

CITY OF PORTLAND, MAINE

PLANNING BOARD

Stuart O'Brien, Chair
Timothy Dean, Vice Chair
Elizabeth Boepple
Sean Dundon
Bill Hall
Carol Morrisette
Jack Soley

June 2nd, 2014

Peter F Holmes
PH Warren Avenue, LLC
401 Warren Avenue
Portland, ME 04103

Stephen Bushey, P.E.
Fay, Spofford & Thorndike
778 Main Street, Suite 8
South Portland, ME 04106

Project Name: **Six Unit Commercial Building**
Project ID: 2014-016 CBL: 296-A006001
Address: 421 Warren Avenue, Portland
Joint Applicants: PH Warren Avenue, LLC
Planner: Jean Fraser

Dear Mr Holmes and Mr Bushey:

On May 27th, 2014, the Planning Board considered the Level III Site Plan application for the proposed 25,040 sq ft single story industrial building to provide 6 commercial units, with 36 parking spaces and associated landscaping, at 421 Warren Avenue. The Planning Board reviewed the proposal for conformance with the standards of the Site Plan Ordinance, and other regulations.

The approval is based upon the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in in the Planning Board Report for the public hearing on May 27, 2014 for application #2014-016 (attached), and the testimony presented at the Planning Board hearing. The Planning Board voted 5-0 (Morrisette and O'Brien absent) to approve the application with the following waivers and conditions as presented below:

WAIVER

1. The Planning Board voted 5-0 (Morrisette and O'Brien absent) to waive the Technical Standard Section 1.7.1.4 *Maximum Driveway Width* which specifies a maximum of 36 feet wide for a major commercial driveway, to allow the drive entrance to be 45 feet wide.
2. The Planning Board voted 5-0 (Morrisette and O'Brien absent) to waive the Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow the drive aisles to be greater than 24 feet, as shown on Plan P6.
3. The Planning Board voted 5-0 (Morrisette and O'Brien absent) to waive the Site Plan Ordinance Section 14-526 (a) (4) (b) and (c) *Bicycle, Motorcycle and Scooter Parking* to allow the proposed parking in commercial units to meet the standard, subject to 2 outside bicycle parking spaces being provided as shown on Plan P6.

SITE PLAN REVIEW

The Planning Board voted 5-0 (Morrisette and O'Brien absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following eleven conditions of approval to be met prior to the issuance of a building permit unless stated otherwise:

- i. That the applicant shall submit, for the City's Associate Corporation Counsel and Department of Public Services review and approval prior to the issuance of a building permit, and submit recorded copies prior to the issuance of a Certificate of Occupancy for any part of the principal structure, easements for joint use of the existing drive access from Warren Avenue, and paving, local drive access, parking, landscaping and other proposed elements that are encroaching on the abutting lot; and
- ii. That the applicant shall submit a Landscape Plan, based on an a submitted assessment of the trees on the site, that shows the following: tree saves; any required replacement planting; and additional planting; snow storage areas; all to address the landscape preservation and parking lot landscaping requirements of the Site Plan Ordinance (14-526), for review and approval by the Planning Authority and City Arborist; and
- iii. That the applicant shall contribute \$6,950 to the Capisic Brook water quality treatment program to address the required mitigation of project impacts in the Urban Impaired Stream Watershed; and
- iv. That the applicant shall address the Fire Prevention concerns, as outlined in the e-mail from Captain Chris Pirone of the Fire Department dated April 30, 2014, to the satisfaction of the Fire Department; and
- v. The stormwater inspection and maintenance plan should include provisions for the inspection and maintenance of the Roof Drip-line Filtration BMP as outlined in Section 7.6 of Volume III of the MaineDEP Stormwater BMP Manual and the post-construction stormwater management plan requirements outlined in Chapter 32 of the City of Portland Code of Ordinances; and
- vi. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan submitted and dated February 2014, as revised April 2014, and revised to address condition v. above, based on City standards and state guidelines. The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements. A maintenance agreement for the stormwater drainage system shall be submitted and signed for the principal structure with a copy to the Planning Division and Department of Public Services; and
- vii. That the applicant shall close the existing curb cut on Warren Avenue (east of the joint access from Warren Avenue into the site); install three signs along the back of the property where the asphalt ends stating: DO NOT DUMP - IMPAIRED WETLANDS; and shall mark with paint the pedestrian walking area in front of the building and between the building and Warren Avenue sidewalk; all prior to the issuance of a Certificate of Occupancy; and
- viii. That this approval relates to the 9.2 acre site identified in Plan P6 fronting onto Warren Avenue, which at the time of this approval is part of a 48+acre site owned by the applicant. If any part of the 48+acre lot is sold off or further developed, the applicant would need to retain the 9.2 acre site that is subject of this approval and include it in any subdivision review, and obtain verification from the Zoning Administrator and Planning Authority that the subject site, as created by any sale, remains in conformity with zoning and site plan requirements; and
- ix. That the applicant shall submit a copy of the ability to serve (wastewater) letter; and
- x. That separate reviews and permits are required the principal structure and separate use permits are required for each unit before occupation. Separate permits are also required for new signs, including those on the building, and for HVAC systems, which require submission of dBA levels to confirm compliance with the maximum sound limits of the B4 zone; and
- xi. That the applicant shall submit the approved Tier I NRPA Permit to the Planning Authority.

STANDARD CONDITIONS OF APPROVAL

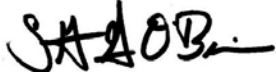
Please note the following standard conditions of approval and requirements for all approved site plans:

1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
3. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
8. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.

The Development Review Coordinator must be notified five (5) working days prior to the date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Jean Fraser at (207) 874-8728.

Sincerely,



Stuart O'Brien, Chair
Portland Planning Board

Attachments:

1. Fire Prevention comments, Captain Chris Pirone e-mail of April 30, 2014
2. Planning Board Report for the public hearing on May 27, 2014, for #2014-016 421 Warren Avenue
3. Portland City Code: Chapter 32
4. Sample Stormwater Maintenance Agreement
5. Performance Guarantee Packet

Electronic Distribution:

Jeff Levine, AICP, Director of Planning and Urban Development
Alexander Jaegerman, FAICP, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Jean Fraser, Planner
Philip DiPierro, Development Review Coordinator, Planning
Marge Schmuckal, Zoning Administrator, Inspections Division
Tammy Munson, Inspection Division Director
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Michael Bobinsky, Public Services Director
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services
Doug Roncarati, Stormwater Coordinator, Public Services

Greg Vining, Associate Engineer, Public Services
Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Services
Rhonda Zazzara, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
Captain Chris Pirone, Fire Department
Danielle West-Chuhta, Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File

From: Chris Pirone
To: JF@portlandmaine.gov
Date: 4/30/2014 9:55 AM
Subject: 421 Warren ave

Initial Fire Comments:

Access looks good as aisle widths are presently 38'.
Is the 20' access at the rear of the building being proposed for the Fire Department?

It appears a sprinkler system is being installed.
The fire department connection for the sprinkler system will need to be located on the front of the building and will need to have a fire hydrant within 100' of the connection but no closer than 40'.

Has an NFPA 1 code analysis been performed for the site?

A private fire hydrant may need to be installed per NFPA 1 on site.

Identification of the building shall have the address at the entrance and on the building which each unit being identified by Suite and letter such as 421 Warren Ave. Suite A.

Exits from the building shall continue from the building onto the site with clear walkways for the occupants to stage if an emergency happens in the building.

Captain Chris Pirone
Portland Fire Department
Fire Prevention Bureau
380 Congress Street
Portland, ME 04101
(t) 207.874.8405



PLANNING BOARD REPORT PORTLAND, MAINE

Six unit Commercial Building
421 Warren Avenue
Final Level III Site Plan
Project ID 2014-016 CBL 296-A006001
PH Warren Avenue, LLC, Applicant

Submitted to: Portland Planning Board Public Hearing Date: May 27 th , 2014	Prepared by: Jean Fraser, Planner Date: May 23 rd , 2014
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I. INTRODUCTION

Steve Bushey of Fay, Spoffard & Thorndike, on behalf of P H Warren Avenue, LLC, has submitted a Final Level III Site Plan for a proposed single story industrial building of 25,040 sq ft floor area to create a 6 unit commercial complex with 26 parking spaces. It is proposed to be accessed via an existing drive that currently serves 429 Warren Avenue (also owned by the applicant).

This project was the subject of a Planning Board Workshop on March 18, 2014, although at that time the proposal was for a 28,000 sq ft building with 7 larger units and a larger paved area that impacted substantially more wetland.

The proposed building is located on a 9.2 acre site that is part of the 48+ acre site known as “Warren Green”. The applicant has purchased the whole of the “Warren Green” site (see [Plan P1](#) and [Attachment 7](#)) and is currently in discussions regarding the possible sale of part or all of the remainder of this larger site to the City. The City would like to acquire some part of the area to enhance water quality and preserve water resources in the Capisic Brook watershed. The applicant also owns the properties abutting both sides of the project on the Warren Avenue frontage.

The proposed development of commercial units does not create a subdivision under State law or City ordinances, as both relate to dwelling units only.

A total of 116 notices of this Hearing were sent to property owners within 500 feet and to interested citizens and a notice was published in the May 19th and 20th, 2014 editions of the *Portland Press Herald*. The applicant held a public information meeting on March 17, 2014 regarding the associated MDEP application to fill in wetlands on part of the site, which was noticed widely. A Neighborhood Meeting was held on April 30, 2014 and attended by 6 neighbors ([Attachment M](#)). To date the Planning office has not received any written public comments although there have been telephone inquiries.

Required reviews: The site plan is being reviewed under the Land Use Code provision 14-526 (Site Plan). The project is located within the Capisic Brook Watershed District and must obtain a Stormwater Permit from the City of Portland (delegated review). The project requires a Natural Resources Protection Act (NRPA) approval from the Maine DEP (Tier I permit for wetland fill).

Required waivers: Three waivers are identified in the table below. The applicant has not addressed the tree preservation and landscaping ordinance and waivers may be requested in the context of that requirement.



<i>Requested Waiver</i>	<i>Standard and any waiver provisions</i>
Driveway Design: the access driveway into the proposal site is 45 feet in width and exceeds the maximum in order to allow for the large vehicles anticipated to require regular access to the site and to avoid conflict with the existing turning movements and traffic flows on the joint access drive.	<i>Technical Manual Section 1.7.1.4</i> which specifies a maximum of 36 feet wide for a major commercial driveway. (Note: the driveway is off of a private drive jointly serving the project not directly off of a public street; Tom Errico, Traffic Reviewer, supports the waiver.)
Parking Lot and Parking Space Design: The parking aisles are up to 68 feet in width to allow for circulation by truck vehicles and therefore exceed the maximum width.	<i>Technical Manual Section 1.14</i> which specifies a maximum of 24 feet for parking aisles. Tom Errico, Traffic Engineer, supports the waivers in view of the anticipated tenants.
Bicycle Parking Spaces- waiver requested from the requirement, as 2 are proposed outside and the applicant considers that tenants will likely store bicycles in their units.	Ordinance 14-526 Site Plan Standards requires 2 bicycle parking spaces for every 10 required vehicle parking spaces, which would be 4 bicycle parking spaces for this project.

II. PROJECT DATA

<i>DATA</i>	<i>Original Proposal (as for March Workshop)</i>	<i>Final Proposal (as reviewed in this hearing report)</i>
Total Site Area	418,393 sq ft	409,000 sq ft
Existing Zoning	B4	B4
Existing Use	Vacant, flat gravel	Vacant, flat gravel
Proposed Uses	Commercial units for rent	Commercial units for rent
Proposed structure height	21 feet	21 feet
Total Disturbed Area	110,207 sq ft	74,809 sq ft
Existing impervious areas	0	0
Proposed impervious areas	82,764 sq ft	56,252 sq ft
Increase in impervious area	82,764 st ft	56,252 sq ft
Existing wetland	3.5 to 4 acres	3.5 to 4 acres
Proposed wetland fill	25,093 sq ft	14,323 sq ft (see NRPA Permit in <u>Att N</u>)
Existing building footprint	0	0
Proposed building footprint	28,000 sq ft	25,040 sq ft
Proposed floorspace	28,000 sq ft	25,040 sq ft
Proposed parking as required by zoning	41 proposed; 28 required by zoning	36 proposed; 25 required by zoning
Proposed bicycle parking	4 (4 required by Ordinance)	2 (4 required by ordinance)
Estimated Cost of Project	\$1.5 million	\$1.5 million
Uses in Vicinity:	Mixed commercial along Warren Avenue; undeveloped at rear	Mixed commercial along Warren Avenue; undeveloped at rear

III. EXISTING CONDITION

The part of the site nearest to Warren Avenue, where the new building is proposed, is about half cleared with gravel and the remainder is wetland mixed with vegetation, including many trees. The rear part of the lot (approximately 7 acres) is mostly fingers of wetland which are part of a much larger area of wetland (Attachment 7 shows wetland over the wider “Warren Green” site).



Photo submitted by applicant

The lot is bounded on the west and east (nearest Warren Avenue) by commercial developments similar to the proposed project and owned by the applicant. The commercial development to the west is 429 Warren Avenue (2 buildings totaling about 35,000 sq ft) in the same ownership as the proposal site. It is served by an existing 36 foot wide access drive from Warren Avenue, and this is proposed as a shared access for the new commercial building.

There are bituminous sidewalks along the frontage and a former (now unused) curb cut on the site.

IV. PROPOSED DEVELOPMENT

The proposal plans (Plans P3. to P20.) show the layout and physical site work on the southern part of the lot where the new development is proposed, with the building elevations in Plan P20. The development has been reduced in scale so there is 35,000 sq ft less disturbed area and the impervious surface is reduced by approximately 26,500 sq ft.

The revised layout comprises a new single story 110 foot (at widest) by 300 foot L-shaped building containing 6 commercial units: 4 units at 3,500 sq ft each; and 2 units of 5,500 sq ft each, to total 25,000 q ft. Each unit will have an overhead door and pedestrian door and initially have an open interior to be leased and modified by small business users.

The parking has been reduced to 36 spaces, largely located near the front of the units with some around the periphery of a large paved area accessed by a 45 foot wide drive onto the joint access drive to Warren Avenue. Drainage will be managed by gravel wetlands to the rear of the building and along the joint access drive, and just over 14,323 sq ft of existing meadow and tree wetland will be filled in to accommodate the development. The impact on wetland is greatly reduced from the earlier proposal, which required filling of over 25,000 sq ft of wetland.

The proposals include the provision of three street trees in the Warren Avenue ROW but no other tree planting or reinstatement planting is proposed. Where the new access is created from the joint access drive, a few shrubs and boulders are proposed.

V. PUBLIC COMMENT and WORKSHOP

A. Public comments: There were no public comments at the time of the Planning Board Workshop and one written comment was received recently from a neighbor Maria Kerley on Iffley Street (PC1) expressing concerns about the impacts of this proposal. At the public meetings arranged by the applicant it is understood that some local residents indicated they would like the remaining land to be sold to the City. The sale of the rest of the lot is not an issue before the Board.

B. Planning Board comments: The Planning Board requested further explanation of the expanse of paved area associated with the first proposals, and sought clarification regarding tree saves and planting. The applicant has revised the proposals to reduce the building size (by 3000 sq ft) and this has resulted in a smaller area of paved surface and reduced wetland fill. The question of treesaves and planting has been addressed by the applicant but staff have suggested that this aspect needs further attention.

VI. RIGHT, TITLE AND INTEREST

The applicant has submitted evidence of ownership of the larger lot (48+acres) in a deed recorded in June 2013 at the Cumberland County Register of Deeds at Book 30781 Page 74. The owner has indicated that the 9.2 acre site will be retained and some or all of the remainder will be sold in due course, with a transfer to the City currently under discussion. Since the basis of the review is the 9.2 acre site (regarding compliance with numerical standards and dimensions), a potential condition of approval has been included to ensure that any sale of the remainder of the lot retains the development site so that it is substantially as presented in this report:

That this approval relates to the 9.2 acre site identified in Plan P6 fronting onto Warren Avenue, which at the time of this approval is part of a 48+acre site owned by the applicant. If any part of the 48+acre lot is sold off or further developed, the applicant would need to retain the 9.2 acre site that is subject of this approval and include it in any subdivision review, or otherwise obtain verification from the Zoning Administrator and Planning Authority that the subject site, as created by any sale, remains in conformity with zoning and site plan requirements; and

The proposal is accessed via a joint access with the neighboring development and some of the site development, including the driveway, some parking and landscaping, is located outside the subject parcel. At present the applicant

owns both the abutting and subject parcels, but one or both could be sold in the future. A potential condition of approval requires a joint access easement which includes shared rights for the drive access from Warren Avenue, and rights for the paving and local drive access, parking, landscaping and other elements that are encroaching on the abutting lot.

VII. STAFF REVIEW

A. ZONING ASSESSMENT

The revised final proposals have been reviewed by Marge Schmuckal, Zoning Administrator, and she has confirmed:

I have reviewed the revised project that reduces the size the square footage of the building and number of units to 6 from 7. I also reviewed the responses to my previous comments. All the B-4 requirements are being met. Again, a permit is required for the principal structure and separate use permits are required for each unit before occupying. Separate permits are required for all signage. (Attachment 5)

B. SITE PLAN STANDARDS

The review has addressed the 9.2 acre parcel that is described on the submitted data sheet. The remainder of the 48+acre lot is not reviewed as it is intended to be transferred and not benefit the subject site.

A. Transportation

1. Impact on Surrounding Street system

The proposed development utilizes an existing access that currently serves the commercial units at 429 Warren Avenue (aka 424 Warren) , which serves just over 35,000 sq ft warehouse/commercial space plus ancillary offices. Tom Errico, the Consultant Traffic Engineer, requested that the applicant provide a traffic generation estimate for the proposed project as well as for the two existing buildings serviced by the shared driveway, in order to determine whether a Traffic Movement Permit (TMP) is necessary (Attachment 3). The applicant has submitted this information (Attachment L) and Mr Errico has confirmed a TMP is not required (Attachment 3)

2. Access and circulation, loading and servicing

The access into the new site has been revised from a 60 foot wide curb cut to a 45 foot wide curb cut, branching from the existing access drive from Warren Avenue that currently serves 429 Warren (two existing warehouse /industrial /commercial buildings) (See Plan P6). The new internal curb cut opens immediately into a large area of pavement that extends about 110 feet out from the new building in the central area, narrowing to 80 feet from the new building at south end and partially wrapping around the building at both ends. This area provides access to the units by large vehicles, including tractor-trailers, and includes parking around the periphery and an area alongside the building for the snowplow (Attachment O).

The revised proposals appear to include pavement at the north end that is not required for the large tractor-trailer turning movements (as shown in Plan P21) nor for fire access or parking (Attachment 3). Staff requested a further explanation of the need for this particular shape of paved area and the applicant has addressed these questions in Attachment O.

Tom Errico, Traffic Reviewer, has provided the following final comments and confirmed that he supports waivers for the driveway entrance and aisle widths (Attachment 3):

- *The proposed driveway entrance exceeds City standards and a waiver will be required. The applicant shall provide an Auto-Turn analysis documenting the need for the wide driveway.
Status - In response to this comment, the applicant has reduced the size of the driveway. The revised driveway width continues to exceed the City's standard. Based upon a review of a truck turning template graphic, I find the proposed driveway design to be acceptable and therefore I support a waiver from City standards.*
- *The aisle widths in the internal parking/circulation area do not meet City standards and a waiver will be required. The applicant shall provide an Auto-Turn analysis documenting the need for the expanded pavement areas.
The applicant has provided a truck turning template graphic that shows a significant portion of the parking lot will be required for very large truck maneuvers. The graphic also illustrates*

that the trucks will require use of areas that are noted as general passenger car parking spaces. From a traffic perspective the paved area will not present safety or circulation problems. The applicant will need to coordinate closely with tenants to ensure parking areas will not constrain large truck maneuvers. It is my understanding that the applicant has experience managing this type of situation. Given that the site is somewhat contained and is set back from Warren Avenue, I find conditions to be acceptable and support a waiver for parking lot aisle width.

3. Pedestrian Access

Each of the proposed 6 units have a pedestrian entrance from the central paved area which also provides parking spaces (Plan P6). Tom Errico, Traffic Reviewer, had requested a pedestrian link from the sidewalk to the building entrances, and marking of the area along the front of the building to identify a pedestrian route (Attachment 3).

The revised proposals include the pedestrian connection from the new building to the Warren Avenue sidewalk, but have not indicated the painted marking for the pedestrian route along the front of the building and across to the pedestrian link. A potential condition of approval has been included, at Mr Errico's recommendation, to include the painted markings for the pedestrian route.

4. Parking Requirements

The proposal includes 36 parking spaces, distributed around the perimeter of the central access area to serve the units. The zoning requirement would be 25 spaces (1 per 1000 sq ft). The additional parking is not directly creating the need for the shape of the paved area. In view of the unknown mix of tenants, staff consider the number of parking spaces to be acceptable.

5. Bicycle Parking Requirements

The ordinance standard for this development is 2 bicycle parking spaces for every 10 required vehicle parking spaces, ie 4 bicycle parking spaces. The applicant has provided 2 bicycle parking spaces in a rack near Warren Avenue and requested a waiver for the other 2 spaces based on the expectation that employees with bikes would store them within the units. Staff agree that in this case the two spaces for visitors is adequate and support the waiver.

6. Snow Storage

The site plan (Plan P6) does not specifically call out snow storage. The proposed paved area is likely to provide adequate area for snow storage, but the proposed wetland cells, swales and erosion control features about the paved area and a Snow Storage Plan is required to ensure that these areas are not used for snow storage. A potential condition of approval requests that snow storage areas be shown on the requested Landscape Plan.

Note: Public Transit Access and TDM requirements do not apply to this project.

B. Environmental Quality

1. Landscape Preservation

Preservation of a percentage of large trees within the setbacks of the 9.2 acre site is an Ordinance requirement. The City Arborist had previously requested a tree save plan but the applicant has indicated in Attachment L (page 10) that this is not required because the remaining 40 acres addresses this requirement. The evaluation of this proposal is based on the site of 9.2 acres described on the data sheet and staff consider that if there are any large trees near the edge of the proposed paved area, that they should be identified for protection on a plan. Staff have not suggested that the project be scaled down in order to protect trees, as the waiver provision in the ordinance would allow the applicant to remove and replace (elsewhere on the site) any large trees. A potential condition of approval covers this concern and other landscaping issues as discussed below.

2. Site Landscaping and Street Trees

The Site Plan (Plan P.6) shows three street trees and a few shrubs and boulders near the new access from the joint drive. The Site Plan and zoning ordinances include the following requirements which apply to this site and have been met by other developments on Warren Avenue:

B4 Zoning Requirement:

- (a) *Landscaping and screening:* The site shall be suitably landscaped for parking, surrounding uses and accessory site elements including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).

Site Plan Standards:

- (ii) *Parking Lot Landscaping:*
- (a) *Developments with five (5) or more parking spaces shall include at least two (2) trees (or one (1) tree and three (3) shrubs) per five (5) parking spaces planted in landscaped islands to screen shade and break up parking. Trees and shrubs in parking lots may be in informal groups, straight rows, or concentrated in clusters as detailed in Section 4 of the Technical Manual.*
- (b) *Landscaped islands shall be distributed so that uninterrupted pavement does not exceed forty (40) parking spaces.*
- (c) *Landscaped islands shall be curbed and a minimum of eight (8) feet in width, not including curbing. The incorporation of bioretention into landscaped islands is strongly encouraged.*

As noted at the Workshop, planting is also needed for the proposed gravel wetlands and staff suggest a separate Landscape Plan for this, along with parking lot landscaping and replacement trees. A potential condition of approval is included to cover these issues along with tree preservation.

3. Stormwater Management

The proposals result in creation of new impervious areas that total 56,252 sq ft, of which the new commercial building accounts for just under a half (25,000 sq ft). The area of impervious surface has been reduced from over 80,000 sq ft in the revised proposals. The project also results in the filling of 14,323 sq ft of wetlands and the applicant has applied for a Tier I Permit under NRPA. The site is within the Capisic Brook Impaired Watershed.

The applicant has submitted a final Stormwater Management Report (Attachment K) and Dave Senus, consulting engineering reviewer, has confirmed that the overall proposals are acceptable subject to some minor conditions (Attachment 1) that have been included in the motion for the Board to consider. These include the requirement for an in-lieu compensation fee of \$6,950 because the project is required to comply with the Urban Impaired Stream Standard.

C. Public Infrastructure and Community Safety Standards

1. Consistency with City Master Plans

The Department of Public Services (David Margolis-Pineo) has commented (Attachment 2):

Since the curb cut on Warren Ave in front of this project is not proposed to be used, the applicant is requested to close the curb cut. The curbing shall be set in concrete to match the abutting curb work... Warren Ave in this area is currently under a pavement moratorium until October 26, 2014. However as long as the applicant does not encroach the pavement more than two feet from the face of curb, no moratorium repair will be requested if the work is done before this date.

The applicant has agreed to close this curb cut in the submitted narrative (Attachment L) but it is not shown on the plans. A suggested condition of approval requests this be shown in the site plan in Plan P6.

2. Public safety

The proposals are acceptable as they include lighting and a pedestrian link along the front of the building and connecting to the sidewalk on Warren Avenue.

3. Fire prevention

Captain Chris Pirone has outlined his concerns (Attachment 6) but further discussion is necessary to determine whether and where an additional hydrant is needed, whether the sprinkler connection is adequate. A potential condition of approval addresses this outstanding issue.

D. Site Design Standards

1. Site Lighting

The proposed lighting fixtures are included in Attachment J (at end) and the Photometric Plan is included in Plan P7; both meet the City's Technical Standards.

2. Construction Management Plan

The final submission includes an acceptable Construction Management Plan (Attachment H).

VIII. STAFF RECOMMENDATION

The Planning staff recommend approval of this project subject to the suggested conditions of approval as cited in the proposed motions.

IX. MOTIONS FOR THE BOARD TO CONSIDER

a. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report for the public hearing on May 27, 2014 for application #2014-016 (421 Warren Avenue) relevant to Portland's Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board (waives/does not waive) Technical Design Standard Section 1.7.1.4 which specifies a maximum of 36 feet wide for a major commercial driveway, to allow the drive entrance to be 45 feet wide.
2. The Planning Board (waives/does not waive) Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow the drive aisles to be greater than 24 feet, as shown on Plan P6.
3. The Planning Board (waives/does not waive) Section 14-526 (a) (4) (b) and (c) Bicycle, Motorcycle and Scooter Parking to allow the proposed parking in commercial units to meet the standard, subject to 2 outside bicycle parking spaces being provided as shown on Plan P6.

b. DEVELOPMENT REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on May 27, 2014 for application #2014-016 (421 Warren Avenue) relevant to the Site Plan review and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

1. SITE PLAN REVIEW

The Planning Board finds that the plan (**is/is not**) in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval to be met prior to the issuance of a building permit unless stated otherwise:

Potential conditions of approval:

- i. That the applicant shall submit, for the City's Associate Corporation Counsel and Department of Public Services review and approval prior to the issuance of a building permit, and submit recorded copies prior to the issuance of a Certificate of Occupancy for any part of the principal structure, easements for joint use of the existing drive access from Warren Avenue, and paving, local drive access, parking, landscaping and other proposed elements that are encroaching on the abutting lot; and
- ii. That the applicant shall submit a Landscape Plan, based on an a submitted assessment of the trees on the site, that shows the following: tree saves; any required replacement planting; and additional planting; snow storage areas; all to address the landscape preservation and parking lot landscaping requirements of the Site Plan Ordinance (14-526), for review and approval by the Planning Authority and City Arborist; and

- iii. That the applicant shall contribute \$6,950 to the Capisic Brook water quality treatment program to address the required mitigation of project impacts in the Urban Impaired Stream Watershed; and
- iv. That the applicant shall address the Fire Prevention concerns, as outlined in the e-mail from Captain Chris Pirone of the Fire Department dated April 30, 2014, to the satisfaction of the Fire Department; and
- v. The stormwater inspection and maintenance plan should include provisions for the inspection and maintenance of the Roof Drip-line Filtration BMP as outlined in Section 7.6 of Volume III of the MaineDEP Stormwater BMP Manual and the post-construction stormwater management plan requirements outlined in Chapter 32 of the City of Portland Code of Ordinances.
- vi. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan submitted and dated February 2014, as revised April 2014, and revised to address condition vi above, based on City standards and state guidelines. The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements. A maintenance agreement for the stormwater drainage system shall be submitted and signed for the principal structure with a copy to the Planning Division and Department of Public Services; and
- vii. That the applicant shall close the existing curb cut on Warren Avenue (east of the joint access from Warren Avenue into the site); install three signs along the back of the property where the asphalt ends stating: DO NOT DUMP - IMPAIRED WETLANDS; and shall mark with paint the pedestrian walking area in front of the building and between the building and Warren Avenue sidewalk; all prior to the issuance of a Certificate of Occupancy; and
- viii. That this approval relates to the 9.2 acre site identified in Plan P6 fronting onto Warren Avenue, which at the time of this approval is part of a 48+acre site owned by the applicant. If any part of the 48+acre lot is sold off or further developed, the applicant would need to retain the 9.2 acre site that is subject of this approval and include it in any subdivision review, and obtain verification from the Zoning Administrator and Planning Authority that the subject site, as created by any sale, remains in conformity with zoning and site plan requirements; and
- ix. That the applicant shall submit a copy of the ability to serve (wastewater) letter; and
- x. That separate reviews and permits are required the principal structure and separate use permits are required for each unit before occupation. Separate permits are also required for new signs, including those on the building, and for HVAC systems, which require submission of dBA levels to confirm compliance with the maximum sound limits of the B4 zone.

ATTACHMENTS:

Staff Review comments and background information

1. Engineering Review (David Senus, Woodard & Curran) comments 5.15.14 and 3.3.14
2. DPS (David Margolis-Pineo) comments 5.7.14, 5.16.14 and 3.11.14
3. Traffic Engineering Review (Tom Errico, T Y Lin), comments 5.22.14, 5.9.14 and 3.12.2014
4. City Arborist (Jeff Tarling) comments 3.13.14
5. Zoning Administrator (Marge Schmuckal) comments 5.21.14 and 3.14.14
6. Fire Department (Captain Chris Pirone) comments 4.30.14
7. Wider Warren Green Wetlands Plan (2007) (from rezoning files)

Public comments

PC1 Maria Kerley, 56 Iffley Street

Applicant's Final Submittal

- A. Cover letter
- B. Final Site Plan Application

- C. Table of contents of written submission
- D. Sec 1 Project Description and Photos
- E. Sec 2 Technical and Financial Capability and RTI
- F. Sec 3 Utility Letters
- G. Sec 4 Final Fire Safety Info
- H. Sec 5 Construction Management plan
- I. Sec 6 Solid Waste
- J. Sec 7 Narrative re Conformity with Standards and Lighting
- K. Sec 8 Stormwater Management Report
- L. Sec 9 Detailed responses to review comments
- M. Neighborhood Meeting Certificate and notes
- N. NRPA Tier 1 Application
- O. Letter 5.21.2014 re need for paved area

Plans

- P1. Boundary Survey Wider Area
- P2. Site Boundary Survey (C2.0)
- P3. Cover sheet
- P4. General Notes and Legend
- P5. Existing conditions
- P6. Site Layout and Utility Plan
- P7. Lighting and Photometric
- P8. Grading and Drainage
- P9. Gravel Wetland #1 Plan
- P10. Gravel Wetland #2 Plan
- P11. Erosion and Sedimentation Control
- P12. Details (C4.3)
- P13. Details (C6.0)
- P14. Details (C6.1)
- P15. Details (C6.2)
- P16. Details (C6.3)
- P17. Predevelopment Watershed
- P18. Post-Development Watershed
- P19. Floor Plans and Elevations
- P20. Elevations
- P21. Truck Turning Template

CHAPTER 32 STORM WATER

Art. I. Prohibited Discharges, §§ 32-1--32-15

Art. II. Prohibited Discharges, §§ 32-16--32-35

Art. III. Post-Construction Stormwater Management, §§32-36-32-40

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

Applicant. "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

Best management practices ("BMP"). "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act. "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Enforcement authority. "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

Exempt person or discharge. "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority

municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP").City of Portland

Municipality. "Municipality" means the city of Portland.

Municipal separate storm sewer system, or MS4. "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

National pollutant discharge elimination system (NPDES) storm water discharge permit. "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-storm water discharge. "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

Person. "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-construction stormwater management plan. "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

Premises. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Qualified post-construction stormwater inspector. "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

Regulated small MS4. "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

Small municipal separate storm sewer system, or small MS4. "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

Storm drainage system. "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

Storm water. "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

Urbanized area ("UA"). "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-2. Reserved.

Sec. 32-3. Reserved.

Sec. 32-4. Reserved.

Sec. 32-5.	Reserved.
Sec. 32-6.	Reserved.
Sec. 32-7.	Reserved.
Sec. 32-8.	Reserved.
Sec. 32-9.	Reserved.
Sec. 32-10.	Reserved.
Sec. 32-11.	Reserved.
Sec. 32-12.	Reserved.
Sec. 32-13.	Reserved.
Sec. 32-14.	Reserved.
Sec. 32-15.	Reserved.

ARTICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-17. Responsibility for administration.

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

Sec. 32-18. Prohibition of non-storm water discharges.

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-19. Suspension of access to the city's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-20. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-21. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
 - (2) The cessation of discharges, practices, or operations in violation of this article.
 - (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
 - (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and

regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

result from any person's reliance on this article or any administrative decision lawfully made hereunder.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-22. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.**
- Sec. 32-24. Reserved.**
- Sec. 32-25. Reserved.**
- Sec. 32-26. Reserved.**
- Sec. 32-27. Reserved.**
- Sec. 32-28. Reserved.**
- Sec. 32-29. Reserved.**
- Sec. 32-30. Reserved.**
- Sec. 32-31. Reserved.**
- Sec. 32-32. Reserved.**
- Sec. 32-33. Reserved.**
- Sec. 32-34. Reserved.**
- Sec. 32-35. Reserved.**

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-37. Post-construction stormwater management plan approval.

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.

(Ord. No. 35-09/10, 9-17-09)

Sec. 32-38. Post-construction stormwater management plan compliance.

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the yare adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file and annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

Sec. 32-39. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

- (a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
 - (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
 - (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
 - (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to

attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or , in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-40. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 35-09/10, 8-17-09)

**STORMWATER DRAINAGE SYSTEM
MAINTENANCE AGREEMENT AND
RELEASE FROM LIABILITY**

IN CONSIDERATION OF [site plan/subdivision] approval granted by the Planning Board of the City of Portland to a plan entitled _____ prepared for _____ (applicant and address) by _____(agents/engineers) dated ____ __, ____ recorded in the Cumberland County Registry of Deeds in Plan Book ____, Page ____ (the “Plan”) and pursuant to a condition thereof, _____ (owner) having a mailing address of _____, the owner of the subject premises, does hereby agree, for itself, its successors and assigns (the “Owner”), as follows:

Maintenance Agreement

That it will, at its own cost and expense and at all times in perpetuity, maintain in good repair and in proper working order the stormwater drainage system, as shown on said plan, including but not limited to the tree boxes, StormTech Isolator Row, piping, valves, etc. in strict compliance with the Maintenance of Facilities as described in _____ (Stormwater Management Plan) in the _____ dated _____ and Chapter 32 of the Portland City Code. Owner of the subject premises further agrees to keep a Stormwater Maintenance Log that will be made available for inspection by the City of Portland upon reasonable notice and request.

This Agreement is for the benefit of the said City of Portland and all persons in lawful possession of the property; further, that the said City of Portland may enforce this Agreement by an action at law or in equity in any court of competent jurisdiction; further, that after giving the Owner written notice as described in this Agreement, and a stated time to perform, that the said City of Portland, by its authorized agents or representatives, may, but is not obligated to, enter upon the property in question to maintain, repair, or replace said stormwater drainage system, including but not limited to the _____ (specify devices and measures including, but not limited to, tree boxes, StormTech Isolator Row, piping, valves, etc.) thereon in the event of any failure or neglect thereof, the cost and expense thereof to be reimbursed in full to the said City of Portland by the Owner upon written demand. Any funds owed to the City under this paragraph shall be secured by a lien on the property.

This Agreement shall bind the undersigned only so long as it retains any interest in said premises, and shall run with the land and be binding upon the Owner's successors and assigns as their interests may from time to time appear. The Owner agrees to provide a copy of this Agreement to any successor or assign and to forward to the City an Addendum signed by any successor or assign in which the successor or assign states that the successor or assign has read the Agreement, agrees to all its terms and conditions.

For the purpose of this Agreement the real estate shown by chart, block and lot number in the records on file in the City Assessor's office shall constitute "the property" that may be entered by the City and liened if the City is not paid all of its costs and charges following the mailing of a written demand for payment to the Owner pursuant to the process and with the same force and effect as that established by 36 M.R.S.A. §§ 942 and 943 for real estate tax liens.

Any written notices or demands required by this Agreement shall be complete on the date the notice is mailed to the owner of record as shown on the tax roles on file in the City Assessor's Office. If the property has more than one owner on said tax rolls, service shall be complete by mailing it to only the first listed owner. The failure to receive any written notice required by this Agreement shall not prevent the City from entering the property and performing maintenance or repairs on the stormwater system, or any component thereof, or liening it or create a cause of action against the City.

Dated at Portland, Maine this ____ day of _____, 20__.

By: _____
Its: _____

STATE OF MAINE
CUMBERLAND, ss.

Date: _____

Personally appeared the above-named _____, and acknowledged the foregoing instrument to be his/his free act and deed in his/her said capacity, and the free act and deed of said _____.

Before me,

Notary Public/Attorney at Law

Print name: _____



PORTLAND MAINE

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Planning & Urban Development Department

Jeff Levine, AICP, Director

Planning Division

Alexander Jaegerman, FAICP, Director

Performance Guarantee and Infrastructure Financial Contribution Packet

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

SUBDIVISION/SITE DEVELOPMENT
Cost Estimate of Improvements to be covered by Performance Guarantee

Date: _____

Name of Project: _____

Address/Location: _____

Application ID #: _____

Developer: _____

Form of Performance Guarantee: _____

Type of Development: Subdivision _____ Site Plan (Level I, II or III) _____

TO BE FILLED OUT BY THE APPLICANT:

<u>Item</u>	PUBLIC			PRIVATE		
	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

6. SITE LIGHTING	_____	_____	_____	_____	_____	_____	_____
7. EROSION CONTROL							
Silt Fence	_____	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____	_____
Pipe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)	_____	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____	_____

INSPECTION FEE (to be filled out by the City)

	PUBLIC	PRIVATE	TOTAL
A: 2.0% of totals:	_____	_____	_____
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
LETTER OF CREDIT
[ACCOUNT NUMBER]**

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby issues its Irrevocable Letter of Credit for the account of **[Insert: Name of Developer]**, (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of **[Insert: amount of original performance guarantee]**. These funds represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/ or site plan]**, approved on **[Insert: Date]** and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or

3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on [Insert date between April 16 and October 30 of the following year] ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at

_____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the [Insert: subdivision and/ or site plan] approval, dated [Insert: Date] as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
ESCROW ACCOUNT
[ACCOUNT NUMBER]**

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

[Bank] will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the **[Bank]**, by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this agreement that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider the Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [**Insert: subdivision and/ or site improvements**].

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

Seen and Agreed to: [**Applicant**]

By: _____

**PERFORMANCE GUARANTEE
with the City of Portland**

Developer's Tax Identification Number: _____

Developer's Name and Mailing Address: _____

City Account Number: _____

Application ID #: _____

Application of _____ **[Applicant]** for _____ **[Insert street/Project Name]** at _____ **[Address]**, Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$_____ **[amount of performance guarantee]** on behalf of _____ **[Applicant]** in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing _____ **[insert: subdivision and/ or site improvements (as applicable)]** as depicted on the subdivision/site plan, approved on _____ **[date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the _____ **[insert: subdivision and/ or site improvements (as applicable)]** approval, dated _____ **[insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option,

either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its representative, will give the City written notice, by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Works and Planning, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **[the applicant]**. The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship;
or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
****Planning Division Director

Date: _____

By: _____
Development Review Coordinator

Date: _____

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

Distribution

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. ****Signature required if over \$50,000.00.

Infrastructure Financial Contribution Form
Planning and Urban Development Department - Planning Division

Amount \$

City Account Number: 710-0000-236-98-00

Project Code: _____

(This number can be obtained by calling Cathy Ricker, x8665)

Project Name:

Application ID #:

Project Location:

Project Description:

Funds intended for:

Applicant's Name:

Applicant's Address:

Expiration:

If funds are not expended or encumbered for the intended purpose by _____, funds, or any balance of remaining funds, shall be returned to contributor within six months of said date.

Funds shall be permanently retained by the City.

Other (describe in detail) _____

Form of Contribution:

Escrow Account

Cash Contribution

Interest Disbursement: Interest on funds to be paid to contributor only if project is not commenced.

Terms of Draw Down of Funds: The City shall periodically draw down the funds via a payment requisition from Public Works, which form shall specify use of City Account # shown above.

Date of Form:

Planner:

- Attach the approval letter, condition of approval or other documentation of the required contribution.
- One copy sent to the Applicant.

Electronic Distribution to:

Peggy Axelsen, Finance Department
Catherine Baier, Public Services Department
Barbara Barhydt, Planning Division
Jeremiah Bartlett, Public Services Department
Michael Bobinsky, Public Services Department
Diane Butts, Finance Department
Philip DiPierro, Planning Division
Katherine Earley, Public Services Department
Michael Farmer, Public Services Department
Alex Jaegerman, Planning Division
David Margolis Pineo, Public Services Department
Matt Rancourt, Public Services Department
Jeff Tarling, Public Services Department
Planner for Project