



CITY OF PORTLAND
Planning & Urban Development
Christine Grimando, AICP, Planning Director

April 12, 2019

Banyan North LLC
13 Kinnaird Street
Cambridge, MA 02139

Michael Barton, Manager
The Congress Group of Maine
78 Lincoln Street
Portland, Maine 04103

Jason G Howe
Bergen Parkinson Attorneys
62 Portland Road, Suite 25
Kennebunk, Maine 04043

Project Name: **Taco Bell Amendment: to address condition on #2016-007 approved site plan**

Project ID: PL-000565-2019
Address: 1363 Washington Avenue, Portland CBL: 401 A002001
Applicant: Banyan North LLC
Planner: Jean Fraser

Dear Sirs:

On April 12, 2019, the Planning Authority approved with conditions a Level II Site Plan application for the creation of an exit drive at the rear of the site to provide a safe exit route for vehicles wishing to go south on Washington Avenue and allowing for the restriction of the Washington Avenue access to right out only. This is an amendment to the site plan subject of approval #2016-007, and addresses conditions of that approval that sought to secure safe access to the site.

The decision is based upon the application and documents as submitted by the Congress Group of Maine, including C-01 Site Concept Plan and C-02 Details prepared by Bohler Engineering dated 3/29/2019, and legal documents including the executed cross easement agreement for access to the abutting "Rite Aid Drive" dated 4/9/2019.

The Planning Authority found the proposals are in conformance with the Site Plan Standards of the Land Use Code subject to the following waiver and conditions of approval and the standard conditions of approval:

WAIVER

Parking lot layout

The Planning Authority waives the Technical Standard, Section 1.14 and associated figures, which specify aisle widths and parking space dimensions, to allow the parking lot layout to be based on 50 degree angled parking as shown on the approved Layout Plan.

SITE PLAN CONDITIONS OF APPROVAL

1. That the Applicant's right, title and interest in the access way proposed in this amendment is based on the submitted signed cross-easement agreement that confirms that the owner and a specific buyer have rights for access over the "Rite Aid Drive" abutting the site to the north. This easement shall be recorded in the Cumberland County Register of Deeds prior to the issuance of a building permit (if needed) or prior to the Pre Construction meeting noted below (Standard Conditions). This approval is expressly conditioned on any purchaser of the Property remaining a party to the cross-easement with a right of access.
2. The new rear access drive that connects to the "Rite Aid" Drive (as depicted on the approved site plan, including signage) shall be implemented within 2 months of the date of this letter, or within 2 months of the recommencement of a Taco Bell operation, whichever is later. The Applicant or any purchaser of the Property shall promptly notify the Planning Authority when Taco Bell resumes operations.
3. That the new rear access drive that connects to the "Rite Aid" Drive (as depicted on the approved site plan, including signage) shall be open and accessible through the site and over the "Rite Aid" Drive at all times when the restaurant and drive-through are operating, except during the implementation period as noted in 2 above.
4. That only right-turn vehicle movements are permitted from the driveway onto Washington Avenue (left-turns are prohibited). All vehicles exiting to Washington Avenue southbound shall use the rear exit and "Rite Aid Drive".
5. That Applicant and any purchaser of the property subject to this approval shall execute an assignment and assumption agreement pursuant to which the Applicant assigns and the purchaser agrees to assume ALL obligations and rights (omnibus assignment) associated with this approval, including the payment of fees associated with the cross-easement.
6. That a detailed design of the retaining wall and associated facing blocks, drainage, structural and other elements (such as fencing) shall be prepared by a Professional Engineer and submitted to the Planning Authority for review and approval. Once approved by the Planning Authority, any required building or other permits shall be obtained prior to construction.
7. That the drive-through is approved as part of the Taco Bell use only. If the occupant changes and the drive-through remains in operation, the new occupant shall submit a traffic analyses relating to the new occupant's drive through traffic generation to the Planning Authority for review and approval. If the new occupant's drive through use results in "peak hour" traffic volumes that are greater than those associated with Taco Bell (as documented in the 2016 Taco Bell site plan application), the new occupant may be required to modify the site plan layout and/or obtain a Traffic Movement Permit.

8. The Taco Bell building design was approved in 2016 as being in conformance with the B2 Design Standards (as shown in the attached elevation) based on the understanding that windows would be Solarban 60 Starphire Ultra-Clear Glass (or equivalent) of a tint to match the tint of the existing windows. The elevations shall be maintained in accordance with the approved building design, and any modifications to the elevations, material or glass specifications shall be submitted for review and approval by the Planning Authority prior to implementation.

The approval is based on the submitted site plan. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.

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 two (2) final sets of at-scale plans must be submitted to and approved by the Planning Division and Public Works 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 Work'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 and confirm the construction management details including delivery and storage of materials and erosion control. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

7. **Department of Public Works Permits** If work or obstructions will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, site deliveries and equipment siting, a Street Opening and/or Occupancy 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 the return of the Performance Guarantee. Please schedule any property closing with these requirements in mind.

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

Sincerely,



Christine Grimando, AICP
City Planning Director

Attachment:

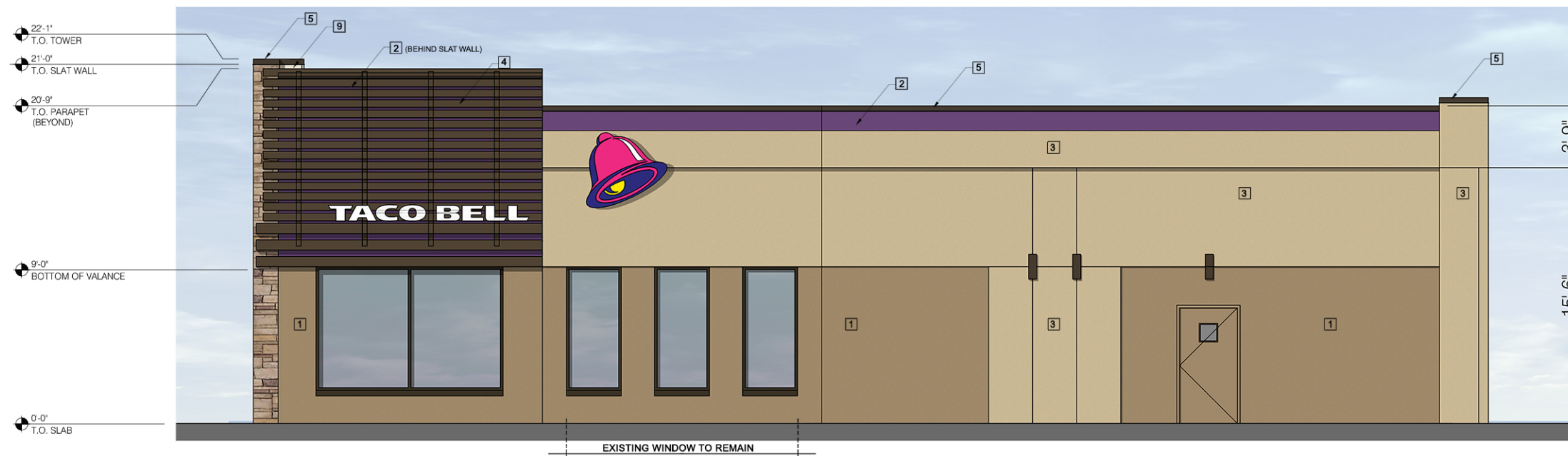
- i. Elevations as approved in 2016
- ii. Performance Guarantee Packet



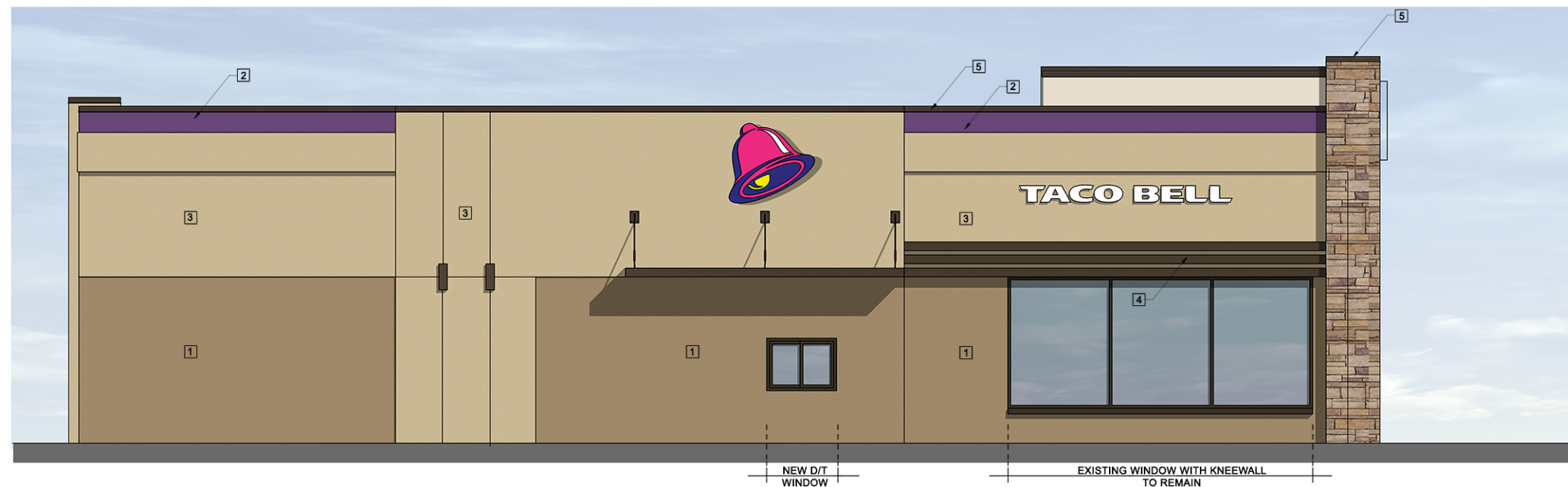
SYMBOL	AREA	MANUFACTURER	COLOR
1	MAIN BUILDING COLOR (E.I.F.S)	LOTUSAN STO THERM, CI ESSENSE STOLIT LOTUSAN 1.0	NA08-0011 "CAMEL BACK"
2	WALL COLOR BEHIND SCREEN WALL (E.I.F.S)	LOTUSAN STO THERM, CI ESSENSE STOLIT 130 DARK	NA08-0011 "CLEMATIS"
3	ACCENT COLOR (E.I.F.S)	LOTUSAN STO THERM, CI ESSENSE STOLIT LOTUSAN 1.0	NA08-0011 "ROOKWOOD CLAY"
4	ALUMINUM SLAT WALL AND VALANCE COLOR	VENDOR	SW 7034 "STATUS BRONZE" (EQUAL)
5	PARAPET CAP COLOR	DUROLAST	MEDIUM BRONZE (FACTORY FINISH)
6	STONE WALL	BORAL - VERSA STONE	TIGHT CUT - "PLUM CREEK"

EXTERIOR FINISH SCHEDULE

NOTE: EXISTING WINDOWS NOTED TO REMAIN.
NEW GLASS TO BE SOLARBAN 60 STARPHIRE
ULTRA-CLEAR GLASS, TINT TO MATCH EXISTING



- 22'-1" T.O. TOWER
- 21'-0" T.O. SLAT WALL
- 20'-9" T.O. PARAPET (BEYOND)
- 9'-0" BOTTOM OF VALANCE
- 0'-0" T.O. SLAB



MARK D. MCCLUGGAGE AIA, CCS
1538 E. Douglas, Wichita, KS 67211
Tel: (316) 265-9367
Fax: (316) 265-5646
www.gmv.com

15034.000



CONTRACT DATE:
BUILDING TYPE:
PLAN VERSION:
SITE NUMBER:
STORE NUMBER:

TACO BELL
1363 WASHINGTON AVE.
PORTLAND, ME



EXTERIOR ELEVATIONS

PLOT DATE:



CITY OF PORTLAND
Planning & Urban Development

Performance Guarantee, Inspection Fee, and Infrastructure Financial Contribution Packet

A. Site Plan/Subdivision Performance Guarantees Required

Portland's Land Use Code requires all developers with approved site plan and/or subdivision applications to submit a performance guarantee to the City prior to the start of any construction or site improvements. The performance guarantee represents 100% of the total cost of site improvements, as determined by the City. The code further requires developers to pay an inspection fee of 2% of the performance guarantee amount to the City for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications. (Portland's Land Use Code, Sections 14-501 and 14-530)

B. Cost Estimate Form and Inspection Fee

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. Please submit an itemized cost estimate form to determine the detailed costs of both public and private site improvements to the Planning Division for review and approval. The cost estimate form (excel format) can be downloaded from the city's website here: <http://portlandmaine.gov/costestimate> The approved amount on the Cost Estimate form is the amount to be covered by the performance guarantee and is the basis for calculating the 2% inspection fee.

C. Acceptable Types of Performance Guarantees

The accepted forms of a performance guarantee, covering the amount approved on the Cost Estimate form, must be one of the following options consistent with the attached templates, with **NO** exceptions:

1. A letter of credit from a bank/credit union (Attachment 2)
2. A deposit into a bank-held escrow account (Attachment 3)
3. A deposit into a City-held escrow account (Attachment 4)

NOTE: No land use application of any kind shall be processed, reviewed or issued, no signed subdivision plat shall be released or recorded, and no building permit of any kind shall be issued unless all fees have been paid and every aspect of the proposed development is in compliance with City Codes as determined by the Development Review Coordinator in the Planning Division.

The developer is eligible to receive up to three reductions from the performance guarantee in a calendar year equal to the estimated cost of the completed improvements. In no case, however, shall any performance guarantee be reduced 1) in any line item where improvements remain to be completed; or 2) to a value which is less than the estimated cost of completing all remaining required improvements; or 3) to a value less than 10% of the Performance Guarantee. *(The Cost Estimate Form can also be used during the construction phase to submit reductions of fully completed site work items)*

At the conclusion of the project, the City will release 90% of the performance guarantee after the Development Review Coordinator determines that site improvements have been satisfactorily completed at the time of the final inspection. The City will then retain a 10% defect guarantee to cover the workmanship and durability of materials used in construction. The defect guarantee will be released one (1) year from date of acceptance, subject to the Development Review Coordinator inspecting the site and finding it in compliance with the approved site plan.

D. Housing Replacement Performance Guarantees

For those projects that are subject to Portland's Housing Preservation and Replacement Ordinance (Section 24-483) and have an approved plan, then a performance guarantee is required for housing replacement. An owner or developer must post a performance guarantee in the form of a letter of credit in the amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Fund, if the applicant had chosen that option. The guarantee shall be valid for no more than three years, after which the full amount shall be provided to the City's Housing Trust Fund, if replacement units meeting the code do not have certificates of occupancy. The guarantee can be released upon the issuance of a certificate of occupancy for the replacement units. A suggested template for a Housing Replacement Performance Guarantee is included as Attachment 4.

E. Infrastructure Accounts

Contributions to infrastructure accounts may be required as part of the conditions of site plan approval. The contributions must be submitted prior to the issuance of any permits, unless stated otherwise in the approval. The form for submitted required contributions is included as Attachment 5.

F. Administrative Process for Submitting Performance Guarantee

- **Step 1 - Cost Estimate**

Submit completed cost estimate form to Planning Division for review and approval. Once approved, use this total amount as the performance guarantee amount in Step 2.

- **Step 2 - Performance Guarantee**

Complete a draft of 1 of the 3 attached performance guarantee templates, inputting project specific information into blank and bracketed areas, and submit to the Planning Division for final approval. Once staff approved the draft, the applicant shall submit the official signed original performance guarantee document, which for option 1) or 2) must be on Bank/Credit Union letterhead with original signatures.

- **Step 3 - Submit Performance Guarantee, Inspection Fee, and Infrastructure Contributions**

Submit the final original Performance Guarantee, the required inspection fee, and any infrastructure contributions to the Planning Division. The Planning Division will confirm that the final documents are accurate and acceptable.

- **Step 4 - Release of Recording Plat and Permits**

Only after the performance guarantee is issued, fees paid, and all other conditions of site plan approval and compliance are met, will the recording plat be released for recording at the Cumberland County Registry of Deeds and/or City permits issued.

Contact: Please email the cost estimate form to jkeene@portlandmaine.gov

After the cost estimate is approved, all Performance Guarantees and Infrastructure Contributions can be submitted by mail to: 389 Congress Street, 4th Floor, Portland, ME 04101, Attn: James Dealaman. Please call our office with any questions: 207-874-8721

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 Escrow Form with the City of Portland
5. Housing Replacement Performance Guarantee Form
6. Infrastructure Financial Contribution Form with the City of Portland

Cost Estimate of Improvements Form

Please visit the city's website to download and complete the electronic Cost Estimate spreadsheet:

<http://portlandmaine.gov/costestimate>

PERFORMANCE GUARANTEE LETTER OF CREDIT

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 Applicant]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “Bank”) hereby issues its Irrevocable Letter of Credit for the account of **[Insert: Name of Applicant]** (hereinafter referred to as “Applicant”), 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 the City of Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65.

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 Applicant 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 Applicant 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 Applicant has failed to notify the City for inspection of completed site improvements; or
4. the Applicant has failed to provide the City with civil as-built drawings at the time of project completion.

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City 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 City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the Bank, by written certification, to reduce the available amount of the escrowed money by a specified amount.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Letter of Credit will automatically expire on **[Insert date one year from the date of this Letter of Credit]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever is later (“Expiration Date”), provided that the expiration date does not fall between October 30th and April 15th. It is a condition of this Letter of Credit that the expiration date 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 Brendan O’Connell, 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, up to thirty (30) days before or sixty (60) days after its expiration, 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, 530 and shall automatically expire thirty (30) days after Applicant notifies the City for a Defect Inspection (“Termination Date”). The Applicant may notify the City for a Defect Inspection no sooner than one (1) year from the date the Defect Letter of Credit was created.

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

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

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

ESCROW ACCOUNT WITH FINANCIAL INSTITUTION

[Insert: SITE PLAN and/or SUBDIVISION]
PERFORMANCE GUARANTEE
ESCROW ACCOUNT WITH FINANCIAL INSTITUTION
[Insert: ACCOUNT NUMBER]

[Insert: Date]

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

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

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “Bank”) hereby certifies to the City of Portland that [Insert: Name of Bank/Credit Union] 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: Approval Date] as required under the Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by [Insert: Name of Applicant].

[Insert: Name of Bank/Credit Union] 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 Applicant has failed to satisfactorily complete the work on the improvements contained within the [Insert: subdivision and/ or site plan] approval, dated [Insert: Approval Date]; or
2. the Applicant 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 Applicant has failed to notify the City for inspection of completed site improvements; or
4. the Applicant has failed to provide the City with civil as-built drawings at the time of project completion.

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City 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 City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the Bank, by written certification, to reduce the available amount of the escrowed money by a specified amount.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Escrow Account will automatically expire on [Insert: Date one

year from the date of this Escrow Account] or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever is later (“Expiration Date”), provided that the expiration date does not fall between October 30th and April 15th. It is a condition of this Escrow Account that the expiration date 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 Brendan O’Connell, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this 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, up to thirty (30) days before or sixty (60) days after its expiration, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank’s offices located at **[Insert: Address of Financial Institution]** stating that:

this drawing results from notification that the Bank has elected not to renew its Escrow Account No. **[Insert: ACCOUNT NUMBER]**.

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: Approval Date]** as required by City Code §14-501, 530 and shall automatically expire thirty (30) days after Applicant notifies the City for a Defect Inspection (“Termination Date”). The Applicant may notify the City for a Defect Inspection no sooner than one (1) year from the date the Defect Letter of Credit was created.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Defect Guarantee by presentation of a sight draft at Bank’s offices located at **[Insert: Address of Financial Institution]**, prior to the Termination Date, stating any one of the following:

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

Date: _____

By: _____

[Insert: Name]

[Insert: Title]

Its Duly Authorized Agent

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

By: _____

guarantee] (“Expiration Date”), or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later, provided that the expiration date does not fall between October 30th and April 15th.

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 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, 530 and shall automatically expire thirty (30) days after Applicant notifies the City for a Defect Inspection (“Termination Date”). The Applicant may notify the City for a Defect Inspection no sooner than one (1) year from the date the Defect Letter of Credit was created.

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

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
****Planning Division Director

Date: _____

By: _____
Administrative Officer

Date: _____

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

Distribution

1. The account number will be completed by Planning Staff.
2. The Agreement will be executed with one original signed by the Applicant.
3. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office.
4. ****Signature required if over \$50,000.00.

**TEMPLATE - PERFORMANCE GUARANTEE FOR
COMPLIANCE WITH HOUSING REPLACEMENT ORDINANCE**

Demolition and Housing Replacement
PERFORMANCE GUARANTEE
LETTER OF CREDIT
[ACCOUNT NUMBER]

[Insert Date]

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

Re: [Insert Project Address] Demolition and Housing Replacement

[Insert Name of Lender] (“Bank”) hereby issues its Irrevocable Letter of Credit for the account of **[Insert Name of Applicant]** (“Applicants”), held for the exclusive benefit of the City of Portland (“City”), in the aggregate amount of **[Insert exact amount to be determined by the City]**. These funds represent the estimated cost of **[Insert Amount]** for the housing replacement fee applicable to the demolition of **[insert number of units demolished]** dwelling units if no replacement units are constructed, as approved on _____ (“**Demolition Approval**”) and as required under Portland Code of Ordinances Chapter 14-483(j).

In the event that Applicant fails to satisfy its housing replacement obligation, 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, if any.

The housing replacement requirement shall be deemed satisfied upon the City’s issuance of a Certificate of Occupancy for **[insert number of units to be replaced]** dwelling units located in the City of Portland provided that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

After construction of each of the replacement units has been completed, the City, as provided in Chapter 14 of the Portland Code of Ordinances, may authorize the Bank, by written certification along with the return of the original of this Letter of Credit, to reduce the available amount of the escrowed money by the full amount of the Letter of Credit.

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.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Letter of Credit will automatically expire on **[Insert date one year from the date of this Letter of Credit]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever is later (“Expiration Date”), provided that the expiration date does not fall between October 30th and April 15th. It is a condition of this

Letter of Credit that the expiration date 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 Brendan O'Connell, 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 that the Bank provides notice of its election to discontinue this Letter of Credit and Applicant has not satisfied its housing replacement obligation, 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 signed by the Director of Planning and Urban Development, at Bank's offices located at Portland Maine stating that:

this drawing results from notification that the Bank has elected to discontinue its Letter of Credit No.
_____.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

**Contribution Form (Watershed, Tree, and Infrastructure Accounts)
Planning and Urban Development Department - Planning Division**

Application ID:		Planner:	
Project Name:		Date of Form:	
Project Address:			
Applicant's Name:			
Applicant's Address:			
Project Description:			

TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:	Retained by City	Funds not Expended	Expiration Date:	Amount
Infrastructure #1	71000000 236020	24					\$
Infrastructure #2	71000000 236020	24					\$
Infrastructure #3	71000000 236020	24					\$

TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:			Amount
Infrastructure (Tree Fund)	2423300 3410000	3319PR0045				\$
Watershed (Nason's Brook)	2423100 341000	31Watershd-Watershed-NasonsBrk				\$
Watershed (Fallbrook)	25731000 327100	31Watershd-Watershed-FallBrook				\$
Watershed (Capisic Brook)	25731000 327100	31Watershd-Watershed-CapisicBrk				\$
Watershed (Dole Brook)	25731000 327100	31Watershd-Watershed-DoleBrook				\$

	Total Amount:	\$
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* Funds not expended or encumbered by the expiration date, shall be returned to contributor within 6 months of said date.

* Office Use Only

FORM OF CONTRIBUTION: (Please check the applicable box below for an Infrastructure Account only)

Cash Contribution
Escrow Account

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

The City shall periodically draw down funds from Public Works, which form shall specify use of City Account # as shown above.