

~~Order 67 - 04/05~~
~~Given first reading 9/20/04~~
~~Postponed on 10/4/04~~
~~Public Hearing and Passage 10/18/04 7-1 (Smith abstaining, O'Donnell opposed)~~

NATHAN H. SMITH (MAYOR)(3)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
CHERYL A. LEE MAN (4)
JAMES I. COHEN (5)

CITY OF PORTLAND
IN THE CITY COUNCIL

PETER E. O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

amended

ORDER AUTHORIZING AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR 802-828 OCEAN AVENUE

ORDERED, that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below;

BE IT FURTHER ORDERED, that the conditional rezoning amendment authorized herein shall become effective thirty (30) days following this rezoning.

Ridge
Development LLC
wherever Graves
Hill referred to

CONDITIONAL ZONE AGREEMENT
~~GRAVES HILL LAND COMPANY, LLC~~

This Agreement made this _____ day of _____, 2004 by ~~GRAVES HILL LAND COMPANY, LLC~~, a Maine limited liability company with an office in ~~Saco~~, Maine (hereinafter "~~GRAVES HILL~~ ").

or has an option

WITNESSETH:

WHEREAS, ~~GRAVES HILL~~ owns a parcel of land consisting of approximately 18.32 acres located at 802-828 Ocean Avenue in Portland, consisting of parcels shown on City of Portland Tax Map 411, Block A, Lot 7 and Tax Map 416, Block A, Lots 6, 7 and 21, and more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 21500, Page 269 (collectively the "Property"); and

94

WHEREAS, ~~GRAVES HILL~~ proposes to construct upon a portion of the Property a maximum of 98 condominium units in two mid-rise buildings in a Planned Residential Unit Development ("PRUD") while preserving and protecting a portion of the Property as open space, by utilizing a pattern of development designed to minimize the clearing of natural vegetation, to minimize the area to be blasted, to provide a unique residential living experience with a high degree of natural site amenities, and to promote public recreational use of trails which integrate

with a larger trail system; and

10.40



WHEREAS, ~~GRAVES HILL~~ has requested the rezoning of ~~10.167~~ acres of the Property from R-3 to R-5A Residential Zone and the simultaneous approval of a contract zone to implement a planned residential unit development (PRUD) for dwelling units on that portion of the property, and the rezoning of ~~8.155~~ acres of the Property from R-3 to Recreation and Open Space Zone (R-OS) ; and

7.92



WHEREAS, the Planning Board of the CITY OF PORTLAND (hereinafter "CITY"), pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "Code") §§ 14-60 to 14-62 and 14-127, after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions; and

WHEREAS, the CITY, by and through its City Council has determined that because of the bold and innovative design which:

- promotes efficient land use and conservation of natural resources,
- protects the natural environment by locating the development so as to reduce the impact on environmentally sensitive areas,
- utilizes one of the last large undeveloped tracts of residentially-zoned land to provide housing of a type not currently available in Portland,
- reduces the impact on surrounding properties by minimizing the area to be blasted, preserving natural site amenities, and providing substantial buffers, and
- enhances the recreational trail system in Portland,

it is necessary and appropriate to impose with ~~GRAVES HILL's~~ agreement the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the CITY'S comprehensive land use plan; and

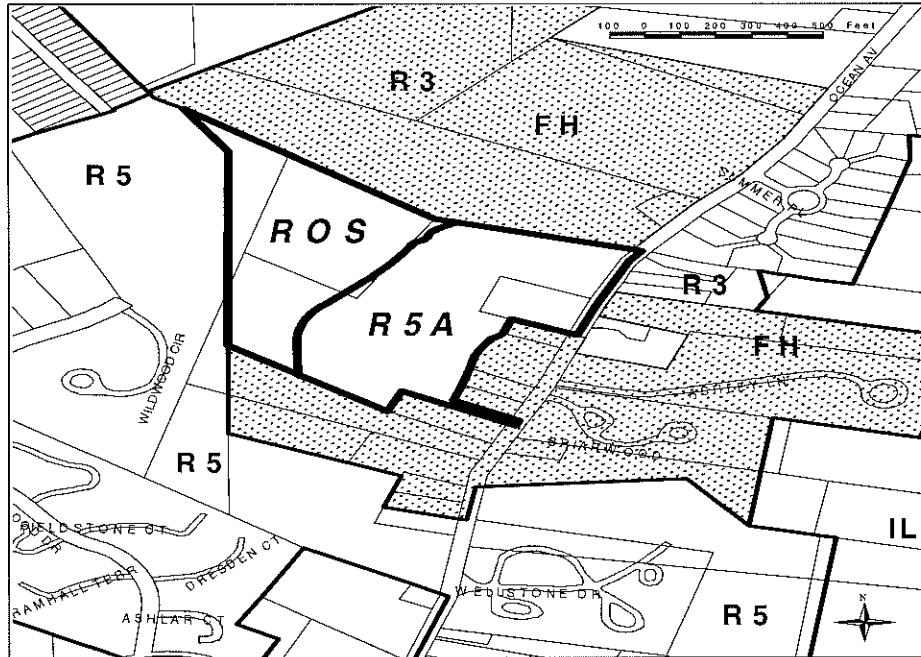
WHEREAS, the City Council of the CITY authorized the execution of this Agreement on _____, 200_, by City Council Order No. _____, a true copy of which is attached hereto as Attachment I; and

WHEREAS, GRAVES HILL has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind ~~GRAVES HILL~~, its successors or assigns;

NOW, THEREFORE, in consideration of the rezoning of the Property, ~~GRAVES HILL~~ contracts to be bound by the following terms and conditions:

1. The CITY hereby amends the Zoning Map of the City of Portland dated December 2000, as amended from time to time and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by Section 14-49 of the Code, by adopting the map change amendment shown below (rezoning to R-5A and R-OS). If this Agreement is not recorded within thirty (30) days of the City Counsel's approval of said rezoning, then the rezoning shall become null and void and the zoning of the Property shall revert

to the pre-existing R-3 zone.



**Proposed Rezoning for 802 Ocean Avenue
from R3 and Flexible Housing Overlay to R5A and ROS**
July 2004

Map prepared by the City of Portland's Department of Planning & Development and the GIS Workgroup

2. **GRAVES HILL** is authorized to establish and maintain the following uses on the **R-5A** portion of the property:

94

47

- a. Up to ~~98~~ residential units located in two buildings, each building containing up to ~~49~~ units, which may be sold as condominium units, resulting in a maximum total of ~~ninety eight (98)~~ residential units within the Property; and
- b. a community room in each building available for use by the residents of the ~~PRUD~~; and
- c. a small office in each building to be used by employees of the condominium owners' association, only for on site property management and concierge services for 802 Ocean Avenue, if determined necessary by the condominium owners' association; and
- d. a fitness and special events room in each building available for use by the residents of the ~~PRUD~~; and
- e. a cross country ski center/locker room in each building available for use by the

ninety four (94)

1 space per 1BR unit + 2 spaces per 2BR, 3BR units

A future recreation area is also permitted, subject to Site Plan Review and approval by the Planning Board

b

~~residents of the PRUD; and~~

~~f. parking in an amount of not less than 2 spaces per residential unit, plus at least 28 additional surface visitor parking spaces; and~~

c

~~g. a trail system traversing the site, extending from Ocean Avenue to connect with the trail system on the R-OS portion of the site.~~

The uses specified herein supersede the otherwise permitted uses contained within the underlying R-3 and R-5A zones.

forty seven (47)

3. The use of the **R-5A** portion of the property, by virtue of this contract rezoning, shall be limited to that of a residential PRUD with the accessory uses described in paragraph 2. The Property may be developed in two phases, Phase I to consist of all necessary blasting for both buildings, one structure containing up to ~~forty nine (49)~~ dwelling units plus all accessory uses associated with that structure, and the entire trail system in both the R-5A and R-OS portions of the Property (excluding only the portion of the trail accessing the building to be constructed in Phase II) and Phase II to consist of the second structure, containing up to ~~forty nine (49)~~ dwelling units plus all accessory uses associated therewith and trail sections and roads serving only that structure, all as more fully set forth in the Site Plans.

forty seven (47)

4. Separate performance guarantees shall be issued for Phases I and II. The amounts and terms of such performance guarantees shall be determined by the Planning Authority at the time of Site Plan and Subdivision approval for each Phase, but each Phase must provide minimum financial guarantees such that each Phase constitutes a separate and complete project. Surface stabilization of any portions of the project area located in Phase II that have been affected by blasting performed during Phase I shall be shall be accomplished prior to the issuance of a Certificate of Occupancy for Phase I, unless construction of Phase II has commenced. The intent of this condition is to ensure a complete site in the event Phase II is never built.

5. ~~GRAVES HILL~~ is authorized, and is hereby required pursuant to this Contract Zone Agreement, to establish and maintain the following use on the **R-OS** portion of the Property:

a trail system, for pedestrian, bicycle and/or other non-motorized use, together with associated benches, bridges, raised walkways, or similar improvements as necessary to facilitate access.

future recreation area

The R-OS portion of the Property not used as aforesaid shall be left in its natural state, and natural features, mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.

6. ~~GRAVES HILL~~ shall grant to **Portland Trails**, a Maine nonprofit corporation, a recreational trail easement at least five feet in width for trails on the R-5A portion of the Property and ten feet in width for trails on the R-OS portion of the property, extending for a distance of not less than 3,207 linear feet, to allow for passive recreational use by the general public. The

easement may impose reasonable restrictions upon the trail use, including the following: Permitted uses are limited to low-impact recreational uses, including, without limitation, walking, hiking, nature viewing, photography, mountain biking, cross-country skiing, snowshoeing, walking dogs on leashes as long as dog owners pick up after their dogs, and educational programs. Prohibited uses include, but are not necessarily limited to, motorized vehicles (except for authorized trail construction, repair or maintenance), camping, fires, horses, removing, cutting, or otherwise altering trees, branches, and other vegetation (except for authorized trail construction, repair and maintenance, to restore native flora and fauna, or to remove invasive or dangerous flora and fauna), any filling, excavation or alteration of the surface of the earth other than for authorized trail construction, repair or maintenance purposes, any disposal of rubbish, garbage or other waste material, hunting, trapping, wildlife collecting, any loud activities which disturb others, all overnight uses, and other activities which have a high impact by degrading or destroying the natural resource values of the property or which conflict with the rights of other users for a quiet, peaceful and contemplative experience in a natural area. In no event shall any of the above prohibited uses interfere with the right to construct, repair and maintain a recreational trail and associated recreational structures. The hours of use may be strictly limited to daylight hours. The easement may authorize ~~GRAVES HILL~~, its successors and assigns, ~~Graves Hill~~ Condominium Owners' Association, and Portland Trails to enforce those restrictions. In the alternative, instead of granting a trail easement on the R-OS portion of the Property, ~~GRAVES HILL~~ may opt to convey the R-OS portion of the Property to **Portland Trails** in fee, with such conveyance made subject to use conditions and reserved rights of enforcement as aforesaid . The form of such easement and/or deeds shall be reviewed and approved by Corporation Counsel in connection with the Site Plan approval process for Phase I. If a conveyance, by easement or in fee, is to be made to **Portland Trails**, the certificate of occupancy for the residential units shall not be delayed due to the status of completion of the trail system on the R-OS portion of the site so long as ~~GRAVES HILL~~ has made the required conveyance, by easement and/or in fee, to Portland Trails and funds sufficient to complete construction the trails on the R-OS portion of the site have been placed in escrow. If, for any reason, Portland Trails declines to accept said trail easements and/or conveyances upon the terms offered, ~~GRAVES HILL~~ may satisfy this contract zone requirement by constructing the trails pursuant to the approved site plan and granting trail easements to the City of Portland, upon the same terms and conditions stated above, granting the City of Portland (rather than Portland Trails) the right to enforce the restrictions, with the form of the easement subject to review and approval by Corporation Counsel.

Sebago Technics,
Date TBD

Archetype PA, date
TBD

7. The Property will be developed substantially in accordance with the Preliminary Site Plans, Zone Identification and Phasing Identification submitted by Richardson and Associates ~~(last revised August 16, 2004)~~ and the Proposed Building Design site sections, building sections and floor plans submitted by Scott Simons Architects ~~(last revised July 8, 2004)~~ and the ~~preliminary elevation from Mackworth Island (undated, submitted August 17, 2004), attached hereto.~~ The ~~Graves Hill~~ entrance on Ocean Avenue shall be at the location shown on said Site Plan and the City hereby grants such waivers as may be necessary to permit the entrance in that proximity to adjacent driveways; provided, however, that at the request of ~~GRAVES HILL~~, with the approval of the Planning Board, the location of the entrance may be moved up to 20 feet southerly of the location shown on the attached site plan without any further amendment to this

Contract Zone Agreement. So long as the two residential structures include an approved fire sprinkler system, the required fire access shall be satisfied by the provision of one access road, as shown on the site plan. ~~GRAVES HILL~~ shall provide sidewalk and granite curb along the property's frontage on Ocean Avenue and also as along the frontage of the four intervening residential parcels, or, at the option of the Planning Board, ~~GRAVES HILL~~ shall instead contribute funds equal to the cost of installing sidewalk and granite curbs as aforesaid to the CITY for the CITY to apply toward installing granite curbs and sidewalk in the vicinity of the PROPERTY.

~~GRAVES HILL~~ shall provide a planted buffer as shown on the site plan in the vicinity of the rear lot lines of the abutters whose lots front on Ocean Avenue, with precise specifications subject to final site plan review. Such planted buffer, in addition to the areas on the site plan designated as "preserve existing trees" and "no cut area" shall remain in perpetuity and shall not be eliminated by ~~GRAVES HILL~~ or its successors, provided that, to the extent applicable, the planted buffer may be maintained according to standards contained within the *National Arborist Association, Inc. Standards for Tree Care Operations*. Furthermore, while ~~GRAVES HILL~~ shall provide at least 3,207 linear feet of pedestrian trails in the general configuration shown on the plans, it is stipulated that the pedestrian trails shown on the attached plans are for diagrammatic purposes only, and actual proposed trail locations will be submitted to and reviewed by the Planning Board as part of the site plan process.

8. The Planning Board shall review and approve Phase I and Phase II of this development according to the subdivision and site plan provisions of the Portland Land Use Code.

9. Any change in ownership shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to the granting of mortgages by ~~GRAVES HILL~~ or any successor in interest, or to the enforcement by the mortgagees of their rights under such mortgages, or to the assignment or conveyance of the ownership to an entity in which ~~GRAVES HILL~~ and/or Diane Doyle holds at least a 30% interest, nor shall this requirement apply to the conveyance of individual condominium units or to the granting of mortgages upon individual condominium units. Similarly, ~~GRAVES HILL~~ or any successor in interest may convey the R-OS portion of the Property to Portland Trails in fee simple and/or may grant trail easements and conservation easements to Portland Trails and/or to the City of Portland as provided above without any further review of the change in ownership by the Planning Board.

10. For the portion of the Property rezoned R-5A, the dimensional requirements and other zoning requirements for the Property shall be those of the underlying R-5A zone with respect to PRUDs except as follows:

Maximum number of units per building: ~~49~~ ← 47

Maximum number of buildings containing residential dwelling units: 2 75

Maximum building height: ~~100~~ feet, as measured per zoning ordinance, and in accordance with the plans attached hereto and in accordance with the location on the site

204 spaces



plan

Parking: Minimum of 2 spaces per unit plus 28 visitor spaces, half in Phase I and half in Phase II

Minimum recreation open space area: Outdoor passive recreation in the form of pedestrian trails of not less than 3,207 linear

feet shall be provided on the Property, generally as shown on the Preliminary Site Plans, Zone Identification. Such trails shall be composed of stone dust, asphalt or similar materials, and, if environmentally necessary or advisable, shall include bridges, raised walkways, or similar improvements as necessary to facilitate access, together with a reasonable number of wooden benches. The non-trail portion of the Property located in the R-OS zone shall otherwise remain in its natural vegetative state. A public recreational trail easement over the trails on the Property shall be conveyed to **Portland Trails** or, in the alternative, to the **City of Portland** granting the public the right to use the trails subject to such restrictions on hours, manner and intensity of use outlined in Paragraph 6, above. In the alternative, ~~GRAVES HILL~~ may convey an easement over the recreational trails on the R-5A portion of the Property and convey the R-OS portion of the Property to **Portland Trails** in fee, both subject to such restrictions on hours, manner and intensity of use outlined in Paragraph 6, above. So long as at least the minimum passive recreational open space is provided as specified above, no additional active recreational open space is required. However, the developer may provide more than the minimum required, at its option, and subject to site plan review.

Except as set forth above, all provisions in Sections 14-126 through 14-131 of the **CITY**'s zoning ordinance shall apply to the portion of the Property rezoned R-5A.

11. For the portion of the Property rezoned **R-OS**, the dimensional requirements and other zoning requirements of the R-OS zone shall apply, except as follows: despite any requirement to the contrary in § 14-158 (g), due to the linkage of the trail system to publicly-owned property which will provide public parking, no off-street parking need be provided on any portion of the Property for visitors projected to use the R-OS portion of the Property and ~~GRAVES HILL~~ need not submit any parking needs projections.

12. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit ~~GRAVES HILL~~, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.

13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.

14. In the event ~~GRAVES HILL~~ or its successors should fail to utilize the **PROPERTY** in accordance with this Agreement, or in the event of ~~GRAVES HILL'S~~ breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code which would otherwise be applicable to property situated in the R-5A or ROS zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. §4452, M.R.Civ.P. 80K, or in any other manner available by law.

In addition, if such an enforcement action should result in a finding that ~~GRAVES HILL~~ has breached the Agreement, then either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Conditional Rezoning be modified or the **PROPERTY** rezoned.

15. ~~GRAVES HILL~~ shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

16. Except as expressly modified herein, the development, use and occupancy of the Property shall be governed by and comply with the applicable provisions of the Portland City Code and any applicable amendments thereto or replacements thereof.

Ridge Development LLC

WITNESS: ~~GRAVES HILL LAND COMPANY, LLC~~

By: _____
~~Diane Doyle~~
Its Manager

Patrick Tinsman

Patrick Tinsman,
Manager of Ridge
Development LLC

STATE OF MAINE
CUMBERLAND, SS. _____, 200_

Then personally appeared the above-named ~~Diane Doyle, Manager of GRAVES HILL LAND COMPANY, LLC~~ as aforesaid, and acknowledged the foregoing instrument to be her

free act and deed in her said capacity and the free act and deed of said limited liability company.

Before me,

Notary Public/Attorney-at-Law

Printed name: _____

My Commission Expires: _____

← Remaining Pages Invalid

CHESTER & VESTAL

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

EDWIN P. CHESTER
BARBARA A. VESTAL
STEVEN M. CAREY

107 Congress Street
Portland, Maine 04101
Telephone (207) 772-7426
Fax (207) 761-5822
E-mail: nchester@maine.rr.com
vestal@maine.rr.com
smcarey@maine.rr.com

NOV 12 2004

November 12, 2004

HAND DELIVERED

Penny Littel, Esq.
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Conditional Zone Agreement, Graves Hill Land Company, LLC

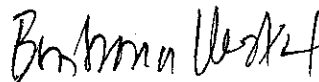
Dear Penny:

Enclosed is a copy of the Conditional Zone Agreement which was executed by Graves Hill Land Company, LLC on November 8, 2004, together with the Council Order (Attachment 1) and reduced, black/white copies of Exhibits 1-4 which were attached to the Agreement when it was submitted to the City Council for public hearing on October 18, 2004. The original Conditional Zone Agreement (including Attachment and Exhibits) was recorded on November 10, 2004 at 2:02 p.m. in Cumberland County Registry of Deeds Book 21999, Page 113.

As agreed, also enclosed for your records are the full size, 11" x 17" and/or color pages which were submitted to the Council as Exhibits 1-4.

Please contact me if anything further is required at this time. Thank you for your assistance throughout this phase of the process.

Very truly yours,



Barbara A. Vestal

BAV/om
Enclosures
dc: Diane Doyle, Graves Hill Land Company, LLC

Official Receipt for Recording in:

Cumberland County Registry Of Deeds
142 Federal Street
PORTLAND, MAINE 04101

Issued To:
CHESTER & VESTAL
107 CONGRESS STREET
PORTLAND ME 04101-

Recording Fees

Document Description	Number	Volm	Page	Recording Amount
MORTGAGE 1-GRAVES HILL LAND CO LLC 02:02:30p	88949	21999	113	\$61.00
				\$61.00

Collected Amounts

Payment Type	Check Number	Amount
CHECK	144	\$61.00
		\$61.00

Total Received :	\$61.00
Less Total Recordings:	\$61.00
Change Due :	\$.00

Thank You
JOHN B OBRIEN - Register of Deeds
By - Monica Bouchie

Receipt# Date Time
0185173 11/10/2004 02:02p

**CONDITIONAL ZONE AGREEMENT
GRAVES HILL LAND COMPANY, LLC**

This Agreement made this 3rd day of November, 2004 by **GRAVES HILL LAND COMPANY, LLC**, a Maine limited liability company with an office in Saco, Maine (hereinafter "**GRAVES HILL**").

WITNESSETH:

WHEREAS, GRAVES HILL owns a parcel of land consisting of approximately 18.32 acres located at 802-828 Ocean Avenue in Portland, consisting of parcels shown on City of Portland Tax Map 411, Block A, Lot 7 and Tax Map 416, Block A, Lots 6, 7 and 21, and more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 21500, Page 269 (collectively the "Property"); and

WHEREAS, GRAVES HILL proposes to construct upon a portion of the Property a maximum of 98 condominium units in two mid-rise buildings in a Planned Residential Unit Development ("PRUD") while preserving and protecting a portion of the Property as open space, by utilizing a pattern of development designed to minimize the clearing of natural vegetation, to minimize the area to be blasted, to provide a unique residential living experience with a high degree of natural site amenities, and to promote public recreational use of trails which integrate with a larger trail system; and

WHEREAS, GRAVES HILL has requested the rezoning of 10.167 acres of the Property from R-3 to R-5A Residential Zone and the simultaneous approval of a contract zone to implement a planned residential unit development (PRUD) for dwelling units on that portion of the property, and the rezoning of 8.155 acres of the Property from R-3 to Recreation and Open Space Zone (R-OS) ; and

WHEREAS, the Planning Board of the **CITY OF PORTLAND** (hereinafter "**CITY**"), pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "Code") §§ 14-60 to 14-62 and 14-127, after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions; and

WHEREAS, the **CITY**, by and through its City Council has determined that because of the bold and innovative design which:

- promotes efficient land use and conservation of natural resources,
- protects the natural environment by locating the development so as to reduce the impact on environmentally sensitive areas,
- utilizes one of the last large undeveloped tracts of residentially-zoned land to provide housing of a type not currently available in Portland,
- reduces the impact on surrounding properties by minimizing the area to blasted, preserving natural site amenities, and providing substantial buffers, and
- enhances the recreational trail system in Portland,

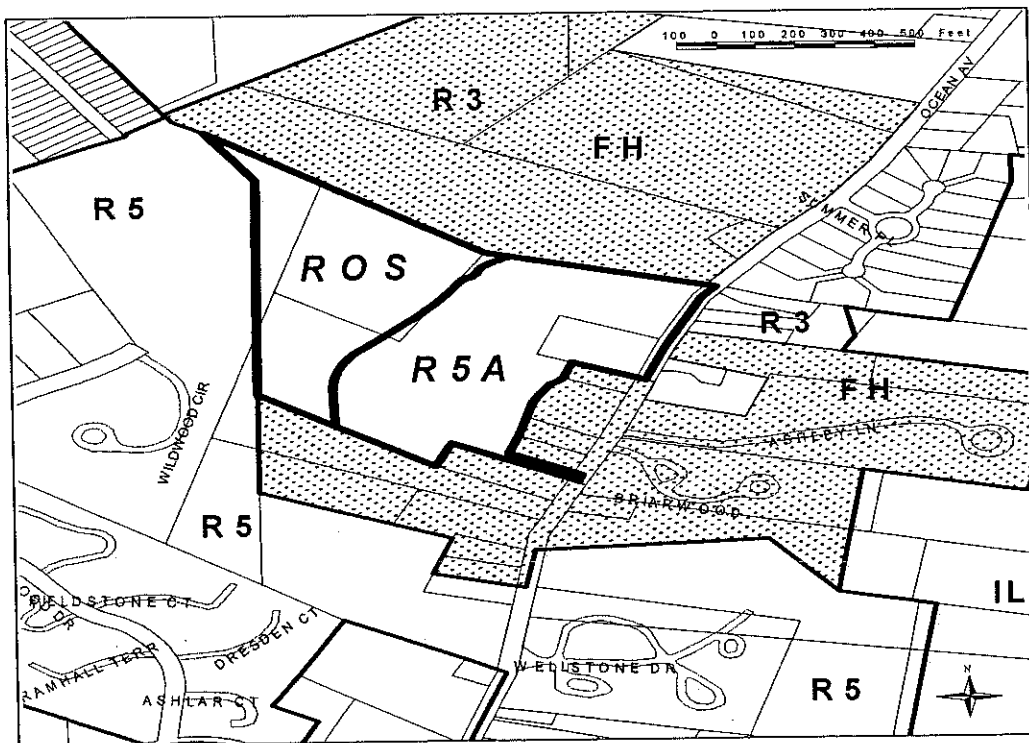
it is necessary and appropriate to impose with **GRAVES HILL**'s agreement the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the **CITY'S** comprehensive land use plan; and

WHEREAS, the City Council of the **CITY** authorized the execution of this Agreement on October 18, 2004, by City Council Order No.67 – 04/05, a true copy of which is attached hereto as Attachment 1; and

WHEREAS, **GRAVES HILL** has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind **GRAVES HILL**, its successors or assigns;

NOW, THEREFORE, in consideration of the rezoning of the Property, **GRAVES HILL** contracts to be bound by the following terms and conditions:

1. The **CITY** hereby amends the Zoning Map of the City of Portland dated December 2000, as amended from time to time and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by Section 14-49 of the Code, by adopting the map change amendment shown below (rezoning to R-5A and R-OS). If this Agreement is not recorded within thirty (30) days of the City Council's approval of said rezoning, then the rezoning shall become null and void and the zoning of the Property shall revert to the pre-existing R-3 zone.



**Proposed Rezoning for 802 Ocean Avenue
from R3 and Flexible Housing Overlay to R5A and ROS**

July 2004

Map prepared by the City of Portland's Department of Planning & Development and the GIS Workgroup

2. **GRAVES HILL** is authorized to establish and maintain the following uses on the **R-5A** portion of the property:

- a. Up to 98 residential units located in two buildings, each building containing up to 49 units, which may be sold as condominium units, resulting in a maximum total of ninety-eight (98) residential units within the Property; and
- b. a community room in each building available for use by the residents of the PRUD; and
- c. a small office in each building to be used by employees of the condominium owners' association, only for on-site property management and concierge services for 802 Ocean Avenue, if determined necessary by the condominium owners' association; and
- d. a fitness and special events room in each building available for use by the residents of the PRUD; and
- e. a cross country ski center/locker room in each building available for use by the residents of the PRUD; and
- f. parking in an amount of not less than 2 spaces per residential unit, plus at least 28 additional surface visitor parking spaces; and
- g. a trail system traversing the site, extending from Ocean Avenue to connect with the trail system on the R-OS portion of the site.

The uses specified herein supersede the otherwise permitted uses contained within the underlying R-3 and R-5A zones.

3. The use of the **R-5A** portion of the property, by virtue of this contract rezoning, shall be limited to that of a residential PRUD with the accessory uses described in paragraph 2. The Property may be developed in two phases, Phase I to consist of all necessary blasting for both buildings, one structure containing up to forty-nine (49) dwelling units plus all accessory uses associated with that structure, and the entire trail system in both the R-5A and R-OS portions of the Property (excluding only the portion of the trail accessing the building to be constructed in Phase II) and Phase II to consist of the second structure, containing up to forty-nine (49) dwelling units plus all accessory uses associated therewith and trail sections and roads serving only that structure, all as more fully set forth in the Site Plans.

4. Separate performance guarantees shall be issued for Phases I and II. The amounts and terms of such performance guarantees shall be determined by the Planning Authority at the time of Site Plan and Subdivision approval for each Phase, but each Phase must provide minimum financial guarantees such that each Phase constitutes a separate and complete project. Surface stabilization of any portions of the project area located in Phase II that have been affected by

blasting performed during Phase I shall be shall be accomplished prior to the issuance of a Certificate of Occupancy for Phase I, unless construction of Phase II has commenced. The intent of this condition is to ensure a complete site in the event Phase II is never built.

5. **GRAVES HILL** is authorized, and is hereby required pursuant to this Contract Zone Agreement, to establish and maintain the following use on the **R-OS** portion of the Property:

a trail system, for pedestrian, bicycle and/or other non-motorized use, together with associated benches, bridges, raised walkways, or similar improvements as necessary to facilitate access.

The R-OS portion of the Property not used as aforesaid shall be left in its natural state, and natural features, mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.

6. **GRAVES HILL** shall grant to **Portland Trails**, a Maine nonprofit corporation, a recreational trail easement at least five feet in width for trails on the R-5A portion of the Property and ten feet in width for trails on the R-OS portion of the property, extending for a distance of not less than 3,207 linear feet, to allow for passive recreational use by the general public. The easement may impose reasonable restrictions upon the trail use, including the following: Permitted uses are limited to low-impact recreational uses, including, without limitation, walking, hiking, nature viewing, photography, mountain biking, cross-country skiing, snowshoeing, walking dogs on leashes as long as dog owners pick up after their dogs, and educational programs. Prohibited uses include, but are not necessarily limited to, motorized vehicles (except for authorized trail construction, repair or maintenance), camping, fires, horses, removing, cutting, or otherwise altering trees, branches, and other vegetation (except for authorized trail construction, repair and maintenance, to restore native flora and fauna, or to remove invasive or dangerous flora and fauna), any filling, excavation or alteration of the surface of the earth other than for authorized trail construction, repair or maintenance purposes, any disposal of rubbish, garbage or other waste material, hunting, trapping, wildlife collecting, any loud activities which disturb others, all overnight uses, and other activities which have a high impact by degrading or destroying the natural resource values of the property or which conflict with the rights of other users for a quiet, peaceful and contemplative experience in a natural area. In no event shall any of the above prohibited uses interfere with the right to construct, repair and maintain a recreational trail and associated recreational structures. The hours of use may be strictly limited to daylight hours. The easement may authorize **GRAVES HILL**, its successors and assigns, Graves Hill Condominium Owners' Association, and **Portland Trails** to enforce those restrictions. In the alternative, instead of granting a trail easement on the R-OS portion of the Property, **GRAVES HILL** may opt to convey the R-OS portion of the Property to **Portland Trails** in fee, with such conveyance made subject to use conditions and reserved rights of enforcement as aforesaid. The form of such easement and/or deeds shall be reviewed and approved by Corporation Counsel in connection with the Site Plan approval process for Phase I. If a conveyance, by easement or in fee, is to be made to **Portland Trails**, the certificate of occupancy for the residential units shall not be delayed due to the status of completion of the trail system on the R-OS portion of the site so long as **GRAVES HILL** has made the required conveyance, by easement and/or in fee, to **Portland Trails** and funds sufficient to complete construction the trails on the R-OS portion of the site

have been placed in escrow. If, for any reason, Portland Trails declines to accept said trail easements and/or conveyances upon the terms offered, **GRAVES HILL** may satisfy this contract zone requirement by constructing the trails pursuant to the approved site plan and granting trail easements to the City of Portland, upon the same terms and conditions stated above, granting the City of Portland (rather than Portland Trails) the right to enforce the restrictions, with the form of the easement subject to review and approval by Corporation Counsel.

7. The Property will be developed substantially in accordance with the Preliminary Site Plans, Zone Identification and Phasing Identification submitted by Richardson and Associates (last revised August 16, 2004) and the Proposed Building Design site sections, building sections and floor plans submitted by Scott Simons Architects (last revised July 8, 2004) and the preliminary elevation from Mackworth Island (undated, submitted August 17, 2004), attached hereto. The Graves Hill entrance on Ocean Avenue shall be at the location shown on said Site Plan and the City hereby grants such waivers as may be necessary to permit the entrance in that proximity to adjacent driveways; provided, however, that at the request of **GRAVES HILL**, with the approval of the Planning Board, the location of the entrance may be moved up to 20 feet southerly of the location shown on the attached site plan without any further amendment to this Contract Zone Agreement. So long as the two residential structures include an approved fire sprinkler system, the required fire access shall be satisfied by the provision of one access road, as shown on the site plan. **GRAVES HILL** shall provide sidewalk and granite curb along the property's frontage on Ocean Avenue and also as along the frontage of the four intervening residential parcels, or, at the option of the Planning Board, **GRAVES HILL** shall instead contribute funds equal to the cost of installing sidewalk and granite curbs as aforesaid to the **CITY** for the **CITY** to apply toward installing granite curbs and sidewalk in the vicinity of the **PROPERTY**.

GRAVES HILL shall provide a planted buffer as shown on the site plan in the vicinity of the rear lot lines of the abutters whose lots front on Ocean Avenue, with precise specifications subject to final site plan review. Such planted buffer, in addition to the areas on the site plan designated as "preserve existing trees" and "no cut area" shall remain in perpetuity and shall not be eliminated by **GRAVES HILL** or its successors, provided that, to the extent applicable, the planted buffer may be maintained according to standards contained within the *National Arborist Association, Inc. Standards for Tree Care Operations*. Furthermore, while **GRAVES HILL** shall provide at least 3,207 linear feet of pedestrian trails in the general configuration shown on the plans, it is stipulated that the pedestrian trails shown on the attached plans are for diagrammatic purposes only, and actual proposed trail locations will be submitted to and reviewed by the Planning Board as part of the site plan process.

8. The Planning Board shall review and approve Phase I and Phase II of this development according to the subdivision and site plan provisions of the Portland Land Use Code.

9. Any change in ownership shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to the granting of mortgages by **GRAVES HILL** or any successor in interest, or to the enforcement by the mortgagees of their rights under such mortgages, or to the assignment or conveyance of the ownership to an entity in which **GRAVES HILL** and/or Diane Doyle holds at least a 30% interest, nor shall this requirement apply to the conveyance of individual condominium units or to the granting of mortgages upon individual

condominium units. Similarly, **GRAVES HILL** or any successor in interest may convey the R-OS portion of the Property to Portland Trails in fee simple and/or may grant trail easements and conservation easements to Portland Trails and/or to the City of Portland as provided above without any further review of the change in ownership by the Planning Board.

10. For the portion of the Property rezoned **R-5A**, the dimensional requirements and other zoning requirements for the Property shall be those of the underlying R-5A zone with respect to PRUDs except as follows:

Maximum number of units per building: 49

Maximum number of buildings containing residential dwelling units: 2

Maximum building height: 100 feet, as measured per zoning ordinance, and in accordance with the plans attached hereto and in accordance with the location of the site plan

Parking: Minimum of 2 spaces per unit plus 28 visitor spaces, half in Phase I and half in Phase II

Minimum recreation open space area: Outdoor passive recreation in the form of pedestrian trails of not less than 3,207 linear feet shall be provided on the Property, generally as shown on the Preliminary Site Plans, Zone Identification. Such trails shall be composed of stone dust, asphalt or similar materials, and, if environmentally necessary or advisable, shall include bridges, raised walkways, or similar improvements as necessary to facilitate access, together with a reasonable number of wooden benches. The non-trail portion of the Property located in the R-OS zone shall otherwise remain in its natural vegetative state. An public recreational trail easement over the trails on the Property shall be conveyed to **Portland Trails** or, in the alternative, to the **City of Portland** granting the public the right to use the trails subject to such restrictions on hours, manner and intensity of use outlined in Paragraph 6, above. In the alternative, **GRAVES HILL** may convey an easement over the recreational trails on the R-5A portion of the Property and convey the R-OS portion of the Property to **Portland Trails** in fee, both subject to such restrictions on hours, manner and intensity of use outlined in Paragraph 6, above. So long as at least the minimum passive recreational open space is provided as specified above, no additional active recreational open space is required. However, the developer may provide more than the minimum required, at its option, and subject to site plan review.

Except as set forth above, all provisions in Sections 14-126 through 14-131 of the **CITY**'s zoning ordinance shall apply to the portion of the Property rezoned R-5A.

11. For the portion of the Property rezoned **R-OS**, the dimensional requirements and other zoning requirements of the R-OS zone shall apply, except as follows: despite any requirement to the contrary in § 14-158 (g), due to the linkage of the trail system to publicly-owned property which will provide public parking, no off-street parking need be provided on any por-

tion of the Property for visitors projected to use the R-OS portion of the Property and **GRAVES HILL** need not submit any parking needs projections.

12. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **GRAVES HILL**, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.

13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.

14. In the event **GRAVES HILL** or its successors should fail to utilize the **PROPERTY** in accordance with this Agreement, or in the event of **GRAVES HILL'S** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code which would otherwise be applicable to property situated in the R-5A or ROS zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. §4452, M.R.Civ.P. 80K, or in any other manner available by law.

In addition, if such an enforcement action should result in a finding that **GRAVES HILL** has breached the Agreement, then either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Conditional Rezoning be modified or the **PROPERTY** rezoned.

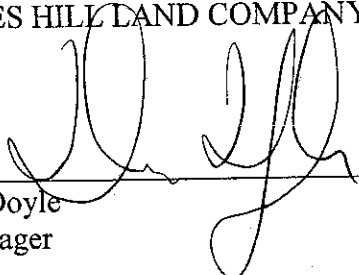
15. **GRAVES HILL** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

16. Except as expressly modified herein, the development, use and occupancy of the Property shall be governed by and comply with the applicable provisions of the Portland City Code and any applicable amendments thereto or replacements thereof.

WITNESS:

Brianne V. Vestal

GRAVES HILL LAND COMPANY, LLC

By: 
Diane Doyle
Its Manager

STATE OF MAINE
CUMBERLAND, SS.

November 8, 2004

Then personally appeared the above-named Diane Doyle, Manager of GRAVES HILL LAND COMPANY, LLC as aforesaid, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said limited liability company.

Before me,

Barbara A. Vezina

~~Notary Public~~/Attorney-at-Law

Printed name: Barbara A. Vezina

My Commission Expires: _____

ATTACHMENT 1

Order 67 – 04/05

Given first reading 9/20/04

Postponed on 10/4/04

Public Hearing and Passage 10/18/04 7-1 (Smith abstaining, O'Donnell opposed)

NATHAN H. SMITH (MAYOR)(3)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
CHERYL A. LEEEMAN (4)
JAMES I. COHEN (5)

CITY OF PORTLAND
IN THE CITY COUNCIL

PETER E. O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

ORDER AUTHORIZING AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR 802-828 OCEAN AVENUE

ORDERED, that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below;

BE IT FURTHER ORDERED, that the conditional rezoning amendment authorized herein shall become effective thirty (30) days following this rezoning.

CONDITIONAL ZONE AGREEMENT
GRAVES HILL LAND COMPANY, LLC

This Agreement made this _____ day of _____, 2004 by **GRAVES HILL LAND COMPANY, LLC**, a Maine limited liability company with an office in Saco, Maine (hereinafter "GRAVES HILL").

WITNESSETH:

WHEREAS, GRAVES HILL owns a parcel of land consisting of approximately 18.32 acres located at 802-828 Ocean Avenue in Portland, consisting of parcels shown on City of Portland Tax Map 411, Block A, Lot 7 and Tax Map 416, Block A, Lots 6, 7 and 21, and more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 21500, Page 269 (collectively the "Property"); and

WHEREAS, GRAVES HILL proposes to construct upon a portion of the Property a maximum of 98 condominium units in two mid-rise buildings in a Planned Residential Unit Development ("PRUD") while preserving and protecting a portion of the Property as open space, by utilizing a pattern of development designed to minimize the clearing of natural vegetation, to minimize the area to be blasted, to provide a unique residential living experience with a high degree of natural site amenities, and to promote public recreational use of trails which integrate with a larger trail system; and

WHEREAS, GRAVES HILL has requested the rezoning of 10.167 acres of the Property from R-3 to R-5A Residential Zone and the simultaneous approval of a contract zone to implement a planned residential unit development (PRUD) for dwelling units on that portion of the property, and the rezoning of 8.155 acres of the Property from R-3 to Recreation and Open Space Zone (R-OS) ; and

WHEREAS, the Planning Board of the **CITY OF PORTLAND** (hereinafter "**CITY**"), pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "Code") §§ 14-60 to 14-62 and 14-127, after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions; and

WHEREAS, the **CITY,** by and through its City Council has determined that because of the bold and innovative design which:

- promotes efficient land use and conservation of natural resources,
- protects the natural environment by locating the development so as to reduce the impact on environmentally sensitive areas,
- utilizes one of the last large undeveloped tracts of residentially-zoned land to provide housing of a type not currently available in Portland,
- reduces the impact on surrounding properties by minimizing the area to be blasted, preserving natural site amenities, and providing substantial buffers, and
- enhances the recreational trail system in Portland,

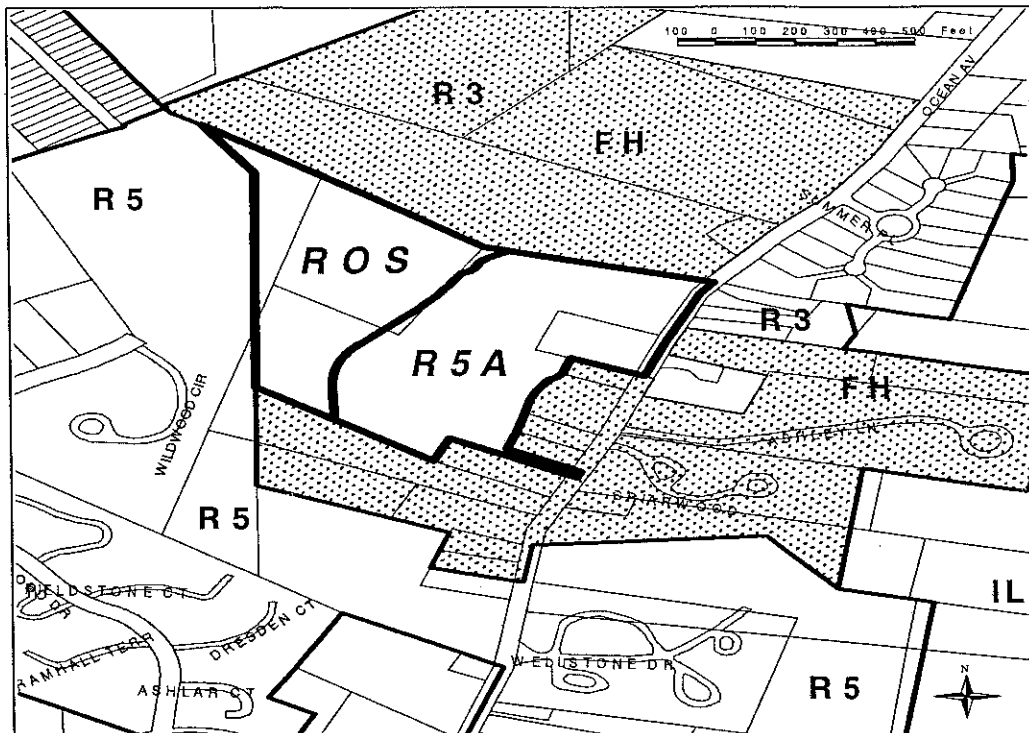
it is necessary and appropriate to impose with **GRAVES HILL's** agreement the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the **CITY'S** comprehensive land use plan; and

WHEREAS, the City Council of the **CITY** authorized the execution of this Agreement on _____, 200_, by City Council Order No. _____, a true copy of which is attached hereto as Attachment 1; and

WHEREAS, GRAVES HILL has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind **GRAVES HILL,** its successors or assigns;

NOW, THEREFORE, in consideration of the rezoning of the Property, **GRAVES HILL** contracts to be bound by the following terms and conditions:

1. The **CITY** hereby amends the Zoning Map of the City of Portland dated December 2000, as amended from time to time and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by Section 14-49 of the Code, by adopting the map change amendment shown below (rezoning to R-5A and R-OS). If this Agreement is not recorded within thirty (30) days of the City Counsel's approval of said rezoning, then the rezoning shall become null and void and the zoning of the Property shall revert to the pre-existing R-3 zone.



**Proposed Rezoning for 802 Ocean Avenue
from R3 and Flexible Housing Overlay to R5A and ROS**

July 2004

Map prepared by the City of Portland's Department of Planning & Development and the GIS Workgroup

2. **GRAVES HILL** is authorized to establish and maintain the following uses on the **R-5A** portion of the property:

- a. Up to 98 residential units located in two buildings, each building containing up to 49 units, which may be sold as condominium units, resulting in a maximum total of ninety-eight (98) residential units within the Property; and
- b. a community room in each building available for use by the residents of the PRUD; and
- c. a small office in each building to be used by employees of the condominium owners' association, only for on-site property management and concierge services for 802 Ocean Avenue, if determined necessary by the condominium owners' association; and
- d. a fitness and special events room in each building available for use by the residents of the PRUD; and
- e. a cross country ski center/locker room in each building available for use by the residents of the PRUD; and

- f. parking in an amount of not less than 2 spaces per residential unit, plus at least 28 additional surface visitor parking spaces; and
- g. a trail system traversing the site, extending from Ocean Avenue to connect with the trail system on the R-OS portion of the site.

The uses specified herein supersede the otherwise permitted uses contained within the underlying R-3 and R-5A zones.

3. The use of the **R-5A** portion of the property, by virtue of this contract rezoning, shall be limited to that of a residential PRUD with the accessory uses described in paragraph 2. The Property may be developed in two phases, Phase I to consist of all necessary blasting for both buildings, one structure containing up to forty-nine (49) dwelling units plus all accessory uses associated with that structure, and the entire trail system in both the R-5A and R-OS portions of the Property (excluding only the portion of the trail accessing the building to be constructed in Phase II) and Phase II to consist of the second structure, containing up to forty-nine (49) dwelling units plus all accessory uses associated therewith and trail sections and roads serving only that structure, all as more fully set forth in the Site Plans.

4. Separate performance guarantees shall be issued for Phases I and II. The amounts and terms of such performance guarantees shall be determined by the Planning Authority at the time of Site Plan and Subdivision approval for each Phase, but each Phase must provide minimum financial guarantees such that each Phase constitutes a separate and complete project. Surface stabilization of any portions of the project area located in Phase II that have been affected by blasting performed during Phase I shall be accomplished prior to the issuance of a Certificate of Occupancy for Phase I, unless construction of Phase II has commenced. The intent of this condition is to ensure a complete site in the event Phase II is never built.

5. **GRAVES HILL** is authorized, and is hereby required pursuant to this Contract Zone Agreement, to establish and maintain the following use on the **R-OS** portion of the Property:

a trail system, for pedestrian, bicycle and/or other non-motorized use, together with associated benches, bridges, raised walkways, or similar improvements as necessary to facilitate access.

The R-OS portion of the Property not used as aforesaid shall be left in its natural state, and natural features, mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.

6. **GRAVES HILL** shall grant to **Portland Trails**, a Maine nonprofit corporation, a recreational trail easement at least five feet in width for trails on the R-5A portion of the Property and ten feet in width for trails on the R-OS portion of the property, extending for a distance of not less than 3,207 linear feet, to allow for passive recreational use by the general public. The easement may impose reasonable restrictions upon the trail use, including the following: Permitted uses are limited to low-impact recreational uses, including, without limitation, walking, hiking, nature viewing, photography, mountain biking, cross-country skiing, snowshoeing, walking

dogs on leashes as long as dog owners pick up after their dogs, and educational programs. Prohibited uses include, but are not necessarily limited to, motorized vehicles (except for authorized trail construction, repair or maintenance), camping, fires, horses, removing, cutting, or otherwise altering trees, branches, and other vegetation (except for authorized trail construction, repair and maintenance, to restore native flora and fauna, or to remove invasive or dangerous flora and fauna), any filling, excavation or alteration of the surface of the earth other than for authorized trail construction, repair or maintenance purposes, any disposal of rubbish, garbage or other waste material, hunting, trapping, wildlife collecting, any loud activities which disturb others, all overnight uses, and other activities which have a high impact by degrading or destroying the natural resource values of the property or which conflict with the rights of other users for a quiet, peaceful and contemplative experience in a natural area. In no event shall any of the above prohibited uses interfere with the right to construct, repair and maintain a recreational trail and associated recreational structures. The hours of use may be strictly limited to daylight hours. The easement may authorize **GRAVES HILL**, its successors and assigns, Graves Hill Condominium Owners' Association, and Portland Trails to enforce those restrictions. In the alternative, instead of granting a trail easement on the R-OS portion of the Property, **GRAVES HILL** may opt to convey the R-OS portion of the Property to **Portland Trails** in fee, with such conveyance made subject to use conditions and reserved rights of enforcement as aforesaid. The form of such easement and/or deeds shall be reviewed and approved by Corporation Counsel in connection with the Site Plan approval process for Phase I. If a conveyance, by easement or in fee, is to be made to **Portland Trails**, the certificate of occupancy for the residential units shall not be delayed due to the status of completion of the trail system on the R-OS portion of the site so long as **GRAVES HILL** has made the required conveyance, by easement and/or in fee, to Portland Trails and funds sufficient to complete construction the trails on the R-OS portion of the site have been placed in escrow. If, for any reason, Portland Trails declines to accept said trail easements and/or conveyances upon the terms offered, **GRAVES HILL** may satisfy this contract zone requirement by constructing the trails pursuant to the approved site plan and granting trail easements to the City of Portland, upon the same terms and conditions stated above, granting the City of Portland (rather than Portland Trails) the right to enforce the restrictions, with the form of the easement subject to review and approval by Corporation Counsel.

7. The Property will be developed substantially in accordance with the Preliminary Site Plans, Zone Identification and Phasing Identification submitted by Richardson and Associates (last revised August 16, 2004) and the Proposed Building Design site sections, building sections and floor plans submitted by Scott Simons Architects (last revised July 8, 2004) and the preliminary elevation from Mackworth Island (undated, submitted August 17, 2004), attached hereto. The Graves Hill entrance on Ocean Avenue shall be at the location shown on said Site Plan and the City hereby grants such waivers as may be necessary to permit the entrance in that proximity to adjacent driveways; provided, however, that at the request of **GRAVES HILL**, with the approval of the Planning Board, the location of the entrance may be moved up to 20 feet southerly of the location shown on the attached site plan without any further amendment to this Contract Zone Agreement. So long as the two residential structures include an approved fire sprinkler system, the required fire access shall be satisfied by the provision of one access road, as shown on the site plan. **GRAVES HILL** shall provide sidewalk and granite curb along the property's frontage on Ocean Avenue and also as along the frontage of the four intervening residential parcels, or, at the option of the Planning Board, **GRAVES HILL** shall instead contribute funds

equal to the cost of installing sidewalk and granite curbs as aforesaid to the CITY for the CITY to apply toward installing granite curbs and sidewalk in the vicinity of the PROPERTY.

GRAVES HILL shall provide a planted buffer as shown on the site plan in the vicinity of the rear lot lines of the abutters whose lots front on Ocean Avenue, with precise specifications subject to final site plan review. Such planted buffer, in addition to the areas on the site plan designated as "preserve existing trees" and "no cut area" shall remain in perpetuity and shall not be eliminated by **GRAVES HILL** or its successors, provided that, to the extent applicable, the planted buffer may be maintained according to standards contained within the *National Arborist Association, Inc. Standards for Tree Care Operations*. Furthermore, while **GRAVES HILL** shall provide at least 3,207 linear feet of pedestrian trails in the general configuration shown on the plans, it is stipulated that the pedestrian trails shown on the attached plans are for diagrammatic purposes only, and actual proposed trail locations will be submitted to and reviewed by the Planning Board as part of the site plan process.

8. The Planning Board shall review and approve Phase I and Phase II of this development according to the subdivision and site plan provisions of the Portland Land Use Code.

9. Any change in ownership shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to the granting of mortgages by **GRAVES HILL** or any successor in interest, or to the enforcement by the mortgagees of their rights under such mortgages, or to the assignment or conveyance of the ownership to an entity in which **GRAVES HILL** and/or Diane Doyle holds at least a 30% interest, nor shall this requirement apply to the conveyance of individual condominium units or to the granting of mortgages upon individual condominium units. Similarly, **GRAVES HILL** or any successor in interest may convey the R-OS portion of the Property to Portland Trails in fee simple and/or may grant trail easements and conservation easements to Portland Trails and/or to the City of Portland as provided above without any further review of the change in ownership by the Planning Board.

10. For the portion of the Property rezoned **R-5A**, the dimensional requirements and other zoning requirements for the Property shall be those of the underlying R-5A zone with respect to PRUDs except as follows:

Maximum number of units per building: 49

Maximum number of buildings containing residential dwelling units: 2

Maximum building height: 100 feet, as measured per zoning ordinance, and in accordance with the plans attached hereto and in accordance with the location on the site plan

Parking: Minimum of 2 spaces per unit plus 28 visitor spaces, half in Phase I and half in Phase II

Minimum recreation open space area: Outdoor passive recreation in the form of

pedestrian trails of not less than 3,207 linear feet shall be provided on the Property, generally as shown on the Preliminary Site Plans, Zone Identification. Such trails shall be composed of stone dust, asphalt or similar materials, and, if environmentally necessary or advisable, shall include bridges, raised walkways, or similar improvements as necessary to facilitate access, together with a reasonable number of wooden benches. The non-trail portion of the Property located in the R-OS zone shall otherwise remain in its natural vegetative state. A public recreational trail easement over the trails on the Property shall be conveyed to **Portland Trails** or, in the alternative, to the **City of Portland** granting the public the right to use the trails subject to such restrictions on hours, manner and intensity of use outlined in Paragraph 6, above. In the alternative, **GRAVES HILL** may convey an easement over the recreational trails on the R-5A portion of the Property and convey the R-OS portion of the Property to **Portland Trails** in fee, both subject to such restrictions on hours, manner and intensity of use outlined in Paragraph 6, above. So long as at least the minimum passive recreational open space is provided as specified above, no additional active recreational open space is required. However, the developer may provide more than the minimum required, at its option, and subject to site plan review.

Except as set forth above, all provisions in Sections 14-126 through 14-131 of the **CITY**'s zoning ordinance shall apply to the portion of the Property rezoned R-5A.

11. For the portion of the Property rezoned **R-OS**, the dimensional requirements and other zoning requirements of the R-OS zone shall apply, except as follows: despite any requirement to the contrary in § 14-158 (g), due to the linkage of the trail system to publicly-owned property which will provide public parking, no off-street parking need be provided on any portion of the Property for visitors projected to use the R-OS portion of the Property and **GRAVES HILL** need not submit any parking needs projections.

12. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **GRAVES HILL**, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.

13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.

14. In the event **GRAVES HILL** or its successors should fail to utilize the **PROPERTY** in accordance with this Agreement, or in the event of **GRAVES HILL'S** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code which would otherwise be applicable to property situated in the R-5A or ROS zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. §4452, M.R.Civ.P. 80K, or in any other manner available by law.

In addition, if such an enforcement action should result in a finding that **GRAVES HILL** has breached the Agreement, then either the Portland Planning Board on its own initiative, or at the

request of the Planning Authority, may make a recommendation to the City Council that the Conditional Rezoning be modified or the **PROPERTY** rezoned.

15. **GRAVES HILL** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

16. Except as expressly modified herein, the development, use and occupancy of the Property shall be governed by and comply with the applicable provisions of the Portland City Code and any applicable amendments thereto or replacements thereof.

WITNESS:

GRAVES HILL LAND COMPANY, LLC

By: _____
Diane Doyle
Its Manager

STATE OF MAINE
CUMBERLAND, SS.

_____, 200_

Then personally appeared the above-named Diane Doyle, Manager of GRAVES HILL LAND COMPANY, LLC as aforesaid, and acknowledged the foregoing instrument to be her

free act and deed in her said capacity and the free act and deed of said limited liability company.

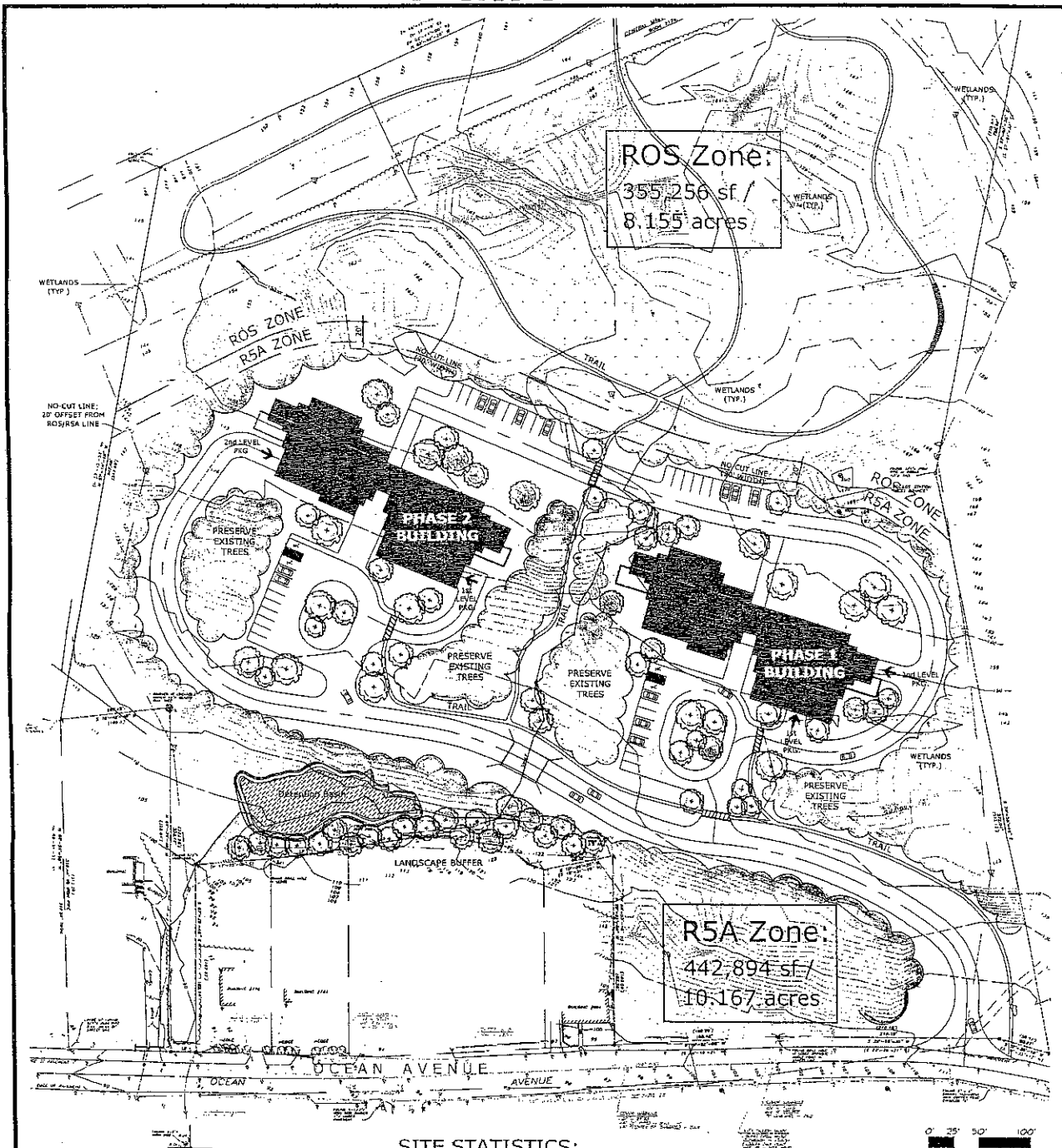
Before me,

Notary Public/Attorney-at-Law

Printed name: _____

My Commission Expires: _____

EXHIBIT 1



NOTES:

1. ALL TOPOGRAPHIC INFORMATION AND EXISTING BASE INFORMATION EXCEPT WETLANDS BOUNDARIES PROVIDED BY DOW & COULOMBE SURVEYORS.
2. UTILITY INFORMATION SHOWN IS APPROXIMATE ONLY.
3. PROPOSED ELEVATIONS AND PERCENT SLOPES INDICATED ON PLAN ARE TO PROVIDE GENERAL INFORMATION REGARDING
4. EXISTING AND PROPOSED CONDITIONS AND RELATIONSHIPS.
5. WETLANDS BOUNDARIES SHOWN ARE FOR PLANNING PURPOSES ONLY AND WILL REQUIRE FIELD VERIFICATION.

SITE STATISTICS:

Site Size: Gross area: 798,150 s.f. / 18,323 acres
 Zone ROS: 355,256 sf / 8.155 acres
 Zone R5A: 442,894 sf / 10.167 acres
 Net Land Area: 434,622 s.f. / 9.978 acres
 Frontage: 445 L.F.
 Impervious Surface Ratio: 0.16

Number of Units:
 Phase 1: 49
 Phase 2: 49
 Gross Density: 5.3 Units/Acre
 Net Density: 9.8 Units/Acre

Roadway Ownership: Private
 Linear Feet of Roadway: 2,656 L.F.
 Roadway Width: 24 feet

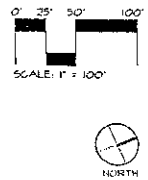
Total Number of Parking Spaces: 224 spaces
 Phase 1: 112 spaces
 Phase 2: 112 spaces

Parking Spaces within Parking Structure:
 Phase 1: 90 spaces
 Phase 2: 20 spaces

Surface Parking Spaces:
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 Phase 2: 22 spaces

Projected Wetlands Disturbance: 2,230 s.f.
 Projected Site Disturbance: 3.4 Acres

Trail:
 Zone ROS: 2,855 lf
 Zone R5A: 1,170 lf
 Total Trail: 4,025 lf



Preliminary Site Plan: Zone Identification
GRAVES HILL
 Portland, Maine

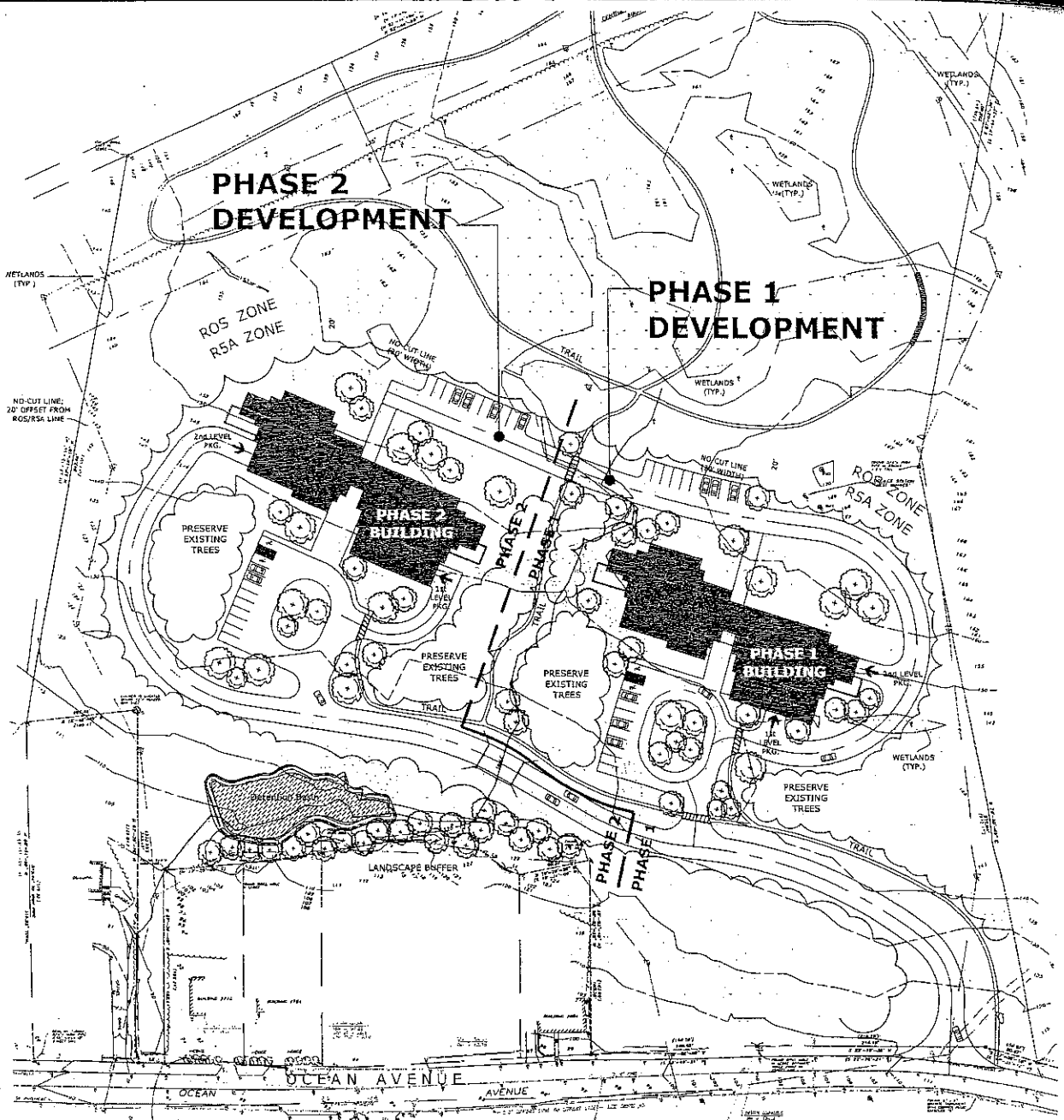
Developer: **GRAVES HILL LAND COMPANY**
 150 Main Street
 Scarborough, Maine
 tel: 207.286.1191

Architect: **Scott Simons Architects**
 75 York Street
 Portland, Maine 04101
 tel: 207.722.6556

Landscape Architect: **Richardson & Associates**
 Landscape Architects
 PO Box 426
 176 Main Street
 Scarborough, Maine 04072
 tel: 207.286.9291

Civil Engineer: **BH2M**
 Consulting Engineers
 28 State Street
 Gorham, Maine
 tel: 707.819.7771

MARCH 25, 2004
 REVISED MAY 14, 2004
 REVISED JUNE 1, 2004
 REVISED JUNE 14, 2004
 REVISED JULY 8, 2004
 REVISED AUGUST 16, 2004



NOTES:

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SITE STATISTICS:

Site Size: Gross area: 798,150 s.f. / 18.323 acres
 Zone ROS: 355,256 sf / 8.155 acres
 Zone RSA: 442,894 sf / 10.167 acres
 Net Land Area: 434,622 s.f. / 9.978 acres
 Frontage: 445 L.F.
 Impervious Surface Ratio: 0.16

Number of Units:
 Phase 1: 49
 Phase 2: 49
 Gross Density: 5.3 Units/Acre
 Net Density: 9.8 Units/Acre

Roadway Ownership: Private
 Linear Feet of Roadway: 2,656 L.F.
 Roadway Width: 24 feet

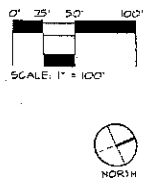
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 Total Trail: 4,025 lf



Preliminary Site Plan: Phasing Identification
GRAVES HILL
 Portland, Maine

Developer: GRAVES HILL LAND COMPANY
 110 Main Street
 5800, Maine
 tel 207.286.1151

Architect: Scott Simons Architects
 75 Park Street
 Portland, Maine 04101
 tel 207.722.4656

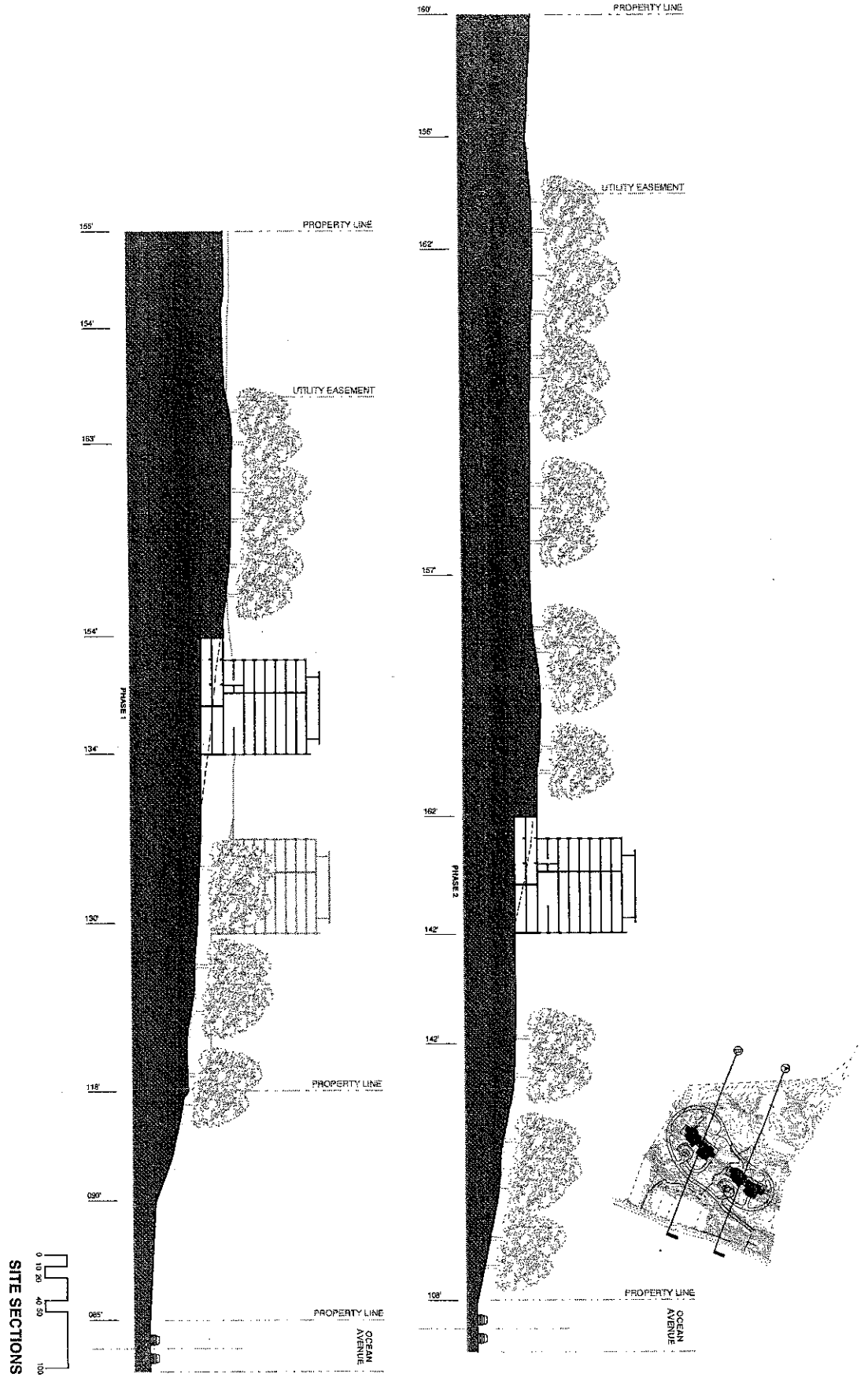
Landscape Architect: Richardson & Associates
 Landscape Architects
 PO Box 426
 176 Main Street
 2400, Maine 04072
 tel 207.286.9291

Civil Engineer: BH2M
 Consulting Engineers
 28 State Street
 Gorham, Maine
 tel 207.839.2751

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 REVISED AUGUST 16, 2004

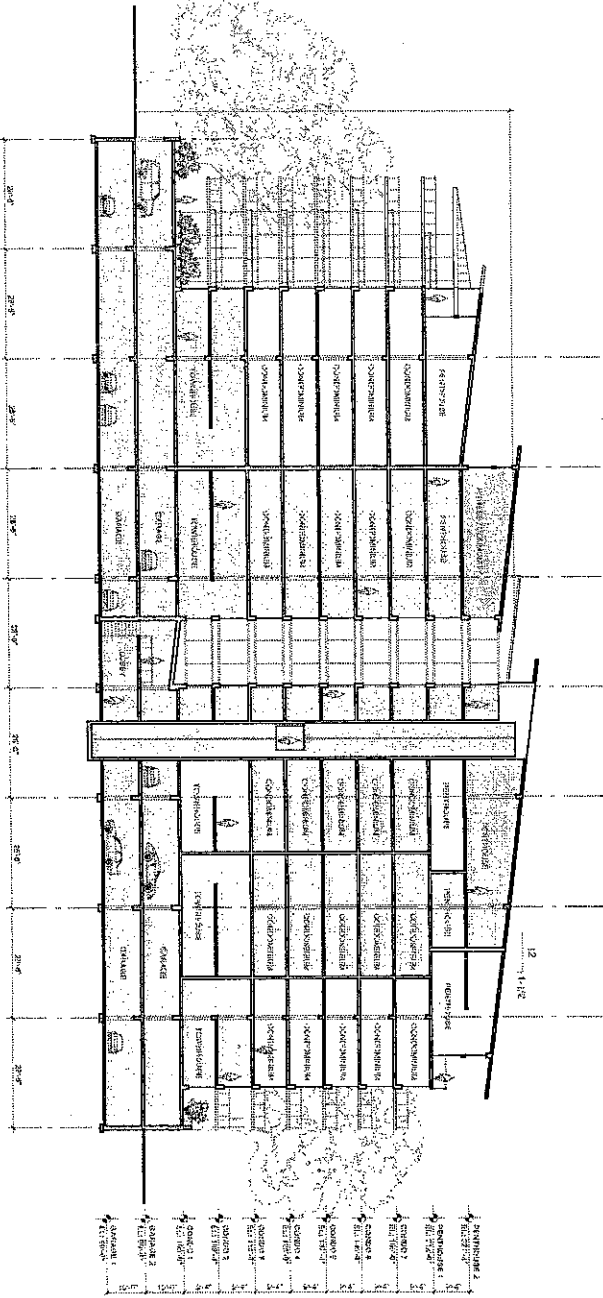
EXHIBIT 3

GRAVES HILL
 OCEAN AVENUE
 PORTLAND, ME

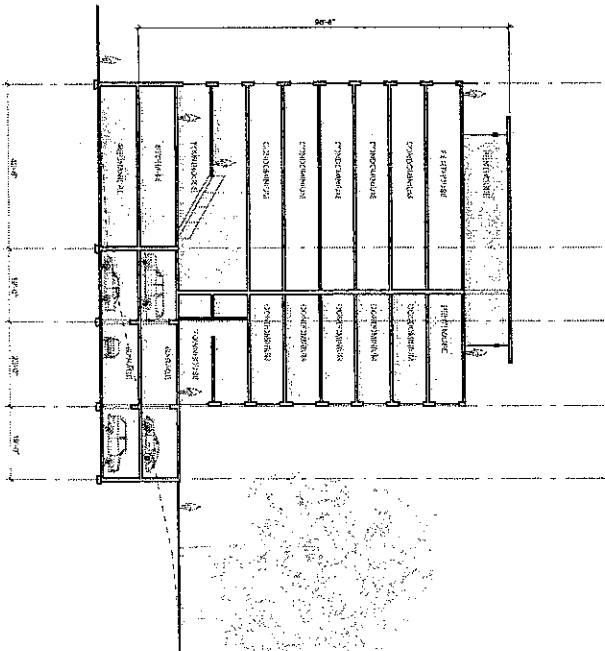


GRAVES HILL
OCEAN AVENUE
PORTLAND, ME

S-N BUILDING SECTION

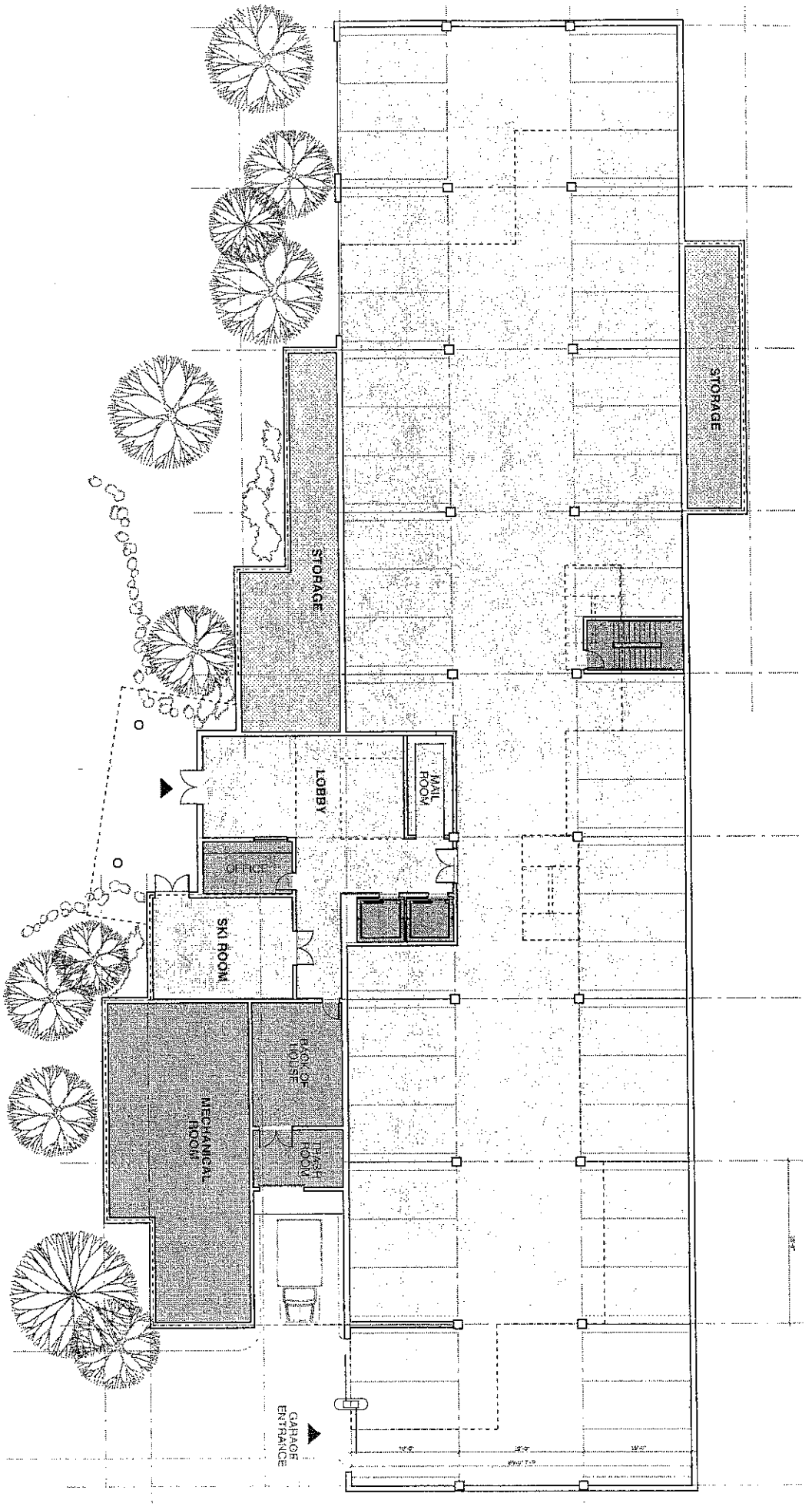


E-W BUILDING SECTION



BUILDING SECTIONS

GRAVES HILL
OCEAN AVENUE
PORTLAND, ME

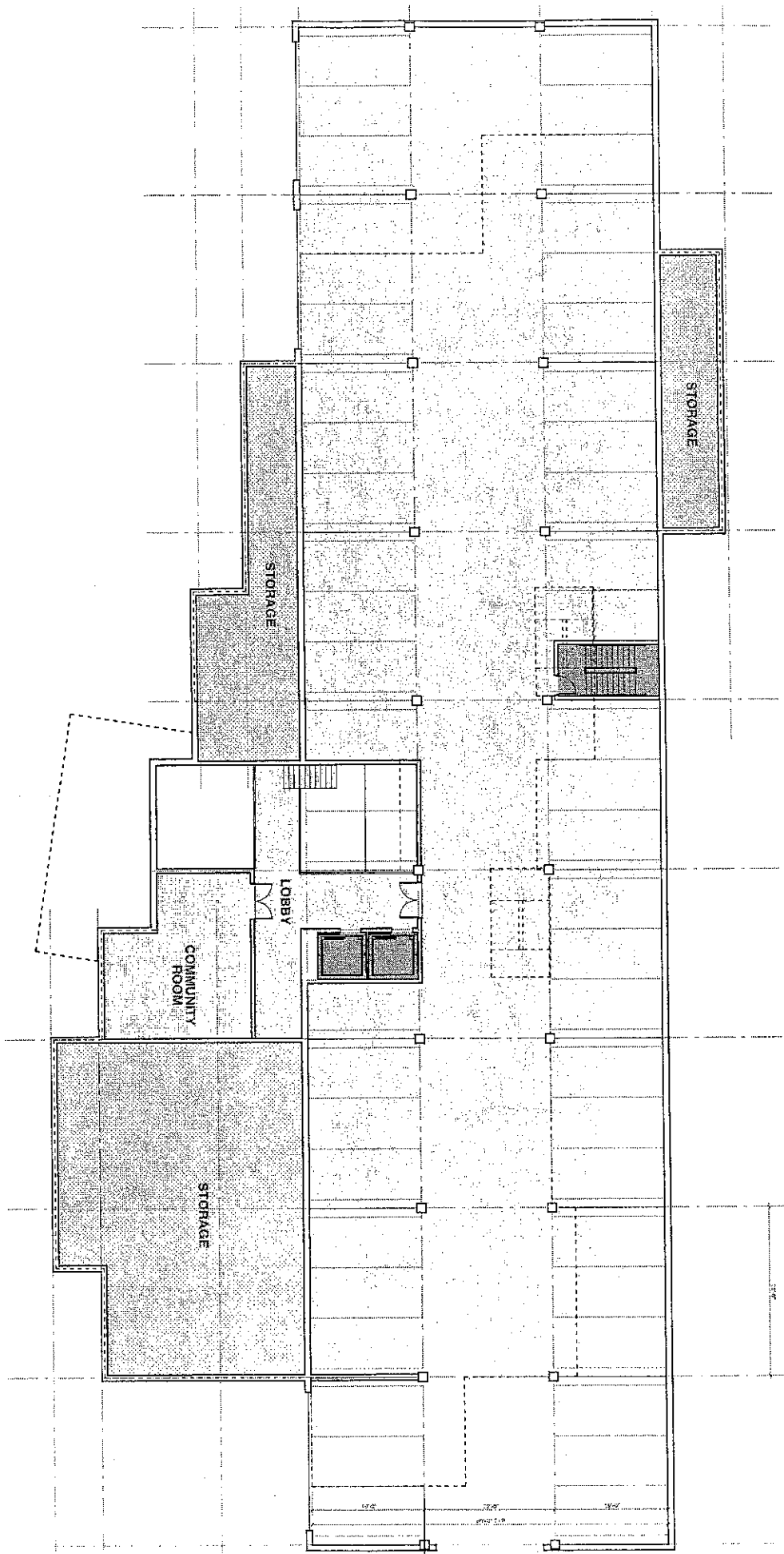


FLOOR 01: LOBBY & GARAGE



Scott Simon Architects

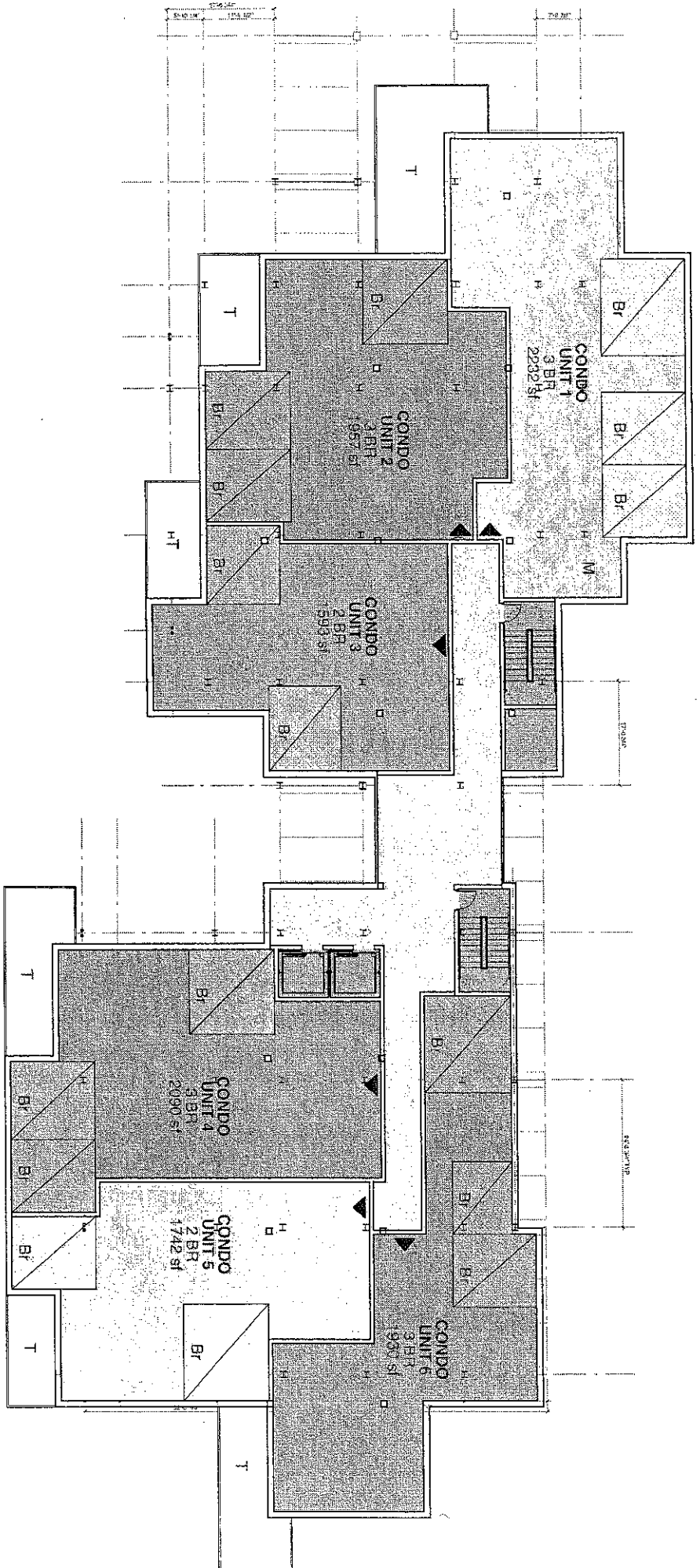
GRAVES HILL
OCEAN AVENUE
PORTLAND, ME



FLOOR 02: COMMUNITY ROOM & GARAGE



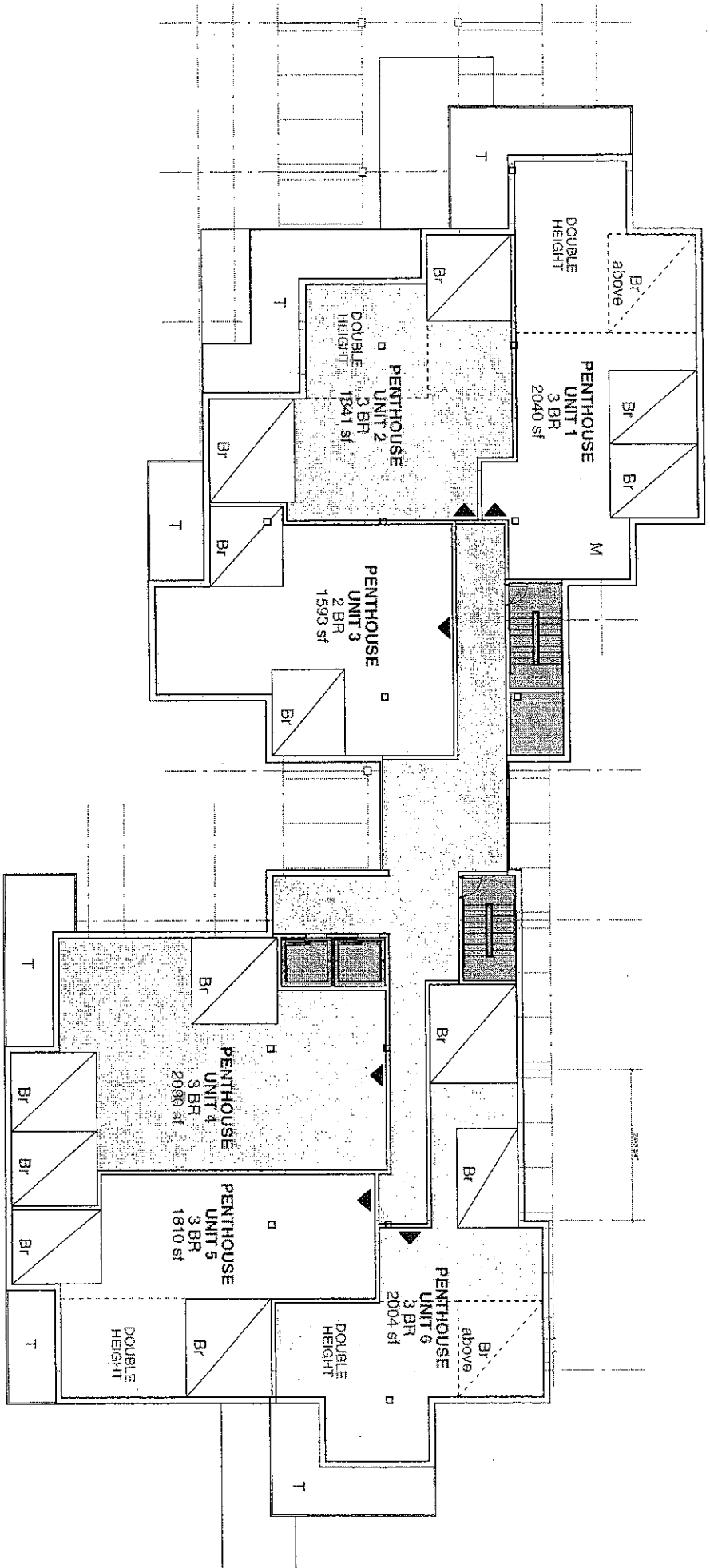
GRAVES HILL
OCEAN AVENUE
PORTLAND, ME



FLOOR 03-09: TYPICAL CONDOMINIUM
 14,510 SF TOTAL

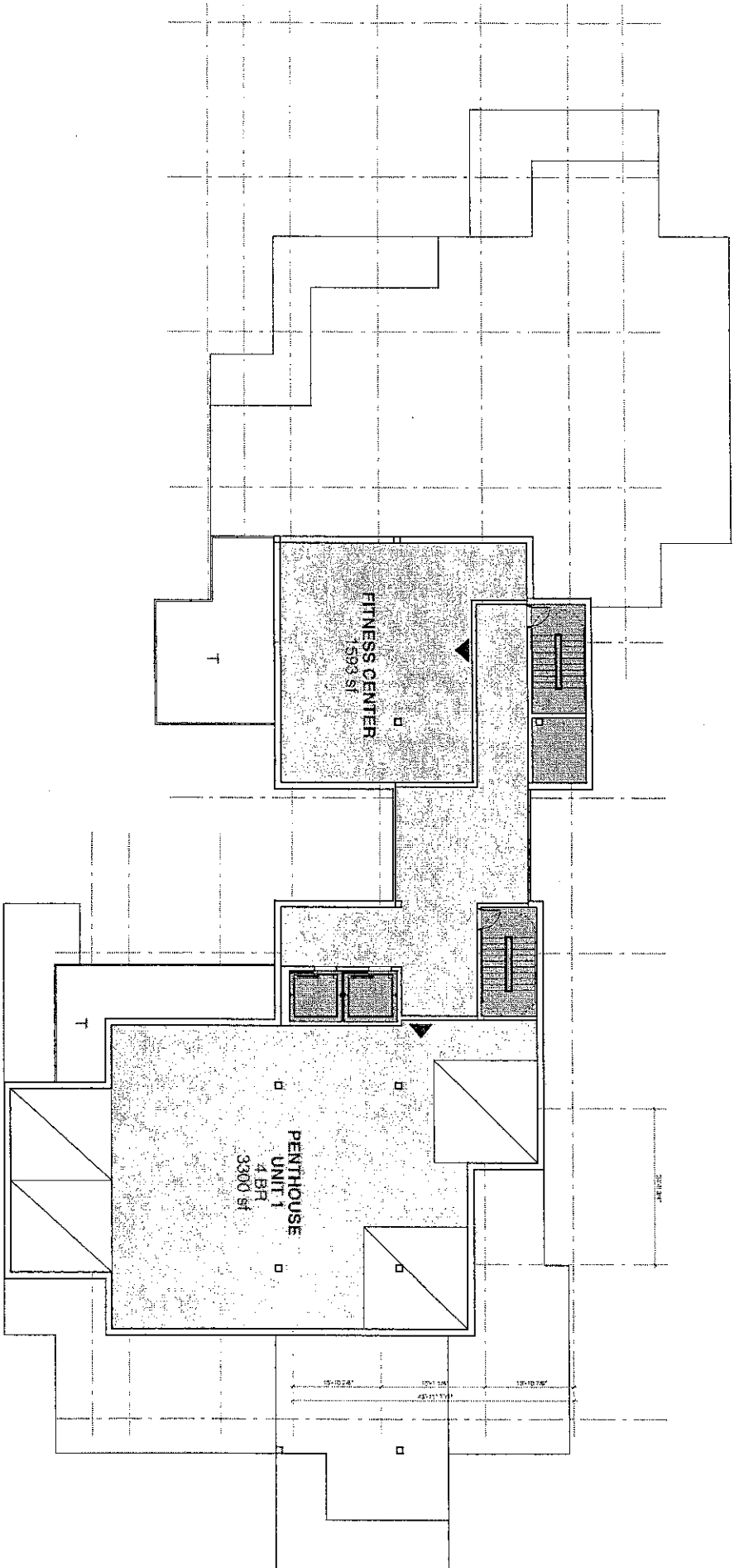


GRAVES HILL
OCEAN AVENUE
PORTLAND, ME



FLOOR 10: PENTHOUSE
 13,405 SF TOTAL

GRAVES HILL
OCEAN AVENUE
PORTLAND, ME



FLOOR 11: PENTHOUSE
6,853 SF TOTAL

EXHIBIT 4



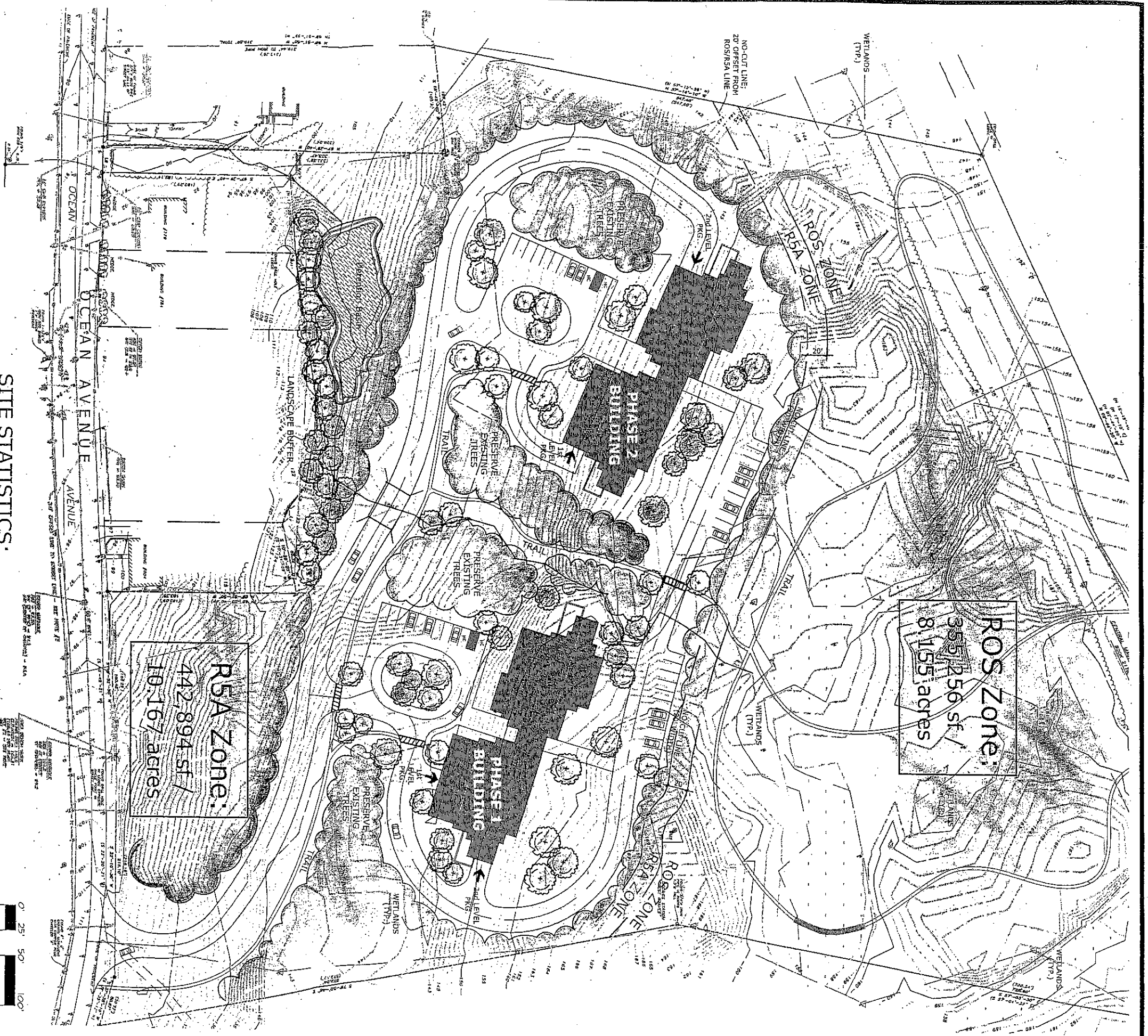
Submitted to
PORTLAND PLANNING BOARD
AUGUST 17, 2004

GRAVES HILL LAND COMPANY, LLC
Diane Doyle 207.286.1151

SCOTT SIMONS ARCHITECTS
Scott Simons 207.772.4656

RICHARDSON & ASSOCIATES
Todd Richardson 207.286.9291

BH2M
Les Berry 207.839.2771



ROS Zone:
 355,256 sf /
 8.155 acres

RSA Zone:
 442,894 sf /
 10.167 acres

SITE STATISTICS:

- NOTES:**
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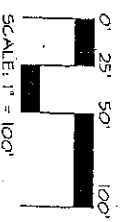
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Preliminary Site Plan: Zone Identification
GRAVES HILL
 Portland, Maine

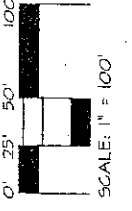
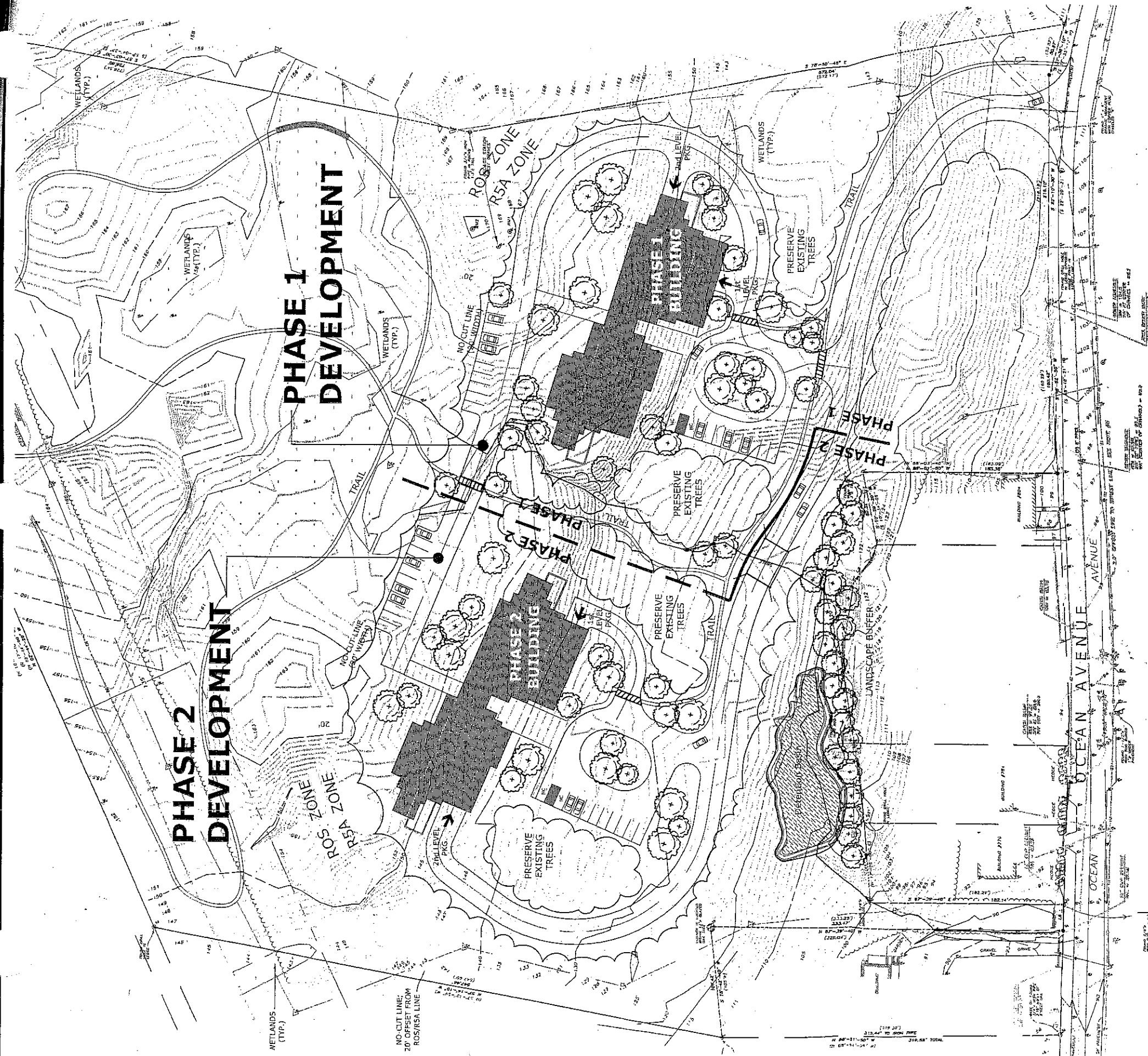
Developer: **GRAVES HILL LAND COMPANY**
 110 Main Street
 Saco, Maine
 Tel 207.286.1151

Architect: **Scott Simons Architects**
 75 York Street
 Portland, Maine 04101
 Tel 207.772.4555

Landscape Architect: **Richardson & Associates**
 Landscape Architects
 PO Box 426
 176 Main Street
 Saco, Maine 04072
 Tel 207.286.9291

Civil Engineer: **BH2M**
 Consulting Engineers
 28 State Street
 Portland, Maine
 Tel 207.559.7771

MARCH 25, 2004
 REVISED MAY 14, 2004
 REVISED JUNE 1, 2004
 REVISED JUNE 4, 2004
 REVISED JUNE 8, 2004
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Preliminary Site Plan: Phasing Identification

GRAVES HILL
 Portland, Maine

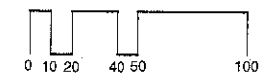
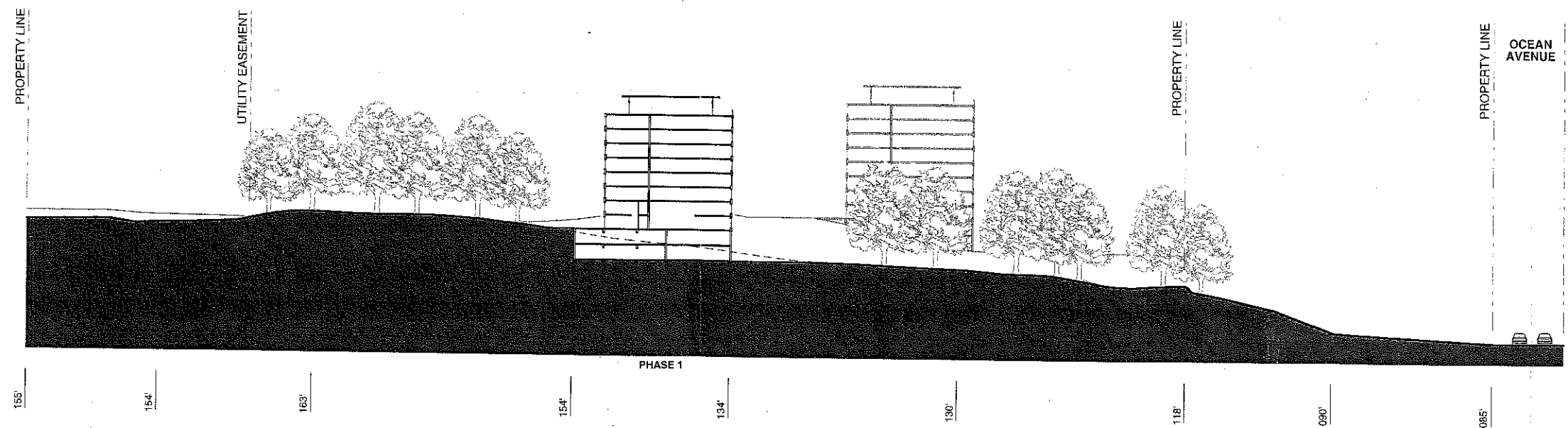
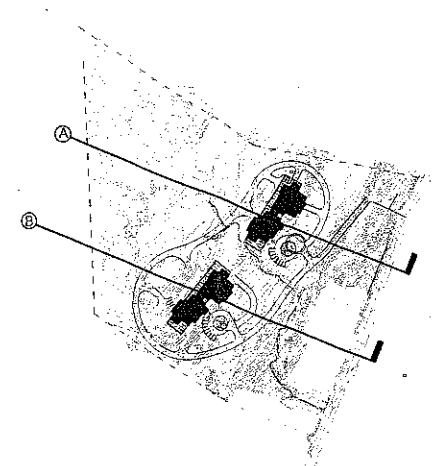
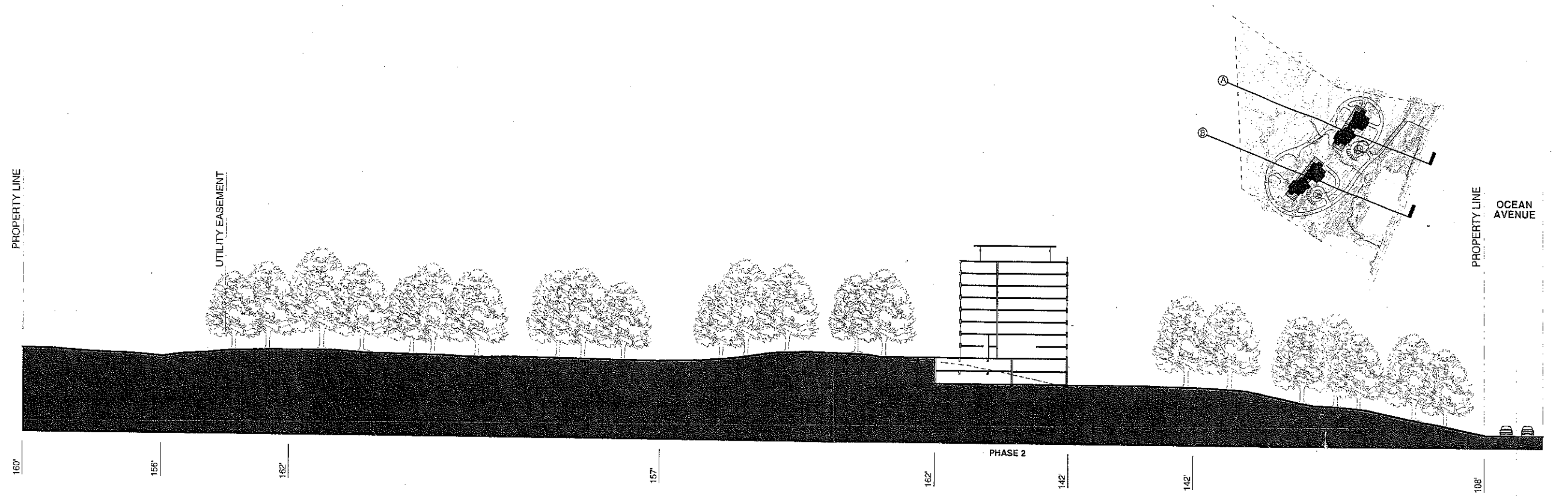
Developer: GRAVES HILL LAND COMPANY
 110 Main Street
 Saco, Maine
 tel 207.286.1151

Architect: Scott Simons Architects
 75 York Street
 Portland, Maine 04101
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Landscape Architect: Richardson & Associates
 Landscape Architects
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 176 Main Street
 Saco, Maine 04072
 tel 207.286.9291

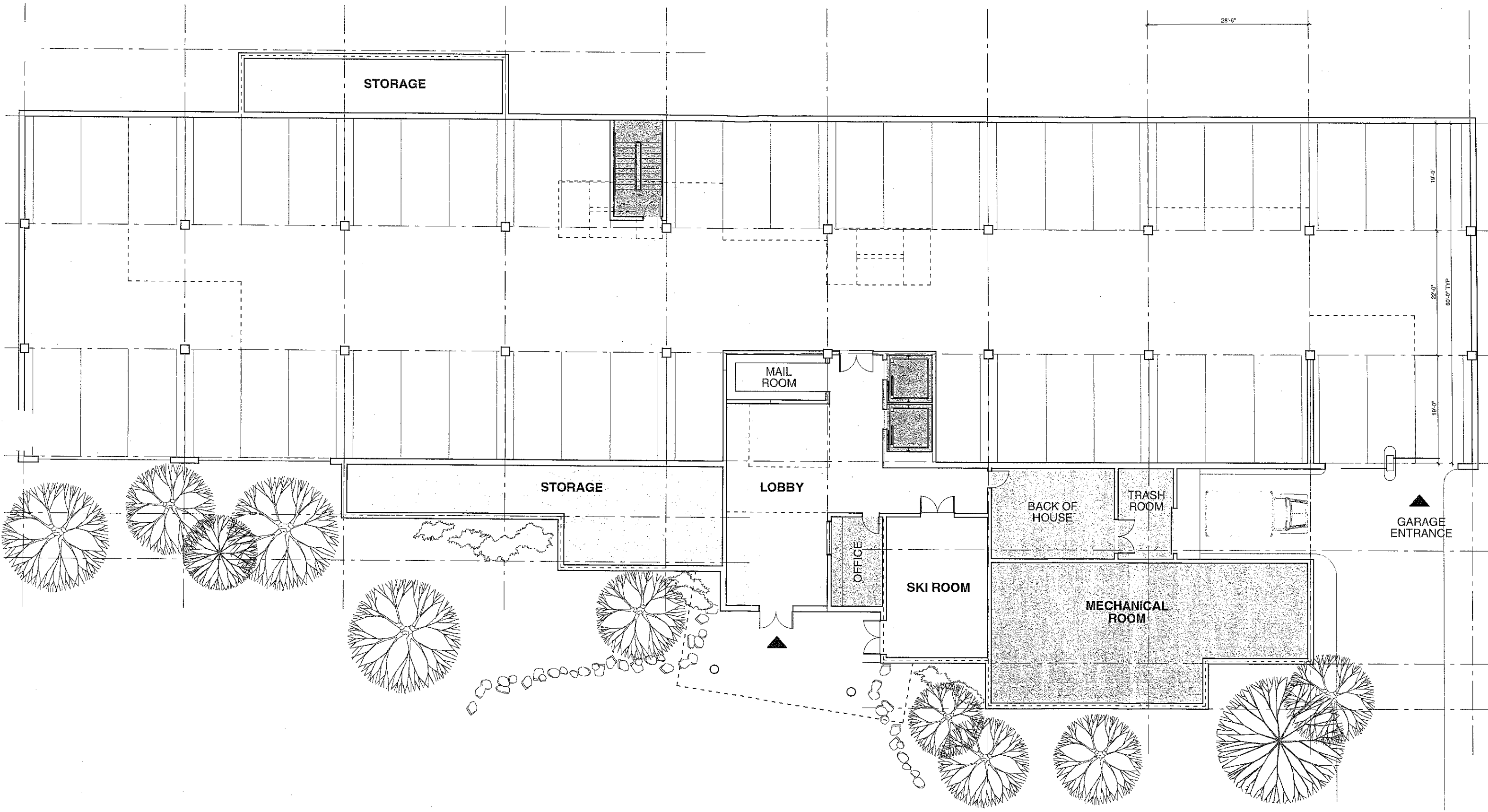
Civil Engineer: BH2M
 Consulting Engineers
 28 State Street
 Gorham, Maine
 tel 207.859.2771

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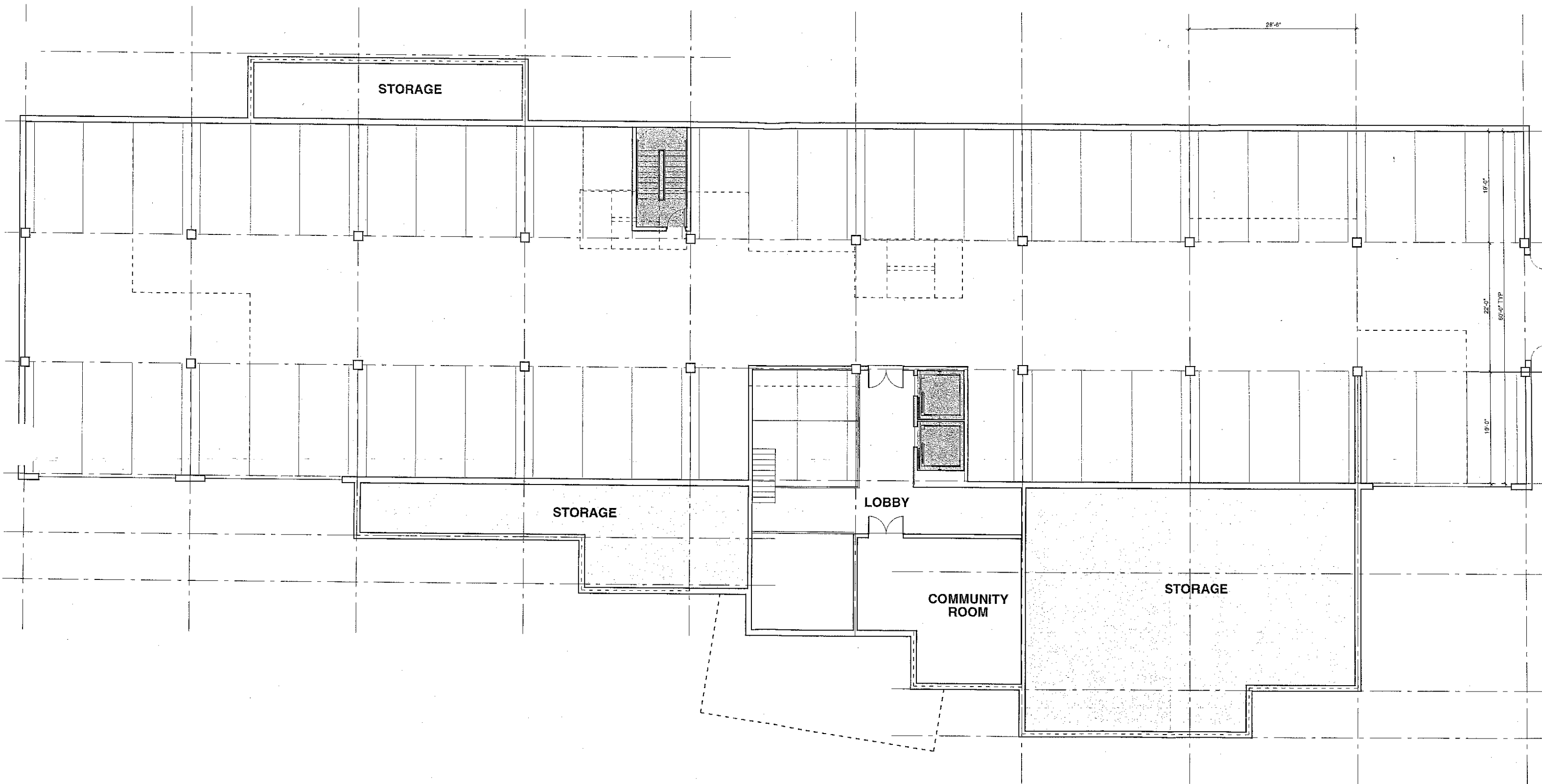


SITE SECTIONS

GRAVES HILL
 OCEAN AVENUE
 PORTLAND, ME

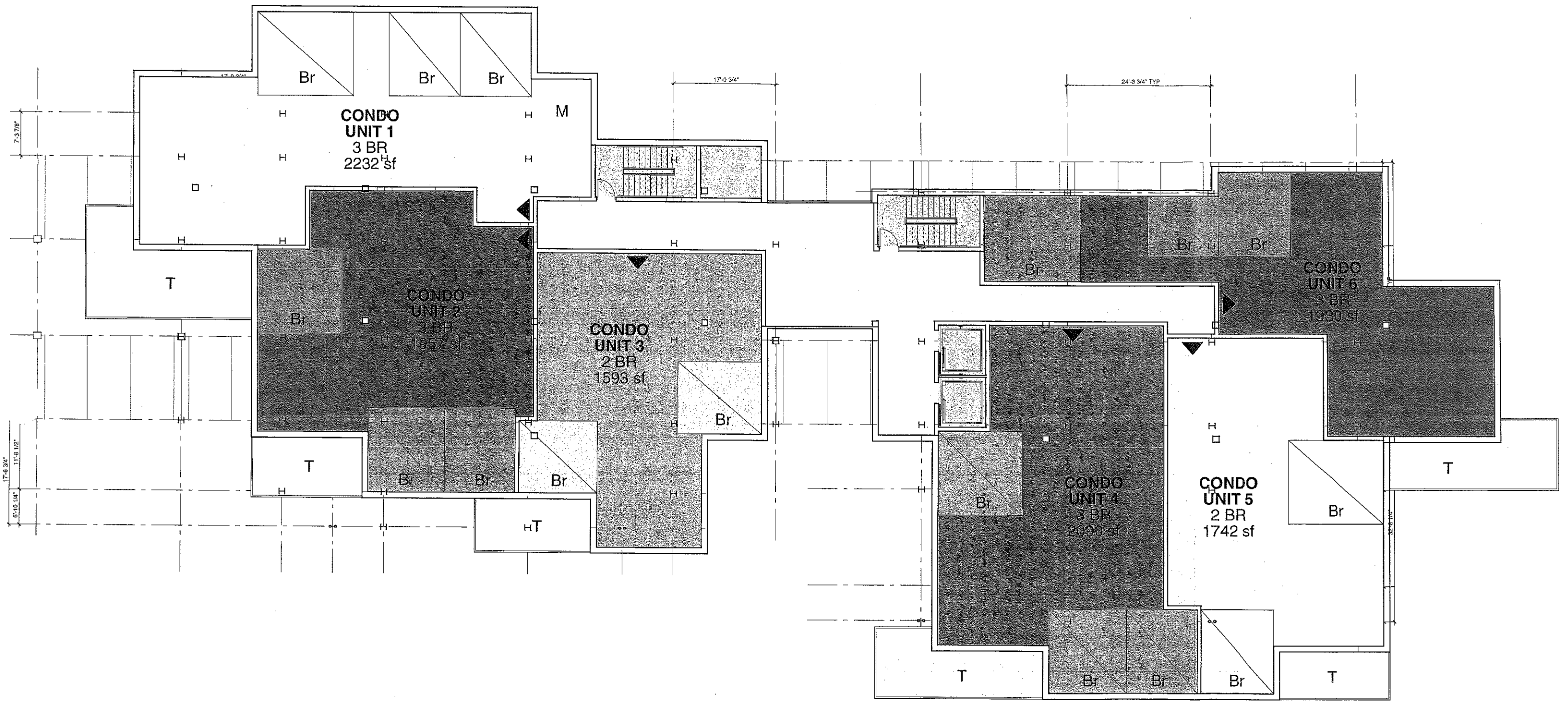


GRAVES HILL
 OCEAN AVENUE
 PORTLAND, ME



FLOOR 02: COMMUNITY ROOM & GARAGE

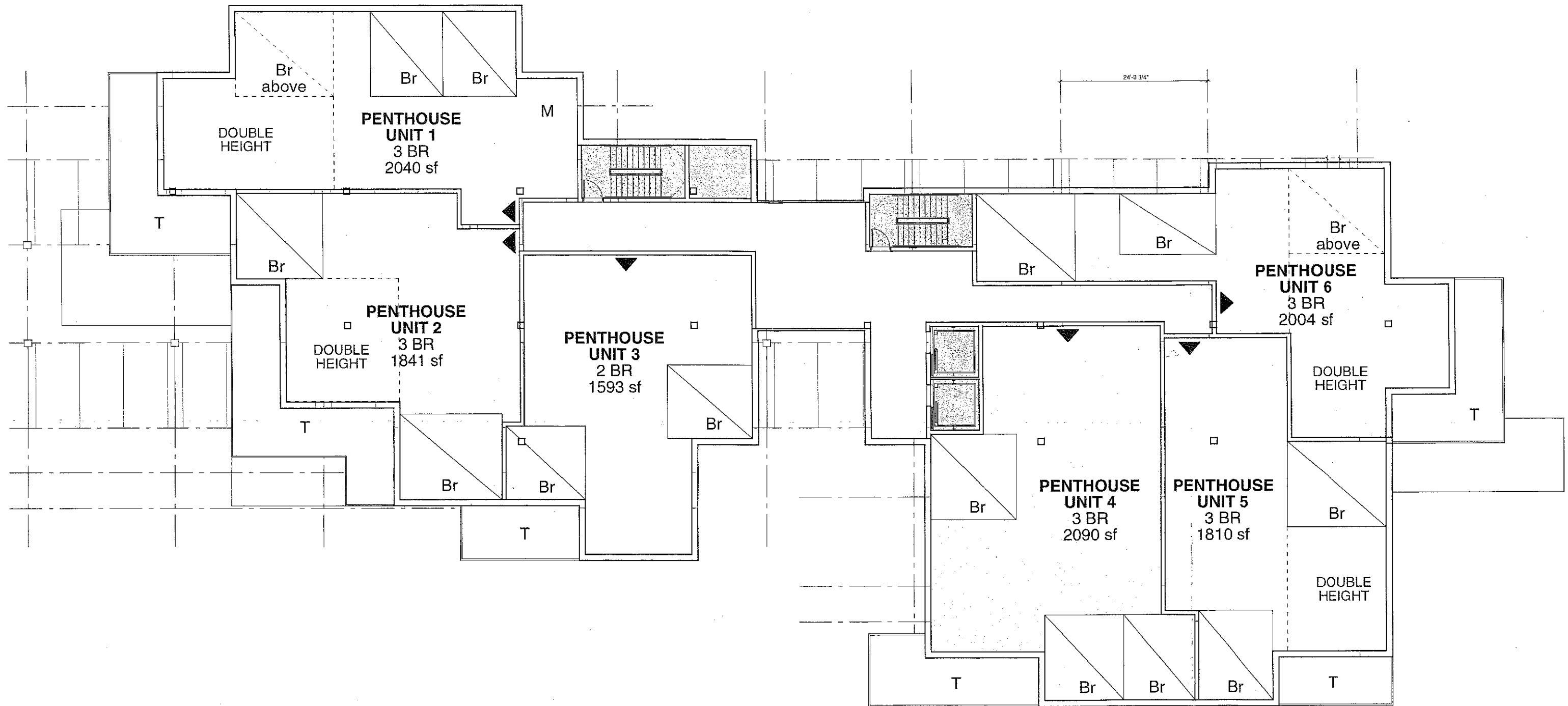
GRAVES HILL
 OCEAN AVENUE
 PORTLAND, ME



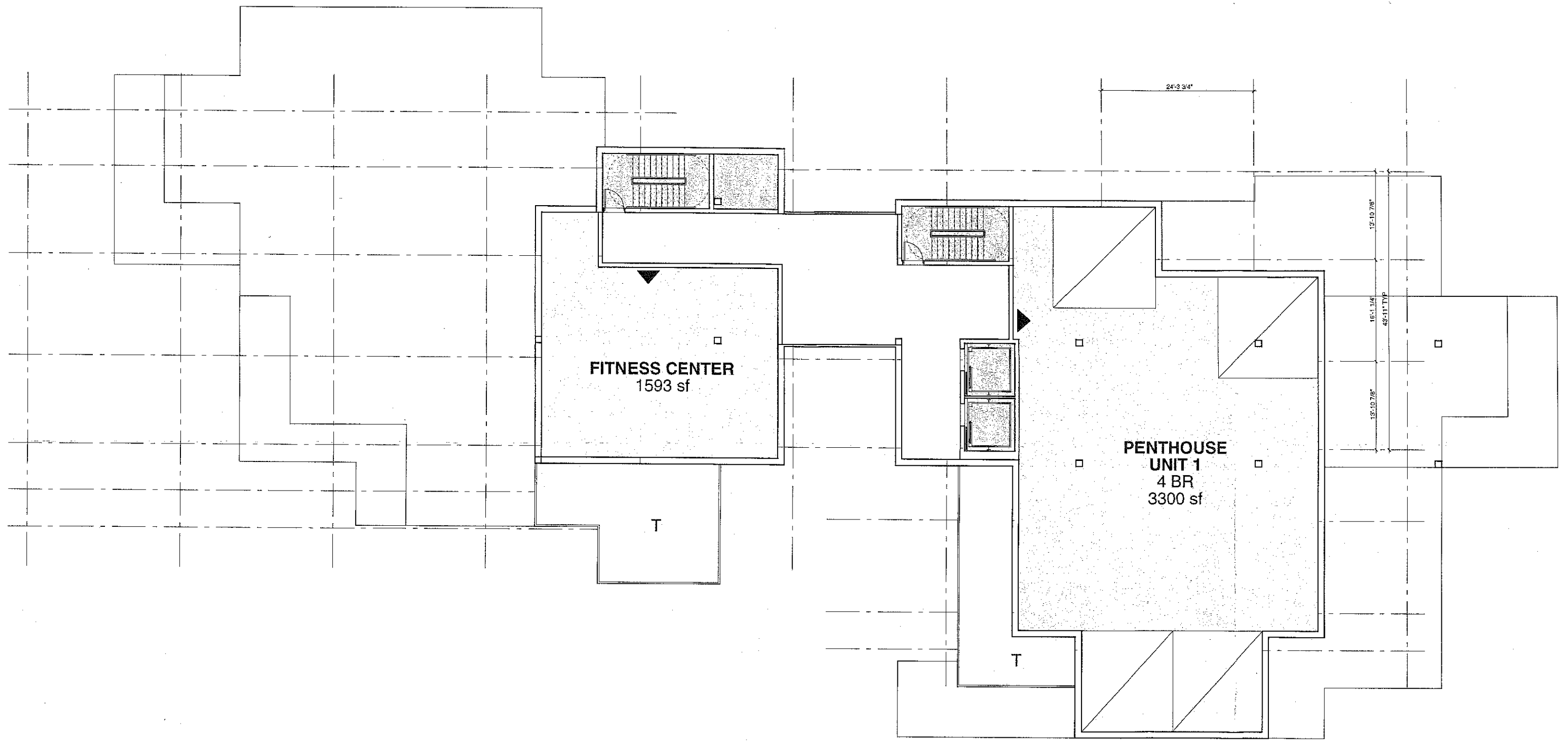
FLOOR 03-09: TYPICAL CONDOMINIUM
 14,510 SF TOTAL

GRAVES HILL
 OCEAN AVENUE
 PORTLAND, ME

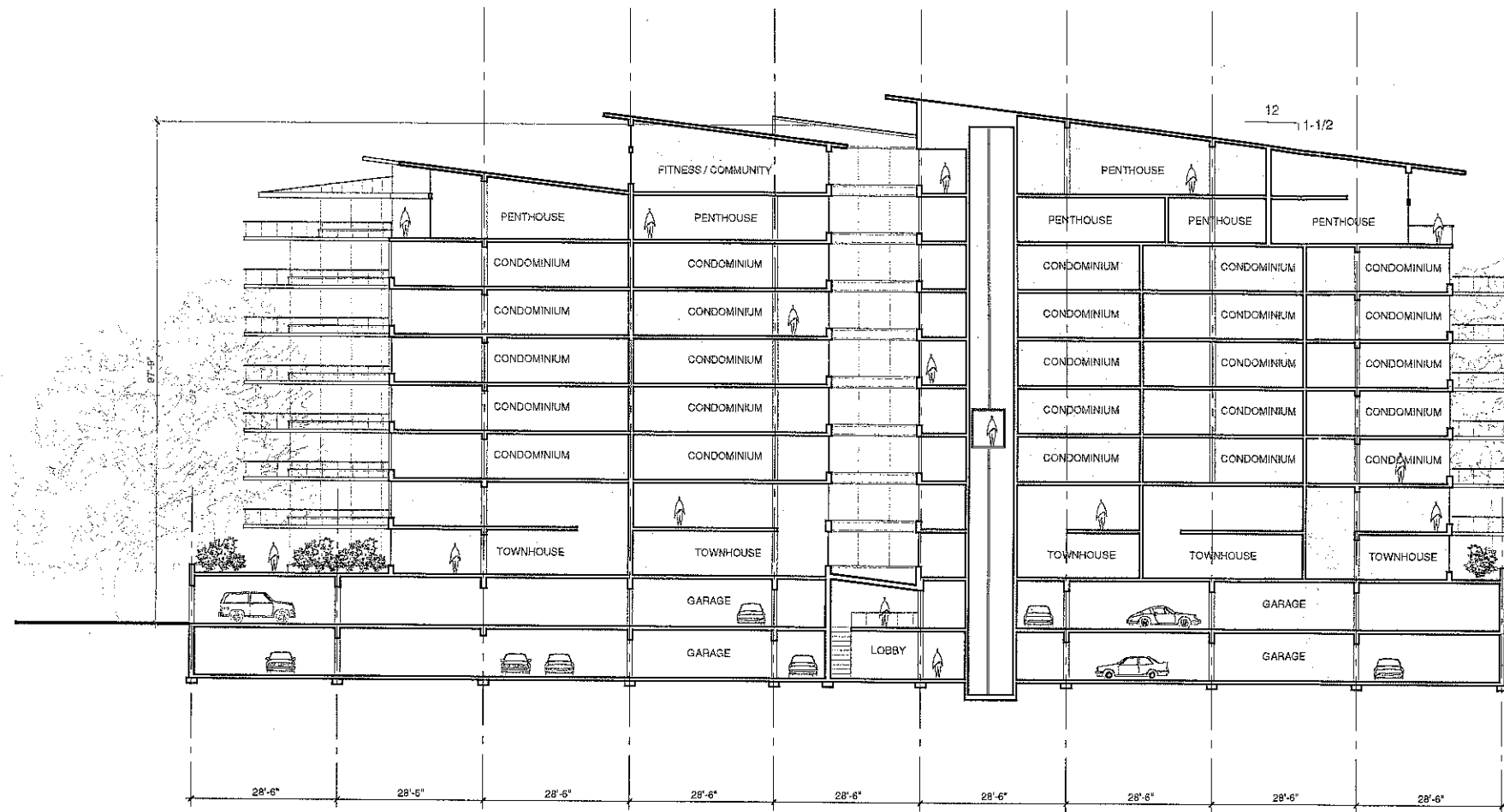




FLOOR 10: PENTHOUSE
13,405 SF TOTAL

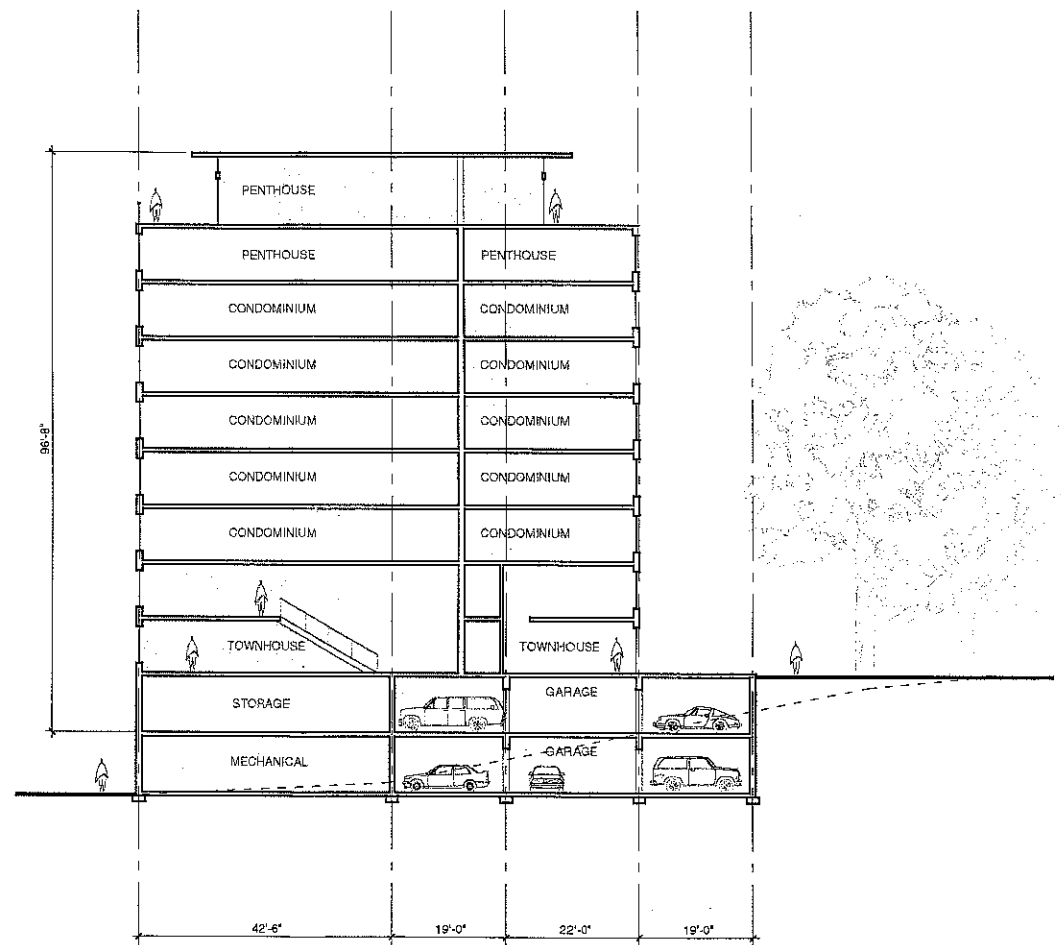


FLOOR 11: PENTHOUSE
6,653 SF TOTAL



S-N BUILDING SECTION

- PENTHOUSE 2
EL: 221'-4"
- PENTHOUSE 1
EL: 212'-0"
- CONDO 7
EL: 195'-0"
- CONDO 8
EL: 186'-8"
- CONDO 5
EL: 187'-4"
- CONDO 4
EL: 128'-0"
- CONDO 3
EL: 118'-8"
- CONDO 2
EL: 109'-4"
- CONDO 1
EL: 100'-0"
- GARAGE 2
EL: 90'-0"
- GARAGE 1
EL: 80'-0"



E-W BUILDING SECTION

BUILDING SECTIONS

GRAVES HILL
 OCEAN AVENUE
 PORTLAND, ME