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CITY OF PORTLAND  
IN THE CITY COUNCIL

John R. Coyne  
John Hinck  
JILL C. DUSON  
NICHOLAS M. MAVODONES

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

ORDERED, that the Zoning Map of the City of Portland, dated 2012 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  
RIDGE DEVELOPMENT, LLC

upon sale to ridge development llc

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by Ridge Development, LLC, a Maine limited liability company with an office in Portland, Maine (hereinafter "RIDGE DEVELOPMENT").

WITNESSETH:

WHEREAS, RIDGE DEVELOPMENT owns or has an option to buy 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

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WHEREAS, RIDGE DEVELOPMENT proposes to construct upon a portion of the Property a maximum of ~~94~~ 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

10.18

WHEREAS, **RIDGE DEVELOPMENT** has requested the rezoning of 10.4 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 7.92 acres of the Property from R-3 to Recreation and Open Space Zone (R-OS); and

8.14

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 **RIDGE DEVELOPMENTS** 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 \_\_\_\_\_, 2014, by City Council Order No. \_\_\_\_\_, a true copy of which is attached hereto as Attachment 1; and

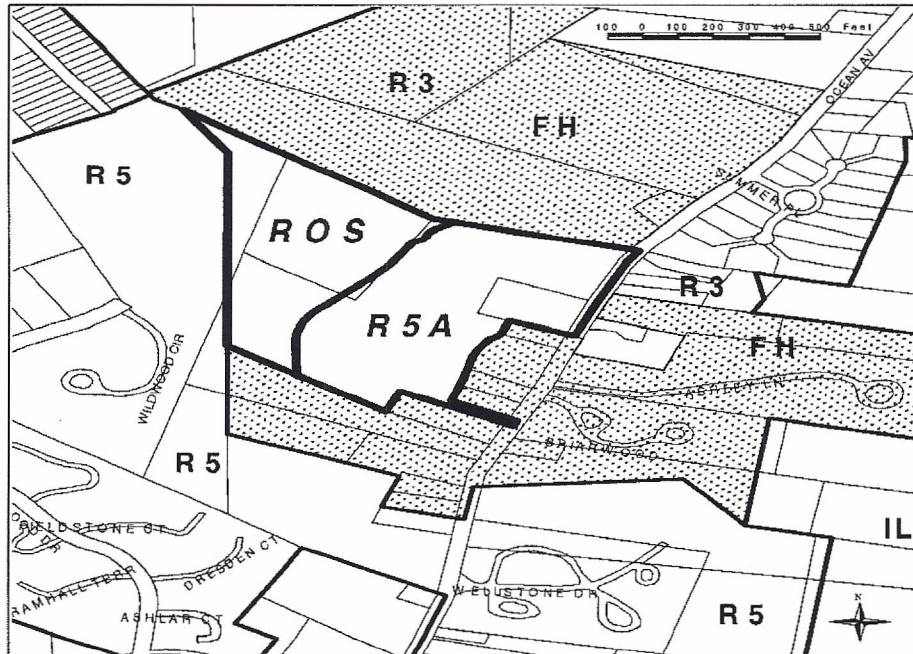
WHEREAS, **RIDGE DEVELOPMENT** has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind **RIDGE DEVELOPMENT**, its successors or assigns;

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

1. The **CITY** hereby amends the Zoning Map of the City of Portland dated 2012, 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 R5-A 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

sale of the property to ridge development

to the pre-existing R-3 zone.



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

April 2014

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

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- a. up to ~~94~~ residential units located in two buildings, each building containing up to ~~47~~ units, which may be sold as condominium units, resulting in a maximum total of ~~ninety-four (94)~~ residential units within the Property; and

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ninety six(96)

- b. parking in an amount of not less than 1 space per 1BR unit and 2 spaces per 2BR and 3BR units per residential unit, plus at least 28 additional surface visitor parking spaces; and
- c. 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 eight (48)

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 seven (47)~~ 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 seven (47)~~ 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 eight (48)

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. **RIDGE DEVELOPMENT** 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. Additionally, a future recreation area subject to Planning Board approval may be created.

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. **Ridge DEVELOPMENT** 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 **RIDGE DEVELOPMENT**, its successors and assigns, Casco Heights 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, **RIDGE DEVELOPMENT** 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 **RIDGE DEVELOPMENT** 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, **RIDGE DEVELOPMENT** 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.

May

7. The Property will be developed substantially in accordance with the Preliminary Site Plans, Zone Identification and Phasing Identification submitted by Sebago Technics (last revised ~~March~~, 2014) and the Proposed Building Design site sections, building sections and floor plans submitted by Archetype (last revised ~~March~~, 2014). The Casco Heights 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 **RIDGE DEVELOPMENT**, 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

May

side of the building  
adjacent to Ocean  
Ridge  
Condominiums

the attached ~~side of the building adjacent to Ocean Ridge Condominiums~~ amendment to this Contract Zone Agreement. So long as the two residential units have 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. **RIDGE DEVELOPMENT** 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, **RIDGE DEVELOPMENT** 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**.

**RIDGE DEVELOPMENT** 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 **RIDGE DEVELOPMENT** 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 **RIDGE DEVELOPMENT** 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 **RIDGE DEVELOPMENT** 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 **RIDGE DEVELOPMENT** 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, **RIDGE DEVELOPMENT** 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:** ~~47~~ ← 48

**Maximum number of buildings containing residential dwelling units:** 2

**Maximum building height:** 75 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:** 204 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, **RIDGE DEVELOPMENT** 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 **RIDGE DEVELOPMENT** 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 **RIDGE DEVELOPMENT**, 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 **RIDGE DEVELOPMENT** or its successors should fail to utilize the **PROPERTY** in accordance with this Agreement, or in the event of **RIDGE DEVELOPMENT'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 **RIDGE DEVELOPMENT** 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. **RIDGE DEVELOPMENT** 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:

RIDGE DEVELOPMENT, LLC

\_\_\_\_\_

By: \_\_\_\_\_

Patrick Tinsman  
Its Manager

STATE OF MAINE  
CUMBERLAND, SS.

\_\_\_\_\_, 2014\_

Then personally appeared the above-named Patrick Tinsman, Manager of Ridge Development, LLC as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his 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: \_\_\_\_\_