

**PLANNING BOARD REPORT  
TO  
CITY COUNCIL  
PORTLAND, MAINE**

Amended Conditional Rezoning Agreement for 802-828 Ocean Avenue  
Casco Heights Condominiums, formerly Graves Hill  
802 Ocean Avenue  
First Amendment to Conditional Rezoning Agreement for 802 Ocean Avenue  
Project No.: 2014-036  
Ridge Development LLC, Applicant

Submitted to: Portland City Council: From: Portland Planning Board Second Reading: September 3, 2014	Prepared by: Barbara Barhydt, Development Review Services Manager Date: July 25, 2014 CBL: 411 A007, 416 lots 6, 7, and 21
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## I. INTRODUCTION

The Ridge Development LLC is requesting the City Council's consideration and adoption of proposed amendments to a conditional zoning agreement for the property at 802-828 Ocean Avenue (formerly known as Graves Hill). The proposed amendments seek to adjust the boundary line between the R-5A and ROS zone while retaining the same amount of area in each zone, reduce the number of units from 98 to 96 in two mid-rise buildings, reduce the maximum building height from 100 feet to 75 feet, revise the parking numbers for a total of 204 spaces, and eliminate certain building amenities. Casco Heights is proposed with a mix of one, two and three-bedroom market rate units with top floor penthouses. Trail easements and other amenities are proposed as part of the project.

The Planning Board held a workshop on May 6, 2014 and a site walk on June 3, 2014. A public hearing on this application was held on June 10, 2014. The Planning Board voted 3-2, (Hall and Dean opposed, Morrissette and Soley absent) to table this item for further deliberations, which was held on July 8, 2014. The Planning Board considered three motions regarding the proposed recommendation at the July 8<sup>th</sup> meeting. The first motion was a finding that the proposed amendments are consistent with the Comprehensive Plan, which was supported by Chair O'Brien and not supported by the five Board members (Boepple, Dean, Dundon, Hall and Soley, with Morrissette, recused). The second motion was a finding that the proposed amendments are consistent with the underlying R-5A zone. The Chair and Mr. Dundon voted affirmatively and the other four members (Boepple, Dean, Hall and Soley) voted against the motion with Morrissette recused. The third motion was to recommend the proposed First Amendment of the Conditional Rezoning Agreement for 802 Ocean Avenue, which was unanimously opposed by all six members with Morrissette recused.

**Applicant:** Ridge Development LLC, Pat Tinsman

**Property Owner:** Diane Doyle, Property owner, developer of Graves Hill, and hired by applicant to advise on this proposal

**Consultant:** Will Conway, Sebago Technics

## II. REQUIRED REVIEWS

<i>Review</i>	<i>Applicable Statute</i>
Conditional Zoning Agreement	MSRA Section 4352(8) City of Portland Code of Ordinances, <i>Chapter 14, Division 1.5</i>

### III. PUBLIC COMMENT

Notices were sent to 414 residents and the interested citizen list for the Planning Board hearings and will be sent for the City Council's public hearing at the second reading. Notices will also appear in the Portland Press Herald, on the City's web page and posted in the City Clerk's office.

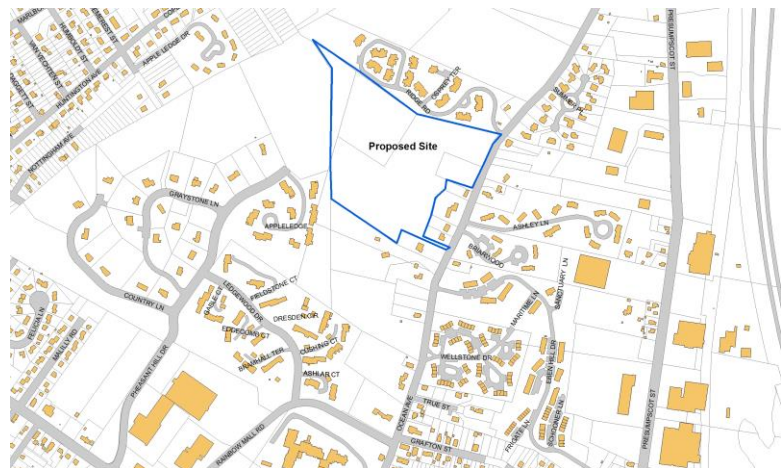
The applicant held the required neighborhood meeting on April 21, 2014 and the material from that meeting is included under the public comment packet as PC-1. All of the public comment received to date is included in the public comment packet.

### IV. PROJECT DATA

Existing Zoning	R-5A (10.167 acres) and ROS (8.155 acres) with Conditional Zoning Agreement
Proposed Zoning ( <b>revised since workshop</b> )	R-5A ( <b>10.18</b> acres) and ROS ( <b>8.14</b> acres) with Conditional Zoning Agreement. The zone line adjustment is shown in a map below in the project description.
Existing Use	Vacant wooded site
Proposed Use	96 condominium units in two mid-rise buildings in a Planned Residential Development (PRUD)
Parcel Size	18.32 acres
Impervious Surface Area	2.78 acres
Total Ground Floor Area	46,698 sq. ft.
Total Building Floor Area	215,438 sq. ft.
<b>Bedroom Mix</b>	
One Bedroom	16
Two Bedroom	32
Three Bedroom	48
<b>Vehicle Parking -Proposed</b>	
Total Parking spaces	204- 1 space for 16 one bedroom units and 2 spaces for 80 two/three bedroom units with 28 visitor parking spaces
Handicapped Spaces	5
<b>Bicycle Parking- Proposed</b>	
Total # of Spaces	38

### V. BACKGROUND AND CONDITIONAL ZONE AGREEMENT FROM 2004

The roughly 18 acre parcel at 802 Ocean Avenue is a wooded site that has one of the highest elevations in Portland with views of Casco Bay. There is a 135 foot CMP easement along the rear property line. The parcel abuts single family homes along Ocean Avenue. The Ocean Ridge Condominium project is located to the north of the site along Ocean Avenue. The rear boundary abuts the condominiums located in the Alden's Walk project on Wildwood Circle. There are single family homes and condominium projects along the easterly side of Ocean Avenue in vicinity of the site.



Vicinity Map (from Portland GIS data)

The conditional rezoning agreement adopted by the City Council in 2004 changed the underlying zoning of Residential R-3 to Residential R-5a for 10.167 acres adjoining Ocean Avenue and to ROS for approximately 8 acres at the site, which the applicant is seeking to amend. A copy of the original agreement as passed is included Attachment 2, with the accompanying plans. The 2004 map amendment showing the two zones is inserted here.

The whereas statements in the agreement include a general purpose statement as follows:

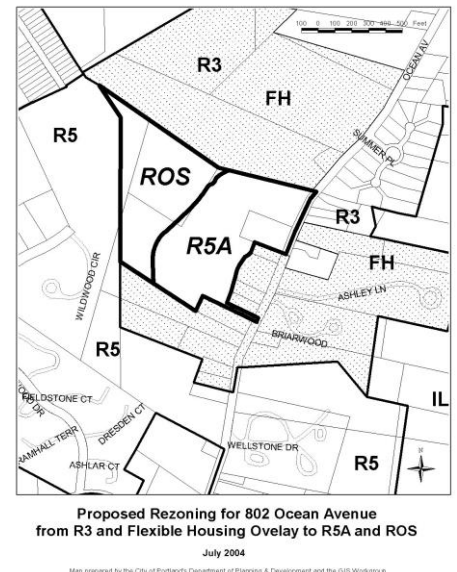
...to construct upon a portion of the Property while preserving and protecting a portion of the Property as open space, by utilizing a pattern of development designed to minimize the clearing of natural vegetation, to minimize the area to be blasted, to provide a unique residential living experience with a high degree of natural site amenities, and to promote public recreational use of trails which integrate with a larger trail system.

The 2004 Graves Hill project included 98 units in two buildings with a maximum height of 100 feet tapering down to 70 feet at each end. The amenities included a community room, small office, fitness rooms and a cross-country-ski locker room. Required parking was set at 2 per unit with 28 spaces for visitors and the uses allowed in the R-5a would be allowed for the Graves Hill planned residential development (PRUD). The portion of the site (approximately 8 acres) included in the Recreation and Open Space (ROS) zone was to remain undeveloped and open to the public through easements with Portland Trails. The developer proposed a buffer area between the abutting residential neighbors that reside on Ocean Avenue and a no cut area along the ROS zone to further protect the buffer area for the residents at Alden's Walk.

## VI. PROPOSED DEVELOPMENT

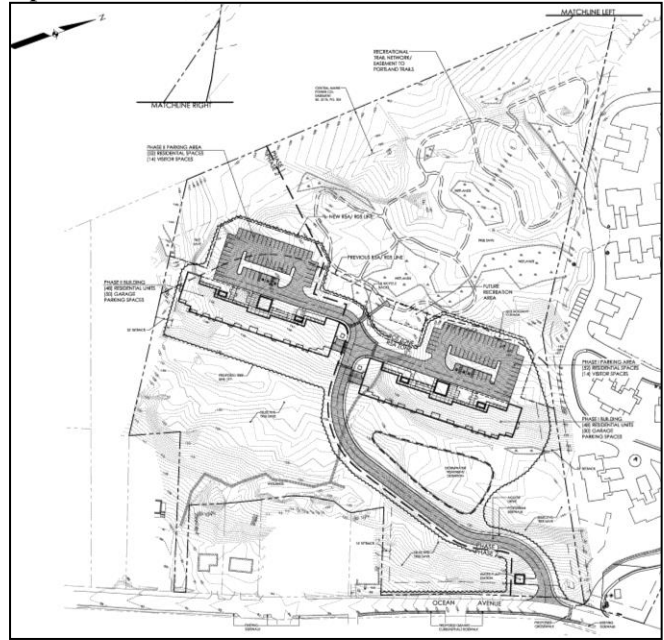
Ridge Development LLC is seeking to amend the 2004 conditional zone agreement for 802 Ocean Avenue in order to enable them to revise the development concept. Their proposal includes the following components:

- a. 96 units (down from 98) in two buildings with 48 units in each.
- b. The bedroom mix of 16 one-bedroom units, 32 two-bedroom units, and 48 three-bedroom units.
- c. A maximum building height of 75 feet, rather than the adopted 100 feet.
- d. The building footprints have expanded in width to roughly 330 feet.
- e. The building on the northeast side of the site (abutting Ocean Ridge Condominiums) are shown at 65 feet from the property line and a landscaped buffer is proposed. The second phase building is 36 feet at the closest point from the property line on the westerly side of the site.
- f. Structured parking is provided on the base level of each building and there are two surface parking lots to the rear of the buildings. The total number of parking spaces proposed and included as an amendment in the agreement is 204 spaces. This is based upon a ratio of 1 space for each one bedroom unit, and 2 spaces for the two and three bedroom units and 28 visitor parking spaces.
- g. The layouts of the surface lots are modified, so that blasting of the second highest point in Portland is not required.
- h. The plan includes a sidewalk along the entrance road, which connects with the proposed trails within the ROS zone. A sidewalk is proposed along the opposite side of Ocean Avenue with a crosswalk leading to the site, as recommended by Public Services.
- i. A detention basin on the northerly side of the site is proposed to manage storm water.
- j. The amenities of a small office, fitness and special events room, a cross country ski center/locker room are eliminated in this proposal.
- k. The project is proposed to retain two phases of development as presented in the 2004.



1. The adjustment to the zone line between ROS and R-5a is shown below and with this modification the amount of land in each zone is almost the same as the current land area. The proposed modification from the approved agreement is as follows:
  - i. Current: R-5A (10.167 acres) and Proposed R-5A (10.18 acres)
  - ii. Current ROS (8.155 acres) and Proposed ROS (7.14 acres)

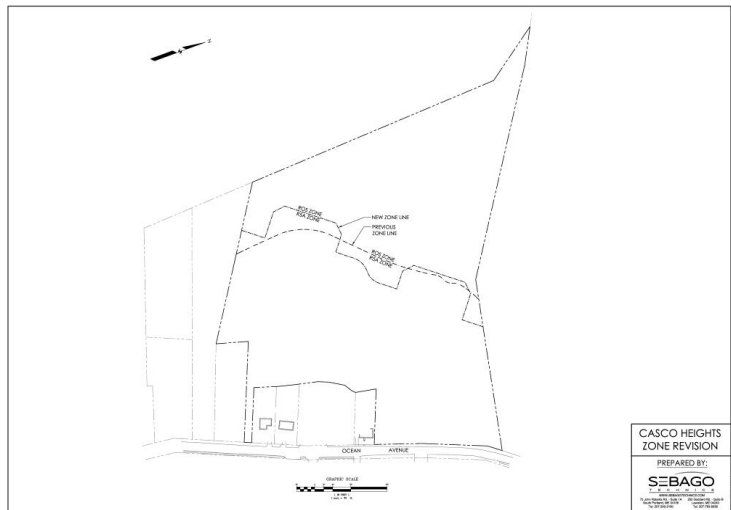
Overall Site Plan



Building Elevations



Proposed Zoning Map Amendment – Adjustment of Line between ROS and R-5a



## VII. AMENDED CONDITIONAL REZONING AGREEMENT

Attachment 1 to this report is the revised First Amendment to the Conditional Rezoning Agreement updated by Jennifer Thompson for July 8th. The applicant's requested agreement, as revised by the applicant, is presented in Applicant's submission, Attachment J. While the Planning Board is recommending against adoption of this proposed First Amendment to the Conditional Zone Agreement, if the City Council were to approve it despite their negative recommendation, the Board's revised conditional zone agreement is the version that should be considered. The revised version of the amended agreement addresses the concerns raised by the public and the planning during the review and the applicant is generally agreeable to them, except the requirement for additional liability insurance for the blasting contractor. The proposed agreement incorporating staff recommendations is summarized below.

### A. **WHEREAS STATEMENTS (refer to Attachment 1 for complete list of whereas statements):**

1. **Developer Name:** All references to the Graves Hill Land Company, LLC are replaced with the Ridge Development LLC.
2. **Purchase Option:** The first whereas is modified to reflect that Ridge Development has an option to purchase the property.
3. **Number of Residential Units:** The maximum number of proposed residential units is changed from 98 to 96 (at the workshop the maximum figure was 94).
4. **Zone Map Adjustments:** In the third whereas statement, the land area within the R-5a zone is increased slightly from 10.167 to 10.18 acres and the land area within the ROS zone is reduced from 8.155 to 8.14 acres.
5. **Consistency with Land Use Code and Comprehensive Plan:** In the fourth paragraph, the wording has been revised to include reference to the comprehensive plan and the underlying zone. The changes are as follows:

WHEREAS, the CITY OF PORTLAND (hereinafter "CITY"), by and through its City Council, 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, has also concluded that the rezoning of the Property as aforesaid and subject to certain conditions outlined below, is consistent with the City's Comprehensive Plan and with existing and permitted uses in the underlying zone; and

6. **Design:** The fifth whereas statement refers to the design. The staff and applicant have not proposed any revisions to this statement other than the substitution of the developer name. It is as follows:

**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 RIDGE DEVELOPMENT'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

**B. CONDITIONS FOR THE AMENDED AGREEMENT (refer to Attachment 1 for complete list of Conditions):**

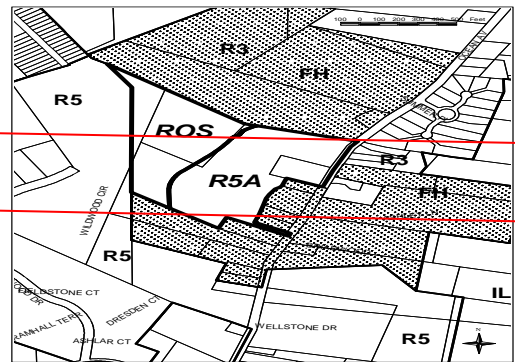
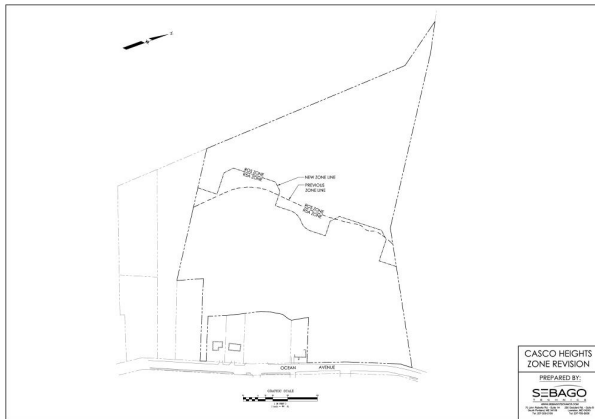
**1. The Zoning Map Amendment (paragraph 1):**

At the public hearing, the Board discussed with the staff whether the proposal could revert to the original underlying R-3 zone or would it revert to the adopted Conditional Rezone Agreement. Jennifer Thompson, Associate Corporation Counsel, reviewed this question and has revised the wording so that it would revert back to the 2004 adopted conditional agreement.

The revised condition is as follows:

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 sale of the property to Ridge Development LLC~~ or within one hundred and eighty (180) days of the City Council's approval of said rezoning, whichever is later, then the rezoning shall become null and void and the zoning of the Property (together with all conditions) shall revert to ~~the pre-existing R-3 zone that contained in the original Conditional Rezoning Agreement for 802-828 Ocean Avenue approved on \_\_\_\_\_ and recorded in the Cumberland County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_~~

DELETE THIS MAP



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

SUBSTITUTE MAP SHOWING REVISED ZONE LINE

**2. Permitted uses in the R5a and Parking (paragraph 2):**

- a. Number of residential units permitted is up to 96 rather than up to 98;
- b. Community room in each building is deleted;
- c. A small office in each building is deleted.
- d. A fitness and special events room in each building available for use by the residents is deleted.
- e. A cross country ski center/locker room in each building available for the residents is deleted.

- f. The two spaces per unit plus 28 spaces for visitor parking is now proposed as 2 spaces per the two and three bedroom units and 1 space per 1 bedroom unit, plus at least 28 visitor parking spaces.
  - g. In addition to the trail system, a future recreation area is proposed that is subject to site plan review and approval by the Planning Board.
- 3. Use and Phasing of R-5A portion of site (paragraph 3.):** The proposal retains the phasing as depicted in the adopted agreement. The site will be developed in two phases. The paragraph specifies that each phase will be limited to 48 units and it retains the language that all blasting required for the entire site development would be done in Phase I. The first phase includes the access road, building on the northerly side of the site near Ocean Ridge, the surface parking, all trails and the stormwater pond below Phase 1 (as shown on the revised overall site plan, Plan 1, dated 5-20-14).
- 4. Separate Performance Guarantees for each Phase (Paragraph 4):** Unchanged.
- 5. Use of ROS portion of the site (paragraph 5):** The proposal retains the language for the uses as follows and adds the concept of a future recreation area (shown on site layout):

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

The section retains the language for the ROS which states, "... the property shall be left in its natural state, and natural features, mature trees and natural surface drainage ways, shall be preserved to the greatest possible extent consistent with the uses of the property."

- 6. Recreation Trail Easement to Portland Trails (paragraph 6):** The requirements to grant trail easements to Portland Trails for not less than 3,207 linear feet of trails to allow for passive recreational use by the general public are retained. The full condition remains unchanged from the adopted agreement except for owner name changes. If Portland Trails does not accept the easements or conveyance, then the applicant may grant the trail easements to the City of Portland.
- 7. Property developed in substantial accord with Preliminary Site Plans (paragraph 7):** The site plans developed by Sebago Technics and the building elevations prepared by Archetype are substituted for the plans prepared by Scott Simons Architects.

The revised plan shifts the drainage detention area from behind the homes on Ocean Avenue to a location on the easterly side of the proposed roadway. The revised plan shows tree save areas where the detention basin had been located and it shifts the building in Phase 1 from 32 to 65 feet from the Ocean Ridge property line. The proposal revises the buffer requirement (Plan 19 is the buffer plan, which will be attached to agreement) as follows:

**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~~ side of the building adjacent to Ocean Ridge Condominiums, with precise specifications subject to final site plan review.

Based upon Mr. Errico's review of the proposed accessway, public comments, and its proximity to Ridge Road this paragraph includes a revision to allow the Planning Board to review the final location for the access road. It states the separation between the access Road and Ridge Road will be to the maximum extent practicable. The proposed language is as follows:

The Ridge Development entrance on Ocean Avenue as shown on the site plan shall achieve separation from Ridge Road to the maximum extent practicable be at the location shown on said Site Plansubject to site plan review by the Planning Board and the City hereby grants consideration of 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 the final Planning Board approved~~ location of the entrance may be moved up to 20 feet southerly of the location shown from the location on the attached site plan without any further amendment to this Contract Zone Agreement.

**8. Planning Board Review of each Phase (paragraph 8):** Unchanged

- 9. Staff Recommendations for conditions of approval regarding a blasting plan, adds new conditions 9-13:** The Planning Board recommends that conditions be included in the agreement to address concerns raised by the Board and the public. Portland regulates blasting through the Regulation of Explosive Ordinance and technical manual regulations. The proposed conditions build upon those regulations and would require a blasting plan be submitted for review by a third party seismologist, as part of the site plan and subdivision review. The amendments call for a certified mailing, increase in insurance coverage from \$2 million to \$4 million, and the independent third-party seismologist would also monitor the blasting during construction. The proposed conditions are as follows:

9. The blasting plan required by Chapter 14, Article VIII of the Portland City Code and Section 3 of the City of Portland Technical Manual for issuance of a blasting permit shall be included in the applications for Site Plan and Subdivision Review and shall require final review and approval by the Planning Board based upon the recommendation of a third-party, independent, seismologist approved and hired by the Planning Authority at the Applicant's expense (hereinafter "Third-Party Seismologist").

10. The notification of neighbors required by Section 14-592 of the Portland City Code shall be accomplished by certified mail rather than regular mail.

11. During blasting operations, ground vibration monitoring shall be conducted by the an independent Third-Party Sseismologist at the Applicant's expense or blasting consultant. RIDGE DEVELOPMENT's selection of the independent seismologist or blasting consultant is subject to the review and approval of the City of Portland Planning Authority.

12. Notwithstanding Section 3.7.13 of the City of Portland Technical Manual, the blasting contractor shall be required to carry liability insurance (XCU) coverage in an amount no less than \$4,000,000.00.

13. In addition to the requirements outlined in Paragraphs 9-11 above, RIDGE DEVELOPMENT expressly agrees that, with respect to its development of the Property, it will comply with all other provisions relating to the regulation of blasting and explosives contained in Chapter 14 of the Portland City Code and the City of Portland Technical Manual.

**10. Change in Ownership (paragraph 14 in staff version or 9 in applicant's):** Unchanged

**11. Dimensional Requirements for modified R-5a zone (paragraph 15):**

- a. Maximum number of units per building is reduced from 49 to 48



- b. Maximum number of units per building is 2 (unchanged from adopted agreement)
- c. Maximum building height is reduced from 100 feet to 75 feet
- d. The parking is revised to provide a total of 204 spaces with have in Phase I and half in Phase II. The total number of space proposed in the original agreement was 224 spaces.
- e. Minimum recreation open space area: (unchanged from adopted agreement)

**12. Standard Conditions of Conditional Zone Agreements (paragraphs 16-21 in staff version or 12 through 16 in applicant's):** Unchanged

**VII. REGULATORY CONSIDERATIONS AND COMPREHENSIVE PLAN**

**A. Conditional Rezoning**

Consideration of the request for conditional rezoning is guided by both state statute and the city's land use ordinance. The state statute (Title 30-A Section 4352(8)) requires that all conditional or contract zoning must:

- *Be consistent with the growth management program adopted under this chapter;*
- *Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and*
- *Only include conditions and restrictions that relate to the physical development or operation of the property.*

The city's ordinance (*Section 14-60*) further states:

*Pursuant to 30-A M.R.S.A. Section 4503(9), conditional or contract zoning is hereby authorized for rezoning of property where, for reasons such as the unusual nature or unique location of the development proposed, the city council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions in order to ensure that the rezoning is consistent with the city's comprehensive plan. Conditional or contract zoning shall be limited to where a rezoning is requested by the owner of the property to be rezoned. Nothing in this division shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city's comprehensive plan.*

The applicant has provided two narratives in their submission that addresses compliance with the Comprehensive Plan and an analysis of compliance with the R-5a zone, refer to the Applicant's Submissions, Attachments F and G. The applicant has cited goals and policies in Attachment F regarding housing and economic development, trail connections, appreciation of coastal heritage, need for higher residential density, housing options for all income levels, open space and recreation, environmental protection and urban design. The R-5a zoning analysis (Attachment G) provides the history, purpose, zoning comparison, and provisions of the conditional agreement. It should be noted that on the future Land Use Plan in Portland's Comprehensive Plan, the conditional rezone agreement for the R-5A is shown as a growth area and the ROS area is designated as rural or conservation zone.

**B. Comprehensive Plan**

In addition to the comprehensive plan policies as stated in the Applicant's Submission Attachments F and G, Portland's Comprehensive Plan includes the following policies regarding neighborhood compatibility:

## **Housing: Sustaining Portland's Future**

Policy #3: Maintain and enhance the livability of Portland's neighborhoods as the City grows and evolves through careful land use regulations, design and public participation that respect neighborhood integrity.

Objective 3.b. Support Portland's livable neighborhoods by encouraging a mix of needed uses and services within walking distance of most residents.

Actions:

3.b.1. Promote a mix of housing types, small retail and service businesses, community services, and open space/recreation opportunities of appropriate size, scale and type within each neighborhood through City policies and programs such as zoning for mixed use neighborhood centers, housing pilot projects, Land Band Commission efforts and parks planning.

Objective 3.c. Encourage innovative new housing development, which is designed to be compatible with the scale, character, and traditional development patterns of each individual residential neighborhood.

Actions:

3.c.1. Evaluate and update, as needed, the current zoning and subdivision codes to encourage new residential development that

- Offers diverse and quality living options;
- Provides traditional neighborhood elements;
- Promotes a walkable city;
- Is compatible with Portland's existing neighborhoods.

Objective 3.d. Encourage new housing development in proximity to neighborhood assets such as open space, schools, community services and public transportation.

Objective 3. e. Ensure the integrity and economic value of Portland's neighborhoods

Action

3.e. 7. The City will preserve publicly owned neighborhood amenities, such as trails, athletic fields, and parks.

### **C. Planning Board Analysis:**

According to the Planning Board report to the City Council in 2004, "[T]he focus was to design buildings that would minimize the impact on the site, preserving the natural landscape for the public to enjoy through a trail system."

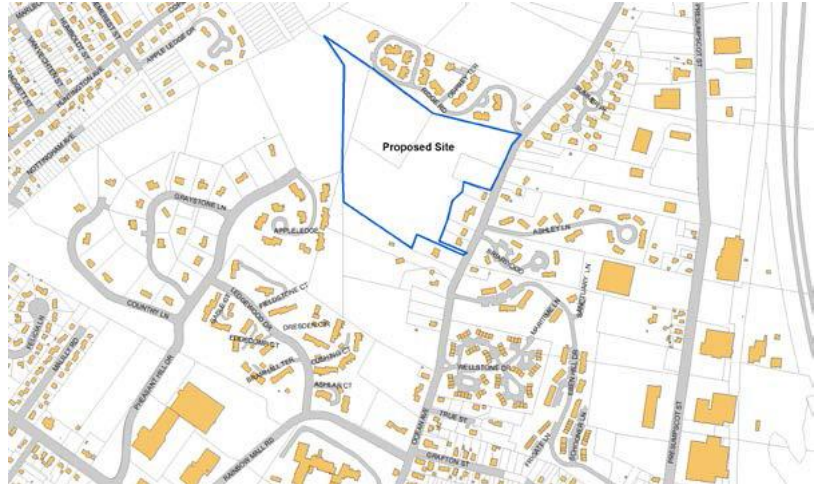
At the June 10<sup>th</sup> public hearing on the amended agreement, neighboring residents raised a number of concerns regarding the scale and compatibility of the project with the existing neighborhood. The Planning Board's discussion noted that the layout had improved since the workshop, but questions were raised pertaining to the scale and massing of the buildings given that the neighborhood had further developed since the original agreement was adopted in 2004. Specifically, the Board expressed concern regarding the mass of the buildings in both height and width and questioned the project's consistency with the comprehensive plan in terms of compatibility with the neighborhood.

As stated in the Applicant's submission, one of Portland's housing goals is to "ensure that an adequate supply of housing is available to meet the needs, preference and financial capabilities of all Portland households, now and in the future." The policies call for a mix of housing types that offers options for owners and renters across all income levels. It also encourages higher density housing, particularly located near services, such as schools, businesses, institutions, employers, and public transportation. While the site is not on a public

transportation route, it is near the downtown and off-peninsula business areas and employment centers in both East and North Deering. The proposed buildings offer an alternative housing type (mid-rise buildings) for the neighborhood and the density is within the limits of the R-5a zone. The developer's concept for the two larger buildings versus multiple smaller structures is intended to preserve a significant portion of the site for passive recreation and preservation of open space.

The Comprehensive Plan includes policies that seek to maintain and enhance the livability of Portland's neighborhoods as the City grows and evolves through careful land use regulation, design and public participation that respects neighborhood integrity. The roughly

18 acre parcel at 802 Ocean Avenue is a wooded site that has one of the highest elevations in Portland with views of Casco Bay. There is a 135 foot CMP easement along the rear property line. The parcel abuts single family homes along Ocean Avenue. The Ocean Ridge Condominium project is located to the north of the site along Ocean Avenue. The rear boundary abuts the condominiums located in the Alden's Walk project on Wildwood Circle. There are single



family homes and condominium projects along the easterly side of Ocean Avenue in vicinity of the site. The 2014 plan lowers the height of the two structures (maximum of 75 feet) and creates a wider structure with a width of approximately 330 feet. While, the proposal increases the width of the buffer along Ocean Ridge, provides increased landscaping, reduces impervious surface area, and seeks to minimize blasting, the Planning Board cited the massive buildings as being out of context with the development patterns in the area and noted that the area had been further developed since the 2004 conditional rezoning agreement was adopted.

Preserving a portion of the site in the ROS zone for trails was an integral component of the site plan. The line between the ROS zone and the R-5A zone is modified in the 2014 proposal, but the quantity of land in each zone is essentially the same. As presented in the applicant's analysis of the comprehensive plan ([Attachment F](#)) there are policies from Green Spaces, Blue Edges, that support trails and open space focal points within walking distance of neighborhoods. The plan as revised preserves the high point and is consistent with the comprehensive plan recommendation to "develop High Point Parks, open space spaces located on the higher elevations of the city..." The Comprehensive plan also includes policies for trail connections, which in this proposal includes at least 3,207 linear feet of trails for public use. Lastly, the City's housing policies support locating and designing housing to reduce impacts on environmentally sensitive areas. The applicant has indicated that they are trying to minimize tree clearance, reduce blasting from the 2004 proposal, and minimize the amount of impervious surface area on the site. It should be noted that the site is on the highest priority list for acquisition by the Land Bank Commission (list includes 15 sites).

## VIII. PLANNING BOARD RECOMMENDATION

The Planning Board considered three motions regarding the proposed recommendation. The first motion was a finding that the proposed amendments are consistent with the Comprehensive Plan, which was supported by Chair O'Brien and not supported by the five Board members (Boepple, Dean, Dundon, Hall and Soley, with Morrissette, recused). The second motion was a finding that the proposed amendments are consistent with the underlying R-5A zone. The Chair and Mr. Dundon voted affirmatively and the other four members (Boepple, Dean, Hall and Soley) voted against the motion with Morrissette recused. The third motion was to recommend the proposed First Amendment of the Conditional Rezoning Agreement for 802 Ocean Avenue, which was unanimously opposed (6-0, Morrissette recused).

Diane Doyle, as the representative for the applicant, has requested that the proposed amendments be brought forward to the City Council for consideration as is the right of the applicant. Ms. Doyle argues that the objectives for the development as stated in the 2004 agreement and contained in the current agreement, remain valid under the revised proposal and seeks to pursue this development.

## **X. ATTACHMENTS**

### **PLANNING BOARD REPORT ATTACHMENTS**

- IA. Proposed First Amendment to Conditional Rezoning Agreement - Staff Recommendation – redlined version
- 2A. Adopted Agreement 2005 with attachments

### **ATTACHMENT 2 APPLICANT’S SUBMITTALS AND PLANS**

- A. Table of Contents
- B. Cover Letter
- C. Application
- D. Redlined Rezoning Agreement
- E. Proposed Amended Rezoning Agreement
- F. Conformance with Comprehensive Plan
- G. Conformance with R-5a zoning
- H. Right Title and Interest
- I. May 20, 2014 Cover letter
- J. Redlined revised agreement, May 20th
- Plan 1 Overall Site Plan
- Plan 2 Illustrative Site Plan- accessway
- Plan 3 Illustrative Site Plan- building and parking
- Plan 4 Boundary Survey 1
- Plan 5 Boundary Survey 2
- Plan 6 Zoning Map Adjustment
- Plan 7 Casco Heights Building Elevations
- Plan 8 Casco Heights Rendering
- Plan 9 Casco Heights Flagging for Site Walk
- Plan 10 Fall Equinox 9 a.m.
- Plan 11 Fall Equinox 12 p.m.
- Plan 12 Fall Equinox 3 p.m.
- Plan 13 Winter Solstice 9 a.m.
- Plan 14 Winter Solstice 12 p.m.
- Plan 15 Winter Solstice 3 p.m.
- Plan 16 Summer Solstice 9 a.m.
- Plan 17 Summer Solstice 12 p.m.
- Plan 18 Summer Solstice 3 p.m.
- Plan 19 Buffer Plan

### **ATTACHMENT 3 PUBLIC COMMENT**

- PC-1 Applicant’s Neighborhood Meeting Packet, meeting held on April 21, 2014
- PC-2 Mark Lourie, April 21 and 23, 2014
- PC-3 Roberta Loring, April 29, 2014
- PC-4 Dagmar Decker, May 3, 2014
- PC-5 Anthony Miller MD, May 3, 2014
- PC-6 Vincenzo Marotta, May 4, 2014
- PC-7 Jeff Degan, May 4, 2014
- PC-8 Antoinette Mancusi, May 4, 2014
- PC -9 Jon Camire, May 4, 2014
- PC-10 Pam Anzelc, May 5, 2014
- PC-11 Jade Arn, May 5, 2014
- PC-12 Helen Daniels, May 5, 2014

PC-13 Thomas and Shelia Buckland, May 6, 2014  
 PC-14 Sabrina Nickerson and Randy Judkins, May 5, 2014  
 PC-15 Jean Mattimore, May 5, 2014  
 PC-16 Gene DiBenedetto, May 5, 2014  
 PC-17 Judith Richard, May 6, 2014  
 PC 18 Glenna Irvine, May 6, 2014  
 PC-19 Jeanette Haskell, Wellstoen Condominium Association, May 6, 2014  
 PC-20 Frank Pandolfo, May 7, 2014  
 PC-21 Linda Belanger, May 7, 2014  
 PC-22 Chuck Grossman, May 6, 2014  
 PC-23 Leslie Rodgers, May 7, 2014  
 PC-24 Gene Ibenedetto, June 4, 2014  
 PC-25 Richard Kessler  
 PC-26 Lesli Rodgers 6-30-14  
 PC27 Robin Schulte 6-30-14  
 PC28 Helen Daniels 5-5-14  
 PC29 Pamela Anzelc 6-29-14  
 PC30 Carol Hayden 6-28-14  
 PC31 Terence Goodwin 6-27-14  
 PC32 Vincenzo Marotta 7-1-14, 6-8-14 and 5-4-14  
 PC33 Wayne Goodman 6-8-14  
 PC34 Matt Smith 6-8-14  
 PC35 Antoinette Mancusi 6-8-14  
 PC36 Vincenzo Marotta 6-8-14 and 5-4-14  
 PC37 Frank Pandolfo 6-8-14  
 PC38 Judith Richard 6-8-14  
 PC39 Barbara Miller 6-9-14  
 PC40 Karen McCallum 6-9-14  
 PC41 Robin Schulte 6-9-14  
 PC42 Richard Kessler 6-9-14  
 PC43 Glenn Turner 6-9-14  
 PC44 Jean Mattimore 6-9-14  
 PC45 Terence Goodwin 6-9-14  
 PC46 Chuck Grossman 6-9-14  
 PC47 Craig Williams 6-9-14  
 PC48 James Harnar 6-9-14  
 PC49 Stacey Hong 6-9-14  
 PC50 Asherah Cinnamon 6-9-14  
 PC51 Jim Fairbanks 6-9-14  
 PC52 Carol Veilleux 6-9-14  
 PC53, Jim Harnar 7-3-14  
 PC54 Tom Buckland 7-4-14  
 PC55 Antoinette Mancusi 7-5-14  
 PC56 Jean Mattimore 7-3-14  
 PC57 Glen Turner 7-3-14  
 PC 58 Craig Williams 7-7-14  
 PC59 Paulette Tidd 7-7-14  
 PC60 Jim Fairbanks 7-7-14  
 PC61 Sabrina Nickerson 7-8-14  
 PC62 Carol Veilleux 7-7-14  
 PC63 Carol Veilleux and Donald Kale  
 PC64 George Campbell 7-8-14  
 PC65 Terrence Goodwin 7-1-14

**ORDER AUTHORIZING AMENDMENT TO CITY CODE  
SEC. 14-49 (ZONING MAP AMENDMENT)  
RE: FIRST AMENDMENT TO 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; and

**BE IT FURTHER ORDERED,** that the conditional rezoning amendment authorized herein shall become effective upon sale to Ridge Development LLC.

**FIRST AMENDMENT CONDITIONAL ZONE AGREEMENT  
GRAVES HILL LAND COMPANY RIDGE DEVELOPMENT, LLC**

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

WITNESSETH:

**WHEREAS, ~~GRAVES HILL RIDGE DEVELOPMENT~~** owns or has an option on 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 RIDGE DEVELOPMENT~~** proposes to construct upon a portion of the Property a maximum of ~~98~~ 96 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 RIDGE DEVELOPMENT~~** has requested the rezoning of ~~40.167~~ 10.18 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~~ 8.14 acres of the Property from R-3 to Recreation and Open Space Zone (R-OS) ; and

**WHEREAS, the CITY OF PORTLAND** (hereinafter "**CITY**"), by and through its City Council, 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, has concluded that the rezoning of the Property as aforesaid and subject to certain conditions outlined below, is consistent with the City's Comprehensive Plan and with existing and permitted uses in the underlying zone; 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,

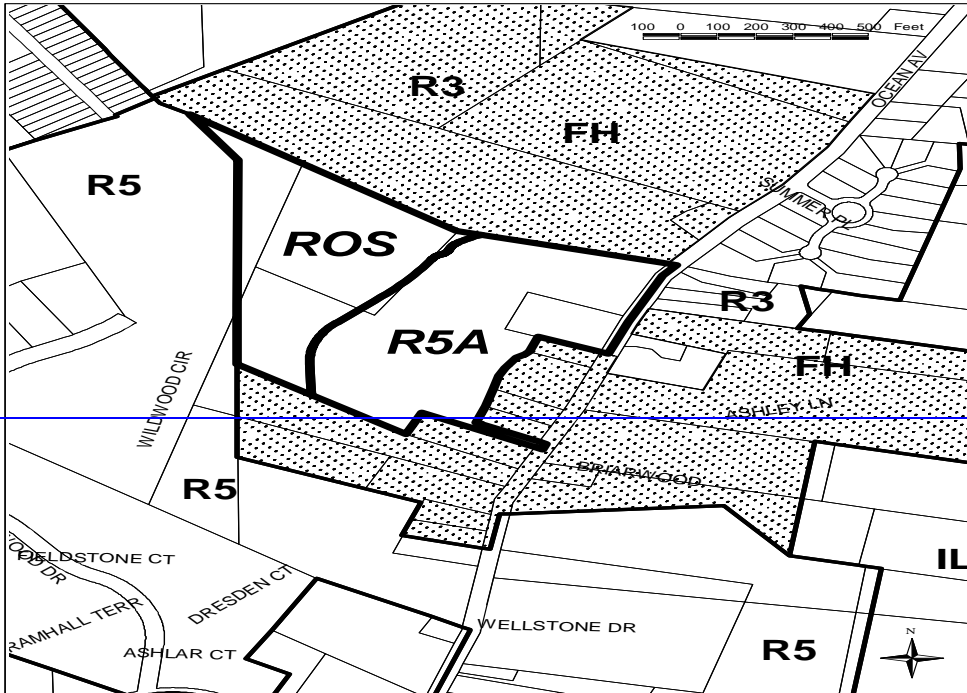
it is necessary and appropriate to impose with **GRAVES HILL'S- RIDGE DEVELOPMENT'S** agreement the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the **CITY'S** comprehensive land use plan; and

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

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

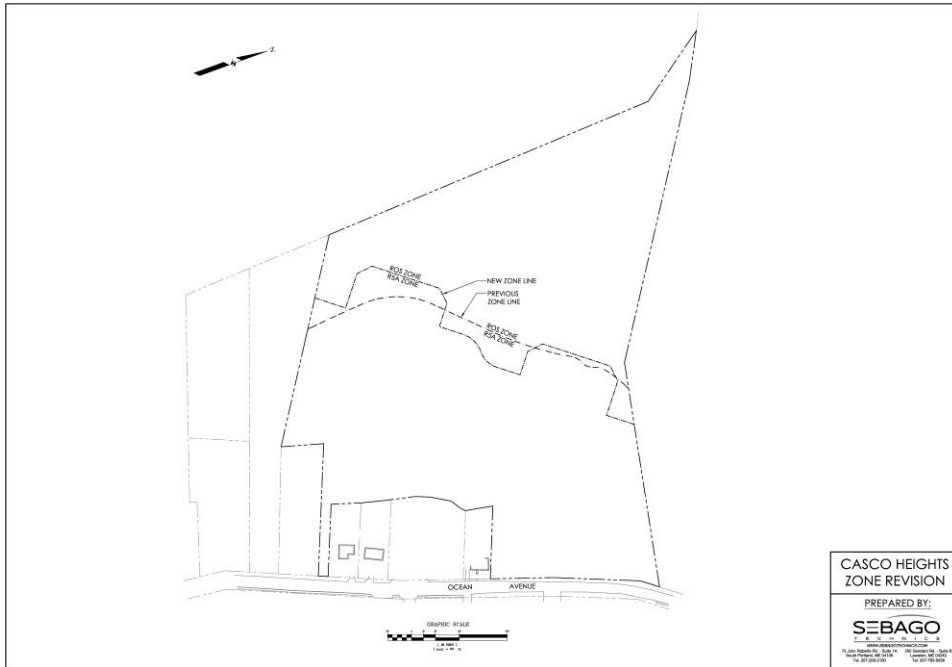
1. The **CITY** hereby amends the Zoning Map of the City of Portland dated December 2000, as amended from time to time and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by Section 14-49 of the Code, by adopting the map change amendment 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 sale of the property to Ridge Development LLC or within one hundred and eighty (180) days of the City Council's approval of said rezoning, whichever is later, then the rezoning shall become null and void and the zoning of the Property (together with all conditions) shall revert to the pre-existing R-3 zone that contained in the original Conditional Rezoning Agreement for 802-828 Ocean Avenue approved on \_\_\_\_\_ and recorded in the Cumberland County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_.



**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



[Proposed Amended Rezoning for 802 Ocean Avenue for the line adjustment between Recreation and Open Space \(ROS\) and Residential R-5a \(of the C-34 Conditional Rezone Agreement\) May 2014](#)



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

- a. Up to ~~98-96~~ residential units located in two buildings, each building containing up to ~~49~~ 48 units, which may be sold as condominium units, resulting in a maximum total of ~~ninety-eight-six (98 96)~~ 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 a fitness and special events room in each building available for use by the residents of the PRUD; and~~
- ~~d. a cross-country ski center/locker room in each building available for use by the residents of the PRUD; and~~
- e. ~~b.~~ parking in an amount of not less than ~~2 spaces per residential unit one (1) space per one bedroom unit and two (2) spaces per two and three bedroom units~~, plus at least 28 additional surface visitor parking spaces; and
- ~~f. 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. A future recreation area is also permitted, subject to Site Plan Review and approval by the Planning Board.

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-eight (49 48)~~ 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 eight (49 48)~~ 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 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, future recreation area, 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 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 ~~GRAVES HILL RIDGE DEVELOPMENT~~, its successors and assigns, ~~Graves Hill Ridge Development~~ 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 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 ~~GRAVES HILL 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, ~~GRAVES HILL 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.

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)~~ ~~Sebago Technics (last revised May 2014)~~ and the Proposed Building Design site sections, building sections and floor plans submitted by ~~Scott Simons Architects (last revised July 8, 2004)~~ ~~Archetype PA (last revised May 2014)~~ ~~and the preliminary elevation from Mackworth Island (undated, submitted August 17, 2004), attached hereto.~~ The Ridge Development entrance on Ocean Avenue as shown on the site plan shall achieve separation from Ridge Road to the maximum extent practicable ~~be at the location shown on said Site Plans~~ subject to site plan review by the Planning Board and ~~the City hereby grants consideration of~~ 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 the final Planning Board approved~~ location of the entrance may be moved up to 20 feet southerly of the location shown from the location 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- 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, ~~GRAVES HILL- 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.

~~GRAVES HILL- 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 side of the building adjacent to Ocean Ridge Condominiums~~, 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- 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 ~~GRAVES HILL- 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. The blasting plan required by Chapter 14, Article VIII of the Portland City Code and Section 3 of the City of Portland Technical Manual for issuance of a blasting permit shall be included in the applications for Site Plan and Subdivision Review and shall require final review and approval by the Planning Board based upon the recommendation of a third-party, independent, seismologist approved and hired by the Planning Authority at the Applicant's expense (hereinafter "Third-Party Seismologist").

10. The notification of neighbors required by Section 14-592 of the Portland City Code shall be accomplished by certified mail rather than regular mail.

11. During blasting operations, ground vibration monitoring shall be conducted by the ~~an independent Third-Party Seismologist at the Applicant's expense or blasting consultant. RIDGE DEVELOPMENT's selection of the independent seismologist or blasting consultant is subject to the review and approval of the City of Portland Planning Authority.~~

12. Notwithstanding Section 3.7.13 of the City of Portland Technical Manual, the blasting contractor shall be required to carry liability insurance (XCU) coverage in an amount no less than \$4,000,000.00.

13. In addition to the requirements outlined in Paragraphs 9-11 above, RIDGE DEVELOPMENT expressly agrees that, with respect to its development of the Property, it will comply with all other provisions relating to the regulation of blasting and explosives contained in Chapter 14 of the Portland City Code and the City of Portland Technical Manual.

149. 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- 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 ~~GRAVES HILL- RIDGE DEVELOPMENT 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- 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.

~~4015~~. 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~~ 48

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

**Maximum building height:** ~~100~~ 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:** ~~Minimum of 2 spaces per unit plus 28 visitor spaces, half in Phase I and half in Phase II.~~ 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, **GRAVES HILL 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.

~~164~~. 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 RIDGE DEVELOPMENT** need not submit any parking needs projections.

~~17~~. 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 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.

1318. 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.

1419. In the event ~~GRAVES HILL- RIDGE DEVELOPMENT~~ or its successors should fail to utilize the **PROPERTY** in accordance with this Agreement, or in the event of ~~GRAVES HILL'S- 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 ~~GRAVES HILL- 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.

1520. ~~GRAVES HILL- RIDGE DEVELOPMENT~~ shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

1621. 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~~ RIDGE DEVELOPMENT, LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
~~Diane Doyle~~ Patrick Tinsman  
Its Manager

STATE OF MAINE  
CUMBERLAND, SS. \_\_\_\_\_, 200\_

Then personally appeared the above-named ~~Diane Doyle~~ Patrick Tinsman, Manager of ~~GRAVES HILL LAND COMPANY~~ RIDGE DEVELOPMENT, LLC as aforesaid, and acknowledged the foregoing instrument to be ~~her- his~~ free act and deed in ~~her- 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: \_\_\_\_\_

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. LEEMAN (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

o:/Penny/Contract/Rezoning/Graves Hill to Council 9.15.04

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

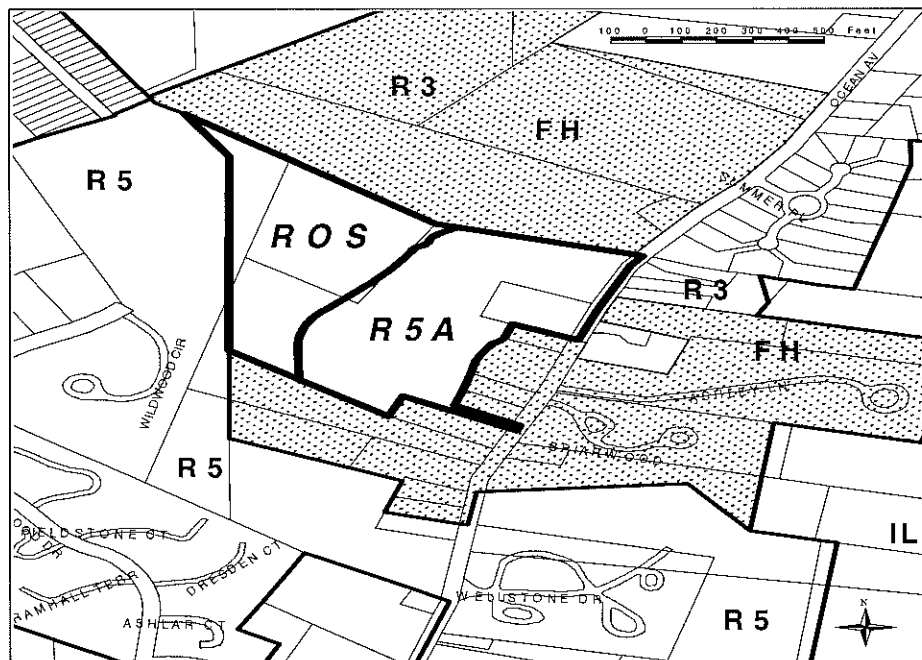
**WHEREAS, GRAVES HILL** has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind **GRAVES HILL**, its successors or assigns;

**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

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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

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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

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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: \_\_\_\_\_

# 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

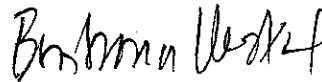
Dear Penny:

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	88949	21999	113	\$61.00
1-GRAVES HILL LAND CO LLC				
02:02:30p				
				\$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 8<sup>th</sup> 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,

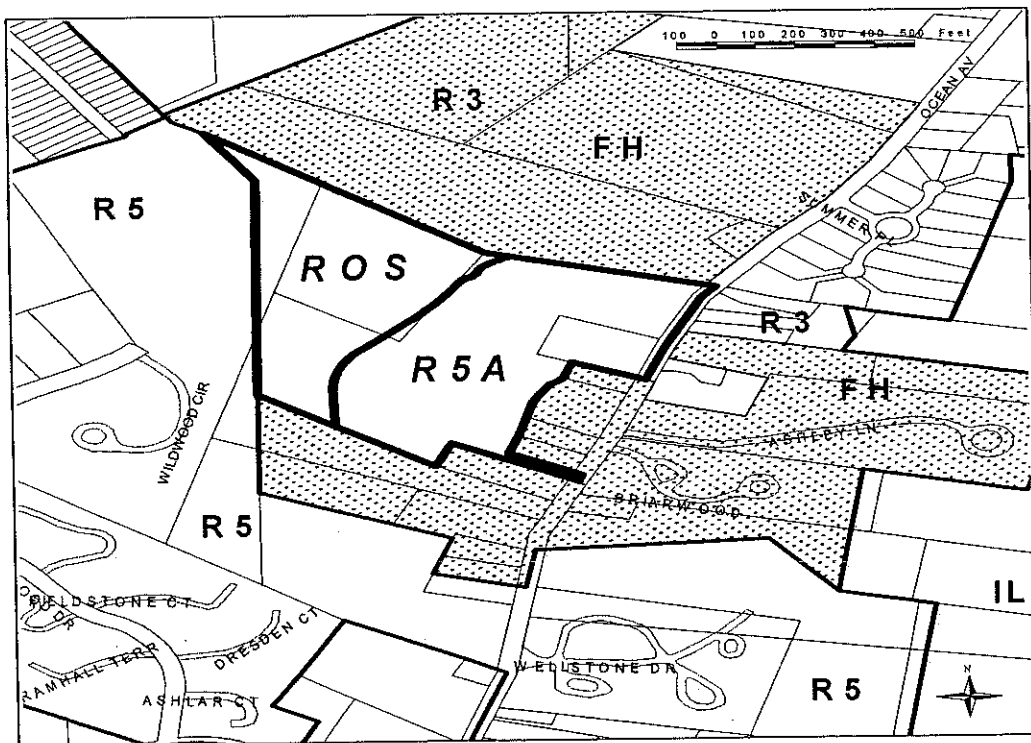
it is necessary and appropriate to impose with **GRAVES HILL**'s agreement the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**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.

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**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.

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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.

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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.

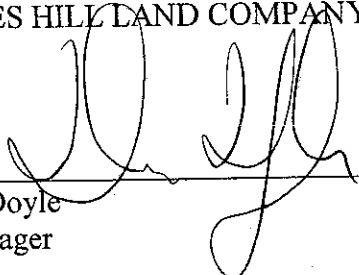
15. **GRAVES HILL** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

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,

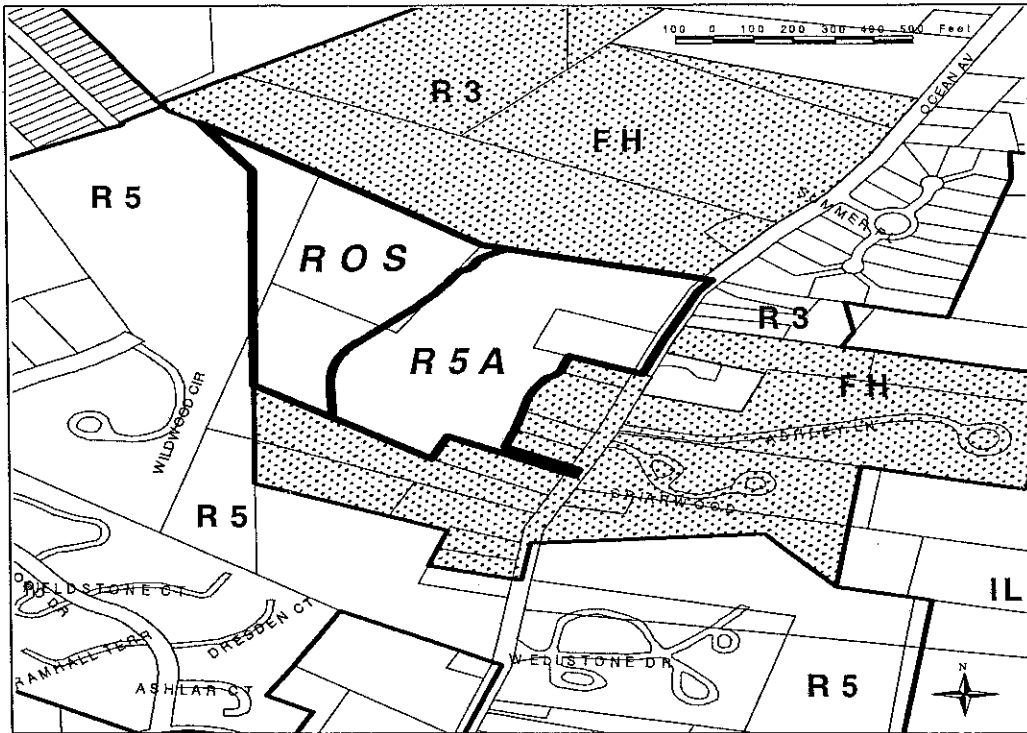
it is necessary and appropriate to impose with **GRAVES HILL's** agreement the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**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.

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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,

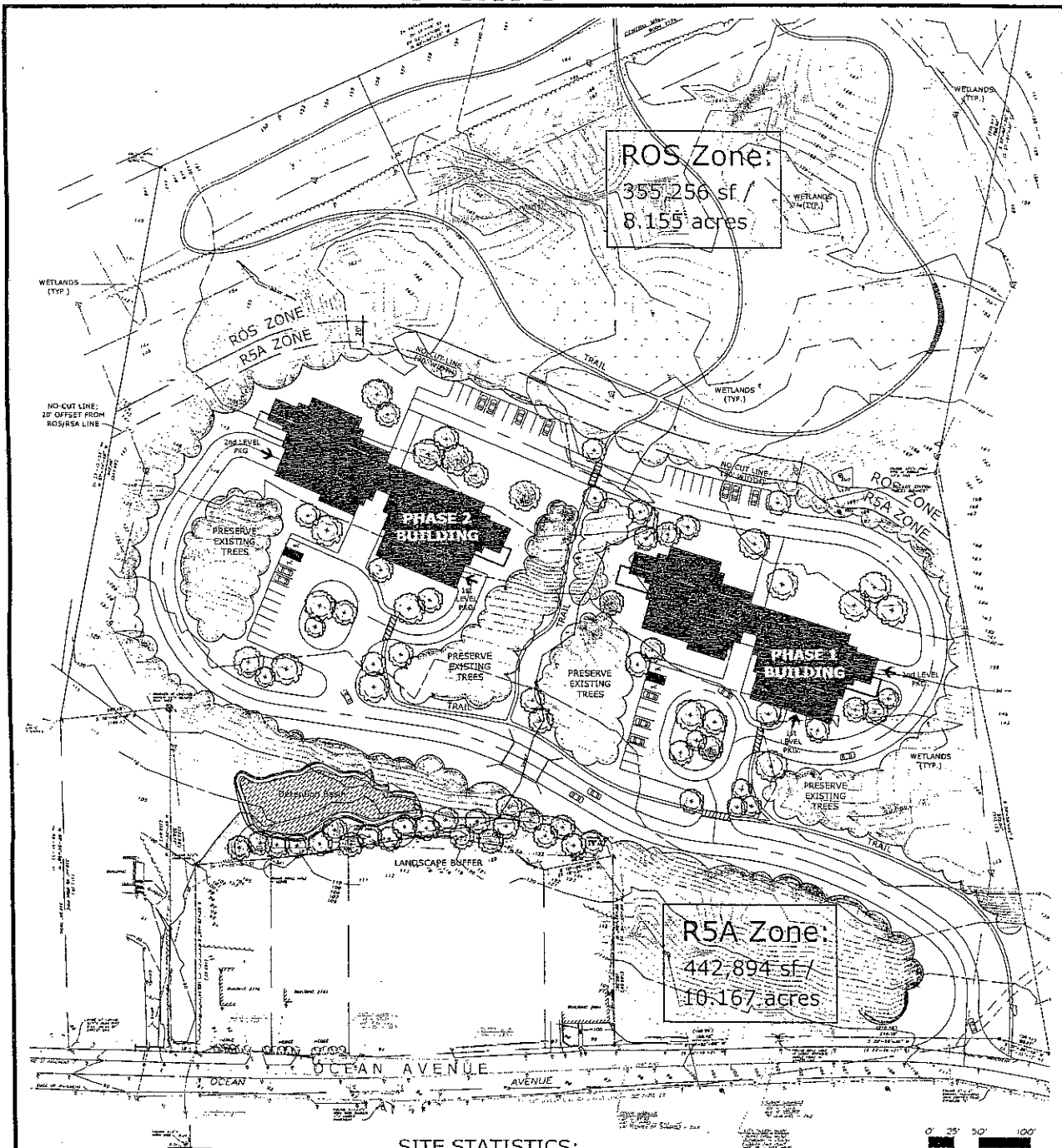
\_\_\_\_\_  
Notary Public/Attorney-at-Law

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

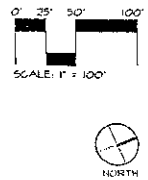
Total Number of Parking Spaces: 224 spaces  
 Phase 1: 112 spaces  
 Phase 2: 112 spaces

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

Surface Parking Spaces:  
 Phase 1: 22 spaces  
 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

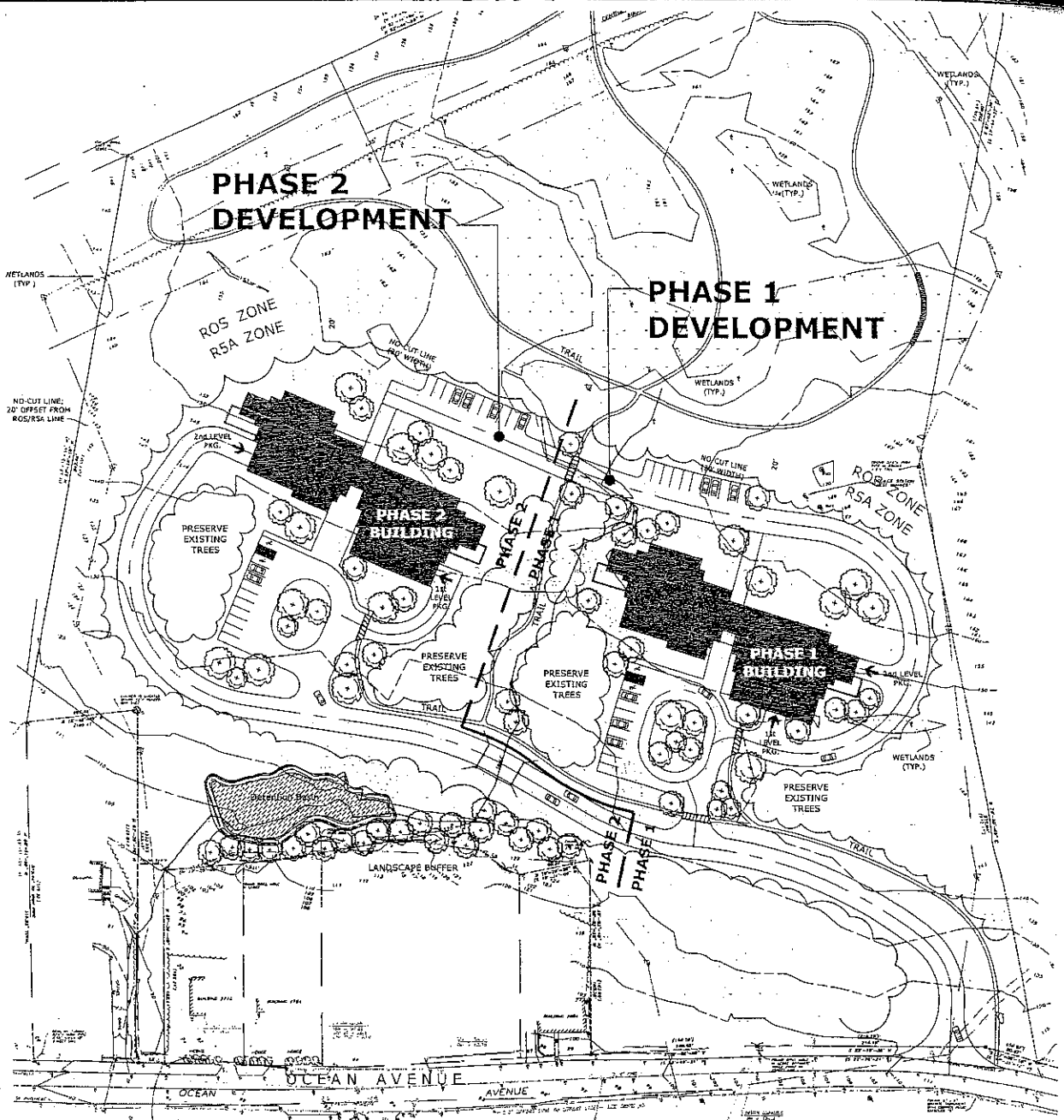
Developer: **GRAVES HILL LAND COMPANY**  
 150 Main Street  
 Scarborough, Maine  
 tel: 207.286.1191

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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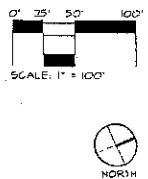
Total Number of Parking Spaces: 224 spaces  
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 Phase 1: 90 spaces  
 Phase 2: 90 spaces

Surface Parking Spaces:  
 Phase 1: 22 spaces  
 Phase 2: 22 spaces

Projected Wetlands Disturbance: 2,230 s.f.  
 Projected Site Disturbance: 3,645 Acres

Trail:  
 Zone ROS: 2,855 lf  
 Zone RSA: 1,170 lf  
 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

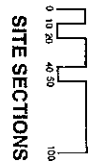
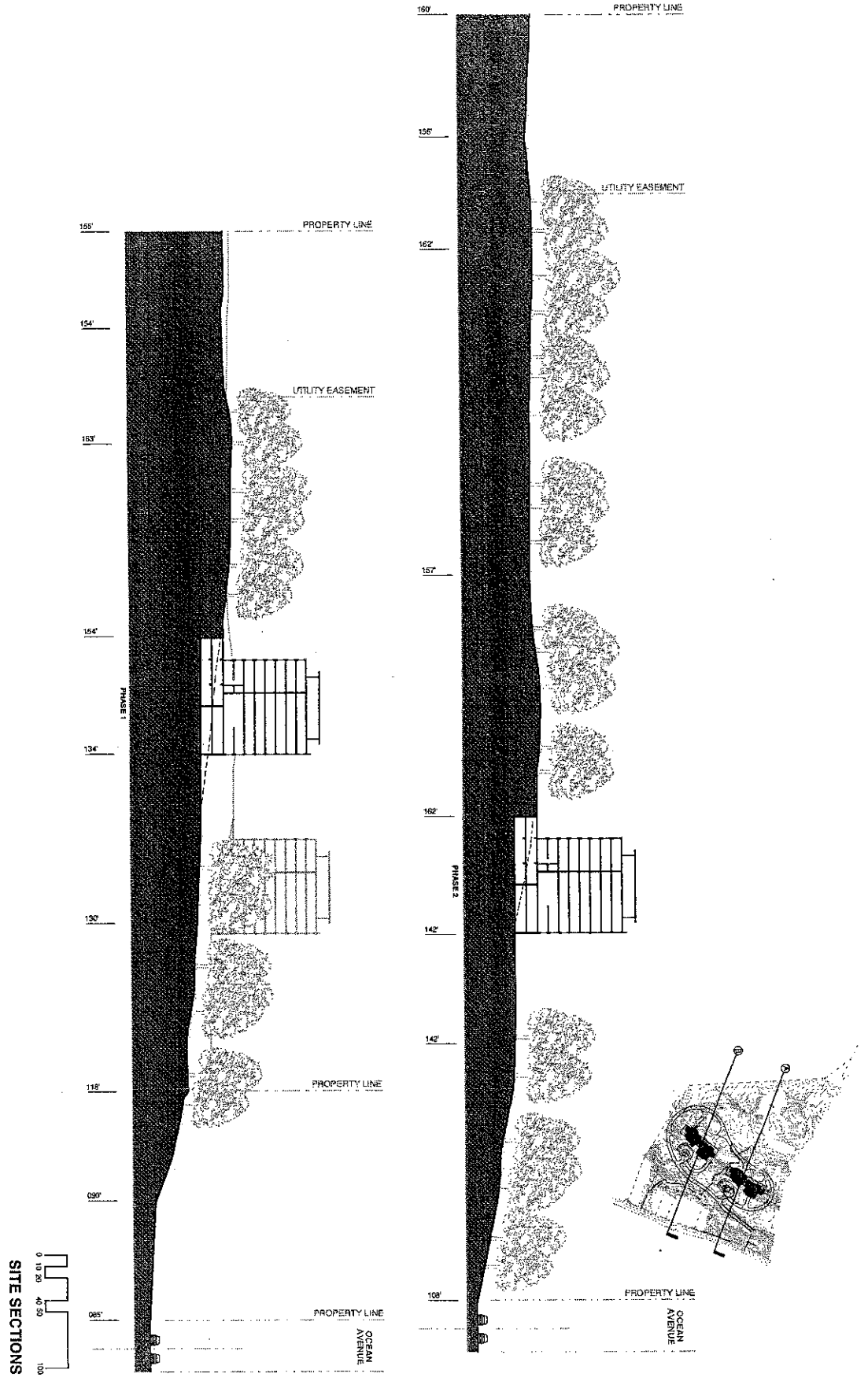
Landscape Architect: **Richardson & Associates**  
 Landscape Architects  
 PO Box 426  
 176 Main Street  
 2400, Maine 04072  
 tel 207.286.9291

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

MARCH 25, 2004  
 REVISED MAY 14, 2004  
 REVISED JUNE 1, 2004  
 REVISED JUNE 14, 2004  
 REVISED JULY 6, 2004  
 REVISED AUGUST 16, 2004

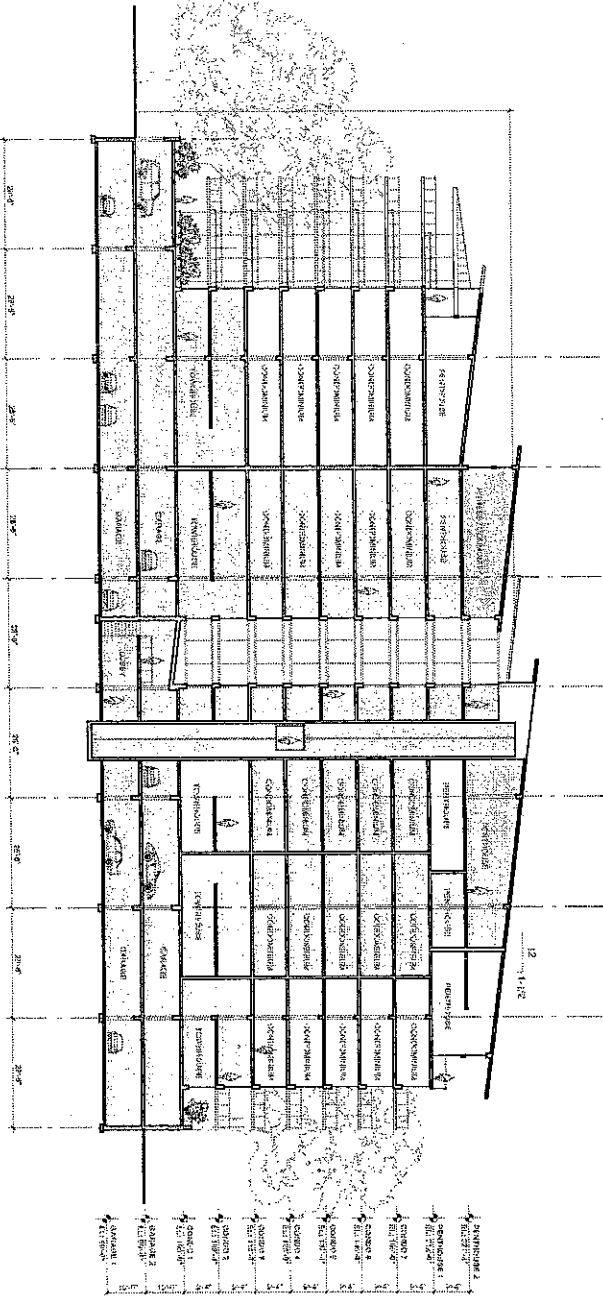
EXHIBIT 3

GRAVES HILL  
 OCEAN AVENUE  
 PORTLAND, ME

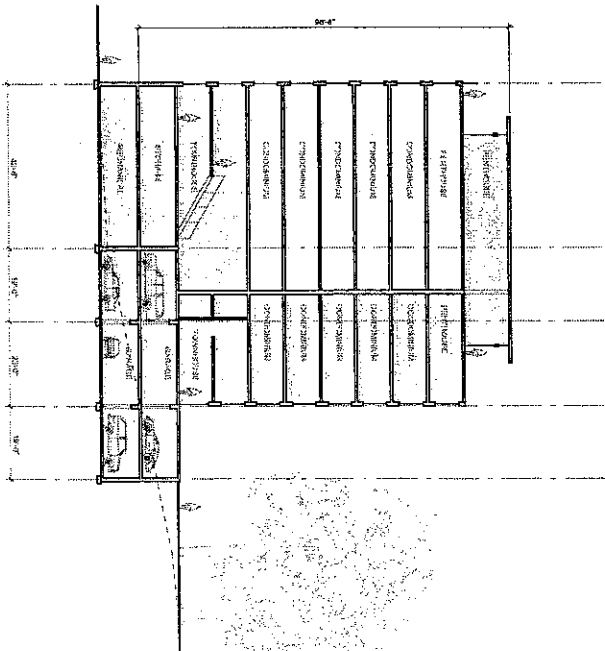


**GRAVES HILL**  
**OCEAN AVENUE**  
**PORTLAND, ME**

**S-N BUILDING SECTION**



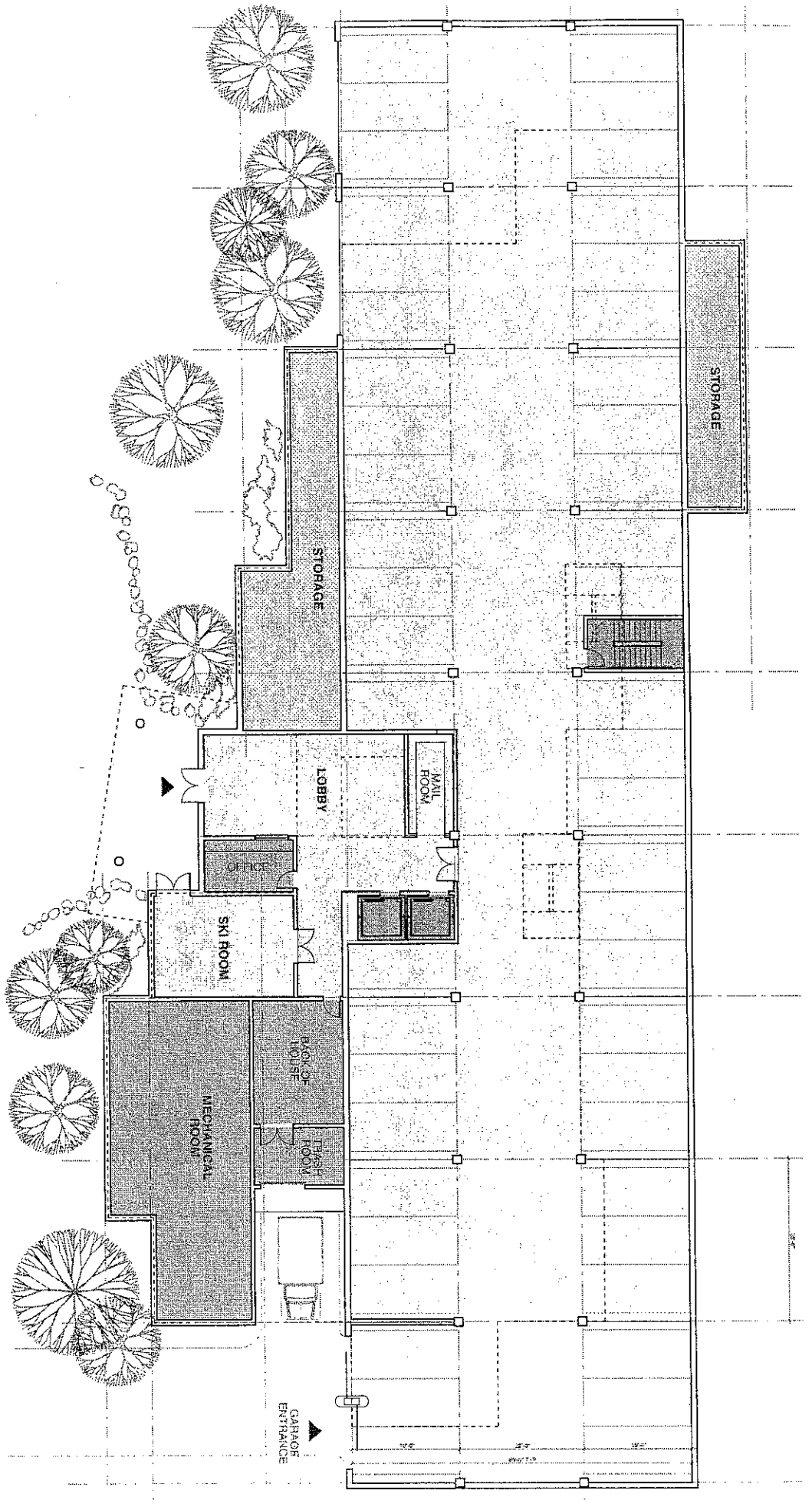
**E-W BUILDING SECTION**



**BUILDING SECTIONS**



**GRAVES HILL**  
OCEAN AVENUE  
PORTLAND, ME

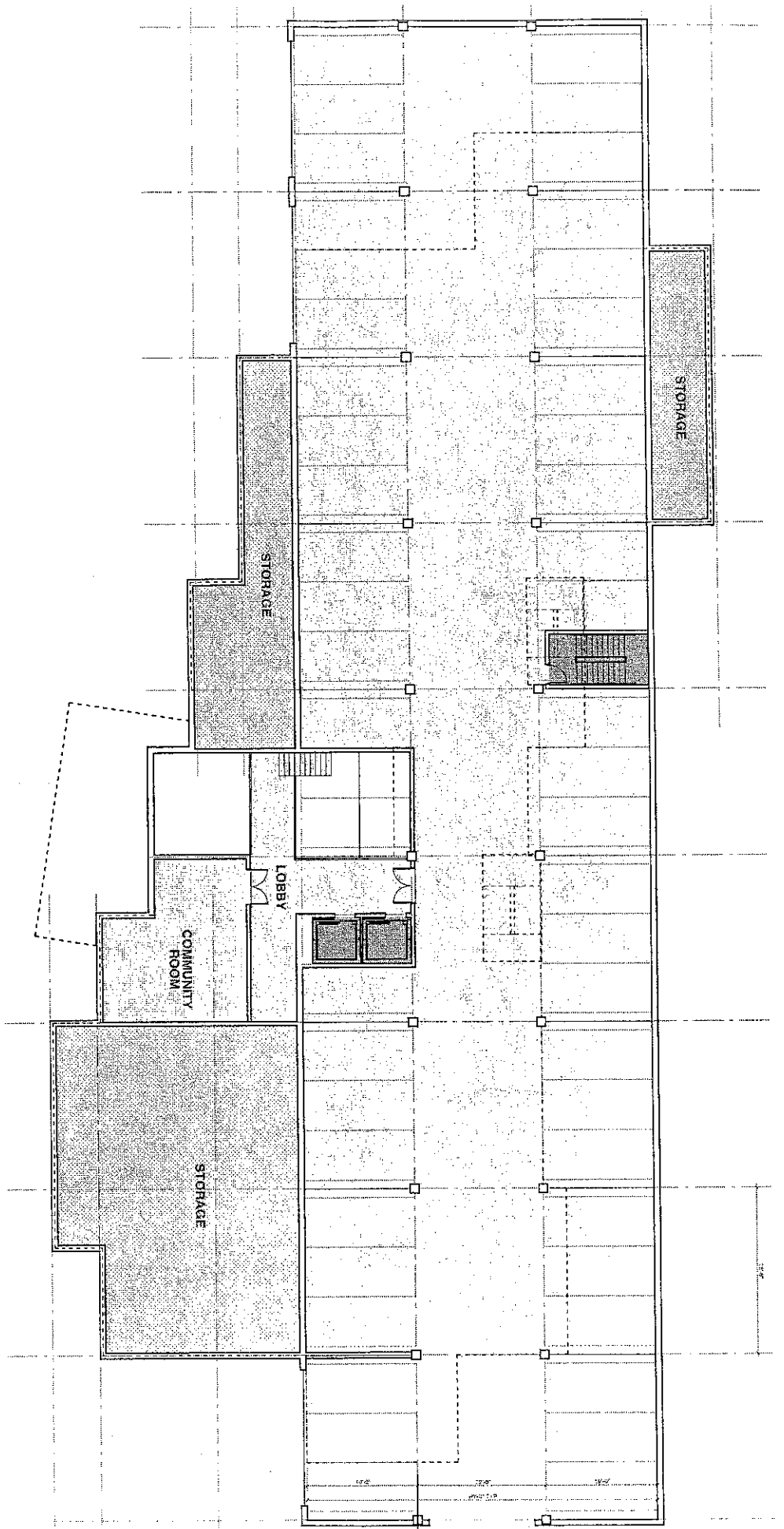


**FLOOR 01: LOBBY & GARAGE**



Scott Simons Architects

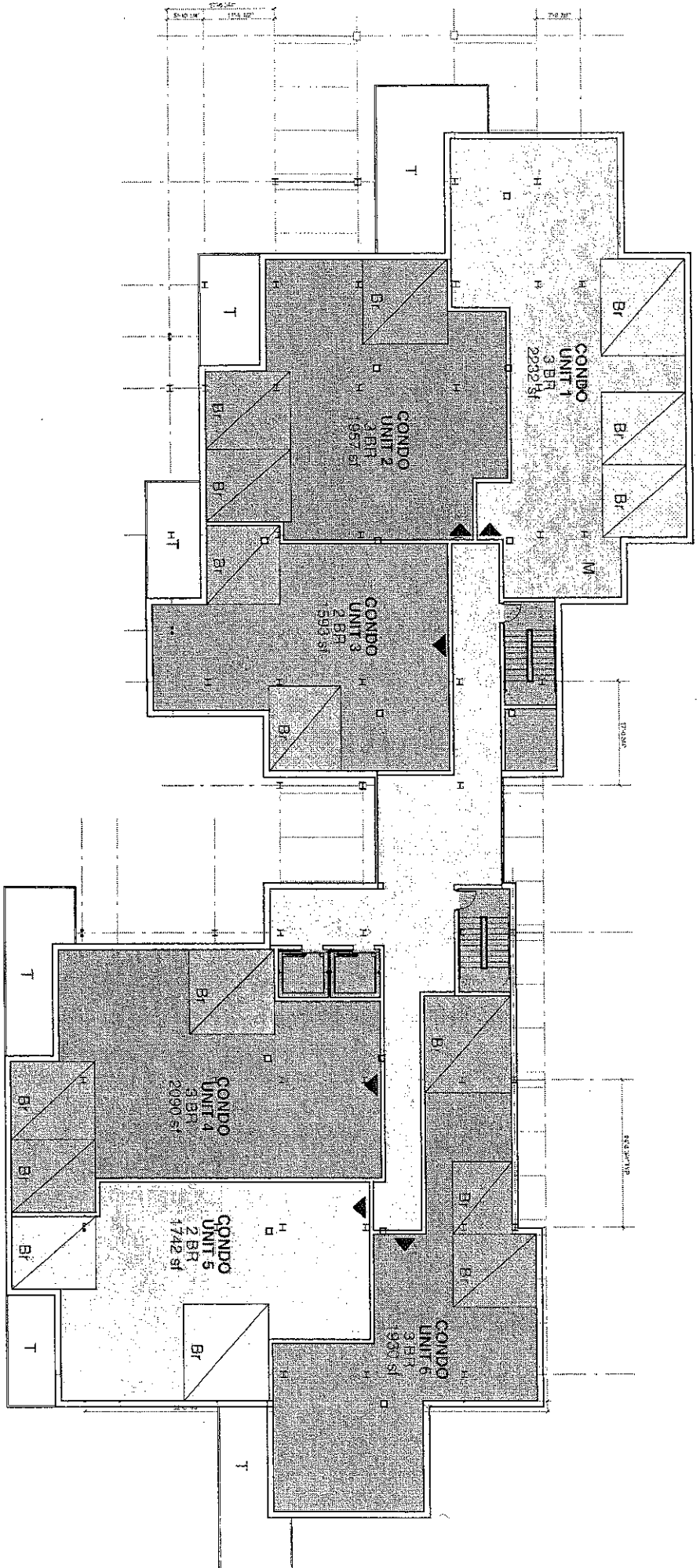
GRAVES HILL  
OCEAN AVENUE  
PORTLAND, ME



FLOOR 02: COMMUNITY ROOM & GARAGE

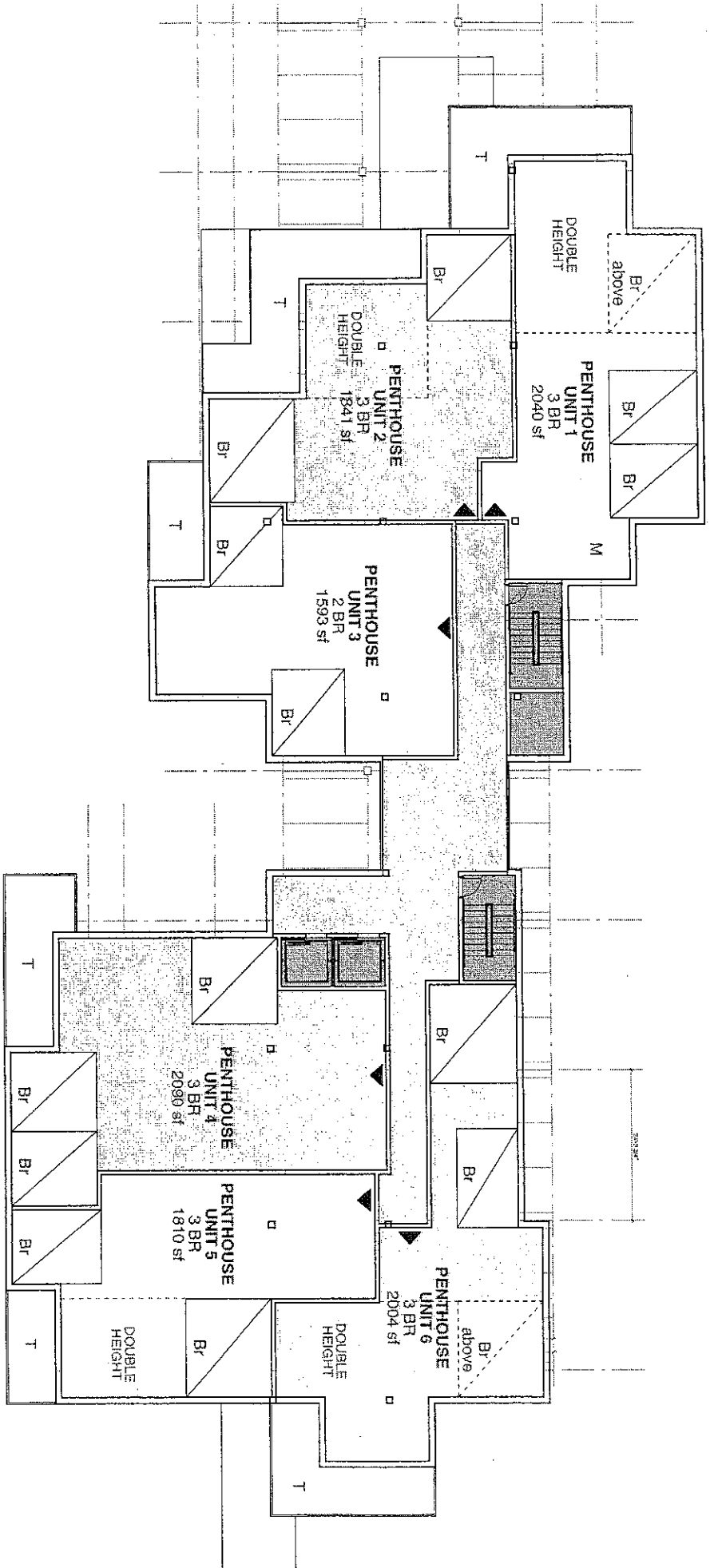


**GRAVES HILL**  
**OCEAN AVENUE**  
**PORTLAND, ME**



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

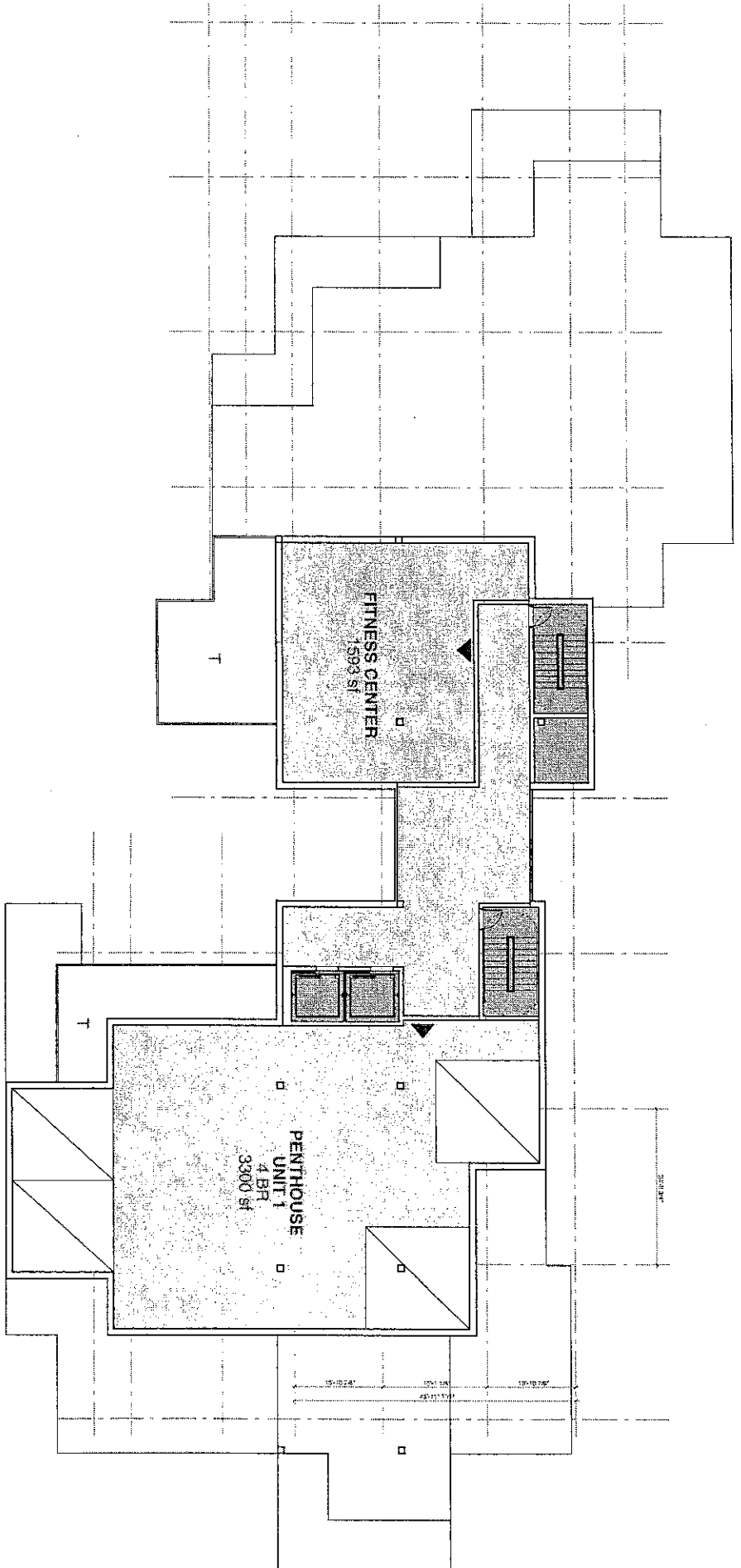
**GRAVES HILL**  
**OCEAN AVENUE**  
**PORTLAND, ME**



**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**

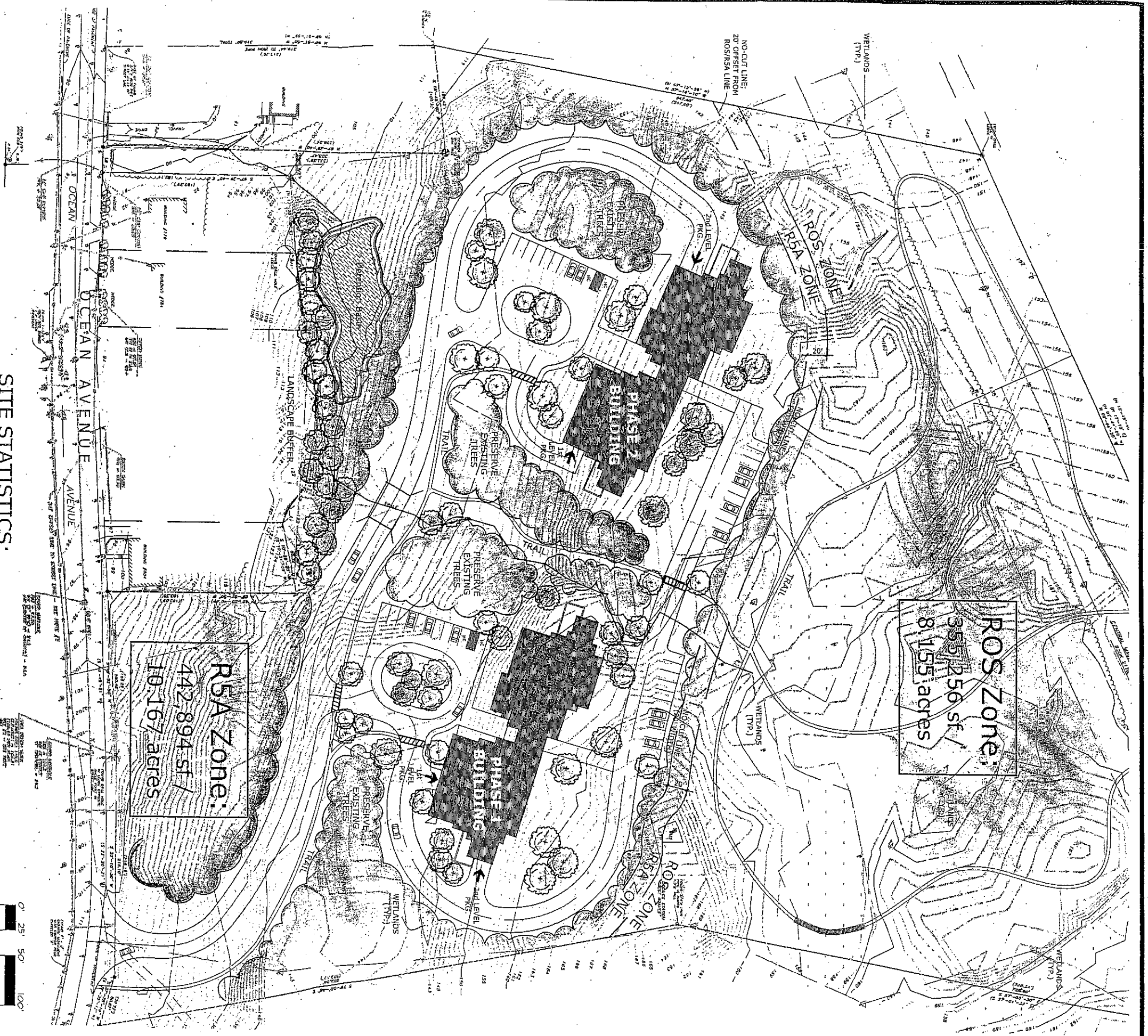
**GRAVES HILL LAND COMPANY, LLC**  
Diane Doyle 207.286.1151

**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:**

Site Size: Gross area: 798,150 s.f. / 18.323 acres  
 Zone ROS: 355,256 sf / 8.1555 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

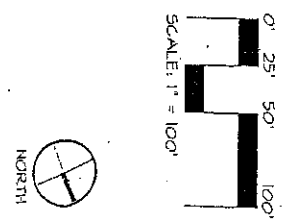
Total Number of Parking Spaces: 224 spaces  
 Phase 1: 112 spaces  
 Phase 2: 112 spaces

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

Surface Parking Spaces:  
 Phase 1: 22 spaces  
 Phase 2: 22 spaces

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

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



- 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.

Preliminary Site Plan: Zone Identification

# GRAVES HILL

Portland, Maine

MARCH 25, 2004  
 REVISED MAY 14, 2004  
 REVISED JUNE 1, 2004  
 REVISED JUNE 4, 2004  
 REVISED AUGUST 16, 2004

Developer: GRAVES HILL LAND COMPANY

Architect: Scott Simons Architects

Landscape Architect: Richardson & Associates

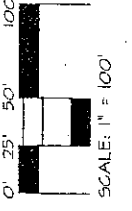
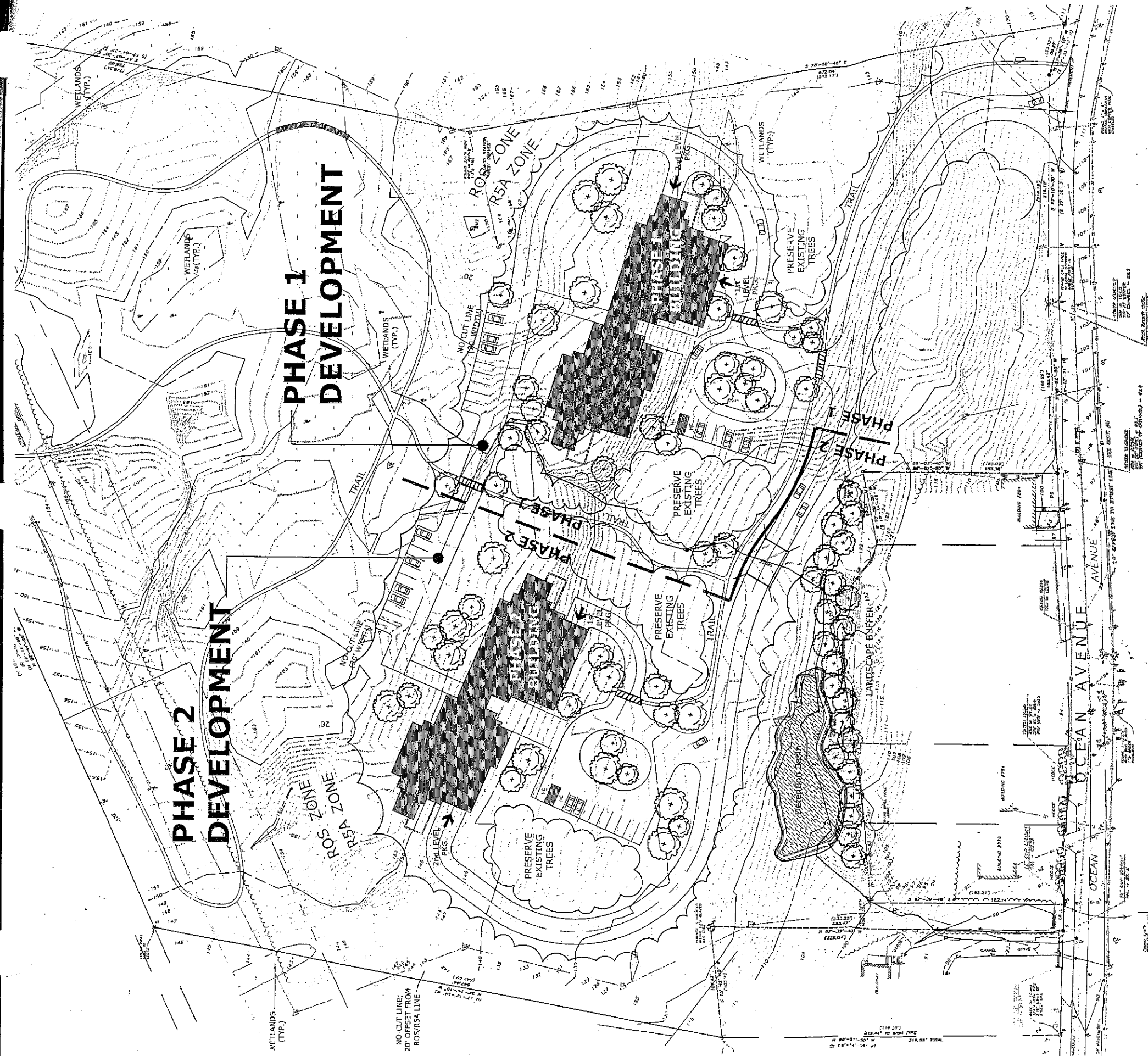
Civil Engineer: BH2M

110 Main Street  
 Saco, Maine  
 Tel 207.286.1151

75 York Street  
 Portland, Maine 04101  
 Tel 207.772.4555

PO Box 426  
 176 Main Street  
 Saco, Maine 04072  
 Tel 207.286.9291

28 State Street  
 Portland, Maine  
 Tel 207.559.7771



**NOTES:**

1. ALL TOPOGRAPHIC INFORMATION AND EXISTING BASE INFORMATION EXCEPT WETLANDS BOUNDARIES PROVIDED BY DOW & COULOMBE SURVEYORS.
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 Net Land Area: 434,622 s.f. / 9.978 acres  
 Frontage: 445 L.F.  
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 Phase 1: 112 spaces  
 Phase 2: 112 spaces

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 Phase 1: 90 spaces  
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Surface Parking Spaces:  
 Phase 1: 22 spaces  
 Phase 2: 22 spaces

Projected Wetlands Disturbance: 2,230 s.f.  
 Projected Site Disturbance: 3,645 Acres

Trail:  
 Zone ROS: 2,855 L.F.  
 Zone R5A: 1,170 L.F.  
 Total Trail: 4,025 L.F.

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

Preliminary Site Plan: Phasing Identification

**GRAVES HILL**  
 Portland, Maine

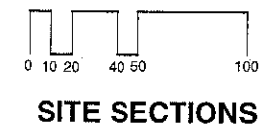
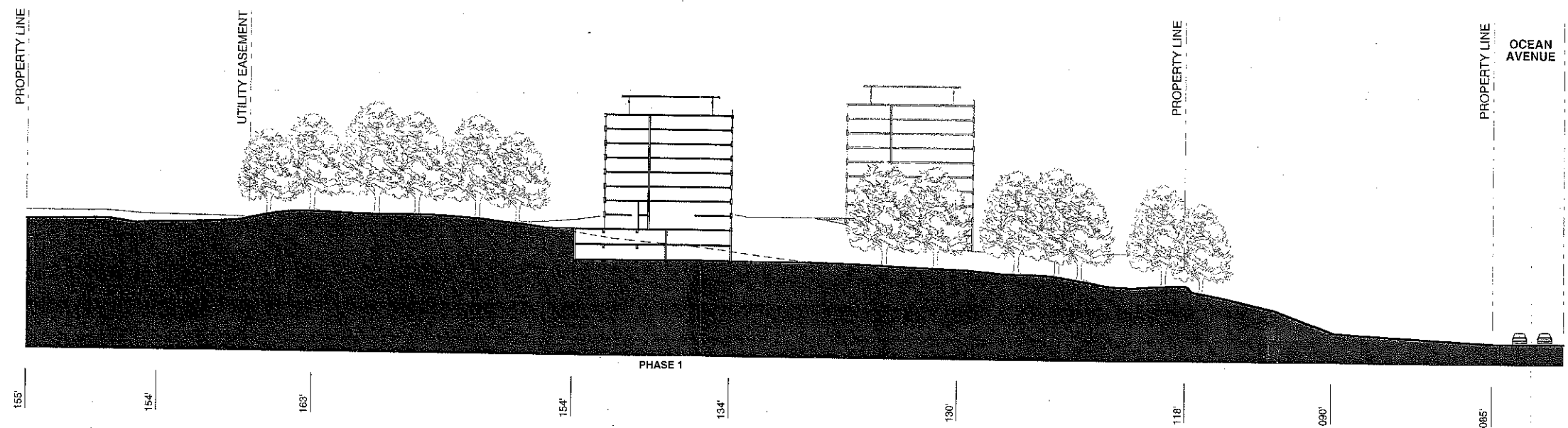
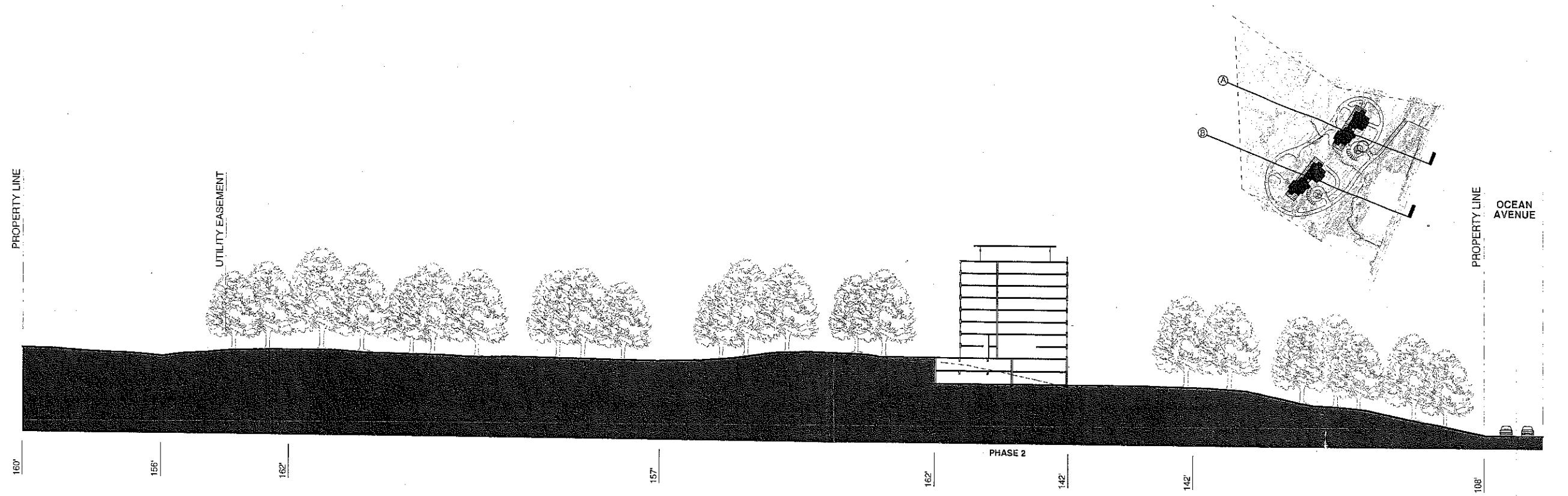
Developer: GRAVES HILL LAND COMPANY  
 110 Main Street  
 Saco, Maine  
 tel 207.286.1151

Architect: Scott Simons Architects  
 75 York Street  
 Portland, Maine 04101  
 tel 207.772.4656

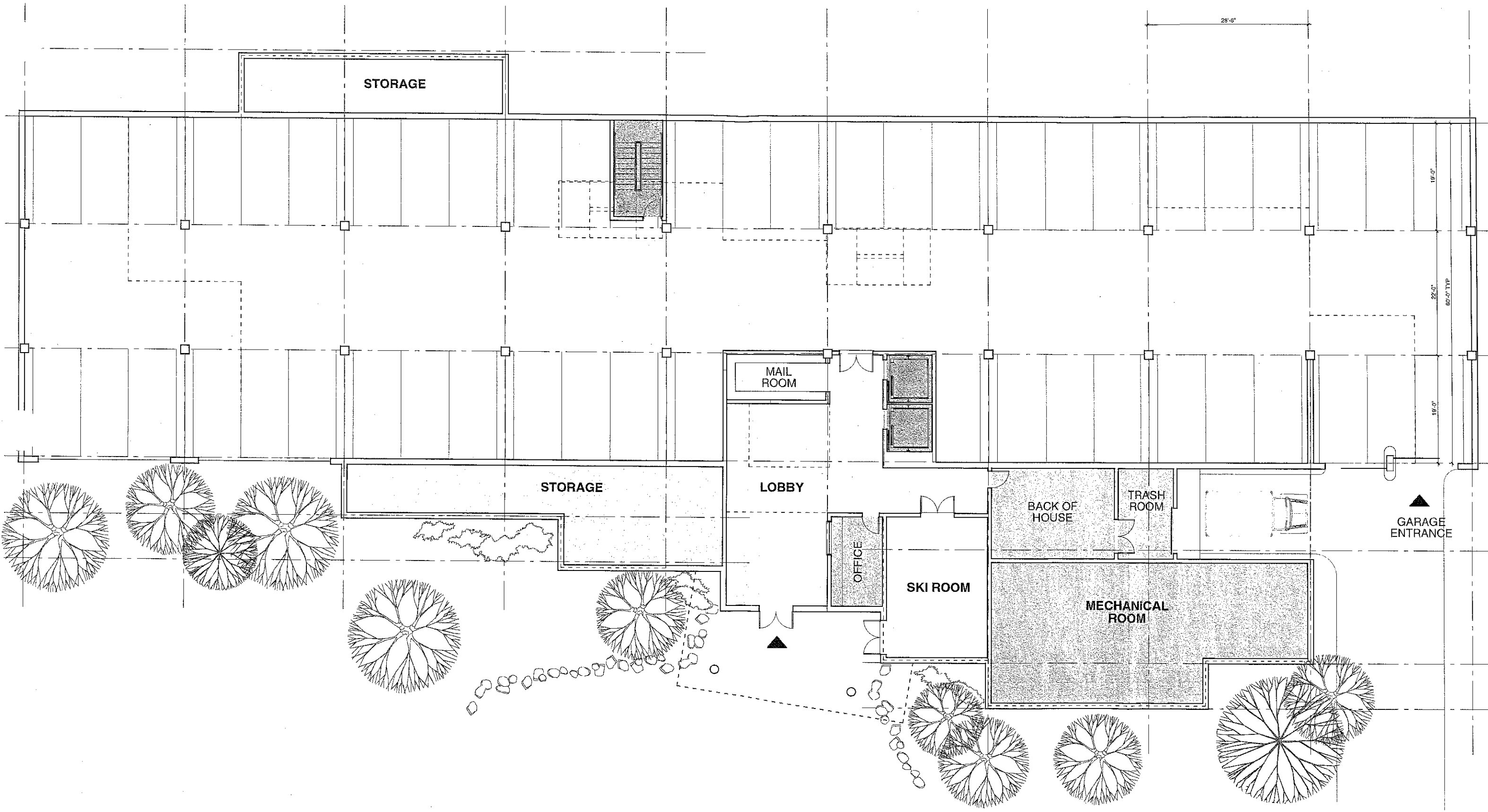
Landscape Architect: Richardson & Associates  
 Landscape Architects  
 PO Box 426  
 176 Main Street  
 Saco, Maine 04072  
 tel 207.286.9291

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

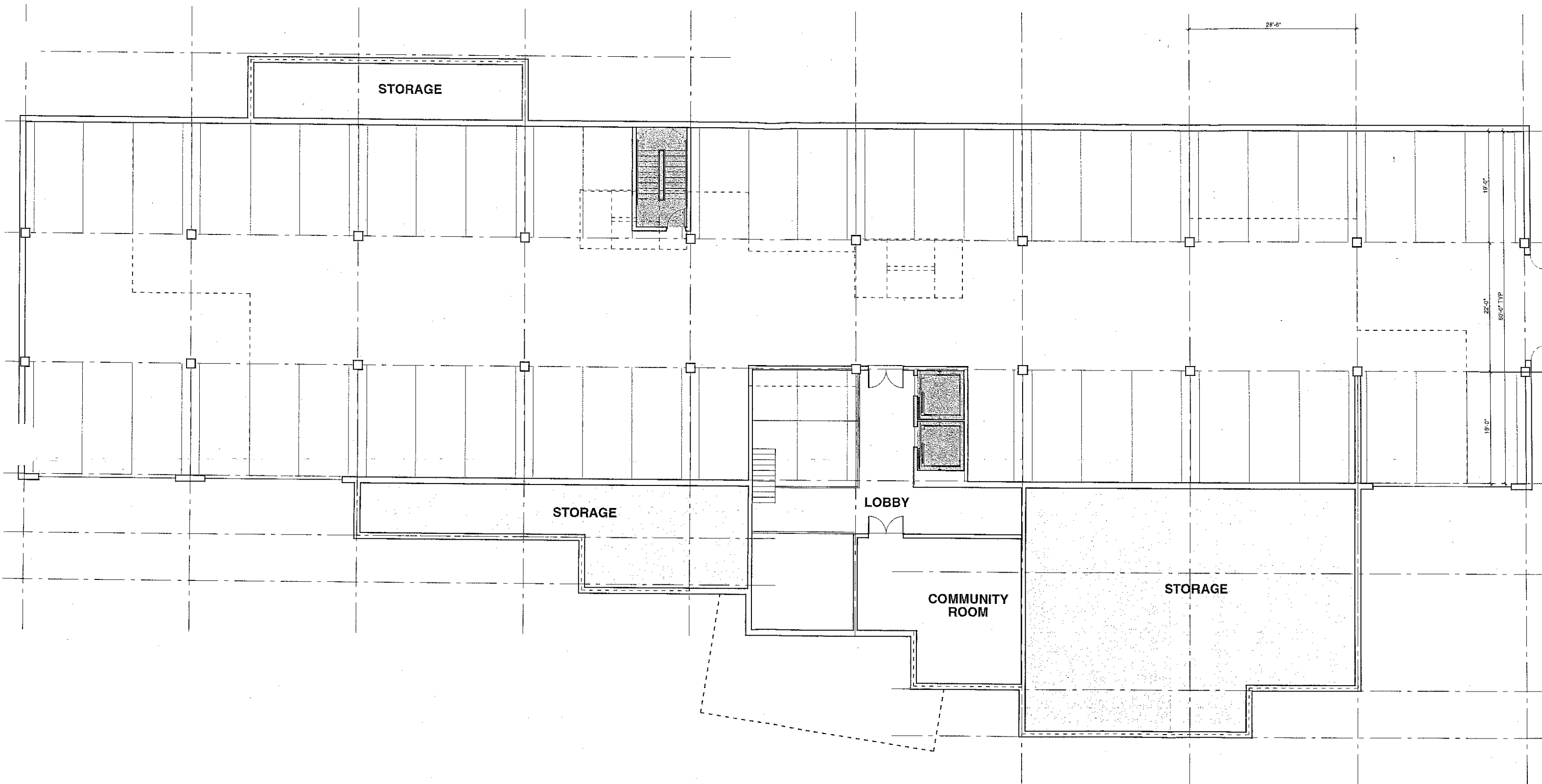
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 REVISED AUGUST 16, 2004



**GRAVES HILL**  
 OCEAN AVENUE  
 PORTLAND, ME



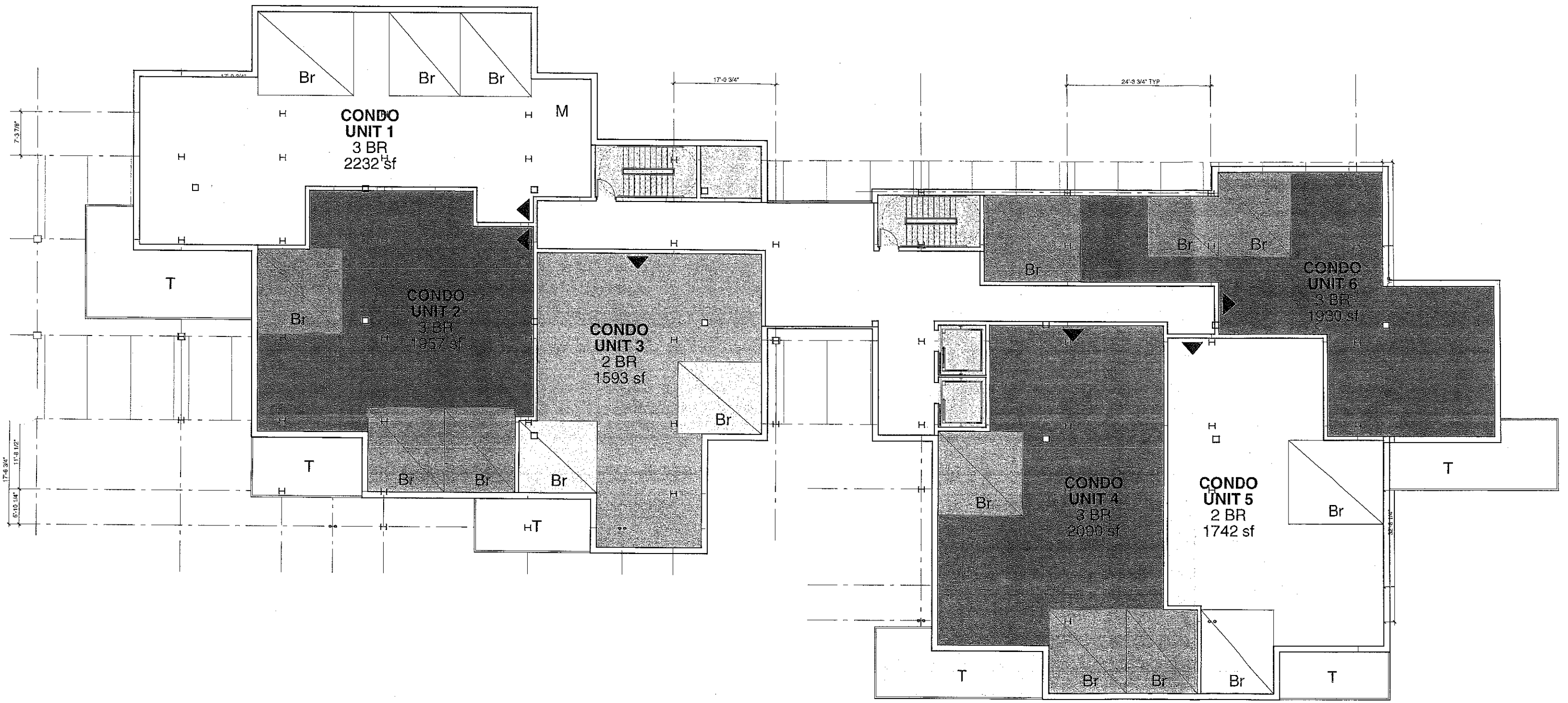
**GRAVES HILL**  
 OCEAN AVENUE  
 PORTLAND, ME



FLOOR 02: COMMUNITY ROOM & GARAGE

**GRAVES HILL**  
 OCEAN AVENUE  
 PORTLAND, ME

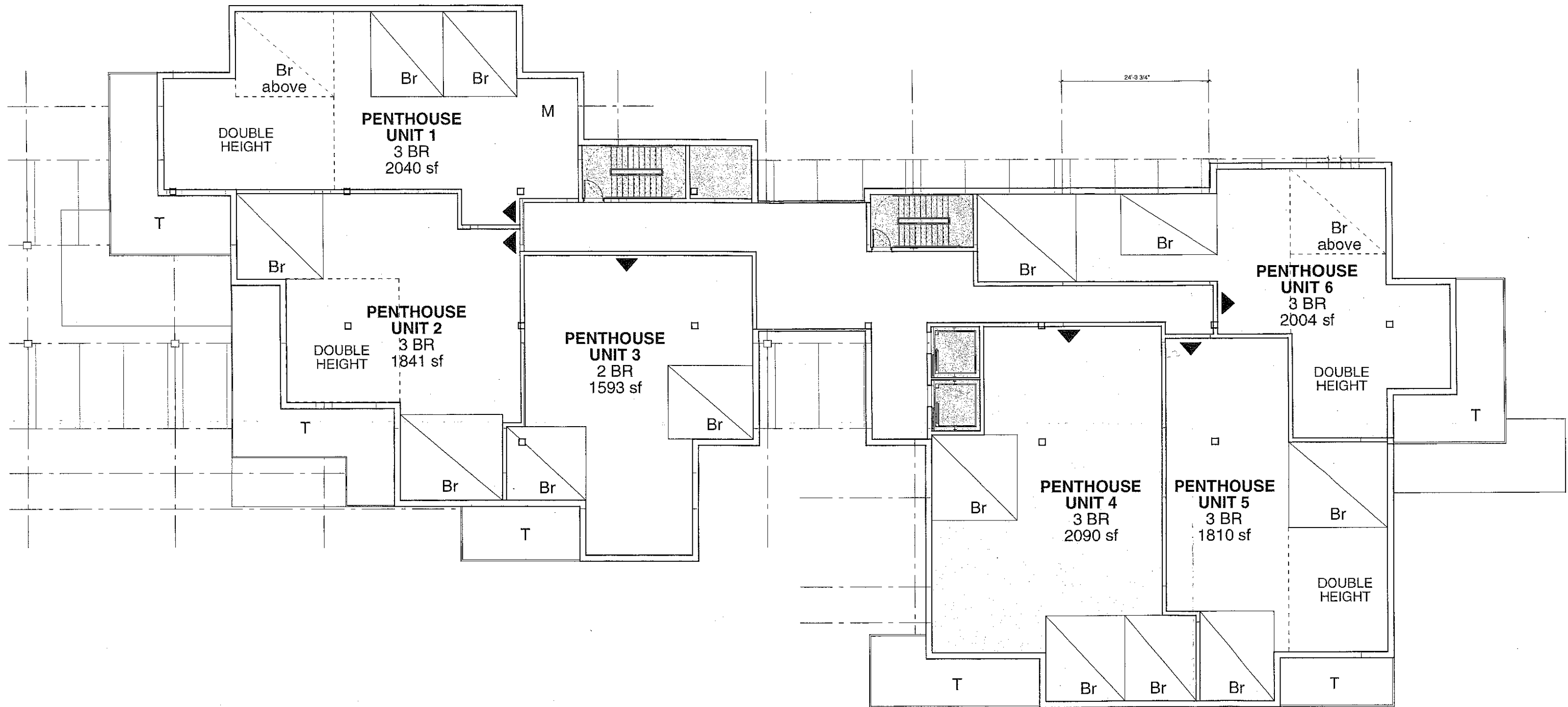




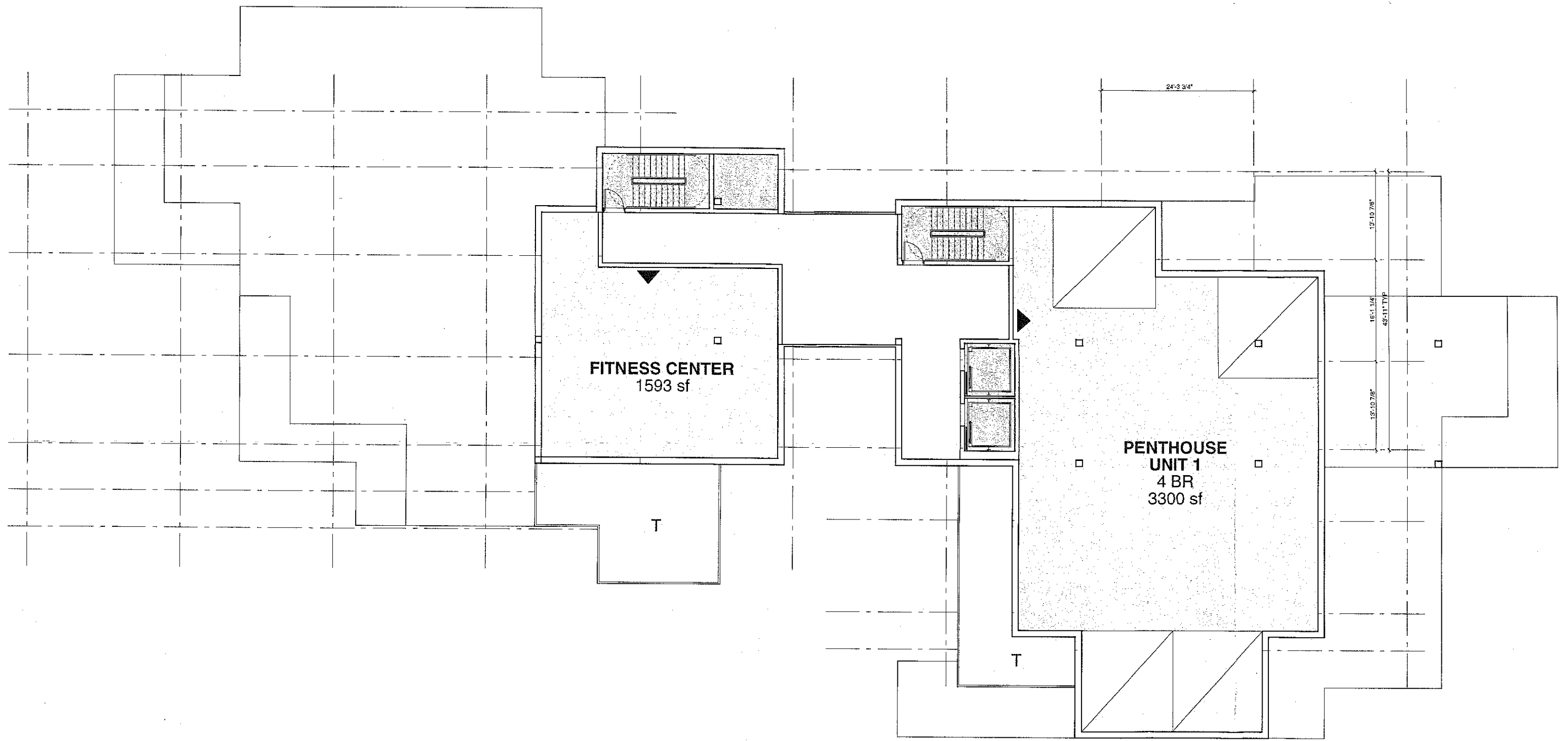
**FLOOR 03-09: TYPICAL CONDOMINIUM**  
 14,510 SF TOTAL

**GRAVES HILL**  
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 PORTLAND, ME

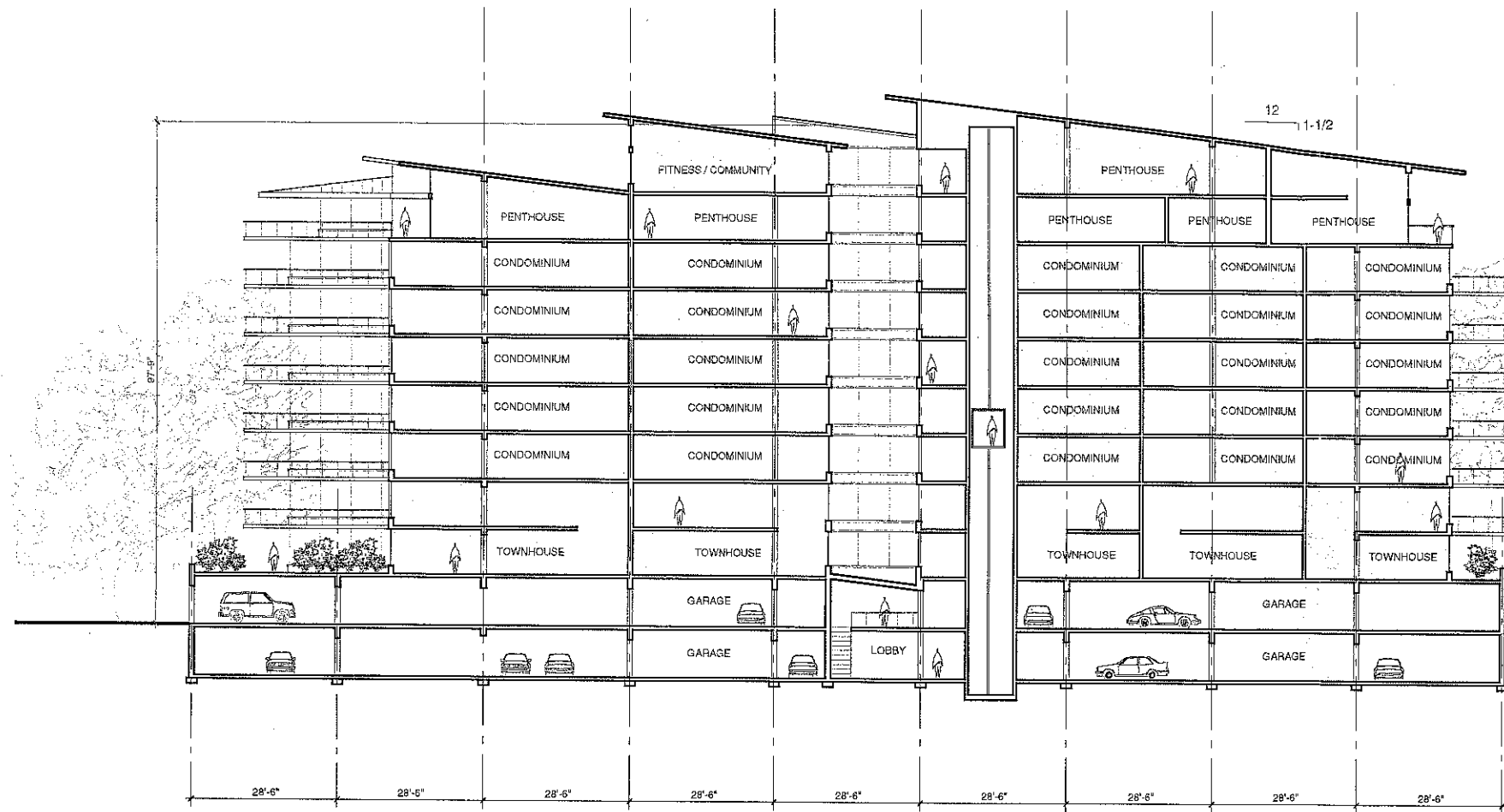




**FLOOR 10: PENTHOUSE**  
13,405 SF TOTAL

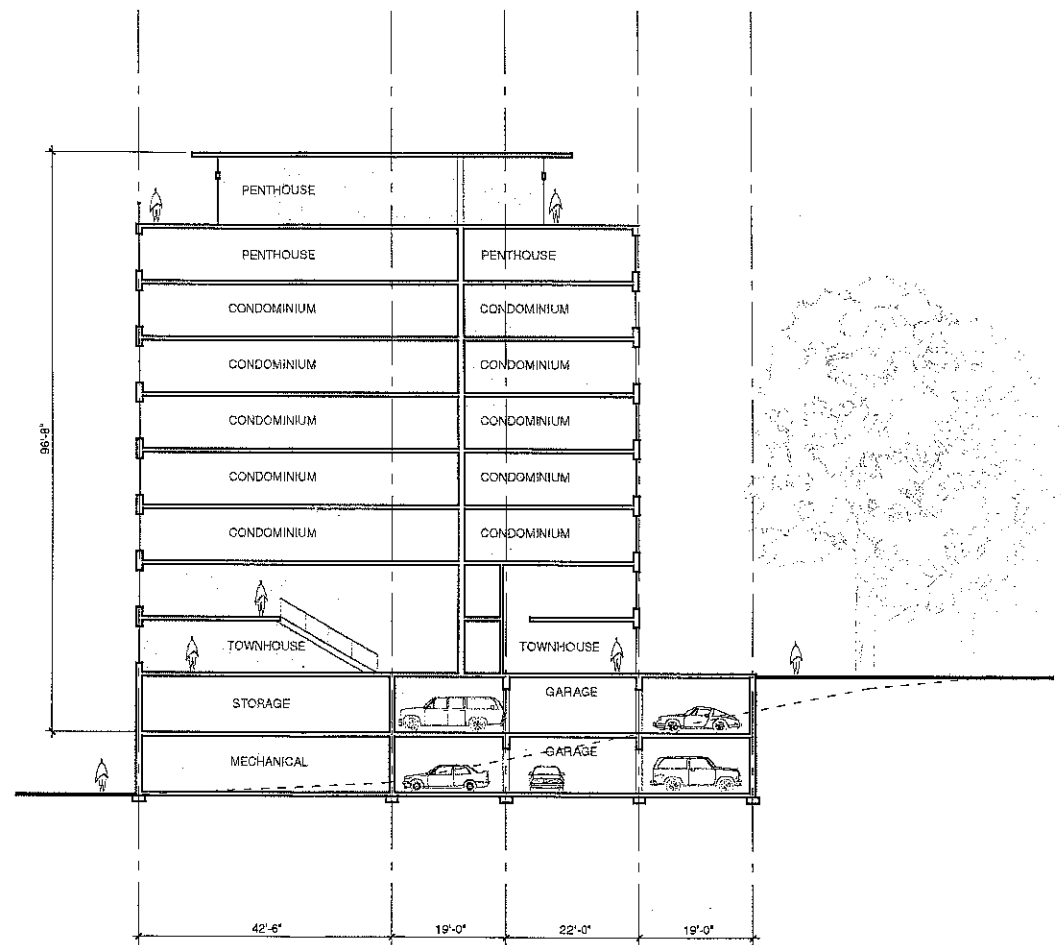


**FLOOR 11: PENTHOUSE**  
6,653 SF TOTAL



S-N BUILDING SECTION

- PENTHOUSE 2  
EL: 221'-4"
- PENTHOUSE 1  
EL: 212'-0"
- CONDO 7  
EL: 156'-0"
- CONDO 8  
EL: 146'-8"
- CONDO 5  
EL: 137'-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