

Order 34-12/13

Passage 8-0 (Coyne absent) 8-6-12

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

**REAUTHORIZATION OF
AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR PROPERTY
IN VICINITY OF 81-85 DANFORTH STREET**

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:

**CONDITIONAL ZONE AGREEMENT
RE: DANFORTH ON HIGH, L.P.**

This Agreement made this ____ day of _____, 20__ by **DANFORTH ON HIGH, L.P.** a Maine corporation with an office in Portland, Maine (hereinafter "**DANFORTH ON HIGH**").

WITNESSETH:

WHEREAS, DANFORTH ON HIGH has entered into a contract to purchase a parcel of land from Random Orbit, Inc. consisting of approximately 7,655 square feet located at 81-85 Danforth Street in Portland, being a parcel shown on City of Portland Tax Map 40, Block A, Lot 16, and more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 3304, Page 289 (collectively the "Property"); and

WHEREAS, DANFORTH ON HIGH proposes to construct upon the Property a maximum of 30 rental apartment units for seniors aged 55 and older in one building, which are designed to contribute innovative, pedestrian oriented and affordable housing to the peninsula housing stock, to enhance alternative transportation options, and to provide a unique residential living experience compatible with the established urban neighborhood; and

WHEREAS, the proposed development is consistent with the purposes of the R-7 Compact Urban Residential Overlay Zone as it is on the peninsula; in a location characterized by moderate to high density multi-family housing; within walking distance of downtown or other work places, shopping and community facilities; will have access to public transit service; and will provide opportunities for compact in-city living for renters, representing a variety of income levels in small households; and

WHEREAS, in December 2007, the **CITY OF PORTLAND** (hereinafter “**CITY**”) granted a conditional rezoning from R-6 to R-7 Compact Urban Residential Overlay Zone for Random Orbit, Inc. recorded in the Cumberland County Registry of Deeds on January 2, 2008 at Book 25723, Page 89; and

WHEREAS, certain easements are in place between Random Orbit and abutters that remain in effect and will be assigned to **DANFORTH ON HIGH** at the time of closing including the easements evidenced by Easement Deeds recorded in the Cumberland County Registry of Deeds as follows: (1) an access easement granted by Random Orbit, Inc. to East Danforth, LLC and recorded in Book 26501, Page 247; (2) an emergency egress easement granted by Mid-Town Properties, LLC to Random Orbit, Inc. and recorded in Book 26501, Page 249; (3) a temporary construction easement granted by Mid-Town Properties, LLC to Random Orbit, Inc. and recorded in Book 26501, Page 251; and (4) an access easement granted by Random Orbit, Inc. to Mid-Town Properties, LLC and recorded in Book 26501, Page 253; and

WHEREAS, DANFORTH ON HIGH has requested an amendment to the December 2007 Conditional Rezoning Agreement; and

WHEREAS, the Planning Board of the **CITY**, pursuant to 30-A M.R.S.A. § 4352(8) and §§ 14-60 to 14-62 and 14-127 of the Code, 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 the unique and innovative concept and design of the proposed development:

- Contributes a desirable, unique type of housing to the peninsula stock;
- Provides affordable senior rental housing opportunities for traditionally underserved groups;
- Promotes reuse of an underutilized lot to provide new housing development consistent with the compact urban residential development pattern typically found on the peninsula; and
- Encourages pedestrian, public transit, bicycle, and alternative transportation options that are part of a Transportation Demand Management Plan;

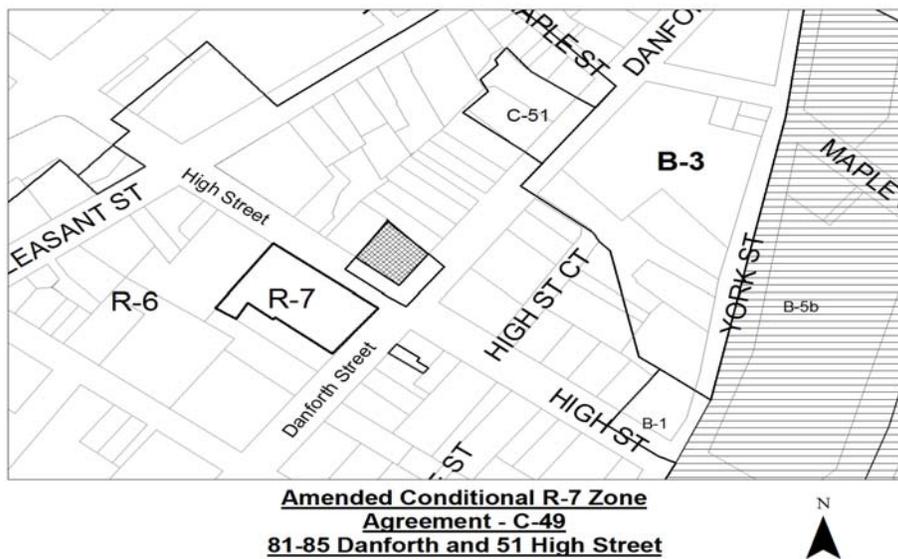
it is necessary and appropriate to impose, by agreement, the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the **CITY’S** comprehensive land use plan; and

WHEREAS, the City Council of the **CITY** authorized the execution of this Agreement on May 7, 2012 by City Council Order No. 164-11/12 and reauthorized the execution of this Agreement on August 6, 2012 by way of this Order, a true copy of which is attached hereto as Attachment 1; and

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

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

1. The **CITY** hereby amends Section C-49 of 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-7 Compact Urban Residential Overlay Zone with contract zone described herein). 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-7 zone.



2. **DANFORTH ON HIGH** is authorized to establish and maintain the following uses on the Property:

- a. Residential units: Up to 30 residential units located in one building, which shall be developed and rented as age- and rent-restricted apartments; and
- b. Related amenities: to be located within the building, namely, two shared lounges for residents and guests; shared laundry facilities; bicycle storage areas with a minimum capacity for 27 bicycles and storage areas to be used by individuals or in common.
- c. Parking:
 - 1) shall be provided on-site in an amount of not less than a total of 13 vehicle spaces and 2 scooter/motorcycle spaces,
 - 2) **DANFORTH ON HIGH** shall include a Transportation Demand Management (“TDM”) Plan with its site plan application, as required by the **CITY’S** Technical Manual.

An analysis of the effectiveness and functioning of the TDM Plan shall be provided to the Planning Authority on an annual basis for two (2) years following the issuance of a certificate of occupancy for the project described herein and shall be maintained for inspection upon request thereafter.

3. The Property will be developed substantially in accordance with the Site Plan and Subdivision Plan, elevations and floor plans prepared by Archetype, P.A., Architects attached hereto as exhibits, subject to such subsequent modifications as may be required by the Planning Board during site plan and subdivision review and such subsequent modifications as may be required by the Portland Historic Preservation Committee during its review and approval.

4. Dimensional Requirements: The following shall be the dimensional requirements which shall be applied in subsequent review and shall be met by the proposed development:

Rear yard minimum setback:	4 feet
Rear yard minimum distance between buildings:	20 feet
Side minimum setback, not abutting street:	4 feet
Side minimum setback, abutting street:	0 feet
Side minimum distance between buildings:	12 feet
Minimum land area per dwelling unit:	Two hundred fifty (250) square feet per dwelling unit
Maximum units allowed:	30
Minimum parking spaces per unit:	0.43 spaces/unit (13 vehicle spaces and 2 scooter/motorcycle spaces for 30 units)

To the extent that the dimensional, density and related standards are not otherwise specified herein to the contrary, the dimensional requirements of the R-7 Compact Urban Residential Overlay Zone shall apply.

5. **DANFORTH ON HIGH** shall enter into a Land Use Regulatory Agreement with Maine State Housing Authority at the time of closing on the financing for the project described herein that shall reflect an obligation of **DANFORTH ON HIGH** to maintain affordability and age restrictions on the Property for a term consistent with the Maine State Housing Authority financing requirements.

6. **DANFORTH ON HIGH** shall maintain the planter along Danforth Street with appropriate seasonal flowers or plants.

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

8. Any change in ownership to an owner other than **DANFORTH ON HIGH** shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to the granting of mortgages by **DANFORTH ON HIGH** 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 **DANFORTH ON HIGH** holds at least a 30% interest.

9. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **DANFORTH ON HIGH**, 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.

10. 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.

11. Given the lack of open space on the site and the requested density, the community contribution under this Agreement shall be \$19,000. \$14,000 of this contribution shall be dedicated to improvements at the Pleasant Street Park as determined necessary and appropriate by the City's Recreation Division, and the remaining \$5,000 of this contribution shall be dedicated to the City's street tree fund as required under the City's subdivision ordinance and may also be applied to the street tree and landscaping needs of Pleasant Street Park as determined necessary and appropriate by the City Arborist. This community contribution is independent of any conditions which the Planning Board may lawfully require under site plan or subdivision review. This community contribution shall also be made prior to the issuance of a certificate of occupancy.

12. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law including, but not limited to, 30-A MRSA § 4452 and the Portland City Code. In addition, in the event of a breach by **DANFORTH ON HIGH** or its successors or assigns of the zoning provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals or a court determines such breach), the Planning Board, after notice and hearing, may recommend to the City Council that the Conditional Zone and this Agreement be amended, or be rescinded, such rescission to result in the termination of this Agreement and a reversion of the Property to the existing R-7 zone in place before the execution of this Agreement.

13. In the event that **DANFORTH ON HIGH** does not close upon the purchase of the Property from Random Orbit, LLC pursuant to the Purchase and Sale Agreement by and between the parties, as it may be amended, then the zoning for the Property shall automatically revert to the existing R-7 zone.

14. **DANFORTH ON HIGH** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

15. 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:

DANFORTH ON HIGH, L.P.

By: CHOM DEVELOPMENT CORPORATION
Its General Partner

By: _____
Erin Cooperrider
Its Development Director

STATE OF MAINE
CUMBERLAND, SS.

_____, 200_

Then personally appeared the above-named Erin Cooperrider, Development Director of CHOM DEVELOPMENT CORPORATION, the General Partner of DANFORTH ON HIGH, L.P., 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 CHOM DEVELOPMENT CORPORATION and DANFORTH ON HIGH, L.P.

Before me,

Notary Public/Attorney-at-Law
Printed name:
My Commission Expires: