

Order 170-04/05

Second Reading waived

Emergency Passage 2/23/05 7-0 (Leeman gone, Cohen absent)

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

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

ORDER AMENDING COUNCIL ORDER NO. 76 -04/05
RE: CONDITIONAL REZONING FOR
70-88 Forest Avenue and 209 through 233 High Street
YMCA and CCYSRO

ORDERED, that the language contained within the Conditional Rezoning at 70-88 Forest Avenue and 209 through 233 High Street be amended and superceded by the following language. This amendment is intended to clarify the original intent of the Council to respect the rights and responsibilities of the YMCA and CCYSRO, respectively, as they are set forth in the amended language, whereas time is of the essence due to the owners' construction schedule;

BE IT FURTHER ORDERED, that the Amendment authorized herein shall become effective immediately as an emergency enactment pursuant to Article II, Section 8 of the Portland City Charter.

AMENDED
CONDITIONAL REZONING AGREEMENT

CCYSRO, L. P. AND
THE CUMBERLAND COUNTY YMCA

AGREEMENT made this ____ day of _____, 2005 by CCYSRO, L.P., a Maine limited partnership with a place of business in Portland, Maine (hereinafter "**CCYSRO**") and the Cumberland County **YMCA**, formerly known as the Greater Portland **YMCA** and the Young Men's Christian Association of Portland, Maine, a nonprofit corporation with a place of business in Portland, Maine, (hereinafter "**YMCA**") and each of their successors and assigns

W I T N E S S E T H

WHEREAS, Cumberland County **YMCA** owns a parcel of land located at 70 through 88 Forest Avenue and 209 through 233 High Street in Portland, consisting of parcels shown on City of Portland Tax Map 36, Block G, Lots 20 through 25 (collectively the "**PROPERTY**"); and

WHEREAS, the parcel comprising the northerly section of the Preliminary Subdivision Plan, submitted by Sebago Technics dated 12-29-03 and revised _____ (see Exhibit 1), denoted as “leased parcel” shall be leased by “CCYSRO, L.P.” (hereinafter “Leased Lot”); and

WHEREAS, the entire parcel shown on the Site Plan and comprising (CBL Map 36, lots 20 through 25) is owned by Cumberland County **YMCA** (Lot II); and

WHEREAS, the **YMCA** will demolish two existing apartment buildings, one at 217 High Street and the other at 219 to 221 High Street, which buildings, as of 9/14/04, were recorded by the City as containing a total of seven (7) dwelling units and nine (9) rooming units, which buildings housed eleven occupants; and

WHEREAS, the **YMCA** and **CCYSRO** have requested a conditional rezoning of the Property in order to permit the development of thirty-two (32) low-income efficiency apartment units located on the Leased Lot and to be owned by **CCYSRO** (the “**PROJECT**”); and

WHEREAS, the number of new housing units exceeds the number of housing units being demolished and, thus, the proposal complies with Portland’s Ordinance, Division 29. Preservation and Replacement of Housing Units, Portland City Code, Sec. 14-483 to 14-488; and

WHEREAS, the **YMCA** intends to maintain the current uses in the existing **YMCA** facility at 70 through 88 Forest Avenue, which include a day care facility, membership services (i.e. athletic facilities, educational opportunities, etc.), administrative offices, eighty-six (86) single room occupancy units, and also provides space for a variety of recreational, community and social services; and

WHEREAS, the **YMCA** will change the primary entrance for Cumberland County **YMCA** members from Forest Avenue to High Street, by adding a new entrance, lobby and waiting area on the High Street side of the building; and

WHEREAS, the parking lot along High Street will have a minimum of thirty (30) spaces and will be rebuilt by the **YMCA** with a maximum of two curb cuts and landscaping; and

WHEREAS, the Portland Planning Board has determined that the rezoning and proposed development would provide needed housing in the City for low income individuals, is consistent with the housing component of the Comprehensive Plan and would not have an adverse impact on the surrounding residential community; and

WHEREAS, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code (the “Code”) §§ 14-60 to 14-62 and 14-264, and after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY**, subject, however, to certain conditions; and

WHEREAS, because of the unusual nature and unique location of the proposed development, it is necessary and appropriate to have the following conditions and restrictions imposed on this development in order to ensure that the rezoning is consistent with the **CITY’S** Comprehensive Plan; and

WHEREAS, the City Council of the City of Portland (hereinafter “**CITY**”) authorized the execution of this Agreement on June 7, 2004, by City Council Order No. 222-03/04, a true copy of which is attached hereto as Exhibit 2; and

WHEREAS, the **YMCA** and **CCYSRO** have requested that certain revisions to the Agreement be made to clarify the responsibilities of the **YMCA** and **CCYSRO**;

NOW, THEREFORE, in consideration of the rezoning, **YMCA** and **CCYSRO**, respectively, as set forth more specifically below, covenant and agree as follows:

1. The **YMCA** and **CCYSRO** request, and the Portland City Council approves, the following changes to the Conditional Rezoning Agreement previously approved by City Council Order 222-03/04 and recorded in the CCCRCD at Bk. 21883 Pg. 155. This amended agreement shall be recorded at the Cumberland County Registry of Deeds, but no later than sixty (60) days after the date of the Portland City Council approval of the Amendment. If this Agreement is not recorded by said date, then the conditional rezoning shall be null and void, and the zoning of the **PROPERTY** shall revert to the pre-existing Residential R-6 zone.

2. The **YMCA** will demolish two apartment buildings, one at 217 High Street and the other at 219 to 221 High Street. Prior to the issuance of the demolition permits, the **YMCA** shall provide to the City all information required by the Preservation and Replacement of Housing Units, Portland City Code, Sec. 14-483 to 14-488, shall comply with the requirements of said ordinance, and further ensures that all tenants of said buildings shall be offered replacement housing of a kind and quality similar to that being demolished. In addition, as a condition of this contract, the **YMCA** agrees that it shall maintain the adjacent property at 207 High Street so as to prevent deterioration and maintain code compliance of the building located thereon, for as long as the **YMCA** shall own said property.

3. The **LEASED LOT** is to be developed with a single four-story building consisting of thirty-two (32) efficiency apartments as depicted on the attached Site Plan submitted by Sebago Technics, dated 12-29-03 and revised _____, attached hereto as Exhibit 3, and Elevations, submitted by CWS Architects dated 4-2-04 and 3-9-04 and revised _____, attached hereto as Exhibit 4,.

4. Execution of this Agreement binds the **YMCA and CCYSRO**, and their successors and assigns, to the terms applicable to each respective entity, as set forth in this Agreement.

5. 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 **YMCA** or **CCYSRO** to the enforcement by the mortgagees of their rights under such mortgages, or to any change of ownership due to the transfer to an entity that is a wholly owned subsidiary or related entity of **YMCA**. Notwithstanding the provision contained herein and in paragraph 2, any change in ownership which includes the granting of a mortgage by the **YMCA** or the transfer of the property to any entity affiliated with the **YMCA**, shall include the obligation for the new owner to maintain 207 High Street so as to prevent deterioration and maintain code compliance of the building located thereon.

6. Permitted Uses.

I. **YMCA** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

a. Eighty six (86) rooming units presently existing within the main **YMCA** building at 70 Forest Avenue (delineated as **YMCA** building on the Site Plan), which rooming units share bathroom facilities and a common kitchen; and

b. The following additional uses shall be permitted in the main building of the **YMCA**: Fitness facilities (including swimming, racquet sports, gym sports, yoga, dance, running, biking, etc);

Day care and after school programming for school-age children;

Teen center, focused on fitness, counseling and educational programs;

Day camps for school age children, to be held during the school year and vacations;

Elder programs;

Office and staff facilities;

Teaching and educational programs;

Therapeutic services;

Other membership and community services traditionally provided by the **YMCA**.

c. A minimum of thirty (30) dual use parking spaces (i.e. parking used by occupants of the efficiency apartments, the SRO and members of the **YMCA**) on site will be provided as delineated in the parking layout plan attached hereto as Exhibit 3, provided that the **YMCA** and **CCYSRO** may make reasonable accommodations for tenants as necessary to comply with federal and state laws and regulations.

II. **CCYSRO** shall be authorized to establish and maintain the following uses on the Leased Lot: A new four-story structure, containing thirty-two (32) low-income efficiency apartments¹ to be constructed over the existing High Street parking lot in the vicinity of 231 High Street (delineated as Proposed 32 Unit (SRO) on Exhibit 3). There shall be on site laundry facilities in the basement, an office and vestibule on the first floor and common meeting rooms on the three upper floors, only for use of residents, guests and staff.

The uses specified herein supersede the otherwise permitted uses contained within the underlying Residential R-6 zone.

¹ For purposes of this Agreement, “efficiency apartment” is defined as a self-contained living unit of not less than two hundred and fifty (250) square feet of living space, with a kitchen (containing at minimum, a kitchen sink, stove with an oven and refrigerator), and a bathroom. Occupancy of an efficiency apartment shall be targeted to one person.

7. Upon approval of the Site Plan for the **PROJECT**, the **YMCA** shall implement a Parking Management Plan to be approved by the Planning Board during site plan review and any additional parking management initiatives otherwise required by the Portland Planning Board during site plan review, with the goal of informing members, on an ongoing basis, of the availability of off-street, off-site parking provided by the **YMCA**, including parking at the so-called Gateway Garage, or any other parking lot under the control of the **YMCA** within a four block radius of the site. Such Parking Management Plan shall be subject to twice per year monitoring by the Planning Authority and the Parking Authority, with reports submitted to the District One and District Two City Councilors.

8. The front entrance for the existing **YMCA** facility at 70 through 88 Forest Avenue will be used primarily for residents of the existing facility and the executive offices. A new entrance will be provided on High Street, which will primarily serve **YMCA** members and guests. The addition to the existing facility, as shown on the Site Plan, will create the new entrance, with a lobby and waiting area.

9. Performance guarantees will be required for entire buildout of the Site Plan shown on Exhibit 3. The amount and terms of such performance guarantee shall be determined by the Planning Authority at the time of Site Plan, Conditional Use and Subdivision approval of the project. The parking lot, landscaping, and front entrance to the **YMCA** designated on Exhibit 3 shall be completed prior to the issuance of a Certificate of Occupancy for the **YMCA**. Such improvements need not be installed prior to the issuance of a Certificate of Occupancy for the Leased Lot. The cost of the curb extensions for a crosswalk (as shown on the Site Plan) shall be included in a separate escrow account in favor of the City. If High Street is converted to a two-way street, prior to the installation of said curb extension, then the curb extensions shall not be required by the City, and the escrow money shall be returned to the **YMCA**.

10. **YMCA** shall be responsible for ongoing maintenance of the **PROPERTY**, including snow removal, salting, sanding, sweeping, lighting, trash pickup, maintenance, mowing, etc.

11. The **PROPERTY** will be developed substantially in accordance with the Site Plans and Elevations shown on Exhibits 3 and 4, submitted by Sebago Technics dated 12-29-03 and revised _____ and submitted by CWS Architects dated 4-2-04 and 3-9-04 and revised _____. In addition to the space and bulk requirements of paragraph 12 below and the applicable provisions of Article IV (subdivisions) and Article V (site plan) of the Code, the development proposal shall show a unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation, and other natural features of the site.

12. The Planning Board shall review and approve the project according to the Site Plan, Subdivision, and Conditional Use provisions of the Portland Land Use Code.

13. *Space and Bulk Requirements.* The following space and bulk requirements will apply to the efficiency apartment building (shown as Leased Lot on Exhibit 1):

Minimum lot size:	None.
Minimum area per dwelling (density):	450 sq. feet
Minimum street frontage:	50 feet.
Minimum front yard:	none required.
Minimum rear yard:	Five (5) feet
Minimum side yard:	Five (5) feet
Minimum lot width:	50 feet.
Maximum lot coverage:	100%
Maximum structure height:	55 feet
Open space ratio:	none required
Parking requirements:	minimum 30 parking spaces on site, and at minimum, eleven (11) spaces at an off site lot ² to be used by the YMCA and CCYSRO

14. **CCYSRO** agrees to maintain, for a period of ninety years, the rent levels and income requirements for the efficiency apartments on the Leased Lot as follows:

100% of units at 60% of Area Median Income.

The foregoing restriction on rent levels and income requirements will be secured by covenants and restrictions and conditions in any deeds conveyed out by **YMCA**.

15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A MRSA 4452) and City Ordinance. No alleged violation of this rezoning Agreement may be prosecuted, however, until the **CITY** has delivered written notice of the alleged violation(s) to the **YMCA** and **CCYSRO** and given the **YMCA** and **CCYSRO** an opportunity to cure the violation(s) within thirty (30) days of receipt of the notice. Following any determination of a zoning violation by the Court, and in addition to any penalties authorized by law and imposed by the Court, 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.

Notwithstanding anything to the contrary herein, in the event that either the **YMCA** or **CCYSRO** defaults on their respective obligations hereunder and fails to remedy said default within a reasonable period of time after written notice from the **CITY**, this Amended Conditional Rezoning Agreement shall remain in full force and effect with respect to the property occupied by the non-defaulting party. The **YMCA** and **CCYSRO** shall have no obligations to perform any of the duties or obligations of the other under this agreement, including any obligation to advance funds to satisfy the others obligations. Each party shall have the right (but not the obligation) to cure any default or violation of the defaulting party under this Agreement. The **CITY** shall have

no right to withhold approvals relating to the Leased Lot (including without limitation, building permits and certificates of occupancy) as a result of any default by the **YMCA**.

16. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **YMCA** and **CCYSRO**, respectively, as more fully set forth above, any entity affiliated with **YMCA** and **CCYSRO** which takes title to the **PROPERTY**, their successors or assigns, and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. The **YMCA** and **CCYSRO** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

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

WITNESS:

Cumberland County YMCA

By:
Its:

WITNESS:

CCYSRO LP

By:
Its:

STATE OF MAINE
CUMBERLAND, ss.

Personally appeared before me the above-named _____, in his capacity as President of Cumberland County **YMCA**, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said organization, a non-profit entity.

Notary Public/Attorney at Law

STATE OF MAINE
CUMBERLAND, ss.

Personally appeared before me the above-named _____, in his capacity as President of **CCYSRO LP**, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said organization, a non-profit entity.

Before me,

Notary Public/Attorney at Law

Exhibit 1: Subdivision Plan, submitted by Sebago Technics dated _____ and revised _____

Exhibit 2: Council Order June 4, 2004

Exhibit 3: Site Plan submitted by Sebago Technics, dated 12-29-03 and revised

Exhibit 4: Elevations, submitted by CWS Architects dated 4-2-04 and 3-9-04 and revised
