

Order 214-04/05

Given 1<sup>st</sup> reading: 4/4/05

Public Hearing, Amended & Passage: 4/25/05 9-0

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. 121-04/05  
RE: CONDITIONAL REZONING FOR  
The Iris Network  
189-201 Park Avenue**

**ORDERED**, that the language contained within the Conditional Rezoning at 189-201 Park Avenue be amended and superceded by the following language. This amendment is intended to clarify the original intent of the Council to allow for building within the existing R-5 zone but to modify the parking and density requirements.

**AMENDED  
CONDITIONAL ZONE AGREEMENT  
THE IRIS NETWORK**

**AGREEMENT** made this \_\_\_ day of \_\_\_\_\_, 2005 by **THE IRIS NETWORK** a not for profit corporation with a principal place of business located at Park Avenue, Portland, Maine 04101 (hereinafter sometimes referred to as "**IRIS**").

**W I T N E S S E T H**

**WHEREAS, IRIS** seeks to develop property located at 189- 201 Park Avenue, in the City of Portland and identified on the City of Portland on the Assessor's maps at Map \_\_\_, Block \_\_, Lot(s) \_\_\_\_ (hereinafter referred to as the "**PROPERTY**"); and

**WHEREAS, IRIS** proposes to renovate the **PROPERTY** from offices and sixteen (16) SRO units to offices and twenty four (24) 1 bedroom residential units and six (6) 2-bedroom units. The residential units will serve the visually impaired and blind population; and

**WHEREAS, the PROPERTY** is currently located in the R-5 zoning district; and

**WHEREAS, research** has shown that the parking needs for persons with visual impairments is significantly lower than the residential parking requirements contained within the R-5 zone; and

**WHEREAS, the purpose** of this conditional rezoning is to allow adiminished parking requirement and an increased density requirement than would otherwise be allowed in the R-5 zone; and

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

**WHEREAS**, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and will establish uses that are consistent with the uses in the original zones and the surrounding areas; and

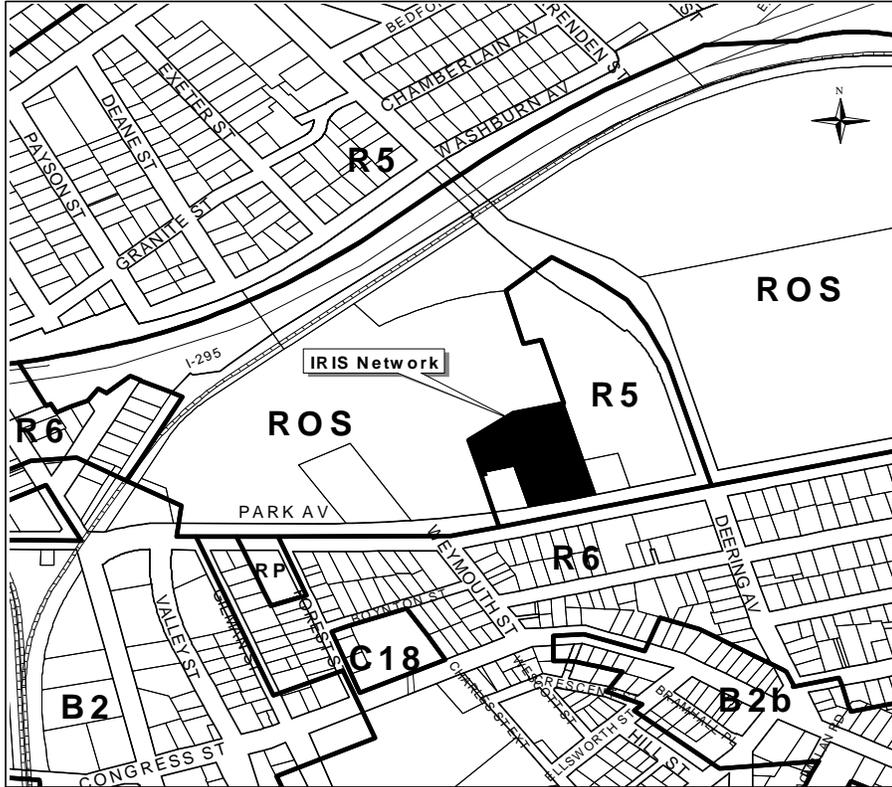
**WHEREAS**, the **CITY** has determined that the proposed development will be designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal through the design and implementation of significant public traffic improvements, stormwater drainage improvements, landscaping and buffering; and

**WHEREAS**, the **CITY** has determined that because of the unusual nature and unique location of the proposed development and the need for significant public improvements it is necessary and appropriate to have conditions and restrictions which ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**WHEREAS**, on \_\_\_\_\_, 2005, the **CITY** authorized amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions become part of the **CITY'S** zoning requirements; and

**NOW, THEREFORE**, in consideration of the rezoning, **IRIS** covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council on rezoning the **PROPERTY**, by Council Order No. \_\_\_\_\_, the City amends the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City Code, by adopting the map change amendment for the **PROPERTY** shown herein.



Proposed Rezoning for  
 IRIS Network, 189 Park Ave., from R5 to R7  
**IRIS Network, 189 Park Ave.**

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

**March 2005**

2. This rezoning shall apply only while **IRIS**, or an entity controlled by or affiliated with **IRIS**, owns the **PROPERTY**, the housing thereon is reserved for use by visually impaired individuals, and the 16,800 square feet of office use if primarily related to the operation of **IRIS** or any successor not-for-profit entity. Otherwise, the **PROPERTY** shall revert to the R-5 or any successor zone.
3. Notwithstanding the density requirements in the underlying R-5 zone, **IRIS** shall be allowed to renovate the existing buildings on the **PROPERTY** from offices and sixteen (16) SRO units to offices and twenty four (24) 1 bedroom residential units and six (6) 2-bedroom units. The residential units will serve the visually impaired and blind population. **IRIS** agrees to maintain, for a period of ninety (90) years, the following controls on the residential portion of the development:

Marketing the residential units to visually impaired individuals  
with incomes at 50% and 60% of the Area Median Income

These affordability restrictions shall be secured by covenants and restrictions and conditions in any deeds conveyed out by **OWNER**.

4. Notwithstanding the parking requirements of the underlying R-5 zone, the following parking requirements shall be met:
  - a. Parking: A total of 54 parking spaces shall be provided as follows:
    - 41 spaces available for office uses on the **PROPERTY**
    - 13 spaces available for residential use on the **PROPERTY**
5. The **PROPERTY** shall otherwise conform to the zoning requirements of the R-5 zone
6. The property shall be developed substantially in accordance with the site plan shown on Attachment 2 and shall be reviewed by the Portland Planning Board under the subdivision and site plan provisions of the Portland City Code.
7. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall bind and benefit **IRIS**, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. Within 60 days of the rezoning by the City Council, **IRIS** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property. The **DEVELOPER** shall provide to the City the Book and Page number of said recording.
8. 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 portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
9. Except as expressly modified herein, the development, use, and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.
10. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A MRS 4452) and City Ordinance. Following any determination of a zoning violation 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 Contract Rezoning be modified or the **PROPERTY** rezoned.

Dated this \_\_\_ day of \_\_\_\_\_, 2005.

The Iris Network

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

Its: \_\_\_\_\_

State of Maine  
Cumberland, ss.

Date:

Personally appeared the above-named \_\_\_\_\_, in his capacity as \_\_\_\_\_ of The Iris Network and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Maine Workforce Housing LLC.

\_\_\_\_\_  
Notary Public