

Order 161-05/06
Given first reading on 2/6/06
Public Hearing & Passage: 2/22/06 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. 92-03/04

AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR:
49-69 Frederic Street, Portland, Maine

ORDERED, that Council Order No.92-03/04, adopted on November 3, 2003 is hereby amended to reflect a change in one of the owners of the property and an allocation of responsibilities under the rezoning at 49-69 Frederick Street, Portland, Maine as an amendment to 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.

AMENDED AND RESTATED CONTRACT ZONE AGREEMENT

YC PORTLAND, LP AND
AVESTA FORE RIVER HOUSING, LP

AGREEMENT made this ____ day of _____, 2005 by **YC PORTLAND, LP**, a Maine limited partnership with a place of business in Portland, Maine and **AVESTA FORE RIVER HOUSING, LP**, , a Maine limited partnership with a place of business in Portland, Maine, and each of their successors and assigns (hereinafter collectively "**OWNER**").

W I T N E S S E T H

WHEREAS, Avesta Housing Development Corporation took title to a parcel of land located at 49-69 Frederic Street in Portland, consisting of parcels shown on City of Portland Tax Map 76, Block A, Lots 3 through 8 and Map 67, Block K, Lot 19, and more particularly

described in a deed from Ralph Romano III to AVESTA Housing Development Corporation dated March 18, 2003 and recorded in the Cumberland County Registry of Deeds in Book 19064, Page 96 (collectively the “**PROPERTY**”); and

WHEREAS, Avesta conveyed a portion of the **PROPERTY** to YC Portland, LP, by deed dated June 18, 2004 and recorded in the Cumberland County Registry of Deeds in Book 21435, Page 30 and re-recorded in Book 21673, Page 121 (such land, with the buildings and improvements thereon, is sometimes referred to in this Agreement as “Logan Place”), and Avesta conveyed the remaining **PROPERTY** to Avesta For River Housing, LP by deed dated May 17, 2005 and recorded in said Registry of Deeds in Book 22655, Page 192 (such land, with the buildings and improvements thereon, is sometimes referred to in this Agreement as “Fore River Apartments”); and

WHEREAS, OWNER has requested a rezoning of the **PROPERTY** in order to permit the development of a two-phase housing project, the first phase, Logan Place, to consist of up to thirty (30) low-income efficiency apartment units with related social services, and the second phase, Fore River Apartments, to consist of up to twenty (20) units of one- and two- bedroom mixed-income family apartments; and

WHEREAS, OWNER’s funding sources require that each of the two phases be held in separate ownership; and

WHEREAS, the parcels comprising Chart 76 Block A Lot 5 through 8 and a portion of Lot 4 are owned by YC Portland LP (Phase I); and

WHEREAS, the parcels comprising Chart 67 Block K Lot 19, Chart 75 Block A Lot 3 and a portion of Lot 4 are owned by Avesta Fore River Housing, LP (Phase II); and

WHEREAS, the use (in 2003) of that portion of the **PROPERTY** comprising the proposed second phase, namely a commercial landscaping business with internal office and garage and outside storage and a small building for general office use, will continue until commencement of development of such second phase, which shall be not later than June 15, 2006; and

WHEREAS, the Portland Planning Board determined the rezoning and proposed development would provide needed housing in the City, both low income restricted (Phase I) and low/moderate income restricted (Phase II) as is consistent with the housing component of the Comprehensive Plan, and would not negatively impact 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 Land Use 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** as aforesaid, subject, however, to certain conditions; and

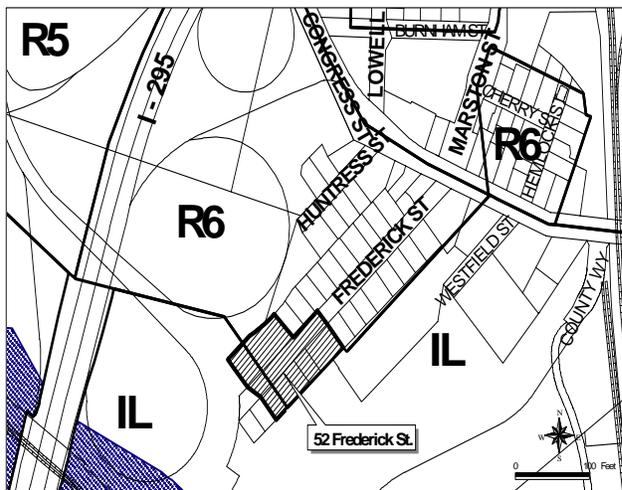
WHEREAS, the **CITY** has determined that because of the unusual nature and unique location of the proposed development it is necessary and appropriate to impose by agreement the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY’S** comprehensive land use plan; and

WHEREAS, the City Council of the **CITY** authorized the execution of this Agreement on November 3, 2003, by City Council Order No. 92, a true copy of which is attached hereto as Attachment 1 (the “Original Order”), and the original Contract Zone Agreement, dated December 1, 2003, was duly executed and recorded at the Cumberland County Registry of Deeds in Book 20632, Page 330 (the “Original Agreement”); and

WHEREAS, YC Portland, LP and Avesta Fore River Housing, LP have requested that revisions to the Original Agreement be made to clarify their respective responsibilities;

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

1. Effective upon the recording of this Agreement at the Cumberland County Registry of Deeds, but no later than thirty (30) days after the date of Portland City Council approval, 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 Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Code) by adopting the map change amendment shown below. If this Agreement is not recorded by said date, then the contract rezoning shall become null and void and the zoning of the **PROPERTY** shall revert to the pre-existing R-6 and I-L zones.



**Proposed Zone Change
from R6, Residential, and IL, Industrial, to Contract Zone
for 52 Frederick Street**

Map produced by the City of Portland's Department of Planning and Urban Development and the GIS Workgroup, July 2003

2. The **PROPERTY** is to be developed in two phases, Phase I to consist of up to thirty (30) efficiency apartments, known as Logan Place, and Phase II to consist of up to twenty (20) apartments, known as Fore River Apartments, all as more fully set forth below. (See Attachment 2 and Attachment 3)

Phase I shall be owned by YC Portland LP, or its successor, and shall consist of that portion of the **PROPERTY** shown on Attachment 4A and Attachment 5.

Phase II shall be owned by Avesta Fore River Housing, LP, or its successor, and shall consist of that portion of the **PROPERTY** shown on Attachment 2 and Attachment 3.

3. Execution of this Agreement binds both YC Portland LP and Avesta Fore River Housing, LP, and their respective successors and assigns, to the terms of Phase I and Phase II as set forth in this Agreement.
4. Any change in ownership of either Phase I or Phase II shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to the granting of mortgages by **OWNER** or to the enforcement by the mortgagees of their rights under such mortgages. The Planning Board shall have a maximum of sixty (60) days from the City's receipt of a complete application for a change in ownership to act on the application. Should the Planning Board be unable to respond within such time frame, the application shall be deemed approved. Pursuant to site and subdivision review, the Planning Board previously approved the change in ownership of Phase II from Avesta Housing Development Corporation to Avesta Fore River LP.
5. Permitted Uses. **OWNER** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

a.

Within Phase I, YC Portland, LP shall construct up to thirty (30) efficiency apartments. For purposes of this Agreement, "efficiency apartment" is defined as a self-contained living unit of no less than two hundred and fifty (250) square feet of living space, with a kitchen (at minimum, a kitchen sink, stove and refrigerator), and a bathroom. Each efficiency apartment shall be occupied by no more than one (1) person.

Four (4) offices and a conference room within the Phase I building shall be allowed for use by the twenty four (24) hour on-site staff and related personnel, who may provide the following services to the residents:

- provision of case management;
- life skills training;
- mental health and substance abuse counseling;
- employment, educational and legal services.

In addition, one of the four offices noted above may be used by the **OWNER** for property management space for the **PROPERTY** only. Such space shall not constitute a property management office for any other property owned or operated by **OWNER** or its successors or assigns.

There shall be on site laundry facilities and a common meeting room on each floor of the building, all for use of residents and staff only.

Phase I shall have parking in an amount from eight (8) to twenty (20) spaces.

b.

Within Phase II, Avesta Fore River Housing, LP shall construct up to a total of twenty (20) apartment units, containing one and two bedroom dwelling units (or any combination thereof), together with an office within the Phase II building for on-site property management for the **PROPERTY** only. Such space shall not constitute a property management office for any other property owned or operated by **OWNER** or its successors or assigns.

Phase II shall have parking in an amount no less than 1.75 spaces per unit.

Phase II shall also be required to provide not less than 1200 square feet in playground area and equipment for use by residents of both Phase I and Phase II.

- c. Use of a portion of the Phase II site (identified as “existing garage – presently leased by LST Landscaping Co.” on Attachment 4A) currently containing a landscape business, as well as a separate small office building (identified as “existing office” on Attachment 2) to be used for general office purposes, may continue for a period ending on June 15, 2006.

The uses specified herein supersede the otherwise permitted uses contained within the underlying R-6 and I-L zones.

6. 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. Loaming and seeding the land area comprising a portion of Phase I and a portion of Phase II designated on Attachment 2, note 9, shall be accomplished prior to the issuance of a Certificate of Occupancy for Phase I, unless construction of Phase II has commenced. This condition ensures a complete site in the event Phase II is never built.

7. **OWNER** shall be responsible for ongoing maintenance of the **PROPERTY**, including snowplowing, salting, sanding, sweeping, lighting, trash pickup, playground maintenance, mowing, etc.

8. The **OWNER** shall grant to the City a fifty (50) foot easement in the vacated portion of Frederic Street as delineated by note 2 on Attachment 6. This easement shall be for purposes of locating, installing and maintaining utilities; vehicle ingress and egress of **CITY** vehicles (snowplows, trash trucks and other **CITY** vehicles).

In addition, the **OWNER** shall grant to the **CITY** a forty (40) by fifty (50) foot easement to allow for snowplows, trash trucks and other City vehicles to enter and turn around at the southwesterly corner of Phase I (See Attachment 7A), which easement shall be voluntarily extinguished by the **CITY** if and when the Turn Around Easement for Phase II is constructed (See Attachment 6 note 1 “Turn around Easement”). The **OWNER** shall not be required to pave the Phase I Turn Around Easement, provided (i) the same is built of compacted gravel, (ii)

construction of Phase II Turn Around shall begin no later than June 15, 2006, at the conclusion of which the Phase II Turn Around Easement shall be paved according to City standards; and (iii) the **OWNER** escrows with the **CITY** an amount equal to the estimated cost of paving the Phase II Turn Around Easement, such escrow to be made at the same time as the establishment of the performance guarantees for Phase I. If the Phase II Turn Around should not be constructed as provided herein, then the owner will pave the Phase I Turn Around on or before December 31, 2006. If the Phase II Turn Around should not be constructed, then the City may apply the escrow to the costs of paving the Phase I Turn Around.

The **OWNER** shall also grant to the **CITY** a thirty (30) foot easement at the northwesterly corner of Phase II for snowplows, garbage trucks and other **CITY** vehicles to enter and turn (See Attachment 6, note 1. The **OWNER** shall pave this easement according to City standards. Such easements shall be granted prior to the development of Phase I. The form of such easements shall be reviewed and approved by Corporation Counsel in connection with the Site Plan approval process for Phase I and Phase II.

Finally, the **OWNER** shall grant to the **CITY** a recreational easement across its property in an area and width acceptable to the **CITY** for purposes of providing pedestrian, bicycle and similar non-motorized (other than wheelchair and emergency vehicles, which shall be permitted) as well as other pedestrian recreational uses by the public across its property to the I-295 connector roadway.

In addition, a general access/vehicular and pedestrian easement by and between YC Portland LP and Avesta Fore River Housing, LP shall be granted such that each Phase of the **PROPERTY** is able to access the sites as depicted on Attachment 3. YC Portland LP shall also grant a parking easement substantially in accordance with the site as depicted on the Master Plan, and as delineated on Attachment 3 for twelve (12) full and seven (7) partial motor vehicles to be parked within the confines of Phase I.

As evidenced by issuance of a certificate of occupancy for Logan Place, the **CITY** has approved of the foregoing easements.

9. The **PROPERTY** will be developed substantially in accordance with the Site Plans and Elevations shown on Attachment 2 and 3, submitted by Mitchell and Associates dated July 25, 2003 and revised October 8, 2003.

10. The Planning Board shall review and approve Phase I and Phase II according to the site plan and subdivision provisions of the Portland Land Use Code.

11. 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, development proposals for both phases shall demonstrate 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. *Space and Bulk Requirements.* The following space and bulk requirements shall apply to each lot comprising Phase I and Phase II:

- | | |
|---|--|
| a. Minimum lot size: | None. |
| b. Minimum area per dwelling (density): | 725 SF. |
| c. Minimum street frontage: | 50 feet. |
| d. Minimum front yard: | none required. |
| e. Minimum rear yard: | Ten (10) feet between structures adjacent to abutting residence. |
| f. Minimum side yard: | Ten (10) feet between structures adjacent to abutting residence. |
| g. Minimum lot width: | 50 feet. |
| h. Maximum lot coverage: | Phase I : 80%.
Phase II: 80%. |
| i. Maximum structure height: | 45 feet. |
| j. Open space ratio: | Phase I: 20%.
Phase II: 20%. |
| k. Parking requirements: | |
| Phase I: | 8 to 20 parking spaces. |
| Phase II: | a minimum of 1.75 spaces per unit. |

13. The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the underlying I-L and R-6 zones.

14. YC Portland, LP agrees to maintain, in perpetuity, the rent levels and income requirements for Phase I as follows:

30% of units at 40% of Area Median Income

30% of units at 50% of Area Median Income

40% of units at 60% of Area Median Income

These affordability restrictions shall be secured by covenants and restrictions and conditions in any deeds conveyed out by YC Portland, LP.

15. Avesta Fore River Housing, LP agrees to maintain, in perpetuity, the rent levels and income requirements for Phase II as follows:

No less than 40% of the units shall remain affordable to residents whose income does not exceed 60% of the then current Area Median Income as published periodically by the Federal Housing and Urban Development (HUD) agency.

These affordability restrictions shall be secured by covenants and restrictions and conditions in any deeds conveyed out by Avesta Fore River Housing, LP.

16. In the event of a breach by **OWNER** or its successors or assigns of the zoning provisions contained herein (whether such breach is determined to have occurred by the Zoning Administrator, the Zoning Board of Appeals or a court), the Planning Board, after notice and hearing, may recommend to the City Council that the contract zone and this Agreement be amended, or be rescinded, such rescinding to result in the termination of this Agreement and a reversion of the **PROPERTY** to the R-6 and I-L zones in place before the execution of this Agreement.

Notwithstanding anything to the contrary herein, in the event that either YC Portland, LP or Avesta Fore River Housing, LP., or their approved successors and assigns, defaults on its respective obligations hereunder and fails to remedy said default within a reasonable period of time after written notice from the **CITY**, this Amended and Restated Contract Zone Agreement shall remain in full force and effect with respect to the portion of the **PROPERTY** occupied by the non-defaulting party. Neither YC Portland, LP nor Avesta Fore River Housing, LP, shall have any obligation to perform any of the duties or obligations of the other party under this agreement, including any obligation to advance funds to satisfy the other party's 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 Fore River Apartments (including without limitation, building permits and certificates of occupancy) as a result of any default by YC Portland, LP.

The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **OWNER**, any entity affiliated with **OWNER** that takes title to the **PROPERTY**, their successors and 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.

OWNER 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 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.

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 Portland City Code and any applicable amendments thereto or replacement thereof.

WITNESS:

YC PORTLAND, LP

BY: PINETREE HOUSING
DEVELOPMENT LLC, its General
Partner

By: Avesta Housing
Development Corporation,
its Sole Member

By _____
Dana Totman, its President

WITNESS:

AVESTA FORE RIVER HOUSING, LP

BY: PINETREE HOUSING
DEVELOPMENT LLC, its General
Partner

By: Avesta Housing
Development Corporation,
its Sole Member

By _____
Dana Totman, its President

STATE OF MAINE
CUMBERLAND, ss.

_____, 2005

Personally appeared before me the above-named Dana Totman, in his capacity as President of Avesta Housing Development Corporation, Sole Member of Pinetree Housing Development LLC, General Partner of YC Portland, LP, and Avesta Fore River Housing, 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 corporation, limited liability company and limited partnerships.

Before me,

O:\OFFICE\PENNY\orders\rezoning
\FrederickStreetAmendment012606.doc

Notary Public/Attorney at Law