

**JOINT DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF PORTSMOUTH AND HARBORCORP LLC
FOR A DOWNTOWN HOTEL, CONFERENCE CENTER AND PARKING GARAGE**

This Joint Development Agreement is entered between the CITY OF PORTSMOUTH, NEW HAMPSHIRE (hereinafter referred to as "the City"), a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, and HARBORCORP LLC (hereinafter referred to as "HarborCorp"), a Maine limited liability company with a principal place of business at 55 Lisbon Street, Suite 2400, Lewiston, Maine 04243-0660.

PRELIMINARY

WHEREAS; the City has an interest in securing additional public parking in the downtown area of the City; and

WHEREAS, the City has an interest in the diverse economic benefits which would be created for the City by the construction and operation of a conference center located in the City's downtown capable of servicing not less than 1,000 persons for a sit down meal; and

WHEREAS, HarborCorp desires to construct new hotel facilities to complement existing hotel facilities currently located on Map 118, Lot 28, Map 124, Lot 12 and Map 125, Lot 21 of the tax maps of the City, all properties owned by it and located between Market Street, Deer Street, Maplewood Avenue and Russell Street, and being bounded on the North by the property of Boston & Maine Railroad; and

WHEREAS, included within HarborCorp's plans described in the previous paragraph is the development of a quality hotel with a conference center of not less than 18,500 square feet capable of servicing not less than 750 persons for a sit down meal or 1,200 person seated theater

style, in one room, (hereinafter, the 1,000 seat conference center) in the City's downtown area (the "Project"); and

WHEREAS, in order for HarborCorp to construct the Project (including the minimum 1,000 seat conference center desired by the City), the economic feasibility of the Project requires that the City enter an agreement with HarborCorp for the construction and operation of a parking facility of at least 657 parking spaces (the "Parking Garage") under the terms and conditions to be described herein.

NOW, THEREFORE, the City and HarborCorp enter this binding agreement to proceed with the construction of the Project (including the creation of the minimum 1,000 seat conference center as described above) and the construction and operation of the Parking Garage under the following terms and conditions:

HARBORCORP OBLIGATIONS

1. HarborCorp will perform or cause to be performed all of the design, engineering and construction of the Project (including the conference center) and the Parking Garage, except as expressly provided otherwise by this agreement. The City will timely submit to HarborCorp the general specifications for a municipal public garage for incorporation into the Parking Garage design.
2. All design, engineering and construction by HarborCorp of the Project (including the conference center) and the Parking Garage shall be done in accordance with all applicable laws and regulations of the federal, state and local governments, including, but not limited to, compliance with all building codes, planning ordinances and regulations and zoning ordinances and regulations of the City.
3. Except as expressly indicated otherwise in this agreement including Item 1 above, HarborCorp shall determine the design and specifications of the Project and the Parking Garage.
4. HarborCorp shall permit, design, engineer and construct the Parking Garage as a public parking garage and to meet in all respects design and specifications approved by the City prior to the commencement of construction. The Parking Garage shall include ground level retail space as shown on the ICON plan dated June 28, 2005 with the addition of cantilevered construction in the southwest corner to accommodate additional spaces.

5. Prior to the commencement of construction of the Parking Garage, the City and HarborCorp will agree in writing as to the final design, construction specifications and costs, including those categories of hard and soft costs for which the City shall be responsible at completion (not to exceed \$15,000,000) of the Parking Garage. Absent such agreement, neither party shall have any further obligations hereunder.
6. HarborCorp shall undertake and bear all design, engineering and construction costs and all risks normally associated with the development of real estate for all aspects of design, engineering and construction contemplated by this agreement. Except, however, HarborCorp shall be reimbursed by the City in the one-time lump sum payment for certain of those costs as described in Item F of this agreement.
7. HarborCorp agrees to accomplish its design, engineering and construction obligations under this agreement in accordance with the critical path schedule attached hereto as Exhibit A; provided, however, time for the performance thereof shall be extended by a period equal to any delay caused by or resulting from act of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of energy, labor, materials or equipment, government regulations, or other causes beyond HarborCorp's reasonable control, whether such time be designated by a fixed date, a fixed time or a "reasonable time".
8. At the closing on the construction loan to finance the construction of the Project, HarborCorp will convey to the City for \$1.00 and in consideration of the mutual covenants and agreements herein contained certain parcels of property (expressly excluding the Parking Garage parcel which shall be conveyed as described in the next sentence) set forth on Exhibit B "Land Exchange Plan" attached hereto determined by HarborCorp and the City necessary or desirable to be conveyed to the City as part of the overall development of the Project (including the conference center) or the Parking Garage. At such time as described in Item F below, HarborCorp will convey to the City by marketable title fee simple absolute the Parking Garage and all of the real estate determined by the City's Planning Board (substantially based upon HarborCorp's site plan application to the Planning Board) to be a suitable lot on which to locate the Parking Garage, for \$1.00 and in consideration of the mutual covenants and agreements herein contained.
9. HarborCorp agrees on behalf of itself and its successors and its assigns to maintain and operate the minimum 1,000 seat conference center for as long as the City has any obligation to HarborCorp or any successors to HarborCorp under this agreement or any agreement contemplated hereunder.
10. HarborCorp will design, engineer and construct all off-site sidewalk, roadway and traffic improvements as (i) may reasonably be required by the Planning Board of

the City in response to HarborCorp's site plan application, and (ii) in accordance with City ordinances, all in connection with any of the construction contemplated by this agreement.

11. All records of HarborCorp relating to the design, engineering or construction of the Project (including the conference center) and the Parking Garage (including such associated Project records of all persons or entities working in conjunction with HarborCorp, excluding lawyers) shall be made available for review and copying by the City at its sole cost and expense upon reasonable request. However, the City agrees that only those records relating to the Parking Garage shall be deemed public records and that all other records and documents provided by HarborCorp pursuant to this provision shall be deemed confidential and protected from disclosure by the City to the greatest extent allowed by law, except to the limit that such records might be required to be produced for litigation purposes.
12. Notwithstanding anything to the contrary listed in Items 1 through 11, inclusive, or otherwise in this agreement, in the event the Project is no longer feasible (e.g., increased interest rates, change in market conditions, changes in the national and regional economy, force majeure circumstances or other similar matters), HarborCorp shall have the option, in its reasonable discretion, (i) if prior to the closing on the construction loan, to terminate this agreement, and neither party will have any further obligations hereunder, or (ii) if after the closing on the construction loan and the commencement of construction on the Parking Garage (but prior to commencing construction on the Project), then HarborCorp shall complete the construction of the Parking Garage in accordance with the terms hereof, the City will fulfill its obligations concerning the Parking Garage as described herein, including, without limitation, as set forth in Items F and H below, but HarborCorp shall not be required to commence construction on the Project; provided, however, upon notice to the City of the occurrence of events described in clause (ii) above, the City shall have the option to either (A) terminate this agreement, and neither party will have any further obligations hereunder or (B) fulfill its obligations under the Parking Lease except that so long as the 1,000 seat conference center described above is being provided by HarborCorp, the cost of the parking spaces under the Parking Lease as set forth in Item H below shall be at the then existing 24 hour parking rate for municipal parking garages in Portsmouth, New Hampshire.

OBLIGATIONS OF THE CITY

- A. As soon as practical after the execution of this agreement by the City and HarborCorp, the City, at its election, may select an appropriate professional consultant to review and approve the detailed specifications for the design, engineering and construction of the Parking Garage to be prepared as described in Items 1 and 4 above.

- B. The City shall submit the name of the Parking Garage consultant to HarborCorp for its review and approval prior to selection by the City.
- C. After such approval, the City may then engage the Parking Garage consultant, at the expense of the City, to complete its work as described above in a manner calculated to allow HarborCorp to maintain the critical path for construction described in Items 1 and 4 of this agreement. Said Parking Garage consultant (or the City if no consultant is engaged by the City) shall provide to HarborCorp its written approval of the said design plans and specifications for construction of the Parking Garage prior to the construction closing so long as the Parking Garage is designed in accordance with Items 1 and 4 above. Additionally, from time to time during the construction of the Parking Garage, at the request of HarborCorp, the Parking Garage consultant (or the City) shall provide interim written approvals that the Parking Garage is being constructed in accordance with the approved plans and specifications (as may be amended from time to time subject to the City's approval), which approval shall not be unreasonably withheld, conditioned or delayed. Except for defects to the Parking Garage discovered upon final inspection prior to closing, such written approvals of the plans and specifications and of the completed stages of construction by the City's Parking Garage consultant (or the City) shall be conclusive evidence (solely for the purpose of meeting a precondition for closing) that the Parking Garage has been constructed as required by the City, and thereby obligating the City's purchase as described in Item F below. This provision shall not affect the City's legal right to redress with respect to defects in the design, engineering or construction of the garage discovered after the completion of construction. Notwithstanding anything to the contrary herein, if the City does not provide its prior written approval to the design and construction specifications of the Parking Garage before the commencement of construction, the City may terminate this agreement and neither party will have any further obligations hereunder.
- D. The City, on or before December 31, 2005, will submit the bond resolution for financing the purchase of the Parking Garage to the City Council for its approval. Failure to obtain Council approval of the City's bond resolution will give each party grounds to terminate this agreement without any further obligation hereunder.
- E. The City will design, engineer and construct at its sole cost and expense the relocation of any municipal water, storm water drainage or sewer facilities made necessary by any aspect of the construction of the Parking Garage.
- F. Ninety (90) days prior to the completion of the Parking Garage in accordance with the approvals described in Item C above, HarborCorp shall notify the City of a firm date that the Parking Garage shall be ready for operation, which date shall be the closing date for conveying the Parking Garage to the City (the "Garage Closing Date"). After notification to the City, the City will have an opportunity to inspect and accept the Parking Garage prior to the Garage Closing Date. The City

shall not be obligated to accept the Parking Garage if it is not constructed in accordance with the previously approved and agreed upon plans and specifications, and any change orders mutually agreed to by the parties hereto. On the Garage Closing Date, HarborCorp agrees to sell, and the City agrees to buy, the Parking Garage by a one-time lump sum payment to HarborCorp in an amount (supported by appropriate documentation) equal to those on-site construction costs, including mutually approved third party soft costs and costs for resolution of environmental issues, ledge removal and on-site utility relocation paid by HarborCorp directly made necessary for the construction of the Parking Garage [as distinct from the remaining elements of construction contemplated by this agreement]; provided, however, the total costs for the Parking Garage shall not exceed \$15,000,000 plus the cost of any City approved change orders. On the Garage Closing Date, 150% of the estimated costs for completing "punch list" items will be placed in an escrow account for disbursement to HarborCorp upon timely completion of said punch list satisfactory to the City.

- G. The City hereby agrees to provide to HarborCorp an \$800,000 loan for a period of up to twenty (20) years at 2% per year interest from the City's UDAG program income to pay for the cost of any off-site sidewalk, roadway and traffic improvements mandated by the Planning Board of the City in connection with any of the Project construction contemplated by this agreement. Said \$800,000 UDAG loan shall be made on terms and conditions set by the Economic Development Commission and reasonably acceptable to HarborCorp.
- H. Subject to the remaining provisions of this agreement including Item 11 above, for so long as HarborCorp, its successors and assigns, provide the 1,000 seat conference center described above, the City agrees to operate a public parking facility in the Parking Garage. The Parking Garage shall be operated in accordance with the City's normal practices and policies for operating parking garages, except that so long as HarborCorp (and its successors and assigns) shall continue to operate the said conference center at the Project, the City shall provide HarborCorp (and the owner of the Sheraton, as applicable) with the following parking accommodations:
1. The City shall provide 325 parking spaces (i.e., 188 for the Sheraton parking and 137 for HarborCorp's parking), either through (i) two (2) long-term leases of not less than seventy (70) years total consisting of a twenty (20) year initial term with two (2) automatic renewal terms of twenty-five (25) years (collectively, the "Parking Lease") or (ii) for the Sheraton parcel parking, a deeded perpetual parking easement (the "Parking Easement"); provided however, HarborCorp shall use its best efforts to convert its Sheraton parcel parking spaces to the Parking Lease; all references to a Parking Lease above shall include the Parking Easement, if applicable.

2. On a 24 hour a day, seven (7) day a week basis, the City shall reserve for use by HarborCorp or its designees (including the owner of the Sheraton Hotel parcel) the aforementioned 325 parking spaces in the Parking Garage. The said 325 reserved parking spaces shall be exclusively designated or reserved in the Parking Lease or the Parking Easement, as applicable, provided, however, pursuant to further Parking Garage Management Agreements between the City and HarborCorp and between the City and the owner of the Sheraton, said 325 parking spaces shall not be specific designated parking spaces, but rather available spaces wherever they may be found within the Parking Garage (subject to default provisions in the said Parking Garage Management Agreements and the right of HarborCorp and the Sheraton to conduct verification testing from time to time). Such Parking Garage Management Agreements shall provide that as long as the City is able to meet any actual demand for parking generated by HarborCorp or its designees (including the owner of the Sheraton Hotel parcel) up to the 325 parking spaces in the Parking Garage, the City may utilize any portion of the Parking Garage at its discretion, including allowing for public parking at the municipal market rates in any parking space in the Parking Garage. Remedies under the said Parking Garage Management Agreement for City's default shall include a right to terminate the Parking Garage Management Agreement resulting in the Parking Lease controlling HarborCorp's specific designated parking spaces.

3. For so long as HarborCorp (and its successors and assigns) continue to operate the said conference center, HarborCorp shall pay to the City for said 325 parking spaces a monthly payment equal to the Municipal Monthly Parking Rate (as hereinafter defined) minus the agreed upon value of HarborCorp's land (\$1,850,000) upon which the Parking Garage is constructed amortized over twenty (20) years as shown on Table 1 attached hereto and incorporated by reference. The "Municipal Monthly Parking Rate" herein shall mean the 24 hour parking rate for municipal garage parking spaces established through the City's ordinances and budget resolutions. Provided, however, the parties hereto agree that the Municipal Monthly Parking Rate for lease years one (1) through five (5), inclusive, shall be \$100 per month, and that during the sixth (6th) through the end of the twentieth (20th) year of operation of the Parking Garage, the then existing Municipal Monthly Parking Rate shall not exceed the maximum rate as shown on said Table 1. During years twenty-one (21) through seventy (70), inclusive, HarborCorp shall pay to the City for said 325 parking spaces a monthly payment equal to the Municipal Monthly Parking Rate; provided, however, such payment shall not exceed the market rate for downtown parking garages in Portsmouth, New Hampshire as determined by an independent MAI real estate appraisal. References to HarborCorp in this paragraph 3 shall include, as applicable, the owner of the Sheraton parcel, and references to the Parking Lease shall include the

proposed parking lease with the owner of the Sheraton parcel for the 188 parking spaces described in Item H.1 above, which Parking Lease with the owner of the Sheraton parcel shall be subject to prior written approval of the City and which shall not afford greater rights to the owner of the Sheraton parcel than are held by HarborCorp under this agreement and which shall be assigned by HarborCorp to the City on the Garage Closing Date.

4. The parties hereto shall negotiate and enter an agreement under which the City shall make available to HarborCorp up to an additional 275 parking spaces in either the Parking Garage, or in another proximate City facility for those occasions when HarborCorp, by prior arrangement with the City determines that use of the conference center will require such additional spaces. This agreement shall be subject to the prior review and approval by bond counsel for the City to assure that it will not affect the tax exempt status of any portion of the tax exempt bonds which might be issued by the City in order to partially fund its obligations under this agreement.
 5. The City shall provide access through the Parking Garage to a separate HarborCorp parking area to be located underneath the Project pursuant to a permanent easement for ingress and egress reserved in the deed from HarborCorp to the City pursuant to easement language reasonably acceptable to the City.
 6. Notwithstanding the foregoing accommodations provided by the City to HarborCorp, the City shall retain all revenues of any kind produced in any manner by the existence and operation of the parking facility.
 7. The Parking Lease shall include any terms and conditions reasonably required by HarborCorp, including a right of first refusal under which HarborCorp might purchase the parking garage before the Parking Garage might be sold to a third party, and/or HarborCorp's mortgage lender (including subordination, cure and standby provisions). Except, however, neither HarborCorp nor its successors or assigns shall encumber, by mortgage or otherwise, the parking garage beyond the rights afforded to HarborCorp under this agreement.
- I. As soon as practical, but in any event not later than the closing on the construction loan to commence the construction of the Project, the City will convey to HarborCorp all of its right, title and interest in any property approved by the Planning Board for conveyance to HarborCorp for the purposes of the Project. It is anticipated that such land will include, but not be limited to, the following, and such land more particularly described on Exhibit B "Land Exchange Plan" attached hereto:

- a. Approximately 18,400 square feet of area currently identified as Russell Street in order to reconfigure the intersection of Russell Street and Deer Street.
- b. The City will grant air rights to HarborCorp to allow the construction and maintenance of a walkway located over Russell Street to connect the new hotel to be constructed with the existing Sheraton facility.

DEFAULTS

A party shall be in default under this agreement if it fails to perform, in all material respects, any covenants made by it or obligations assumed by it under this agreement, which failure adversely affects the other party's interest under this agreement, and in such an event, each party shall be entitled to all available legal and equitable remedies, including, but not limited to, the right of specific performance, including all costs of enforcement of this agreement, with reasonable attorneys' fees paid to the prevailing party.

THE PARTIES HEREBY AGREE AND CONFIRM THAT IT IS A MATERIAL CONDITION OF THIS AGREEMENT THAT HARBORCORP (ITS SUCCESSORS AND ASSIGNS), IN EXCHANGE FOR ITS RIGHTS UNDER THE PARKING LEASE, THE PARKING GARAGE MANAGEMENT AGREEMENT AND THE UDAG LOAN DOCUMENTS AS THEY EACH RELATE TO THE PROJECT, SHALL OPERATE THE SAID MINIMUM 1,000 SEAT CONFERENCE CENTER DESCRIBED ABOVE LOCATED IN THE CITY'S DOWNTOWN BY NO LATER THAN THE DATE SHOWN FOR OPENING IN THE ATTACHED EXHIBIT A. IF AT ANY TIME THEREAFTER THE CONFERENCE CENTER IS NOT OPERATED BY HARBORCORP, IT SHALL BE AN EVENT OF DEFAULT RELIEVING THE CITY OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND EVERY FURTHER AGREEMENT, DEED OR CONTRACT, HOWEVER CHARACTERIZED, NEGOTIATED HEREUNDER EXCEPT:

1. THE LEASE OR AGREEMENT ALLOWING THE SHERATON TO BE PROVIDED WITH 188 SPACES IN THE PARKING GARAGE.
2. THE LEASE OR AGREEMENT ALLOWING HARBORCORP ACCESS TO ITS SEPARATE PARKING UNDERNEATH THE PROJECT DESCRIBED IN ITEM 5 ABOVE.
3. ANY PROPERTY TO BE EXCHANGED BETWEEN HARBORCORP AND THE CITY AS SHOWN ON EXHIBIT B "LAND EXCHANGE PLAN" ATTACHED HERETO.

WITH THE EXCEPTION OF THE ITEMS LISTED ABOVE, ALL FURTHER AGREEMENTS AND DOCUMENTS, HOWEVER CHARACTERIZED, NEGOTIATED HEREUNDER SHALL EXPRESSLY REFER TO THE FOREGOING DEFAULT CONDITION AND INDICATE THAT ON DEFAULT THE CITY IS RELIEVED OF ITS OBLIGATIONS THEREUNDER.

INSPECTION AND TESTING

HarborCorp shall have a right at all reasonable times during the term of this agreement to inspect the applicable City property and make engineering studies, surveys, soils tests, inspections and other reasonable evaluations of such property; provided, however, that such right of entry shall be at the HarborCorp's own risk.

MISCELLANEOUS PROVISIONS

- a. This agreement may not be changed or terminated orally. This agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Except for an affiliated single purpose entity organized by HarborCorp to construct and operate the Project, neither this agreement nor any of the rights, interests or obligations under this agreement may be assigned or delegated by any party, without the prior written consent of the other party. This agreement is not intended to confer any rights or benefits to any entity other than to the City and to

HarborCorp, its affiliate entity organized to construct and operate the Project, and its affiliates (including the owner of the Sheraton Hotel parcel) requiring parking spaces in the Parking Garage.

- b. This agreement is and shall constitute a contract under and is to be construed in accordance with the laws of the State of New Hampshire.
- c. This agreement may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.
- d. All notices required to be given under this agreement shall be deemed given upon the earlier of actual receipt or two (2) days after being mailed by registered or certified mail, return receipt requested, addressed as follows: if to City, to c/o John P. Bohenko, (or the then current) City Manager, 1 Junkins Avenue, Portsmouth, New Hampshire 03801, with a copy to Robert P. Sullivan, (or the then current) City Attorney; if to HarborCorp, at 55 Lisbon Street, Suite 2400, Lewiston, Maine 04243-0660, with a copy to David L. Galgay, Jr., Verrill Dana, LLP, One Portland Square, P.O. Box 586, Portland, Maine 04112-0586.
- e. This agreement is not intended to supercede the authority granted by law to any regulatory board or agency of the City. Therefore, nothing in this agreement shall be construed or implied to require the City's Planning, Zoning or other regulatory boards or agencies (however designated) to approve the plans for any aspect of the Project or the Parking Garage or other action required under this agreement.
- f. Time is of the essence and a material provision of this agreement.

NON-INTEGRATION

This joint development agreement does not constitute the entire agreement between the parties. Specific reference is made to a Memorandum of Understanding between the parties dated December 30, 2004; and the Feasibility Study for Sheraton Expansion and Parking Garage, Portsmouth, New Hampshire prepared by CLD dated July 5, 2005 for guidance in determining the overall scope of the agreement between the City and HarborCorp as of the date of this Joint Development Agreement. However, to the extent of that differences exist between these documents, it is this Joint Development Agreement which shall be controlling.

MUTUAL COOPERATION AND FURTHER AGREEMENTS

The parties anticipate that the obligations set further herein will be further described in other agreements and or deeds as agreed to by the parties. The City and HarborCorp agree to cooperate in good faith with regard to each and every aspect required for the completion of all construction and operations contemplated by this agreement. The parties recognize, however, that the land use regulatory agencies of the City must perform their responsibilities in accordance with the law governing that performance and consequently are not obligated in any way by this agreement. The City and HarborCorp further agree to negotiate in good faith and to enter such other and further agreements as may be necessary to implement any aspect of design, engineering, construction or facility operation contemplated under this agreement.

CITY OF PORTSMOUTH

Dated: _____

By: _____
John P. Bohenko, City Manager
Pursuant to vote of the City Council on
_____, 200__.

HARBORCORP LLC

Dated: _____

By: _____
Stephen L. Griswold
Its Manager

Table 1
(Maximum Municipal Monthly Parking Rates Per Parking Space)

<u>Lease Year</u>	<u>Maximum Municipal Monthly Parking Rate</u>	<u>Land Credit</u>
1	\$100.00	\$23.72
2	\$100.00	\$23.72
3	\$100.00	\$23.72
4	\$100.00	\$23.72
5	\$100.00	\$23.72
6	\$105.00	\$23.72
7	\$110.25	\$23.72
8	\$115.76	\$23.72
9	\$121.55	\$23.72
10	\$127.63	\$23.72
11	\$140.39	\$23.72
12	\$154.43	\$23.72
13	\$169.87	\$23.72
14	\$186.86	\$23.72
15	\$205.55	\$23.72
16	\$226.10	\$23.72
17	\$248.71	\$23.72
18	\$273.58	\$23.72
19	\$300.94	\$23.72
20	\$331.03	\$23.72

Exhibit A
(critical path schedule)



needs to be attached for City Council draft

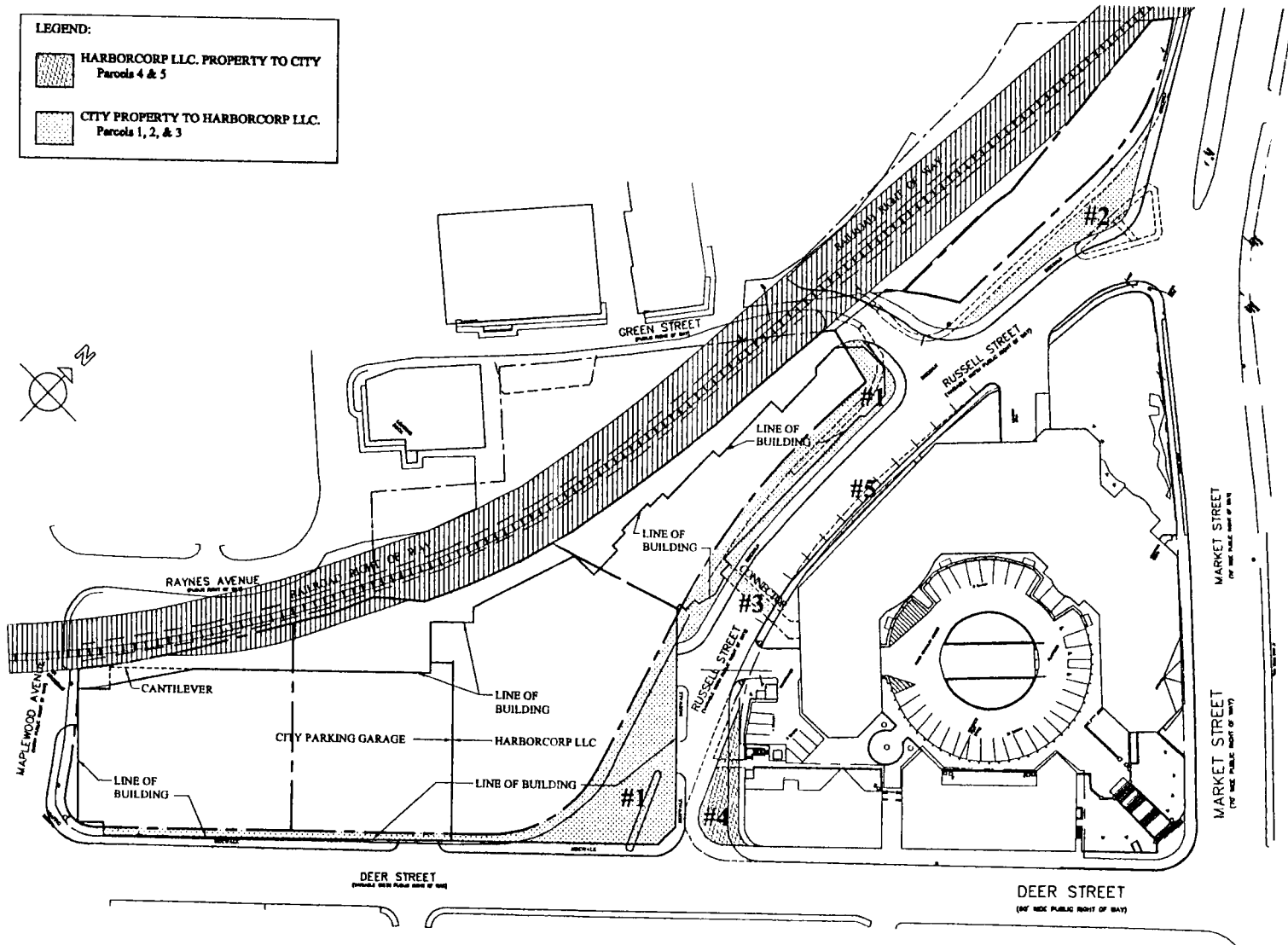
Exhibit B

(certain other parcels of property to be conveyed to City)

needs to be attached for City Council draft

LEGEND:

-  HARBORCORP LLC. PROPERTY TO CITY
Parcels 4 & 5
-  CITY PROPERTY TO HARBORCORP LLC.
Parcels 1, 2, & 3



Harborside Hotel and Conference Center

Portsmouth, New Hampshire

EXHIBIT B LAND EXCHANGE PLAN

October 26, 2005

