

CITY OF PORTLAND, MAINE
M E M O R A N D U M

CAJ *C22*

TO: Jenn Babcock, Finance Administrator
FROM: Charles A. Lane, Associate Corporation Counsel, Ext. 8480
DATE: February 15, 2000
RE: Contract Rezoning 2282 Congress Street

Attached hereto for filling in your office is an original agreement relating to a contract zone for the premises at 2282 Congress Street.

I have provided copies of the contract to the individuals who will receive copies of this memorandum.

Charles

Charles A. Lane
Associate Corporation Counsel

cc: Alex Jaegerman, Chief Planner
Marge E. Schmuckal, Zoning Administrator
Penny Littell, Associate Corporation Counsel

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**AGREEMENT BETWEEN
CITY OF PORTLAND
AND
HUTCHCOURT, L.L.C.**

AGREEMENT made this _____ day of _____, 1999 by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "**CITY**") and **HUTCHCOURT, L.L.C.** of Portsmouth, NH (hereinafter "**CORPORATION**").

WITNESSETH:

WHEREAS, CORPORATION did request a rezoning of property located at 2282 Congress Street, in Portland, in order to permit the establishment and operation of a hotel on 3.24 acres; and

WHEREAS, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. §4352(8), 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** by and through its City Council has determined that said rezoning would be pursuant to and consistent with the **CITY'S** comprehensive land use plan and consistent with the existing and permitted uses within the original zone; and

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

WHEREAS, the **CITY** authorized the execution of this Agreement on _____, 1999;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1.
2. The property shall be developed substantially in accordance with the site plan shown on Attachment 2.
3. **CORPORATION** shall be authorized to establish and maintain a Hotel, with hotel-related accessories including but not limited to a restaurant, bar, conference room(s), pool, and gym) provided that the same is located within said Hotel or on a pation adjacent thereto), in addition to undertaking uses permitted in the I-M zone.
4. **CORPORATION** shall provide to the **CITY** a sanitary sewer easement establishing to the satisfaction of the **CITY's** Public Works Department and Corporation Counsel's Office, **CORPORATION's** right to connect to the Harmon-Hutchins private sewer.
5. **CORPORATION** shall provide confirmation from the Portland Engineering Department that the public sewer has capacity to handle the increased flow generated by the hotel facility.
6. Up to a maximum of ninety-eight (98) guest rooms shall be permitted in the Hotel.
7. The Hotel project must obtain final site plan approval from the Portland Planning Board. Included within such approval are the following requirements:
 - (1) **CORPORATION** shall submit a traffic study establishing its ability to meet all the traffic safety requirements to the satisfaction of the **CITY's** Traffic Engineer, and
 - (2) All signage on site shall obtain the prior approval of the Zoning Administrator.

8. The provisions of this Agreement, including the permitted hotel use, are intended to be supplemental to the uses and requirements of the underlying I-M zone.
9. If a building permit has not been pulled within two years of the date of this contract, the zone shall revert to I-M zone; provided that CORPORATION may extend this Agreement by one (1) year at the discretion of the Director of Planning and Urban Development.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the subject premises, shall bind CORPORATION, their successors and assigns, as permitted by this Agreement, of said property or any part thereof or interest therein, 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.

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 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.

In the event that CORPORATION or any successor fail to continue to utilize the property in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the

breach or the failure to operate. The resolution may include a recommendation to the City Council that the site be rezoned to I-M or any successor zone and that this Agreement be terminated, requiring a cessation of the hotel use.

WITNESS:

CITY OF PORTLAND

Sonia Bean

By Robert B. Ganley
Robert B. Ganley
Its City Manager

WITNESS:

HUTCHCOURT, L.L.C.

By Patricia Walsh
Its: Manager

STATE OF MAINE
CUMBERLAND, ss.

Date: February 18, 2000, 1999

Personally appeared the above-named Robert B. Ganley, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

Sonia T. Benn
Notary Public/Attorney at Law

SONIA T. BENN
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES JANUARY 10, 2005

STATE OF MAINE
CUMBERLAND, ss.

Date _____, 1999

Personally appeared the above-named Patrick Corbett, manager, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Hutchcourt, L.L.C.

Before me,



Notary Public/Attorney at Law