



CITY OF SOMERVILLE

Mayor Joseph A. Curtatone

Office of Strategic Planning and Community Development (OSPCD)

Through the Purchasing Department

City Hall 93 Highland Avenue Somerville, MA 02143

(617) 625-6600 ext.3400

Request for Proposals

RFP # 13-53

Davis Square Hotel Project

I. Summary

The City of Somerville ("City"), through its Purchasing Department, invites proposals from qualified applicants for the development of a hotel in Davis Square, Somerville, Massachusetts at the municipally-owned property currently known as the Day Street/Herbert Street Public Parking Lot (referred herein as "Parcel"). Disposition of the Parcel has been authorized by Board of Aldermen Order # 193586 adopted on October 11, 2012 (see **Appendix A**).

Proposals will be reviewed by staff and the Davis Square Hotel Technical Advisory Committee ("Committee"). The Committee shall provide the Mayor with a written report evaluating all proposals. Upon review of the report, the Mayor will select one development team who best demonstrates the ability and commitment to producing a successful hotel project ("Project"). The Mayor shall submit his selection of a "Preferred Developer" to the Board of Aldermen for approval.

Respondents must make a specific purchase offer for the Parcel. Only offers equal to or greater than the Board of Assessor's Fiscal Year 2013 Parcel Value provided in **Section II. B.** will be entertained.

All respondents are required to make a \$10,000 deposit ("Deposit") upon submission of the Proposal, which shall be retained by the City as a Good Faith Deposit during the RFP process without any obligation on the part of the City to pay interest thereon. Deposits will be refunded to those respondents not selected as the Preferred Developer. Once the Preferred Developer has entered into the ENA period, the Preferred Developer's Deposit will be credited to the total of 10% of the purchase price Deposit due at the time of signing the LDA. If the parties fail to agree upon the terms of an LDA during the ENA Period, the total Deposit will be forfeited. The City will require a letter of credit, bond, or other security for performance of development obligations that survive the closing.

The Preferred Developer's project will be subject to extensive public review. The City strongly encourages the applicant to utilize environmentally-friendly building design elements and to provide replacement publicly assessable parking as part of the Project.

The City reserves the unqualified right, at its sole discretion, to modify, suspend, or terminate any and all aspects of this Request for Proposal process. The City reserves the right to reject any and all proposals if deemed in the best interests of the City. The City may approve those portions of a submission that are satisfactory and reject those portions that are not, or may approve all or a portion of a submission subject to conditions requiring further submissions for City review and approval. The City does not intend to provide a cash subsidy to the selected project developer. The City reserves the right to request further information from development teams, and to waive any minor informality.

II. Background

A. Property Description

The Parcel available for disposition is shown on a map in **Appendix B** and described further in **Appendix C**.

B. Parcel Value / Purchase Price

The Preferred Developer will be required to pay a purchase price that is at least equal to the value of the Parcel. The FY2013 Parcel Value below has been provided by the City's Board of Assessors through procedures customarily accepted by the appraising profession as valid in accordance with Massachusetts General Law ("M.G.L").c. 30B sec. 16 and is included as **Appendix D**. The Parcel Value is subject to change each fiscal year which runs from July 1st to June 30th. The City's Board of Assessors has certified the value of the Parcel as follows:

FY 2013 Parcel Value: **\$1,001,400**

The Preferred Developer, if a taxable entity, will be subject to a pro forma tax in accordance with M.G.L Chapter 59 section 2C , "Real Estate sold by governmental or exempt entities; pro rata taxation; computation; collection remedies."

C. Current Use

The Parcel is actively in use as a public parking lot consisting of a combination of approximately 61 metered, business permit, and Zipcar spaces. The Parcel currently serves the City by generating revenue from a combination of meter receipts, permit fees, leasing fees and violations issued. The site is also home to a successful farmers' market every Wednesday during the summer and fall.

D. Acceptable Use

The City seeks to dispose of the Parcel for the development of a hotel, associated parking and complementary ancillary uses that provide amenities to the occupants of the hotel and the public. Providing replacement publicly accessible parking and any additional publicly accessible parking is strongly encouraged. Proposers must be sensitive to quality of life issues affecting the local community and should attempt to minimize traffic, shadow, outdoor lighting, noise impacts and odor while maximizing landscaping, providing adequate setbacks, and screening transformers and rooftop utilities.

E. Ownership / Title / Restrictions

The City is the owner of the Parcel and is not aware of any title encumbrance related to the Parcel other than the rights, easements, and restrictions specifically set forth in the deed, or otherwise described in particular in **Appendix E**.

The Preferred Developer shall perform an independent title search during the ENA period.

The City will entertain RFP submissions that include privately-owned property in addition to the Parcel, provided that any RFP submission incorporating privately-owned property includes sufficient documentation in the form of a signed approval letter from the private owner and a copy of the respective deed.

F. Zoning / Other Permits and Approvals

The Parcel is located in the Central Business District (“CBD”) zoning. Submissions shall describe in detail the Special Permits, Special Permits with Site Plan Review (“SPSPR”), variances, or other relief needed under the Somerville Zoning Ordinance (“SZO”). If the proposal would require an amendment to the SZO, the language of the proposed amendment shall be included as part of the proposal. The SZO may be accessed online at: <http://www.somervillema.gov>.

During the permitting process under the SZO, the City’s special permit granting authority is likely to require additional information in order to make required findings on the impacts of the proposed development, including without limitation, a traffic analysis, a shadow study, and detailed plans showing lighting, landscaping, parking, and signage, etc. In addition, in accordance with existing requirements of the SZO, the proposed design will be subject to design review.

Private property can be used to meet project related zoning requirements, in part or whole, if located across the street from or adjacent to the Parcel. Also, the parking requirements can be met by either being located on the same site as the Project or as a separate structure. Refer to the SZO for more specifications.

If above grade parking is anticipated to be located off-site from the Parcel, the first floor of the parking structure shall incorporate commercial space (i.e. retail, restaurant, office, etc).

G. Utilities

The Parcel currently has no active utility services.

H. Environmental

The City has no environmental reports associated with the Parcel. The Massachusetts Department of Environmental Protection (“MassDEP”) maintains a database of MassDEP-listed properties online at <http://mass.gov/dep>. The Preferred Developer shall undertake environmental investigations during the ENA period at its own expense. It is incumbent upon the Preferred Developer to determine during the ENA period whether or not the Parcel will require remediation. If it does, the Preferred Developer shall be responsible for reporting and for all costs associated with the proper remediation of the Parcel for this use per MGL c. 21E and 310 CMR 40.0000 as administered by the Massachusetts Department of Environmental Protection (“MassDEP”).

I. Timetable for RFP

RFP release	December 19, 2012
Onsite Pre-bidders Conference ¹	January 15, 2013 at 11 a.m.
Deadline for Submitting Questions ²	January 18, 2013
Final Response to Questions due by	January 25, 2013
RFP due by	February 4, 2013 by 11 a.m.
Technical Advisory Committee to Convene	TBD
Development Team Interviews Scheduled for	February 11 -15, 2013
Technical Advisory Committee to Convene	TBD
Mayor's Recommendation to Aldermen	February/March 2013
Aldermanic Review	February/March 2013
ENA Signed	TBD
LDA Signed	TBD

J. Reference Documents

Applicants are encouraged to review the following documents and information available online at the City of Somerville's website (www.somervillema.gov):

1. Pinnacle Group's Analysis of Lodging Supply and Demand and Strategic Planning Recommendation that identifies demand for a Boutique Select Service, Branded Select Service, or Branded Limited Service hotel with amenities located in the Davis Square area. (click on "Departments", then under the heading "Office of Strategic Planning & Community Development" click on "Economic Development" under "Projects" in the right hand column)
2. Assessor's Maps
(click on "Departments", then "Assessing", then "Assessor Maps")
3. Somerville Zoning Ordinance ("SZO")
(click on "Departments", then under the heading "Office of Strategic Planning and Community Development" click "Planning and Zoning")

K. Governing Law

This property exchange is governed by the Uniform Procurement Act, M.G.L. Chapter 30B, Section 16. The City will not sell the Parcel to an entity eligible for tax exempt status under G.L. c.59, §5, unless the owner enters into a Payment in Lieu of Tax (PILOT) Agreement requiring the Parcel to be assessed and taxed at 100% fair market value in perpetuity, with increases in assessed and committed taxes over time. Taxes will be based on the full and fair cash value of the property using an appropriate classified tax rate.

¹ Report promptly at 11:00 a.m. to the northeast corner of the 44 Day Street public parking lot.

² Questions must be submitted in writing to the Purchasing Director amallen@somervillema.gov. Communication about this RFP with any other City Department than Purchasing could result in disqualification.

III. Proposal Submission Requirements

One original and eight (8) copies of the proposal must be submitted marked “Davis Square Hotel Proposal.” An electronic version of the complete proposal must be submitted on a CD-R or similar disk.

Proposals must be received by the Office of the Purchasing Agent, City Hall, 93 Highland Avenue, Somerville, MA 02143 no later than 11:00 a.m. on **February 4, 2013**. No faxed or electronically mailed (e-mailed) proposals will be accepted. Late submissions will not be accepted and will be returned to the Proposer unopened. In the event City Hall is closed, the deadline is at the same time on the next day City Hall is open for business.

A complete Proposal shall include the following:

A. Letter of Transmittal

The Letter of Transmittal must include a brief summary of the Davis Square Hotel Project (“Project”) with the Applicant’s name, mailing address, contact person, telephone, fax number and email address. The letter must be signed by the proposer and addressed to Angela M. Allen, Purchasing Director, City Hall, 93 Highland Avenue, Somerville, MA 02143.

B. Statement of Qualifications

Include the following:

1. The composition and structure of the development team including the developer, architect, engineer, project manager, licensed site professional (LSP), attorney, hotel operator as known and any other key members of the development team.
2. The qualifications of the development team as they relate directly to designing, financing, constructing and operating hotels in urban settings that have included a community process.
3. Resumes of key personnel on the development team.
4. If the Proposal includes private property, include a signed approval letter from the private owner and a copy of the deed.

C. Comparable Projects & References

Include the following:

1. For the Developer and the Architect, provide a written description of at least one (1) but not more than three (3), urban infill projects most similar to your vision for the Davis Square Hotel project that were completed within the past ten (10) years. List the projects’ location, size, ownership entity, community process, development costs, financing mechanism, any municipal subsidy received, current status, and references’

- contact name(s) and telephone number(s). If the applicant wants to include additional examples, list them with a web link to additional information.
2. Include a letter sized (8.5"x11") graphic representation of each project along with the written description of the development program (do not submit large-scale drawings).
 3. Describe any "green" building design or management practices utilized.
 4. Describe the development approach including the urban context, parking situations encountered, community process, development team integration, coordination among town/city/county officials and community benefits and community impacts.

D. Purchase Price

Include the following:

- The offered purchase price for the Parcel.

E. Davis Square Hotel Project Narrative

Include the following:

1. A timeline for acquisition, construction and operation of the Project that is within a window of three years from the date of transfer of title to the property.
2. Indicate whether the hotel will be an independent hotel or part of larger lodging system/chain. If known, identify the proposed "flag," or brand of hotel and how the proposed hotel fits into the classification structure, if any, within that corporate flag. If a specific chain/system has not been selected, please define the hotel in terms of potential flags.
3. Identify the number of proposed keys.
4. Indicate the desired target market and briefly describe the marketing plan.
5. Indicate the forecasted monthly occupancy rate.
6. Describe any guest amenities, ancillary uses and public amenities and include their anticipated location on the Parcel.
7. Include a statement proposing a site for the relocation of farmer's market that periodically occurs on the Parcel.
8. Identify any proposed green building design elements, including level of LEED certification, as applicable.
9. Parking:

It is highly recommended that any above grade parking structure fit into the urban context and not be identifiable as a parking garage except by signage. Interior structural elements required in parking structures should not be repeated on the exterior facade. A wall or other screening of sufficient height and depth of a visually appealing character is advantageous. Views into parking structures should be minimized through the use of landscaping and/or architectural treatments. See the **SZO** for signage and other requirements.

Include the following:

- a. Identify the location, type (private or public, electric, business permit, Zipcar or other car share, etc.) and quantity of parking spaces included in this project.
- b. Describe whether the Project satisfies the SZO's parking requirements for the hotel and its ancillary uses or identify the zoning relief that will be sought from the special permit granting authority.
- c. Provide a statement as to whether or not the Project includes replacement publicly accessible parking and any additional publicly accessible parking.

F. Financial Information

Include the following:

1. Provide the anticipated financial and management interests in the project.
2. Provide the strategy for securing financing.
3. Provide banking references for financing soft costs, as well as, hard costs necessary for the Project from the execution of the ENA through to occupancy.

G. Construction Methods / Design

Include the following:

1. Identify methods by which construction may be phased to minimize impacts on abutters.
2. Describe the type of construction methods expected (wood or steel, etc), anticipated elements including architectural classification, exterior materials, color palettes and other elements or features such as types of signage. Renderings are not required.
3. Applicable only if parking is proposed above grade: describe the conceptual architectural elements of the parking garage. It should include materials, color palettes and any other elements. Renderings are not required.

H. Operation Methods

If known, include the following:

1. A description of any anticipated green lodging practices included as part of the hotel's operation.
2. Describe how management and pricing strategies will encourage shared use and reasonable turnover of parking spaces, and discourage structures' use as "Park and Ride" facilities.

I. Municipal Benefits/Impacts/Costs

It is of paramount importance that the proposed development provides a fiscal benefit to the City. The proposed purchase price for the Parcel must be equal to or greater than the 2013

Parcel Value defined in **Section II. B.** The Project must yield net revenue to the City in excess of the cost of City services.

Include the following:

1. Provide calculations for the amount of the real estate taxes anticipated by the Project upon its completion. The fiscal year 2013 commercial tax rate in Somerville is \$22.38/\$1,000;
2. Provide calculations of the annual hotel tax revenues paid by the development based on the number of rooms proposed and the projected occupancy rate. The state hotel tax rate is 5.7% and the local “occupancy” hotel tax rate is 6% (subject to change);
3. Provide calculations for the cost of municipal services and provide the methodology for such calculations;
4. Provide calculations for the anticipated pro forma taxes paid by the developer in the fiscal year of sale.
5. Identify the number and types of jobs expected to result from the hotel, parking facility and ancillary uses and include the pay range of such positions.
6. Describe the anticipated neighborhood impacts, including traffic, noise, odor, lighting, and shadow effects, both during and post construction;
7. Describe other benefits, impacts, or costs including contribution to community improvement projects; and
8. Describe any proposed infrastructure improvements to be made by the Preferred Developer.

J. Job Creation

Creating jobs in Somerville is an important City goal. The City strongly encourages active and meaningful involvement in the Minority Owned Enterprises (MBE) and Women Owned Business Enterprises (WBE).

Include the following information:

- Identify MBE and WBE associations and affiliates expected as part of this Project.

K. Exclusive Negotiating Agreement

Include the following:

1. A statement of the Preferred Developer’s willingness to execute an ENA in substantially the form included herein as **Appendix F** (which expressly provides, among other things that the final LDA, a sample of which is attached as **Appendix G**, will be subject to the approval of the Board of Aldermen).
2. Identify modifications to the ENA.

L. Financial Deposit

All respondents are required to make a \$10,000 deposit (“Deposit”) upon submission of the Proposal, which shall be retained by the City as a Good Faith Deposit without any obligation on the part of the City to pay interest thereon. An offer will be made to one Preferred Developer to enter into an ENA with the City and commence good faith negotiations for a Land Disposition Agreement (“LDA”).

Upon execution of the Exclusive Negotiation Agreement (“ENA”), Deposits will be returned to respondents not selected as the Preferred Developer. During the ENA period, the Preferred Developer will be required to conduct predevelopment activities including design, environmental site assessment/testing and a title search. In the event that an LDA is not signed, the Deposit will not be refunded.

The Preferred Developer authorizes the City to use its initial Deposit to fund the City’s due diligence efforts pertaining to the subject property. The remaining Deposit will be credited toward the additional 10% of the purchase price deposit due at the time of signing the LDA, and further, the City will require a letter of credit, bond, or other security for performance of development obligations that survive the closing. If the project does not break ground within three years from the date of transfer, the City retains the right to take back title to the land at no cost.

Include the following:

1. A statement that the respondent has made a \$10,000 deposit and that it agrees to the terms herein.
2. A statement that allows the City to use their Deposit to fund site activities as needed.
3. A statement that the respondent, if selected as the Preferred Developer, agrees to make a total deposit of 10% of the purchase price at the time of the execution of the LDA.

M. Certification of Good Faith

Include an executed Certification of Good Faith, pursuant to G.L. c. 30B, §10, a copy of which is included as **Appendix H**.

N. Disclosure Statement

Include an executed Disclosure Statement, as required by G.L. c. 7, s. 40J, a copy of which is included as **Appendix I**.

IV. Selection Process

The Davis Square Hotel Technical Advisory Committee (“Committee”) shall include staff from the Mayor’s Office, the Purchasing Department, and OSPCD, a member of the Board of Aldermen and other representatives as appointed by the Mayor.

The Committee shall review proposals based on information provided in the submitted envelope entitled “Davis Square Hotel Proposal”. The Committee may request additional information of the applicants in writing and use that information in evaluating the responses. Proposers may be asked to present their proposals to the Committee, other City staff, neighborhood groups, the Board of Aldermen, and/or the Mayor as part of this review process.

Each member of the Committee will be required to fill out the Evaluation Criteria Form as identified in **Section V**. Each committee member’s Evaluation Criteria forms will be individually tabulated and then aggregated for each Proposal.

The Committee shall provide the Mayor with a written report evaluating all proposals. Upon review of the report, the Mayor will select one development team who best demonstrates the ability and commitment to producing a successful Project. The Mayor shall submit his selection of a Preferred Developer to the Board of Aldermen for approval.

V. Evaluation Criteria

Each member of the Committee will be required to fill out the Evaluation Criteria Form as follows:

EVALUATION CRITERIA FORM – DAVIS SQUARE HOTEL PROJECT

RFP Submittal Team Name: _____ Date: _____

Technical Advisory Committee Member: _____ Title: _____

INSTRUCTIONS: Review each Davis Square Hotel Proposal and fill out a Rating Form for each Proposal. The right column is for your rating for the corresponding item to the left. Every numbered item needs a rating. The rating form is based on an overall, maximum rating of 100 points. Each numbered item below ranges from 0 to the number listed in the middle column. A rating of “0” signifies “not qualified”. A rating of the maximum number as indicated in the middle column indicates “highly qualified”. Tally your ratings in the field labeled “Sub-total” and “Total”. Sign, date, and label each form. M stands for Mandatory. Proposals shall be disqualified if an M does not appear in line A 1.

A. Experience of the Current Development Team:		
1. At least one urban hotel project designed and constructed within the last 10 years	M	
2. Key Individuals' experience and credentials	5	
3. Experience working with local governments and community stakeholders	5	
Sub-total	10	
Comments		
B. Financial Capacity for the Current Project:		
1. Clear and convincing evidence of financial capacity for both hard and soft cost expenditures relating to the timely construction of the Project	10	
2. Banking references pursuant to financing the Project	10	
Sub-total	20	
Comments		

C. Quality of Prior Projects:		
1. Quality of design, hotel amenities and comparability to the Davis Square Hotel Project	5	
2. Compatibility with and sensitivity to the neighborhood during the design and construction phases.	5	
3. Green design and management practices	5	
4. References	10	
Sub-total	25	
Comments		
D. Community Objectives:		
1. Net new real estate, hotel taxes and other municipal revenues	5	
2. Number and types of jobs and expected pay range.	5	
3. Consideration for MBE / WBE.	5	
4. Mitigation against neighborhood impacts including traffic, noise, odor lighting, and shadow effects, both during and after construction.	5	
5. Replacement of existing publicly accessible parking.	20	
6. Other benefits, impacts or costs including contribution to community improvement projects.	5	
Sub-total	45	
Comments		
GRAND TOTAL	100	

DISCLAIMER/RESERVATION OF RIGHTS

The City of Somerville makes no representations or warranties, express or implied, as to the accuracy and/or completeness of the information provided in this RFP. The City of Somerville reserves the right to extend the deadline for submission of proposals, to request supplementary information, and waive minor informalities and to reject any or all proposals if in its sole judgment the best interests of the City of Somerville would be served in doing so.

ADDITIONAL INFORMATION

For all inquiries, contact Angela M. Allen, Purchasing Director, at the above address or by telephone at (617) 625-6600, x. 3400, by fax at (617) 625-1344 or by e-mail at amallen@somervillema.gov. Do not contact OSPCD Economic Development Division's Senior Project Manager Steven Azar or other City of Somerville employees during the RFP process as such communication would be grounds for disqualification.

APPENDICES

APPENDIX A	Board of Aldermen Order # 193586 adopted on October 11, 2012
APPENDIX B	Disposition Parcel Location Map
APPENDIX C	Disposition Parcel Description
APPENDIX D	Board of Assessor's Certification of Value - Day Street/Herbert Street Lot
APPENDIX E	Day Street / Herbert Street Deed
APPENDIX F	Sample Exclusive Negotiating Agreement
APPENDIX G	Sample Land Disposition Agreement
APPENDIX H	Certification of Good Faith
APPENDIX I	Disclosure Statement

APPENDIX A

Board of Aldermen Order # 193586 adopted on October 11, 2012



CITY OF SOMERVILLE, MASSACHUSETTS
BOARD OF ALDERMEN

Docket # 193586

Mayor's Request
Property/Land Transaction

Regular Meeting 10/11/2012
Item ID 6012

SUMMARY: Requesting that this Board declare the Day Street/Herbert Street parking lot available for disposition as a hotel use.

COMPLETE TEXT:

To the Honorable Board:

I respectfully request your Honorable Board to declare the Day Street/Herbert Street parking lot available for disposition as a hotel use.

The staff of the Mayor's Office of Strategic Planning and Community Development is available to provide further information and answer questions.

Thank you for your consideration.

Respectfully submitted,

Joseph A. Curtatone, Mayor

RESULT: APPROVED WITH CONDITIONS. [UNANIMOUS]

AYES: Connolly, Desmond, Sullivan, White Jr., Roche, Heuston, Taylor, Lafuente, O'Donovan, Gewirtz, Trane

CONDITIONS: That a Technical Advisory Committee be created, and that the selected developer be approved by this Board following a subsequent review.

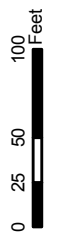
ADOPTED BY THE BOARD OF ALDERMEN OF THE CITY OF SOMERVILLE,
MASSACHUSETTS, AT A REGULAR MEETING ON THE 11th DAY OF OCTOBER, 2012.

APPROVED BY THE MAYOR OF THE CITY OF SOMERVILLE, MASSACHUSETTS, ON
THE 18th DAY OF OCTOBER, 2012.

ATTEST:


John J. Long, City Clerk

APPENDIX B
Disposition Parcel Location Map



APPENDIX C
Disposition Parcel Description

44 Day Street / Herbert Street Parking Lot

2012 Assessed Value: \$1,001,400
M-B-L 22 – D – 1
Total Land Area: 23,923sf
Taxes: exempt
FAR: 2.0
Maximum Ground Coverage: 80%

Site Description

This site consists of a surface parking facility of 61 spaces and occupies land area owned by the City of Somerville. All spaces for public parking are metered and operational from 8am to 8pm. The site is square and abuts residences on two sides and open roadway on the other two sides. The site is also home to one of the area's more successful farmers' markets every Wednesday during the summer and fall

Development Constraints

There are no particular development constraints on this parcel other than the fact that it abuts a residential area. Any building constructed on this lot will need to be designed with appropriate concern toward abutting residences.

Zoning

The site is located in the CBD. The parcels immediately abutting the property to the west are zoned RB.


APPENDIX D

Board of Assessor's Certification of Value – Day Street / Herbert Street Lot



CITY OF SOMERVILLE, MASSACHUSETTS
BOARD OF ASSESSORS
JOSEPH A. CURTATONE
MAYOR

December 20, 2012

To: Office of Strategic Planning & Community Development
From: Marc A. Levy, MAA, RMA Chief Assessor 

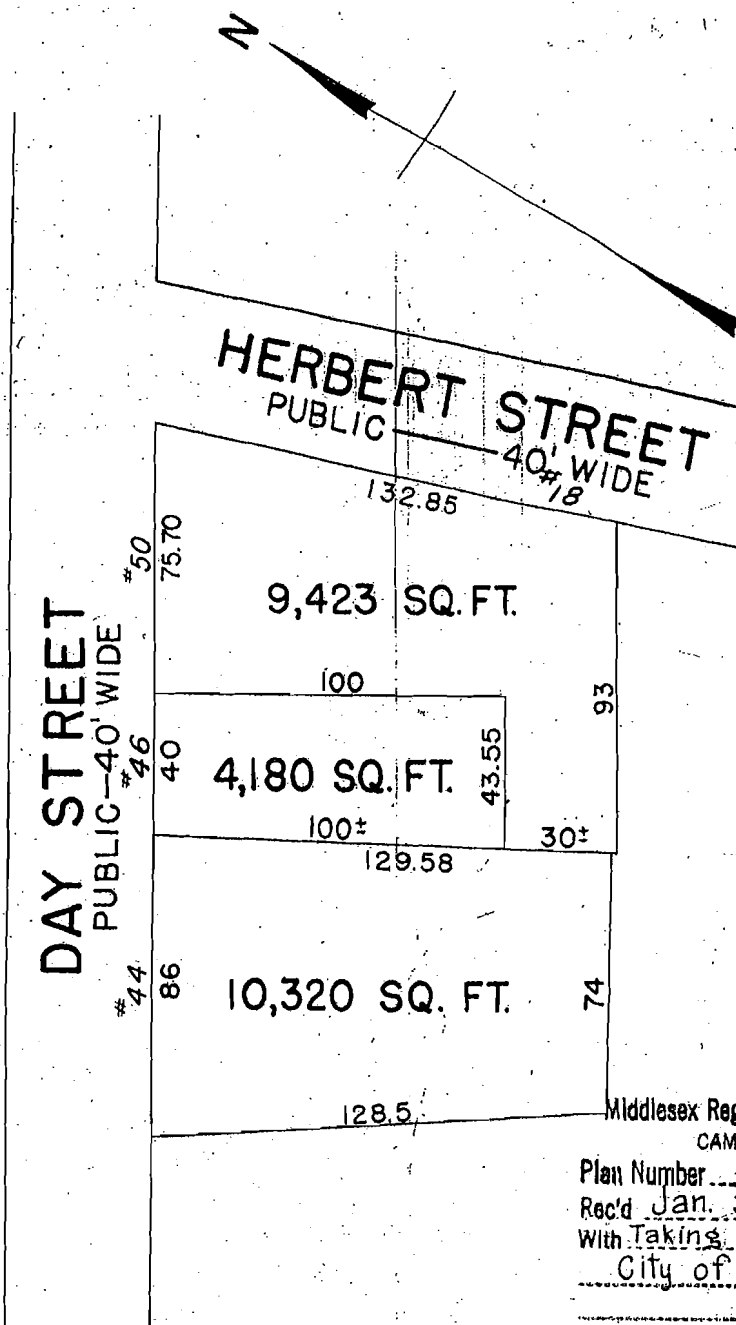
Re: 44 Day Street/Herbert Street Parking Lot, map 22 Block D lot 1

The subject property, containing 23,923 square feet of land and currently used a City parking lot has a fiscal year 2013 assessment of \$1,001,400.

APPENDIX E
Day Street / Herbert Street Deed

CITY OF SOMERVILLE PROPOSED LAND TAKING DAY STREET & HERBERT STREET

SCALE 1" = 40' DEC. 9, 1955
WALTER J. MANNING
COMMISSIONER OF PUBLIC WORKS



Middlesex Registry of Deeds, So. Dist.
CAMBRIDGE, MASS.

Plan Number 3 of 1956
Rec'd Jan. 3, 1956 at 1:15 p.m.
With Taking Doc. No. 209
City of Somerville

Recorded, Book 8645 Page 99

Attest: *William A. Baskin*

REGISTRAR

JAN -3-56 PM 01:15 209RE***1.69

COMMONWEALTH OF MASSACHUSETTS

In Board of Aldermen

ORDERED:

The parcels of land hereinafter described, including the trees, buildings and other structures thereon or affixed thereto, are hereby taken by the City of Somerville in fee for the purpose of acquiring land for the development of off-street parking areas, an appropriation of money having heretofore been made for this purpose by a two-thirds vote of this Board of Aldermen, which constitutes the city council of Somerville.

The said parcels of land are situated in Somerville in the County of Middlesex and Commonwealth of Massachusetts and are shown on a plan entitled "City of Somerville Proposed Land Taking Day Street and Herbert Street" dated December 9, 1955, Walter J. Manning, Commissioner of Public Works, and are bounded and described as follows:

PARCEL NO. 1. Northwesternly by Day Street, 86 feet; northeasterly by lot 46, as shown on said plan, 100 feet more or less; and again northeasterly by part of lot 50, as shown on said plan, 30 feet more or less; southeasterly by land of owners unknown, 74 feet; and southwesterly by land of owners unknown, 128.5 feet; containing 10,320 square feet of land.

PARCEL NO. 2. Northwesternly by Day Street, 40 feet; northeasterly by lot 50, as shown on said plan, 100 feet; southeasterly by lot 50, as shown on said plan, 43.55 feet; southwesterly by lot 44, as shown on said plan, 100 feet more or less; containing 4,180 square feet of land.

PARCEL NO. 3. Northwesternly by Day Street, 75.70 feet; northeasterly by Herbert Street, as shown on said plan, 132.85 feet; southeasterly by land of owners unknown, 93 feet; southwesterly by lot 44, as shown on said plan, 30 feet more or less, and again northwesterly by lot 46, as shown on said plan, 43.55 feet; and again southwesterly by lot 46, as shown on said plan, 100 feet; containing 9,423 square feet of land.

For damages sustained by persons in their property by reason of such taking, there is hereby awarded the following:

PARCEL NO. 1. - Elias M. Lowe, the sum of \$1.00.

PARCEL NO. 2. - Elias M. Lowe, the sum of \$1.00.

PARCEL NO. 3. - New England Theatre Corp., formerly New England Olympia Co., the sum of \$1.00.

The clerk of this Board of Aldermen, Norman E. Corwin, is hereby authorized and directed within thirty days after the adoption of this order to certify and cause to be recorded in the Registry of Deeds for the Southern District of the County of Middlesex in said Commonwealth a copy of this order and a copy of the plan above described, and he is hereby further authorized and directed, if land of a registered owner or any right or interest therein is hereby taken, to file for registration in the proper

SEE PLAN IN RECORD BOOK 144 PAGE 99

- 2 -

In Board of Aldermen

registry district a description of the registered land so taken, giving the name of each owner thereof, referring by number and place of registration in the registration book to each certificate of title and stating what estate or interest in the land is taken, and for what purpose, and he is further authorized and directed to give the notice required by law to every person whose property has been taken or who is otherwise entitled to damages on account of such taking, and he is further authorized and directed to do all other things in behalf of this Board of Aldermen required by law in relation to such taking.

John E. Ryan

J
1/
C
S

50785

ORDER

Taking by eminent domain
Land at Day Street and Herbert Street etc

IN BOARD OF ALDERMEN

DEC 22 1955

Read twice and adopted by
Roll Call Vote, 11 Yes, 0
No, 0 Absent.

Norman E. Corwin
Clerk

IN BOARD OF ALDERMEN

DEC 22 1955

Later a motion for reconsideration was defeated.

Norman E. Corwin
Clerk

Approved: 12/27/1955

William J. Donovan
Mayor

December 30, 1955

Attest: COPY



Clerk

2/1
see

APPENDIX F
Sample Exclusive Negotiating Agreement

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement (the "AGREEMENT"), is made and entered into this _____ day of _____, 2013, by and between the CITY OF SOMERVILLE, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts, acting by and through its Office of Strategic Planning and Community Development ("OSPCD") with a usual address of 93 Highland Avenue, Somerville, MA 02143 ("City"), and

_____ a _____ duly organized and existing under G.L. c. _____ ("Developer") (together, the City and the Developer are referred to as the "Parties"), pursuant to Board of Aldermen Order # 193586 adopted on October 11, 2012.

RECITALS

- A. The City seeks to encourage the development of a hotel in Davis Square by offering City-owned land to developers. Towards this goal, City staff identified a site that is immediately available for development. The sites fiscal year 2013 assessed value is: Day Street/Herbert Street Parking Lot - \$1,001,400.
- B. On _____, the City issued a Request for Proposals ("RFP") to potential developers. On _____, the City received _____ submissions, which met the guidelines established in the RFP. After an evaluation of the proposals by a Technical Advisory Committee, which made recommendations to the Mayor, the Mayor and the Board of Alderman determined that the proposal submitted by the Applicant provided the highest public benefit to the City.
- C. The City and the Applicant desire to enter into this Agreement to explore the possibility of developing the Property for use as a hotel ("Project").
- D. The City and the Developer recognize and acknowledge that the feasibility of the development proposed by Developer has not been determined to the satisfaction of the City and the purpose of this Agreement is to allow the City and Developer to undertake additional design, planning, and analysis to determine the feasibility of the proposed Project and to negotiate the terms of a Land Disposition Agreement for the Property.

NOW THEREFORE, the City and Developer agree as follows:

1. NEGOTIATIONS

1.1. Length of Negotiation Period

Unless terminated earlier in accordance with this Agreement, the period for negotiations between the Parties shall be **one hundred and eighty (180) days**, commencing on the date of

this Agreement (the “Negotiation Period”); provided, however, that the Negotiation Period may be extended as provided in Section 6.4 of this Agreement.

1.2. Good Faith Negotiations

The City and Developer shall negotiate diligently and in good faith during the Negotiation Period toward a Land Disposition Agreement (“LDA”) wherein the City will agree to sell and the Developer will agree to purchase the property for a sum equal to or exceeding the appraised price of \$TBD. The Parties contemplate that the LDA will set forth the terms and conditions for the conveyance of the Property to Developer; and describe the Project that the Developer will be permitted to develop on the Property, the timeline within which it shall be developed, and subsequent uses of the Property by the Developer and any successors-in-interest. The Parties contemplate that negotiations regarding the LDA shall commence after execution of this Agreement and shall continue while the Developer submits to the City the information required herein and the Parties pursue preliminary design, planning and analysis of the Project. If the terms of a mutually satisfactory LDA have not been negotiated by Developer and OSPCD staff during the Negotiation Period, or if the Board of Aldermen declines to approve the LDA for any reason, then, without further action, this Agreement shall automatically terminate and neither Party shall have further rights or obligations to the other.

1.3. Exclusive Negotiations

The City shall not negotiate regarding development of the Property with any other person or entity during the Negotiation Period.

2. GOOD FAITH DEPOSIT

The sum of \$10,000.00 has been submitted to the City by the Developer and may be applied to any City’s predevelopment expenses related to the Project. If the Developer and the City enter into an LDA for the Project, the remainder of the Good Faith Deposit shall be applied toward the 10% deposit, which shall be required in accordance with the LDA. If within the reasonable judgment of the Mayor, the Developer has failed to negotiate the LDA in good faith with the City, the City may, in its sole discretion, retain the Good Faith Deposit. The Parties agree that it would be impractical and extremely difficult to estimate the damages which the City may suffer in the event that Developer fails to meet its obligations herein. Therefore, the Parties do hereby agree that a reasonable estimate of the total net detriment the City would suffer in the event of any such Developer default is and shall be the retention of the Good Faith Deposit as liquidated damages and as the City’s sole and exclusive remedy at law and in equity.

3. SCHEDULE OF PERFORMANCE

The Developer shall complete the following activities within the time periods set forth below, which time periods shall commence as of the date of the Agreement. Unless otherwise specified, the word “days” shall mean “calendar days”.

3.1 Conceptual Design

Within **fifteen (15) days**, the Developer and the Developer’s architect shall commence discussions with OSPCD regarding the proposed design of the hotel, including number of room keys and parking spaces, the height, siting, and massing of structures, landscaping and useable open space, and ancillary commercial uses for both the hotel and any garage structures. Unless otherwise agreed, the design shall incorporate commercial space (i.e., retail, restaurant, office, etc.) at the ground level of any parking structure, and the garage shall not be readily identifiable as such except for signage; the design shall encourage pedestrian activity; the façade of the garage shall exhibit a horizontal line with no repetition on the exterior of the sloping interior necessary for parking structures; there shall be a wall or other screening of sufficient height and depth to screen parked vehicles; and views into the parking structure shall be minimized through use of landscaping or architectural treatment. Following preliminary discussions, OSPCD shall schedule a community meeting at which the Developer and the Developer’s architect shall be present to obtain public input.

Within **ninety (90) days**, design discussions shall have progressed to a level sufficient to allow for the presentation of conceptual drawings at a public meeting or meetings to be scheduled by OSPCD at which the Developer shall present at least two alternative conceptual designs. Drawings shall include the following at a minimum: a site plan showing the proposed structure(s) on the site(s) with landscaping areas identified; elevations showing the facades and materials of the proposed structures; a parking plan; and a signage plan. The Developer shall also be prepared to provide the following information to OSPCD staff and to members of the public at public meetings:

- the likely “flag,” or brand of hotel and the classification within the flag or brand;
- target market;
- anticipated occupancy rate throughout the year;
- ancillary uses, such as retail, restaurants, and health clubs;
- green building elements and practices (including design elements and management, lodging and other operational practices);
- number and location of parking spaces and number of spaces over and above hotel requirements and the replacement parking;

- relating to replacement of publically accessible parking, if any, provide management and pricing strategies to encourage shared use and reasonable turnover of parking spaces, and discourage “Park and Ride” use.
- projected total amount of the real estate taxes and amount of new real estate taxes over and above existing use;
- projected annual hotel tax revenues based on the number of rooms proposed and the projected occupancy rate;
- number and types (including pay ranges) of jobs expected to result from the hotel, parking facility and ancillary uses;
- neighborhood impacts, including traffic, noise, odor, lighting, and shadow effects, both during and after construction;
- public infrastructure improvements to be made by the Developer, including useable open space, traffic signals that may need to be replaced or installed; street lights that may need to be replaced or installed; sidewalk replacement; street tree planting; improvements to be made as mitigation; and other public improvements proposed by the Developer;
- analysis of how the project conforms to the Somerville Zoning Ordinance and what zoning relief, if any, is required;
- public art to be incorporated as part of the project.

If the Developer is unable to achieve a conceptual design that is satisfactory to the City by the end of **one hundred and twenty (120) days**, the Mayor may, in his sole discretion, notify the Developer that the City does not intend to proceed with the disposition process, whereupon this Agreement shall automatically terminate and neither party shall have any further rights or obligations hereunder.

3.2 Environmental Review/Zoning Permits/Title

Within **one hundred and eighty (180) days**, the Developer shall retain:

- c) an environmental engineering firm and licensed site professional (LSP) and commence environmental due diligence, including the preliminary site assessment typically required to obtain financing for a project;
- d) an attorney who shall commence preparation and submission of permit applications for all zoning relief required under the Somerville Zoning Ordinance, including an application for a building permit to trigger the denial required as a pre-condition to filing an application for zoning relief.

- e) a title examiner and a title insurance company to prepare a title abstract and issue a title insurance policy for the Property.

By the end of the Negotiation Period, as such Negotiation Period may be extended pursuant to Section 6.4 this Agreement, the Developer shall have completed to Developer's satisfaction all environmental due diligence; shall have obtained all zoning approvals; and shall have determined title is good record, marketable, and insurable title.

3.3 Financing, and Other Submissions

Within **one hundred and eighty (180) days**, Developer shall submit to the City the following:

- (a) A description of the specific financial structure and legal structure of the proposed development in a form that reasonably satisfies the City that the Project is feasible. This shall include a written description of the specific and general roles, responsibilities, and obligations of the Developer, the Developer's members or partners, and any other entity participating in the legal entity established by Developer for purposes of developing the Project. Additionally, the written description of roles, responsibilities, and obligations shall identify the principals and other personnel, to the extent identified, from each participating party by name, title or position, and areas of responsibility within the development entity.
- (b) Copies of balance sheets and income/loss statements, prepared in accordance with generally accepted accounting principles, and other financial documentation as reasonably requested by the City covering the last two years for the Developer, the Developer's members or partners, and any other entity participating in the legal entity established by Developer for purposes of developing the Project.
- (c) A written statement concerning any litigation in which Developer or Developer's partners or members is a party that may have an impact on the negotiations. Developer shall provide to the City copies of any litigation documents or filings in connection with such litigation within five (5) business days of the City's written request.
- (d) A list of lenders and investors the Developer will approach for financing the project.
- (e) All documents related to its corporate, LLC, or partnership status, and the status of its members or partners, including but not limited to articles of incorporation, by-laws, partnership agreements, operating agreements, joint venture agreements, lists of members of board of directors, and certificates of good standing from the Mass/ Department of Corporations and the Mass. Department of Revenue.
- (f) Outline specifications, a preliminary construction cost estimate based on the submitted schematic design plans, and a proposed construction schedule.

- (g) Detailed and itemized project pro formas that are linked to the schedule for construction of the Project. Pro formas shall include a Project development budget, a statement describing the sources and uses of funds and a cash flow analysis to a level of detail reasonably acceptable to the City.
- (h) Letters of intent from lenders and equity partners, if any, expressing willingness to provide Project financing.

3.2 Monthly Reports

The Developer shall provide the City with written monthly progress reports on all matters pertaining to the Project, including updates and changes to financing, program, design, or pro formas previously submitted to the City.

4. CITY APPROVAL OF DEVELOPER SUBMISSIONS

Within fifteen (15) business days after the City receives any information or documents required to be submitted by the Developer pursuant to Section 2 of this Agreement, the City shall inform the Developer of its acceptance or rejection of the submission. The City may approve those portions of a submission that are satisfactory and reject those portions that are not, or may approve all or a portion of a submission subject to conditions requiring further submissions for City review and approval. If the City rejects all or any part of a submission, the City shall provide to the Developer written notice of the reasons for such rejection within said fifteen (15) days. The Developer shall then have fifteen (15) business days to correct or supplement its submission to respond to the City's rejection. If the City has not responded to a submission by the Developer within fifteen (15) business days of submission, such submission shall be deemed approved by the City.

5. EFFECT OF NEGOTIATIONS

The Developer understands and acknowledges that any LDA resulting from the negotiations arising from this Agreement shall become effective only if and only after such LDA has been approved by the Somerville Board of Aldermen and executed by the Mayor. The Developer understands that the Board of Aldermen and the Mayor retain the sole and absolute right to approve or not approve the sale of the Property. If the terms of a mutually satisfactory LDA have not been negotiated by the Developer and OSPCD staff during the Negotiation Period, as it may be extended if extended, or if the Board of Aldermen declines to authorize an LDA for any reason, then, without further action, this Agreement shall automatically terminate and neither Party shall have further rights or obligations hereunder.

6. TERMINATION AND EXTENSIONS

6.1 Time of the Essence

Time is of the essence in this Agreement. Any Party's failure to timely perform according to the terms and conditions of this Agreement shall be considered a material breach of this Agreement.

6.2 Notice to Developer of Breach

In the event that Developer fails to materially perform any of Developer's obligations pursuant to the terms and conditions of this Agreement within the time herein specified, the City shall promptly give the Developer notice of such default. The Developer shall have a period of ten (10) business days from receipt of such written notice from the City to Developer within which to cure such default if such default is capable of being cured by Developer; provided, however, that with respect to any default capable of being cured by Developer but which cannot be cured by Developer within such ten (10) business day period, the default shall not be deemed to be uncured if Developer commences to cure within such ten (10) business day period and diligently prosecutes the cure to completion.

6.3 Termination Upon Developer Default

If the Developer fails to cure any material default during the cure period described above, this Agreement shall be terminated upon written notice of termination from the City, and thereafter neither Party shall have any further rights or obligations thereunder, except for the City's right to retain the Good Faith Deposit as more particularly described herein.

6.4 City Discretion to Extend Time for Performance

Notwithstanding the above, if the Mayor determines that it is in the best interest of the City, the Mayor may extend the time for Developer's performance of any of the terms and conditions of this Agreement. Any extension shall be granted in the Mayor's sole and absolute discretion, and in no event shall this provision be construed as conveying any right or entitlement to an extension.

6.5 Default by City

In the event that the City fails to perform any provision under this Agreement, the Developer shall have the right to terminate this Agreement and obtain a refund of the Good Faith Deposit. Upon termination of this Agreement, neither Party shall have any further rights or obligations hereunder except for Developer's right to recover the Good Faith Deposit. In no event shall Developer be entitled to any damages, of any kind or character, from the City.

7. LIMITATIONS

This Agreement does not obligate the City to transfer the Property to the Developer or any other person, nor does it obligate the City to approve the Project or any other project. Developer

acknowledges and agrees that no City commitment to move forward with the Project can be made other than by resolution of Board of Aldermen and adoption of any such resolution shall be at the sole and absolute discretion of said Board of Aldermen. Any costs incurred by Developer, Developer's members or partners, or other members of the Project development team to comply with its obligations under this Agreement or to negotiate the LDA shall be the sole responsibility of the Developer, and in no event shall the City have any responsibility to pay for or reimburse the Developer for any of said costs.

The Developer understands and acknowledges that the City is subject to Massachusetts Open Meeting and Public Records laws, and that the City must make information regarding the Property, the Project, the Developer, and this Agreement available to the public upon request as required by said laws.

8. NON-DISCRIMINATION

The Developer agrees that there shall be no discrimination against, or segregation of, any person, or group of persons, on account of sex, race, color, age, marital status, religion, disability, creed, national origin, ancestry, or sexual orientation in the construction, operation use, or occupancy of the Property, nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to employees or invitees of the Property.

9. NO ASSIGNMENT

This Agreement is personal to the Developer and is not assignable to any other person or entity/without the prior written consent of the City. Any attempt to assign this Agreement or any part of the Agreement without the prior written consent of the City shall constitute a breach of this Agreement and shall be void and of no force and effect. Notwithstanding the above, this Agreement may be assigned to an affiliated partnership or a limited liability company provided that the Developer is either the general partner or managing member of the assignee entity.

10. RIGHT OF ENTRY

The Developer and its agents, contractors and representatives shall have the right to enter upon the Property at any time during the Negotiation Period to conduct investigations, tests, topographical surveys, appraisals, and studies, including geotechnical studies, soils tests and environmental site assessments. The Developer shall not alter the Property except as needed to conduct the testing and other activities thereon as authorized by this Agreement, and the Developer agrees upon completion of any testing or other activity under this Agreement to remove all debris, litter, equipment, and other materials placed on the Property by the Developer and its agents, and to restore the Property as much as reasonably possible to its original condition. A minimum 48 hours of advance notice shall be provided to the City by the Developer if activities will have any impact upon access to or use of existing public parking spaces.

The Developer shall indemnify, defend and hold the City harmless from any and all claims, demands, damages, losses, actions, liabilities, causes of action or judgments, including reasonable attorney's fees, which the City may incur or be required to pay by reason of entry onto the Property and activities thereon by Developer or Developer's agents, employees, contractors or consultants, including, without limitation, any damages, injury or death to any person or property suffered by any person, firm or corporation, except to the extent the same are attributable to the negligence or willful misconduct of the City or any person or entity acting on the City's behalf or under the City's authority. Notwithstanding any other provision of this Agreement, Developer shall have no liability to the City or any other party by reason of, nor shall Developer have any duty to indemnify, defend or hold any person harmless from or against, any claim, demand, damage, loss, action, liability, cause of action or judgment, including without limitation, any claim for diminution in value of the Property or for environment remediation or clean-up costs, arising out of or in connection with the mere fact of having discovered and/or reported any adverse physical condition, title condition or other condition or defect with respect to the Property. For the duration of this Agreement, Developer shall cause the City to be named as an additional insured on applicable commercial general liability insurance policies with coverage of at least one million dollars (\$1,000,000) and shall cause certificates of such insurance to be delivered to the City. The protection afforded by such insurance shall not be limited by the liquidated damages provisions of this Agreement.

Notwithstanding any other provision in this Agreement, this right of entry shall not relieve the Developer from the necessity of obtaining any applicable governmental approvals or permits that may be necessary to perform such tests or conduct other activities on the Property.

11. INFORMATION

Upon Developer's request, the City shall promptly furnish the Developer all material information within its possession or control concerning the Property, including without limitation, copies of all topographical surveys, environmental reports, engineering studies, soil-bearing test data, and any similar reports and studies with respect to the Property.

12. NOTICES

All notices under this Agreement shall be sufficiently given if delivered, faxed (but only if simultaneously served by another method herein specified), or mailed by registered or certified mail, postage prepaid, addressed to:

DEVELOPER:

CITY:

If mailed, the written notice shall be deemed received and shall be effective three (3) business days after deposit in the United States mail in the Commonwealth of Massachusetts or upon actual receipt by the addressee if earlier.

13. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

14. COUNTERPARTS

This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, this Exclusive Negotiating Agreement has been executed by the Parties as of the date first written above.

“CITY”

By: _____
Its: Mayor

Approved as to form:

By: _____
City Solicitor

“DEVELOPER”

By: _____

Its: _____

APPENDIX G
Sample Land Disposition Agreement

LAND DISPOSITION AGREEMENT

This Land Disposition Agreement ("LDA") dated this ____ day of _____, 2013, is made by and between the City of Somerville, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts, with usual offices at 93 Highland Avenue, Somerville, MA ("City" or "Seller"), acting by and through the Mayor's Office of Strategic Planning and Community Development ("OSPCD") and _____, a _____ duly organized and existing under Chapter _____ the law of the Commonwealth, with usual offices at _____ (the "Buyer")

In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Buyer hereby agree as follows:

A. PROPERTY

The City agrees to sell to Buyer and Buyer agrees to purchase, upon the terms and conditions hereinafter set forth all the City's right, title and interest in _____ parcel(s) of land located at _____ (the "Property"), more particularly described in EXHIBIT A attached hereto and incorporated as part of this LDA.

B. PURCHASE PRICE

The agreed purchase price for the Property is _____ Dollars (\$ _____) of which:

\$ 10,000.00	was paid upon execution of an Exclusive Negotiating Agreement. The balance of ten percent (10%) of the Purchase Price is paid herewith.
\$ _____	Subtotal (the "Deposit"); and
\$ _____	is to be paid at the time of delivery of the Deed by wire transfer in accordance with the City's instructions.
\$ _____	Total (the "Purchase Price").

C. DEPOSIT

The Deposit shall be held in escrow by the OSPCD Director of Administration and Finance ("Escrow Agent"), subject to the terms of this Agreement. The Escrow Agent shall be liable only for willful default or misconduct. In the case of a dispute, the Escrow Agent shall retain the Deposit pending written receipt of instructions signed by both the City and the Buyer, or Court Order. The City shall have no obligation to pay interest on the Deposit to the Buyer.

If the Buyer fails to purchase the Property on the Closing Date, the Deposit and any interest thereon shall be retained by the City as the City's sole remedy at law and in equity.

D. DEED

The City shall convey its right, title and interest in the Property to the Buyer by a Quitclaim Deed in the form attached as EXHIBIT B (“Deed”). The Deed shall convey good, clear record and marketable title to the Property, free from all encumbrances except for:

1. provisions of then existing laws, rules, and regulations, including without limitation, building, zoning and environmental laws;
2. any liens for municipal betterments first assessed after the date of this LDA;
3. matters set forth in Exhibit C;
4. real estate taxes or PILOT payments not yet due and payable;
5. rights, easements, restrictions, and reservations of record, if any, in addition to those described in item #3 above;
6. any provisions of this LDA, that, by their terms, survive the Closing Date.
7. The Deed from the City to the Buyer will include the following restrictive covenants, which shall run with the land and be binding upon the grantee and the grantee’s successors and assigns: a) that the use of the Property be restricted to a hotel with ancillary uses and associated parking as approved; b) that there be no material change in development concept at the Property for a period of twenty (20) years from the Date of Closing unless the City has given its prior written consent to such change; and c) that there be no transfer of title to a tax-exempt owner unless the City has given its prior written consent to such transfer and the City may condition its consent upon the tax-exempt owner’s entering into a Payment in Lieu of Taxes (“PILOT”) Agreement. The consent of the “City” shall mean the consent of both the Mayor and the Board of Aldermen.

E. TIME FOR PERFORMANCE/DELIVERY OF THE DEED

The Buyer, or a nominee approved by the Somerville Board of Aldermen (“BOA”)) shall acquire the Property by accepting delivery of the Deed from the City and paying the balance of the Purchase Price to the City on or before _____, 2013 (“Closing Date”) at City Hall or such other place as may be mutually agreed upon by the parties. Time is of the Essence of this Agreement. The City will not deliver the Deed prior to the Developer securing zoning relief, building permit, and financing commitment.

F. ACCEPTANCE OF THE DEED

The acceptance of the Deed to the Property by the Buyer and the payment by the Buyer of the Purchase Price shall be deemed a full performance by the parties hereto and shall discharge

every agreement and obligation of the parties herein contained, except such as, by the express terms of the LDA are to survive the Closing Date.

G. CONDITION OF THE PROPERTY ON THE CLOSING DATE

On the Closing Date, the Property shall be conveyed “as is”, in substantially the same condition as it is as of the date hereof, reasonable wear and tear expected.

H. USE OF PURCHASE MONEY TO CLEAR TITLE

To enable the City to make conveyance, City may, at the Closing Date, use the purchase money or a portion thereof to clear the title of any or all encumbrances, provided that all instruments so procured are recorded promptly after the delivery of the Deed.

I. BROKER’S FEE

The City and the Buyer each represent and warrant to the other that neither has dealt with any real estate broker or other person who would be entitled to be paid a commission by reason of the procurement of this Agreement or the sale of the Property, and each agrees to defend, indemnify and hold the other harmless from and against any loss, damage or expense arising out of any breach by the indemnifying party of such representation and warranty. These warranties, representations, and indemnifications shall survive the delivery of the Deed.

J. CONSTRUCTION OF THE PROPOSED DEVELOPMENT

Buyer acknowledges that the City has agreed to sell the Property to Buyer so that Buyer can construct at the Property a project (“the Project”), consisting of a hotel described in a proposal submitted by the Buyer to the City in response to a publicly advertised disposition process.

1. Development Team: The Buyer’s Development Team shall consist of :

a. Applicant:

b. Attorney:

c. Architect:

d. Engineer:

b. Lender(s):

c. Equity Partners

2. Description of the Project. The Project is described in the Buyer’s proposal. The Buyer shall develop the Property substantially in accordance with such proposal as modified to comply with Planning Board and/or Somerville Board of Zoning Appeal requirements.

3. Development Milestones. Buyer shall commence and complete construction of the Project within thirty-six (36) months after the Closing Date. Construction shall be phased as described in EXHIBIT C in order to minimize the loss of existing parking during construction.
4. Force Majeure. Notwithstanding the foregoing, the Buyer shall not be in default of this Agreement for failure to meet development milestone dates if such failure is due to a cause beyond the Buyer's reasonable control, such as a flood, earthquake, fire, epidemic, or material shortages resulting from strikes and/or freight embargoes. It is the intent of this section that, in such event or events, such date(s) shall be extended for the period of the enforced delay; provided, however, that the period of the extension and the reasons therefore shall be in writing signed by both parties. The City shall not unreasonably withhold or delay its written consent to such extension.
5. Security for Performance. The Buyer shall obtain from the general contractor for the Project, performance and payment bonds in the amount of 100% of the contract price naming the City of Somerville as an additional obligee. In addition, the Buyer shall post a bond or letter of credit or other security satisfactory to the City in the amount of \$_____ to secure performance of the Buyer's obligation to construct the Project.
6. Survival. This Section J shall survive the Closing Date.

K. IDENTITY OF BUYER AND DEVELOPMENT TEAM /PROHIBITION AGAINST CHANGE OF USE.

1. The Buyer represents that it is acquiring the Property for purposes of development and not for speculation.
2. The Buyer acknowledges that, in view of the importance of the undertakings set forth herein to the general welfare of the community, the identity of the Buyer is material.
3. The Buyer covenants not to transfer the Property without the City's prior written consent until such time as the Project has been fully constructed and the hotel is open for business.
4. The Buyer covenants not to make any material change in the development concept as set forth in the Buyer's Proposal (as modified to comply with Planning Board and/or Somerville Board of Zoning Appeal requirements) for twenty (20) years from the Date of Closing.
5. The covenants contained in this Section K are expressly stated to be covenants which shall survive the Closing and run with the land. They shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the Property or any portion of the Property. They shall, to the fullest extent permitted by law and equity, be binding for the benefit of the City and be enforceable by the City against the Buyer and the Buyer's successors and assigns.

L. ACQUISITION AND DEVELOPMENT FINANCING.

The Buyer represents that it has adequate financial resources to acquire the Property and to construct the Project and shall deliver upon execution of the LDA and again at the Closing Date, current versions of the financial statements and pro formas provided by the Buyer under an Exclusive Negotiating Agreement (“ENA”) dated _____, demonstrating to the reasonable satisfaction of the City that the Buyer is in stable financial condition, not the subject of nor threatened with a bankruptcy, receivership, assignment for the benefit of creditors or other insolvency type proceeding, and is financially capable of developing the Project as contemplated by this Agreement.

M. ENVIRONMENTAL TESTING /TITLE / PERMITS AND APPROVALS

During the Exclusive Negotiating Agreement period: (1) the Buyer tested the Property for the presence of oil and hazardous materials and substances and expressly waives any objection to closing based on the environmental condition of the Property; (2) the Buyer conducted a title examination and expressly waives any objection to closing based on issues related to title; and (3) the Buyer obtained all permits and approvals needed to construct the Project and expressly waives any objection to closing based on permits and approvals.

N. DEFAULT/TERMINATION/REMEDIES.

If the Buyer is in default in its obligations, other than any default which is governed by Section C of this Agreement, the City shall send written notice of such default, stating what actions are required to cure the default and stating the time period within which the default must be cured. If the Buyer fails to promptly take and diligently pursue action designed to cure the default, or if the default is not cured within thirty (30) days of receipt of written notice of default, or if a default cannot with due diligence be cured within thirty (30) days and Buyer does not commence the cure of such default within such thirty (30) days and thereafter diligently prosecute the same to completion, the City may avail itself of any and all remedies, including without limitation, enforcing the bonds of the general contractor, looking to the letter of credit, bond, or other security provided by the Buyer to secure the Buyer’s performance, or bringing an action for damages and/or to enjoin or compel specific performance. No delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this section shall operate as a waiver of such rights or limit such rights in any way. The City shall not, because of concepts of waiver or laches or otherwise, feel constrained to exercise such remedy at a time when it may still hope to resolve by other methods the problems created by the default; nor shall the City's waiver of any specific default be treated as a waiver of the City's rights with respect to any other default or, for that matter, as a waiver with respect to the particular default. This Section shall survive the Date of Closing.

O. NOTICE

All notices required or permitted to be given hereunder shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, or by Express Mail or FedEx or other nationally recognized delivery service with tracking capability, addressed

in case of the City to:

and in the case of the Buyer to:

or to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or upon mailing.

P. REPRESENTATIONS AND WARRANTIES

1. The Buyer represents and warrants and delivers herewith an opinion of its legal counsel, that the Buyer is a _____, organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts; that the Buyer has the legal right, power and authority to enter into and perform all of its obligations under this Agreement; and that the individuals executing this Agreement have been duly authorized to execute the same on behalf of and to bind, the Buyer.
2. The Buyer represents and warrants that the execution of this Agreement and compliance with its terms will not conflict with or result in a breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority of which the Buyer has knowledge or notice, or any other agreement, document or instrument by which the Buyer is bound. The Buyer further represents and warrants that there are no claims, lawsuits or proceedings pending in any court or government agency the outcome of which could materially and adversely affect the Buyer's ability to perform its obligations under this Agreement.
3. The Buyer acknowledges that the Seller has made no representations or warranties regarding the Property.

Q. CLOSING DOCUMENTS/ADJUSTMENTS TO THE PURCHASE PRICE

The City shall execute and deliver closing documents reasonably and customarily required from a seller of real property in the Commonwealth of Massachusetts, as requested by Buyer's or Buyer's mortgagee's counsel. The following charges shall be adjusted as of the Date of Closing and added to or deducted from the Purchase Price due from the Buyer under G.L. c. 59, s.2C.

R. MISCELLANEOUS PROVISIONS

1. This Agreement shall be binding on the Buyer's successors and assigns.
2. This Agreement shall be governed by Massachusetts law, shall be construed as a Massachusetts contract, shall take effect as a sealed instrument, and shall be modified or amended only by a written instrument executed by the City and the Buyer and approved by the Board of Aldermen.
3. Captions are for convenience only and shall not limit the scope or substance of this Agreement.
4. Time is of the essence of this Agreement.
5. No official or employee of the City of Somerville shall have any personal interest, direct or indirect, in this Agreement or in the Buyer, nor shall such officials or employees participate in any decision relating to this Agreement which affects their personal interest or the interests of any corporation, partnership, or association in which they are, directly or indirectly, interested. No official or employee of the City of Somerville shall be personally liable to the Buyer or any successor in interest in the event of any default or breach by the City of Somerville or for any amount which may become due to the Buyer or to its successor or on any obligations under the terms of this Agreement.
6. Wherever the consent or approval of the City is required herein, it shall mean the consent or approval of both the Mayor and the Board of Aldermen.
7. This LDA shall be recorded at the Middlesex South District Registry of Deeds.
8. This LDA may be executed in multiple counterparts, each of which shall be treated as an original.

SIGNATURE PAGE FOLLOWS

Exhibit A - Property Description
Exhibit B – Form of Deed
Exhibit C - Construction Phasing
Exhibit D - Disclosure Statement under G.L. c. 7, §40J

EXECUTED under seal on the day and year first written above.

CITY OF SOMERVILLE

BUYER:

By: _____

Joseph A. Curtatone

Its: Mayor

By: _____

Its:

Approved as to form: _____

City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared the above-named Joseph A. Curtatone, Mayor of the City of Somerville, proved to me by my own knowledge of the identity of the signatory to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose as Mayor of the City of Somerville.

Notary Public
My Commission Expires:
Qualified in Massachusetts

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared the above-named _____, the _____ of _____, _____, proved to me by my own knowledge of the identity of the signatory to be the person whose name is signed above, and acknowledged the foregoing to be signed by _____ voluntarily for its stated purpose as _____.

Notary Public
My Commission Expires:
Qualified in Massachusetts

APPENDIX H
CERTIFICATION OF GOOD FAITH

Pursuant to G.L. c. 30B, §10

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person.

As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(Name of person signing bid or proposal)

(Name of Business)

(Signature)

APPENDIX I
DISCLOSURE STATEMENT

Acquisition/Disposition of Real Property

The undersigned does hereby file the following statement with the Commonwealth of Massachusetts Division of Capital Asset Management (DCAM) for the purpose of disclosure pursuant to section 40J of Chapter 7 of the General Laws of Massachusetts:

REAL PROPERTY:

SELLER () LESSOR ():

BUYER () LESSEE ():

TERMS: Purchase Price:
 Closing Date:
 Other:

Listed below are the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in the Property. There is no person with a direct or indirect beneficial interest in the property who is either an official elected to public office in the City of Somerville or an employee of the City of Somerville.

_____ of _____
_____ of _____
_____ of _____

Name: _____

By: _____

Title: _____

APPENDIX I
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TERMS: Purchase Price:
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 Other:

Listed below are the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in the Property. There is no person with a direct or indirect beneficial interest in the property who is either an official elected to public office in the City of Somerville or an employee of the City of Somerville.

_____ of _____
_____ of _____
_____ of _____

Name: _____

By: _____

Title: _____