THE PLANNING COMMITTEE OF THE COMMON COUNCIL

125 East Avenue
P.O. Box 5125
Norwalk, CT 06856

TO: MEMBERS, PLANNING COMMITTEE OF THE COMMON COUNCIL

FROM: NICK KYDES, CHAIRMAN

DATE: MAY 31, 2012

RE: **MEETING NOTICE**

The next scheduled meeting of the Planning Committee of the Common Council will be held on **Thursday, June 7, 2012 at 6:30 pm**, in Room 231 in Norwalk City Hall. Please Note The Time And Location.

PLANNING COMMITTEE OF THE COMMON COUNCIL
June 7, 2012
6:30 PM

A G E N D A

PUBLIC HEARING – NEIGHBORHOOD ASSISTANCE ACT TAX CREDIT PROGRAM

CALL TO ORDER

ROLL CALL

I. APPROVAL OF MINUTES – May 3, 2012

II. BUSINESS

A. NEIGHBORHOOD ASSISTANCE ACT TAX CREDIT PROGRAM

1. Act on advancement to the Common Council the attached list of programs for inclusion in the Neighborhood Assistance Act Tax Credit Program

B. CDBG

1. Act on advancement to the Common Council the Globe Theater, Inc's $2,000,000 Section 108 Loan request for the purposes of acquisition and redevelopment of the Globe Theater

C. **<u>WALL STREET REDEVELOPMENT PLAN AREA</u>**

1. Review the POKO 2007 LDA related timelines based on the developer's confirmed September 1, 2011 commencement of construction

III. NEW BUSINESS

IV. OLD BUSINESS

ADJOURNMENT

CITY OF NORWALK
PLANNING COMMITTEE OF THE COMMON COUNCIL
MAY 3, 2012

ATTENDANCE: Nicholas Kydes, Chairman; Douglas Hempstead, Michael Geake, Carvin Hilliard, Bruce Kimmel.

STAFF: Norwalk Redevelopment Agency: Tim Sheehan.

CALL TO ORDER

Mr. Kydes called the meeting to order at 7:30 p.m. and stated that the members as listed above were present and that there was a quorum.

Mr. Kydes stated that the protocol for the agenda items would be that discussion by the Committee Members would take place first and that if members of the public in attendance wished to speak, comments would be accepted following the discussion of the items.

Mr. Kydes requested a change to the order of the agenda items to move Section 108 Loan for the Redevelopment of the Globe Theater to last on the agenda, and Mr. Sheehan responded that it would have this as last for any future agendas.

** **MR. GEAKE MOTIONED TO CHANGE THE ORDER OF THE AGENDA ITEMS TO MOVE ITEM III, SECTION 108 LOAN FOR THE REDEVELOPMENT OF THE GLOBE THEATER TO LAST ON THE AGENDA.**
** **THE MOTION PASSED UNANIMOUSLY.**

APPROVAL OF MINUTES

** **MR. HEMPSTEAD MOTIONED TO APPROVE THE MINUTES FROM MARCH 19, 2012 AS SUBMITTED.**
** **THE MOTION PASSED UNANIMOUSLY.**

Mr. Sheehan stated that there were a few corrections needed on page two as follows:
Paragraph 3, last sentence: Mr. Sheehan explained that HUD recommends webinar meetings as an effective way to reach a broader audience...
Paragraph 5, last sentence: He said that while customized interaction may be preferred, resources are limited.

** **MR. HILLIARD MOTIONED TO APPROVE MINUTES FROM THE APRIL 5, 2012 MEETING AS AMENDED.**

** **THE MOTION PASSED UNANIMOUSLY, ONE ABSTENTION (GEAKE)**

BUSINESS

Neighborhood Assistance Act Tax Credit Program

Mr. Sheehan referred to the supporting documents and stated that it is an annual practice to review applications with a pubic hearing in accordance with state procedures.

It was suggested to hold this prior to the start of the next meeting, and it was agreed that the public hearing would be scheduled for June 7, 2012 at 6:30 p.m.

** **MR. HILLIARD MOTIONED TO HOLD A PUBLIC HEARING TO REVIEW APPLICATIONS FOR THE NEIGHBORHOOD ASSISTANCE ACT TAX CREDIT PROGRAM, AND TO SCHEDULE THIS PRIOR TO THE REGULAR MEETING ON JUNE 7, 2012 AT 6:30 P.M.**

** **MOTION PASSED UNANIMOUSLY.**

Update on the Norwalk Company Project

Mr. Sheehan referred to the letter to the Connecticut Department of Economic and Community Development from the Connecticut State Historic Preservation Office and supporting documents (SEE EXHIBIT A).

Mr. Kimmel asked how old the building was, and Mr. Sheehan replied that it was over one hundred years old.

Mr. Kimmel asked why this issue was not identified at the beginning when the building was being considered for demolition. Mr. Sheehan replied that the Environmental Impact Evaluation (EIE) has nothing to do with the municipal entitlement process which ultimately allowed for the demolition of the front façade. Mr. Sheehan indicated that the EIE and public scoping session was in response to the preliminary award of the Brownfield Remediation Grant. Mr. Sheehan indicated that the demolition of a building which could be on the state and or national historic register is an action which triggers the EIE by the state. Mr. Sheehan further indicated that while the project was undertaking it local public entitlement the application for the Brownfield Remediation Grant had yet to be released.

Mr. Geake asked that in the absence of the grant would the owner of the property have had input (Check with Mr. Geake regarding wording) with the demolition. Mr. Sheehan replied that the State cannot require anything from the developer that is not directly related to the grant award and its' related mitigation requirements. Mr. Sheehan indicated additionally that the developer is not required to accept the grant or the state's requested mitigation in connection with the grant.

A discussion ensued on the protocol for the future, and Mr. Kydes stated that his concern is the issue of private property rights as was the same as 93 East Avenue, and that this opens the door to put someone's property on the register of "historical" properties.

Mr. Sheehan replied that the state has no authority to put the property on any such register without the authorization of the owner. He indicated that via this process the State is seeking to be sure that their investment into the project is vetted and that if mitigation measures are required they are understood by all prior to the execution of an assistance agreement. He referred to the ECD guidelines (SEE EXHIBIT B).

Mr. Sheehan explained that if a project seeking state assistance meets any one of the actions listed an EIE is required. He indicated this project also met the threshold for a public scoping session which is scheduled for next week. He added that DECD, based upon the input from the various state departments, will then issue its determination regarding the need for any mitigation measures and the related compliance.

Mr. Kydes asked if not, is it rejected by the state for the grant and is the $500,000 at risk. Mr. Sheehan replied that the developer has to respond to the recommended mitigation measures either accepting or rejecting them. Should they be rejected the grant would obviously be at risk.

Mr. Kydes stated that we need to develop strategies in the future to avoid these bumps that stifle redevelopment efforts and we need to get progress in gear to draw more revenue into the City's tax base to have a more viable future and to reduce the "limbo state" of development that has made our city economically stagnant.

Mr. Sheehan emphasized that this is a state process and the project itself has a required EIE trigger. That trigger requires the commencement of the process by the state. Mr. Sheehan indicated he had early discussions with Mr. Bryant and disagrees that the Norwalk Trust is not within their rights to contact the state regarding the investment of state funding into the project.

Mr. Kydes asked if we would lose funding for remediation from the grant. Mr. Sheehan replied that it was his belief that we would be going though this same process even if the façade of the building was preserved as façade preservation as initially intended in this case is not considered historic preservation.

Mr. Sheehan noted that the hearing was set up by DECD next Wednesday at 10:00 a.m. in the Community Room at City Hall.

Mr. Kydes asked if this needs to be addressed through the Ordinance process and Mr. Hempstead replied that he feels it is a combination of the City's Finance Department with regards to tax relief and the Redevelopment Agency through the Historic Commission. Mr. Hilliard stated that there needs to be a clear definition of what is historic in reaching an agreement of the guidelines.

Mr. Kydes asked how the rights of the property owner can be protected and is there an inventory of the City's historic buildings. Mr. Sheehan replied that he is not sure if the list is up to date.

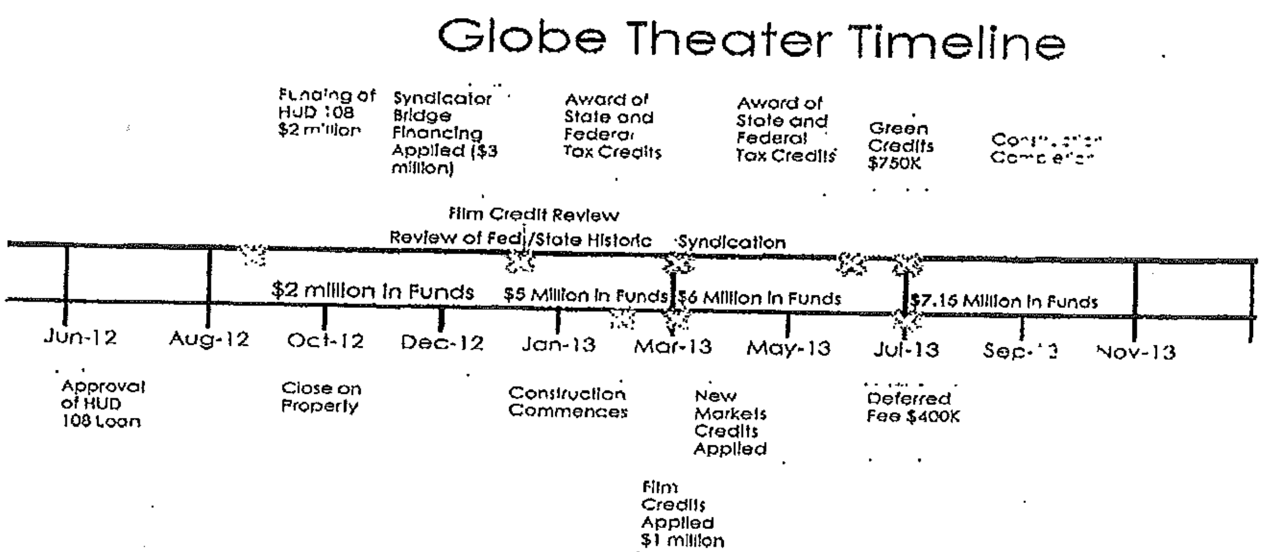
Mr. Hempstead stated that the City had received funding to start and maintain this inventory, but the City has no provision of identifying for tracking purposes, historic preservation. He added that this hearing could be a kick off for further discussion by the other Committees involved.

<u>CDBG –</u>

<u>Section 8 Loan for the Redevelopment of the Globe Theater</u>

Mr. Kydes stated that he was recusing himself from this discussion due to a conflict, and left the meeting at 8:15 p.m.

Mr. Sheehan indicated that it was his understanding that the developer was not prepared to provide the additional information requested by the Committee last month at this time and was requesting additional time to produce such information, but indicated that Mr. Farricker was in the audience. Mr. Farricker came forward and stated that the following documents represent a summary of the timeline and phases of approval and development for the project:



Globe Theater HUD 108 Timelines for Funds Placed in Service

Acqusition of Theater	***FUNDED AT HUD 108 Closing***	$1,044,000
Rationale:	Site Control and Ownership facilitates grant money Change in Ownership removes impediment Purchase equals appraisal, colateral recoupable to Norwalk HUD prefers 108 funds to be used for capital investments	
Remediation of Theater	***FUNDED AT HUD 108 Closing***	$287,323
Rationale:	Necessary for any use or ownership Preserves value of building and increases liquidity Absolute requirement of use, either by Globe or Norwalk Value for insurance and liability	
Architecture and Engineering	***FUNDED AT HUD 108 Closing*** OR Draw schedule	$255,000
Rationale:	Requirement for proper application for Tax Credits Completed Plans enhances project sale values Timeline makes plan development necessary Should increase appraised value as later stage approval	
Tax Credit Applications	***FUNDED AT HUD 108 Closing*** OR Draw schedule	$238,000
Rationale:	Needed to secure equity to complete project Costs include exhibits, legal and structuring HUD 108 funding demonstrates community support	
Uncommitted Necessary Funds for Preconstruction Activities	DRAW SCHEDULE	$175,677
	TOTAL HUD 108 LOAN	$2,000,000

Globe Theater Inc. is negotiating with DECD for a grant of up to $250,000 to pay for operating costs (insurance, utilities, salaries, studies, etc.) estimated at $286,000 for full

Mr. Farricker stated that the above timeline was in response to the request from the last meeting. He stated that in addition to the major areas listed above, in response to the state's requirement, he presented a background fact sheet on Blum Shapiro and stated that they have retained them based on their accounting and experience with municipal projects.

He went through the issue of timing as it relates to the market study and explained that a full study would take three months and while he would like to proceed with the above timetable and simultaneously do the study, he would like to have approval to move forward on the project, on the condition that the market study will be done.

He stated that in order to satisfy the terms as negotiated by the RDA, waiting three months for the completion of the study represents somewhat of a chicken-egg situation that would lose time in the process. He asked the Committee to take a leap of faith that the study will have the positive results that the RDA is hoping for.

Mr. Hempstead replied that under the financial circumstances with the City's budget constraints, coupled with a recent need for a special appropriation to help the Board of Education with a funding issue on their Pension Benefits, he has reservations about any potential liability that the city just cannot afford at this time.

Mr. Kimmel stated that Norwalk is expected to have the market feasibility and need for Arts facilities. There are a surprising number of factors that indicate the City could not support another Theatre within proximity of New York and other nearby venues such as New Haven, or the Long Wharf or even Ridgefield. He added that this project really needs to be supported with a reasonably extensive market study.

Mr. Geake asked what the costs were to the City to proceed, and Mr. Sheehan replied that there needs to be a level of Common Council support for the project and its financing prior to beginning the work involved as there is RDA and HUD staff time that would be devoted to the project.

Mr. Kimmel added that his other concern is a credibility factor with the state as we have spent a great deal of time previously with HUD in Hartford and Washington with this property. (Check with Mr. Kimmel on wording)

Mr. Hempstead asked about the appraisal and Mr. Farricker replied that the intended use is appraised at a very different value than market value. Mr. Hempstead stated that the City's credit for such loan must be secured and a stream of payments of principal and interest must be adhered to, based upon a full evaluation and recommendation by the Redevelopment Agency. (Check with Mr. Hempstead on wording)

Mr. Sheehan stated that the Agency's concern is not the debt but the related structure and the viability of the business plan to draw that many people in the door. Mr. Farricker indicated that the Agency's own consultant Kevin Gremes was supportive of the presented structure. Mr. Sheehan stated that the Agency's consultant has not been engaged on this project, but he would have a discussion with Mr. Gremes regarding any position that he might have. Mr. Geake asked when the Agency can expect to receive the information, and Mr. Farricker replied that it may take three months or more to perform a comprehensive market analysis as it is difficult to do and it takes time to find all the required information.

Mr. Albanese noted that the Redevelopment Agency passed on this project several years ago for many of the same reasons as stated now. Mr. Hilliard suggested that further action be tabled until the full Council can review all the information requested along with an actionable plan. He suggested that a special meeting be held after the RDA has reviewed and evaluated this with a deeper dive and recommendation, then invite the full Council for a review. (Check with Mr. Hillard on wording)

Mr. Hempstead stated that this has to be evaluated on the financial merit and the percentage of CDBG funds that is available to the City.

OLD BUSINESS

Mr. Hempstead noted that with regard to the POKO LDA being vetted through the Law Department and the time line for the Common Council, Corporation Counsel has suggested that Mr. Keyes recuse himself from any further discussions regarding the POKO project, due to a personal conflict. (Check with Mr. Hempstead on wording)

NEW BUSINESS

There was no further new business discussed.

ADJOURNMENT

** **MR. GEAKE MOVED TO ADJOURN.**
** **THE MOTION PASSED UNANIMOUSLY.**

The meeting adjourned at 9:25 p.m.

Respectfully submitted,

Marilyn Knox;
Telesco Secretarial Services

EXHIBIT A

State Historic Preservation Office

D E C D
State of Connecticut
Department of Economic and Community Development

April 26, 2012

Maya Loewenberg
Permit Ombudsman
Office of Responsible Development
Department of Economic and Community Development

Subject: Comments on the Proposed DECD Brownfields Program Grant for Remediation of 20 North Water Street, Norwalk.

Dear Ms. Loewenberg:

The State Historic Preservation Office (SHPO) responds here with our comments on the Public Scoping Notice published in the Connecticut Environmental Monitor on April 17, 2012 for the referenced state action. We are also responding to comments from several interested parties provided to SHPO as part of our agency consultations concerning the potential impacts to historic resources resulting from this action. According to the scoping notice, the City of Norwalk in conjunction with North Water Street LLC (c/o Spinnaker Real Estate Partners LLC) is proposing the redevelopment of the former Norwalk Company site located at 20 North Water Street, Norwalk, CT. Redevelopment activities include: environmental assessment, remediation and monitoring of the 1.895 acre site; demolition of the existing 56,720 square foot brick building; and new construction of a 130,000 square foot mixed-use development consisting of 107 residential rental units and 18,000 square feet of ground floor commercial space. State funds are proposed for environmental assessment, remediation, abatement and monitoring. The existing brick industrial building proposed for demolition as part of this action is over 100 years old. SHPO also understands that building has been the subject of previous consultations between the City of Norwalk and the Norwalk Preservation Trust (NPT).

SHPO was contacted by Mr. Tod Bryant, President of NPT, on April 5, 2012 with concerns about the proposed demolition of the historic building on this property. As stated by Mr. Bryant, it is the opinion of the Norwalk Preservation Trust that the former Norwalk Company building is eligible for listing in the National Register of Historic Places and that this action may cause an adverse effect to significant historic properties. SHPO contacted staff at DECD's Brownfields Program to share the concerns raised by the NPT and to express our concurring opinion that former Norwalk Company building is National Register eligible. We provide here additional information on the basis of our opinion. It is SHPO's opinion that the former Norwalk Company building at 20 North Water Street is individually eligible for listing in the National Register of Historic Places under Criterion A, for its association with South Norwalk's late 19th and early 20th century industrial history and Criterion C for its representation of very early 20th and century factory design. The building appears to have been constructed between 1895 and

State Historic Preservation Office

DECD
State of Connecticut
Department of Economic and Community Development

1900[1] and retains sufficient integrity of design, materials, location, and setting to convey its association with South Norwalk's industrial heritage. The building was constructed as a machine shop for the Norwalk Iron Works and the original layout of the facility remains visible in recent aerial views of the property. Norwalk Iron Works was founded in South Norwalk in 1864 and maintained operations along present day North Water Street throughout the 20th century. The firm changed its name to the Norwalk Compressor Company in 2005 when they relocated to Stratford, Connecticut.

Although many of the original windows appear to have been replaced or lost and a large single story addition has been constructed at the rear of the building, the former factory and machine shop building retains its essential historic features and would very likely be recognizable to someone familiar with the building in the early 20th century. Historic exterior features reflecting the industrial function of the building include the saw-back roof at the rear of the building (visible on recent aerial imagery). The roofing here is consistent with an October 1900 Sanborn Insurance map showing the facility with a "saw tooth roof" at the rear. SHPO believes that the former Norwalk Company factory may also be eligible for listing as a contributing resource to the adjacent Washington Street and South Main Street Historic District. Although the period of significance for the historic district and Norwalk Company building overlap, the historic district is primarily significant for its intact assemblage of historic commercial and residential properties constructed in the late 19th and early 20th century. Despite the differences in property type, the Norwalk Company building presents an important element of the historic streetscape linking the property at 20 North Water Street with the adjacent district and bridge. The existing historic facilities at 20 North Water Street are physically contiguous with the National Register-listed Norwalk River Railroad Bridge along the northern parcel boundary.

Based on the information available to the State Historic Preservation Office, it appears that the proposed action may significantly affect historic structures or landmarks, as defined in Connecticut General Statute 10-410. We understand that the NPT, Norwalk Historic Society, and the Connecticut Trust for Historic Preservation have requested a public scoping meeting for this project. The State Historic Preservation supports the opportunity of these parties, and other members of the public, to express their views on the potential public benefits and environmental impacts of this state action under the Connecticut Environmental Policy Act. SHPO anticipates that such public input will assist DECD, the City of Norwalk, and North Water Street, LLC. in the consideration of appropriate mitigation measures to resolve the impacts to Norwalk's significant historic resources.

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[1] The building was inventoried in 1976 as part of an Historic Architectural Survey with a suggested date of construction of "c. 1865". This information appears to be incorrect, as the facility is not depicted on an 1895 Sanborn Map of the area.

State Historic Preservation Office

DECD
State of Connecticut
Department of Economic and Community Development

The State Historic Preservation Office appreciates the opportunity to have reviewed and commented upon this Brownfields Program project. These comments are provided in accordance with the Connecticut Environmental Policy Act. For further information, please contact me at (860) 256-2761 or Daniel.Forrest@ct.gov.

Sincerely,

Daniel T Forrest

Daniel T. Forrest
Deputy State Historic Preservation Officer

CC: Sheehan/Norwalk Redevelopment Agency
Bryant/Norwalk Preservation Trust
Westmoreland/Norwalk Historic Society
Higgins/CT Trust for Historic Preservation

EXHIBIT B

Environmental Classification Document

Generic ECD (revised effective 10/5/2010)
The following document is the approved 2010 revision to the Generic Environmental Classification Document (ECD) for use by most State agencies to determine whether an agency action requires evaluation under the Connecticut Environmental Policy Act (CEPA). This Generic ECD supersedes the previous version that was in effect since 1993. This ECD is being noticed according to Section 22a-1a-5 of the Regulations of the Connecticut State Agencies
Printable Generic ECD (.pdf, 72 KB))

Generic Environmental Classification Document (ECD)
For State Agencies*

Prepared Pursuant to Section 22a-1a-4
of the Regulations of Connecticut State Agencies (RCSA)

I. Typical Actions For Which Environmental Impact Evaluations Shall Always Be Prepared. Such actions may include, but are not limited to, instances where the State is obligating the following types of development through State funding or agreements:

a. Construction of new sewage treatment plants;

b. Construction of hazardous waste disposal facilities;

c. Construction of low-level radioactive waste disposal facilities; and

d. Construction of coal-fired heating plants.

II. Typical Actions Whose Degree of Impact Is Indeterminate, But Could Have Significant Environmental Impacts. When any of the following actions are proposed, including, but not limited to, instances where the State is obligating the following types of development through State funding or agreements, the sponsoring agency shall conduct an early public scoping process in accordance with Section 22a-1b(b) of the Connecticut General Statutes (CGS). The sponsoring agency shall take into consideration comments received and shall prepare a written memorandum that documents its findings and subsequent determination of the proposed action's environmental significance using the criteria set forth in Section 22a-1a-3 of the Regulations of Connecticut State Agencies. Said memorandum shall be posted in the Environmental Monitor, unless the sponsoring agency determines that an environmental impact evaluation shall be prepared pursuant to CGS Section 22a-1b(c).

a. Construction of, addition to, or major alteration involving a change in use of a State leased, licensed, or owned facility involving 100,000 sq. ft. or greater of floor space if the facility is located in a Regional Center or Neighborhood Conservation Area, or 25,000 sq. ft. or greater of floor space if the facility is located outside of such areas as defined by the locational guide map of the Conservation and Development Policies Plan for Connecticut. A facility is defined as one or more concurrently planned or envisioned structures on a site, the sum total of which would equal or exceed the applicable figure for the project location;

b. Construction of new paved roads or lane additions to existing roads where the State's cost of such which would equal or exceed one million dollars ($1,000,000) using current industry cost estimates;

c. Construction of new parking lots, garages, or additions thereto, that provide for an increase in capacity of 200 vehicles or more;

d. Construction of new, or changes to, dams on watercourses resulting in a permanent change in water level of more than four (4) inches;

e. Capacity expansion of sewage treatment plants, hazardous waste or low level radioactive disposal facilities and coal fired heating plants;

f. Demolition or major alteration of any facility (i.e., building or structure) or site listed or eligible to be listed on the National or State Registers of Historic Places as determined by the State Historic Preservation Office; and

g. Any other action that may significantly affect the environment in an adverse manner. The significance of a likely consequence of an action should be assessed by the sponsoring agency and/or the participating agency, as the case may be, in connection with its setting, its probability of occurring, its duration, its irreversibility, its controllability, its geographic scope, its magnitude, and regulatory requirements.

III. Any and all joint federal/state actions for which environmental assessments or environmental impact statements are prepared pursuant to the National Environmental Policy Act (NEPA), as amended, shall be recognized as meeting the Connecticut Environmental Policy Act (CEPA) requirements provided that such NEPA documents meet, and are circulated in accordance with, the CEPA document-equivalent requirements.

IV. Actions which do not warrant a review pursuant to CEPA. Notwithstanding the provisions of II.f. above, the following actions have been shown by past agency experience to have impacts which are determinate, sufficiently limited in scope or covered under specific state or federal requirements other than CEPA or NEPA, and include a determination by the State Historic Preservation Office, whenever appropriate, that there is either *No Effect* or *No Adverse Effect* to historic, architectural or archaeological resources.

a. Maintenance, repairs, or renovations of facilities;

b. Demolition of facilities;

c. Environmental remediation at facilities or property;

d. Energy conservation measures; and

e. Licenses for non facility-related purposes.

*** Each agency that currently has its own ECD (i.e., DECD, DOT, DEP & DPH) shall either revise its ECD in accordance with RCSA Sec. 22a-1a-6 by April 1, 2011 or operate under the provisions of this Generic ECD after such date.**

For Further Information, Contact:
Dimple Desai, (860) 418-6412 ; dimple.desai@ct.gov

Content Last Modified on 10/4/2010 2:08:24 PM

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NORWALK re: DEVELOPMENT AGENCY
norwalkredevelopmentagency.com

TO: PLANNING COMMITTEE OF THE COMMON COUNCIL

FROM: MUNRO W. JOHNSON, AICP
SENIOR DEVELOPMENT PROJECT MANAGER

DATE: MAY 29, 2012

RE: NEIGHBORHOOD ASSISTANCE ACT TAX CREDIT PROGRAM

It is that time of the year again where the Norwalk Common Council traditionally authorizes the local Neighborhood Assistance Act Tax Credit Program (NAATCP).

Per years prior, the Redevelopment Agency is transmitting herewith a list of Norwalk-area non-profits that are applying for corporate contributions through the NAATCP and the Connecticut State Department of Revenue Services. The program is one where private companies may receive a credit against their State Corporate Income Tax if they contribute funds to pre-approved not-for-profit programs.

Please note that this is not a Norwalk grants program, nor are any funds controlled by the City of Norwalk involved. Rather, the city's role is essentially one of acknowledging the existence and legitimacy of the local non-profits to the state and corporate seekers of tax credit opportunities. The total local contributions for 2011 amounted to $133,267.

Application review is carried out by the state's Department of Revenue Services. However, under statute, the non profits must first be referred by the local legislative body following a public hearing. This hearing has been scheduled to take place at your upcoming June meeting.

Please review the attached list or program proposals and, should you have any questions, I will be pleased to try to answer them over the phone or at your meeting. Thank you.

ACTION REQUESTED: Approval of the attached list of programs for inclusion in the Neighborhood Assistance Act Tax Credit Program.

2012 NAATCP List

Organization Name	*ID*
Broad River Homes	46
Description	
$24,644 to fund a handicap-accessible patio for homebound residents.	

Organization Name	*ID*
Food Bank of Lower Fairfield County	44
Description	
$20,000 in support of food bank program which delivers nearly 300,000 pounds of food to Norwalk agencies each year.	

Organization Name	*ID*
Human Services Council	12
Description	
$150,000 for HVAC upgrade, energy efficiency improvements, incl. new boiler and outdoor lighting.	

Organization Name	*ID*
Mid-Fairfield Child Guidance Center	13
Description	
$100,000.00. - for Capital Campaign Building Project -- i.e., ongoing renovations to MFCGC's headquarters and retrofitting to house all programs and services under one roof.	

Organization Name	*ID*
Open Door Shelter	45
Description	
$50,000 for Manna House of Hospitatlity Food Program, a soup kitchen food pantry serving families in need.	

Organization Name	*ID*
Open Door Shelter	19
Description	
$100,000.00 - for the Hope Works Job Training Program - career training for the homeless with disabilities.	

Organization Name	*ID*
S.T.A.R. Inc., Lighting the Way	47

Description
$26,000 for Out-of-School Transition Services via Van transport to access community-based work and opportunities.

Organization Name	*ID*
The Maritime Aquarium	39

Description
$150,000 for additional energy conservation measures, incl. upgrades to chillers, air systems, and other motors.

PLANNING COMMITTEE OF THE NORWALK COMMON COUNCIL

TO: MEMBERS OF THE PLANNING COMMITTEE OF THE NORWALK COMMON COUNCIL

FROM: TIMOTHY SHEEHAN, EXECUTIVE DIRECTOR
MUNRO W. JOHNSON, AICP
SENIOR DEVELOPMENT PROJECT MANAGER

DATE: MAY 30, 2012

RE: SECTION 108 REQUEST FROM THE GLOBE THEATER, INC.

On March 23rd of this year, The Globe Theater, Inc., represented by Frank Farricker, submitted a set of materials to this Committee in connection with Mr. Farricker's desire that the City of Norwalk advance a $2 million Section 108 Loan request to HUD for his project. By way of background, a Section 108 Loan is ultimately considered by HUD upon the approval of the loan by the local legislative body (Common Council) of the entitlement community. The legislative body commits to HUD a guarantee for the full repayment of the intended loan using future CDBG entitlement funds should the intended loan recipient default on its repayment obligations to HUD.

The materials provided by Mr. Farricker, while detailed in some regards, represented a partial response to the Committee's list of requested materials set forth in memos from (fmr.) Chairman Hempstead and Agency staff following Mr. Farricker's appearance before the Committee in January (Attachment A). The Committee has since had additional opportunity to review those materials and hear from Mr. Farricker directly at its April and May meetings and received additional information from Mr. Farricker (Attachment B). At these meetings the lack of an in depth market study was discussed and the Committee considered Mr. Farricker's explanation that such a study would take a significant amount of time to complete and that this time constraint would negatively impact his advancement of certain grant applications with the Connecticut Department of Economic and Community Development (Attachment C).

The Planning Committee, now having considered this project for some months, has a fundamental understanding of the developer's intended re-use of the Globe Theater as well as the related financial structure that the developer has sought the City's participation in. The issues of risk have been discussed and the implications of default have been assessed with the Committee. It is for this reason that Mr. Hempstead, in his continuing capacity as Committee chairman for this project, has indicated the time may be appropriate to seek from the Committee a formalized action on Mr. Farricker's request as it has been conveyed to the Committee. This memo offers some preparatory review for that vote.

Following its first audience with Mr. Farricker, the Committee had many of the same questions and concerns as they had when approached in September with a similar request for $2 million for a similar project. Adding three new questions, the Committee approved issuing the same request for information to Mr. Farricker as it had previously sought from the prior developer. This list included the following items:

Item #1	A demonstrated understanding of and strategy for dealing with the HUD regulations associated with the loan.
Item #2	An appraisal.
Item #3	A market analysis.
Item #4	Initial due diligence by a qualified syndicator of tax credits
Item #5	Conceptual drawings
Item #6	A disclosure of the City's financial risk should the initiative fail
Item #7	An explanation of the process and timeline for obtaining tax credits

To varying degrees of satisfaction as related in staff's April 2nd memo to the Committee, (Attachment D), Mr. Farricker's March 23rd submittal – and information provided since – respond to the seven items above. There is concurrence however that the information provided lacked the requested market analysis as previously noted. That being said the Committee is being asked to determine, based on the proponent's materials to date, whether or not it is supportive of both the intended redevelopment project, the project's overall financial structure and the investment the City is being asked to make in that structure.

Few can argue that the intended use of the Globe Theater as presented by Mr. Farricker is not in keeping with the City's approved plans for the Wall Street area or that if successful it would not be transformational. Real estate investments on any level must however consider the associated risk and rewards.

The financial risk in this proposal can be viewed from at least four perspectives. **First** and foremost, the loan-to-value ("LTV") ratio is a quantitative measure of risk in any lending scenario. In the case of the Globe Theater, the loan being sought is $2 million while the asset is worth only $1 million. Mr. Farricker has said that the Globe will, *when completed,* be worth over $5 million. The suggested financial structure however seeks to use the $2 million public loan, guaranteed by the City, as the first project funds in paying for acquisition, improvements and efforts to secure additional funding resources. This could expose the city to a financial risk for which it has no real recourse.

Secondly, in any loan, there is a risk associated with the borrower. Mr. Farricker to his credit is a real estate professional familiar with the property, Norwalk and the public financing resources potentially available to his project. But, there is no evidence in the material provided that Mr. Farricker has successfully redeveloped a theater or managed the ongoing operations of such a facility. In fact there is no evidence that Mr. Farricker or Globe Theater, Inc., a newly formed non-profit, has ever undertaken a redevelopment effort of this size.

Thirdly, there is a risk associated with the funding source. As has been related before, Section 108 is a federal loan program through HUD, and comes with a host of regulatory requirements. The associated challenge of conforming the project to the appropriate federal guidelines and the hazards of running afoul of the multifarious regulations that come with the funds are another set of risks which Mr. Farricker has evidenced his unfamiliarity with, which could negatively impact the City's strong relationship with HUD.

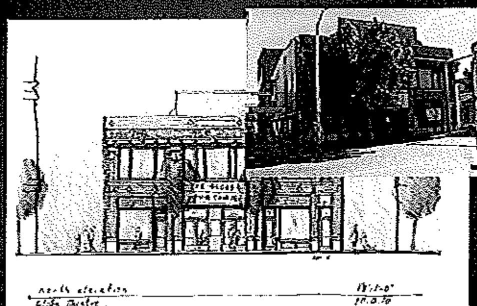
Finally, there is a community risk associated with the potential default of the loan if it should fail. In traditional real estate loans, defaults are subject to foreclosure, and the lender can recoup a portion of their investment by calling the loan's underlying collateral. The Committee members need to understand that the financial structure. as proposed, does not assure any such collateral until the project is substantially completed. Should that risk be called upon, HUD would recoup its investment by garnishing Norwalk's annual CDBG funding in the amount of the required annual debt service, reducing the amount traditionally made available in the community.

The investment of public funding in advancing development in distressed areas is not without merit. Sometimes projects such as the Globe Theater redevelopment have the ability to be a catalyst for additional private sector investment and increase public sector economic return. The risks associated with the financing structure presented by these types of development projects simply need to be fully considered by public bodies choosing to assume them. Failure to do so leads to unrealized public sector obligations and more thinly stretched public resources which are already strained. The Planning Committee members must determine for themselves if they are comfortable with the investment structure which has been presented on this project and if the inherent risk is acceptable when compared with the potential reward.

ACTION:

The Planning Committee has reviewed and considered the information as provided by Globe Theater, Inc. and its representative, Mr. Farricker, related to a $2,000,000 Section 108 Loan request for the purpose of acquisition and redevelopment of the Globe Theater and **(approves / does not approve)** advancing this request to the Common Council.

Attachment A



Redevelopment of The Globe Theater
Norwalk, CT

Redevelopment Plan Overview

Development Plan for Globe

The purpose of an acquisition and rehabilitation of the historic Globe Theater, it to create a permanently operating public arts facility for Norwalk, and the Wall Street area

This rehabilitation will allow the creation of a community performing arts center that supports local music and dance groups with sound stage capabilities while accommodating visual and performing arts in the emerging cinematic industry in Southwestern Connecticut.

Globe Development Team

Project Director/Finance:

Project Consultants

Architects

Legal Team

Tax Credit Team

Construction Team

Globe Construction

Development Costs		PSF	COST
Land			
	Land Cost	$30.5	$350,000.0
	Building Cost	$100.1	$1,150,000.0
	Demolition/Abatement	$2.2	$35,000.0
	Off Site Improvements	$6.5	$75,000.0
	Other	$17.4	$ 200,000
Total Land		$156.7	$1,800,000.0
Hard Costs			
	Construction Costs	$240.1	$2,768,000.0
	Remediation	$19.6	$225,000.0
3%	Bond	$7.8	$89,490.0
5%	General Conditions	$13.0	$149,150.0
3%	CM/GC Fee	$7.8	$89,490.0
4%	Reimbursables	$10.4	$119,320.0
10%	Contigency	$26.0	$298,300.0
15%	Other	$36.0	$413,700.0
Total Hard Costs		$360.6	$4,142,450.0
Soft Costs			
6%	Architect	$28.8	$331,396.0
4%	Engineer	$14.4	$165,656.0
	Legal	$6.5	$75,000.0
	Permits		
	Appraisal	$0.9	$10,000.0
	Environmental	$1.7	$20,000.0
	Tax Credit Fees	$14.4	$165,000.0
Total Soft Costs		$66.9	$767,094.0
Financing			
2%	Loan Fees		$60,000.0
5%	Financing Costs/Credit Enhancement		$325,000.0
2500	Construction Monitoring		$45,000.0
Total Financing			$430,000.0
Total Development Cost		$621.6	$7,130,544.0

Globe Prospective Tenant

- Public Benefit
- School
  - Norwalk High
  - Brien McMahon
  - Middle Schools
  - Elementary Schools

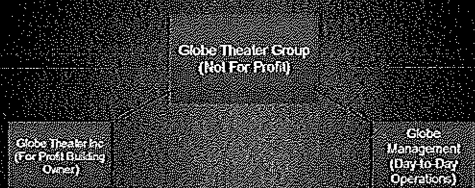
  For high school music, dance and theater programs as well as middle and elementary school concerts, shows and meeting space

- Private Sector
- Private Events
  - Corporate
- Private Parties
  - Bar Mitzvah, Wedding and related function space
- Non-Profit meetings/ events
- Music/Dance/Theater space

Sources and Uses of Funds

SOURCES		USES	
HUD 108	$2MM	LAND	$1.8MM
Fed. Historic	$1.1MM	HARD COSTS	$4.15MM
State Historic	$1.1MM	SOFT COSTS	$750K
State Film	$1.025MM	FINANCING	$450K
New Markets	$1.025MM	OVERHEAD	$100K
Green Building	$700K		
Deferred Fee	$300K		
TOTAL	$7,250,000	TOTAL	$7,250,000

Globe Business Structure



Globe Theater Group is owned by no person and controlled by its Board of Directors.

Globe Theater Inc. a for-profit company for tax-credit purposes–100% owned by Globe Theater Group.

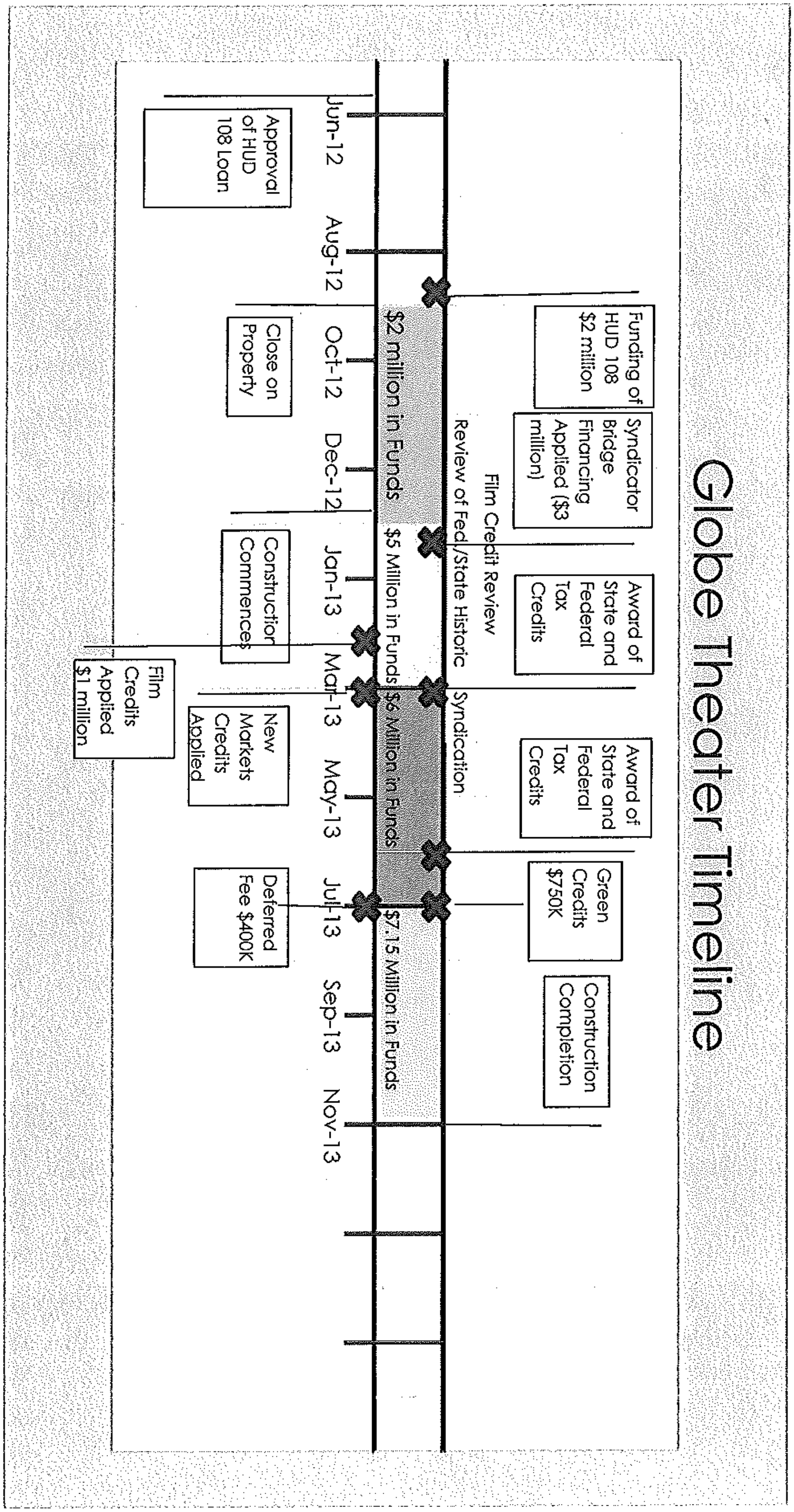
Globe Management may be either for-profit or not-for profit, and is 100% owned by Globe Theater Group.

Contact

Frank Farricker
frankfarricker@gmail.com
203.554.6140

THANK YOU

Attachment B



BYLAWS Of THE GLOBE THEATER INC.
(Non-Stock Corporation)

ARTICLE I
The Corporation
The Corporation shall be known as The Globe Theater Inc.., and shall be referred to in these Bylaws as the "Corporation."

ARTICLE II
Purposes
The purposes of the Corporation shall be the development and oversight of the operation of the Globe Theater, 71 Wall Street, Norwalk CT and any other purpose that shall be those set forth in the Certificate of Incorporation on file in the office of the Secretary of the State of Connecticut, a copy of which is attached as an appendix to these Bylaws.

ARTICLE III
Offices
The Corporation's principal office and any other of its offices shall be located at such places within or without the State of Connecticut as the Board of Directors may from time to time determine. The Corporation shall maintain within the State of Connecticut a registered office at such place, which may be the principal office, as the Board of Directors may from time to time determine.

ARTICLE IV
Members

SECTION 1. Membership
1.1 Voting Rights. Voting members are members elected by a majority of the Board Members at the time of their election. The number of Board Members shall not exceed twenty (20) persons at any given time.

1.2 Admission. Any individual interested in supporting the purposes of the Corporation as set forth in Article II of the Certificate of Incorporation and such other qualifications as the Board shall determine, may become a Member of the Corporation

Each voting Member shall be entitled to one vote on matters as set forth in the Certificate of Incorporation, these Bylaws, and such other matters as may be submitted to the Members by the Board of Directors, or any Committee with the power to act for the Board, on all matters for which a vote of members is required as set forth in the Revised Connecticut Nonstock Corporation Act. The first Members of the Corporation shall be Frank A. Farricker, President and Stephen Soler, Secretary

1.3 Withdrawal. A Member may withdraw his or her membership at any time by giving written or e-mail notice thereof to the Secretary of the Corporation. Withdrawal is effective upon receipt of notice.

1.4 Expulsion. Membership in the Corporation may be terminated automatically for inactivity of one year, or by a vote of a majority of the Voting Members.

1.5 Dues. The Steering Committee shall determine from time to time the amount of annual dues, if any, payable to the Corporation by the Members.

SECTION 2. Meetings

2.1 Location. Meetings of the Members may be held within or without the State of Connecticut as set forth in any notice of meeting.

2.2 Annual Meeting. The Annual Meeting of the Members shall be held for the transaction of such business as may properly come before the meeting. The Annual Meeting shall be held at such time and place as the Steering Committee shall determine, with the consent of the Board of Directors. Written or e-mail notice of each meeting of the Members, stating the date, time, and place of the meeting shall be delivered not less than ten (10) nor more than sixty (60) calendar days before the date of the meeting. For purposes of this Section only, Members shall be those persons listed as Voting Members on the books of the Corporation at the time notice is sent.

2.3 Special Meetings. Special meetings of the Members may be called by a majority of the Directors then serving. Written or e-mail notice of each meeting of the Members, stating the date, time, place of the meeting, and of the subject to be considered at the meeting, shall be delivered not less than ten (10) nor more than sixty (60) calendar days before the date of the meeting.

2.4 Notice and Waiver of Notice. Unless otherwise specified in the Bylaws or required by law, notice may be given by sending a written letter or e-mail to the Secretary. Notice of any meeting of the Members may be waived by any or all of the persons entitled to notice. A Member may waive notice by filing a written or e-mail waiver filed with the Secretary before, at,or after such meeting. A Member is also deemed to have waived notice of a meeting that the Member attends or in which the Member participates, unless the Member at the beginning of the meeting, or promptly upon arrival, objects to the holding of the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

SECTION 3. Transaction of Business by Members

3.1 Voting . Unless otherwise provided in the Certificate of Incorporation, these Bylaws, or by law, the affirmative vote of a majority of the Members entitled to vote and present at a meeting duly held shall be the act of the Members. Associate Members shall not be counted in determining any fraction of the membership. Decisions taken by the Membership through voting shall include, but are not limited to, the following operations: nomination and election of members into leadership roles, Addition or elimination of businesses associated with operation of the Globe Theater; Policy decisions and statements, or any other issue brought to a membership vote at the request of Steering or the Board.

3.2 Action by Written Ballot in Lieu of Meeting. Where directors or officers are to be elected by the Members or any other action is to be voted upon by the Members, such elections may be conducted and such actions voted upon by mail or electronic means, provided that the same period for which notice would otherwise be required for a meeting is provided for the return of ballots.

ARTICLE V
Directors

SECTION 4 - Service of the Board of Directors

4.1Powers. The Corporation shall act by and through its Board of Directors. The Board of Directors may delegate its powers as it sees fit, subject to restrictions imposed by the Certificate of Incorporation, the Bylaws, the Connecticut Revised Nonstock Corporation Act, as amended, and Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter, the "Code") (or the corresponding provision of any future federal tax code).

4.2. Number. There shall be no less than 2, nor more than 10, voting members of the Board of Directors.

4.3. Nomination and Election Process. Nominations for directors to replace directors whose terms expire, or to add new directors, subject to Section 2.1, shall be circulated in advance to the Members. Voting members make nominations for directors. Nominations must be made at least twenty (20) business days prior to the meeting or vote at which the directors may be elected and sent in writing or e-mail to the Secretary. Incumbent directors are assumed to have nominated themselves to stand for reelection unless they have provided notice in writing or by e-mail of intent not to serve. Directors of the Corporation shall be elected by the majority of Voting members present in person or by proxy.

4.4 Terms. The initial Board of Directors shall be selected by the Incorporator to hold office until the first Annual Meeting of the Members and elected thereafter to staggered terms. Commencing with the first Annual Meeting of the Members following the adoption of these Bylaws, and annually thereafter, approximately one-half of the directors shall be elected every three years to serve for three-year terms, such that the terms of approximately one-third of the directors shall expire each year, except that in the event of a vacancy, which may be filled at a meeting of the Members called by the Secretary expressly for this purpose, or in the case of a newly-elected director, the director may be elected to a shorter term as may be appropriate to maintain the balance of staggered terms. Directors shall hold office until their successors are elected and qualified.

4.6 Resignation. A director may resign at any time upon delivery of written notice to the Board of Directors or the Secretary. Any such resignation shall be irrevocable upon delivery of such notice, but said individual may be subsequently reelected to the Board via Section 4.3 at any time in the future

4.7 Removal. A director may be removed as a director at any time with cause by the affirmative vote of the majority of the voting Members present in person or by proxy at any meeting or vote of the members. Said individual may be subsequently reelected to the Board via Section 4.3 at any time in the future.

SECTION 5. Meetings of the Directors.

5.1 Location. Meetings of the Board of Directors may be held within or without the State of Connecticut as set forth in any notice of meeting.

5.2 Annual Meeting. The Annual Meeting of the Board of Directors shall be held at such time as the Board of Directors shall determine. Written or e-mail notice by the Secretary or Chairperson of the date, time and place of each Annual Meeting shall be given to each director at least five (5) days before the Annual Meeting.

5.3 Special Meetings. Special meetings of the Board of Directors may be called by a majority of the directors then serving. Ex-officio directors shall be included in the count for calling special meetings. Notice of the date, time, place, and purpose of each Special Meeting shall be given to each director at least five (5) days prior to such meeting.

5.4 Notice and Waiver of Notice. Unless otherwise specified in the Bylaws or required by law, notice may be given by a written letter or e-mail addressed to the Secretary. Notice of any meeting of the Board of Directors may be waived by any or all of the persons entitled to notice. A director may waive notice by filing a written waiver filed with the Secretary before, at, or after such meeting. A director is also deemed to have waived notice of a meeting that the director attends or in which the director participates, unless the director at the beginning of the meeting, or promptly upon arrival, objects to the holding of the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

SECTION 6 Transaction of Business among Directors

6.1 Quorum. Unless otherwise required by law or by these Bylaws, the quorum necessary for the transaction of business shall consist of a majority of the directors. A director may participate in a meeting of the Board by means of a conference telephone or other means of communication enabling all participating directors to hear one another simultaneously and such participation shall constitute presence in person. Once a quorum is noted as present, it is not broken by the subsequent withdrawal of one or more directors.

6.2 Voting. Unless otherwise provided in the Certificate of Incorporation, these Bylaws, or by law, the affirmative vote of a majority of the directors at which a quorum is present shall be the act of the Board of Directors. Decisions taken by the Directors through voting may include, but are not limited to, the following areas of operations: the review and approval of yearly budget and any other major purchase or financial decisions, such as hires and insurance; the review and approval of any legal contract, memorandum of understanding, or other binding agreement; review and approval of programs and activities to ensure alignment with the Corporation's mission and vision.

6.3 Action Without a Meeting. The Board of Directors may act without a meeting by the unanimous written consent of all directors. Unanimous written consents shall be filed in the minute book of the Corporation.

6.4 Compensation. All decisions concerning compensation to directors shall be governed also by the Article of these Bylaws entitled "Conflicting Interests."

6.5. Compensation for Non-Director Services. Upon approval of the Board of Directors, directors may be compensated for services provided to the Corporation in a capacity other than as director.

6.6 Amount of Compensation. The Corporation shall provide no reimbursement for expenses or compensation other than those reasonable and necessary in furthering the Corporation's purposes as determined by the Board.

ARTICLE VI
Committees

SECTION7. Committees

7.1. Authority. The Corporation may act through any Committees that the Board of Directors may appoint subject to Article VI of these By Laws.. Committees may be standing or ad hoc committees. Each committee shall have such powers and authorities as may be provided in these Bylaws, in the resolution creating such committee, or in resolutions of the Board of Directors adopted from time to time at the suggestion of the Steering Committee.

7.2. Appointment. Committees shall be created and Committee members appointed by the Board of Directors and vacancies on Committees shall be filled by the Board of

Directors. Each Committee with power to act for the Board shall have at least one Committee member who is a director.

7.3. Meetings, Notices, and Quorum. All Committees other than advisory committees and the Steering Committee shall have the same requirements for Meetings and the Transaction of Business as those set forth in the articles of these Bylaws entitled "Directors" and "Conflicting Interests" with respect to the conduct of business by the Board of Directors, except that Committees shall not be required to hold annual meetings and written or e-mail notice of meetings shall be given by the Committee Chair.

7.4 Limitations on Powers. Notwithstanding any provision of this Article or these Bylaws to the contrary, no Committee shall have any power to:
(a) Fill vacancies on the Board of Directors or any of its Committees;
(b) Amend the Certificate of Incorporation;
(c) Adopt, amend, or repeal the Bylaws;
(d) Approve a plan of merger, approve a sale, lease, exchange or other disposition of all, or substantially all, of the Corporation's property, other than in the usual and regular course of business; or
(e) Approve a proposal to dissolve the Corporation.

7.5 Advisory Committees. The Board of Directors may appoint one or more persons as advisory committees for any lawful purpose. Advisory Committees shall have no power to exercise any power of the Board of Directors.

ARTICLE VII
Officers and Agents
Section 8. Officers and Agents

8.1. Titles, Election, Requirements, and Duties. Nominations for officers shall be made by voting members. Officers shall be elected by the plurality of Voting members present in person or by proxy. The Board of Directors may open nominations for any other officers that it deems expedient or necessary. The officers need not be residents of Connecticut, but must be residents or citizens of the United States and satisfy such other requirements as shall be specified by the Board of Directors. The officers must be at least 18 years of age. The officers must be voting members.
Officers shall serve for one-year terms.

8.2 . Agents and Attorneys. The Board of Directors may appoint such other agents and attorneys, with such powers and to perform such acts and duties on behalf of the Corporation, as the Board of Directors may determine.

ARTICLE VIII
Finance
SECTION 9 : Finance

9.1Fiscal Year. The fiscal year of the Corporation shall end on the last day in December of each year.

ARTICLE IX
Amendments
These Bylaws may be altered, amended or repealed with the consent of both the Directors and voting Members by the affirmative vote of 2/3 of the entire Board of Directors at any meeting of the Board of Directors and by the affirmative vote of the majority of the Members present in person or by proxy at any meeting of the Members.

ARTICLE X
Indemnification
The Corporation shall indemnify, and advance expenses to, its members, directors, officers, employees, and agents to the maximum extent permitted by the Connecticut Revised Nonstock Corporation Act, as amended. Notwithstanding the foregoing, if at any time the Corporation is a private foundation, the Corporation shall not indemnify such individuals, procure such insurance or share such premium cost to the extent so doing would constitute an act of self-dealing as defined in Section 4941(d) of the Code.

ARTICLE XI
Conflicts of Interest
SECTION 10: Conflicts of Interest

10.1 Compliance. No director or officer may engage in any excess benefit transaction as defined in Section 4958 of the Internal Revenue Code of 1986, as amended. The Board of Directors shall comply with the provisions of Sections 33-1127 - 33-1130 of the Connecticut General Statutes, as amended, regarding "conflicting interest" transactions. The Board of Directors may adopt appropriate policies and procedures to implement this Section, and such policies and procedures may only be amended by the same vote required to amend these Bylaws.

10.2 Disclosure. Any director for whom there may exist a conflict of interest shall disclose such possible conflict of interest to the Board.

10.3 Recusal. No director shall discuss or vote on any matter that would involve a conflict of interest as determined by the Board. Any director for whom there may exist a conflict of interest shall refrain from discussion or vote on any such matter, and shall not be physically present in the room at the time any vote is taken thereon.

10.4 "Conflict of Interest." The term "conflict of interest" includes, without limitation, the reasonable possibility that the matter involves an arrangement to provide compensation or any financial or tangible benefit or payment, directly or indirectly, to a director or any other "disqualified person" (including a person or entity related to or controlled by the director, or otherwise as defined in section 4958(c)(1) of the Internal

Revenue Code and/or Section 33-1127 of the Connecticut General Statutes). In the event that there is a question whether a conflict exists, the issue shall be determined by majority vote of the directors other than the affected director (which shall consist of at least two directors) present and voting.

Appendix to the Bylaws
Certificate of Incorporation
Of The Globe Theater Inc..
(Non-Stock Corporation)

ARTICLE I
The name of the corporation shall be The Globe Theater Inc., hereinafter referred to as the "Corporation."

ARTICLE II
The nature of the activities to be conducted and the purposes to be promoted or carried out by the Corporation are as follows: To be organized and operated exclusively for educational, charitable, and/or religious purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or to any corresponding provision of any future federal tax law), (the "Code"), including but not limited to the following:

(A) To increase awareness among all people on issues pertaining to arts and culture.

(B) To provide technical knowledge and assistance to people interested in gaining work experience in the fields of music, theater and arts production

(C) To restore the Globe Theater, and to generally promote the economic vitality of the Wall Street area of Norwalk through the advancing of arts-related functions

(D) To engage, subject to the foregoing limitation and those set forth below, in any lawful act or activity for which a corporation may be organized under the Connecticut Revised Nonstock Corporation Act. If at any time the Corporation is deemed to be a private foundation as defined in Section 509 of the Code then so long as the Corporation is deemed a private foundation, it shall not, as provided in Section 508(e) of the Code, fail to require its income for each taxable year to be distributed at such time and in such manner as not to subject the Corporation to tax under Section 4942 of the Code, engage in any act of self-dealing as defined in Section 4941(d) of the Code, retain any excess business holdings as defined in Section 4943(c) of the Code, or make any investments or expenditures in such manner as to subject the Corporation to tax under Section 4944 or Section 4945(d) of the Code.

ARTICLE III
In pursuance of its purposes, as set forth in Article II, and subject to any limitations herein expressed, the Corporation is specifically authorized to do the following:

(a) To purchase, accept, exchange, inherit, lease or otherwise acquire real and personal property, or any interest therein, of whatever kind, and to own, hold, control, maintain, manage, convey, dispose of, or change the character of such property; and

(b) To do, perform and supervise any and all other things which are not inconsistent with the purposes set forth in Article II; provided that the Corporation shall not have or exercise any power or authority not granted to it under the Connecticut Revised Nonstock Corporation Act nor shall it engage in any activity that would prevent it from qualifying as a corporation described in Section 501(c)(3) of the Code or the corresponding provision of any future federal tax code.

ARTICLE IV

No part of the net earnings of the Corporation shall inure to the benefit of any director, director, or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no director, director or officer shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the Corporation. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided by Section 501(h) of the Code), and the Corporation shall not participate in, or intervene in (including by the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision hereof, the Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code or the corresponding provision of any future federal tax code.

ARTICLE V

The Corporation is non-profit and shall not have or issue shares of stock or make distributions.

There shall be no period of limitation for the duration of the Corporation.

ARTICLE VI

The Corporation shall have Members as follows:

(a) Eligibility. Any individual shall be eligible for membership in accordance with this Certificate and the Bylaws of the Corporation. There shall be no limit to the number of Members.

(b) Classes of Members. There shall be two classes of Members of the Corporation, voting members and non-voting members. Voting members are defined as individuals elected by the Board to be voting members. Non-voting members shall be defined as all Members admitted by the Board to the Corporation who do not have a vote.

(c) Voting Power. Each voting member shall be entitled to one (1) vote on all matters submitted to the Members for action. Non-voting members shall be entitled to no votes.

Only voting Members shall be entitled to vote for Directors.

ARTICLE VI
The Board of Directors shall manage the activities, property and affairs of the Corporation. The number and manner of election of directors shall be as authorized in the Bylaws.

ARTICLE VIII
The directors may by the affirmative vote of no less than two-thirds of all directors then serving, at any annual meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose:

(1) To amend the Certificate of Incorporation, provided, however, that no such amendment shall operate to terminate the deductibility of gifts to the Corporation or federal tax purposes or the federal income tax exemption of the Corporation as an organization described in Section 501(c)(3) of the Code;

(2) To dissolve the Corporation;

(3) To transfer substantially all of the Corporation's assets to another corporation pursuant to Article IX;

(4) To merge the Corporation with another corporation or consolidate the Corporation into a new corporation; or

(5) To amend the Bylaws.

The directors of the Corporation shall have the right to make other fundamental changes to the extent and in the manner permitted by Connecticut law to directors of a Connecticut nonstock corporation except as otherwise provided in this Certificate of Incorporation or the Bylaws of the Corporation.

ARTICLE IX
Upon the termination, dissolution or final liquidation of the Corporation in any manner and for any reason, the Board of Directors shall first pay or provide for the payment of all liabilities of the Corporation; all remaining assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Code, or shall be distributed to the federal government, or to state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the County in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as

said court shall determine, which are organized and operated exclusively for such purposes.

ARTICLE X

This Certificate of Incorporation shall not be amended to permit the Corporation to engage in any activity which would be inconsistent with its classification as an organization described in Section 501(c)(3) of the Code.

ARTICLE XI

To the fullest extent permitted by applicable law, the personal liability of the directors to the Corporation for monetary damages for breach of duty as a director shall be limited to an amount equal to the compensation received by the director for serving the Corporation during the year of the violation.

The Corporation shall indemnify, and advance expenses to, its directors, officers, employees, and agents to the maximum extent permitted by the Connecticut Revised Nonstock Corporation Act, as amended.

Attachment C

Common Council cautious about underwriting a $2M federal loan to shape the former Globe Theatre into a performing arts center.

By ROBERT KOCH

Hour Staff Writer | Posted: Sunday, May 6, 2012 10:15 am

NORWALK --Members of the Common Council's Planning Committee on Thursday night expressed reservations about underwriting a $2-million federal loan to shape the former Globe Theatre at 71 Wall St. into a performing arts center.

"I don't think there's anybody that sits on the council as a whole who hasn't dealt with this building one way or the other over the last six or seven years (who) does not want what you're trying to do work in that building," said Douglas E. Hempstead, acting chairman of the committee. "The question is we're putting at risk funding that funds our redevelopment department, that funds a lot of non-profits in town, and we have to feel very comfortable before committing even anything verbally at risk."

On Thursday night, Frank Farricker of The Globe Theatre, Inc., asked the committee to begin advancing an application for a $2-million U.S. Department of Housing and Urban Development loan, which he would use to acquire, remediate and design renovate the historic theater.

Farricker is hopeful that the council will approve the grant application and set the stage for the estimated $3.7-million renovation of the building.

He added, however, that he cannot secure a $250,000 state loan, whose application deadline is this June, with the HUD money in process.

Committee members, however, stressed that HUD would take from its annual community development block grants to Norwalk -- roughly $1 million that goes to local non-profit agencies -- in the event of a default on the $2-million development loan.

Farricker asked the committee to advance the HUD loan application, as he performs a market study -- a key piece of information sought by the committee.

"We're in a chicken-and-egg situation," Farricker said. "We're afraid that if we wait three months we're going to lose a lot."

Councilman Bruce I. Kimmel expressed skepticism about the market for a non-profit performing arts center, given the difficulties of similar facilities in the region.

Farricker, who happens to be board chairman of Connecticut Lottery Corp., would purchase the former theater from owner Mary A. Kyriakides, if the redevelopment plan advances, according to Redevelopment Agency officials.

Councilman Nicholas D. Kydes, brother-in-law of Kyriakides and chairman of the Planning Committee, recused himself from Thursday night's discussion.

Attachment D

NORWALK re:DEVELOPMENT AGENCY

TO:	MEMBERS OF THE PLANNING COMMITTEE OF THE NORWALK COMMON COUNCIL
FROM:	TIMOTHY SHEEHAN, EXECUTIVE DIRECTOR TTS MUNRO W. JOHNSON, AICP MWJ SENIOR DEVELOPMENT PROJECT MANAGER
DATE:	APRIL 3, 2012
RE:	STAFF REVIEW AND RECOMMENDATION REGARDING GLOBE THEATER, INC SUBMITTED MATERIALS DATED MARCH 23, 2012

Background

In 2003, the Norwalk Planning Commission and the Common Council approved *The Norwalk Wall Street Area Planning Update*, a year later approving also *The Wall Street Redevelopment Plan.* These City planning documents identify the theater at 71 Wall Street (hereafter, "the Globe") as an important community asset to be preserved, rehabilitated and restored to accommodate a public cultural use.

In 2006, the property was purchased by an entity associated with the current owner whose representatives have presented a number of proposals to rehabilitate the Globe. The most recent owner entity presentation to the Planning Committee, hereafter "Committee") occurred in August 2011. The project involved the full redevelopment of the property as a public cultural use and required a $2 Million Section 108 Loan Guarantee from the City of Norwalk. In response to that presentation, the Committee chairman sent a letter to the proponent on September 15, 2011 (attached), articulating the Committee's general support for the project, but itemizing five (5) areas of concern and a request for additional information.

In January of this year, this Committee heard a presentation by a new development entity ("Globe Theater, Inc.") represented by Frank Farricker. Globe Theater, Inc., a not for profit entity pending formation in Connecticut, is advancing a plan to purchase and redevelop the Globe as a theater. Its financing plan too is also seemingly dependent on securing a Section 108 Loan Guarantee from the City. In response to this presentation, the Committee asked the Globe Theater, Inc. to provide a written response to the same questions included in the September 15, 2011 letter, and three additional questions, all of which were forwarded to Mr. Farricker in a new letter on January 12, 2012 (attached). The then chairman requested that, once Mr. Farricker had responded to each of the requests for information, that the Redevelopment Agency provide the Committee its assessment of the response and a recommendation regarding the developer's request as the City's CDBG Administrator.

In considering the various requests for the City to participate in a Section 108 Loan Guarantee, the Committee members have expressed concerns that the principal security for the Section 108 Loan Guarantee would be the City of Norwalk's current and future CDBG funds. The guarantees being requested have been estimated by the developers to be approximately $2,000,000. With regard to the most current project, this represents 30% of the proposed total project cost.

The Globe Theater, Inc.'s response to the Committee arrived on March 23, 2012. That response has been provided to the Committee members and has been made available for public review. The component pieces of this package include an appraisal of the property dated March 20, 2012, a construction cost analysis, a market study, a review of potential project funding sources, soft letters of interest from syndicators and issuers and a review of the project's Section 108 Loan Guarantee eligibility.

Upon review of the package, the Redevelopment Agency has determined the package is not sufficiently complete to fully answer many of the questions and requests for information that were posited to the Globe Theater, Inc. by the Committee. However, in that this has been the most complete response yet filed from the private sector parties regarding this redevelopment effort, the Agency was directed to review the submission and provide its recommendation for the April meeting.

Review

The National Trust for Historic Preservation identifies "Historic Theaters" as the most endangered historic buildings in America. While there were once more than 20,000 such theatres in the U.S., fewer than 5,000 of these historic venues still remain according to the Trust. By themselves, and in their current form, most of these buildings are no longer viewed as economically profitable propositions for the commercial sector to undertake. That being said, the rehabilitation of such increasingly rare examples of architecture – which are often linked to a community's unique heritage – can serve public goals such as downtown redevelopment, cultural growth, local identity and pride, as well as provide other community benefits.

A city's involvement in preserving such structures can also have a significant economic impact by spurring <u>private sector-led</u> downtown revitalization. When a city spends money on its downtown, it signals to private investors that it's safe for them to do the same – that the local government takes an active interest in the area, and that their investment will be more secure – and businesses often take into consideration a community's arts and culture programs when deciding where to relocate. Communities with an active culture and nightlife are considered "healthier" economically. To these goals and objectives the City and the Redevelopment Agency have already indicated their intention and support.

The successful theater redevelopment projects that the Agency has reviewed, however, usually represent the culmination of years of planning and coordination that clearly define a programming model that is compatible with the community vision, the location and surrounding businesses, and have evidenced the project's appeal to its intended patrons. The vision for these projects has a clear community stake, which includes a mission statement for guiding the effort. The mission statement is the foundation of the project funding mechanisms and business plan to support the ongoing operation of the facility in addition to the required restoration funds. It is the Agency's opinion that the Globe Theater, Inc. and its submission is at the very early stages of this coordination effort and as such many of the components of the submission raise more questions rather than nailing down answers.

The market study itself states (Pg 2) "While all three areas of examination presented favorable profiles for the arts and cultural participation in terms of demographics and lifestyles, caution should be made before labeling these areas as potential participants in activities at the renovated Globe Theater. Further, research in terms of a facility feasibility study is needed to help examine the interest in and the desire to participate in activities at a renovated Globe Theater, as well as profiling the competitive landscape for arts and cultural participation". The Agency agrees, and this information is what was being sought from the requested market study. The study provided was silent in its examination of certain components required in the September 15, 2011 letter.

The early state of this redevelopment concept is also referenced in the McGuire appraisal (pg. 31) "Despite their advanced age and present condition, the improvements are considered to contribute to the overall property value. Actual operating information or budget information would be required to further assess the financial feasibility of the subject facility but that is beyond the scope of this assignment." The Agency agrees the improvements would increase the value of the subject property, but if the end use cannot financially sustain all or a portion of the project redevelopment liabilities, that should be clearly understood by the City prior to committing itself to advancing a Section 108 Loan Guarantee Application.

The GTL Construction, LLC Cost Estimate of March 21, 2012 the Agency believes is well considered and the numbers and suggested scheduling are seemingly reasonable. The only concern the Agency references in this regard is any additional costs that might impact the project as a result of regulation or public policy associated with the City's investment. The Agency is also preliminarily accepting of the design, space allocations and layout as submitted on March 15, 2012 by Design Development, PLLC. The Agency, however, will reserve its final approval for the formal design review process should the project advance. All of these components are considered helpful in moving this discussion forward.

Perhaps nowhere is the preliminary nature of this project more evident than in the project financing submission. The September 15, 2011 letter from the Committee sought initial underwriting due diligence by a syndicator for both the historic and new market tax credits. The letter provided by Ms. Andrea Pereira, the Executive Director for LISC on March 21, 2012 indicates, " ...it appears that your property would be eligible to apply for the Federal Historic Tax Credit". "The property is also located in a qualified low-income census tract, making it eligible for New Market Tax Credits". "While the project appears to be eligible for both of these tax credits, both would be subject to underwriting and approval by the appropriate entities." This letter provides no advancement regarding the Committee's request for initial due diligence. The Agency does accept it, however, as a soft letter of LISC's interest in the project. The February 8, 2012 letter from Mr. George Norfleet is also so regarded as a soft letter of project interest. Finally, the letter form Attorney Christopher J. Rixon, Reid and Riege, P.C., is considered by the Agency as useful background information regarding the potential public financing sources that might be available to the project. There is, however, no serious initial underwriting due diligence evidenced in the submission by a qualified professional as was requested. Nor is there any indication of the timeline to put the credits in place. The Agency believes this must be resolved prior to the request being advanced out of the Planning Committee.

Finally, the Agency turned its attention to the question of the project's eligibility under the Section 108 Loan Guarantee Program. The September 15, 2011 letter's request in connection with Section 108 funds states:

> Projects assisted with Section 108 loan funds must pass two tests of eligibility: they must meet a "National Objective" and the money must fund an "eligible activity." The sensitive, technical nature of meeting these two tests should not be underestimated. Using the appropriate regulatory citations, explain how the project fulfills these requirements and discuss your strategy for maintaining the necessary files to demonstrate related compliance.

The proponent's submittal on the subject of Section 108 compliance consists of a letter from Christopher J. Rixon, Esq. of Reid and Riege, P.C. and an appendix excerpted from a guidebook on state CDBG programs. It should be noted that state CDBG programmatic controls are different from local CDBG programs.

The Rixon letter states that the City of Norwalk's annual CDBG allocation is $300,000. This statement is inaccurate by a factor of 3. The letter further states that the *Wall Street Redevelopment Plan* was established "in conjunction" with our CDBG program. There is in fact no relationship between the two. These factual errors aside, the point Mr. Rixon is trying to get at is that, under state law, redevelopment plans are predicated on the existence of blight, and that the elimination or prevention of blight is a national objective under the Section 108 program. The Agency concurs with this position. However, the Globe Theater, Inc.'s response suggests that it would meet the CDBG National Objective using the elimination of the slum and blight provision. The CDBG program requires that the City expend 70% of all CDBG-related funds (including Section 108) for the benefit of its LMI population. The National Objective of elimination of slum and blight is not so considered by HUD, and therefore is not an option for this project.

In addition to choosing an unusable National Objective, Mr. Rixon's letter does not fully address which "eligible activity" is actually being proposed. Rather, he excerpts a section of the federal act that lists numerous eligible activities. He references a section of the regulations (dealing with national objectives, not eligible activities) that also includes a "laundry list" of potential activities under the chosen (inapplicable) national objective. Based on prior presentations, meetings, and other sections of the Globe Theater, Inc.'s submitted materials, staff gathers that the chief eligible activity intended for the loan guarantee would be its acquisition, leaving roughly an additional $1,000,000 available. The sources and uses provided in the financial submission do provide insight on how these funds are intended to be used by the developer. In reviewing these uses, items such as "payroll" raise eligibility concerns. The submission also fails to reference the eligibility of the anticipated project expenditures.

The Agency's final comment on the submission relates to the Committee's question on how the proponent will maintain files to document regulatory compliance – Mr. Rixon makes reference to Mr. Farricker's "determination to engage a consultant" for this purpose, and attached the aforementioned appendix from the State CDBG guidebook. The Agency does not view this as a meaningful answer to the question.

Recommendation

The Redevelopment Agency understands that the Planning Committee is being asked to advance to the Common Council a request for authorization to develop a Section 108 Loan Guarantee Application in the amount of $2,000,000 on behalf of the Globe Theater, Inc's private interest in the redevelopment of the Globe Theater at 71 Wall Street in Norwalk. The Agency further understands the Committee is being asked to accept the submission of the Globe Theater, Inc as a sufficient response to the Committee's questions and requests for additional information as made on September 15, 2011 and January 12, 2012 as the basis for the advancement of this request to the Common Council.

If the Agency is correct in its understanding of the request, it recommends against Committee advancement of this matter to the Common Council at this time. This recommendation is made based on its review of the submission and its determination that there are substantive concerns, and significant outstanding questions and requests for information which have not yet been adequately addressed by the developer in their March 23, 2012 submission.

Next Steps

Staff sees at least three possible next steps in this process:

1. The Committee could disregard the staff recommendation and advance to the Common Council an Action to entertain a formal Section 108 Loan application.

2. The Committee could fully or partially accept staff's recommendation and inform Globe Theater, Inc. that, based upon its submission, it is not interested in advancing the Section 108 loan process with the Common Council in the manner the submission suggests.

3. The Committee could fully or partially accept staff's recommendation and inform Globe Theater, Inc. that, in order to advance, it must address the Committee accepted deficiencies in its submission, and that when it has done so the Planning Committee will revisit the proposal. Specific developer follow-ups in this regard could potentially include some or all of the following or any of those deemed additionally necessary by the Committee:

- Resubmit the explanation of how the project will meet the CDBG, National Objective, eligibility criteria.
- Define each eligible activity that the requested 108 funding will be used for and provide the appropriate regulatory citation for such line item.
- Address how each line item and project fulfills the stated requirements.
- Submit a meaningful strategy for maintaining the necessary files to demonstrate related HUD compliance.
- Resubmit the appraisal inclusive of the financial feasibility component.
- Resubmit the market study inclusive of the facility feasibility component.
- Submit the requested preliminary financial due diligence regarding the tax credits as well as a timeline for the credits to be allocated to the project.
- Explain how the project will bridge the tax credit equity not available during construction.
- Post $5,000 in an interest-bearing account with the Redevelopment Agency to cover the City's related legal expenses in preliminarily assessing its liability and associated financial risks associated with this request. Expenses to be paid from the account will require developer pre-approval prior to the work being undertaken.

THE PLANNING COMMITTEE
OF THE COMMON COUNCIL

125 East Avenue
P.O. Box 5125
Norwalk, CT 06856

TO: MEMBERS OF THE PLANNING COMMITTEE OF THE NORWALK COMMON COUNCIL

FROM: TIMOTHY SHEEHAN, EXECUTIVE DIRECTOR
MUNRO W. JOHNSON, AICP
SENIOR DEVELOPMENT PROJECT MANAGER

DATE: JUNE 1, 2012

RE: GLOBE THEATER FINANCING STRUCTRE REVISIONS

Mr. Farricker submitted on the afternoon of May 31, 2012 the attached revision of the Globe Theater, Inc's intended use of the requested $2 Million Section 108 Loan that is currently before the Committee for consideration.

While the Agency has not had time to fully consider the revision in its entirety and the HUD eligibility of its component pieces it is seemingly a realization on the part of the developer of what the Committee has been indicating over the past few months. The upfront risk of the previous financing structure was too risky for the City to consider. On its face this revision seems to be working through the related risk issues by claiming third party guarantees and the establishment of a $2 Million credit facility that will "protect Norwalk from any default". While the Agency finds this proposal to be interesting in the abstract and moving in the right direction of mitigating City related risk it lacks meaningful specifics which perhaps Mr. Farricker can provide to the Committee on Thursday.

The Agency is curious as to why the Globe Theater, Inc. cannot simply obtain an option agreement from the property owner if they are supportive of the project to the point of deferring that portion of the sale price beyond the existing debt to the backend of the project? Such an option agreement would be limited in its duration based on the schedule the Committee has been presented to less than a year. The Agency is also unclear as to the structure of the "arrangement" with the Bank of West Texas.

The need to execute the 108 in such short order to accommodate a $275,000 predevelopment need seems procedurally flawed especially if this funding is fully secured by an acceptable third party guarantee. The City could simply provide a predevelopment loan that would be taken out by the 108 Loan, assuming all of the predevelopment uses are CDBG eligible which as previously stated has not been established. The point being there is no pressing need to rush a $2,000,000 108 Loan through if the immediate need of only $275,000.

As stated previously the specifics of the third party guarantor and the structure of the $2 million credit facility all of which are new are not present in this proposal so the Agency has only questions but no informed comment to offer the Committee.

May 31, 2012

Mr. Tim Sheehan
Norwalk Redevelopment Agency
125 East Avenue
Norwalk CT 06851

Dear Tim;

Enclosed, please find a revised proposal from Globe Theater Inc. ("Globe") for the proposed uses of a $2 million HUD 108 loan guarantee requested by this organization from the City of Norwalk. Please consider this letter a substitution of any previous proposals for the use and timing of these contemplated funds.

Globe proposed changing the disbursement timetable from the "front loaded" approach we had previously proposed, which was essentially releasing the funds first in the funding waterfall for property purchase, remediation, architecture and tax credit application costs. Instead, we are proposing a *mostly* "back ended" approach, which would involve a significant percentage of the 108 funds being disbursed following construction completion. We intend to achieve this goal in the following fashion:

1) Instead of the proposed $1,044,000 going to the immediate purchase of the Globe Theater, we will enter into an arrangement with the Bank of West Texas, as mortgagee, to purchase the Globe subject to the existing debt.
2) According to our contractual arrangement with the Seller, any funds due to Seller in excess of the current mortgage and closing costs up to $1,044,000 will be due following the receipt of a Certificate of Occupancy post-construction.
3) Remediation costs of approximately $250,000, which are currently budgeted in the construction cost estimates, will stay in that sector of work, rather than be completed up-front with the HUD 108 funds
4) We will abandon the initial $121,000 renovation of the office area, again consolidating the work into the overall construction process, and keep Globe Theater Inc. domiciled elsewhere until completion of construction

Globe will request the disbursement of some HUD 108 funds, outlined below. We recognize the specific risk present in this transaction. Therefore, we propose any "up-front" costs would be paid out on an "as-needed" basis draw schedule administered by the Redevelopment Agency. <u>Additionally, Globe will provide a third-party guarantee, in a form acceptable to the Common Council, for the full amount of the funds drawn prior to completion of construction, estimated to be +/- $275,000</u>

The pre-completion funds will be limited to:

1) Debt interest of approximately $4,000 per month
2) Utilities, Insurance, security costs and other operating costs necessary to maintain the current state of the property
3) Tax credit application and approved third-party consultant costs
4) Legal fees

Additionally, Globe will commit to apply any general grant funds (funds not specifically earmarked for specific tasks, such as remediation or job creation, etc.) to these costs if and when such funds are made available. This is proposed to ensure that any HUD 108 drawdowns are kept to a minimum, notwithstanding the guarantee.

Construction costs are estimated to be paid through the application of tax credit equity in the same funding pattern proposed in earlier submissions. We still believe that this amount appears to be sufficient for completion of the work. Following the issuance of a Certificate of Occupancy, we propose the balance of the HUD 108 funds be released to Globe for the following purposes

1) Payoff of the debt to Bank of West Texas. This removes them from any first lien position and is replaced by HUD/City of Norwalk
2) Payment of any fees or costs deferred during the construction period
3) Working Capital, if necessary.

Prior to the release of any further funds, Globe commits to provide, in a form acceptable to the Common Council, a $2 million credit facility to protect Norwalk from the effects of any default, so that in the event of any occurrence which might affect Community Development Block Grant funds, a stand-by source of repayment is available.

It is our opinion that this structure allows Norwalk sufficient oversight over the distribution of funds, and provides protection against default risk in any potential negative situation. Commitment of the Council to the HUD 108 will allow the Globe to solicit Tax Credit equity with a sufficient financing structure, as well as a clear demonstration of community support necessary to complete the project.

We believe this structure adequately addresses the concerns of the Council and other stakeholders, and is proper for Globe to achieve its necessary objectives in the reconstruction and reopening of the Globe Theater.

Thank you for your consideration of this revised funding proposal, and we look forward to further discussion this coming Thursday.

Best regards,

Frank Farricker
Globe Theater Inc.
(203) 554-6140

Cc: Planning Committee, Norwalk Common Council
Mr. Tad Diesel
Mr. Stephen Soler

PLANNING COMMITTEE OF THE NORWALK COMMON COUNCIL

TO: MEMBERS OF THE PLANNING COMMITTEE OF THE NORWALK COMMON COUNCIL

FROM: TIMOTHY SHEEHAN, EXECUTIVE DIRECTOR
MUNRO W. JOHNSON, AICP
SENIOR DEVELOPMENT PROJECT MANAGER

DATE: MAY 31, 2012

RE: POKO LAND DISPOSITION AGREEMENT CONSTRUCTION STATUS

The City of Norwalk's designated developer for the redevelopment of Wall Street Redevelopment Parcel 2a, POKO IWSR, LLC, has, under Section 3.12 of the Land Disposition and Development Agreement (LDA) has indicated to the City that they have, "commenced construction" on the Phase I improvements. This claim is based on the developer's filed Notice of Intent to Demolish with the City of Norwalk in September of 2011. Pursuant to this section of the LDA, POKO has 36 months in which to complete the Phase I improvements, as evidenced by a Certificate of Completion to be issued by the Norwalk Redevelopment Agency, which process is further defined in Section 3.13.

This timeline is running six months behind the originally agreed timeline in the LDA due to an extension requested by POKO and granted by the public parties, (i.e., the Agency and the Common Council). The Working Drawings which are not stamped construction drawings (see Section 3.8) were approved by the Agency in December of 2010, at which time, POKO had 90 days to commence construction, i.e., until March of 2010. However, at that time the Redeveloper filed a request for a one-year extension which, following the public parties' requests for information and the developer's fulfillment of those requests to the satisfaction of the public parties, was acted upon by both the Agency and the Common Council in July of 2010 by granting a 6-month extension, retroactive to the original March deadline. This carried the window out to September of 2011.

Based on a traditional 18-month construction period for complex mixed use projects of the size of Wall Street Place Phase I, the Agency estimates the developer would have to begin actual site work in early 2013 to comply with the LDA-allowed 36-month window from the indicated commencement of construction date. That being said, there remains significant issues to resolve prior to the project advancing into active construction. The most significant of these being the level of state investment into the project through various grants, tax credit and loan structures. As of the writing of this memo this remains unknown to the developer despite numerous applications being filed and years of communication with the various state agencies. Without a clear understanding of the state's position regarding its potential investment in the project both the developer and the City remain in state a limbo in terms of advancing this project into construction while the LDA clock continues to tick down on the developer's ability to effectively meet the expectations of the LDA.

Should the state funding not materialize in a meaningful way based on these various requests the Agency thinks it is fair to say the developer would have to reconsider the proposed development plan. Obviously the developer does not want to be forced to do this without having received a formal indication from the state that would require such a massive step backwards in the development process. A determination of this nature would literally mean loosing years of planning, design, engineering and public entitlement work and the related financial investment in all of these documents. However at some point the developer and the City need and deserve an answer from the State so that both can focus on how best to proceed forward.

As of today the guideposts within the LDA however marking the specific period of the timeline in which the project currently exists are limited to Section 3.12, i.e., commencement and completion, the former which, as a technical matter, the redeveloper has seemingly satisfied to City's Corporation Counsel, and the latter does not formally occur until August of 2014 but obviously will be known before this date.

The precise chain of events that would occur under the LDA should the redeveloper fail to perform is better explained by Corporation Counsel, but Articles 18 (Mediation / Arbitration) and 19 (Defaults and Remedies; Termination) are where such potentialities are discussed in the LDA. More specifically, mediation and arbitration is prescribed "to resolve any dispute arising between the parties hereto concerning any matter of performance under, or interpretation or breach of this Agreement…" Mediation (Section 18.1) is a preceding step to Arbitration (Section 18.2), and each process in the LDA includes a procedure and a timeline. Should a default by the redeveloper be established, the LDA prescribes the remedies available, which, in the case of failure to complete his construction by deadline, consists of a) re-entry, b) litigation in pursuit of specific performance, c) litigation in pursuit of damages, and finally, d) termination of the LDA. Under the project's intercreditor agreement, remedy 'a)' is subject to the mortgaged debt on the property to be re-entered upon and can be reviewed with Corporation Counsel as the city's legal counsel which reviewed the document and advanced it for formal commitment.

In summary, POKO, is, currently in compliance with the LDA, having notified the public parties that it has "commenced construction" within the period granted by the Common Council's extension of last year and having no municipal objection formally filed under the terms of the LDA to dispute the developer's notice to the City of such commencement. Based on this status POKO has until August 2014 to complete that construction, which, in the opinion of staff, will be very difficult without mobilization of actual site work soon and as stated the potential State investment needed to accomplish this remains unknown. Should any of the parties to the agreement choose to recognize a dispute, it would follow the procedures and timelines outlined in Article 18 of the LDA, and a default by the developer provides the public parties with the options of re-entry, litigation, and termination of the LDA. All of these aspects would be better reviewed with Corporation Counsel.

Hopefully the foregoing is useful to former and new committee members in their discernment of the current status of the project and the potential options going forward.

LAND DISPOSITION & DEVELOPMENT AGREEMENT

By and Between

THE CITY OF NORWALK, CONNECTICUT,
THE REDEVELOPMENT AGENCY OF THE CITY OF NORWALK

AND

POKO-IWSR DEVELOPERS, LLC, Redeveloper

WALL STREET AREA – DEVELOPMENT PARCEL 2a

NORWALK, CONNECTICUT

DATED: November 14, 2007

Approved by Norwalk Common Council on October 9th, 2007

Approved by Norwalk Redevelopment Agency on October 10th, 2007

TABLE OF CONTENTS

Page

LIST OF EXHIBITS

AGREEMENT, consisting of this Part I and Part II annexed hereto and made a part hereof, entered into as of this 14th day of November 2007, by and among the **CITY OF NORWALK, CONNECTICUT,** a municipal corporation having an office at 125 East Avenue, P.O. Box 5125, Norwalk, Connecticut 06856-5125 (hereinafter referred to as the **"City"**), the **REDEVELOPMENT AGENCY OF THE CITY OF NORWALK,** a redevelopment agency created by the Common Council of the City pursuant to Chapter 130 of the General Statutes of the State of Connecticut, having an office at 125 East Avenue, PO Box 5125, Norwalk, Connecticut 06856-5125 (hereinafter referred to as the **"Agency"), and POKO IWSR DEVELOPERS, LLC,** a Connecticut limited liability company organized and existing under the laws of the State of Connecticut and having an office c/o POKO Partners, LLC, 225 Westchester Avenue, Port Chester, New York 10573 (hereinafter referred to as the **"Redeveloper").**

WITNESSETH:

WHEREAS, the Agency caused to be prepared a certain redevelopment plan entitled, "Wall Street Redevelopment Plan" in accordance with the provisions of Chapter 130 of the Statutes, which Redevelopment Plan as approved as hereinafter described, and as same hereafter may be modified in accordance with the Statutes, is herein sometimes referred to as the **"Redevelopment Plan"** or **"Plan"**, and

WHEREAS, the Redevelopment Plan affects a land area of approximately 67 acres located in Norwalk and denominated in the Redevelopment Plan as the Wall Street Redevelopment Plan Project Area (the **"Project Area"** or the **"Wall Street Project Area"),** which is divided into five Redevelopment Parcels, (referred to sometimes, collectively, as the **"Development Parcels"** or **"Parcels"**), including two **"Tier I Redevelopment Parcels"** (Parcel 2a and Parcel 3) and three **"Tier II Redevelopment Parcels"** (Parcel 1, Parcel 2b and Parcel 4), and

WHEREAS, within the Tier I Redevelopment Parcels, the Redevelopment Plan provides for the acquisition of real property, the relocation of businesses and persons, the demolition of buildings, the closing and laying out of streets and the disposition of land for commercial and residential uses all as more specifically set forth in the Redevelopment Plan, a copy of which is recorded in the City's land records (**"Norwalk Land Records"**) in Volume 5490, at Page 170 and is incorporated herein by reference; and

WHEREAS, on May 19, 2004, the Housing Authority of the City of Norwalk reviewed the Redevelopment Plan and approved it in accordance with Section 8-127 of the Statutes, and

WHEREAS, on June 2, 2004, the Norwalk Planning Commission, at the request of the Agency, reviewed the Redevelopment Plan and found the Redevelopment Plan to be in accordance with the *Norwalk Plan of Conservation and Development for the City of Norwalk* (as amended to incorporate the "Norwalk Wall Street Area Planning Update"), and

WHEREAS, the Agency conducted three public hearings on the Wall Street Redevelopment Plan on February 18, 2004, March 15, 2004, and March 29, 2004, and

WHEREAS, having held public hearings thereon, the Agency approved the Wall Street Redevelopment Plan on June 24, 2004, as a redevelopment plan pursuant to Chapter 130 of the Statutes, and

WHEREAS, the Planning Committee of the Common Council conducted a public hearing on the Wall Street Redevelopment Plan on July 1, 2004, and

WHEREAS, on July 13, 2004, the Common Council approved the Redevelopment Plan, and

WHEREAS, on February 14, 2007, the Agency amended the Redevelopment Plan which removed the Agency's power to acquire property within the Project Area through the exercise of the power of eminent domain; and

WHEREAS, on March 13, 2007, the Common Council amended the Redevelopment Plan and removed the Agency's power to acquire property within the Project Area through the exercise of the power of eminent domain, and

WHEREAS, pursuant to authorization of the Common Council, a Request for Proposals was issued for the redevelopment of Development Parcel 2a in accordance with the provisions of the Redevelopment Plan for said parcel, and

WHEREAS, after review of responses to the Request for Proposals, POKO Partners, LLC, was approved by the Common Council on September 13, 2005, as the developer with which the City and Agency would enter into exclusive negotiations for the redevelopment of Parcel 2a **("Development Parcel 2a")**, and

WHEREAS, the Redeveloper is an Affiliate of POKO Partners, LLC, and

WHEREAS, the Redeveloper has proposed to the Agency and the City a plan for redevelopment of a portion of the Wall Street Project Area consisting of property in Development Parcel 2a **("Project Site")** together with related infrastructure and off-site improvements, which plan includes residential, mixed use, retail uses and parking, including replacement of the existing public parking spaces on the Issacs Street Municipal Parking Lot and the Leonard Street Municipal Parking Lot and other improvements, within the Project Site in accordance with the Redevelopment Plan, and

WHEREAS, the Agency and the Common Council of the City have determined that the redevelopment of the Project Site pursuant to the Redevelopment Plan and this Agreement is in keeping with the purposes for which the Redevelopment Plan was adopted; will materially improve substandard, deteriorated and/or blighted conditions within the Project Site; and thus is in the vital and best interests of the public and in accord with the public purposes and provisions of applicable laws; and

WHEREAS, this Agreement sets forth the obligations and responsibilities of each of the parties hereto with respect to the implementation of the Redevelopment Plan and the construction and development contemplated within the Project Site.

NOW THEREFORE, the Parties hereto do hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 "Acquisition Expenses"

"Acquisition Expenses" shall mean all direct expenses reasonably incurred by the City and/or the Agency in connection with the acquisition of Acquisition Property, whether by deed or by the exercise of the power of eminent domain, which Acquisition Expenses shall be incurred in compliance with Article VI hereof. Acquisition Expenses shall include, without limitation, the following: costs and fees for environmental assessments, studies, reports and tests; costs and fees for appraisals and review appraisals; costs and fees for surveys and title insurance commitments, searches and policies; costs and fees for Agency design review consultant; fees for architectural and engineering services; costs of judicial awards, court costs, sheriff's fees and legal fees of outside counsel (but not legal fees for in-house counsel) made or incurred in connection with any eminent domain proceedings, including appeals; payments for or on account of Acquisition Property acquired by purchase or exercise of power of eminent domain in accordance with Section 7.3 and 7.4 hereof; Relocation Expenses incurred pursuant to Section 7.6 hereof, including the special consultant(s), if any; costs and fees for relocation, readjustment or removal of certain utility services pursuant to Section 7.7 hereof; costs incurred pursuant to Section 7.8 for management of Acquisition Property once acquired; remediation expenses, if any incurred by the City and/or the Agency in accordance with the provisions of this Agreement which are not stated herein to be the responsibility of the City or the Agency; and costs incurred by the Agency of prosecuting and/or defending, as the case may be, appeals from actions of the Zoning Commission or others in connection with the applications for all approvals as may be required by any and all Governmental Authorities, if any, or appeals from other applications made by the Agency and/or the City in the performance of their obligations hereunder, but only if requested by Redeveloper to take action in connection with such appeals. Acquisition Expenses shall not include, and Redeveloper shall have no obligation for, and the Agency and/or the City will be solely obligated for: the costs and expenses of the time of employees and staff of the Agency and the City; the legal fees and expenses incurred by the Agency and the City in connection with any Legal Challenges to the Redevelopment Plan and/or this Agreement; and costs and expenses related to any property not identified in this Agreement as Acquisition Property unless specifically denominated as an Acquisition Expense herein.

Section 1.2 "Acquisition Price"

Acquisition Price shall mean the sum total of money actually paid or required to be paid or the exchange of real property interests by Redeveloper or the Agency or City for the acquisition of Acquisition Property which is denominated as representing the purchase price of such Acquisition Property (if acquired by contract in a private transaction (as opposed to via an eminent domain proceeding)) or the amount paid or awarded as the value of, or damages for taking of, such Acquisition Property (if acquired via eminent domain proceeding, whether by settlement thereof or judicial award therein).

Section 1.3 "Acquisition Property"

Acquisition Property shall mean the real property and improvements thereon within the Project Site, which the Redeveloper does not own and hereafter determines necessary to develop the Project as contemplated by the Conceptual Master Site Plan. Upon the written request of the Redeveloper, the parties hereto agree that **Exhibit A** annexed hereto and made a part hereof shall be amended to incorporate the parcels of property within the Project Site that constitute Acquisition Property. The Redeveloper acknowledges that the Agency does not presently have the authority to acquire property within the Project Area through the exercise of the power of eminent domain and that the Agency will be required to obtain approval from the Common Council for any such acquisition(s) on a case by case basis, and further, the Agency can not assure the Redeveloper that the Common Council will approve any such acquisitions

Section 1.4 "Affiliate" or "Affiliate of Redeveloper"

Affiliate or Affiliate of Redeveloper shall mean any Person who controls, is controlled by, or is under common control with Redeveloper. In this context (a) a Person "controls" Redeveloper if said Person (i) is a general partner, managing member, officer, director or trustee of either the Redeveloper or of a Person which controls Redeveloper, (ii) directly or indirectly or acting in concert with one or more other Persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the Redeveloper or of a Person which controls the Redeveloper, (iii) controls in any manner the election of a majority of the directors of either Redeveloper or of the Person(s) which control Redeveloper, or (iv) has contributed more than twenty percent (20%) of the equity capital of Redeveloper; and (b) a Person "is controlled by Redeveloper" if the Redeveloper (i) is a general partner, managing member, officer, director or trustee of either such Person or of a Person which controls such Person, (ii) directly or indirectly or in concert with one or more other Persons, or through one or more subsidiaries, owns, controls, holds with the power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in such Person, (iii) controls in any manner the election of a majority of the directors of either such Person or of a Person which controls such Person or (iv) has contributed more than twenty percent (20%) of the equity capital of such Person. Sometimes in this Agreement, the term Affiliate shall mean, without reference necessarily to Redeveloper, any Person who controls, is controlled by, or is under common control with, another Person, such "control" being determined as set forth in this Section.

Section 1.5 "Agency Appraisals" or "Agency Review Appraisals"

Agency Appraisals or Agency Review Appraisals shall mean, respectively, Appraisals or Review Appraisals prepared by Appraisers retained by the Agency.

Section 1.6 "Agreement"

Agreement shall mean this document, including Part II attached hereto and all exhibits hereto, as same hereafter from time to time may be amended, modified or supplemented.

Section 1.7 "Appraisal"

Appraisal shall mean an appraisal of the Fair Market Value of the interest(s) to be acquired in one or more parcels of real estate constituting all or a portion of the Acquisition Property, performed and prepared by an Appraiser in accordance with generally accepted appraisal methods and setting forth all factors considered in arriving at said Fair Market Value.

Section 1.8 "Appraiser"

Appraiser shall mean a real estate appraiser retained to prepare an Appraisal of the Fair Market Value of one or more parcels of real estate constituting all or a portion of the Acquisition Property. Any and all Appraisers retained by the Redeveloper and/or by the City and the Agency to prepare such Appraisals shall have obtained the M.A.I. designation by the American Institute of Appraisers, shall enjoy a reputation for probity and acuity in the community, and shall have at least ten (10) years' experience appraising real estate in Fairfield County, Connecticut.

Section 1.9 "Architect"

Architect shall mean the firm of Crosskey Architects LLC, presently retained by the Redeveloper as Architect of record to provide architectural services with respect to the Improvements to be erected on the Project Site, or such other firm as may be retained by the Redeveloper as Architect of record for the Project with the prior written consent of the Agency, which approval will not be unreasonably withheld, delayed or conditioned by the Agency.

Section 1.10 "Bonds"

Bonds shall mean the tax-exempt General Obligation Bonds of the City which may be issued by the City to finance City Infrastructure Improvements and all utility work for which the City is responsible hereunder.

Section 1.11 "Business Day"

Business Day shall mean any day upon which the City is open for the conduct of the business of the City, and shall exclude Saturdays, Sundays and state and federal holidays upon which the City shall be closed for business.

Section 1.12 "Certificate of Taking"

Certificate of Taking shall mean with respect to any parcel of Acquisition Property the certificate of taking described in Section 8-129 of the Statutes, to be issued by the Clerk of the Court and to be recorded in the office of the Town Clerk in accordance with said Section 8-129 of the Statutes.

Section 1.13 "City Infrastructure Improvements"

The term City Infrastructure Improvements is defined in Section 4.1(A) hereof.

Section 1.14 "Clerk of the Court"

Clerk of the Court shall mean the clerk of the Superior Court of the State of Connecticut for the judicial district in which is located any Acquisition Property to be acquired by the Agency by the exercise of the powers of eminent domain.

Section 1.15 "Common Council"

Common Council shall mean the Common Council of the City.

Section 1.16 "Conceptual Master Site Plan"

Conceptual Master Site Plan shall mean the site plan described as such in this Agreement, a copy of which is annexed hereto as **Exhibit B** and made a part hereof.

Section 1.17 "Construction Plans"

The term Construction Plans is defined in Section 301 of Part II hereof.

Section 1.18 "Debt Service Payments"

Debt Service Payments shall mean the payments, calculated as provided in this Agreement, which may become due and payable by Redeveloper in connection with any Municipal Finance Instrument to which the Redeveloper's Guarantee applies.

Section 1.19 "DEP" and "DEP Commissioner"

DEP and DEP Commissioner shall mean, respectively, the Department of Environmental Protection of the State of Connecticut and the Commissioner of DEP.

Section 1.20 "Deposit"

Deposit shall have the meaning ascribed to it in Section 5.1 hereof.

Section 1.21 "Development Parcel" or "Development Parcels"

Development Parcel or Development Parcels shall mean one or more of the five (5) Development Parcels designated as such in the Redevelopment Plan.

Section 1.22 "Environmental Condition"

Environmental Condition shall mean the condition of a parcel of Project Property caused by or attributable to the existence or presence at, on, in, under, above or near the parcel of Project Property, or any building thereon, of any Hazardous Materials, or by reason of the actual or threatened release or discharge of any Hazardous Materials at, on, in, under, above, near or from the parcel of Project Property.

Section 1.23 "Environmental Laws"

Environmental Laws shall mean any present or future federal, state or local law, statute, regulation or ordinance, and any judicial or administrative order or judgment thereunder, pertaining to health, Hazardous Materials or the environment, including, without limitation, each of the laws, statutes, regulations and ordinances identified in the definition of Hazardous Materials hereinafter set forth, as enacted as of the date hereof and as hereafter amended or supplemented, and any permit, authorization or order thereunder.

Section 1.24 "Event of Default"

Event of Default shall have the meaning ascribed to said term in Article XIX hereof.

Section 1.25 "Execution Date"

Execution Date shall mean the date this Agreement has been duly signed by all the parties hereto, an original thereof recorded on the Norwalk Land Records, and an original thereof delivered to the Redeveloper.

Section 1.26 "Fair Market Value"

Fair Market Value shall mean the fair market value of the interest(s) owned or to be acquired in one or more parcels of real property and the improvements thereon, as determined by an Appraisal performed by an Appraiser taking into account all conditions affecting such value, including without limitation all matters which constitute or contribute to the existence of constraints to the development of such parcel, such as geotechnical conditions, matters affecting title, survey conditions, Zoning Regulations and/or any Environmental Condition of the subject parcel.

Section 1.27 "Governmental Authorities"

Governmental Authorities shall mean any and all federal, state, county, municipal and/or other local agencies, commissions, departments, boards, bureaus, officials and other governmental and quasi-governmental authorities having jurisdiction over the Redevelopment Plan, the Project, this Agreement and/or any of the parties hereto.

Section 1.28 "Hazardous Materials"

Hazardous Materials shall mean (i) those elements, wastes, materials, substances or compounds identified or regulated as hazardous or toxic pursuant to any and all Environmental Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et. seq. and 40 CFR §302.1 et. seq.) ("CERCLA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et. seq. and 40 CFR § 116.1 et. seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et. seq.), the Clean Air Act (42 U.S.C. §7401 et. seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et. seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 1101 et. seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et. seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 et. seq.), any analogous state laws, including Title 22a of the Statutes, any amendments to said laws, and the regulations promulgated pursuant to said laws, all as amended from time to time, relating to or affecting the Project Property, (ii) any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents) or any other substances or materials which are identified by or regulated by Environmental Laws, on, in, under or affecting all or any portion of the Project Property or any surrounding areas, and (iii) any substances now or hereafter defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants" or "toxic substances" under any applicable Environmental Laws.

Section 1.29 "Improvements"

Improvements shall mean those items which are to be constructed by the Redeveloper pursuant to the terms of this Agreement, including buildings and other structures, site work and landscaping.

Section 1.30 "Infrastructure Improvements"

Infrastructure Improvements shall mean those public roadway and pedestrian improvements to be designed and to be newly constructed and/or to be rehabilitated, renovated, relocated and/or upgraded within and adjacent to the Project Site in order to facilitate the development of the Project. It is understood and agreed by the parties hereto that unless otherwise specifically identified as being the responsibility of the City, all street or road Infrastructure Improvements for which the City shall be responsible shall be limited to those located within the yellow (or light gray) area shown on **Exhibit C-2** attached hereto and made a part hereof and shall include the curb, and those located within the green (or dark gray) area on **Exhibit C-2** shall be the responsibility of the Redeveloper. Those Infrastructure Improvements which have been identified as of the date hereof are specified on **Exhibit C-1** annexed hereto and made a part hereof by reference. Additional Infrastructure Improvements may hereafter be identified by mutual agreement of the City, the Agency and the Redeveloper. Upon identification of and an agreement upon any such additional Infrastructure Improvements from time to time, said **Exhibit C-1** will be amended upon agreement of the parties hereto to reflect same.

Section 1.31 "Institutional Investor" and/or "Institutional Lender"

Institutional Investor shall mean any entity proposing to make or making an equity investment in all or a portion of the Project, and Institutional Lender shall mean any entity proposing to make or making a mortgage loan to Redeveloper secured by all or a portion of the Project Property and which, in either case, is any one of: a state-chartered bank, savings bank, private banker, trust company, savings and loan association or other state regulated banking organization; a national bank or trust company, a federally-chartered or federally-regulated savings bank or savings and loan association, or any other federally-regulated banking institution; an insurance company duly organized or licensed to do business in the State; and/or an investment banking firm, brokerage house or other similar, generally recognized financial services firm; which, in the case of each of the foregoing, has a net worth in excess of twenty-five million (U.S. $25,000,000.00) dollars; and/or any Affiliate, parent or subsidiary of any of the foregoing.

Section 1.32 "Isaacs Street Municipal Parking Lot"

Isaacs Street Municipal Parking Lot shall mean that certain parcel of Project Property known and designated on the City's tax assessment map as District 1, Block 29, Lot 18.

Section 1.33 "Legal Challenge"

Legal Challenge shall mean any action which is or may be taken by any Person (including without limitation the commencement of any action or proceeding at law or in equity) to challenge the validity, legality or effectiveness of any thing, matter or process arising out of or relating to the Redevelopment Plan and/or to this Agreement and/or to the adoption or approval of either of same by any Governmental Authorities and/or to the implementation of any of same.

Section 1.34 "Legal Requirements"

Legal Requirements shall mean any and all present or future federal, state, city or other local laws, statutes, rules, regulations, codes or ordinances, and any judicial or administrative orders, judgments or decrees thereunder.

Section 1.35 "Leonard Street Municipal Parking Lot"

Leonard Street Municipal Parking Lot shall mean that certain parcel of Project Property known and designated on the City's tax assessment map as District 1, Block 29, Lot 25.

Section 1.36 "LEP Firm"

LEP Firm shall mean an environmental consulting firm employing one or more LEP's.

Section 1.37 "LEP" or "Licensed Environmental Professional"

LEP or Licensed Environmental Professional shall mean any person licensed by the State Board of Examiners of Environmental Professionals pursuant to 22a-133v of the Statutes, as same may be amended from time to time.

Section 1.38 "Meaningful Participation"

Meaningful Participation, when used to describe the type and/or nature of the input and participation which the Redeveloper will have in and to certain decision-making processes to be engaged in by the Agency and/or the City, shall mean that the City and the Agency shall afford the Redeveloper a full and fair opportunity to participate in all aspects of the decision-making process, to make its views, suggestions and opinions known, and to object to proposed action by the City and/or the Agency; that the City and the Agency will give due and fair consideration to the views and positions of the Redeveloper in making such decisions, considering the Redeveloper's expertise, focus, diligence and its costs expended on the Project, and that, if they do not follow the Redeveloper's suggestions, the City and/or the Agency will advise the Redeveloper of the reasons why such was the case. Where, in this Agreement, it is stated that Redeveloper will have Meaningful Participation with respect to certain matters, same shall not be construed to require that the consent or approval of the Redeveloper be required in order for action taken by the Agency and/or the City in connection with such matter to be valid or effective. Redeveloper acknowledges that the City, as a body politic and corporate, has duties and obligations which are imposed by the Constitution and the Statutes of the State of Connecticut and by its own Charter and ordinances. Nothing contained within the concept of "Meaningful Participation", as used herein, shall be construed to require the City to violate these duties and obligations or shall be interpreted or applied in such a way as to cause or result in a violation of any duty, obligation or standard of care applicable to the City. If, in discharging these duties and obligations in good faith, the City takes action which is not in agreement with the views expressed and/or positions taken by the Redeveloper, this shall not give rise to any claim by Redeveloper against the City for failure to permit Redeveloper to have Meaningful Participation. Nothing contained herein is to be construed as granting to Redeveloper rights greater than may by law be granted to any citizen.

Section 1.39 "Municipal Finance Instrument"

Municipal Finance Instrument shall mean any form of financing mechanism which the City may elect to utilize in order to fund City Infrastructure Improvements, including, without limitation, Notes, Bonds and/or other forms of debt instruments.

Section 1.40 "Municipal Parking Lot"

Municipal Parking Lot shall mean the Isaacs Street Municipal Parking Lot and the Leonard Street Municipal Parking Lot.

Section 1.41 "Notice of Condemnation" or "Notice of Eminent Domain"

Notice of Condemnation or Notice of Eminent Domain shall mean either of the notices referred to in Section 22a-133dd(3) and/or 48-13 of the Statutes.

Section 1.42 "Person"

Person shall mean any individual, firm, partnership, association, syndicate, company, trust, corporation, limited liability company, or other legal entity of any kind.

Section 1.43 "Phase"

Phase shall mean each Phase or, if more than one, the Phase of development of portions of the Project, so delineated or described as a Phase of development in this Agreement.

Section 1.44 "Plan Requirements"

Plan Requirements shall mean the provisions, guidelines and requirements set forth in the Redevelopment Plan with respect to development of properties subject to the Redevelopment Plan, including without limitation the requirements relating to Goals, Objectives and Strategies, Project Boundaries, Land Use, Design Standards, Streets and Utilities, Displacement and Relocation and Zoning.

Section 1.45 "Project"

Project shall mean all the activities described in this Agreement and the Redevelopment Plan to be undertaken by the Redeveloper and/or the City and the Agency within the Project Site.

Section 1.46 "Project Costs"

Project Costs shall mean any and all costs, expenses and obligations of whatsoever kind or nature arising out of or incurred by the Redeveloper in connection with the development of the Project and this Agreement, whether denominated as "hard" or "soft" costs, whether direct or indirect, and whether absolute or contingent and/or liquidated or unliquidated, including without limitation, Acquisition Expenses, land costs, fees of attorneys, appraisers, accountants, architects, engineers, LEPs and the fees of all other consultants and/or professionals; filing fees, recording fees, and permit fees; title search costs and title insurance, liability insurance and fire insurance premiums; financing fees; environmental, engineering, geotechnical, surveying and other costs of tests, measurements and surveys; construction costs, construction management and supervision fees; interest on construction loans; such Project development fees and Project management fees as may be permitted by the Institutional Lender providing financing for the Project and such other costs as the Agency, in its sole discretion, deems appropriate.

Section 1.47 "Project Operating Deposit"

Project Operating Deposit shall mean that portion of the Deposit which is deposited into the Project Operating Account.

Section 1.48 "<u>Project Site" or "Project Property" or "Property</u>"

Project Site or Project Property or Property shall mean the entire land area more particularly described in **Exhibit D** attached hereto and made a part hereof (as the same may be expanded in accordance with this Agreement).

Section 1.49 "<u>Redeveloper Appraisals" or "Redeveloper Review Appraisals</u>"

Redeveloper Appraisals or Redeveloper Review Appraisals shall mean, respectively, Appraisals or Review Appraisals which have been prepared by Appraisers retained by the Redeveloper.

Section 1.50 "<u>Redeveloper Infrastructure Improvements</u>"

The term Redeveloper Infrastructure Improvements is defined in Section 4.1(A) hereof.

Section 1.51 "<u>Redeveloper Property</u>"

Redeveloper Property shall mean all of the real property in the Project Site owned by the Redeveloper, or by Affiliates of Redeveloper, on the date of this Agreement, as shown on **Exhibit E** annexed hereto and made a part hereof.

Section 1.52 "<u>Relocation Act</u>"

Relocation Act shall mean the *Uniform Relocation Assistance Act*, Chapter 135 of the Statutes, Section 8-266, *et. seq.*

Section 1.53 "<u>Relocation Expenses</u>"

Relocation Expenses shall mean those costs and expenses incurred by the Agency to make payments required, pursuant to the Relocation Act and Section 7.6 of this Agreement, to be made to displaced persons and businesses relocated from Acquisition Property acquired by the Agency by eminent domain.

Section 1.54 "<u>Remedial Action Plan</u>"

Remedial Action Plan shall mean the plan, if any, described in and prepared in accordance with Section 8.1 hereof for the performance of the Remedial Work, if any, required to remediate any Environmental Condition with respect to the Project Property as a whole.

Section 1.55 "<u>Remedial Cost Estimate</u>"

Remedial Cost Estimate shall mean, with respect to each parcel of Acquisition Property, the estimate (which estimate is to be prepared by the LEP Firm retained by the Agency or the Redeveloper, as applicable, pursuant to Section 7.3(A) hereof) of the costs which, in the opinion of the LEP, would necessarily be incurred to remediate such parcel of Acquisition Property such that an LEP could verify, pursuant to Sections 22a-133x, 22a-133y or 22a-134a of the Statutes, that the parcel has been remediated in accordance with the applicable provisions of the Remediation Standard Regulations. In preparing the Remedial Cost Estimate, the LEP will provide for the remediation of such parcel to the direct exposure criteria and volatilization criteria applicable to the use to which the parcel is being put at the time of preparation of such estimate, and will only include the cost of asbestos abatement if the highest and best life of the Acquisition Property involves the renovation or demolition of any building located therein.

Section 1.56 "Remedial Work"

Remedial Work shall mean the work, if any, required to be performed to remediate the Environmental Condition of the Project Property, as set forth in the Remedial Action Plan, which Remedial Work is to be performed in accordance with all applicable Legal Requirements.

Section 1.57 "Remediation Standard Regulations" or "RSR"

Remediation Standard Regulations or RSR shall mean and refer to the "Remediation Standard Regulations," R.C.S.A. §§22a-133k-1 *et.sq.*, adopted by DEP pursuant to Section 22a-133k of the Statutes.

Section 1.58 "Review Appraisal" and "Review Appraiser"

Review Appraisal and Review Appraiser shall mean, respectively, an Appraisal which is performed and prepared by an Appraiser to confirm the work product, opinions and conclusions of another Appraiser, and the Appraiser performing such Review Appraisal.

Section 1.59 "Security Deposit"

Security Deposit shall mean that portion of the Deposit which is deposited into the Security Account to serve as security for the performance by Redeveloper of its obligations under this Agreement.

Section 1.60 "Site Preparation Activities"

Site Preparation Activities shall mean and include (a) the acquisition by the Redeveloper of title to all parcels of Acquisition Property, (b) the relocation by the Agency of all occupants of Acquisition Property required for construction of the Improvements, (c) the demolition by the Redeveloper of all existing structures on Acquisition Property required for construction of the Improvements, and (d) the performance by the Redeveloper of all Remedial Work, if any, with respect to Acquisition Property required for construction of the Improvements.

Section 1.61 "Statement of Compensation"

Statement of Compensation shall mean the statement of compensation with respect to the acquisition of Acquisition Property by eminent domain, as described in Section 8-129 of the Statutes, setting forth a description of the Acquisition Property to be taken, the names of all parties having a record interest therein and the amount of compensation to be paid to the persons entitled thereto for such Acquisition Property, which is to be prepared by the Agency, filed with the Clerk of the Court and recorded in the office of the Town Clerk of the City.

Section 1.62 "Statutes"

"Statutes" shall mean the Connecticut General Statutes, as amended from time to time.

Section 1.63 "Workforce Housing Unit"

"Workforce Housing Unit" shall have the same meaning ascribed to it in Section 118-1050 of the Zoning Regulations.

Section 1.64 "Zoning Regulations"

Zoning Regulations shall mean the Building Zone Regulations of the City of Norwalk, Connecticut, effective October 16, 1929, as amended to the date hereof, and as same hereafter may be further amended from time to time.

ARTICLE II
IMPROVEMENTS

Section 2.1 Phase I Improvements.

A. The Redeveloper shall construct on the Project Site within the time limits sets forth in this Agreement, the Improvements (**"Phase I Improvements"**) more particularly described in Section 2.1(B) below; together with surface and/or structured parking and circulation space, and appropriate landscaping and pedestrian and vehicular circulation areas, which shall be developed and constructed in accordance with the Conceptual Master Site Plan, the Redevelopment Plan and the Plan Requirements.

B. The Phase I Improvements to be constructed by the Redeveloper on the Project Site are the following:

1. Phase I Parking Garage. The Redeveloper shall construct a parking garage (**"Phase I Parking Garage"**) containing not fewer than two hundred fifty six (256) parking spaces serving the Phase I Improvements. The Phase I Parking Garage shall be designed and constructed as an integral part of the mixed use development of the Phase I Improvements and the two hundred fifty six (256) parking spaces shall include a

minimum of one hundred (100) Public Parking Spaces. The design, engineering and Construction Plans for the Phase I Parking Garage shall be subject to the provisions of Section 3.6 hereof. All parking shall be constructed in a manner to comply with the Zoning Regulations (as the same may be amended or as such relief may be granted by the Norwalk Zoning Commission or Zoning Board of Appeals), as to the number of required spaces and dimension of the spaces, including but not limited to such matters as the number of handicapped spaces, parking requirements by land use type and shared parking reductions permitted by the Zoning Regulations.

2. Phase I Residential Units. The Redeveloper shall construct one hundred two (102) residential units (**"Phase I Residential Units"**). The Phase I Residential Units will be constructed in a manner that allows the Phase I Parking Garage to be integrated within, and to the greatest extent possible screened by, the residential structure on all street facing elevations. The Redeveloper shall construct the Phase I Residential Units in compliance with all Legal Requirements. The Phase I Residential Units shall consist of for sale units (**"Phase I Residential For Sale Units"**), and rental units (**"Phase I Residential Rental Units"**).

In addition, the greater of twenty (20%) percent of the Phase I Residential Units or the number of Phase I Residential Units which are required to satisfy the Zoning Regulations, shall be deed restricted so as to require such units to comply, in perpetuity, with the requirements of both Section 118-1050 of the Zoning Regulations, as the same may be amended from time to time, and Section 8-30g-8 of the Regulations of Connecticut State Agencies, as the same may be amended from time to time, so as to qualify each such unit as a "Workforce Housing Unit" and an "affordable unit", respectively. To the extent that the terms and conditions of the Zoning Regulations and the State Regulations differ, then the more restrictive regulation shall apply. In the event the Zoning Regulations and the State Regulations contain any terms or conditions which conflict to the extent that both regulations cannot be satisfied, then the terms and conditions of Section 118-1050 of the Zoning Regulations shall control. The balance of the affordable units in the Project that are constructed with State or federal capital shall comply with applicable State or federal requirements. It is understood and agreed by the parties, that all such affordable units shall be located on the Project Site.

3. Phase I Retail Space. The Redeveloper shall construct not less than twenty thousand five hundred ninety-eight (20,598) ± square feet of retail space and Cultural/Performance Space (the **"Phase I Retail Space"**) on the ground floor of the Phase I Improvements. For purposes of this Section 2.1(B)(3), 67-69 Wall Street shall not be considered Phase I Retail Space, however, the Globe Theater (as hereinafter defined) shall be included within the calculation of Phase I Retail Space. The Phase I Retail Space shall have its principal public façade oriented to the street, and provide for pedestrian access from the street sidewalk. All storefronts shall have a minimum of seventy-five (75%) percent glazing in the street facing elevation.

4. Phase I Recreational Space. The Redeveloper shall construct such recreational space in the form of occupant-accessible rooftop gardens as indicated on the Conceptual Master Site Plan as shall be required by the Zoning Regulations.

5. Phase I Live/Work Space. The Redeveloper shall construct not more than ten thousand eight hundred twenty-eight (10,828)± square feet of live/work space (the **"Phase I Live/Work Space"**) on the ground floor of the Phase I Improvements. The parties acknowledge that the present Zoning Regulations do not permit Phase I Live/Work Space on the ground floor. The Agency agrees to support the Redeveloper's request to amend the Zoning Regulations to permit Phase I Live/Work Space on the ground floor of the Phase I Improvements. The uses for which the Phase I Live/Work Space may be utilized shall be those uses as may be permitted by the Zoning Regulations as the same may be amended. In the event that the Zoning Regulations do not ultimately permit the use of the area depicted in Phase I on the Conceptual Master Site Plan as Phase I Live/Work Space, then the Redeveloper shall have the right to convert such area to any use or uses as may be permitted by the Zoning Regulations. The Redeveloper agrees to amend the Conceptual Master Site Plan to reflect such change in accordance with the provisions of Section 3.1 hereof; provided, however, that in the event the proposed change in use is to either residential or commercial use, then such change shall not be deemed a "substantial change" for purposes of ARTICLE III hereof and shall only require the written consent of the Agency, which consent shall not be unreasonably withheld, delayed or conditioned.

6. Globe Theater. Provided the Redeveloper acquires such property, the Redeveloper agrees to renovate and preserve the building located at 71 Wall Street, Norwalk, Connecticut (the **"Globe Theater"**) and to restrict the future use thereof to predominantly cultural uses such as, but not limited to, theatrical performances and/or performance education, or similar uses such as ballet, dance, symphonic orchestra performances and concerts (**"Cultural/Performance Space"**). The foregoing use restriction on the Globe Theater shall remain in effect from the date Redeveloper acquires title to the Globe Theater until the later of (i) that date which is thirty (30) years after the Redeveloper acquires title to the Globe Theater, or (ii) the date of expiration of the Covenant on Use set forth in Article XIV hereof. The Redeveloper agrees that in the event the Redeveloper or an Affiliate of the Redeveloper acquires title to the Globe Theater, and at any time thereafter desires to sell the Globe Theater and shall have received a bona fide written offer from a third party for the purchase thereof which it wishes to accept, it shall by written notice to the City, enclosing a copy of such written bona fide offer, offer to the City the right to enter into a contract for the purchase of the Globe Theater, and the City shall have sixty (60) days after receipt of such written notice and offer in which to accept in writing such offer upon such terms and conditions specified therein, and upon such acceptance of such offer by the City, the Redeveloper or an Affiliate of the Redeveloper, as the case may be, and the City shall enter into a contract for the purchase of the Globe Theater upon the terms and conditions specified in the written notice and offer to the City. In the event that the City shall fail to accept in writing the terms and conditions of sale during such sixty (60) day period, this option

shall be null and void and of no further force and effect, and the Redeveloper or the Affiliate of the Redeveloper, as the case may be, shall thereafter be free to sell the Globe Theater substantially upon the terms and conditions specified in the bona fide written offer made by such third party.

Section 2.2 Phase II Improvements.

A. The Redeveloper shall construct on the Project Site within the time limits set forth in this Agreement, the Improvements (**"Phase II Improvements"**) more particularly described in Section 2.2(B) below; together with surface and/or structured parking and circulation space, and appropriate landscaping and pedestrian and vehicular circulation areas, which shall be developed and constructed in accordance with the Conceptual Master Site Plan, the Redevelopment Plan and the Plan Requirements.

B. The Phase II Improvements to be constructed by the Redeveloper on the Project Site are the following:

1. Phase II Parking Garage. The Redeveloper shall construct a parking garage (**"Phase II Parking Garage"**) containing not fewer than two hundred seventy six (276) parking spaces serving the Phase II Improvements. The Phase II Parking Garage shall be designed and constructed as an integral part of the mixed use development of the Phase II Improvements and the two hundred seventy six (276) parking spaces shall include a minimum of eighty-eight (88) Public Parking Spaces. The design, engineering and Construction Plans for the Phase II Parking Garage shall be subject to the provisions of Section 3.6 hereof. All parking shall be constructed in a manner to comply with the Zoning Regulations (as the same may be amended or as such relief may be granted by the Norwalk Zoning Commission or Zoning Board of Appeals), as to the number of required spaces and dimension of the spaces, including but not limited to such matters as the number of handicapped spaces, parking requirements by land use type and shared parking reductions permitted by the Zoning Regulations.

2. Phase II Residential Units. The Redeveloper shall construct ninety-six (96) residential units (**"Phase II Residential Units"**). The Phase II Residential Units will be constructed in a manner that allows the Phase II Parking Garage to be integrated within, and to the greatest extent possible screened by, the residential structure on all street facing elevations. The Redeveloper shall construct the Phase II Residential Units in compliance with all Legal Requirements. The Phase II Residential Units shall consist of for sale units (**"Phase II Residential For Sale Units"**), and rental units (**"Phase II Residential Rental Units"**).

In addition, the greater of twenty (20%) percent of the Phase II Residential Units or the number of Phase II Residential Units which are required to satisfy the Zoning Regulations, shall be deed restricted so as to require such units to comply, in perpetuity, with the requirements of both Section 118-1050 of the Zoning Regulations, as the same may be amended from time to time, and Section 8-30g-8 of the Regulations of Connecticut State Agencies, as the same may be amended from time to time, so as to qualify each such unit as a "Workforce Housing Unit" and an "affordable unit", respectively. To the extent that the terms and conditions of the Zoning Regulations and the State Regulations differ, then the more restrictive regulation shall apply. In the event the Zoning Regulations and the State Regulations contain any terms or conditions which conflict to the extent that both regulations cannot be satisfied, then the terms and conditions of Section 118-1050 of the Zoning Regulations shall control. The balance of the affordable units in the Project that are constructed with State or federal capital shall comply with applicable State or federal requirements. It is understood and agreed by the parties, that all such affordable units shall be located on the Project Site.

3. Phase II Retail Space. The Redeveloper shall construct not less than seven thousand two hundred seventy-six (7,276)± square feet of retail space (the **"Phase II Retail Space"**) on the ground floor of the Phase II Improvements. The Phase II Retail Space shall have its principal public façade oriented to the street, and provide for pedestrian access from the street sidewalk. All storefronts shall have a minimum of seventy-five (75%) percent glazing in the street facing elevation.

4. Phase II Live/Work Space. The Redeveloper shall construct not more than nine thousand four hundred forty-five (9,445)± square feet of live/work space (the **"Phase II Live/Work Space"**) on the ground floor of the Phase II Improvements. The parties acknowledge that the present Zoning Regulations do not permit Phase II Live/Work Space on the ground floor. The Agency agrees to support the Redeveloper's request to amend the Zoning Regulations to permit Phase II Live/Work Space on the ground floor of the Phase II Improvements. The uses for which the Phase II Live/Work Space may be utilized shall be those uses as may be permitted by the Zoning Regulations as the same may be amended. In the event that the Zoning Regulations do not ultimately permit the use of the area depicted in Phase II on the Conceptual Master Site Plan as Phase II Live/Work Space, then the Redeveloper shall have the right to convert such area to any use or uses as may be permitted by the Zoning Regulations. The Redeveloper agrees to amend the Conceptual Master Site Plan to reflect such change in accordance with the provisions of Section 3.1 hereof; provided, however, that in the event the proposed change in use is to either residential or commercial use, then such change shall not be deemed a "substantial change" for purposes of ARTICLE III hereof and shall only require the written consent of the Agency, which consent shall not be unreasonably withheld, delayed or conditioned.

5. Phase II Recreational Space. The Redeveloper shall construct such recreational space in the form of occupant-accessible rooftop gardens as indicated on the Conceptual Master Site Plan as shall be required by the Zoning Regulations.

Section 2.3 Phase III Improvements

A. The Redeveloper shall construct on the Project Site within the time limits sets forth in this Agreement, the Improvements (**"Phase III Improvements"**) more particularly described in Section 2.3(B) below; together with surface and/or structured parking and circulation space, and appropriate landscaping and pedestrian and vehicular circulation areas, which shall be developed and constructed in accordance with the Conceptual Master Site Plan, the Redevelopment Plan and the Plan Requirements.

B. The Phase III Improvements to be constructed by the Redeveloper on the Project Site are the following:

1. Phase III Parking Garage. The Redeveloper shall construct a parking garage (**"Phase III Parking Garage"**) containing not fewer than three hundred thirty seven (337) parking spaces serving the Phase III Improvements. The Phase III Parking Garage shall be designed and constructed as an integral part of the mixed use development of the Phase III Improvements and shall contain the number of Public Parking Spaces required to satisfy the Redeveloper's obligation to provide two hundred forty eight (248) Public Parking Spaces on the Project Site, subject to adjustment, if any, in accordance with the last paragraph of Section 2.5(B). The design, engineering and Construction Plans for the Phase III Parking Garage shall be subject to the provisions of Section 3.6 hereof. All parking shall be constructed in a manner to comply with the Zoning Regulations (as the same may be amended or as such relief may be granted by the Norwalk Zoning Commission or Zoning Board of Appeals), as to the number of required spaces and dimension of the spaces, including but not limited to such matters as the number of handicapped spaces, parking requirements by land use type and shared parking reductions permitted by the Zoning Regulations.

2. Phase III Residential Units. The Redeveloper shall construct one hundred seventy three (173) residential units (**"Phase III Residential Units"**). The Phase III Residential Units will be constructed in a manner that allows the Phase III Parking Garage to be integrated within, and to the greatest extent possible screened by, the residential structure on all street facing elevations. The Redeveloper shall construct the Phase III Residential Units in compliance with all Legal Requirements. The Phase III Residential Units shall consist of for sale units (**"Phase IIII Residential For Sale Units"**), and rental units (**"Phase III Residential Rental Units"**).

In addition, the greater of twenty (20%) percent of the Phase III Residential Units or the number of Phase III Residential Units which are required to satisfy the Zoning Regulations, shall be deed restricted so as to require such units to comply, in perpetuity, with the requirements of both Section 118-1050 of the Zoning Regulations, as the same may be amended from time to time, and Section 8-30g-8 of the Regulations of Connecticut State Agencies, as the same may be amended from time to time, so as to qualify each such unit as a "Workforce Housing Unit" and an "affordable unit", respectively. To the extent that the terms and conditions of the Zoning Regulations and the State Regulations differ, then the more restrictive regulation shall apply. In the event the Zoning Regulations and the State Regulations contain any terms or conditions which conflict to the extent that both regulations cannot be satisfied, then the terms and conditions of Section 118-1050 of the Zoning Regulations shall control. The balance of the affordable units in the Project that are constructed with State or federal capital shall comply with applicable State or federal requirements. It is understood and agreed by the parties, that all such affordable units shall be located on the Project Site.

3. Phase III Retail Space. The Redeveloper shall construct not less than fourteen thousand six hundred seven (14,607) ± square feet of retail space (the **"Phase III Retail Space"**) on the ground floor of the Phase III Improvements. The Phase III Retail Space shall have its principal public façade oriented to the street, and provide for pedestrian access from the street sidewalk. All storefronts shall have a minimum of seventy-five (75%) percent glazing in the street facing elevation.

4. Phase III Live/Work Space. The Redeveloper shall construct not more than twelve thousand nine hundred fifty-seven (12,957)± square feet of live/work space (the **"Phase III Live/Work Space"**) on the ground floor of the Phase III Improvements. The parties acknowledge that the present Zoning Regulations do not permit Phase III Live/Work Space on the ground floor. The Agency agrees to support the Redeveloper's request to amend the Zoning Regulations to permit Phase III Live/Work Space on the ground floor of the Phase III Improvements. The uses for which the Phase III Live/Work Space may be utilized shall be those uses as may be permitted by the Zoning Regulations as the same may be amended. In the event that the Zoning Regulations do not ultimately permit the use of the area depicted in Phase III on the Conceptual Master Site Plan as Phase III Live/Work Space, then the Redeveloper shall have the right to convert such area to any use or uses as may be permitted by the Zoning Regulations. The Redeveloper agrees to amend the Conceptual Master Site Plan to reflect such change in accordance with the provisions of Section 3.1 hereof; provided, however, that in the event the proposed change in use is to either residential or commercial use, then such change shall not be deemed a "substantial change" for purposes of ARTICLE III hereof and shall only require the written consent of the Agency, which consent shall not be unreasonably withheld, delayed or conditioned.

5. Phase III Recreational Space. The Redeveloper shall construct such recreational space in the form of occupant-accessible rooftop gardens as indicated on the Conceptual Master Site Plan as shall be required by the Zoning Regulations.

Section 2.4 Independent Parcels.

The land upon which the Phase I Improvements and the Phase II Improvements are to be completed must be assembled as an independent parcel and the land upon which the Phase III Improvements are to be completed shall also be assembled as an independent parcel. Each of the above-mentioned independent parcels must satisfy all governmental requirements, and in addition, each Phase must insure sufficient parking (including the Public Parking Spaces) is preserved for the other Phases by way of a parking easement and/or parking plan.

Section 2.5 Public Parking.

A. Temporary Public Parking.

The City, the Agency and the Redeveloper hereby acknowledge that there are presently two hundred forty-eight (248) spaces of public parking on the Project Site. Such parking spaces exist now to serve retail uses and long term parking needs in the Project Site and surrounding areas and the new parking spaces will be used to serve area retail uses and long term parking needs. Due to Project Site conditions, the parties acknowledge that the Redeveloper will be unable to provide two-hundred forty-eight (248) temporary public parking spaces for use by the general public during construction of the Improvements. During construction of the Phase I Improvements and Phase II Improvements, the Redeveloper shall make available for use by the general public a minimum of one hundred (100) parking spaces. These temporary public parking spaces shall be located on the Project Site, except that with the prior written approval of the Agency, which approval shall not be unreasonably withheld, delayed or conditioned, up to twenty (20%) percent of said temporary public parking spaces may be located off-site provided they are within four hundred (400) feet of the Project Site. During construction of the Phase III Improvements, there shall be available for use by the general public a minimum of one hundred eighty-eight (188) parking spaces within the Phase I Improvements and Phase II Improvements. Prior to the conveyance of the Municipal Parking Lot to the Redeveloper, the Norwalk Parking Authority shall continue to maintain and operate the public parking spaces on such parcels or parcel in the usual course of business and consistent with past practices. Upon conveyance of fee simple title of the Municipal Parking Lot to the Redeveloper, the parking spaces designated by the parties hereto as temporary public parking spaces shall be maintained and operated by the Redeveloper in accordance with the Redeveloper's temporary public parking plan as approved by the Norwalk Parking Authority and/or the City, which temporary public parking plan must be approved prior to the conveyance to the Redeveloper of the Municipal Parking Lot. The City and the Agency agree to modify the Agency's obligation under their Option Agreement granting the Agency the option to purchase the Municipal Parking Lot by modifying the number of temporary public parking spaces that the Agency is required to provide during construction to the number of temporary public parking spaces set forth above. All permanent Public Parking Spaces constructed by the Redeveloper as part of the Improvements on the Project Site for which a Certificate of Completion has been issued shall be maintained and operated by Redeveloper in accordance with the terms of this Agreement.

B. Permanent Public Parking.

The Redeveloper shall construct as an integral part of its mixed use development of the Project Site, a minimum of two hundred forty-eight (248) public parking spaces (**"Public Parking Spaces"**) in addition to any on-street parking within the Project Site, which may be conventional or automated, and which shall be available to the general public to serve as replacement parking for the two hundred forty-eight (248) surface parking spaces presently provided on the Municipal Parking Lot. The Public

Parking Spaces shall be operated and maintained by the Redeveloper in the following manner:

(i) The Public Parking Spaces shall be available to the general public at all times and in perpetuity without restriction or limitation except as may be permitted by this Agreement.

(ii) The Redeveloper shall have the right to establish the parking rates for all parking spaces within the Project Site, including the Public Parking Spaces; provided, however, the Redeveloper agrees that the rate structure established for the Public Parking Spaces shall be reasonable so as not to inhibit the general public from utilizing said Public Parking Spaces. The Redeveloper shall keep the Public Parking Spaces in good operating condition and in a manner consistent with other comparable public parking in the City.

(iii) The Agency, the City and the Redeveloper acknowledge that the Redeveloper will incur substantial costs and expenses in the construction, maintenance and operation of the proposed Public Parking Spaces on the Project Site. The parties further acknowledge that in the event the City establishes parking rates for public parking throughout the City which do not allow the Norwalk Parking Authority to operate on or near a break-even basis and the City is required to provide a Parking Authority Subsidy (as hereinafter defined) to cover such deficiency it would place the Redeveloper at a competitive disadvantage due to the Redeveloper's need to establish parking rates for the Public Parking Spaces that enable it to recoup the costs and expenses of the construction, maintenance and operation of such Public Parking Spaces. Therefore, the City hereby agrees to use reasonable efforts to cause the Norwalk Parking Authority to set rates for off-street public parking spaces in the City at a level that will not require the City to provide a Parking Authority Subsidy to cover any deficiency for off-street parking in the City. For purposes of this section, **"Parking Authority Subsidy"** shall mean a subsidy exceeding seven (7%) percent of the Operating and Management Budget for all off-street parking in the City for a fiscal year of the City. For purposes of this section, **"Operating and Management Budget"** shall mean the Norwalk Parking Authority Budget excluding the following: (a) any City financial participation to pay for capital improvements to the City parking system that could impact public safety and liability; (b) any City financial participation to pay for infrastructure improvements related to the City parking system which include but is not limited to drainage/sewer, road, sidewalk, traffic improvements; and (c) any City financial participation to pay for anything over and above what is considered normal parking operations beyond the control of the Norwalk Parking Authority. In the event that the City is required to provide a Parking Authority Subsidy to cover a deficiency in the City's Operating and Management Budget for off-street parking during a fiscal year of the City, then the City agrees to pay to the operator of the Public Parking Spaces on the Project Site, to assist the operator in covering its cost of maintaining and operating the Public Parking Spaces on the Project Site, an amount determined by using the following formula: the amount of the Parking Authority Subsidy for a fiscal year of the City shall be divided by the total number of off-street public parking spaces maintained by the City during such fiscal year, and the resultant number shall be multiplied by the number of

Public Parking Spaces that the Redeveloper is required to provide on the Project Site pursuant to this Agreement for such fiscal year. For example, if the City's fiscal year Operating and Management Budget for all off-street parking in the City is $4,000,000.00, the amount of the Parking Authority Subsidy for such fiscal year is $400,000.00, the total number of off-street public parking spaces maintained by the City for such fiscal year is 4,000 and the number of Public Parking Spaces that the Redeveloper is required to provide on the Project Site is 248, then the amount that the City would be required to pay to the operator of the Public Parking Spaces on the Project Site under this subsection for such fiscal year would be $24,800.00 ($400,000.00 ÷ 4,000.00 = $100.00 X 248). The City's obligation to make the foregoing payments to said operator shall continue for a period of ten (10) years, commencing with the first full fiscal year of the City after completion of the Phase I Improvements, as evidenced by the issuance of a Certificate of Completion by the Agency. At the end of said ten (10) year period, the parties shall review the implications of this subsection (iii) and assess whether there continues to be reasons for an extension of such ten (10) year period for an additional five (5) years. The parties acknowledge that the Norwalk Parking Authority is responsible for managing and operating all public parking in the City and that the Norwalk Parking Authority owns and operates substantially all of the public parking in the City, and further, that due to the present parking economics in the City and due to the fact that the Public Parking Spaces within the Project Site may be integrated with the necessary parking for the Improvements, the City is permitting the Redeveloper to initially own and operate the Public Parking Spaces. Notwithstanding the foregoing, the Redeveloper, for itself and its successors and assigns, hereby agrees that should the parking economics in the City change in such a way that the Norwalk Parking Authority and the Redeveloper determine it to be in the best interest of both parties for the Norwalk Parking Authority to own and/or operate the Public Parking Spaces, said Redeveloper and related lenders will negotiate in good faith with the Norwalk Parking Authority in an attempt to reach an agreement that is reasonably acceptable to both the Redeveloper and the Norwalk Parking Authority to permit the Norwalk Parking Authority to own and/or operate the Public Parking Spaces.

(iv) The Redeveloper shall pay all costs and expenses associated with the Public Parking Spaces and shall be entitled to retain all parking fees received with respect to said Public Parking Spaces.

(v) The Redeveloper may implement such reasonable rules and regulations as it deems necessary, provided they do not differentiate between the general public and the customers of the retailers within the Project.

(vi) The Agency and/or the City shall have the right at any time to retain a consultant to audit the operation of the parking garages within the Project to insure that the Public Parking Spaces are available to the general public as contemplated by this Agreement. The Redeveloper agrees to fully cooperate with any such audit and to provide the consultant with such financial and operational information as it deems necessary to effectively conduct such audit. In the event the consultant determines that the two hundred forty-eight (248) Public Parking Spaces are not available to the general public at all times and in the manner required by this Agreement, then the Redeveloper shall amend its rules and regulations and operating procedures to the extent necessary so that said Public Parking Spaces are available to the general public at all times and in the manner required by this Agreement. In addition, the City and/or the Norwalk Parking Authority may impose a fine upon the Redeveloper in an amount not to exceed ten (10) times the daily value of the Public Parking Spaces for the time in which any such space was not available to the general public in the manner contemplated by this Agreement. The Redeveloper shall have the right to retain its own consultant if it wishes to dispute the findings of the Agency's and/or the City's consultant. The Redeveloper shall have thirty (30) days after receipt of written notice from the Agency or the City that a violation has occurred under this subsection to obtain a consultant and to object in writing to such finding. The two consultants retained by the parties shall have ten (10) days after the filing of the Redeveloper's written objection to select a third consultant, and the third consultant shall make the decision as to whether a violation has, in fact, occurred, which decision shall be binding upon the parties hereto and which findings shall be made by the third consultant within thirty (30) days after being selected. Each party shall pay the cost of its own consultant and the non-prevailing party shall pay the cost of the third consultant. If the Redeveloper does not retain a consultant and object within the aforementioned thirty (30) day period, then the fine imposed by the City shall be due and payable within thirty (30) days after the Redeveloper's receipt of written notice that a violation has occurred, or if the Redeveloper timely objects and it is subsequently determined by the third consultant that a violation has occurred, then such fine shall be due and payable within ten (10) days after the consultant's findings have been delivered to the Redeveloper.

(vii) The terms and conditions of this Section 2.5(B) shall be enforceable by the City, the Agency, and the Norwalk Parking Authority, or its successor authority.

Notwithstanding the foregoing, in the event that the City and/or the Agency for any reason (other than by reason of a material default by the Redeveloper hereunder) fails or refuses to acquire any parcel or parcels of Acquisition Property that may hereafter be listed on **Exhibit A** attached hereto and convey same to the Redeveloper in accordance with the terms of this Agreement (excepting any such parcels which are owned by the Redeveloper), then the number of Public Parking Spaces that the Redeveloper shall be required to construct in accordance with this Section 2.5(B) shall be reduced from two hundred forty eight (248) Public Parking Spaces to the number of Public Parking Spaces determined by using the following formula: 248 multiplied by a fraction, the numerator of which shall be 237,869 minus the total square footage of land area contained in the aforementioned parcel(s) of Acquisition Property not conveyed to or acquired by the Redeveloper, and the denominator of which fraction shall be 237,869, equals the number of Public Parking Spaces that the Redeveloper shall be required to construct in accordance with this Section 2.5(B). In the event the number of Public Parking Spaces is reduced in accordance with the foregoing provisions of this paragraph, then the City and the Agency agree to modify the Agency's obligation under their Option Agreement granting the Agency the option to purchase the Municipal Parking Lot by reducing the number of Public Parking Spaces that the Agency is required to provide on the Project Site to the number of Public Parking Spaces required to be provided by the Redeveloper under this Agreement.

Section 2.6 Redeveloper's Right to Reduce the Gross Square Footage for Any Phase of the Project.

Notwithstanding anything contained in this Agreement to the contrary, the Redeveloper shall have the right to reduce the gross square footage of any Phase of the Project up to fifteen (15%) percent of the gross square footage as contemplated for such Phase by the initial Conceptual Master Site Plan attached hereto without such change constituting a "substantial change" for purposes of ARTICLE III hereof. In addition, any changes in the number of parking spaces (excluding any reduction in Public Parking Spaces), square footage of retail space, square footage of live/work space, if any, square footage of recreational space and number of residential units necessitated by any such reduction in gross square footage shall not constitute a "substantial change" for purposes of ARTICLE III hereof but shall require the approval of the Agency. The Agency agrees to act in good faith and exercise its discretion in a reasonable manner in considering whether to approve any such changes. In the event the Redeveloper desires to reduce the gross square footage of any Phase of the Project in accordance with the foregoing, the Redeveloper shall submit to the Agency a proposed modification to the Conceptual Master Site Plan for approval by the Agency in accordance with Section 3.1 hereof.

ARTICLE III
CONSTRUCTION PROCESS

Section 3.1 Conceptual Master Site Plan.

Annexed hereto as **Exhibit B** and incorporated herein by reference is the Conceptual Master Site Plan. The Conceptual Master Site Plan represents the Redeveloper's present conception of the proposed layout of the Project Site and design of the Improvements. It is understood and agreed by the parties hereto that the approval of said Conceptual Master Site Plan is an approval of location of land use, height, bulk, massing and scale only and is intended to provide the Redeveloper with a framework within which to develop the Project.

The Redeveloper shall submit any proposed modifications to the Conceptual Master Site Plan for approval by the Agency. The Agency agrees to act in good faith and exercise its discretion in a reasonable manner in considering whether to approve any such modifications. To the extent that any such modifications would be deemed to "substantially change" the Conceptual Master Site Plan, such modifications shall also be subject to the approval of the Common Council. For purposes of the immediately preceding sentence, as it relates to the term "substantial change," the parties agree that a "**substantial change**" shall be limited to the following: (i) any material changes in the uses proposed for the Project Site or portion thereof depicted in the modified Conceptual Master Site Plan which differs from the uses shown on the prior approved Conceptual

Master Site Plan, (ii) any dimensional changes which (either individually, or cumulatively) would increase by more than ten (10%) percent either the highest maximum building height or greatest maximum floor area ratio presently permitted in the Project Site pursuant to the Redevelopment Plan and the Zoning Regulations, (iii) any material change in the location of a structure, (iv) any reduction in the number of Public Parking Spaces, or a ten (10%) percent or more reduction in the total number of parking spaces previously depicted on the Conceptual Master Site Plan, (v) a ten (10%) percent or more reduction in the number of affordable housing units, or (vi) a ten (10%) percent or more change, in the aggregate, in the residential unit count or bedroom count for the Project. With respect to any requests by the Redeveloper for Agency (or, where required, Common Council) approval of any modifications to the Conceptual Master Site Plan, the Agency (and, where required, the Common Council) shall each have ten (10) days after its next regularly scheduled meeting (or if said modifications are not submitted at least ten (10) days prior to the next regularly scheduled meeting, then ten (10) days after the next succeeding regularly scheduled meeting) to provide written approval or disapproval of the proposed modifications to the Conceptual Master Site Plan, or a written request for further information, or further time for review, if necessary. If the Common Council and/or the Agency disapprove in whole or in part the proposed modifications to the Conceptual Master Site Plan, the Common Council and/or the Agency shall state in writing the reasons for such disapproval, and the Redeveloper shall submit new or revised modifications to the Conceptual Master Site Plan for approval by the Common Council and the Agency within ninety (90) days after receipt of notice of disapproval of the proposed modifications by the Common Council and/or the Agency. The foregoing submission and response proceeding will be followed until such time as the Redeveloper's proposed modifications to the Conceptual Master Site Plan are approved by the Agency and the Common Council, or until any dispute is submitted by Redeveloper for resolution by mediation and/or arbitration in accordance with this Agreement; provided, however, that the Redeveloper agrees to use reasonable efforts to revise any proposed modifications that have been rejected by either the Agency or the Common Council, in a manner that will satisfy the Agency's and/or the Common Council's, as the case may be, stated reasons for rejecting the proposed modifications before submitting the matter for resolution by mediation and/or arbitration.

The approval of the Conceptual Master Site Plan or any modification to the Conceptual Master Site Plan by the Agency and the Common Council is not intended in any way to imply that same complies in all respects with the Zoning Regulations, the Plan Requirements or other Legal Requirements applicable to the Project Site. The foregoing is not intended to bind the Zoning Commission, nor shall it be interpreted or construed in a manner so as to limit the Agency's design review jurisdiction under the Redevelopment Plan with respect to the Conceptual Master Site Plan. The Redeveloper shall be obligated to obtain all approvals required from Governmental Authorities having jurisdiction for the Project.

Section 3.2 Phase I Construction Plans.

Within sixty (60) days after the Execution Date, the Redeveloper shall submit Construction Plans (as defined in Section 301 of Part II hereof) for the Phase I Improvements to be constructed on the Project Site in accordance with Section 2.1 hereof, and a timetable for the construction of the Phase I Improvements, for approval by the Agency. The parking garage component of the Phase I Improvements shall be of high quality and constructed in such manner as to meet the needs of the general public and other authorized users of the parking garage. In addition, the parking garage component of the Construction Plans shall be subject to the provisions of Section 3.6 hereof. The Phase I Construction Plans shall be prepared in substantial conformance in all material respects with the approved Conceptual Master Site Plan and shall be submitted to the Agency together with a statement jointly from, and jointly certified by, the Redeveloper and Architect that such Phase I Construction Plans substantially conform in all material respects to the approved Conceptual Master Site Plan or a statement specifying the deviations between the Phase I Construction Plans and the Conceptual Master Site Plan. To the extent that the Phase I Construction Plans would be deemed to "substantially change" the Conceptual Master Site Plan, the Phase I Construction Plans shall also be subject to the approval of the Common Council. For purposes of the immediately preceding sentence, as it relates to the term "substantial change," the parties agree that a "**substantial change**" shall be limited to the following: (i) any material changes in the uses proposed for the Project Site or portion thereof depicted in the Phase I Construction Plans which differs from the uses shown on the Conceptual Master Site Plan, (ii) any dimensional changes which (either individually, or cumulatively) would increase by more than ten (10%) percent either the highest maximum building height or greatest maximum floor area ratio presently permitted in the Project Site pursuant to the Redevelopment Plan and the Zoning Regulations, (iii) any material change in location of a structure, (iv) any reduction in the number of Public Parking Spaces, or a ten (10%) percent or more reduction in the total number of parking spaces previously depicted on the Conceptual Master Site Plan, (v) a ten (10%) percent or more reduction in the number of affordable housing units, or (vi) a ten (10%) percent or more change, in the aggregate, in the residential unit count or bedroom count for the Project. The Agency (and, where required, the Common Council) shall each have thirty (30) days after its next regularly scheduled meeting (or if said Phase I Construction Plans are not submitted at least thirty (30) days prior to the next regularly scheduled meeting, then thirty (30) days after the next succeeding regularly scheduled meeting) to provide written approval or disapproval of the proposed Phase I Construction Plans, or a written request for further information, or further time for review, if necessary. If the Common Council and/or the Agency disapprove in whole or in part the proposed Phase I Construction Plans, the Common Council and/or the Agency shall state in writing the reasons for such disapproval, and the Redeveloper shall submit new or revised Phase I Construction Plans for approval by the Common Council and the Agency within ninety (90) days after receipt of notice of disapproval of the proposed Phase I Construction Plans by the Common Council and/or the Agency. The foregoing submission and response proceeding will be followed until such time as the Redeveloper's proposed Phase I Construction Plans are approved by the Agency and the Common Council, or until any dispute is submitted by Redeveloper for resolution by mediation and/or arbitration in accordance with this Agreement; provided, however, that the Redeveloper agrees to use reasonable efforts to revise any proposed Phase I Construction Plans that have been rejected by either the Agency or the Common Council, in a manner that will satisfy the Agency's and/or the Common Council's, as the case may be, stated reasons for rejecting the proposed Phase I Construction Plans before submitting the matter for resolution by mediation and/or arbitration. The approval of such Phase I Construction Plans by the Agency and the Common Council is an approval of the design concept only and is not intended in any way to imply that same complies in all respects with the Zoning Regulations, the Plan Requirements or other Legal Requirements applicable to the Project Site. The foregoing is not intended to bind the Zoning Commission, nor shall it be interpreted or construed in a manner so as to limit the Agency's design review jurisdiction under the Redevelopment Plan with respect to the Phase I Construction Plans. The Redeveloper shall be obligated to obtain all approvals required from Governmental Authorities having jurisdiction for Phase I of the Project.

Section 3.3 Phase II Construction Plans. Within thirty (30) days after completion of the Phase I Improvements as evidenced by issuance of Certificate of Occupancy by the City, the Redeveloper shall submit Construction Plans (as defined in Section 301 of Part II hereof) for the Phase II Improvements to be constructed on the Project Site in accordance with Section 2.2 hereof, and a timetable for the construction of the Phase II Improvements, for approval by the Agency. The parking garage component of the Phase II Improvements shall be of high quality and constructed in such manner as to meet the needs of the general public and other authorized users of the parking garage In addition, the parking garage component of the Construction Plans shall be subject to the provisions of Section 3.6 hereof. The Phase II Construction Plans shall be prepared in substantial conformance in all material respects with the approved Conceptual Master Site Plan and shall be submitted to the Agency together with a statement jointly from, and jointly certified by, the Redeveloper and Architect that such Phase II Construction Plans substantially conform in all material respects to the approved Conceptual Master Site Plan or a statement specifying the deviations between the Phase II Construction Plans and the Conceptual Master Site Plan. To the extent that the Phase II Construction Plans would be deemed to "substantially change" the Conceptual Master Site Plan, the Phase II Construction Plans shall also be subject to the approval of the Common Council. For purposes of the immediately preceding sentence, as it relates to the term "substantial change," the parties agree that a "**substantial change**" shall be limited to the following: (i) any material changes in the uses proposed for the Project Site or portion thereof depicted in the Phase II Construction Plans which differs from the uses shown on the Conceptual Master Site Plan, (ii) any dimensional changes which (either individually, or cumulatively) would increase by more than ten (10%) percent either the highest maximum building height or greatest maximum floor area ratio presently permitted in the Project Site pursuant to the Redevelopment Plan and the Zoning Regulations, (iii) any material change in location of a structure, (iv) any reduction in the number of Public Parking Spaces, or a ten (10%) percent or more reduction in the total number of parking spaces previously depicted on the Conceptual Master Site Plan, (v) a ten (10%) percent or more reduction in the number of affordable housing units, or (vi) a ten (10%) percent or more change, in the aggregate, in the residential unit count or bedroom count for the Project. The Agency (and, where required, the Common Council) shall each have thirty (30) days after its next regularly scheduled meeting (or if said Phase II Construction Plans are not submitted at least thirty (30) days prior to the next regularly scheduled meeting, then thirty (30) days after the next succeeding regularly scheduled meeting) to provide written approval or disapproval of the proposed Phase II Construction Plans, or a written request for further information, or further time for review, if necessary. If the Common Council and/or the Agency disapprove in whole or in part the proposed Phase II Construction Plans, the Common Council and/or the Agency shall state in writing the reasons for such disapproval, and the Redeveloper shall submit new or revised Phase II Construction Plans for approval by the Common Council and the Agency within ninety (90) days after receipt of notice of disapproval of the proposed Phase II Construction Plans by the Common Council and/or the Agency. The foregoing submission and response proceeding will be followed until such time as the Redeveloper's proposed Phase II Construction Plans are approved by the Agency and the Common Council, or until any dispute is submitted by Redeveloper for resolution by mediation and/or arbitration in accordance with this Agreement; provided, however, that the Redeveloper agrees to use reasonable efforts to revise any proposed Phase II Construction Plans that have been rejected by either the Agency or the Common Council, in a manner that will satisfy the Agency's and/or the Common Council's, as the case may be, stated reasons for rejecting the proposed Phase II Construction Plans before submitting the matter for resolution by mediation and/or arbitration. The approval of such Phase II Construction Plans by the Agency and the Common Council is an approval of the design concept only and is not intended in any way to imply that same complies in all respects with the Zoning Regulations, the Plan Requirements or other Legal Requirements applicable to the Project Site. The foregoing is not intended to bind the Zoning Commission, nor shall it be interpreted or construed in a manner so as to limit the Agency's design review jurisdiction under the Redevelopment Plan with respect to the Phase II Construction Plans. The Redeveloper shall be obligated to obtain all approvals required from Governmental Authorities having jurisdiction for Phase II of the Project.

Section 3.4 Phase III Construction Plans. Within thirty (30) days after completion of the Phase II Improvements as evidenced by issuance of Certificate of Occupancy by the City, the Redeveloper shall submit Construction Plans (as defined in Section 301 of Part II hereof) for the Phase III Improvements to be constructed on the Project Site in accordance with Section 2.3 hereof, and a timetable for the construction of the Phase III Improvements, for approval by the Agency. The parking garage component of the Phase III Improvements shall be of high quality and constructed in such manner as to meet the needs of the general public and other authorized users of the parking garage. In addition, the parking garage component of the Construction Plans shall be subject to the provisions of Section 3.6 hereof. The Phase III Construction Plans shall be prepared in substantial conformance in all material respects with the approved Conceptual Master Site Plan and shall be submitted to the Agency together with a statement jointly from, and jointly certified by, the Redeveloper and Architect that such Phase III Construction Plans substantially conform in all material respects to the approved Conceptual Master Site Plan or a statement specifying the deviations between the Phase III Construction Plans and the Conceptual Master Site Plan. To the extent that the Phase III Construction Plans would be deemed to "substantially change" the Conceptual Master Site Plan, the Phase III Construction Plans shall also be subject to the approval of the Common Council. For purposes of the immediately preceding sentence, as it relates to the term "substantial change," the parties agree that a "**substantial change**" shall be limited to the following: (i) any material changes in the uses proposed for the Project Site or portion thereof depicted in the Phase III Construction Plans which differs from the uses shown on the Conceptual Master Site Plan, (ii) any dimensional changes which (either individually, or cumulatively) would increase by more than ten (10%) percent either the highest maximum building height or greatest maximum floor area ratio presently permitted in the Project Site pursuant to the Redevelopment Plan and the Zoning Regulations, (iii) any material change in location of a structure, (iv) any reduction in the number of Public Parking Spaces, or a ten (10%) percent or more reduction in the total number of parking spaces previously depicted on the Conceptual Master Site Plan, (v) a ten (10%) percent or more reduction in the number of affordable housing units, or (vi) a ten (10%) percent or more change, in the aggregate, in the residential unit count or bedroom count for the Project. The Agency (and, where required, the Common Council) shall each have thirty (30) days after its next regularly scheduled meeting (or if said Phase III Construction Plans are not submitted at least thirty (30) days prior to the next regularly scheduled meeting, then thirty (30) days after the next succeeding regularly scheduled meeting) to provide written approval or disapproval of the proposed Phase III Construction Plans, or a written request for further information, or further time for review, if necessary. If the Common Council and/or the Agency disapprove in whole or in part the proposed Phase III Construction Plans, the Common Council and/or the Agency shall state in writing the reasons for such disapproval, and the Redeveloper shall submit new or revised Phase III Construction Plans for approval by the Common Council and the Agency within ninety (90) days after receipt of notice of disapproval of the proposed Phase III Construction Plans by the Common Council and/or the Agency. The foregoing submission and response proceeding will be followed until such time as the Redeveloper's proposed Phase III Construction Plans are approved by the Agency and the Common Council, or until any dispute is submitted by Redeveloper for resolution by mediation and/or arbitration in accordance with this Agreement; provided, however, that the Redeveloper agrees to use reasonable efforts to revise any proposed Phase III Construction Plans that have been rejected by either the Agency or the Common Council, in a manner that will satisfy the Agency's and/or the Common Council's, as the case may be, stated reasons for rejecting the proposed Phase III Construction Plans before submitting the matter for resolution by mediation and/or arbitration. The approval of such Phase III Construction Plans by the Agency and the Common Council is an approval of the design concept only and is not intended in any way to imply that same complies in all respects with the Zoning Regulations, the Plan Requirements or other Legal Requirements applicable to the Project Site. The foregoing is not intended to bind the Zoning Commission, nor shall it be interpreted or construed in a manner so as to limit the Agency's design review jurisdiction under the Redevelopment Plan with respect to the Phase III Construction Plans. The Redeveloper shall be obligated to obtain all approvals required from Governmental Authorities having jurisdiction for Phase III of the Project.

Section 3.5 Modification of Construction Plans. The Redeveloper shall submit any proposed modifications to the Construction Plans for approval by the Agency. The Agency agrees to act in good faith and exercise its discretion in a reasonable manner in considering whether to approve any such modifications. To the extent that any such modifications would be deemed to "substantially change" the Construction Plans, such modifications shall also be subject to the approval of the Common Council. For purposes of the immediately preceding sentence, as it relates to the term "substantial change," the parties agree that a "**substantial change**" shall be limited to the following: (i) any material changes in the uses proposed for the Project Site or portion thereof depicted in the Construction Plans which differs from the uses shown on the prior Construction Plans, (ii) any dimensional changes which (either individually, or cumulatively) would increase by more than ten (10%) percent either the highest maximum building height or greatest maximum floor area ratio presently permitted in the Project Site pursuant to the Redevelopment Plan and the Zoning Regulations, (iii) any material change in appearance or location of a structure or change in material utilized, (iv) any reduction in the number of Public Parking Spaces, or a ten (10%) percent or more reduction in the total number of parking spaces previously depicted on the Construction Plans, (v) a ten (10%) percent or more reduction in the number of affordable housing units, or (vi) a ten (10%) percent or more change, in the aggregate, in the residential unit count or bedroom count for the Project. With respect to any requests by the Redeveloper for Agency (or, where required, Common Council) approval of any modifications to the Construction Plans, the Agency (and, where required, the Common Council) shall each have ten (10) days after its next regularly scheduled meeting (or if said modifications are not submitted at least ten (10) days prior to the next regularly scheduled meeting, then ten (10) days after the next succeeding regularly scheduled meeting) to provide written approval or disapproval of the proposed modifications to the Construction Plans, or a written request for further information, or further time for review, if necessary. If the Common Council and/or the Agency disapprove in whole or in part the proposed modifications to the Construction Plans, the Common Council and/or the Agency shall state in writing the reasons for such disapproval, and the Redeveloper shall submit new or revised modifications to the Construction Plans for approval by the Common Council and the Agency within ninety (90) days after receipt of notice of disapproval of the proposed modifications by the Common Council and/or the Agency. The foregoing submission and response proceeding will be followed until such time as the Redeveloper's proposed modifications to the Construction Plans are approved by the Agency and the Common Council, or until any dispute is submitted by Redeveloper for resolution by mediation and/or arbitration in accordance with this Agreement; provided, however, that the Redeveloper agrees to use reasonable efforts to revise any proposed modifications that have been rejected by either the Agency or the Common Council, in a manner that will satisfy the Agency's and/or the Common Council's, as the case may be, stated reasons for rejecting the proposed modifications before submitting the matter for resolution by mediation and/or arbitration. The approval of such modification to the Construction Plans by the Agency and the Common Council is an approval of the design concept only and is not intended in any way to imply that same complies in all respects with the Zoning Regulations, the Plan Requirements or other Legal Requirements applicable to the Project Site. The foregoing is not intended to bind the Zoning Commission, nor shall it be interpreted or construed in a manner so as to limit the Agency's design review jurisdiction under the Redevelopment Plan with respect to the Construction Plans. The Redeveloper shall be obligated to obtain all approvals required from Governmental Authorities having jurisdiction for the Project.

Section 3.6 Parking Garage Design and Approvals. In addition to satisfying all Zoning Regulations, the parking garage component of the Improvements (whether conventional or automated) must also be constructed in such manner that the Public Parking Spaces within the parking facility adequately meet the needs associated with public parking. If the Agency deems it appropriate, the Agency may retain a third party consultant to determine whether such parking facility does in fact adequately meet the needs associated with public parking and the expense of such consultant shall be an Acquisition Expense. The provisions of this Section 3.6 are in addition to and not in lieu of the provisions of Sections 3.2, 3.3 and 3.4 hereof, as the case may be. The City and the Agency acknowledge that the Redeveloper intends to use a form of automated parking to satisfy the parking requirements within the Project.

Section 3.7 Governmental Approvals for Each Phase.

Immediately after obtaining the approvals set forth in Sections 3.2, 3.3 and 3.4 hereof, as the case may be, the Redeveloper shall proceed diligently to obtain all governmental permits required for construction of each Phase of the Improvements to be constructed on the Project Site and to undertake such environmental remediation or other actions as may be required as a prerequisite to commencement of construction of the Improvements on the Project Site. All such work performed in connection with the Improvements shall be done at the Redeveloper's sole cost and expense, except as may otherwise be herein specifically provided.

The Agency shall deliver to the Norwalk Building Department copies of all notices required by Sections 3.2, 3.3, 3.4 and 3.5. The Norwalk Building Department shall not issue a building permit for any Phase of Improvements until the Agency has approved such Phase's Construction Plans, or the matter is resolved in the Redeveloper's favor through mediation and/or arbitration, and the Redeveloper has otherwise met all applicable requirements for issuance of such a building permit. The dates for commencement and/or completion of such Phase's Improvements shall be extended by reason of delays in the start of construction resulting from good faith disputes between the Redeveloper and the Agency or City regarding a submission or approval of such Phase's Construction Plans. The period of delay, unless otherwise agreed in writing, shall be measured from the date by which the Agency was required to respond originally until the date upon which the Agency's decision is actually rendered or a settlement is reached.

Section 3.8 Working Drawings.

The Redeveloper shall develop working drawings ("**Working Drawings**") in conformance with the Construction Plans and submit them for approval by the Agency with the assistance of the Department of Public Works and the Norwalk Zoning

Department, within two hundred forty (240) days after the later of: (i) approval of the Construction Plans for the Improvements on such Phase, and (ii) Zoning approval for the Improvements on such Phase. The Working Drawings shall be prepared in substantial conformance in all material respects with the approved Construction Plans and shall be submitted to the Agency together with a statement from the Redeveloper and the Architect, and jointly certified by them, that such Working Drawings substantially conform in all material respects to the approved Construction Plans or a statement specifying the deviations between the Working Drawings and the Construction Plans and a request that the Agency and the Common Council approve such deviations. The Agency staff and its architectural consultants, if any, shall review the Working Drawings and shall, within thirty (30) days after their receipt by the Agency, notify the Redeveloper in writing whether or not the submission is complete and whether or not the Agency has determined that the Working Drawings substantially conform in all material respects to the approved Construction Plans (or whether they require additional time to make such determination, and they shall have such additional, reasonable period of time, not exceeding thirty (30) additional days, to so notify Redeveloper of such determination). If the Agency staff determines that the Working Drawings do not substantially conform in all material respects to the approved Construction Plans, then all material deviations between the Construction Plans and the Working Drawings shall be submitted to the Agency and the Common Council for approval or rejection. The Agency shall act in good faith and exercise its discretion in a reasonable manner in considering whether the Working Drawings substantially conform in all material respects to the approved Construction Plans. The Agency and the Common Council shall each have ten (10) days after its next regularly scheduled meeting (or if said Working Drawings are not submitted at least ten (10) days prior to the next regularly scheduled meeting, then ten (10) days after the next succeeding regularly scheduled meeting) to provide written approval or disapproval of all such material deviations between the Working Drawings and the approved Construction Plans, or a written request for further information, or further time for review, if necessary. If the Common Council and/or the Agency disapprove in whole or in part any material deviations between the Working Drawings and the approved Construction Plans, the Common Council and/or the Agency shall state in writing the reasons for such disapproval, and the Redeveloper shall submit new or revised Working Drawings for approval by the Common Council and the Agency within thirty (30) days after receipt of notice of disapproval of the Working Drawings by the Common Council and/or the Agency. The foregoing submission and response proceeding will be followed until such time as the Redeveloper's Working Drawings are approved by the Agency and the Common Council, or until any dispute is submitted by Redeveloper for resolution by mediation and/or arbitration in accordance with this Agreement. For purposes of this Section 3.8, the parties intend that the word **"material"**, when used with respect to the degree of conformity or deviation between Construction Plans and Working Drawings, shall refer to a difference of quality, appearance or function in design or materials of such Phase's Improvements that significantly affect (i) the appearance of any building exteriors, (ii) the use of ground floor space accessible from public streets, (iii) pedestrian or vehicular traffic flows, or (iv) the Conceptual Master Site Plan. For purposes of this Agreement, the term **"Working Drawings"** shall mean the plans and specifications which are to be utilized for the actual construction of the Improvements on the Project Site.

Section 3.9 Evidence of Equity Capital and Mortgage Financing.

Redeveloper heretofore has submitted to the Agency's financial consultant and the City's financial consultant for review such financial information of the Redeveloper and its Affiliates as the Agency has requested. Based upon such review, the Agency and the City have determined that as of the date of execution of this Agreement, the Redeveloper has the financial wherewithal necessary to proceed with and carry out the development of the Project and to comply with all of its obligations contained herein with respect thereto, including without limitation the funding of the Acquisition Expenses of all of the Acquisition Property. Upon an Event of Default by the Redeveloper hereunder, the Agency and/or the City shall have the right to require the Redeveloper to immediately resubmit to the Agency's consultant and the City's consultant, such financial information as the Agency and/or the City may reasonably request in order to enable the Agency and the City to determine whether the Redeveloper still has the financial wherewithal necessary to proceed with and carry out the development of the Project and to comply with all of its obligations contained herein with respect thereto.

The Redeveloper shall submit to the Agency and the City, for their approval, evidence of equity capital and mortgage financing in connection with the construction of each Phase of the Improvements to be constructed on the Project Site which will require the taking of property by the City or the Agency using the power of eminent domain, at such time as the Redeveloper submits its written request to the City and the Agency to amend **Exhibit A** by adding a parcel or parcels thereto which are to be acquired by the Agency or the City using the power of eminent domain.

Redeveloper's failure to provide the Agency and the City with evidence of equity capital and mortgage financing as required above shall constitute an Event of Default hereunder.

Section 3.10 Failure to Construct in Accordance with Approved Working Drawings

No work shall be done on the construction of the Improvements unless such work conforms with Working Drawings approved in accordance with Section 3.8 hereof. The Agency may request the removal or revision of any construction work in any Phase that is done in a manner which does not substantially conform in any material respect with approved Working Drawings for such Phase not later than the later of (i) ten (10) days after the next meeting of the Agency Commission after the Agency becomes aware that such work is not in substantial conformity, or (ii) five (5) days after termination of negotiations between the Redeveloper and Agency with respect to the revision or correction of such non-conforming work, unless a mediation or arbitration proceeding is commenced to resolve any disagreement between the Agency and the Redeveloper with respect to such work, in which event removal or revision will not be required until thirty

(30) days following a decision by the mediator and/or arbitrator against the Redeveloper by which the parties agree to be bound. Immediately upon receipt of such notice, or within thirty (30) days after such decision by the mediator or arbitrator, the Redeveloper shall direct and cause the removal or revision of such construction work so that it substantially conforms in all material respects with the approved Working Drawings. The removal or revision of such work shall be implemented within the time frames specified in this Agreement for completion of construction of the Project or the relevant Phase or portion thereof, or as otherwise required by applicable Legal Requirements or lawful directive of the Governmental Authorities having jurisdiction. During the pendency of any dispute regarding the conformity of any such work to the approved Working Drawings, any additional work performed by Redeveloper with respect to the matter in dispute shall be performed at Redeveloper's sole risk, and Redeveloper shall have no claim against the City or Agency for any damages arising by reason of the performance of such work.

Section 3.11 Attempts to Memorialize Delays, Extensions, Etc.

In any case where, pursuant to applicable provisions of this Agreement, the time for the performance by any party of any obligation is to be tolled, extended or otherwise modified, the Redeveloper and the Agency and the City shall use their reasonable efforts, as promptly as practicable after the occurrence of the event causing delay or otherwise triggering the need for extension, to agree upon the length of the period of delay, extension or tolling and to memorialize same in a written agreement.

Section 3.12 Commencement and Completion of Construction of Each Phase.

A. Phase I Improvements.

Construction of the Phase I Improvements on the Project Site shall be commenced by the Redeveloper within ninety (90) days after all of the above approvals set forth in this Article III have been obtained for the Phase I Improvements and shall be completed (as evidenced by Certificate(s) of Completion issued by the Agency) within thirty six (36) months after all such approvals have been obtained.

B. Phase II Improvements.

Construction of the Phase II Improvements on the Project Site shall be commenced by the Redeveloper within one hundred eighty (180) days after all of the above approvals set forth in this Article III have been obtained for the Phase II Improvements (but not sooner than the date that the Public Parking Spaces within the Phase I Improvements are available to the general public as evidenced by a Certificate of Completion) and shall be completed (as evidenced by Certificate(s) of Completion issued by the Agency) within forty eight (48) months after all such approvals have been obtained.

C. Phase III Improvements.

Construction of the Phase III Improvements on the Project Site shall be commenced by the Redeveloper within one hundred eighty (180) days after all of the above approvals set forth in this Article III have been obtained for the Phase III Improvements (but not sooner than completion of the Phase I Improvements and the Phase II Improvements as evidenced by the issuance of a Certificate of Completion) and shall be completed (as evidenced by Certificate(s) of Completion issued by the Agency) within forty eight (48) months after all such approvals have been obtained.

D. Redeveloper's Covenants Concerning Commencement and Completion of Construction of the Project.

The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the Project Property, or any part thereof, that subject to all the terms of the Agreement, the Redeveloper, and such successors and assigns shall diligently prosecute to completion the redevelopment of the Project Property through the commencement and construction of the Improvements thereon prior to the dates herein provided therefore. Additionally, the Redeveloper agrees to complete the redevelopment of the entire Project within ten (10) years from the Execution Date.

E. Progress Reports.

The Redeveloper shall make monthly reports to the Agency in substantially the form attached hereto as **Exhibit F** and made a part hereof, describing the actual progress of the Project and its construction during the period of construction of the Improvements for any Phase, or any part thereof, until the issuance of a Certificate of Completion for the Improvements on such Phase. The Progress Reports shall contain among other things, the percentage of completion, estimated date of completion of construction of any Phase then under construction and an updated critical path for construction of Improvements.

Section 3.13 Certificates of Completion.

A. Certificates of Completion.

Promptly after completion of construction of the Improvements in any Phase of the Project in accordance with this Agreement and the approved Construction Plans for such Phase, and within thirty (30) days after written request of Redeveloper, the Agency shall furnish the Redeveloper with a Certificate of Completion with respect to such Phase duly executed in the form of **Exhibit G,** or in such other form as shall be mutually acceptable to the Agency and the Redeveloper (or in such modified form as may reasonably be requested by any Institutional Lender holding a mortgage on, or Institutional Investor owning an equity interest in, any portion of the Project). For purposes of this Section, "completion" shall mean that the Improvements, or the relevant portion thereof, have been sufficiently completed such that only minor details of construction finish and "punch list" type items, or exterior items of a decorative nature (e.g., landscaping, including, without limitation, planting, paving, site lighting, accessory structures, public art and other decorative elements), remain to be completed. If Redeveloper requests a Certificate of Completion, while such items remain unfinished, the Agency may require as a condition of issuance thereof that the Redeveloper deliver its undertaking to complete same as soon as reasonably practicable, weather permitting, with such security to assure performance as the Agency reasonably may determine to be appropriate under the circumstances. Such certification by the Agency (i) shall be (and it shall be so provided in the certificate) a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the Improvements on such Phase and the dates for the beginning and, except as noted below, completion thereof; and (ii) with respect to the lease or conveyance of any such completed Improvements and the portion of the Project Property upon which same are erected, shall mean and provide (1) that any party purchasing or leasing such completed Improvements and/or such individual part or parcel of the Project Property shall not (because of such purchase or lease) incur any obligation with respect to the construction of the Improvements relating to such part or parcel or to any other part or parcel of the Project Property; and (2) that neither the Agency nor any other party shall thereafter have or be entitled to exercise with respect to any such completed Improvements or such individuals part or parcel so sold (or, in the case of lease, with respect to the leasehold interest) any rights or remedies or controls that it may otherwise have or be entitled to exercise with respect to the Project Property as a result of a default in or breach of any provisions of this Agreement by the Redeveloper or any successor in interest or assign.

Each Certificate of Completion provided for in this Section 3.13 shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Project Property.

B. Partial Certificates of Completion.

From time to time and within thirty (30) days after written request of Redeveloper, the Agency shall furnish the Redeveloper with a partial Certificate of Completion for portions of the Improvements which have been completed in accordance with this Agreement and the approved Working Drawings which otherwise satisfy the requirements for a Certificate of Occupancy or temporary Certificate of Occupancy. No such partial Certificate of Completion shall be issued with respect to any building unless the shell and core of such building have been substantially completed in accordance with the approved Working Drawings. In the event the Redeveloper requests a partial Certificate of Completion prior to completion of tenant improvements and finish work, or prior to completion of all landscaping work (including, without limitation, planting, paving, site lighting, accessory structures, public art and other decorative elements) described in the approved Working Drawings, the Agency shall furnish such partial Certificate of Completion upon the delivery to the Agency of the Redeveloper's written undertaking to complete such portion of the work as soon as reasonably practicable thereafter, weather permitting, with such security as the Agency reasonably may determine to be appropriate under the circumstances, to assure performance.

C. Agency's Refusal to Issue Certificate of Completion or Partial Certificate of Completion.

If the Agency shall refuse or fail to provide such a Certificate of Completion or partial Certificate of Completion in accordance with the provisions of this Section, the Agency shall, within said thirty (30) day period, provide the Redeveloper with a written statement, describing in detail the respects in which the Redeveloper has failed to complete the Improvements for which such certification is requested in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Agency, for the Redeveloper to take or perform in order to obtain such certification. If the Agency fails to provide such statement within such thirty (30) day period, the Redeveloper may institute the dispute resolution proceedings provided in this Agreement for such default by the Agency. Any such dispute will be submitted to mediation and arbitration in accordance with this Agreement.

Section 3.14 Design Review. The parties acknowledge that all Improvements to be constructed on the Project Site must satisfy the Design Standards established by the Redevelopment Plan, and the Conceptual Master Site Plan as well as all Construction Plans and Working Drawings submitted by the Redeveloper shall be subject to Design Review by the Agency and its consultants to insure compliance with such Design Standards. All costs incurred by the Agency in retaining outside consultants to perform such Design Review shall be an Acquisition Expense and shall be paid by the Redeveloper.

ARTICLE IV
INFRASTRUCTURE IMPROVEMENTS

Section 4.1 Infrastructure Improvements and Funding.

A. The parties agree that for the Project Site to be developed as envisioned in the Wall Street Redevelopment Plan there are substantial Infrastructure Improvements that are required. A portion of the Infrastructure Improvements shall be constructed at the sole cost and expense of the City (**"City Infrastructure Improvements"**, each a **"City Infrastructure Improvement"**), and the remaining Infrastructure Improvements shall be constructed at the sole cost and expense of the Redeveloper (**"Redeveloper Infrastructure Improvements"**, each a **"Redeveloper Infrastructure Improvement"**). These Infrastructure Improvements are identified on **Exhibit C-1** attached hereto and made a part hereof. The City and/or the Agency agree to expend, either through public financing or by City appropriation up to the sum of Four Million Four Hundred Thousand ($4,400,000.00) Dollars (**"City Funds"**), to pay for the costs of construction of the City Infrastructure Improvements and all utility work for which the City is responsible hereunder, identified on **Exhibits C-1, C-2, C-3** and **C-4** attached hereto. The City Funds required to complete the necessary City Infrastructure Improvement for a Phase shall be available and appropriated within one hundred twenty (120) days after the Redeveloper has obtained all necessary construction financing for such Phase and all necessary approvals required hereunder for such Phase.

B. Based on current estimates, the City Funds are sufficient to pay for the cost of construction of the City Infrastructure Improvements and all utility work for which the City is responsible hereunder. If the actual costs of construction of the City Infrastructure Improvements and all utility work for which the City is responsible hereunder exceed the City Funds, the City and the Agency agree to make reasonable efforts in good faith to secure such additional funding as may be required to pay such costs, including without limitation requesting from the Common Council, appropriation of or authorization to expend additional City monies for such purposes or such alternate funding mechanism as the City and the Agency may elect. The Redeveloper agrees not to unreasonably withhold its consent to any such proposed alternative funding. If, after making reasonable efforts in good faith, the City is unable to obtain or provide sufficient funding to pay for the costs of construction of the City Infrastructure Improvements, the City will not be in default under this Agreement, and in such event, the Redeveloper shall provide to the City, within a reasonable time after receipt of the City's written request for such funds, all or so much of the funds required to pay such costs.

C. If the Redeveloper does not provide to the City all of the funds required to enable the City to pay any of the costs of the City Infrastructure Improvements over the available funds, then the City, the Agency and the Redeveloper agree to negotiate in good faith to modify the City Infrastructure Improvements in order to permit completion of the Project with the City Funds available. The dates for commencement and completion of construction of the Improvements as set forth in Section 3.12 hereof shall be extended for the period of time that construction of the Improvements is delayed due to the City's failure to complete the City Infrastructure Improvements and utility work in accordance with the requirements of this Agreement.

D. The parties hereby agree that the timing of the development of the Infrastructure Improvements and of the development of the Project are interdependent and that same shall proceed together in a coordinated fashion such that the City and the Agency shall be required to construct the Infrastructure Improvements only if and to the extent that development of Project is proceeding in the manner provided for in this Agreement, and the Redeveloper shall be required to proceed with the development of the Project only if and to the extent that the City's financing and construction of the City Infrastructure Improvements and utility work are proceeding in the manner provided for in this Agreement. The required timing for completion of the Infrastructure Improvements is as set forth on attached **Exhibit C-1**.

E. Except to the extent provided in attached **Exhibits C-1, C-2,C-3** and **C-4**, the Redeveloper agrees that it will fund and undertake any and all offsite improvements that are determined to be conditions of approval in the normal course of obtaining site plan approval for a development from the Norwalk Zoning Commission.

F. All design and engineering costs as well as all other soft costs associated with all of the Infrastructure Improvements shall be an Acquisition Expense payable by the Redeveloper. The design and construction plans for all Infrastructure Improvements shall be completed by the Redeveloper and will be in accordance with all standards and specifications of the City, and the standards and specifications of the respective utility companies, as amended from time to time and shall be subject to the approval of the Agency in the same manner as Construction Plans are approved pursuant to Article III hereof, and shall also be subject to the approval of all other necessary Governmental Authorities.

G. Provided it will not violate any Legal Requirements and provided further it will not violate any requirements of the funding source for such City Infrastructure Improvement(s), Redeveloper may, in its sole discretion, undertake the commencement or completion of all or any portion of the City Infrastructure Improvements. In either case, if Redeveloper elects to undertake any portion of the City Infrastructure Improvements, Redeveloper shall deliver a notice ("Infrastructure Notice"), which shall describe the scope, schedule and estimated budget to undertake such City Infrastructure Improvements, all of which shall be subject to the approval of the Agency and the City. Such budget shall include all hard costs (but not soft costs except for any financing costs if Redeveloper is required to fund any City Infrastructure Improvement). Within sixty (60) days after approval of any Infrastructure Notice by the Agency and the City, Redeveloper shall provide the Agency and the City with working drawings depicting the applicable City Infrastructure Improvements and a revised budget for the same for approval by the Agency and the City. Any modifications to the foregoing shall be subject to the approval of the Agency and the City. Upon substantial completion of each such City Infrastructure Improvement, the Agency shall issue a Certificate of Completion according to the requirements set forth in Section 3.13 of this Agreement and, the City shall simultaneously pay (each an "Infrastructure Payment") the Redeveloper for the cost of such City Infrastructure Improvement as reflected in the final approved budget (not to exceed, in the aggregate, the amount of City Funds). Considering the anticipated completion time, the Agency or City shall accordingly budget for each Infrastructure Payment in order to deliver each Infrastructure Payment with a Certificate of Completion. The City and Agency shall make reasonable efforts in good faith to appropriate or otherwise secure City Funds to pay for such budgeted City Infrastructure Improvements upon substantial completion, including without limitation requesting from the Common Council, appropriation of and authorization to expend City monies for such purposes. In the event the Redeveloper does not elect to construct all or any portion of the City Infrastructure Improvements, then the City shall construct such City Infrastructure Improvement.

H. The Agency, the City and the Redeveloper may agree to amend **Exhibits C-1, C-2, C-3** and **C-4** by modifying or adding additional Infrastructure Improvements or utility work thereto, provided that the parties agree upon both the additional

Infrastructure Improvements to be made and the allocation between the parties of the cost of constructing same.

Section 4.2 Academy Street Extension

The Agency retained Tighe & Bond to prepare a report indicating what infrastructure improvements will be required to support the proposed developments contemplated by the Wall Street Redevelopment Plan and the West Avenue Corridor Redevelopment Plan. Said report indicates that the Academy Street Extension is essential to link the Development Parcel 2a Project and the project contemplated for the West Avenue Corridor Redevelopment Plan area and recommends that Academy Street be extended so that it connects appropriately with the Project as determined by the Agency's engineering consultants and City engineers with input from the Redeveloper, and the City agrees to use its best efforts to complete such Academy Street Extension as recommended by the aforementioned Tighe & Bond report. The completion of the Academy Street Extension is conditioned upon authorization by the City to acquire the real property necessary to complete the Academy Street Extension. It is understood and agreed by the parties that approval of this Agreement by the Common Council shall not be deemed an approval by the Common Council to permit the City or the Agency to acquire said parcels of real property, which action shall require a separate vote of the Common Council.

Section 4.3 Use of Redeveloper Property.

The Redeveloper agrees to permit the City and the Agency, and their respective agents, consultants and contractors, to enter upon and use such portions of the Project Property owned by the Redeveloper, and/or to grant to the City and/or the Agency such temporary construction easements with respect to such portions of such Project Property, as may be necessary and appropriate to permit and/or facilitate the design and/or construction of the Infrastructure Improvements to be constructed by the City and the Agency pursuant to this Agreement and/or the Redevelopment Plan. In connection with the use of such portions of the Project Property by the City and the Agency, and their respective agents, consultants and contractors, the City and the Agency agree to (and they will cause their consultants and contractors to agree to) indemnify, defend and hold harmless the Redeveloper against and from any and all claims, suits, costs, expenses, losses, liabilities, and damages, including reasonable attorneys' fees, asserted against and/or incurred by the Redeveloper arising out of such use of any portions of the Project Property of the Redeveloper for the purposes herein described. This indemnity will survive the termination of this Agreement, will not be limited by insurance and will be separate and independent of any other provision of this Agreement. The City and the Agency will (and will cause any and all contractors and consultants retained bv the Agency and City to) maintain comprehensive general liability insurance coverage of their operations on any portions of the Project Property, in amounts reasonably satisfactory to the Redeveloper, and shall name the Redeveloper, and such other persons or entities having an insurable interest as the Redeveloper shall designate (provided no additional premium is charged, unless paid by Redeveloper), as additional named insureds on such policies of liability insurance maintained by the City and/or the Agency and/or their consultants and contractors in connection with performance of such work. Such policies shall provide coverage of the contractual indemnity obligations set forth herein and shall contain provisions that they may not be cancelled, terminated or materially modified unless the Redeveloper, and any other named additional insured, has been given not less than thirty (30) days prior written notice.

Section 4.4 Redeveloper's Guarantee.

A. Redeveloper's agreement to complete the Improvements for each Phase within the time periods set forth in Section 3.12 hereof is intended to ensure that the City will realize the value of increased tax revenues anticipated to be generated by the Improvements and be able to utilize such increased tax revenues to service the Debt Service Payments, if any, required to be paid on any Municipal Finance Instrument issued by the City if the City must borrow money to pay the costs of construction of the City Infrastructure Improvements. As such, Redeveloper has agreed with the City that if (i) all or a portion of the costs of the City Infrastructure Improvements are paid with City Funds; and (ii) the funds utilized to pay all or a portion of the costs of the City Infrastructure Improvements are borrowed by the City via the issuance of a Municipal Finance Instrument; and (iii) the Redeveloper has not completed construction of the Improvements for a Phase within the time periods for completion of such Phase set forth in Section 3.12 hereof (as said date may be tolled or extended in accordance with the provisions of this Agreement); then, Redeveloper, upon the terms hereinafter stated, will guarantee for the benefit of the City the payment of the Debt Service Payments on the Municipal Finance Instrument(s) issued by the City to evidence such borrowed funds. The Redeveloper's Guarantee shall apply and be effective only during the period (the "**Guarantee Period**") commencing on the date the Improvements for a Phase are required to be completed as set forth in Section 3.12 hereof (as said date may be tolled or extended in accordance with the provision of this Agreement) and ending on the earlier to occur of (a) the date of substantial completion of all the Improvements, as evidenced by the issuance of a certificate of occupancy or a Certificate of Completion (as provided in Section 3.13 hereof) and (b) the date upon which (1) fifty (50%) percent of the annualized difference between (x) the aggregate amount of taxes levied upon (or payments in lieu of taxes, if applicable, with respect to) real or personal property, or both, on all parcels of Project Property in the Project Site (collectively, "**Project Taxes**") payable at the time of calculation of the amount to be guaranteed ("**Current Project Taxes**") and (y) the aggregate amount of such Project Taxes which were payable on the Execution Date ("**Base Project Taxes**") exceeds (2) the annualized amount of the Debt Service Payments to be guaranteed. In any event, Redeveloper will receive a credit against the guaranteed Debt Service Payments equal to fifty (50%) percent of the actual annualized difference between Current Project Taxes and Base Project Taxes. Any amounts due and payable by the Redeveloper to the City under this Section 4.4 shall be payable on an annual basis, in arrears, based on the City's fiscal year, and shall be due and payable within thirty (30) days after receipt by the Redeveloper of written notice from the City of the amount due (accompanied by the calculations utilized by the City to determine such amount).

B. Redeveloper further guarantees for the benefit of the City that, in the aggregate, fifty (50%) percent of the actual annualized difference between Current Project Taxes and Base Project Taxes during the term of the Debt Service Payments shall be equal to or exceed the amount of the total Debt Service Payments. The Redeveloper shall receive a credit against the guaranteed amount for any payments made by the Redeveloper to the City pursuant to subsection A of this Section 4.4. The Redeveloper agrees to pay to the City any deficiency plus the cost of funds for any such deficiency within thirty (30) days after expiration of the term of the Debt Service Payments and receipt by the Redeveloper from the City of the amount due under this subsection B accompanied by the calculations utilized to determine said amount. Notwithstanding anything contained in this Agreement to the contrary, the Redeveloper agrees for itself and its successor and assigns, that, prior to expiration of the term of the Debt Service Payments and payment to the City by the Redeveloper of any amounts due under this Section 4.4B it will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease or sublease, or any trust or power, or total or partial transfer in any other mode or form of any Project Property being utilized for the Public Parking Spaces, Residential Rental Units or as Phase I Retail Space, Phase II Retail Space, or Phase III Retail Space without the prior written consent of the Agency, which consent may be withheld if the Agency in its reasonable discretion determines that the remaining property on the Project Site owned by the Redeveloper does not have sufficient equity to reasonably assure the City and the Agency that any amounts that may be due under this subsection B shall be paid.

C. With respect to Redeveloper's Guarantee of Debt Service Payments on any Municipal Finance Instrument utilized by the City to finance the City Infrastructure Improvements, the following provisions will apply:

(i) In no event will the maximum principal amount of all Municipal Finance Instruments which are the subject of Redeveloper's Guarantee of Debt Service Payments exceed the lesser of (i) $4,400,000.00 and (ii) the actual amount of borrowed funds expended by the City on the costs of construction of the City Infrastructure Improvements;

(ii) If the City expends borrowed funds on the costs of construction of certain components of City Infrastructure Improvements prior to receiving from the State or other funding sources funds which are specifically allocated for payment of all or a portion of the costs of construction of said components of City Infrastructure Improvements, and such allocated funds thereafter are received by the City, the Redeveloper will receive credit against the amount subject to its guarantee for the amount of such allocated funds;

(iii) Regardless of the actual form of Municipal Finance Instrument, the Debt Service Payments payable by Redeveloper with respect to such borrowed funds shall be calculated on the assumption that such funds were raised via the issuance of the City's Bonds which fully amortize over a term of twenty (20) years. If the Municipal

Finance Instrument is the City's twenty (20) year Bonds, the interest rate will be the actual rate on said Bonds. If the Municipal Finance Instrument is not the City's Bonds, or if it is Bonds with a different term than twenty (20) years, then the interest rate will be that rate which the municipal bond underwriting firm which has underwritten the City's most recent Bond issuance certifies, in a written instrument addressed to the City and the Redeveloper, would have been payable to the City on twenty (20) year Bonds of the City had such Bonds been issued on the date when the first payment of costs of construction of the City Infrastructure Improvements was made utilizing such borrowed funds. If, after the date when the costs of the City Infrastructure Improvements are paid by the City using borrowed funds, but before the date when Redeveloper's Guarantee has terminated in accordance with this Agreement, the City refinances the debt evidenced by any Municipal Finance Instrument with any other Municipal Finance Instrument having an interest rate lower than the rate calculated as aforesaid, the interest rate utilized to calculate Debt Service Payments under Redeveloper's Guarantee, from and after the date of such refinancing, shall be the lower rate payable with respect to such refinancing Municipal Finance Instrument.

Section 4.5 Acquisition of Real Property for City Streets and Sidewalks.

The Redeveloper, at Redeveloper's sole cost and expense, shall acquire all parcels of property on the Project Site which are not owned by the Redeveloper or the City and which shall be necessary to construct all City streets and sidewalks on the Project Site as depicted on the Conceptual Master Site Plan. The Redeveloper shall transfer to the City for one ($1.00) dollar, free and clear of all liens and encumbrances, fee simple title to that portion of such parcels as will be necessary for the construction of the City streets within the Project Site and shall grant to the City an easement over that portion of such parcels which shall constitute City sidewalks within the Project Site, in such form as the City may reasonably require.

ARTICLE V
DEPOSIT

Section 5.1 Amount of Deposit; Time of Payment.

The Redeveloper heretofore has delivered to the Agency a bank or certified check in the sum of ONE HUNDRED FIFTY THOUSAND and 00/100 ($150,000.00) DOLLARS, reduced by the amount of any money held by the Agency at the time of execution of this Agreement in an account entitled "Norwalk Redevelopment Agency – Project Operating Account f/b/o POKO IWSR DEVELOPERS, LLC," pursuant to a Letter Agreement by and between the Agency and POKO IWSR DEVELOPERS, LLC, dated December 15, 2005 (said aggregate amount plus interest earned and paid thereon hereinafter being referred to as the "Deposit"), as earnest money in connection with this Agreement. Upon execution of this Agreement, the Project Operating Account established pursuant to the aforementioned Letter Agreement shall become the Project Operating Account under this Agreement.

Section 5.2 Project Operating Account and Security Account.

Within three (3) Business Days after the Execution Date occurs, the Deposit check shall be deposited by the Agency into two (2) separate, interest-bearing escrow accounts established and maintained by the Agency. ONE HUNDRED THOUSAND and 00/100 ($100,000.00) Dollars (the Security Deposit) shall be deposited into an account entitled "Norwalk Redevelopment Agency - Security Account f/b/o POKO IWSR DEVELOPERS, LLC" (the "Security Account"), and the balance of the Deposit shall be deposited into an account entitled "Norwalk Redevelopment Agency - Project Operating Account f/b/o POKO IWSR DEVELOPERS, LLC" (the "Project Operating Account"). The Agency, in consultation with and with Meaningful Participation from the Redeveloper, shall determine at which financial institution(s) and in what investment vehicle(s) to maintain said Project Operating Account and said Security Account, and all interest earned on the Project Operating Deposit and/or the Security Deposit shall become part of the Project Operating Deposit and/or the Security Deposit, as appropriate, and shall be paid with other funds constituting the Project Operating Deposit and/or the Security Deposit for the purposes herein set forth. The Project Operating Account shall be maintained by the Agency, and disbursements therefrom shall be made only, in accordance with the provisions of this Agreement. The Security Account shall be maintained by the Agency, and disbursements therefrom shall be made only, in accordance with the provisions of this Agreement. The Agency, at the request of the Redeveloper made not more often than annually, will pay over to the Redeveloper or will transfer to the Project Operating Account any interest accrued on the Security Deposit.

Section 5.3 Use of Project Operating Deposit for Purposes of this Agreement.

The Agency, from time to time, as it incurs Acquisition Expenses which are required to be paid by the Redeveloper hereunder, may, in accordance with the provisions of this Agreement, including without limitation those of Article VI apply portions of the Project Operating Deposit to the payment of such Acquisition Expenses as and when due.

Section 5.4 Return of Security Deposit Upon Completion of Improvements.

Upon completion of the Improvements, as evidenced by the issuance of Certificate(s) of Completion therefor, provided that no Event of Default by Redeveloper hereunder has occurred and is then continuing, the amount of the Security Deposit then on deposit in the Security Account shall be returned to the Redeveloper, and, thereafter, the Project Operating Account shall be the only account required to be maintained under this Agreement and the Redeveloper thereafter shall fund the Project Operating Account as and when necessary in accordance with the terms and provisions of this Agreement.

Section 5.5. Return of Project Funds to Redeveloper.

Upon termination of this Agreement by the Redeveloper pursuant to any provision of this Agreement permitting such termination by Redeveloper, then all amounts on deposit in the Security Account and the Project Operating Account shall be returned promptly to the Redeveloper by the Agency as provided in this Agreement, provided that no Event of Default by Redeveloper shall have occurred and then be continuing under this Agreement, and further provided that the Agency and the City have been reimbursed by the Redeveloper for all Acquisition Expenses expended or contractually obligated by them in accordance with this Agreement up until the date of such termination. In the event that the City and the Agency have not then been reimbursed for all such Acquisition Expenses, the Agency may hold back an amount sufficient to cover such unreimbursed Acquisition Expenses and shall refund the balance of all such monies to Redeveloper.

Section 5.6. General Escrow Provisions.

In its holding of the Deposit and/or the Security Deposit, and its maintenance of the Project Operating Account and the Security Account, the Agency shall have and exercise the obligations of a fiduciary to the Redeveloper and shall hold in trust any and all monies deposited with it, to be used only in the manner and for the purposes set forth in this Agreement. If any party at any time makes a written demand upon the Agency for release and payment of the Deposit and/or any monies on deposit in the Project Operating Account and/or the Security Account, other than requests for disbursements from the Project Operating Account in the ordinary course of the operation of the Project in accordance with Article VI, or if at any time the Agency proposes to expend or disburse any such monies in any manner which is not in accordance with the terms of this Agreement, the Agency shall give written notice to the other parties of such demand or such proposal. If the Agency does not receive a written objection to the proposed payment from any of the other parties within ten (10) Business Days after the giving by the Agency of such notice, the Agency is hereby authorized to make such payment. If the Agency receives a written objection within the aforesaid period of ten (10) Business Days, or if, for any other reason, the Agency in good faith shall elect not to make such payment, the Agency shall continue to hold the monies so entrusted to it until otherwise directed by written instructions from the parties to this Agreement or a final judgment of a court. However, the Agency shall have the right at any time to deposit all of the monies held by it, or such portion thereof as may be in dispute, and interest thereon, if any, with the Clerk of the Court. The agency shall give written notice of such deposit to all other parties to this Agreement. Upon such deposit with the Clerk of the Court, the Agency shall be relieved and discharged of all further escrow obligations and responsibilities hereunder with respect to the monies so deposited with the Clerk of the Court.

ARTICLE VI
BUDGET AND ACCOUNTS

Section 6.1. Redeveloper to Reimburse Agency and City.

The Redeveloper shall reimburse the City and Agency as provided in this Article for all Acquisition Expenses incurred by them. In no event shall Redeveloper be responsible for, or be obligated to indemnify or reimburse the City and/or the Agency for, costs related to any real property (or improvements thereon) which is not identified in this Agreement as Acquisition Property, except as may otherwise be specifically provided herein.

Section 6.2. Budget Creation and Amendment.

A. The parties acknowledge that on or prior to the date hereof, the Redeveloper has advanced to the Agency funds that have been deposited by the Agency in the interest-bearing Project Operating Account. Such funds will be disbursed in accordance with this Agreement against payment of expenses described in Section 6.1, based upon invoices for work actually performed and approved pursuant to this Section 6.2.

B. For purposes of this Section, fiscal "quarters" and/or fiscal "years" of the Project shall be calendar quarters and/or years. Within thirty (30) days after the Execution Date of this Agreement, the Agency will prepare, and will submit to the Redeveloper for its review and approval, a proposed initial budget setting forth the Agency's estimate of those expenses projected to be incurred by the Agency in the performance of its obligations under this Agreement during the quarter (or balance thereof) immediately succeeding the Execution Date hereof. Such initial quarterly budget shall show the balance on deposit in the Project Operating Account and the Security Account, the projected expenditures for the coming quarter in reasonable detail by separate line items, and the projected amount, if any, of additional funding which will be required to permit the Agency to pay such expenditures. Thereafter, within thirty (30) days after the end of each subsequent quarter, the Agency shall submit to the Redeveloper and to the City (to the Finance Director) a statement showing in detail the actual expenditures made by the Agency in the performance of its obligations under this Agreement in the previous quarter, and the cash balances in the Project Operating Account and the Security Account as of the end of such quarter, together with a projected budget for the quarter then commencing showing the projected expenditures to be incurred by the Agency in the performance of its obligations under this Agreement in such quarter and the projected amount, if any, of additional funding required, which quarterly budgets will be subject to the Redeveloper's written approval. In addition, within thirty (30) days after the end of each year of the Project, the Agency shall provide to the Redeveloper a statement for the preceding year, showing the actual, aggregate expenses for such year, and a proposed budget for the coming year. The Redeveloper shall not unreasonably withhold, delay or condition its approval for any such quarterly or annual budget which is consistent with the provisions of this Agreement and prior budgets.

C. If at any time a party hereto becomes aware that the amounts of any items of projected expense set forth in any approved budget are insufficient to cover budgeted costs and are likely to be exceeded substantially by the amounts which will be required to be expended for such items, it shall promptly notify the other parties and the relevant budget shall be amended to reflect same. Any party hereto may propose amendments to any budget(s) from time to time to reflect updated estimates of expenditures, new items of expense, and actual costs incurred, subject to the approval of the other parties, which approval will not be unreasonably withheld, delayed or conditioned. In no event shall such approval be withheld with respect to a proposed amendment to any budget to enable the Agency or the City to comply with a final judgment of a court of competent jurisdiction in connection with any legal proceeding arising out of the performance by the Agency or the City of its or their obligations under Article VII, including but not limited to awards following condemnation or relocation appeals.

D. Prior to incurring any Acquisition Expenses, the Agency shall submit to the Redeveloper in writing a reasonably detailed description of the nature and purpose of such expense or contract, the reasons therefor, and the identity (and background, if requested) of the obligor or provider of service and materials. The Agency shall also provide to the Redeveloper a proposed written service contract providing for a fixed-price fee or other reasonable fee arrangement if a fixed-price fee is not feasible. Such information shall be submitted for approval to the person designated by the Redeveloper from time to time. The Redeveloper shall review each submission and shall give its comments to the submitting party as soon as possible. The Redeveloper shall not unreasonably withhold, delay or condition its approval of any such proposal which is consistent with this Agreement and with the current budget(s). The Agency from time to time, in the ordinary course of business, may pay invoices and bills for services rendered by vendors in connection with the Project (i) for expenses which are the subject of an approved, written contract and are properly set forth in an approved budget, and (ii) expenses which, although not the subject of a written contract, are properly set forth in an approved budget and not to exceed Two Thousand Five Hundred ($2,500.00) Dollars for a single item of expense or an aggregated series of related expenses.

Section 6.3. Funding and Accounts.

From time to time within thirty (30) days after a written request from the Agency, the Redeveloper shall advance to the Agency funds required pursuant to the approved budget to enable the Agency to pay Acquisition Expenses described in Section 6.1 as they become due. In particular, but without limitation, the Redeveloper shall advance to or pay on behalf of the Agency in a timely manner all the amounts necessary to acquire the Acquisition Property in accordance with this Agreement. The Redeveloper shall deposit into the Project Operating Account from time to time, and in any event prior to the time that the Agency files a Statement of Compensation with respect to each such parcel, the compensation amounts for parcels of Acquisition Property established by the Agency pursuant to Section 7.3(D) hereof. The Agency shall not request that Redeveloper fund any compensation amounts for acquisition of Acquisition Property unless and until the Agency, in compliance with the terms of this Agreement, is able to file a Statement of Compensation within thirty (30) days after receipt of said funds from Redeveloper. All amounts advanced pursuant to the approved budget(s) shall be deposited in the interest-bearing Project Operating Account, the interest on which shall be retained for the purposes of the Project Operating Account and allocated to the City and Agency for federal and state income tax purposes. The Agency shall draw upon the Project Operating Account to pay the expenses of the Agency and the City budgeted and approved in accordance with this Article. The Agency shall maintain good and sufficient records of its payments from the account which may be inspected by the Redeveloper at any time during the normal business hours of the Agency. When all items of expenditure to be paid from the Project Operating Account have been paid, the Agency shall deliver the balance in the account, if any, to the Redeveloper. The Agency shall use reasonable efforts to cause the institutions at which the Project Operating Account and/or the Security Account are maintained to provide duplicate Statements of Account to the Redeveloper at such times as such statements are provided to the Agency.

ARTICLE VII
PROPERTY ACQUISITION

Section 7.1. Redeveloper Property; Redeveloper Permitted to Acquire Acquisition Property.

The Redeveloper and/or its Affiliates presently own all of the parcels of Redeveloper Property listed on **Exhibit E** annexed hereto and made a part hereof. The Redeveloper hereafter may acquire Acquisition Property within the Project Site independently of any efforts to acquire such Acquisition Property by the Agency and City pursuant to this Agreement. All costs associated with such acquisition by Redeveloper shall be borne by the Redeveloper. The Redeveloper agrees that any Acquisition Property so acquired by it shall be subject to all of the applicable terms of the Redevelopment Plan and this Agreement.

Section 7.2. Redeveloper's Covenant to Attempt to Acquire Acquisition Property.

The Redeveloper agrees with the Agency and the City that, commencing on the date this Agreement is amended by adding parcels comprising the Acquisition Property to **Exhibit A** and continuing for a period of three (3) months thereafter, the Redeveloper will make reasonable efforts to acquire privately all or as many as may be reasonably practicable of the individual parcels comprising the Acquisition Property as hereafter may be identified on **Exhibit A**, upon terms commercially acceptable to the Redeveloper. The Redeveloper shall document its efforts to acquire privately all such parcels and provide such documentation to the Agency. In addition, the Agency shall have the right to attend in all such discussions if it deems such attendance advisable. The Agency and the City agree that, during said period, they will take no action to acquire any

Acquisition Property except as requested in writing by Redeveloper. The Redeveloper shall inform the Agency in a timely manner of the status of its efforts to acquire any Acquisition Property, including particularly the terms of any offers and counteroffers made by the Redeveloper or by any property owner and the terms of any agreements that may be made with respect thereto. The Redeveloper may advise the Agency and the City in writing at any time during said period that, in Redeveloper's opinion, the Redeveloper's efforts at private acquisition are not likely to result in the acquisition of all of or any particular parcels constituting the Acquisition Property and that Redeveloper is terminating its efforts with respect to said parcels, specifying those parcels with respect to which Redeveloper is terminating its acquisition efforts. Upon receipt of such a notice of termination, the Agency and the City shall prepare to acquire, in the manner hereinafter in Section 7.3 hereof described, all or any of such parcels of Acquisition Property as to which Redeveloper has terminated its acquisition efforts.

Section 7.3. Acquisition of Property by the Agency and City.

Upon expiration of the three-month period referred to in Section 7.2 above, and provided the Agency reasonably determines that the Redeveloper has in fact made good faith efforts to acquire all such parcels, the Agency shall request that the Common Council approve the acquisition of such parcels of Acquisition Property as the Redeveloper was unable to acquire by private negotiations, on a case by case basis, through the exercise of the power of eminent domain and upon approval by the Common Council of the taking of a particular parcel the Agency and City shall prepare to acquire, within a time period which is reasonably established by the Redeveloper giving due consideration to the proposed scheduling of construction of Infrastructure Improvements and Improvements, and which is consistent with the provisions of the Statutes, the Redevelopment Plan and this Agreement, and the time frames established by the Common Council, all parcels of Acquisition Property within the Project Site which have not been acquired by the Redeveloper or with respect to which Redeveloper then has not advised the City in writing that it has entered into an unconditional contract or option for the acquisition of same and which have been approved by the Common Council by separate resolution for acquisition through the exercise of the power of eminent domain. The Acquisition Property shall be acquired by the Agency and the City at such times as may be established by the Redeveloper in accord with the Redevelopment Plan and the provisions of this Agreement and within the time periods established in accordance with the provisions of the Statutes and pursuant to the authority granted by the Common Council for the acquisition of parcels of Acquisition Property within the Project Site (as said time periods may be extended in accordance with the relevant provisions of the Statutes). If for any reason the Common Council does not approve the taking of any Acquisition Property by the Agency through the exercise of the power of eminent domain or the Agency is for any reason unable to acquire any parcel of the Acquisition Property, it shall not be an Event of Default hereunder, and the Redeveloper shall submit a revised Conceptual Master Site Plan, as same relates to the affected Improvements only, for approval by the Agency and the Common Council. The Agency and the Common Council agree to act expeditiously and in a reasonable manner (including taking into consideration the number of parcels in the affected area and their configuration that are available to the Redeveloper either by way of acquisition by the Redeveloper or via eminent domain proceedings approved by the Common Council for development of the affected Improvements) in approving or disapproving the revised Conceptual Master Site Plan. If the Common Council and/or the Agency disapprove in whole or in part the revised Conceptual Master Site Plan submitted by the Redeveloper, the Common Council and/or the Agency shall state in writing the reasons for such disapproval, and the Redeveloper shall submit a new or revised Conceptual Master Site Plan for approval by the Common Council and the Agency. This procedure shall continue until a revised Conceptual Master Site Plan is approved by the Common Council and the Agency; provided, however, that if the affected Improvements consist of Phase III Improvements and no Acquisition Property in Phase III has been acquired via the eminent domain Statutes, then the submission by the Redeveloper of a revised Conceptual Master Site Plan as same relates to the Phase III Improvements shall be discretionary on the part of the Redeveloper.

Notwithstanding anything contained in this Agreement to the contrary, the Agency shall not be required to advance to the Common Council a request by the Redeveloper that the City acquire the Globe Theater through the exercise of the power of eminent domain unless within one (1) year after the Execution Date the following conditions have been satisfied by the Redeveloper: (i) renovation plans for the Globe Theater are submitted to the Agency; (ii) submission of evidence by the Redeveloper that it has the equity capital and mortgage financing necessary to complete the renovations contemplated for the Globe Theater, as determined by a third party consultant retained by the Agency; and (iii) submission to the Agency of a viable economic business plan showing the intended cultural uses for the Globe Theater after the renovations have been completed, as determined by a third party consultant retained by the Agency. The cost of all third party consultants retained by the Agency shall be an Acquisition Expense, payable by the Redeveloper. In the event the Redeveloper is unable to satisfy all such conditions within the aforementioned one (1) year period, then for a period of one (1) year after expiration of the aforementioned one (1) year period, the Agency shall have the right to advance to the Common Council a request that the City approve the acquisition of the Globe Theater through the exercise of the power of eminent domain, in order to preserve its use for predominantly cultural purposes.

A. <u>Entry Upon Acquisition Property Prior to Taking for Inspection and Testing.</u>

Immediately upon the execution of this Agreement, the Agency and the City will exercise all rights available to them under applicable law, including without limitation Sections 48-13 and/or 8-129 and/or 22a-133dd of the Statutes, to enter upon all parcels of the Acquisition Property at the earliest possible dates (but not prior to the Common Council authorizing the Agency to acquire such parcel through the exercise of the power of eminent domain), in order to perform sufficient testing and inspections to ascertain the physical condition of the Acquisition Property, and any buildings located thereon, including the preparation of surveys and determination of whether any Environmental Condition exists and, if there is any Environmental Condition, to cause the preparation of a Remedial Cost Estimate with respect thereto, all at Redeveloper's expense (which will be part of Acquisition Expenses), if not previously obtained by Redeveloper. The Agency and the City will make reasonable efforts, including without limitation, the making of applications to the Superior Court (including without limitation, Section 48-13 of the Statutes), to obtain access to each parcel of Acquisition Property for the making of all such inspections, and to have a Remedial Cost Estimate prepared, prior to the filing of a Statement of Compensation with respect to such parcel by the Agency. Without the prior written consent of the Redeveloper, the Agency will not file a Statement of Compensation or record a Certificate of Taking for any parcel of Acquisition Property unless a Remedial Cost Estimate has been prepared by an LEP Firm with respect to any Environmental Condition of such parcel. In the event the right to make such entries and to perform such inspection and testing, in the opinion of the City's Corporation Counsel, is not delegable by the Agency and the City to the Redeveloper, the Agency and the City will retain one or more LEP Firms satisfactory to the Redeveloper (GZA GeoEnvironmental, Inc. is an LEP Firm satisfactory to Redeveloper) and will cause such LEP Firm(s) to perform all such testing and inspection, and to issue a report with respect to each parcel, addressed to the City, the Agency and the Redeveloper, setting forth the Remedial Cost Estimate with respect to such parcel. The costs and expenses of such LEP Firms will be Acquisition Expenses. If the right to make such entries and to perform such inspection and testing, in the opinion of the City's Corporation Counsel, is delegable to the Redeveloper, the City, by a separate license agreement in form and substance reasonably satisfactory to the City and Redeveloper (and consistent with this Agreement), will grant to the Redeveloper, and Redeveloper's agents, a license (the "License") to enter upon all portions of the Acquisition Property, subject to the rights of occupants thereof, which License shall terminate upon the expiration or termination of Redeveloper's rights under this Agreement, for the purpose of performing all appropriate tests and inspections, including environmental evaluation and feasibility studies sufficient to prepare the Remedial Cost Estimate, if any. In such event, the Redeveloper, at its cost and expense, will retain one or more LEP Firms reasonably satisfactory to the City and the Agency (GZA GeoEnvironmental, Inc. is an LEP Firm acceptable to the City and the Agency) and will cause such LEP Firm to perform all such testing and inspection, and to issue a report with respect to each parcel, addressed to the City and the Agency and the Redeveloper, setting forth the Remedial Cost Estimate with respect to such parcel. The License with respect to any particular portion of the Acquisition Property shall terminate at the time title to such portion of the Acquisition Property is conveyed to the Redeveloper or a permitted successor or assign pursuant to this Agreement. Prior to entering upon any portion of the Acquisition Property pursuant to the License granted hereby, the Redeveloper shall provide the City and the Agency (and, if requested by the City and the Agency or required by law, the owner of such Acquisition Property) with evidence of insurance in form and amounts and coverages (which shall include provisions which name the City and the Agency as additional insureds) and from insurers reasonably acceptable to the City (acting by its Director of Finance) and the Agency and shall provide a written indemnification agreement to the City and the Agency (and, if applicable, to such Acquisition Property owner) in form and substance reasonably acceptable to them to indemnify and hold them harmless from and against any and all cost, losses, damages, liabilities and obligations arising out of or relating to the use of the License by the Redeveloper and any of its agents or contractors.

B. Appraisers & Appraisals.

The Agency, at such time as is requested by the Redeveloper consistent with this Agreement, will retain one or more Appraisers to prepare an Agency Appraisal of the Fair Market Value of each of those parcels of the Acquisition Property which have not been acquired privately by the Redeveloper. Upon completion of the Appraisals the Agency will, if required by law, or if deemed necessary by the Agency, or if requested by the Redeveloper, retain a Review Appraiser to review and confirm the work product, opinions and conclusions of the Appraiser or Appraisers. The Appraisals shall be updated to the date of the filing of a Statement of Compensation with respect to any of the parcels of Acquisition Property. All Appraisals shall take into account, to the extent not prohibited by statute or case law and consistent with generally accepted appraisal standards, any and all conditions of the subject parcel of Acquisition Property bearing on its Fair Market Value, including, without limitation, any Environmental Conditions of the subject parcel of Acquisition Property. If, as of the date of the preparation of any Appraisal, or any update or any Review Appraisal thereof, with respect to any parcel(s) of Acquisition Property affected by any Environmental Condition, generally accepted appraisal methods and statutory or case law in the State of Connecticut provide for and/or permit the deduction, from the value which said parcel(s) of Acquisition Property would have if it were not affected by any Environmental Conditions, of the Remedial Cost Estimate with respect to such parcel of Acquisition Property in order to determine the Fair Market Value thereof, then the Agency will instruct the Appraiser that the Appraisal shall reflect, as a deduction to arrive at the stated Fair Market Value, the Remedial Cost Estimate with respect to said parcel of Acquisition Property, if any. The identities of the Appraiser(s) or Review Appraiser(s) retained by the Agency shall be subject to the approval of the Redeveloper, which approval shall not be unreasonable withheld, delayed or conditioned. The Agency agrees, to the extent not prohibited by law, that it will submit to the Appraiser(s) engaged by it such information and materials relating to the condition of the Acquisition Property as Redeveloper from time to time may request and/or may provide to the Agency.

C. Remedial Cost Estimate; Testimony of Environmental Consultant.

The Redeveloper or the Agency, as applicable and as provided herein, will arrange through its contract(s) with the LEP Firm(s) preparing the Remedial Cost Estimates for LEP(s) associated with such LEP Firm(s) to be available to present evidence and testimony in support of the Remedial Cost Estimates at meetings and/or hearings of the Agency and/or at any trials, hearings or other proceedings held pursuant to Section 8-132 of the Statutes to determine compensation for the taking of Acquisition Property.

D. Establishment By Agency of Price for Acquisition Property.

Upon completion of the Agency Appraisals and, if required, the Agency Review Appraisals, the Agency shall establish the amount of compensation to be paid to the persons entitled thereto for each parcel of Acquisition Property, and shall notify the Redeveloper of such amounts. Such amounts of compensation shall be based upon the Fair Market Values determined in the Agency Appraisals, taking into account any additional factors affecting Fair Market Value as may be within the knowledge and experience of the Agency, provided that the Agency shall not establish an amount of compensation with respect to any parcel which is less than the amount required by any applicable Statutes, and provided further, that the Agency shall not establish an amount of compensation with respect to any parcel which is greater than the Fair Market Value as determined by the Agency Appraisal of such parcel or the amount required by any applicable Statutes, whichever is greater, without the written consent of the Redeveloper.

E. Agency Acquisition of Acquisition Property; Title Insurance.

The Agency shall attempt to acquire by negotiated purchase at the compensation amounts so established all parcels of Acquisition Property not previously acquired by the Redeveloper (but not prior to the Common Council authorizing the Agency to acquire such parcel through the exercise of the power of eminent domain). The Agency shall not offer to pay an amount in excess of the compensation amounts established by the Agency pursuant to Section 7.3(D) hereof for any parcel of Acquisition Property without the written consent of the Redeveloper. The Redeveloper shall deposit into the Project Operating Account from time to time, upon request of the Agency, such sums as may be required to permit the Agency to acquire any such parcels of Acquisition Property by private purchase. Each contract which the Agency proposes to enter into for private purchase of any Acquisition Property shall be subject to the reasonable approval of Redeveloper and, upon the request of Redeveloper, and to the extent not prohibited by law, the Agency shall assign to Redeveloper, or to an Affiliate designated by the Redeveloper, the rights of the Agency under any such contract. In the event that, after the Agency attempts for a reasonable period of time to acquire privately any parcel of Acquisition Property, the owner of a parcel of Acquisition Property is unwilling to sell the parcel for the purchase price so established, the Agency shall proceed to acquire such parcel through the exercise of the power of eminent domain in the manner provided in Chapter 130 (and/or, if applicable, Chapter 835) of the Statutes. The Agency will cooperate with the Redeveloper in obtaining from title insurance underwriters acceptable to the Redeveloper policies of title insurance, at Redeveloper's cost, insuring the City, the Agency and the Redeveloper, as their interests may appear, in each parcel of Acquisition Property effective upon the acquisition of title to each parcel of Acquisition Property.

Section 7.4 Schedule of Acquisitions by Agency.

The acquisition by the Agency of all Acquisition Property not privately acquired by the Redeveloper and which has been duly authorized by the Common

Council shall be done, to the extent practicable, at the earliest possible date when same may be acquired by the Agency consistent with the provisions and the intent of this Agreement, but in any event within the time periods, and subject to the terms and conditions, set forth in any and all resolutions of the Common Council authorizing acquisition by eminent domain, and any Statutes, including without limitation, Section 8-128.

A. Authorization and Agreement for Use of Power of Eminent Domain.

Under the Plan, as amended, the Agency does not have the authority to acquire any parcel of property within the Wall Street Project Area through the exercise of the power of eminent domain. Upon the request of the Redeveloper, the Agency shall request that the Common Council grant the Agency the authority to acquire a parcel of Acquisition Property through the exercise of the power of eminent domain. The Common Council may approve or deny any such request. The Agency agrees, as and when requested by the Redeveloper or as provided in this Agreement, to use the powers of eminent domain granted to it by the Statutes and as may be granted to it by separate authorization of the Common Council to acquire a parcel of Acquisition Property which has not been acquired by negotiated purchase, and shall use best efforts to complete all such proceedings expeditiously after same are commenced and within the time frames established by the Common Council and any Statutes, including without limitation, Section 8-128. The Agency shall acquire the Acquisition Property in the name of the City solely, as provided in Section 8-138 of the Statutes.

B. Redeveloper to Deposit Funds for Acquisition.

Redeveloper will deposit into the Project Operating Account from time to time within thirty (30) days after the request of the Agency such funds as are required to enable the Agency to make the deposit required by Section 8-130 of the Statutes to be made upon the filing by the Agency of a Statement of Compensation with respect to any party of Acquisition Property to be acquired by eminent domain in accordance with this Agreement. The Agency will not request that Redeveloper deposit any such funds with respect to any parcel unless the Agency intends to file a Statement of Compensation with respect to such parcel and to deposit such funds with the Clerk of the Court within thirty (30) days after its receipt of such funds. If the Agency has not filed such Statement of Compensation and deposited such funds with the Clerk of the Court within sixty (60) days after the Redeveloper deposits such funds with the Agency, the Agency shall return such funds to the Redeveloper upon written request.

C. Common Council Action.

In the event that the Common Council adopts any law, rule or regulation which increases the amount of compensation that is required to be paid to a property owner in acquiring a parcel of property within Development Parcel 2a by eminent domain, over the amount of compensation that is required to be paid to such property owner pursuant to the Statutes, then the City agrees to pay any such excess over the amount of compensation required to be paid by the Statutes.

Section 7.5 Discontinuance of City Street.

A. The City shall undertake and pursue to conclusion, pursuant to Sections 95-33 through and including 95-36 of the City Code and/or relevant sections of the Statutes, the processes necessary to discontinue or abandon and demap those portions of the rights of way of such public streets as are designated in the Redevelopment Plan (and/or as may be provided for in this Agreement and as may hereafter be approved and implemented by amendment to the Redevelopment Plan) to be discontinued or abandoned. The abandonment of Isaacs Street shall be subject to the provisions set forth in Section 9.6 hereof. It is intended by the parties hereto that title to any such abandoned public street will devolve, pursuant to common law, at no cost, to the owners of said abutting properties on either side, to the center line of the right of way. It is also agreed by the parties that if Isaacs Street is discontinued or abandoned in accordance with Section 9.6 hereof, then Isaacs Street as depicted on the Conceptual Master Site Plan shall be rededicated as a City street following completion of the Project and the Redeveloper shall cooperate with the City to complete the process to accept Isaacs Street as a public street, or if the City deems it appropriate, to convey such easements to the City as are necessary to maintain Isaacs Street as a public right of way. In addition, the City shall retain an easement over that portion of any such street which shall constitute City sidewalks, in such form as the City may reasonably require. The effectuation of any such street abandonment, however, and the terms of any devolution or conveyance of title shall be subject to the requisite approvals of any and all Governmental Authorities having jurisdiction over such processes. The Agency and the City will prepare, submit and pursue applications for such approvals. The cost of filing fees associated with any such applications will constitute Acquisition Expenses. Upon the granting of such approvals, the City will quitclaim or release, as appropriate, its interest in said portion of Isaacs Street to the owners of the abutting properties. The Agency, at the request of the Redeveloper, shall exercise its authority and power under Section 8-133a of the Statutes to effectuate the temporary and/or permanent readjustment, relocation or removal of "public service facilities" from the rights of way of such discontinued public street.

B. The costs and expenses of (i) removing, demolishing and disposing of the debris related to the pavement, curbing and other portions of discontinued public streets, and (ii) that portion of the costs and expenses of readjustment, relocation or removal of any "public service facility" necessitated by the discontinuance of such streets as would, pursuant to said Section 8-133a of the Statutes, constitute the "equitable share" of such costs to be borne by the Agency, shall constitute Acquisition Expenses and be the obligation of Redeveloper.

Section 7.6 Relocation of Occupants.

The Agency shall provide a relocation assistance advisory program for all displaced persons, pursuant to and in accordance with the requirements of Section 8-271 of the Statutes and pursuant to 42 USC Section 4625, and to the extent required by law shall use reasonable efforts to expeditiously relocate all occupants of each parcel of the Acquisition Property prior to or as soon as is reasonably practicable after the acquisition of each such parcel and prior to conveyance of title by the Agency to Redeveloper. Redeveloper shall not take title to a parcel of Acquisition Property prior to completion of the relocation of the occupants on such parcel by the Agency. The Agency shall use its reasonable efforts to assist Redeveloper in relocating occupants of Redeveloper Property and Acquisition Property privately acquired by Redeveloper. The Agency, the City and the Redeveloper agree that all occupants being relocated from the Project Site in accordance with this Article VII shall be entitled to receive relocation payments and assistance as set forth in the Relocation Act, as well as any additional relocation payments and assistance as set forth in the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 USC, Section 4601, et. seq., which are not provided for in the Relocation Act. The Agency and the City shall render reasonable assistance to the Redeveloper and shall support the Redeveloper in the Redeveloper's efforts to obtain the maximum amount of grants, grants-in-aid, loans and other subsidies of any type available from all public sources pursuant to Relocation Act or otherwise to offset the costs of Relocation Expenses due to occupants of the Project Property who are required to be relocated [but the Agency and the City shall not be required to allocate to Relocation Expenses monies which the Agency and/or the City receive from other funding sources for the funding of other components (i.e., Infrastructure Improvements) of the Redevelopment Plan]. Those Relocation Expenses, which are not paid from available public funding sources shall constitute Acquisition Expenses and shall be incurred by the Agency in accordance with Article VI hereof. In no event will the Agency or the City be entitled to reimbursement as Relocation Expenses for the salaries or fees payable to staff, employees or consultants of the Agency or the City involved in the provision of relocation assistance, it being agreed that such cost will be borne by the Agency and/or the City, as applicable. Notwithstanding the immediately preceding sentence, the reasonable fees of consultants to the Agency and the City for the performance of specialized relocation services outside the scope of the experience of the Agency's relocation staff employees shall be chargeable by the Agency to the Project as an Acquisition Expense, provided that the engagement of such consultant(s) and the fees to be charged by and paid to them are approved by the Redeveloper, such approval not to be unreasonably withheld, delayed or conditioned.

Section 7.7 <u>Utility Relocation; Modification of Layout of Existing and Proposed Utilities in Project Site.</u>

A. In accordance with Section 8-133a (and, if at any time applicable, Sections 8-194 and 32-224(f)) of the Statutes, the Agency will arrange in accordance with a plan prepared by the Redeveloper and approved by the Agency (and subject to the approval of all Governmental Authorities having jurisdiction, including without limitation the Norwalk Department of Public Works) and the respective utility companies for the relocation in a timely manner of all utility services to be removed from or terminated within the Project Site as set forth on **Exhibit C-1** and shown on **Exhibit C-4** attached hereto and made a part hereof, as same may be amended, or as provided for in this Agreement including telephone, cable, water, gas, electricity, storm water drainage and sewers. In addition, the Agency, subject to review and approval by all Governmental Authorities having jurisdiction, including without limitation the Norwalk Department of Public Works, and the respective utility companies will approve such modifications, if any, to the layout as shown on **Exhibits C-1, C-2, C-3** and **C-4** for both existing utilities remaining in the Project Site and/or the Wall Street Project Area, and those proposed to be newly installed therein so as to coordinate same with the layout of the Improvements as may be depicted on Redeveloper's Conceptual Master Site Plan, and/or Construction Plans, as approved by the Agency and/or the City (if required). The Agency and the City will make reasonable efforts to obtain from such sources as are in possession thereof and/or are available to them, and will deliver to the Redeveloper as and when obtained, as-built plans of all utility service lines within the Project Site to facilitate the identification of the location of same and the determination of which of same require relocation to facilitate Redevelopers development in accordance with the approved Conceptual Master Site Plan.

B. With respect to the provision of utility services to the Project Site and the Project, the Agency, the City and the Redeveloper agree as follows:

1. <u>City Obligation</u>

The City, at its sole cost and expense, shall provide or cause the respective utility companies to provide the utility services as set forth on **Exhibit C-1** and shown on **Exhibit C-3** which shall be required to facilitate any increased capacity needs due to the development of the Project Site as envisioned by the Redevelopment Plan. Such utility services shall be provided as depicted on **Exhibit C-3** attached hereto. The City shall provide the Redeveloper with a plan showing the utility services to be provided by the City and their location.

2. <u>Redeveloper Obligation</u>

Except as specifically set forth in this Agreement to be the City's obligation, the Redeveloper, at its sole cost and expense, will be obligated to make provision for any and all utility services required for the Project and to perform any and all work required to provide hook-ups between the Improvements constructed as part of the Project and the public utility facilities depicted on **Exhibit C-3** attached hereto, or within the Project Site, including without limitation, the installation of such conduits, lines and other facilities within the boundaries of Development Parcel 2a, as may be required to effectuate such hookups. Nothing in this Agreement shall be deemed to relieve the Redeveloper of any obligation it may have to pay for the cost of its direct hook-ups to any public utilities.

3. <u>Section 8-133a of the Statutes</u>

The Agency will proceed pursuant to §8-133a of the Statutes to issue appropriate orders for temporary and/or permanent readjustment, relocation, termination or removal of any "public service facility" (as defined in said §8-

133a) required by reason of the closing of any public streets and/or construction of the Improvements and carrying out of the Plan. To the extent that any such readjustment, relocation, termination or removal is located within the green (or dark gray) area as depicted on **Exhibit C-2** attached hereto, the equitable share of the costs of such readjustment, relocation, termination or removal of such public service facilities which is required by said §8-133a to be borne by the Agency shall constitute an Acquisition Expense under this Agreement and be paid by the Redeveloper. To the extent that any such readjustment, relocation, termination or removal is located within the yellow (or light gray) area depicted on **Exhibit C-2** attached hereto, such equitable share shall not be an Acquisition Expense and shall be paid by the City. The Redeveloper will grant such rights of way as reasonably may be required for the relocation of such facilities removed from public streets or public rights of way, subject to Redeveloper's reasonable approval of the location of such rights of way so as not to interfere unreasonably with Redeveloper's intended construction of the Improvements, as depicted on the Conceptual Master Site Plan, or Construction Plans, as approved by the Agency. In the performance of such work, the parties shall only be required to perform such work as may be required by law or by the respective utility companies.

C. The City and the Agency agree to coordinate the design and construction of utility infrastructure with the relevant utility service providers.

Section 7.8 Management of Acquisition Property.

During the period, if any, between the date of acquisition by the City of each parcel of the Acquisition Property and the delivery of the Deed for such parcel to Redeveloper pursuant to Section 9.3 hereof, the Agency shall retain POKO Management Corp. to provide for proper operation and management of all occupied properties within the Project Site owned by the City, including the making of necessary repairs to keep the buildings thereon habitable until their occupants are relocated and to serve as the managing agent on reasonable terms to be agreed upon between the Agency and POKO Management Corp. In the event the Agency and POKO Management Corp. cannot agree upon the terms upon which POKO Management Corp. will operate and manage the aforementioned occupied properties, then the Agency may engage a third party manager to manage the Acquisition Property on its behalf, with the approval of the Redeveloper, which approval shall not be unreasonably withheld, delayed or conditioned. The expenses of such operation and management of such Acquisition Property shall be incurred in accordance with the budgets approved by the Agency and the Redeveloper pursuant to Article VI, such approvals not to be unreasonably withheld, delayed or conditioned. The Redeveloper will indemnify, defend and hold harmless the City and the Agency against and from any and all claims, suits, costs, expenses, losses, liabilities, and damages, including reasonable attorneys' fees, asserted against and/or incurred by either of them arising out of the management of the Acquisition Property by POKO Management Corp. during such period, except to the extent arising out of negligent acts or omissions of the City or the Agency. This indemnity will not be limited by insurance coverage and shall survive termination of this Agreement, and shall be separate and independent of any other provision of this Agreement.

ARTICLE VIII
ENVIRONMENTAL ASSESSMENT AND REMEDIATION

Section 8.1 Environmental Assessment.

A. Immediately upon the Execution Date, the Redeveloper or the Agency, whichever is retaining the LEP(s) to perform the testing described in Section 7.3 hereof, will retain one or more LEP Firms to prepare comprehensive Phase I and/or Phase II and/or Phase III environmental site assessments, as appropriate, and a feasibility study that identifies remedial alternatives, including recommendations for the preferred alternative(s) and estimates of the cost of remediation with respect to each property within the Project Site. Notwithstanding the foregoing, the parties hereto acknowledge that such testing on the Municipal Parking Lot has been completed prior to the Execution Date. The preferred remedial alternative which is satisfactory to the Redeveloper and DEP, and insofar as it affects the Municipal Parking Lot, the City and the Agency, will constitute the Remedial Action Plan for the Project Site. The Remedial Action Plan may include a monitoring program. Notwithstanding anything to the contrary above, the Redeveloper, at its expense (which will be part of Acquisition Expenses), shall retain one or more LEP Firms to prepare comprehensive Phase I and/or Phase II and/or Phase III environmental site assessments, as appropriate, and a feasibility study that identifies remedial alternatives, including recommendations for the preferred alternative(s) and estimates of the cost of remediation with respect to the Municipal Parking Lot. A copy of all reports generated by the LEP Firm and the remediation cost estimate, if any, for the Municipal Parking Lot shall be delivered by the Redeveloper to the Agency and the City within six (6) months after the Execution Date. The preferred remedial alternative for the Municipal Parking Lot, if any, shall be determined jointly by the Redeveloper and the City/Agency. The preferred remedial alternative for the Municipal Parking Lot, if any, shall be made part of the Remedial Action Plan.

The parties acknowledge and agree that the Remedial Action Plan, or portion thereof, may require DEP approval to applicable Environmental Law. In such case, the Remedial Action Plan, or portion thereof, shall be submitted by the Redeveloper to DEP for approval. If the Remedial Action Plan, or portion thereof, so submitted is not approved by DEP, the Redeveloper shall direct its consultants to modify the Remedial Action Plan, or portion thereof, so that it will be approved by DEP. The Redeveloper shall keep the Agency informed of the status of the evaluation and draft plan to be submitted to DEP and shall provide the Agency copies of the plan as submitted and as approved by DEP along with copies of all correspondence between the Redeveloper and DEP in connection therewith. The Agency shall be informed of and afforded an opportunity to attend all meetings between the Redeveloper and/or the consultant and DEP. After the Remedial Action Plan, or portion thereof, has been approved by DEP, it shall be implemented expeditiously in accordance with and subject to the limitations of this Article VIII.

B. In the event that a unilateral order is issued by DEP with respect to any parcel of the Project Property prior to title thereto vesting in the Redeveloper pursuant to Section 9.1, 9.2 or 9.3 hereof, the City and Agency shall afford the Redeveloper the opportunity to participate in all meetings with DEP concerning such order and shall provide the Redeveloper with copies of all correspondence pertaining thereto. At the option of the Redeveloper, the City and Agency shall commence and diligently prosecute an appeal from any such order, at Redevelopers expense, and shall not file any pleadings or make any settlement agreements in connection therewith, other than pleadings the City or Agency believe necessary to protect their interests, without the concurrence of all the parties hereto. The Redeveloper shall have no obligation with respect to any such order unless and until the Redeveloper elects to take title to a parcel which is subject to such an order, in which event the Redeveloper shall be bound by the terms of the order and shall indemnify and hold harmless the City and Agency from any claim against them which may arise from the failure of the Redeveloper to properly perform its assumed obligations pursuant to the terms of such order.

Section 8.2 Remediation by the Redeveloper.

The Redeveloper has agreed to clean up all discharges of oil, petroleum and hazardous or other regulated waste in the Project Site, and accordingly shall be responsible for and shall undertake or cause to be undertaken by others the performance of all work necessary to implement the Remedial Action Plan as approved by the LEP and, if required by Environmental Law, DEP, including any monitoring required by the Remedial Action Plan. All such work to be performed by the Redeveloper shall be undertaken in strict accordance with all applicable laws and regulations.

Section 8.3 No Remediation by the City.

The City shall not be responsible for the performance of any work necessary to implement the Remedial Action Plan.

ARTICLE IX
CONVEYANCE OF PROPERTY

Section 9.1 Conveyance of Isaacs Street Municipal Parking Lot to Redeveloper.

A. Purchase Price. Subject to the terms and conditions of this Agreement, the Isaacs Street Municipal Parking Lot shall be conveyed by the Agency to the Redeveloper upon the terms and conditions set forth below, for a purchase price of Fifty Thousand and 00/100 ($50,000.00) Dollars, payable by the Redeveloper executing and delivering to the Agency at closing a Promissory Note in said amount, providing for ten (10) equal annual installments of Five Thousand and 00/100 ($5,000.00) Dollars each, commencing with the first installment one (1) year from the date the Phase I Parking Garage is opened to the public, and on that same day of each year for the next successive nine (9) years and upon such other normal and customary terms and conditions as the Agency may require. In the event the Agency has purchased the Municipal Parking Lot and executed a Promissory Note in the amount of One Hundred Thousand and 00/100 ($100,000.00) Dollars in favor of the Norwalk Parking Authority as consideration for the purchase of the Municipal Parking Lot, then in lieu of the above Promissory Note to the Agency, the Redeveloper may be required to assume one-half (½) the obligations of the Agency under the aforementioned $100,000.00 Promissory Note to the Norwalk Parking Authority.

B. Deposit. No deposit shall be required for the purchase of the Isaacs Street Municipal Parking Lot

C. Time and Place for the Delivery of Deed. The closing shall take place at City Hall, 125 East Avenue, Norwalk, CT within thirty (30) days after the Redeveloper notifies the City and the Agency that the Redeveloper is ready to acquire title, but not later than the date construction of the Phase I Improvements is to commence and not prior to approval by the Agency (and where required, the Common Council) of the Redeveloper's Phase I Construction Plans as required by Section 3.2, and approval by the Agency of Redeveloper's Evidence of Equity Capital and Mortgage Financing for the Phase I Improvements on the Project Site as required by Section 3.9 hereof.

D. Form of Deed. The City shall convey or cause to be conveyed, marketable and insurable title to the Isaacs Street Municipal Parking Lot to the Redeveloper by quit claim deed (**"Isaacs Street Municipal Parking Lot Deed"**) upon payment of the purchase price by the Redeveloper as set forth herein. Such conveyance and title shall, in addition to the conditions subsequent provided for in Section 19.8 hereof, and to all other conditions, covenants, easements and restrictions set forth or referred to elsewhere in this Agreement, be subject to no other liens or encumbrances except the following: the Redevelopment Plan; all of the terms of this Agreement; regulatory requirements imposed by the federal state, county, municipal and/or other local agencies, commissions, boards, bureaus, officials and other governmental departments or quasi-governmental authorities having jurisdiction over the Redevelopment Plan, the Project Site, this Agreement and/or any of the parties hereto; installments of real property taxes of the City due and payable after the date of conveyance; such state of facts as an accurate survey or personal inspection would reveal, provided same do not render title unmarketable; zoning and planning rules and regulations of the City; an easement enabling the general public to have perpetual access to and use of the Public Parking Spaces on the Project Site; Reservation contained in a deed from The Fifty-Nine Street Corporation to The Norwalk Parking Authority dated July 23, 1954 and recorded in Volume 411 at page 135 of the Norwalk Land Records; Reservations and Agreements contained in a deed from Nordray Realty Corporation to Norwalk Parking Authority dated August 2, 1954 and recorded in Volume 464 at page 206 of the Norwalk Land Records; Right and right of access set forth in a deed from Norwalk Parking Authority to Nordray Realty Corporation dated August 15, 1954 and recorded August 20, 1954 in Volume 464 at page 106 of the Norwalk Land Records; an easement in favor of the general public recorded in Volume 177 at Page 190 of the

Norwalk Land Records; Grant from Norwalk Parking Authority to Fairfield County Savings Bank dated January 20, 1967 and recorded January 24, 1967 in Volume 675 at page 409 of the Norwalk Land Records; and Agreement between the City of Norwalk and Fairfield County Bank Corp. dated January 19, 2006, as amended by First Amendment to Agreement dated October 4, 2006. Subject to the foregoing, title shall be marketable and insurable. After the Execution Date, the City agrees not to enter into any future leases for the Isaacs Street Municipal Parking Lot unless such lease is subject to cancellation by the City upon thirty (30) days prior written notice.

E. Recordation of Deed. The Redeveloper shall promptly file the Isaacs Street Municipal Parking Lot Deed for recordation upon the Norwalk Land Records and the Redeveloper shall pay all costs of recording said deed.

F. Apportionment of Current Taxes. With respect to any tax period during which the City, the Agency or The Norwalk Parking Authority, on the one hand, and the Redeveloper on the other hand, both had title to and possession of the Isaacs Street Municipal Parking Lot or any portion thereof, taxes allocable to the Isaacs Street Municipal Parking Lot or such portion thereof, as the case may be, for such period shall be prorated between the City, The Norwalk Parking Authority and the Agency on the one hand and the Redeveloper on the other hand in proportion to the respective periods of ownership of title and possession. In the event that the Isaacs Street Municipal Parking Lot or any portion thereof, is exempt from taxation on the assessment date next preceding the sale and conveyance of title and possession by virtue of title being vested in the City, The Norwalk Parking Authority or Agency or any other tax exempt entity, the Redeveloper shall make a payment in lieu of taxes based upon the assessed value of Isaacs Street Municipal Parking Lot or portion thereof at the tax rate then prevailing in the City for that portion of the tax year during which the Redeveloper has title and possession. Any payment owed by the Redeveloper under this section shall be due and payable at the time of closing. The assessment in either situation above described upon which adjustment shall be made, shall be the assessment which the Tax Assessor of the City shall make of the Isaacs Street Municipal Parking Lot immediately prior to the transfer of title to the Redeveloper, which assessment shall be based on the physical condition of the Isaacs Street Municipal Parking Lot immediately prior to such conveyance.

G. Condition of Property. The Redeveloper agrees that it has fully inspected the Isaacs Street Municipal Parking Lot and is fully satisfied with the condition thereof. The Redeveloper acknowledges that it is accepting the Isaacs Street Municipal Parking Lot and the land upon which it is situated "as is" and that this Agreement contains all of the understandings and agreements between the parties hereto relating to said property. There are no representations or warranties, expressed or implied, whatsoever upon which the Redeveloper relies with respect to the condition, quality, use, value, quantity or related characteristics of the Isaacs Street Municipal Parking Lot, other than those herein expressly set forth. The provisions of this section shall survive the closing and the delivery of the Isaacs Street Municipal Parking Lot Deed to the Redeveloper.

H. Acquisition Expenses. For purposes of this Agreement, the following costs and expenses associated with the Isaacs Street Municipal Parking Lot shall be deemed to be Acquisition Expenses, payable by the Redeveloper in the same manner as other Acquisition Expenses hereunder: Costs and fees for environmental assessments, studies, reports and tests; costs and fees for appraisals and review appraisals; costs and fees for surveys and title insurance commitments, searches and policies; legal fees of Agency's counsel; and fees for architectural and engineering services.

Section 9.2 Conveyance of Leonard Street Municipal Parking Lot to Redeveloper.

A. Purchase Price. Subject to the terms and conditions of this Agreement, the Leonard Street Municipal Parking Lot shall be conveyed by the Agency to the Redeveloper upon the terms and conditions set forth below, for a purchase price of Fifty Thousand and 00/100 and 00/100 ($50,000.00) Dollars, payable by the Redeveloper executing and delivering to the Agency at closing a Promissory Note in said amount, providing for ten (10) equal annual installments of Five Thousand and 00/100 ($5,000.00) Dollars each, commencing with the first installment one (1) year from the date the Phase I Parking Garage is opened to the public, and on that same day of each year for the next successive nine (9) years and upon such other normal and customary terms and conditions as the Agency may require. In the event the Agency has purchased the Municipal Parking Lot and executed a Promissory Note in the amount of One Hundred Thousand and 00/100 ($100,000.00) Dollars in favor of the Norwalk Parking Authority as consideration for the purchase of the Municipal Parking Lot, then in lieu of the above Promissory Note to the Agency, the Redeveloper may be required to assume one-half (½) the obligations of the Agency under the aforementioned $100,000.00 Promissory Note to the Norwalk Parking Authority.

B. Deposit. No deposit shall be required for the purchase of the Leonard Street Municipal Parking Lot.

C. Time and Place for the Delivery of Deed. The closing shall take place at City Hall, 125 East Avenue, Norwalk, CT simultaneously with the closing of title for the Isaacs Street Municipal Parking Lot in accordance with the provisions of Section 9.1(C).

D. Form of Deed. The City shall convey or cause to be conveyed, marketable and insurable title to the Leonard Street Municipal Parking Lot to the Redeveloper by quit claim deed (**"Leonard Street Municipal Parking Lot Deed"**) upon payment of the purchase price by the Redeveloper as set forth herein. Such conveyance and title shall, in addition to the conditions subsequent provided for in Section 19.8 hereof, and to all other conditions, covenants, easements and restrictions set forth or referred to elsewhere in this Agreement, be subject to no other liens or encumbrances except the following: the Redevelopment Plan; all of the terms of this Agreement; regulatory requirements imposed by the federal state, county, municipal and/or other local agencies, commissions, boards, bureaus, officials and other governmental departments or quasi-governmental authorities having jurisdiction over the Redevelopment Plan, the Project Site, this Agreement and/or any of the parties hereto; installments of real property taxes of the City due and payable after the date of conveyance; such state of facts as an accurate survey or personal inspection would reveal, provided same do not render title unmarketable; zoning and planning rules and regulations of the City; and an easement enabling the general public to have perpetual access to and use of the Public Parking Spaces on the Project Site.; and an easement in favor of the First Taxing District of the City of Norwalk dated September 13, 1962 and recorded in Volume 586 at Page 97 of the Norwalk Land Records. Subject to the foregoing, title shall be marketable and insurable. After the Execution Date, the City agrees not to enter into any future leases for the Leonard Street Municipal Parking Lot unless such lease is subject to cancellation by the City upon thirty (30) days prior written notice.

E. Recordation of Deed. The Redeveloper shall promptly file the Leonard Street Municipal Parking Lot Deed for recordation upon the Norwalk Land Records and the Redeveloper shall pay all costs of recording said deed.

F. Apportionment of Current Taxes. With respect to any tax period during which the City, the Agency or The Norwalk Parking Authority, on the one hand, and the Redeveloper on the other hand, both had title to and possession of the Leonard Street Municipal Parking Lot or any portion thereof, taxes allocable to the Leonard Street Municipal Parking Lot or such portion thereof, as the case may be, for such period shall be prorated between the City, The Norwalk Parking Authority and the Agency on the one hand and the Redeveloper on the other hand in proportion to the respective periods of ownership of title and possession. In the event that the Leonard Street Municipal Parking Lot or any portion thereof, is exempt from taxation on the assessment date next preceding the sale and conveyance of title and possession by virtue of title being vested in the City, The Norwalk Parking Authority or Agency or any other tax exempt entity, the Redeveloper shall make a payment in lieu of taxes based upon the assessed value of Leonard Street Municipal Parking Lot or portion thereof at the tax rate then prevailing in the City for that portion of the tax year during which the Redeveloper has title and possession. Any payment owed by the Redeveloper under this section shall be due and payable at the time of closing. The assessment in either situation above described upon which adjustment shall be made, shall be the assessment which the Tax Assessor of the City shall make of the Leonard Street Municipal Parking Lot immediately prior to the transfer of title to the Redeveloper, which assessment shall be based on the physical condition of the Leonard Street Municipal Parking Lot immediately prior to such conveyance.

G. Condition of Property. The Redeveloper agrees that it has fully inspected the Leonard Street Municipal Parking Lot and is fully satisfied with the condition thereof. The Redeveloper acknowledges that it is accepting the Leonard Street Municipal Parking Lot and the land upon which it is situated "as is" and that this Agreement contains all of the understandings and agreements between the parties hereto relating to said property. There are no representations or warranties, expressed or implied, whatsoever upon which the Redeveloper relies with respect to the condition, quality, use, value, quantity or related characteristics of the Leonard Street Municipal Parking Lot, other than those herein expressly set forth. The provisions of this section shall survive the closing and the delivery of the Leonard Street Municipal Parking Lot Deed to the Redeveloper.

H. Acquisition Expenses. For purposes of this Agreement, the following costs and expenses associated with the Leonard Street Municipal Parking Lot shall be deemed to be Acquisition Expenses, payable by the Redeveloper in the same manner as other Acquisition Expenses hereunder: Costs and fees for environmental assessments, studies, reports and tests; costs and fees for appraisals and review appraisals; costs and fees for surveys and title insurance commitments, searches and policies; legal fees of Agency's counsel and fees for architectural and engineering services.

Section 9.3 Conveyance of Acquisition Property to Redeveloper.

A. Purchase Price. Subject to the terms and conditions of this Agreement, each parcel of Acquisition Property shall be conveyed by the City or the Agency to the Redeveloper or an Affiliate for the purpose of constructing the Improvements upon the terms and conditions set forth below for a purchase price of an amount equal to the Acquisition Expenses incurred in connection with the Acquisition Property conveyed, less the amount by which the City or Agency have been reimbursed for such Acquisition Expenses by the Redeveloper pursuant to Section 6.1 hereof prior to the date of conveyance, which shall be payable by the Redeveloper at closing.

B. Time and Place for the Delivery of Deed. The closing for each parcel of Acquisition Property shall take place at City Hall, 125 East Avenue, Norwalk, CT, on the date of the recording of the Certificate of Taking for each such parcel, or as soon thereafter as is reasonably possible. The City, the Agency and the Redeveloper agree to use best efforts to cause the closing for each such parcel of Acquisition Property to occur on said date. The Agency will give written notice to the Redeveloper upon its receipt of a Certificate of Taking for any parcel of Acquisition Property and advise Redeveloper that it intends to record such Certificate of Taking no later than ten (10) days after the date of such notice. The City, the Agency and the Redeveloper will cooperate in good faith to cause the closing with respect to such parcels to occur within said ten (10) day period and on the same day as, but just subsequent to, the recording of the subject Certificate of Taking.

C. Form of Deed. The City or the Agency shall convey marketable and insurable title to each parcel of Acquisition Property to the Redeveloper by quit claim deed (**"Acquisition Property Deeds," or singularly, "Acquisition Property Deed"**) upon payment of the purchase price by the Redeveloper as set forth herein. Such conveyance and title shall, in addition to the conditions subsequent provided for in Section 19.8 hereof, and to all other conditions, covenants, easements and restrictions set forth or referred to elsewhere in this Agreement, be subject to no other liens or encumbrances except the following: the Redevelopment Plan, all of the terms of this Agreement; regulatory requirements imposed by the federal, state, county, municipal and/or other local agencies, commissions, departments, boards, bureaus, officials and other governmental or quasi-governmental authorities having jurisdiction over the Redevelopment Plan, the Project Site, this Agreement and/or any of the parties hereto; installments of real property taxes of the City due and payable after the date of conveyance; such state of facts as an accurate survey or personal inspection would reveal, provided same do not render title unmarketable; zoning and planning rules and regulations of the City; an easement enabling the general public to have perpetual access to and use of the Public Parking Spaces on the Project Site; and all easements and restrictions of record on the Norwalk Land Records as to any such parcel. Subject to the foregoing, title shall be marketable and insurable.

D. Recordation of Deed. The Redeveloper shall promptly file each Acquisition Property Deed for recordation upon the Norwalk Land Records and the Redeveloper shall pay all costs of recording said deed(s).

E. Apportionment of Current Taxes. With respect to any tax period during which the City or the Agency, on the one hand, and the Redeveloper on the other hand, both had title to and possession of a parcel of Acquisition Property or any portion thereof, taxes allocable to a parcel of Acquisition Property or such portion thereof, as the case may be, for such period shall be prorated between the City and the Agency on the one hand and the Redeveloper on the other hand in proportion to the respective periods of ownership of title and possession. In the event that a parcel of Acquisition Property or any portion thereof, is exempt from taxation on the assessment date next preceding the sale and conveyance of title and possession by virtue of title being vested in the City or Agency or any other tax exempt entity, the Redeveloper shall make a payment in lieu of taxes based upon the assessed value of such parcel of Acquisition Property or portion thereof at the tax rate then prevailing in the City for that portion of the tax year during which the Redeveloper has title and possession. Any payment owed by the Redeveloper under this section shall be due and payable at the time of closing. The assessment in either situation above described upon which adjustment shall be made, shall be the assessment which the Tax Assessor of the City shall make of a parcel of Acquisition Property immediately prior to the transfer of title from the City or the Agency to the Redeveloper, which assessment shall be based on the physical condition of the subject parcel of Acquisition Property immediately prior to such conveyance.

F. Condition of Property. The Redeveloper agrees that it has fully inspected the parcels of Acquisition Property and is fully satisfied with the condition thereof. The Redeveloper acknowledges that it is accepting the parcels of Acquisition Property "as is", and that this Agreement contains all of the understandings and agreements between the parties hereto relating to said property. There are no representations or warranties, expressed or implied, whatsoever upon which the Redeveloper relies with respect to the condition, quality, use, value, quantity or related characteristics of the parcels of Acquisition Property, other than those herein expressly set forth. The provisions of this section shall survive the closing and the delivery of the Acquisition Property Deeds to the Redeveloper.

Section 9.4 Transfers of "Establishments".

To the extent that the transfer of any of the parcels of Acquisition Property or the Isaacs Street Municipal Parking Lot or the Leonard Street Municipal Parking Lot from the City or Agency to the Redeveloper constitutes a **"transfer of establishment"** within the meaning of the Connecticut Transfer Act, Sections 22a-134 et seq. of the Statutes (the **"Transfer Act"**), the City or Agency agrees to execute and deliver as transferor only, and only to the extent required by the Transfer Act to effectuate the conveyance, such forms as are required pursuant to the Transfer Act. In no event shall the Agency or the City be required to execute any Transfer Act forms to the extent that same would provide that the City or Agency is obligated to perform any Remedial Work with respect to such parcel(s). Redeveloper will execute and deliver any and all required Transfer Act forms as transferee, and as certifying party. All costs associated with such filing shall constitute Acquisition Expenses and shall be payable by the Redeveloper. Redeveloper, at its sole cost and expense, shall be responsible for the conduct and completion of any and all obligations that may be required of Redeveloper as the certifying party on any Transfer Act forms filed in accordance with the Transfer Act and this Section 9.4, which obligation shall survive the closing hereunder.

Section 9.5 Redeveloper Grant of Security for Excess Awards in Eminent Domain Proceedings

At the time that the City conveys to Redeveloper a parcel of Acquisition Property which has been acquired by it via the exercise of the power of eminent domain (such a parcel being called, for purposes of this Section, a **"Condemned Parcel"**), the eminent domain proceeding in which such Condemned Parcel was acquired still may be pending and the value of such Condemned Parcel established by the Agency in such proceeding (the **"Agency's Parcel Value"**), which Agency's Parcel Value will be equal in the amount to the sum of money deposited by the Agency with the Clerk of the Court together with the Statement of Compensation relating to such Condemned Parcel (the **"Deposited Funds"**), still may be subject to appeal, and an award in excess of the amount of the Agency's Parcel Value and the Deposited Funds (an **"Excess Award"**) may be made in such proceeding, or the Agency (with the approval of the Redeveloper) may agree to pay an amount in excess of such Deposited Funds (a **"Settlement Amount"**) to settle such proceeding (it being agreed that the Agency and City may not make any settlement of any eminent domain proceeding or appeal without the prior written consent of Redeveloper), which, in either case, may require the Agency to pay to the owner of such Condemned Parcel (the **"Parcel Owner"**) additional sums in excess of the Deposited Funds. Any such Excess Award or Settlement Amount shall constitute Acquisition Expenses under this Agreement and the Redeveloper will be required to pay the amount thereof to the Agency, in accordance with this Agreement, to enable the Agency to pay such Excess Award or Settlement Amount to the Clerk of the Court or the Parcel Owner. The amount of the Deposited Funds with respect to any Condemned

Parcel shall not be the limit of Redeveloper's obligation and liability with respect to Acquisition Expenses incurred by the City and/or the Agency with respect to such Condemned Parcel, and the Redeveloper hereby agrees to indemnify, defend and hold harmless the City and the Agency against and from any and all claims, suits, costs, expenses, losses, liabilities, and damages, including reasonable attorney's fees, asserted against and/or incurred by either of them arising out of an Excess Award or Settlement Amount. This indemnity shall survive termination of this Agreement and shall be separate and independent of any other provision of this Agreement, but shall apply only with respect to Condemned Parcels actually conveyed to the Redeveloper by the City and the Agency. In order to provide collateral security for the Redeveloper's indemnification obligation herein in this Section 9.5 contained, the Redeveloper shall provide to the City and the Agency, at the time the Redeveloper is required to advance to or pay on behalf of the Agency pursuant to Section 6.3 hereof, all amounts necessary to acquire a parcel of Acquisition Property, one (1) of the following forms of security: (i) cash in an amount equal to twenty-five (25%) percent of the Agency's Parcel Value for such parcel, (ii) a Letter of Credit in favor of the City and the Agency from an Institutional Lender reasonably acceptable to the City and the Agency in an amount equal to twenty-five (25%) percent of the Agency's Parcel Value for such parcel, or (iii) such other security as the Agency and the City reasonably deem acceptable. For each Condemned Parcel with respect to which the Parcel Owner accepts the Agency's Parcel Value stated in, and accepts the Deposited Funds deposited with, the Statement of Compensation, the security will be discharged and released by the City and the Agency after the Parcel Owner's acceptance of the Deposited Funds is filed with the Clerk of the Court. For each Condemned Parcel with respect to which the Parcel Owner does not file a timely proceeding or appeal, the security for that parcel will be discharged and released by the City and the Agency when the time for appeal expires. In either of such cases, the City and the Agency will release such security, promptly after Redeveloper makes a written request therefore. With respect to any Condemned Parcel where the Parcel Owner does not accept the Agency's Parcel Value and files a timely proceeding or appeal, the security will continue to be held until such time as either the Parcel Owner agrees to a settlement or the court makes a final award and, in either case, the Redeveloper pays the amount, if any, by which the Settlement Amount or the Excess Award exceeds the amount of the Deposited Funds deposited with the Statement of Compensation. If the value of a Condemned Parcel alleged by the Parcel Owner in the eminent domain proceeding (the "Parcel Owner's Value") is an amount which is less than one hundred and twenty-five (125%) percent of the amount of the Agency's Parcel Value for such Condemned Parcel, the amount of the security with respect to such Condemned Parcel will be reduced to the actual difference between the Agency's Parcel Value and Parcel Owner's Value

Section 9.6 Abandonment of Isaacs Street. The City and the Agency acknowledge that in order for the Redeveloper to complete the Phase III Improvements as contemplated by the Conceptual Master Site Plan, it will be necessary for the City to discontinue or abandon and demap that portion of Isaacs Street depicted on the survey attached hereto as **Exhibit H** and made a part hereof, in accordance with the provisions of Section 7.5 hereof. At such time as the Redeveloper has waived or relinquished, in writing, to the Agency and the City, all of its rights to terminate this Agreement, received

all necessary land use approvals to enable Redeveloper to construct the Phase I Improvements, and Redeveloper or its Affiliate owns eighty (80%) percent or more of the frontage on the cross-hatched portion of Isaacs Street depicted on attached **Exhibit H**, the Redeveloper may request that the City discontinue or abandon and demap that portion of Isaacs Street depicted on attached **Exhibit H.** The Agency agrees to support the Redeveloper's request that the City discontinue or abandon and demap the aforementioned portion of Isaacs Street. In addition, if the Redeveloper comes into possession and/or control of any portion of Isaacs Street prior to the Redeveloper or its Affiliate becoming the owner of all of the properties abutting the aforementioned cross-hatched area, then such other abutting property owners shall be entitled to such reasonable access to such properties as may be required by Legal Requirements. In the event the City approves the Redeveloper's request to discontinue or abandon and demap the aforementioned portion of Isaacs Street, then the City may retain or aquire such easements thereon as it deems reasonably necessary.

ARTICLE X
LICENSE AGREEMENTS FOR ACCESS TO ALL CITY OWNED PROPERTY AND OTHER PROPERTY IN THE PROJECT AREA

Section 10.1 Upon execution of this Agreement, the City and the Redeveloper shall enter into a license agreement according to the City's customary form, a copy of which is attached hereto as **Exhibit I** and made a part hereof, affording the Redeveloper reasonable access to all City owned property for all reasonable purposes relevant to this Agreement.

Section 10.2 To the extent permitted by law, the City and the Agency will grant to the Redeveloper and the Redeveloper's agents and consultants a license to enter upon other property in the Project Area that is not owned by the City for all reasonable purposes relevant to this Agreement commencing at such time as the City and/or the Agency are permitted by applicable law to enter upon any such parcel and terminating upon the earlier of completion of the work for which the license was granted or termination of the Redeveloper's rights under this Agreement.

ARTICLE XI
EASEMENTS

Section 11.1 In the deed or deeds conveying Property to the Redeveloper, the City and the Agency may reserve an easement in favor of the City and in favor of all public utility companies and any other provider of similar services to the public to which the City and the Agency may grant such easement, to install or construct and maintain, repair and replace pipes, wires, conduits or other underground transmission facilities and other public service utilities and equipment, and requisite appurtenances thereto, as needed in the Project Site, including the right at any reasonable time to go upon and excavate the Project Site on foot or in vehicles and with appropriate equipment for the purpose of exercising said easement, provided any Person exercising such easement upon completion of work shall restore the surface of the Project Site to the condition it was in prior to the exercise of the easement. Such easements shall be in such locations as are approved by the Redeveloper, which approval will not be unreasonably withheld so long as the location thereof will not interfere with or impede the development of the Project in accordance with Redeveloper's Conceptual Master Site Plan and/or Construction Plans as approved by the Agency.

Section 11.2 In the event easements similar to that described in Section 11.1 are needed with respect to any portion of the Project Site which is Redeveloper Property, and subject to the approval of same by the Redeveloper as provided in said Section 11.1, the Redeveloper shall convey such similar easements in form approved by the Agency and to such persons as the City and Agency may direct.

ARTICLE XII
ADULT USES PROHIBITED

Section 12.1 The Redeveloper, its successors and assigns, shall not use the Property or any portion thereof for "Adult Uses" as that term is defined in the Adult-Use Ordinance of the City of Norwalk, as the same may be amended from time to time, nor shall the Redeveloper, its successors and assigns, permit any tenant or any other Person or entity occupying the Property to use the Property for any such "Adult Uses", subject, however, to the rights of tenants under leases existing on the Execution Date.

Section 12.2 The provisions of this Article XII shall be a covenant running with the land and shall be binding upon the Redeveloper, and Affiliates of the Redeveloper, tenants, and anyone holding any interest in or rights to any part of the Property and their successors and assigns. This prohibition shall be included in any lease, deed or other instrument transferring any interest in any Property on the Project Site or any portion thereof. This prohibition shall also be included in the Isaacs Street Municipal Parking Lot Deed, the Leonard Street Municipal Parking Lot Deed and in the Acquisition Property Deeds.

ARTICLE XIII
ASSIGNMENT AND TRANSFER

Section 13.1 Representations as to Redevelopment.

The Redeveloper represents to the Agency and the City and agrees that the Acquisition Property to be purchased by the Redeveloper and the Redeveloper's other undertakings pursuant to this Agreement are, and will be used, for the purpose of the redevelopment of the Property and not for speculation in land holding. The Redeveloper further recognizes that, in view of:

(i) the importance of the redevelopment of the Project Site to the general welfare of the Norwalk community; and

(ii) the substantial efforts being made by the City and Agency for the purposes of making such redevelopment possible, including the exercise of the power of eminent domain, the transfer of City-owned assets and the appropriation of certain public funds,

the qualifications and identity of the Redeveloper are of particular concern to the City and the Agency. The Redeveloper further recognizes that it is in reliance on such qualifications and identity that the City and Agency are entering into this Agreement with the Redeveloper and, in so doing, are further willing to accept and rely on the obligations of the Redeveloper for the faithful performance of all undertakings and covenants hereby by it to be performed. The Redeveloper has provided, to the Agency's consultant, UHY Advisors, such information, in such form, as the consultant reasonably requested, in order to enable the consultant to determine that the Redeveloper has the financial ability to complete the Project as contemplated by this Agreement, including without limitation, the names of members of the Redeveloper owning not less than seventy (70%) percent of the equity interest in the Redeveloper and its Affiliates. The Redeveloper agrees to update such information periodically and provide same exclusively to the Agency's consultant, if requested by the Agency. The consultant shall not disclose the identity of the members but shall have the right to disclose to the Agency if any or all of such members' equity interest in the Redeveloper or its Affiliates has been transferred. Any disclosure of investors or financial information shall be made pursuant to a reasonably acceptable confidentiality agreement.

Section 13.2 Transfer of Property and Assignment of Agreement.

A. For the reasons set forth in Section 13.1, the Redeveloper represents and agrees for itself, and its successors and assigns, that, prior to the completion of the Improvements, the Redeveloper (except as permitted pursuant to the terms of this Agreement) has not made or created, and that, without the prior written consent of the Agency (except as permitted by this Agreement) it will not, prior to the completion of the Improvements, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease or sublease, or any trust or power, or total or partial transfer in any other mode or form of or with respect to this Agreement or the Project Site, or any part thereof or any interest therein, or any contract or agreement to do any of the same.

B. Notwithstanding the foregoing provisions, it is specifically agreed by the Agency, the City and the Redeveloper that the following specified transfers, assignments, conveyances and/or encumbrances (**"Permitted Transfers"**) shall be deemed not to be "transfers of real property by Redeveloper" requiring consent of the Agency (as set forth in Section 8-137(c) of the Statutes) and will be permitted without requiring the consent of the Agency (but the Agency shall receive notice of same) provided that they do not result in Kenneth Olson ceasing to have operational control of the management of the business affairs of Redeveloper and its Affiliates or Kenneth Olson and the members of the Redeveloper previously disclosed to the Agency's consultant, ceasing to own a seventy (70%) percent or greater equity interest in the Redeveloper and its Affiliates:

(i) transfers, by any Person who or which is a partner, member, shareholder or other beneficial owner of an interest either in Redeveloper or in any Person owning an interest in Redeveloper, of all or any portion of its ownership interest in Redeveloper or in such Person owning an interest in Redeveloper (a "**Transferor**") to any of (a) any other Person who or which is or may become a partner, member, shareholder or other beneficial owner of an interest in Redeveloper, or (b) any other Person who or which is a partner, member, shareholder or other beneficial owner of an interest in any Person, including the Transferor, owning an interest in Redeveloper, or (c) any family member of any such Person who or which is or may become a partner, member, shareholder or other beneficial owner described in the preceding clauses (a) or (b), any trust for the benefit of any such family member or any Person in which any such family member is a partner, member, shareholder or other beneficial owner, or (d) any Person who or which is a partner, member, shareholder or other beneficial owner of the Transferor and/or any family member of any such Person who or which is a partner, member, shareholder or other beneficial owner of the Transferor, or any trust for the benefit of any such family member or any Person in which any such family member is a partner, member, shareholder or other beneficial owner; or

(ii) transfers with respect to the Redeveloper's rights in this Agreement or of all or any portion of the Project Site (a) to any Affiliate of the Redeveloper, or (b) to any other Person in order to facilitate a lease, sale-leaseback, joint venture or similar transaction with a principal lessee, occupant or beneficial user of the Project Site, or (c) if Redeveloper or any Affiliate or permitted successor is a public company the stock of which is traded on a nationally recognized exchange, by virtue of any merger, recapitalization, reorganization, sale of assets or similar corporate transaction to which the Redeveloper or any of its Affiliates are a party, the purpose of which is to effectuate a *bona fide* business purpose, or (d) to a real estate syndicate, common interest ownership association or other form of ownership structure or regime for purposes, *inter alia*, of financing and/or development of various portions of the Project Site without necessity of subdividing the Project Property, or

(iii) transfers or encumbrances by way of security (subject to the applicable provisions of Article VI of Part II hereof) for (a) the purpose of obtaining financing or refinancing necessary and/or appropriate to enable the Redeveloper or any successor in interest to the Project Site, or any part thereof, to perform its obligations with respect to purchasing the Project Site and/or constructing and operating the Improvements under this Agreement, and (b) any other purposes authorized by this Agreement; or

(iv) ground leases or master leases of all or any portions of the Project, to facilitate financing and/or phasing of the development of the Project without need for subdivision of the Project Property; or

(v) mortgages, pledges or other security instruments encumbering the Project and/or Redeveloper's interest therein and/or interests in Redeveloper in order to secure financing for the costs of acquisition, construction and development of the Project and for permanent financing thereof (subject to the applicable provisions of Article VI of Part II hereof).

C. In addition to the Permitted Transfers described in Section 13.2(B), it is agreed by the Agency, the City and the Redeveloper that:

(i) transfers not hereinabove specifically permitted of ownership interests in the Redeveloper and/or its Affiliates (and/or in Persons owning interests either (i) in Redeveloper and/or its Affiliates, and/or (ii) in the Persons comprising Redeveloper), shall be permitted subject to the consent of Agency, which consent will not be unreasonably withheld, delayed or conditioned, provided that Kenneth Olson and the members of the Redeveloper previously disclosed to the Agency's consultant, continue to own a seventy (70%) percent or greater equity interest in the Redeveloper and its Affiliates and Kenneth Olson shall continue to have control of the day-to-day management of the affairs of Redeveloper and/or its Affiliates or such other Persons comprising Redeveloper, or

(ii) prior to the issuance by the Agency of the Certificate of Completion provided for in Section 3.13 hereof as to the Improvements, the Redeveloper may enter into any agreement to sell, lease or otherwise transfer the Project Site or any part thereof or interest therein, to take place after the issuance of such Certificate of Completion, which agreement shall provide for no payment in excess of the costs theretofore incurred by Redeveloper in connection with the acquisition and development of the Project and the construction of the Improvements to be made to the Redeveloper on account of the purchase price for the Project Site, or the portion thereof (or interest in Redeveloper proposed to be transferred) prior to the issuance of such Certificate of Completion for the Improvements.

D. The prior written consent of the Agency will be required with respect to any transfer which is not a Permitted Transfer pursuant to Section 13.2(B), or otherwise permitted under Section 13.2(C). The granting or withholding of such consent shall be within the Agency's sole discretion, except that the Agency may not act arbitrarily, capriciously, in a discriminatory manner, or otherwise in contravention of law. In any event, the Agency shall not consent to a proposed transferee unless such proposed transferee (or the Person(s) having control thereof): (i) has sufficient experience, qualifications, reputation and financial responsibility, in the reasonable opinion of the Agency (in consultation with Agency's third party consultant), to perform the obligations required to be performed hereunder with respect to the Project, or with respect to the portion or Phase of the Project being acquired or in which the proposed transferee is acquiring an interest; (ii) shall be of good character and reputation, shall not have been convicted of a felony, and shall not be disqualified from engaging in contractual relationships with the Agency and/or the City by reason of any applicable Legal Requirements; and (iii) such proposed transferee, by instrument in writing reasonably satisfactory to the Agency and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Agency and City, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject (or, in the even the transfer is of or relates to part of the Project Site, such obligations, conditions, and restrictions to the extent that they relate to such part), provided that the fact that any transferee of, or any other successor in interest whatsoever to, the Project Site, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Agency) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the Agency of or with respect to any rights or remedies or controls with respect to the Project Site or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Project Site or any part hereof, or any interest therein, however, consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Agency of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Project Site and the construction of the Improvements that the Agency and the City would have had, had there been no such transfer or change. In connection with any transfers hereunder, the Redeveloper shall submit to the Agency for review such information and documentation that the Agency reasonably determines to be necessary to enable the Agency to determine whether such transfer complies with this Section 13.2(D).

E. Notwithstanding the foregoing, the Redeveloper may lease all or portions of the Improvements for occupancy and may receive rent in the ordinary course of business.

F. After completion of the Improvements, as evidenced by the issuance of a Certificate of Completion therefor, the consent of or disclosure to the Agency will not be required with respect to any assignment or transfer of any part of the Project constituting the completed Improvements.

G. Notwithstanding anything to the contrary in this Agreement, the parties acknowledge that Redeveloper expects to finance the Project through the use of low income housing tax credits and any transfer of an interest in the Project Site or Redeveloper necessary to accomplish such financing shall be deemed a Permitted Transfer, provided the Redeveloper delivers reasonable prior notice to the City and Agency of such financing.

Section 13.3 Information as to Ownership and Control.

The Redeveloper agrees that during the period between execution of this Agreement and completion of the Improvements as certified by the Agency in the manner provided in Section 3.13, the Redeveloper will promptly notify the Agency of any and all changes whatsoever or of any other act or transaction involving or resulting in any change, in the ownership or control of the Project Site and/or Redeveloper

ARTICLE XIV
PERIOD OF DURATION OF COVENANT ON USE

The covenant pertaining to the uses of the Project Property, set forth in Section 401 of Part II hereof, shall remain in effect from the Execution Date until July 13, 2024, unless extended by the Common Council. This covenant shall be a covenant running with the land and shall be binding upon the Redeveloper and Affiliates of the Redeveloper, and their successors and assigns. This covenant shall be included in any deed, lease or other instrument transferring any interests in the Project Property.

ARTICLE XV
NOTICES AND DEMANDS

A notice, demand, or other communications under this Agreement by any party shall be sent in writing to all the other parties, as follows:

A. In the case of the Redeveloper, c/o POKO Partners, LLC, 225 Westchester Avenue, Port Chester, New York 10573, Attention: Kenneth Olson, with a copy to Robinson & Cole, LLP, 695 East Main Street, Stamford, Connecticut 06904-2305, Attention: Steven L. Elbaum; or at such other address or to such other attorney with respect to such party as that party may, from time to time, designate in writing and forward to the other parties as provided in this Section.

B. In the case of the City, addressed to the Mayor at 125 East Avenue, P.O. Box 5125, Norwalk, Connecticut, 06856-5125, Attention: Mayor Richard A. Moccia, with a copy to Corporation Counsel at 125 East Avenue, P.O. Box 798, Norwalk, Connecticut 06856-0798, or at such other address with respect to such party as that party may, from time to time, designate in writing and forward to the other parties as provided in this Section.

C. In the case of the Agency, it is addressed to such party at 125 East Avenue, P.O. Box 5125, Norwalk, Connecticut 06856-5125, Attention: Executive Director, with a copy to DePanfilis & Vallerie, 25 Belden Avenue, Norwalk, Connecticut 06850, Attention: David W. Stergas.

D. In the case of any successor, assignee, transferee, or mortgagee of the Redeveloper and to any other party designated by the Redeveloper, addressed to such party at the last known address furnished in writing to the Agency and the City.

Notices shall be hand delivered, sent by reputable guaranteed overnight courier service with computerized tracking capabilities, or by time stamped facsimile transmission, followed the next Business Day by delivery from a reputable guaranteed overnight courier service with computerized tracking capabilities. Notices shall be deemed received upon receipt in the case of hand delivery and facsimile transmission (but only if confirmed by delivery the next Business Day from a reputable guaranteed overnight courier service with computerized tracking capabilities), and the next Business Day if sent by a reputable guaranteed overnight courier.

ARTICLE XVI
CITY AND AGENCY STATEMENTS AND NOTICES

Upon the Redeveloper's request from time to time, the Agency and the City shall provide statements addressed to actual or prospective lenders, tenants and purchasers, (a) stating whether this Agreement is in full force and effect, specifying the date of this Agreement and specifying the dates of any amendments to this Agreement; (b) describing with reasonable particularity any uncured defaults in the Redeveloper's obligations hereunder; and (c) providing such other statements regarding the status of this Agreement and performance hereunder (including without limitation statements about the status of specified conditions or obligations) as the Redeveloper may reasonably request.

ARTICLE XVII
INSURANCE

Section 17.1 As used in this Article XVII, the term **"Redeveloper"** shall also include its respective agents, representatives, employees or subcontractors; and the term **"City"** shall include its officers, agents, officials, employees, volunteers, boards and commissions.

Section 17.2 <u>Minimum Scope and Limits of Insurance</u>:

Worker's Compensation Insurance: With respect to all operations the Redeveloper performs the Redeveloper shall carry worker's compensation insurance in accordance with the requirements of the laws of the State of Connecticut. The Redeveloper shall carry employers liability limits of $100,000 each accident and $100,000 each employee by disease and $500,000 policy limit disease.

Commercial General Liability: With respect to all operations the Redeveloper performs the Redeveloper shall carry Commercial General Liability insurance providing for a total limit of one million dollars ($1,000,000) per occurrence for each job site or location for all damages arising out of bodily injury, personal injury, property damage, products/completed operations, and contractual liability coverage for the indemnification provided under this contract. Each annual aggregate limit shall not be less than $2,000,000.

Automobile Liability: With respect to any owned, non-owned, or hired vehicles the Redeveloper shall carry Automobile Liability insurance providing one million dollars ($1,000,000) per accident for bodily injury and property damage.

Acceptability of Insurers: The Redeveloper's policies shall be written by insurance companies licensed to do business in the State of Connecticut, with an AM Best rating of A-VII, or otherwise acceptable by the City's Risk Manager.

Subcontractors: The Redeveloper shall require subcontractors to provide the same "minimum scope and limits of insurance" as required herein. All Certificates of Insurance shall be provided to Corporation Counsel's office as required herein.

Aggregate Limits: Any aggregate limits must be declared to and approved by the City. It is agreed that the Redeveloper shall notify the City when fifty percent (50%) of the aggregate limits are eroded during the contract term. If the aggregate limit is eroded for the full limit, the Redeveloper agrees to reinstate or purchase additional limits to meet the minimum limit requirements stated herein. The premium shall be paid by the Redeveloper.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retentions must be declared to and approved by the City. All deductibles or self-insured retentions are the sole responsibility of the Redeveloper to pay and/or to indemnify.

Notice of Cancellation or Nonrenewal: Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to the City.

Waiver of Governmental Immunity: Unless requested otherwise by the City, the Redeveloper and its insurer shall waive governmental immunity as a defense and shall not use the defense of governmental immunity in the adjustment of claims or in the defense of any suit brought against the City.

Additional Insured: The liability insurance coverage, except Workers Compensation, required for the performance of the Contract shall include the City as Additional Insured but only with respect to the Redeveloper's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Certificate of Insurance: As evidence of the insurance coverage required by this Agreement, the Redeveloper shall furnish certificate(s) of insurance to Corporation Counsel's Office prior to the award of the contract if required by the bid document, but in all events prior to Redeveloper's commencement of work under this Agreement. The Certificate(s) will specify all parties who are endorsed on the policy as Additional Insureds (or Loss Payees). The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf.

Renewals of expiring certificates shall be filed thirty (30) days prior to expiration. The City reserves the right to require complete, certified copies of all required policies at any time.

All insurance documents required should be mailed to The City of Norwalk, Corporation Counsel, 125 East Avenue, Norwalk, Connecticut 06851-5125.

Waiver of Requirements: The Corporation Counsel, may vary the requirements at Corporation Counsel's sole discretion; if Corporation Counsel determines that the City's interests will be adequately protected without meeting all stated requirements.

Section 17.3 In the event the Redeveloper at any time refuses, neglects, or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the City, at its option, after five (5) Business Days notice to the Redeveloper and if Redeveloper does not procure same or provide evidence of same within said period, may procure or renew such insurance; and all amounts of money paid therefor by the City shall be payable by the Redeveloper to the City within ten (10) Business Days after written notice, with interest thereon at the rate of ten percent (10%) per annum from the date the same were paid by the City to the date of payment thereof by the Redeveloper. The City shall notify the Redeveloper in writing of the date, purposes, and amounts of any such payments made by it.

ARTICLE XVIII
MEDIATION/ARBITRATION

Section 18.1 Mediation. The parties hereto shall reasonably attempt to resolve any dispute arising between the parties hereto concerning any matter of performance under, or interpretation or breach of, this Agreement, by mediation in Norwalk, Connecticut in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect or as otherwise agreed by the parties hereto. Request for mediation by a party shall be filed in writing with the other party and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration, but in such event, the mediation shall proceed in advance of such arbitration, which shall be stayed pending mediation for a period of fourteen (14) days from the date of filing, unless otherwise agreed to by the parties or for such longer period provided by court order. The parties shall each pay one-half of the mediator's fee and filing fees. The mediator with respect to any construction or design matter shall have at least ten years' experience in the construction industry and at least six years' experience as a mediator in cases involving complex construction. Both parties shall each have a representative present at the mediation who has authority to bind it to a written settlement agreement subject to the requirements and limitations of the charter and ordinances of the City. Positions and statements made by any party during mediation may not be used against it in later proceedings if the parties fail to reach a settlement agreement during mediation. Agreements reached in any mediation proceeding shall be enforceable as settlement agreements in any court having jurisdiction thereof. In no event shall any mediator be permitted to serve as an arbitrator for that or any other dispute that is not resolved pursuant to mediation, unless agreed to by both parties.

Section 18.2 Arbitration. In the event the parties do not agree to or cannot resolve such dispute through mediation as provided in Section 18.1, such dispute shall be settled by arbitration in Norwalk, Connecticut, which arbitration, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect (including the applicable procedures referenced below). Either party may serve upon the other party a written notice demanding that the dispute be resolved pursuant to this Article XVIII. Within ten (10) days after the giving of the above mentioned notice, each of the parties hereto shall nominate and appoint an arbitrator and shall notify the other party in writing of the name and address of the arbitrator so chosen. Upon the appointment of the two arbitrators as hereinabove provided, said two arbitrators shall forthwith, and within ten (10) days after the appointment of the second arbitrator, and before exchanging views as to the question at issue appoint in writing a third arbitrator and give written notice of such appointment to each of the parties hereto. In the event that the two arbitrators shall fail to appoint or agree upon such third arbitrator within said ten (10) day period, a third arbitrator shall be selected by the parties themselves if they so agree upon a third arbitrator within a further period of ten (10) days. If any arbitrator shall not be appointed or agreed upon within the time herein provided, then either party on behalf of both may request such appointment by the American Arbitration Association (or a successor or similar organization if the American Arbitration Association is no longer in existence). Said arbitrators shall be sworn faithfully and fairly to determine the question at issue. The three arbitrators shall each be duly qualified in the subject matter of the dispute under arbitration and shall afford to the parties the privilege of cross-examination, on the question at issue, and shall, with all possible speed (and, if no time period is specified in the applicable procedures referenced below, within 60 days after appointment of the third arbitrator unless otherwise agreed to by the parties) , make their determination in writing and shall give notice to the parties hereto of such determination. The concurring determination of any two of said three arbitrators shall be binding upon the parties hereto, or, in case no two of the arbitrators shall render a concurring determination, then the determination of the third arbitrator appointed shall be binding upon the parties hereto. Each party shall pay the fees of the arbitrator appointed by it, and the fees of the third arbitrator shall be divided equally between the parties. In the event that any arbitrator appointed as aforesaid shall thereafter die or become unable or unwilling to act, his or her successor shall be appointed in the same manner provided in this Article XVIII for the appointment of the arbitrator so dying or becoming unable or unwilling to act. Any Mortgagee may appear and participate in said arbitration proceedings. The foregoing agreement to arbitrate shall be specifically enforceable under applicable law in any court of competent jurisdiction. Each of the parties waive all objections to joinder of the other party as a party to any mediation, arbitration or litigation related to this Project in which the other party is joined or is otherwise positioned as a party and in which its conduct or its performance under this Agreement is in any way relevant to the subject of a dispute. Each party shall obtain a similar waiver from all their respective design professionals, contractors, construction managers and subcontractors that work on the Project. Notwithstanding anything to the contrary contained in the Construction Industry

Arbitration Rules of the American Arbitration Association, the (a) Fast Track procedures shall apply in any case in which no party's total disclosed claim or counterclaim exceeds $250,000, (b) the Regular Track procedures shall apply in any case in which any party's total disclosed claim or counterclaim exceeds $250,000, and (c) the Large, Complex Construction Case Track procedures shall apply in any case in which any party's total disclosed claim or counterclaim exceeds $1,000,000.

ARTICLE XIX
DEFAULTS AND REMEDIES; TERMINATION

Section 19.1 Event of Default.

For purposes of this Agreement, an **"Event of Default"** shall mean a "Redeveloper Default" or "City Default" (as those terms are hereinafter defined) as the context may require.

Section 19.2. City and Agency .

For purposes of this Article and Article XVIII hereof, (i) the City shall not be deemed to be aggrieved by any default of the Agency and may not exercise any remedies against the Agency by reason of a default by the Agency; and (ii) the Agency shall not be deemed to be aggrieved by any default of the City and may not exercise any remedies against the City by reason of a default by the City.

Section 19.3 Default by Redeveloper. The occurrence of any one or more of the following, beyond any applicable notice and cure period, shall constitute a "**Redeveloper Default**" as that term is used in this Agreement:

A. Any transfer by the Redeveloper in violation of Section 13.2;

B. If any warranty or representation of the Redeveloper contained in this Agreement is materially untrue as of the date made;

C. The Redeveloper shall cease doing business as a going concern, make an assignment for the benefit of its creditors, admit in writing its inability to pay its debts as they become due, file a petition commencing a voluntary case under any chapter of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), file a petition seeking for itself any reorganization, composition, readjustment, liquidation, dissolution or similar arrangement under the Bankruptcy Code or any other present or future law or regulation; or files an answer admitting the material allegations of a petition filed against it in any such proceeding, consents to the filing of such a petition or acquiesces in the appointment of a trustee, receiver, custodian or other similar official for the Redeveloper or of all or substantially all of the Developer's assets or properties, or institutes any proceeding for the dissolution or liquidation of the Developer; a case, proceeding or other action shall be instituted against the Developer, seeking the entry of an order for relief against the Developer, to adjudicate the Developer as a bankrupt or insolvent, or seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief against the Developer under the Bankruptcy Code or other present or future rule or regulation, which case, proceeding or other action either results in the entry or issuance of any other order or judgment having a similar effect or remains undismissed for sixty (60) days, or within sixty (60) days after the appointment, without the Developer's consent or acquiescence, of any trustee, receiver, custodian or other similar official for Developer or for all or any substantial part of the Developer's assets and properties, such appointment shall not be vacated; or

D. The failure, on or before the applicable deadline therefor set forth in this Agreement with respect thereto, to commence or complete (as evidenced by a Certificate of Completion) any Improvement required to be completed by the Redeveloper under the terms of this Agreement, and the failure to cure such default within thirty (30) Business Days after notice thereof by the City or Agency to the Redeveloper, and each Mortgagee (in accordance with Section 603 of Part II hereof), provided that if such default cannot reasonably be cured within such thirty (30) Business Day time period, then the Redeveloper shall have such additional time as may be reasonably necessary to cure such failure and no Redeveloper Default shall be deemed to exist hereunder so long as the Redeveloper commences such cure within the initial thirty (30) Business Day period and diligently and in good faith pursues such cure to completion within ninety (90) Business Days after expiration of such thirty (30) Business Day period.

E. The default by the Redeveloper of any other material provision of this Agreement and the failure by the Redeveloper to cure such default within thirty (30) Business Days after notice thereof by the City or Agency to the Redeveloper, provided that if such default cannot reasonably be cured within such thirty (30) Business Day time period, then the Redeveloper shall have an additional sixty (60) Business Day period to cure such failure and no Redeveloper Default shall be deemed to exist hereunder so long as the Redeveloper commences such cure within the initial thirty (30) Business Day period and diligently and in good faith pursues such cure to completion within sixty (60) Business Days after expiration of such thirty (30) Business Day period.

Section 19.4 Remedies for Redeveloper Default. Subject to the terms and conditions of Section 604 of Part II hereof, during the existence of any Redeveloper Default, the City and/or Agency may pursue any of the following remedies:

A. With respect to any Redeveloper Default described in Section 19.3(B), the City and/or the Agency shall be entitled to recover from the Redeveloper any and all actual damages, including reasonable attorney's fees incurred by the City and Agency, arising out of or resulting from such default.

B. With respect to a Redeveloper Default described in Section 19.3(A), (C), (D), and (E), the City and/or Agency may pursue any one or more of the following remedies, it being the intent hereof that none of such remedies shall be to the exclusion of any other; provided, however, that any such right shall not apply to individual parts or parcels of the Project Property or any other Project Property (or, in the insolvency statute (the Bankruptcy Code); or the Agency commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Agency; or there is commenced against the Agency any such proceeding which remains undismissed or unstayed for a period of ninety (90) days; or the Agency fails to controvert in a timely manner any such case any such proceeding, or any order approving any such proceeding is entered; or the Agency by any act or failure to act indicates its consent to, approval of, or acquiescence in any proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of ninety (90) days.

Section 19.8 Remedies for Agency Default. Upon the occurrence of any Agency Default, the Redeveloper may pursue the following remedies:

A. With respect to a Agency Default described in Section 19.7(A), the Redeveloper shall be entitled to recover from the Agency any and all actual damages, including reasonable attorneys' fees incurred by the Redeveloper, arising out of or resulting from the breach of such representation or warranty.

B. With respect to a Agency Default described in Section 19.7(B) or (C), the Redeveloper may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

(iv) Pursue an action for specific performance of the Agency's obligations under this Agreement;

(v) Pursue an action for any and all actual damages incurred by or asserted against the Developer as a result of the Agency Default; and

(vi) Exercise or pursue any other remedy or cause of action permitted under this Agreement or conferred upon the Redeveloper at law or in equity.

Section 19.9 Time is of the Essence.

The parties hereto recognize that time is of the essence with respect to the dates in this Agreement.

Section 19.10 Revesting Title in Agency Upon Happening of Event Subsequent to Conveyance to Redeveloper.

A. In the event that subsequent to conveyance of the Isaacs Street Municipal Parking Lot and/or the Leonard Street Municipal Parking Lot or any part thereof from the Agency to the Redeveloper and prior to completion of the Improvements on such parcel(s) as certified by the Agency, the Redeveloper (or successor in interest) shall cause or permit an Event of Default to occur, then the Agency shall have the right to re-enter and take possession of the Isaacs Street Municipal Parking Lot and/or the

Leonard Street Municipal Parking Lot and to terminate (and revest in the Agency) the estate conveyed to the Redeveloper, it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of the Property to the Redeveloper shall be made upon, and that the Isaacs Street Municipal Parking Lot Deed and the Leonard Street Municipal Parking Lot Deed shall contain, a condition subsequent to the effect that upon an Event of Default by the Redeveloper under this Agreement, the Agency at its option may declare a termination in favor of the Agency of the title, and of all the rights and interests in and to the Property conveyed by the Isaacs Street Municipal Parking Lot Deed and the Leonard Street Municipal Parking Lot Deed to the Redeveloper, and that such title and all rights and interests of the Redeveloper, and any assigns or successors in interest to and in the Isaacs Street Municipal Parking Lot and Leonard Street Municipal Parking Lot, shall revert to the Agency: Provided, that such condition subsequent and any revesting of title as a result thereof in the Agency:

(i) Shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by the Agreement, and (ii) any rights or interests provided in the Agreement for the protection of the holders of such mortgages; and

(ii) Shall not apply to individual parts or parcels of the Property (or, in the case of parts or parcels leased, the leasehold interest) on which the Improvements to be constructed thereon have been completed in accordance with the Agreement and for which a Certificate of Completion is issued therefore as provided in Section 3.13 hereof.

In addition to, and without in any way limiting the Agency's right to reentry as provided for in the preceding sentence, the Agency shall have the right to retain the Security Deposit without any deduction, offset or recoupment whatsoever, in the event of a default, violation or failure of the Redeveloper as specified in the preceding sentence.

B. Upon the revesting in the Agency of title to the Property or any part thereof as provided in Section 19.10(A) hereof, the Agency shall, pursuant to its responsibilities under State law, use its best efforts to resell the Property or part thereof (subject to such mortgage liens and leasehold interests as in Section 19.10(A) set forth and provided) as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Property or part thereof in the Redevelopment Plan. Upon such resale of the Property, the proceeds thereof, after first satisfying any encumbrances on the Property which constitute permitted encumbrances in accordance with Section 601 of Part II hereof, shall be applied:

(i) First, to reimburse the Agency, on its own behalf or on behalf of the City, for all costs and expenses incurred by the Agency, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the

Property or part thereof (but less any income derived by the Agency from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment on such charges during the period of ownership thereof by the Agency, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the City assessing official) as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in the Agency or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property or part thereof; and any amounts otherwise owing the Agency by the Redeveloper and its successor or transferee; and

(ii) Second, to reimburse the Redeveloper, its successor or transferee, up to the amount equal to (1) the sum of the purchase price paid by it for the Property (or allocable, to the part thereof) and the cash actually invested by it in making any of the Improvements on the Property or part thereof, less (2) any gains or income withdrawn or made by it from the Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by the Agency as its property.

C. The Agency shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section 19.10, including also the right to execute and record or file among the Norwalk public land records, a written declaration of the termination of all the right, title, and interest of the Redeveloper, and (except for such individual parts or parcels upon which construction of that part of the Improvements required to be constructed thereon has been completed, in accordance with the Agreement, and for which a Certificate of Completion as provided in Section 3.13 hereof is to be delivered, and subject to such mortgage liens and leasehold interests as provided in Section 19.10(A) hereof) its successors in interest and assigns, in the Property, and the revesting of title thereto in the Agency: Provided, That any delay by the Agency in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 19.10 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way [it being the intent of this provision that the Agency should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise) to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved]; nor shall any waiver in fact made by the Agency with respect to any specific default by the Redeveloper under this Section be considered or treated as a waiver of the rights of the Agency with respect to any other defaults by the Redeveloper under this Section or with respect to the particular default except to the extent specifically waived in writing.

Section 19.11. Force Majeure; Delay in Performance for Causes Beyond Control of Party.

For purposes of any of the provisions of this Agreement, neither the Agency nor the City nor the Redeveloper or any successor in interest, transferee, or assignee of the Redeveloper shall be considered in breach of, or default in, any of its obligations under this Agreement in the event and to the extent of (i) unforeseeable delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence and due to the consequential effects of such causes, including but not limited to, acts of God, acts of the public enemy, acts (including failures to act and delays) of any governmental employee, agency, or body (other than, as to the Agency or City, the Agency or the City), acts (including failure to act and delays) of the other party, fires, floods, epidemics, riot or civil disorder, quarantine restrictions, strikes, or other labor disputes, embargoes, reasonable delays in the performance of construction by contractors, and/or unusually severe weather which affects the required performance hereunder; or (ii) any unanticipated environmental conditions at the Project Site; it being the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations in this Agreement shall be extended for the period of such delay provided that the party seeking the benefit of the provisions of this paragraph shall, within ten (10) days after the beginning of such delay (or within ten (10) days after it becomes aware of such delay), notify the other party thereof in writing. With respect to any delay in completion or progress of construction of the Project, the Architect shall certify in said writing as to the (a) anticipated duration of the delay, (b) the reasons for the delay, and (c) the effect of the delay on the completion of the Improvements. In the event the Agency directs that the Improvements in any Phase be modified or reconstructed for failure by the Redeveloper to conform in all material respects to the approved Construction Documents for such Phase or approved modifications thereof, such directive shall not be a ground for the extension of time limits of construction of the Project.

Section 19.12 No Fault Termination In Certain Circumstances.

In the event of the termination of this Agreement by any party pursuant to any of the no-fault termination provisions of this Agreement (e.g., Section 23.1) and provided that no Event of Default by any party has occurred and is continuing and that no party hereto is then alleged to be in breach or default hereunder, then any such termination shall be deemed to be a termination without fault of any party and, in the case of any such termination, the following provisions shall apply:

A. The Redeveloper shall reimburse the City and Agency for all of their Acquisition Expenses incurred as of the date of termination, including all Acquisition Expenses incurred prior to such termination and all Acquisition Expenses that as of the date of such termination the City or Agency is obligated to pay in the future because of (a) contracts entered into or obligations incurred in accordance with this Agreement prior to the date of termination, (b) judicial awards or decisions rendered prior or subsequent to the date of termination in eminent domain proceedings commenced prior to the date of termination in connection with the acquisition of Acquisition Property in accordance with Article VII, and

B. The Agency and City shall convey to the Redeveloper or its designee in accordance with Article IX all property acquired by the City and Agency pursuant to Article VII prior to or subsequent to the date of termination for which the Redeveloper theretofore has reimbursed or thereafter reimburses the Agency for all Acquisition Expenses.

C. The Redeveloper shall reconvey to the Agency and/or the City any portion of the Project Property owned by the City or Agency on the Execution Date which had been conveyed to the Redeveloper prior to the date of such termination, specifically including without limitation, the Municipal Parking Lot and the portion of Isaacs Street which was to be abandoned by the City in accordance with the terms of this Agreement. Such Project Property shall be conveyed to the City free and clear of all liens and encumbrances other than those to which such property was subject at the time it was conveyed or abandoned to the Redeveloper by the Agency and/or the City.

Anything herein to the contrary notwithstanding, any notice given pursuant to this Section 19.12 shall be effective only upon actual receipt by the party to whom such notice is to be given or such Person's authorized agent. Except for the obligations of the parties hereto set forth or referred to in this Section 19.12, which obligations shall survive termination of this Agreement, and except for other obligations set forth in this Agreement which by their terms survive such termination, upon a termination in accordance with this Section 19.12, this Agreement will no longer be of force or effect and the parties hereto shall have no other obligation to each other pursuant hereto.

ARTICLE XX
DISADVANTAGED BUSINESS ENTERPRISES

Section 20.1. General Purpose Statement.

The Redeveloper, Agency and City recognize that the Norwalk business community has a significant number of disadvantaged small businesses that, if permitted to participate in the construction of the Project contemplated by this Agreement, would benefit both the businesses themselves and the Norwalk community at large. Therefore, the Agency and City shall require and the Redeveloper has agreed to use good faith efforts to utilize disadvantaged small businesses, with an emphasis on those located in the Norwalk community, in the construction of the Project.

Section 20.2. Definitions.

A. "Disadvantaged Business Enterprise" **"DBE"** means a small business concern:

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock of which is owned by one or more such individuals; and

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

B. **"Good Faith Efforts"** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Refer to Appendix A of 49 Code of Federal Regulation (**"CFR"**) Part 26 – "Guidance Concerning Good Faith Efforts," a copy of which is attached hereto as **Exhibit J** and made a part hereof, for guidance as to what constitutes good faith efforts.

C. **"Small Business Concern"** means, with respect to firms seeking to participate as DBE's in the Project, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (**"SBA"**) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26, Section 26.65(b).

D. **"Socially and Economically Disadvantaged Individuals"** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1. **"Black Americans,"** which includes persons having origins in any of the Black racial groups of Africa;

2. **"Hispanic Americans,"** which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

3. **"Native Americans,"** which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4. **"Asian-Pacific Americans,"** which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5. **"Subcontinent Asian Americans,"** which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

6. Women;

7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Section 20.3 Requirements.

The Redeveloper agrees that certified DBE's will have an opportunity to compete for contract work in connection with construction of the Project, particularly by arranging solicitations and time for preparation of proposals for services to be provided so as to facilitate the participation of DBE's. The Redeveloper's goal hereunder shall be to have ten (10) percent of the total value of the cost of the Project performed by DBE's, and the Redeveloper agrees to use Good Faith Efforts to attain such goal. The Redeveloper shall cooperate with the Agency and City (acting through its Human Relations Commission) in implementing the requirements concerning DBE utilization under this Agreement, including without limitation, providing such information and/or data that the Agency and the Human Relations Commission may reasonably request in order to determine if the Redeveloper is using Good Faith Efforts to attain the stated goal of utilization of DBE's to perform ten (10) percent of the work, and failure of the Redeveloper to provide such information and/or data or to use Good Faith Efforts to attain such goal shall be a material breach of this Agreement.

ARTICLE XXI
REDEVELOPER'S AGREEMENT

The Redeveloper hereby consents to the implementation of, will not oppose, and will not be deemed to be "affected" by (within the meaning of Connecticut General Statutes Section 8-136), and will not unreasonably withhold, delay or condition its consent to, any amendments and/or modifications to the Redevelopment Plan and/or the Norwalk Zoning Regulations and/or any and all Legal Requirements as may be proposed by the "redevelopers" of other Development Parcels within the Project Area pursuant to any land disposition and/or development agreements by and among the City of Norwalk, Connecticut, the Norwalk Redevelopment Agency and such other redevelopers, with the support of the Agency, to facilitate the development of such other Development Parcels in accordance with the aforementioned Land Disposition and/or Development Agreements. Notwithstanding the foregoing paragraph, the Redeveloper shall not be required to consent to any of the aforementioned proposed amendments and/or modifications which will have a material adverse economic effect on Development Parcel 2a.

The Agency and the City agree that the same provision shall be added to all other Land Disposition Agreements and Development Agreements in the Project Area.

ARTICLE XXII
SPECIAL SERVICES DISTRICT

In recognition of the call for a Special Services District in the Redevelopment Plan, the Redeveloper recognizes the need for a Special Services District and supports in concept the implementation of a Special Services District in the Wall Street area, in Norwalk, Connecticut, and will not unreasonably withhold, delay or condition its approval to the creation of a Special Services District.

ARTICLE XXIII
REDEVELOPMENT PLAN

Section 23.1 Status of Redevelopment Plan and Agreement; Agency & City Covenants to Defend Redevelopment Plan and Agreement.

The Agency and the City represent to Redeveloper that to the best of their knowledge, the Redevelopment Plan and this Agreement have been duly and validly reviewed, approved and adopted by all requisite action on the part of the Agency and the Common Council and by any and all other Governmental Authorities having jurisdiction thereof. The only effect of a breach of this representation by either the Agency or the City shall be that the Agency and the City shall be required, at City's sole cost, to promptly take any and all actions necessary or appropriate to re-approve, re-adopt, re-authorize and/or re-execute the Redevelopment Plan and/or this Agreement, and to defend the Redevelopment Plan and/or this Agreement and the validity thereof, and the validity of any and all approvals thereof and of any and all actions taken in pursuit of the implementation of the Redevelopment Plan and/or this Agreement, against Legal Challenges of any nature by any and all Persons whatsoever, and, to the extent not prohibited by law, to allow the Redeveloper's legal counsel to have Meaningful Participation in the City's and Agency's defenses of such Legal Challenges (and the Redeveloper shall have no action for damages as a result of such a breach). The Redeveloper covenants and agrees, at its cost, to assist and to cooperate with the City and the Agency in the defense of any and all Legal Challenges to the Redevelopment Plan and/or this Agreement and/or the approvals thereof and/or the actions taken hereunder. In the event that any Legal Challenge to the Redevelopment Plan and/or this Agreement and the validity thereof, and/or the validity of any and all approvals thereof and of any and all actions taken in pursuit of the implementation of the Redevelopment Plan and/or this Agreement shall result in a final decision, by a court of competent jurisdiction, after all appeals, adversely to the interests of the City, the Agency and the Redeveloper and invalidating the Redevelopment Plan and/or this Agreement and/or any essential actions taken in pursuit of the implementation of either, and if there shall be no other legal, political or other action or proceeding available to re-approve, re-adopt, re-authorize and/or re-execute the Redevelopment Plan and/or this Agreement and/or such implementing action in a manner which will shield it from the adverse effect of such final, judicial decision, then either the Redeveloper or the City and the Agency may terminate this Agreement on a no-fault basis, per Section 19.10 hereof, by written notice to the other parties. In the event of such a no-fault termination, no party shall have any claim or right of action against any other party solely by reason of such termination but may pursue any breach by a party of any other obligations under this Agreement. Provided that no Event of Default by Redeveloper has occurred and is then continuing, and further provided that the Agency and the City have been reimbursed by the Redeveloper for all Acquisition Expenses incurred by them in accordance with this Agreement, the Agency, within three (3) Business Days after its receipt or giving of such notice of termination, shall return to the Redeveloper all sums then on deposit in the Security Account and/or in the Project Operating Account, or in any other account held by the Agency for the benefit of the Redeveloper and/or the Project (and the City agrees to cause the Agency to return said sums), and, upon such refund, this Agreement shall be null, void and of no further force or effect, except that the Redeveloper shall remain obligated to pay Acquisition Expenses theretofore incurred and that any indemnities which are so stated to survive termination hereof shall so survive. In the event that the City and/or the Agency have not then been reimbursed for all Acquisition Expenses, the Agency may hold back an amount sufficient to cover such reimbursed Acquisition Expenses and shall refund the balance to Redeveloper.

23.2 Amendment of Redevelopment Plan.

The Agency and City will prepare and submit, and pursue approval and adoption of the proposed amendments to the Redevelopment Plan attached hereto as **Exhibit K** and made a part hereof.

23.3 Zoning.

The Agency agrees to support the Redeveloper in seeking such amendments to the Zoning Regulations as may be required to complete the Project as contemplated by the Conceptual Master Site Plan. The Agency's efforts under this paragraph will be undertaken in good faith, but the parties acknowledge that the required approvals are within the discretion of the Norwalk Zoning Commission, which is not bound by the Agency's covenants herein, and the failure to obtain such approval shall not constitute a default by the Agency hereunder.

23.4 Development in Accordance with Redevelopment Plan.

Subject to the provisions of this Agreement, Redeveloper agrees to develop and use the Project in substantial conformance with the Redevelopment Plan and the Plan Requirements, as same may be modified from time to time with the approval of the Agency (and, if required by law, the City) in accordance with this Agreement.

ARTICLE XXIV
FINANCIAL COVENANTS

Section 24.1 Redeveloper Covenants. Redeveloper agrees, for itself and its Affiliates, successors and/or assigns, that it is and will be and remain an entity having as its sole purpose the acquisition, ownership, development, operation and/or disposition of the Project and the Project Property. Redeveloper further agrees that, prior to completion of the Improvements, as evidenced by a Certificate of Completion, its assets (and those of its Affiliates owning any Project Property), will be utilized only for Project purposes and will not be transferred except for fair value received. Without limiting the generality of the foregoing, prior to the completion of the Improvements, as evidenced by a Certificate of Completion, the net proceeds of any mortgage financing transaction made by Redeveloper in accordance with the provisions of this Agreement shall be utilized only for Project purposes in connection with payment of and/or reimbursement for Project Costs incurred. No transfer by Redeveloper of the Project, or any portion thereof or any interest therein, prior to the completion of the Improvements, as evidenced by a Certificate of Completion, shall be deemed to release Redeveloper from, or diminish, its obligations and financial commitments under this Agreement, unless agreed to by the Agency and the City in writing (and no such transfer shall be made except as permitted by and/or in accordance with the terms of this Agreement, including particularly Article XIII).

Section 24.2 Redeveloper Guarantee. The Redeveloper hereby guarantees to the City and the Agency the completion of the Public Parking Spaces (as evidenced by the issuance of a Certificate of Completion for the Phase III Improvements) required to be constructed by the Redeveloper as part of the Phase III Improvements within the time period provided in this Agreement. In the event said Public Parking Spaces are not completed within the time period provided for in this Agreement, then upon written demand by the City, the Redeveloper shall pay to the City, within thirty (30) days after receipt of such notice, an amount equal to twenty-two thousand ($22,000.00) dollars multiplied by the number of Public Parking Spaces in the Phase III Improvements that the Redeveloper failed to complete within the time limits set forth in this Agreement as evidenced by the issuance of a Certificate of Completion for the Phase III Improvements. This guaranty shall terminate upon the issuance of a Certificate of Completion for the Phase III Improvements. In order to secure this guaranty, the Redeveloper shall at all times maintain a net worth of at least twenty million ($20,000,000.00) dollars and liquidity equal to or greater than three million ($3,000,000.00) dollars. The Redeveloper may assign its obligations under this Section 24.2 to an entity owned or controlled by the Redeveloper, provided (i) the assignee has an aggregate net worth of at least twenty million ($20,000,000.00) dollars and liquidity equal to or greater than three million ($3,000,000.00) dollars, as evidenced by review quality statements of the assignee, (ii) the assignee assumes in writing any and all obligations of the Redeveloper hereunder, (iii) such financial statements and written assumption instruments are delivered to and approved in all respects by the Agency, and (iv) the Agency consents to such assignment, which consent shall be in the sole and absolute discretion of the Agency. A breach by Redeveloper of any of its obligations under this Section 24.2 shall be deemed a material default under this Agreement.

ARTICLE XXV
CITY REAL PROPERTY TAX PHASE-IN

Section 25.1 General Purpose Statement. It is acknowledged by the parties to this Agreement that the goals of the Wall Street Redevelopment Plan for the Project Site would be best served by the development program described herein. It is also acknowledged by the parties that the economic conditions present in the Project Area are adverse to new development, and that the transformation of those economic conditions by projects such as this one is a gradual and mutually undertaken endeavor. Further, it is agreed by the parties that such development program is intended to provide substantial public benefits in the form of affordable housing and public parking that would not be economically feasible without the provision of certain public sector commitments and support for the Project. The City, the Agency and the Redeveloper hereby agree that in lieu of the real property taxes applicable to the Project Site that would otherwise be assessed based on the standards and practices of the City's Tax Assessor, but specifically excluding the City's sewer charge which shall not be affected, from the date that the Certificate of Occupancy is issued by the Agency for a Phase of the Project, the real property taxes shall be phased in gradually, in accordance with this Article XXV, herein referred to as the **"Phase-In"**.

Section 25.2 Commencement of Phase-In. The Phase-In shall commence, by Project Phase, on all parcels of Project Property associated with each such Phase and acquired by the Redeveloper upon the completion of said Phase as determined by the issuance of a Certificate of Occupancy, and continuing for the period set forth in the following provisions of this Article XXV.

Section 25.3 Phase-In for Residential For Sale Units. The real property taxes for Phase I Residential For Sale Units and Phase II Residential For Sale Units shall be fixed at $2.00 per square foot based on each unit's gross square footage and shall commence on the date determined in accordance with Section 25.2 hereof for such Phase and shall continue for such Phase for a period of five (5) years after the commencement date. Notwithstanding the foregoing provisions of this Section 25.3, the Phase-In referred to in this Section 25.3 shall only apply to owner occupied units and shall only be available to the initial purchaser of a unit from the Redeveloper or an Affiliate of the Redeveloper. At such time as the initial purchaser of a unit ceases to occupy such unit as their primary residence or transfers title to such unit, the Phase-In for such unit shall immediately terminate upon the happening of either of such events. Each owner of a Residential For Sale Unit who is receiving any benefits of the Phase-In referred to in this Section 25.3 shall be required to duly execute and return to the Agency an owner occupancy certificate in such form as the Agency may reasonably require, within thirty (30) days after receipt of such certificate. Any such unit owner failing to execute and return said owner occupancy certificate within said thirty (30) day period shall be deemed not to occupy such unit as their primary residence and the Phase-In for that unit shall immediately terminate upon expiration of said thirty (30) day period. Such certificate shall be addressed to the owner of record of such unit as shown on the City Tax Collector's records, addressed to the unit and sent in the same manner as required for notices in ARTICLE XXV hereof.

Section 25.4 Phase-In for Residential Rental Units. The real property taxes for Phase I Residential Rental Units, Phase II Residential Rental Units and Phase III Residential Rental Units shall be fixed at seven and one-half (7 ½%) percent of the estimated gross revenue (**"EGR"**) for such units, as estimated and set forth on **Exhibit** L attached hereto and made a part hereof and shall commence on the date determined in accordance with Section 25.2 hereof for such Phase and shall continue for such Phase for a period of fifteen (15) years after the commencement date.

A. Upon the written request of the Agency, the Redeveloper shall submit, within thirty (30) days after receipt of such written request, financial statements reasonably acceptable to the Agency showing gross revenue for the Residential Rental Units in Phase I, Phase II and Phase III.

B. If the gross revenue shown on the audited financial statements is equal to or greater than one hundred ten (110%) percent of the EGR, then the Redeveloper shall pay to the City, within sixty (60) days after receipt by the Redeveloper of the Agency's initial written request, a sum equal to seven and one-half (7 ½%) percent of the amount by which the gross revenue shown on the audited financial statements exceeds the EGR.

C. In the event any of the Residential Rental Units are converted to Residential For Sale Units at any time during the Phase-In period for the Residential Rental Units, then upon such conversion, the real property tax Phase-In provided for such converted unit hereunder shall automatically terminate.

D. The foregoing represents the intended structure for the Phase-In for the Residential Rental Units. For administrative purposes the City Finance Director shall have the right, in consultation with the Redeveloper, to adjust the structure of the Residential Rental Phase-In provided such adjustment does not increase the amount of real property taxes for the Residential Rental Units during the Phase-In period in excess of the amount of such taxes that would be due and payable utilizing the foregoing structure.

Section 25.5 Phase-In for Other Improvements. The real property taxes for the Other Improvements in Phase I and Phase II (as described in ARTICLE III hereof) shall, at the commencement of the Phase-In for each Phase, be assessed on an income-based approach, and shall be subject to tax at forty (40%) percent of full taxes in year one, fifty (50%) percent of full taxes in year two, sixty (60%) percent of full taxes in year three, seventy (70%) percent of full taxes in year four, eighty (80%) percent of full taxes in year five, ninety (90%) percent of full taxes in year six, and one hundred (100%) of full taxes in year seven.

Section 25.6 Redeveloper Payment to City. In the event that during the term of any Phase-In as set forth in this ARTICLE XXV, the real property taxes payable to the City for all parcels of Project Property acquired by the Redeveloper do not, in the aggregate during any City tax period, equal or exceed the real property taxes payable on such parcels on the Execution Date, then the Redeveloper agrees to pay to the City the amount of any such deficiency, which shall be payable when such real property taxes are due and payable to the City.

Section 25.7 Covenant Against Transfer to Tax Exempt Entities. Redeveloper hereby agrees that during the term of any Phase-In as set forth in this ARTICLE XXV, that it shall not sell or transfer fee title to any of the Improvements then existing in the Project Site to any entity (other than the City or the Agency) if such transfer would make the transferred property exempt from taxation pursuant to §12-81 and §7-339m of the Statutes.

Section 25.8 Live/Work Space. In the event any of the Phase I Residential Units or Phase II Residential Units are converted into Live/Work Space in accordance with Section 2.6 hereof, then for purposes of this ARTICLE XXV, such Live/Work Space shall be deemed to be Phase I Residential For Sale Units or Phase II Residential For Sale Units, as the case may be.

Section 25.9 Authority.

A. The Phase-In for Residential Rental Units shall be carried out in accordance with §12-65 of the Statutes and the ordinance adopted by the City authorizing the Phase-In.

B. All other components of the Phase-In shall be carried out in accordance with §12-65b of the Statutes and the ordinance adopted by the City authorizing the Phase-In.

Section 25.10 Tax Freeze. Redeveloper hereby agrees that if any buildings on any parcels of Project Property acquired by the Redeveloper are removed, then the real property taxes payable to the City for any such parcel or parcels upon which any building or buildings have been removed shall at no time thereafter be less than the real property taxes payable to the City for any such parcel or parcels prior to such removal.

ARTICLE XXVI
SUSTAINABLE DESIGN

Section 26.1 General Purpose Statement.

The Redeveloper, Agency and City recognize that both the local and regional community stand to benefit from promoting development practices which foster responsible environmental stewardship and minimize impacts. Therefore, the Agency and City shall require and the Redeveloper has agreed to use Good Faith Efforts to utilize Sustainable Design Practices in the construction of the Project.

Section 26.2 Definitions

A. **"Sustainable Design Practices"** means project design and engineering practices which – through construction systems applied, the selection of materials used, and the siting and design of the project – foster:

1. Responsible environmental stewardship; and,

2. The minimization of environmental impacts.

B. **"Good Faith Efforts"** means efforts that will permit the Redeveloper to satisfy the requirements of Section 26.3 hereof.

Section 26.3 Requirements.

The Redeveloper agrees that in Design Review of the Construction Plans and Working Drawings of each Project Phase (as described in Article III hereof), the Redeveloper shall achieve a minimum score of eighty (80%) percent on the Sustainable Design Practices checklist attached hereto and made a part hereof as **Exhibit M**, as scored by the Agency's Design Reviewer.

ARTICLE XXVII
MISCELLANEOUS

Section 27.1 This Agreement shall supersede any and all prior understandings between the parties with respect to the subject matter of this Agreement.

Section 27.2 The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 27.3 This Agreement shall be construed under and governed by the laws of the State of Connecticut. The parties to this Agreement agree that the execution of this Agreement and related documents and the performance of their obligations hereunder and thereunder, shall be deemed to have a Connecticut situs and that they shall be subject to the personal jurisdiction of the courts of the State of Connecticut with respect to any action that any other party or its successors or assigns may commence hereunder or thereunder. Accordingly, the parties hereby specifically and irrevocably consent to the jurisdiction of the courts of the State of Connecticut judicial district Stamford/Norwalk with respect to all matters concerning this Agreement or such related documents or the enforcement thereof in any action initiated by any other party or which any other party voluntarily joins as a party.

Section 27.4 If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws, regulations, statutes, municipal charters, codes and of the Redevelopment Plan.

Section 27.5 Any right or remedy which any party to this Agreement may have under this Agreement, or any of its provisions, may be waived in writing by such party without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived. If any party to this Agreement does not exercise, or delays in exercising, or exercises only in part any of its respective rights and/or remedies set forth in this Agreement for the curing or remedying of any default or breach of covenant or condition, or any other right or remedy, in no event shall such non-exercise, delay or partial exercise be construed as a waiver of full action by such party or a waiver of any subsequent default or breach of covenant or condition.

Section 27.6 This Agreement may be amended only by a written document, duly executed by the parties hereto, evidencing the mutual agreement of the parties hereto to such amendment.

Section 27.7 Whenever this Agreement provides for the granting or withholding by one party of approval or consent with respect to the action or inaction of the other party, the party authorized to grant or withhold such approval shall act in good faith and reasonably under the circumstances in determining whether to grant such consent or approval.

Section 27.8 The terms and conditions of the Agreement, including the exhibits hereto, shall constitute all of the terms and conditions that shall be required by the Parties of one another.

Section 27.9 The Redeveloper agrees to provide facilities for physically disabled individuals for ingress and egress to and from the Improvements to be constructed by it in the Project Site as required by applicable law.

Section 27.10 WAIVER OF TRIAL BY JURY. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY (I) KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, AND (II) ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND (III) ACKNOWLEDGES THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. EACH OF THE PARTIES TO THIS AGREEMENT FURTHER ACKNOWLEDGES THAT (I) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, AND (II) THIS WAIVER IS A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT.

Section 27.11 The Agreement is executed in six (6) counterparts, each of which shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Agency, the City, and the Redeveloper, have caused this Agreement to be duly executed each in its own behalf by the Mayor of the City, the Chairman of the Agency, and the Redeveloper, respectively, and its respective seals to be hereunto duly affixed on or as of the date first above written and constitutes a valid and binding obligation enforceable in accordance with its terms, conditions, and provisions.

WITNESSES:

David W Stergous

Diane Beltz Jacobson

CITY OF NORWALK

By: ______________________
Richard A. Moccia
Its Mayor

David W Stergous

Diane Beltz-Jacobson

REDEVELOPMENT AGENCY OF THE CITY OF NORWALK

By: ______________________
Paul L. Jones
Its Chairman

David W Stergous

Diane Beltz-Jacobson

POKO-IWSR DEVELOPERS, LLC
By: POKO-IWSR MANAGERS, LLC
Its Managing Member

By: ______________________
Kenneth Olson
Its Manager

STATE OF CONNECTICUT)
) ss: Norwalk
COUNTY OF FAIRFIELD)

On this the 14th day of November, 2007, before me, the undersigned officer, personally appeared RICHARD A. MOCCIA, who acknowledged himself to be the Mayor of the City of Norwalk, and that he as such Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the City by himself as Mayor.

In Witness Whereof, I hereunto set my hand and official seal.

Diane P. Beltz - Jacobson
~~Notary Public~~
Commissioner of the Superior Court

STATE OF CONNECTICUT)
) ss: Norwalk
COUNTY OF FAIRFIELD)

On this the 14th day of November, 2007, before me, the undersigned officer, personally appeared PAUL L. JONES, who acknowledged himself to be the Chairman of the Redevelopment Agency of the City of Norwalk, and that he as such Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Redevelopment Agency by himself as Chairman.

In Witness Whereof, I hereunder set my hand and official seal.

David W. Stergus
~~Notary Public~~
Commissioner of the Superior Court

STATE OF CONNECTICUT)
) ss: Norwalk
COUNTY OF FAIRFIELD)

On this 14th day of November, 2007, before me, the undersigned officer, personally appeared KENNETH OLSON, who acknowledged himself to be the Manager of POKO-IWSR Managers, LLC, a Limited Liability Company that is itself the Managing Member of POKO-IWSR Developers, LLC, and that he, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of POKO-IWSR Developers, LLC, by POKO-IWSR Managers, LLC, as Managing Member, by himself as Manager.

In witness whereof, I hereunto set my hand.

David W Sfekas

~~Notary Public~~
Commissioner of the Superior Court

LIST OF EXHIBITS

Exhibit A
(Acquisition Property)

Exhibit B

(Conceptual Master Site Plan)

Project: Norwalk Parcel 2A   **Date:** 12-Sep-07
Location: Norwalk, CT

Overall Project Information

	Residential	Commercial	Parking	Total
Gross (SF)	503,999	75,711	289,852	869,562
Use/Total	58%	9%	33%	
Floors	8	1	3	
Units	378		788	

Phase 1 Building Information

	Residential										Commercial						Parking				Building
Floor Level	1 BR	2BR	3 BR	1 BR TH	2 BR TH	3 BR TH	Total	Common (SF)	Units (SF)	Total (SF)	Common	Retail	Rest.	Theater	L/W	Area (SF)	Robo	Reg	Total Spaces	Area (SF)	Floor Area
B2										0							93		93	39,480	39,480
B1							0	0		0							93		93	39,480	39,480
G							0	3,322		3,322	3,322	8,538		7,760	5,402	21,700		47	47	22,903	47,925
2	10	7	2	1	5	1	26	5,502	21,230	26,732				4,300	5,426	9,726					36,458
3	9	11	3				23	4,466	26,760	31,226											31,226
4	9	12	2				23	4,466	26,241	30,707											30,707
5	12	9	1			2	24	4,466	25,904	30,370											30,370
6	3	3					6	955	8,328	9,283											9,283
7					5		5	1,039	3,492	4,531											4,531
8							0	97	4,434	4,531											4,531
Total	43	42	8	1	10	3	107	24,313	116,389	140,702		8,538	0	12,060	10,828	31,426	186	47	233	101,863	273,991
Unit type/Total	40%	39%	7%	1%	9%	3%															

Phase 2 Building Information

	Residential										Commercial						Parking				Building
Floor Level	1 BR	2BR	3 BR	1 BR TH	2 BR TH	3 BR TH	Total	Common (SF)	Units (SF)	Area (SF)	Common	Retail	Rest.	Theater	L/W	Area (SF)	Robo	Reg	Total Spaces	Area (SF)	Floor Area
B2							0										136		136	38,675	38,675
B1							0										136		136	38,675	38,675
G	2	1					3	5,801	2,948	8,749		7,276			4,624	11,900		11		2,125	22,774
2	2	12	1		7		22	7,200	14,245	21,445					4,821	4,821					26,266
3	2	14	3				19	4,594	20,838	25,432											25,432
4	2	14	3				19	4,594	20,838	25,432											25,432
5	2	14	3				19	4,594	20,838	25,432											25,432
6		4	4				8	1,296	10,267	11,563											11,563
7					9		9	1,344	6,544	7,888											7,888
8							0	140	7,748	7,888											7,888
Total	10	59	14	0	16	0	99	29,563	104,266	133,829		7,276			9,445	16,721	272	11	272	79,475	230,025
Unit type/Total	10%	60%	14%	0%	16%	0%															

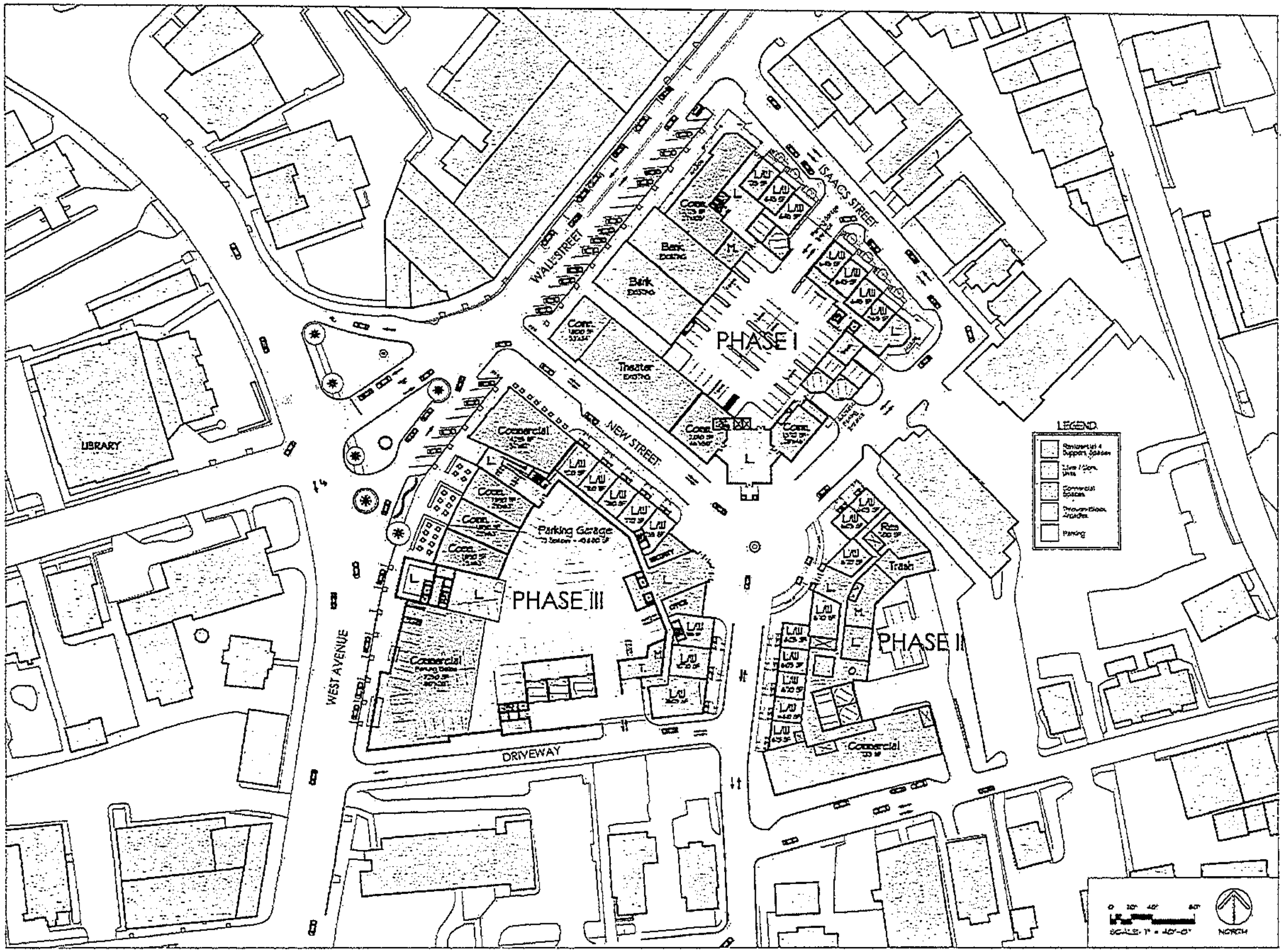
Project:	**Norwalk Parcel 2A**	Date:	12-Sep-07
Location:	Norwalk, CT		

Overall Project Information

	Residential	Commercial	Parking	Total
Gross (SF)	503,999	75,711	289,852	869,562
Use/Total	58%	9%	33%	
Floors	8	1	3	
Units	378		788	

Phase 3 Building Information

		Residential										Commercial						Parking				Building
		1 BR	2BR	3 BR	1 BR TH	2 BR TH	3 BR TH	Total	Common (SF)	Units (SF)	Area (SF)	Common	Retail	Rest.	Theater	L/W	Area (SF)	Robo	Reg	Total Spaces	Area (SF)	Floor Area
Floor Level	B							0										204		204	65,843	65,843
	G							0	9,421		9,421			2,052		6,484	8,536		79	79	42,671	60,628
	2	6	7	3		4	4	24	10,237	17,459	27,696		12,555			6,473	19,028					51,206
	3	10	17	10				37	8,865	37,383	46,248											51,168
	4	10	16	10				36	9,256	37,154	46,410											46,410
	5	13	15	10				38	8,140	38,110	46,250											46,250
	6	5	12	6				23	5,949	30,062	36,011											36,011
	7	3	4					7	1,366	7,350	8,716											8,716
	8	3	4					7	1,366	7,350	8,716											8,716
Total		50	75	39	0	4	4	172	54,600	174,868	229,468		12,555	2052		12,957	27,564	204	79	283	108,514	374,948
Unit type/Total		29%	44%	23%	0%	2%	2%															



NORWALK
PARCEL 2A
NORWALK, CT

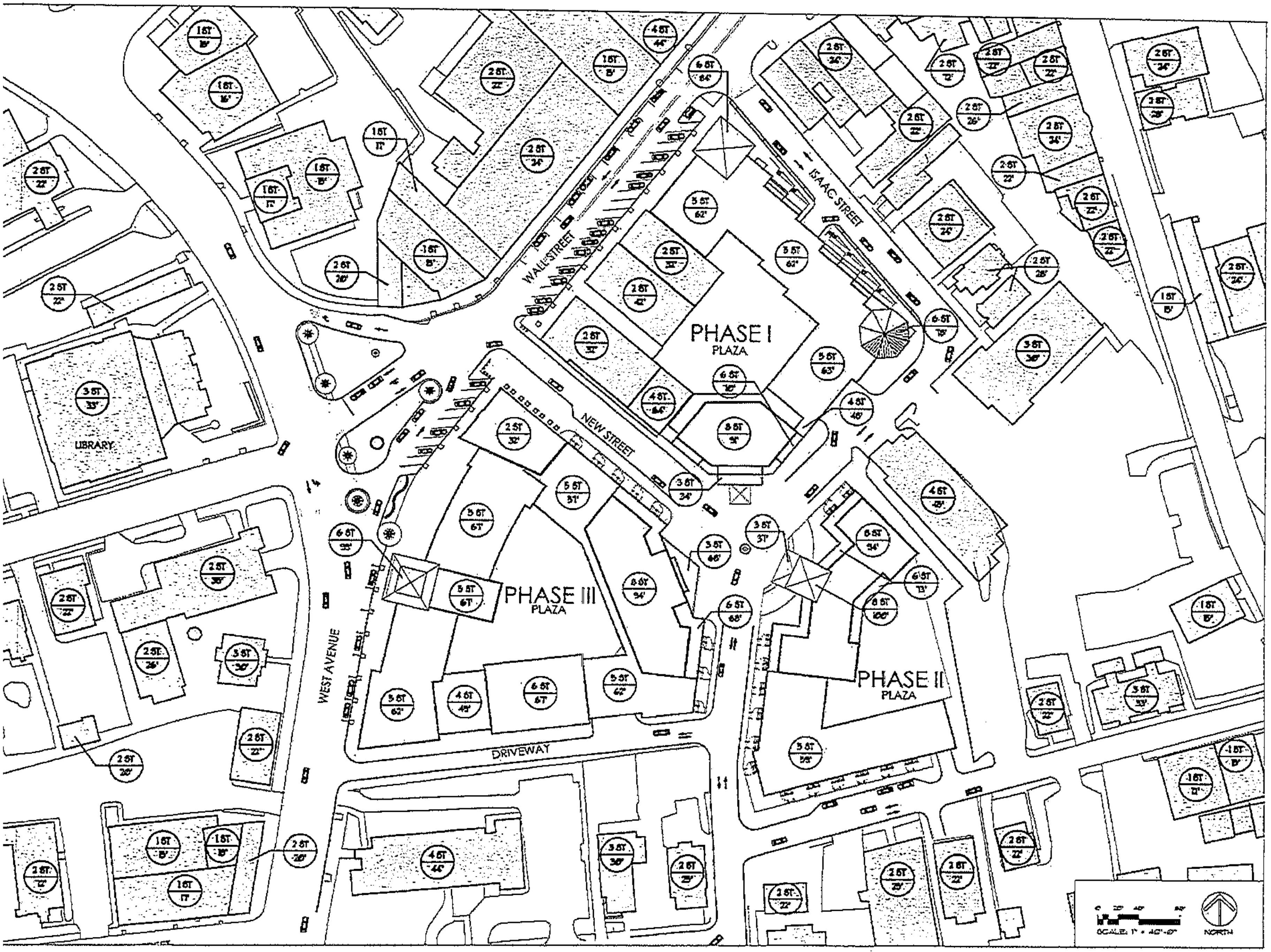
POKO Partners, LLC

POKO Partners, LLC
Crosskey Architects LLC
Wesley Stout Associates LLC
Redniss & Mead, Inc.
Patrick L. Wood

Schematic Design

Crosskey Architects LLC

SP-2



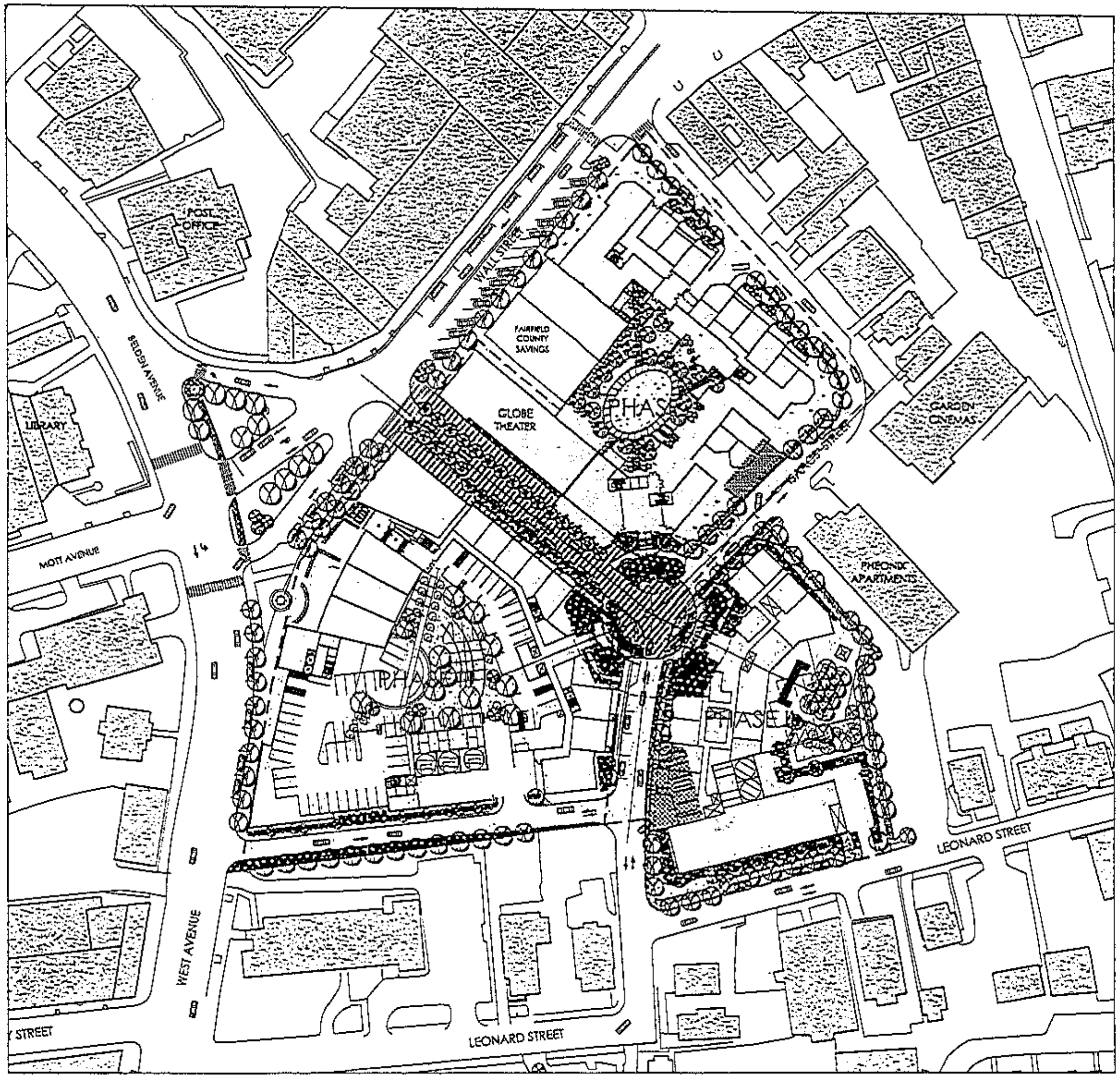
NORWALK
PARCEL 2A
NORWALK, CT

POKO Partners, LLC
Crosskey Architects LLC
Wesley Stout Associates LLC
Redniss & Mead, Inc.
Patrick L. Powell

Schematic Design

Crosskey Architects LLC
ARCHITECTURE • PLANNING • INTERIORS

SP-2



Legend

- Concrete Pavers
- Groundcover
- Grass
- Concrete Paving
- Decorative Paving
- Site Furnishings
- Sculptural Street Elements
- Site Wall
- Shade Tree
- Ornamental Tree
- Evergreen Tree

NORTH

0 25 50 100

JULY 10, 2007

Phasing Plan

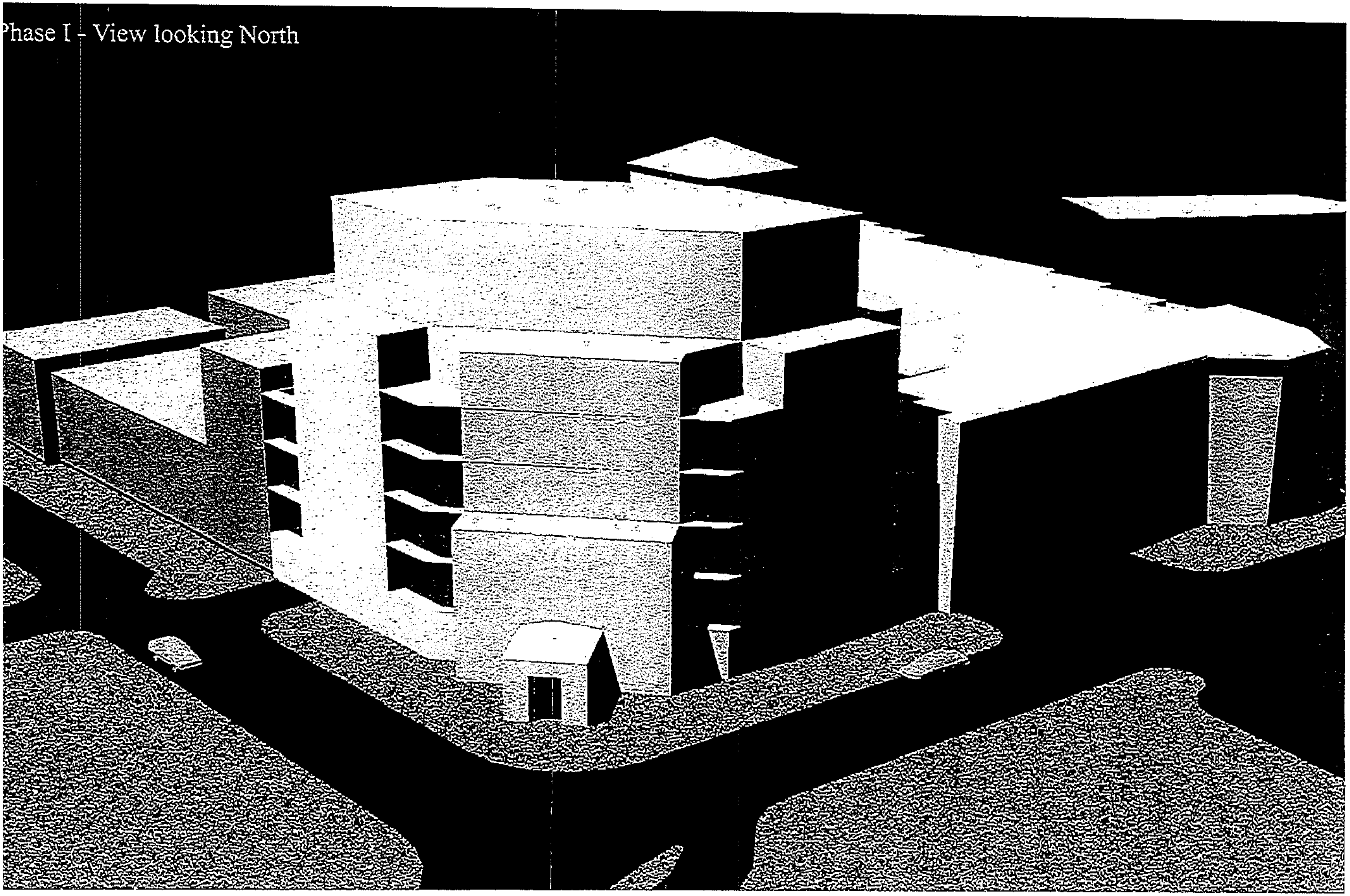
NORWALK PARCEL 2A

Norwalk, Connecticut

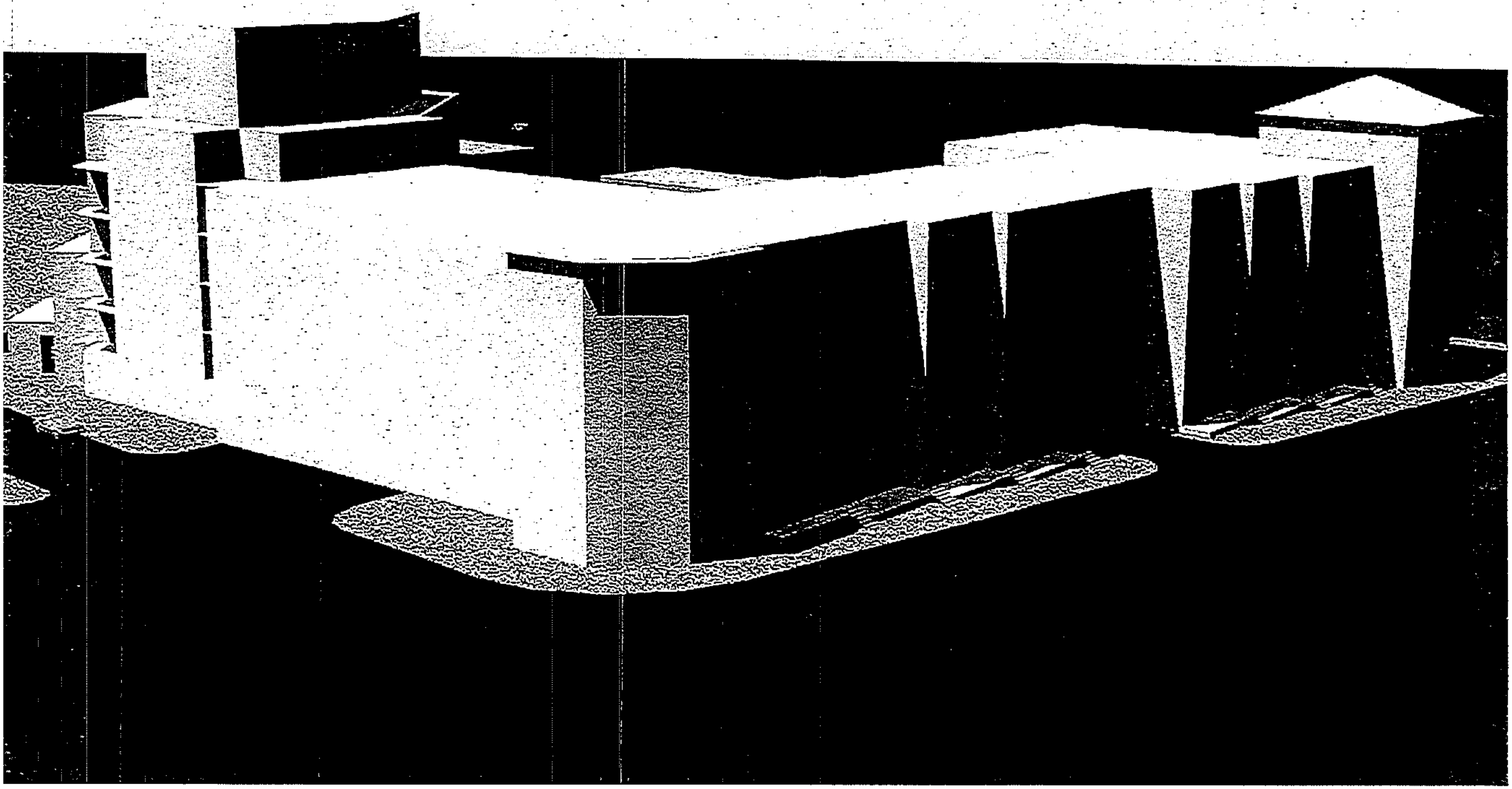
POKO partners, LLC
Another POKO Development

Land Use Attorney
Robinson & Cole LLP
Architect
Crosskey Architects LLC
Planner
Wesley Stout Associates, LLC

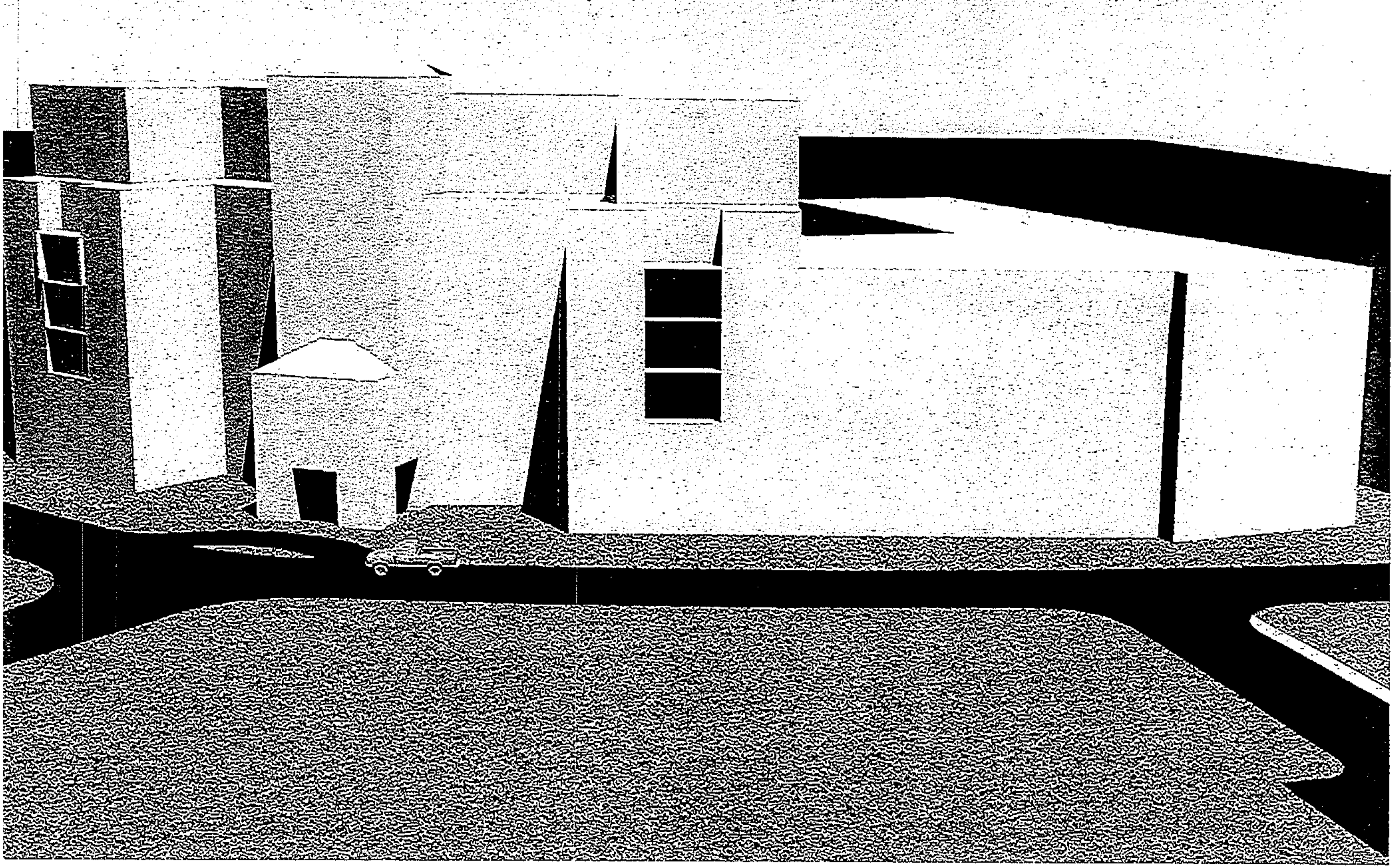
Planning Consultant
Patrick L. Pinell
Traffic Engineer
Barken & Moss
Civil Engineer/Surveyor
Redniss & Mead, Inc.


Phase I - View looking North

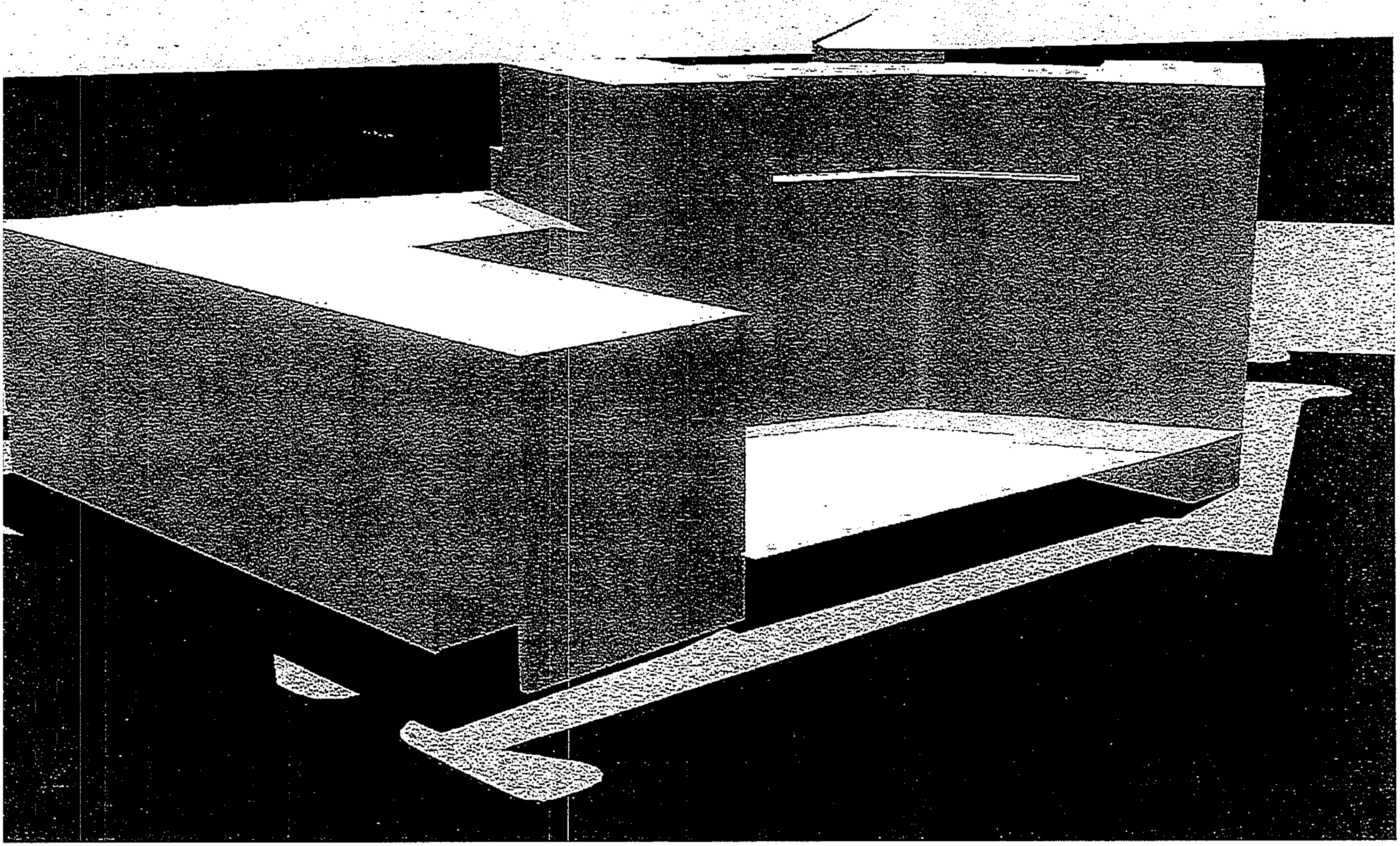
Phase I - View looking South

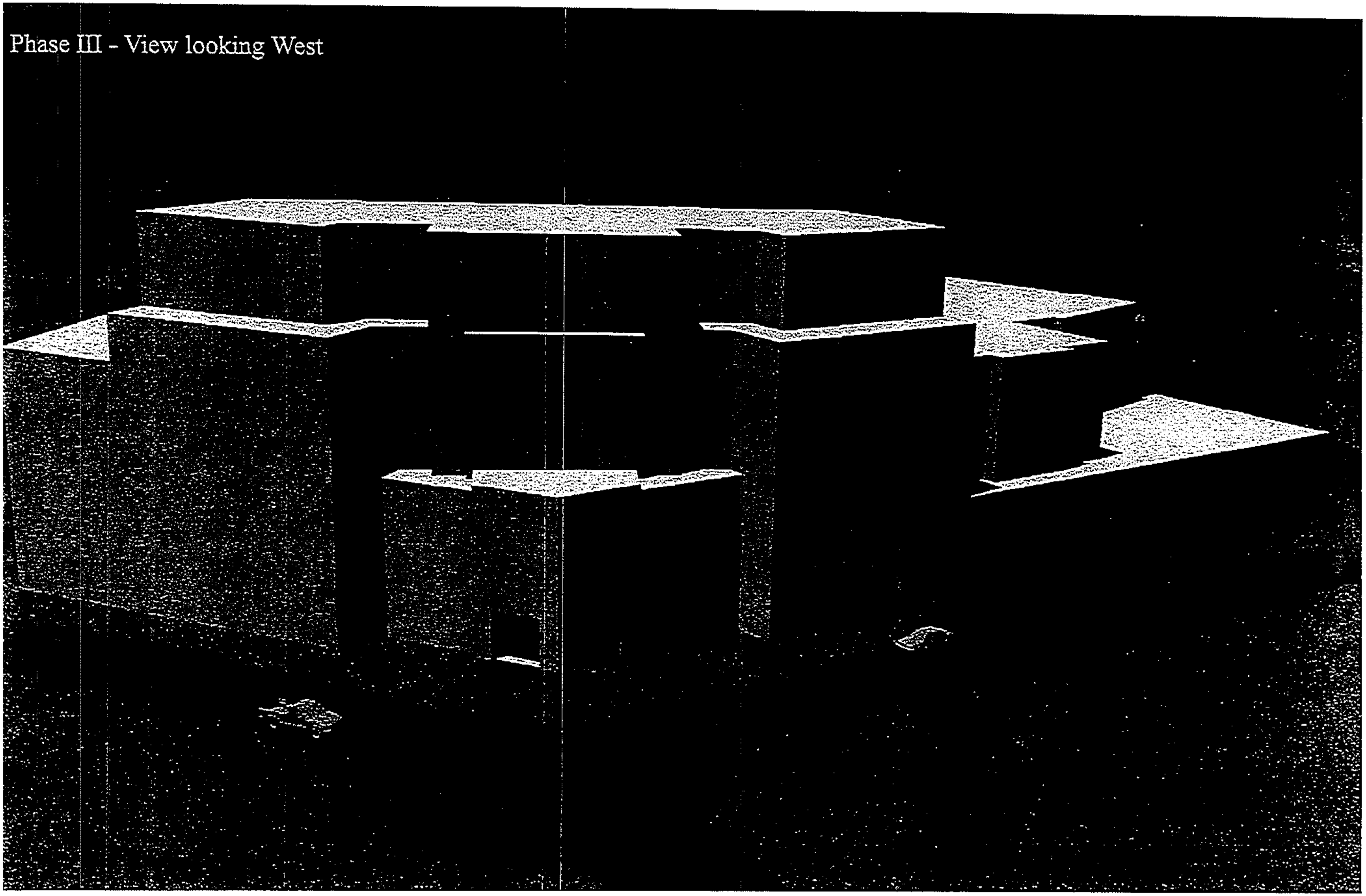


Phase II - View looking East



Phase II - View looking West




Phase III - View looking West

'hase III - View looking East

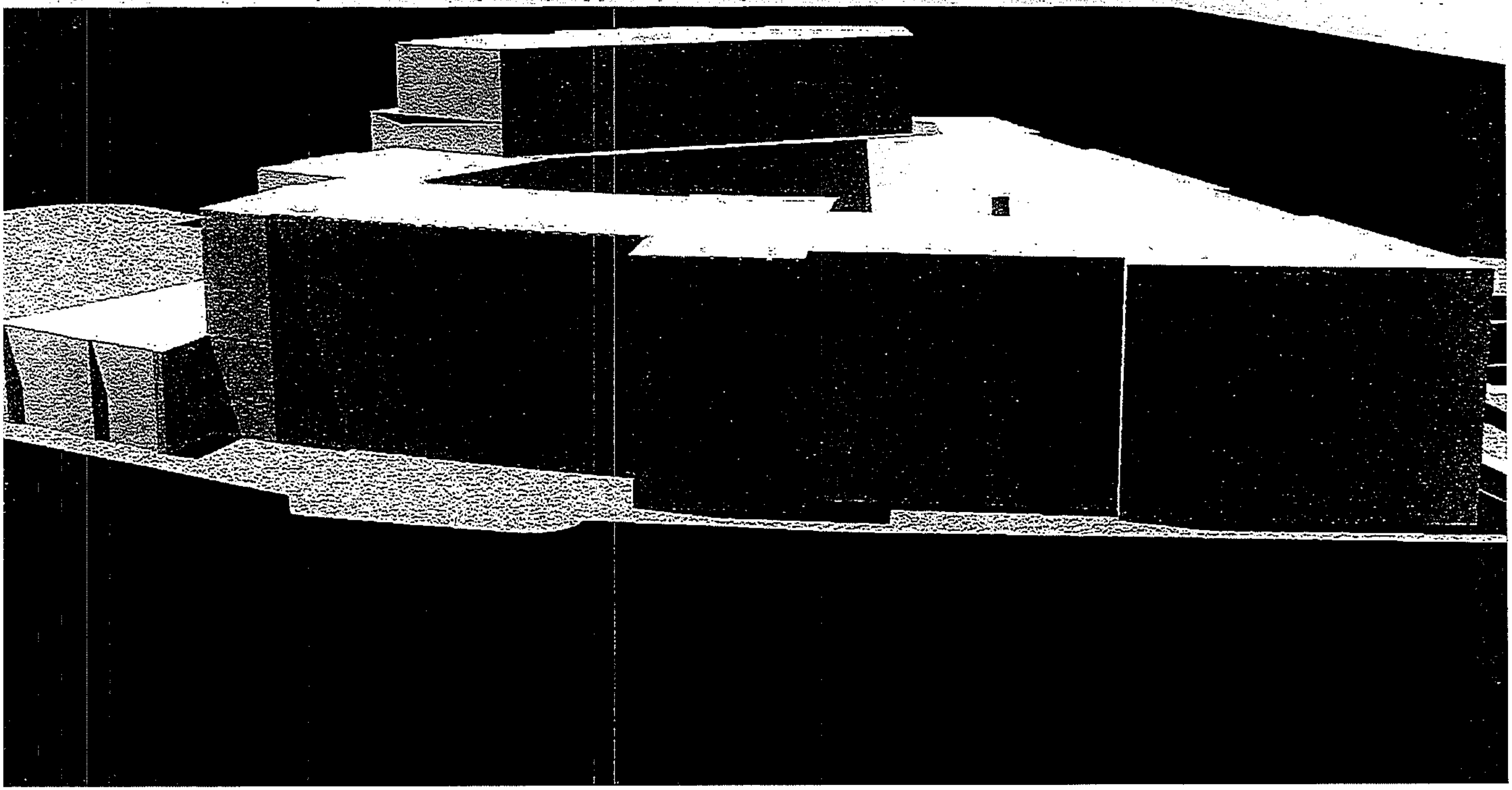


Exhibit C-1
(Infrastructure Improvements and Utilities)

1. Isaacs Street. The City shall be responsible for making all improvements to Isaacs Street and the realignment of Isaacs Street from the southwest corner of the Isaacs Street Parking Lot south to Leonard Street as indicated on the Conceptual Master Site Plan. (To be coordinated with construction of the Phase I Improvements.)

1a. The City shall be responsible for installing a new storm drain and required drainage structures as shown on Exhibit C-3.

1b. The City shall be responsible for replacing the existing 12" sanitary main as shown on Exhibit C-3 if it is determined by the Norwalk Department of Public Works to be in unsatisfactory condition.

1c. The City shall be responsible for relocating overhead electrical lines along Isaacs Street into an underground ductbank as shown on Exhibit C-3.

1d. The City shall be responsible for relocating the existing overhead cable television lines along Isaacs Street into an underground ductbank as shown on Exhibit C-3.

2. Wall Street. The City shall be responsible for the reconfiguration of parking on Wall Street and any necessary changes to the traffic flow. (To be coordinated with construction of the Phase I Improvements.)

2a. The City shall be responsible for required upgrades to the existing telephone ductbank as shown on Exhibit C-3.

2b. The City shall be responsible for upgrading the existing 6" water main as shown on Exhibit C-3.

3. Wall Street/West Avenue Islands. The City shall be responsible for the reconfiguration and improvements to the area of and around the traffic islands at the intersection of Wall/West/Mott/Belden to the extent funds are available and at the direction of the Norwalk Department of Public Works Traffic Engineering Division. (To be coordinated with construction of the Phase I Improvements.)

4. Wall Street/New Street #1 Intersection. The City shall be responsible for all necessary traffic improvements to route traffic in and out of the Project Area via New Street #1. (To be coordinated with construction of the Phase I Improvements.)

5. Isaacs Plaza. The City shall be responsible for the improvements to be made to Isaacs Plaza, which is a circular area, at the intersection of Isaacs Street and New Street #1 as indicated on the Conceptual Master Site Plan, to the extent funds are available. (To be coordinated with construction of the Phase II Improvements.)

5a. The City shall be responsible for capping and abandoning the existing cast iron water mains west of Isaacs Plaza at the point where they cross the Redeveloper's property line as shown on Exhibit C-3.

5b. The City shall be responsible for capping and abandoning the existing natural gas mains west of Isaacs Plaza at the point where they cross the Redeveloper's property line as shown on Exhibit C-3.

5c. The Redeveloper shall be responsible for removing the existing overhead electrical lines and poles west of Isaacs Plaza.

5d. The Redeveloper shall be responsible for removing the existing overhead telephone lines and poles west of Isaacs Plaza.

5e. The Redeveloper shall be responsible for removing the existing overhead cable television lines and poles west of Isaacs Plaza.

6. Arcade I. The Redeveloper shall be responsible for constructing the Arcade I which is a through-block arcade, providing pedestrian access from Isaacs Street to the Project Area as indicated on the Conceptual Master Site Plan. (To be coordinated with construction of the Phase I Improvements.)

7. Arcade II. (If Redeveloper acquires title to the Globe Theater) The Redeveloper shall be responsible for constructing Arcade II which is a through-block arcade entering the Project Area from the south and west side of 83 Wall Street. (To be coordinated with construction of the Phase II Improvements.)

8. New Street #1. The City shall be responsible for constructing New Street #1 which is a pedestrian plaza and limited access street running southeast from Wall Street to Isaacs Street between the Globe Theatre and 83 Wall Street, as indicated on the Conceptual Master Site Plan. (To be coordinated with construction of the Phase I Improvements.)

8a. The City shall be responsible for installing a new storm drain and required drainage structures as shown on Exhibit C-3. The new system shall connect to the existing 18" RCP in Wall Street. The existing 24" RCP north of New Street #1 shall be capped and abandoned by the City.

8b. The City shall be responsible for installing a new sanitary main as shown on Exhibit C-3.

8c. The City shall be responsible for installing a new underground electrical ductbank from the existing electrical manhole in Wall Street to a new electrical vault in Isaacs Plaza as shown on Exhibit C-3.

9. New Street #2. The Redeveloper shall be responsible for constructing New Street #2, running east from West Avenue to Isaacs Street between 717 West Avenue and 1 Leonard Street as indicated on the Conceptual Master Site Plan. (To be coordinated with construction of the Phase III Improvements.)

9a. The Redeveloper shall be responsible for installing a new storm drain and required drainage structures as shown on Exhibit C-3.

10. Academy Street Extension. Subject to the provisions of Section 4.2 hereof, the City shall be responsible for constructing the Academy Street Extension. (To be coordinated with construction of the Phase II Improvements.)

10a. The City shall be responsible for relocating the existing 30" RCP storm drain north of Leonard Street into the new Academy Street Extension. The existing line shall be capped and abandoned at the points where it crosses the Redeveloper's property line as shown on Exhibit C-3.

10b. The City shall be responsible for installing a new sanitary main that will connect to the existing sanitary main in Isaacs Plaza as shown on Exhibit C-3.

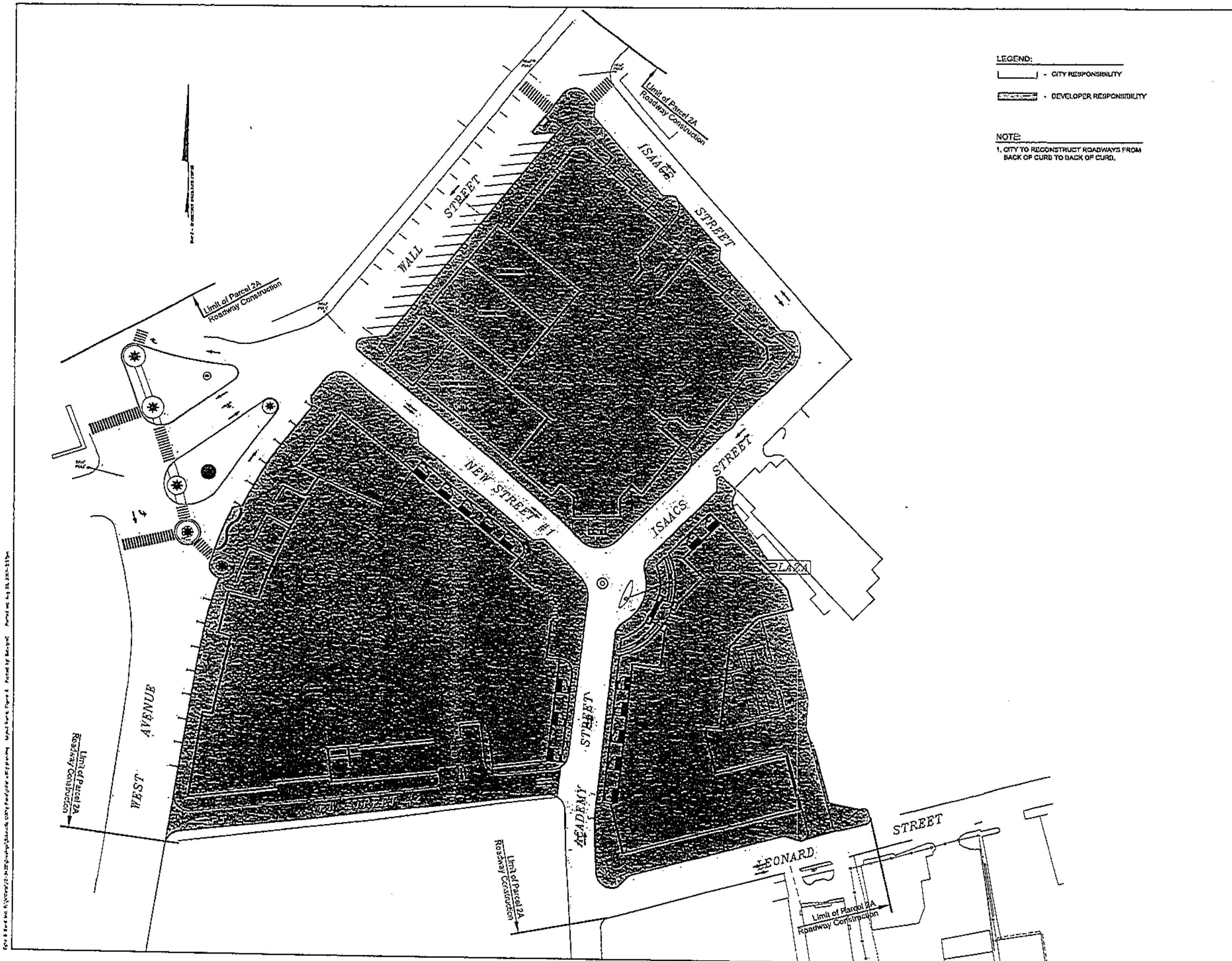
10c. The City shall be responsible for installing a new underground electrical ductbank from Leonard Street to Isaacs Plaza as shown on Exhibit C-3. The ductbank shall terminate at a new electrical vault in Isaacs Plaza.

11. The Redeveloper shall be responsible for connections to the new utilities described above and utility laterals to each building.

12. The Redeveloper shall be responsible for modifications to existing utility services for existing buildings that are proposed to remain and/or temporary services due to project phasing and scheduling.

13. The Redeveloper shall be responsible for the removal of abandoned utilities on its property, if necessary, after they are capped by the City at the property line.

Exhibit C-2
(Tighe and Bond Infrastructure Map)



LEGEND:

- CITY RESPONSIBILITY
- DEVELOPER RESPONSIBILITY

NOTE:

1. CITY TO RECONSTRUCT ROADWAYS FROM BACK OF CURB TO BACK OF CURB.

Tighe&Bond
Consulting Engineers
1000 Bridgeport Avenue
Suite 320
Shelton, CT 06484
(203) 712-1100
www.tighebond.com

Wall Street / West Avenue Infrastructure

Norwalk, Connecticut

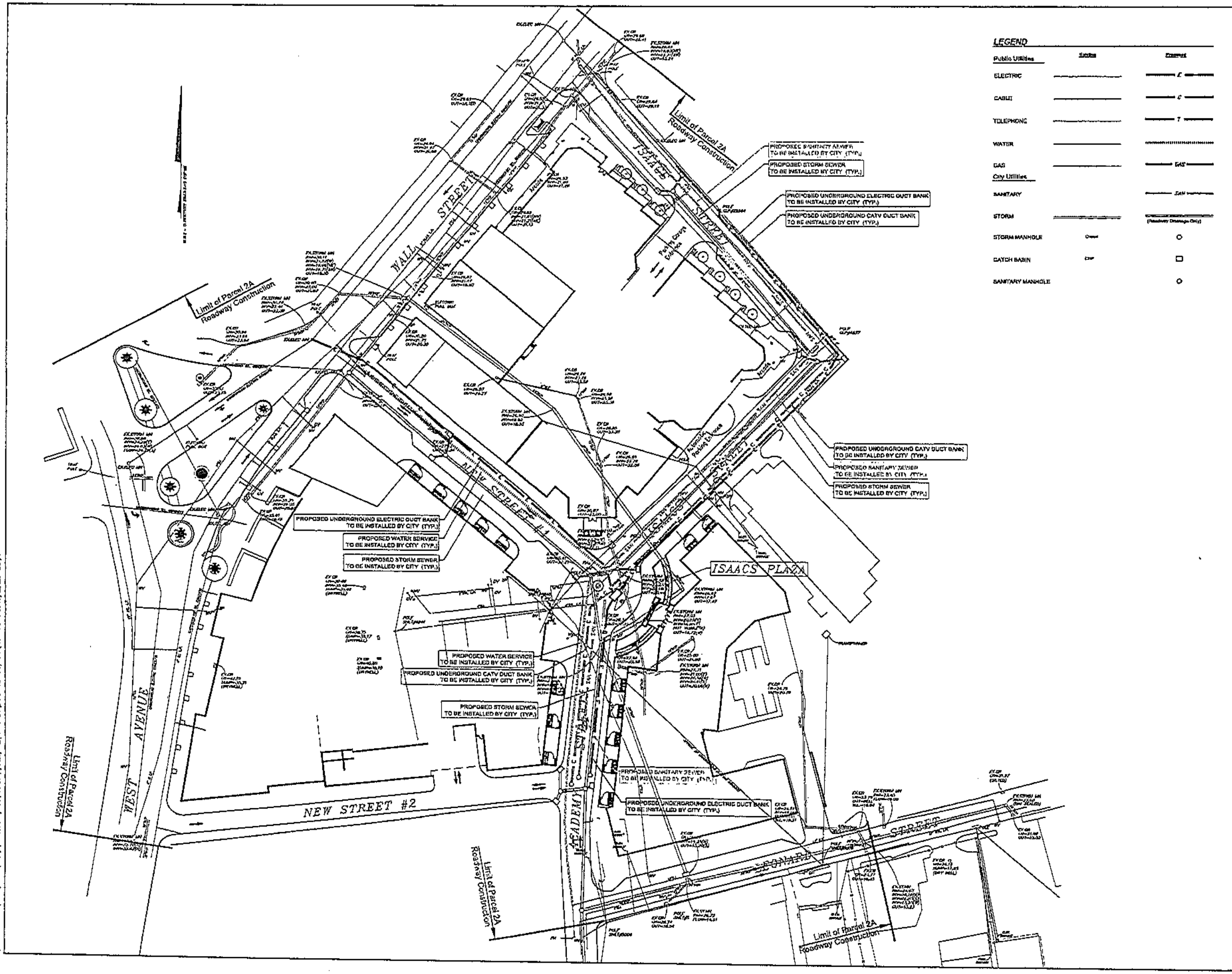
July 25, 2007

Roadway Infrastructure Plan.

SCALE: 1" = 30'

Figure A

Exhibit C-3
(Tighe and Bond Utility Map)



Tighe&Bond
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1000 Bridgeport Avenue
Suite 320
Shelton, CT 06484
(203) 712-1100
www.tighebond.com

Wall Street / West Avenue Utility Infrasructure

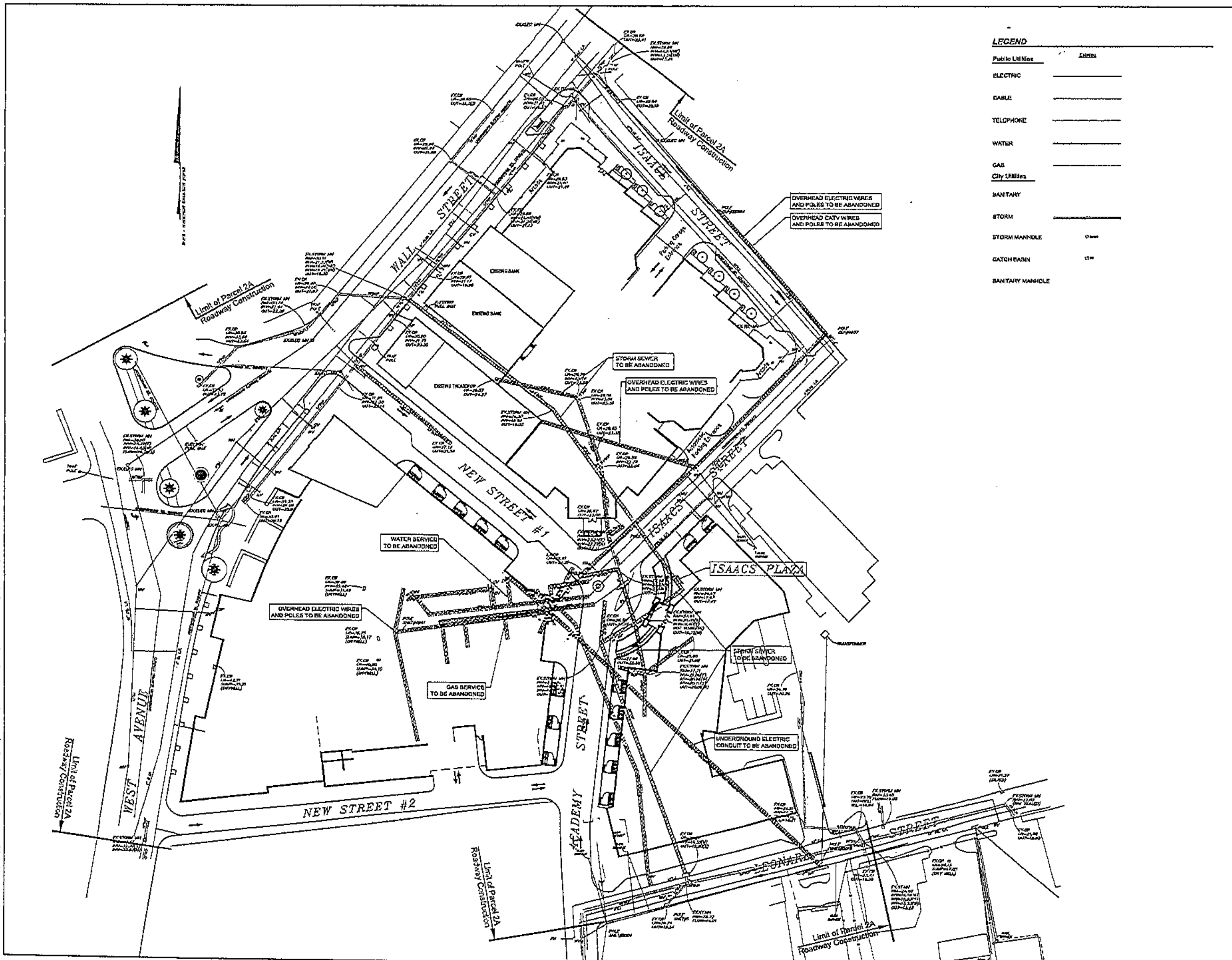
Norwalk, Connecticut

July 25, 2007

Schematic Utility Infrastructure Plan

Figure B

Exhibit C-4
(Tighe and Bond Utility Abandonment Map)



Tighe&Bond
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Shelton, CT 06484
(203) 712-1100
www.tighebond.com

Wall Street / West Avenue Utility Infrasructure

Norwalk, Connecticut

August 14, 2007

Schematic Utility Abandonment Plan

SCALE: 1" = 30'

Figure C

Exhibit D
(Project Site)

1. 65 Wall Street; Tax Parcel 1-29-14
2. 61 Wall Street; Tax Parcel 1-29-13
3. 2 Isaacs Street; Tax Parcel 1-29-18
4. 21 Isaacs Street; Tax Parcel 1-29-28
5. 23 Isaacs Street; Tax Parcel 1-29-25
6. 18 Isaacs Street; Tax Parcel 1-29-24
7. 31 Isaacs Street; Tax Parcel 1-29-23
8. 71 Wall Street; Tax Parcel 1-29-10
9. 77 Wall Street; Tax Parcel 1-29-9
10. 83 Wall Street; Tax Parcel 1-29-8
11. 97 Wall Street; Tax Parcel 1-29-7
12. 20 Isaacs Street; Tax Parcel 1-29-63
13. 731 West Avenue; Tax Parcel 1-29-6
14. 717 West Avenue; Tax Parcel 1-29-4
15. Isaacs Street

Exhibit E
(Redeveloper Property)

1. 61-65 Wall Street; Tax Parcels 1-29-13 and 1-29-14
2. 97 Wall Street; Tax Parcel 1-29-7
3. 21 Isaacs Street; Tax Parcel 1-29-28
4. 31 Isaacs Street; Tax Parcel 1-29-23

Exhibit F
(Form of Progress Reports)

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column 1 on Contracts where veriable retainage for line items may apply.

APPLICATION NO.:
APPLICATION DATE:
PERIOD TO:
ARCHITECTS PROJECT NO.: N/A

A	B	C	D	E	F	G	H
			WORK COMPLETED				
ITEMNO.	DESCRIPTION OF WORK	SCHEDULED VALUE	FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G ÷ C)
	TOTAL	$ -	$ -	$ -	$ -	$ -	

Exhibit G

(Form of Certificate of Completion)

CERTIFICATE OF COMPLETION

KNOW ALL MEN BY THESE PRESENTS:

That the **REDEVELOPMENT AGENCY OF THE CITY OF NORWALK** hereby certifies that **POKO-IWSR DEVELOPERS, LLC** has completed the improvements as shown on a certain map entitled "___________________________"; which map was filed in the Norwalk Land Records as Map # ________, in accordance with the conditions and covenants contained in a certain agreement entitled "Land Disposition and Development Agreement by and between the City of Norwalk, Connecticut, The Redevelopment Agency of the City of Norwalk and POKO-IWSR Developers, LLC", which agreement is dated ____________, 2007, and recorded in the Land Records of the City of Norwalk, County of Fairfield and State of Connecticut, in Volume ____ at Page __ (the "Land Disposition Agreement").

This certificate shall be conclusive determination of satisfaction and termination of the agreements and covenants in said agreement and in the deed with respect to the obligations of the Redeveloper and its successors and assigns to construct the improvements and the dates for the beginning and completion thereof.

IN WITNESS WHEREOF, the Redevelopment Agency of the City of Norwalk has caused this Certificate to be duly executed and its seal affixed by ____________________, its Chairman, hereunto duly authorized, this ___ day of ________, 20__.

Signed; sealed and delivered in the presence of:

REDEVELOPMENT AGENCY OF THE CITY OF NORWALK

____

By: _______________________________

Its Chairman
Hereunto Duly Authorized

____

STATE OF CONNECTICUT)
) SS. Norwalk
COUNTY OF FAIRFIELD)

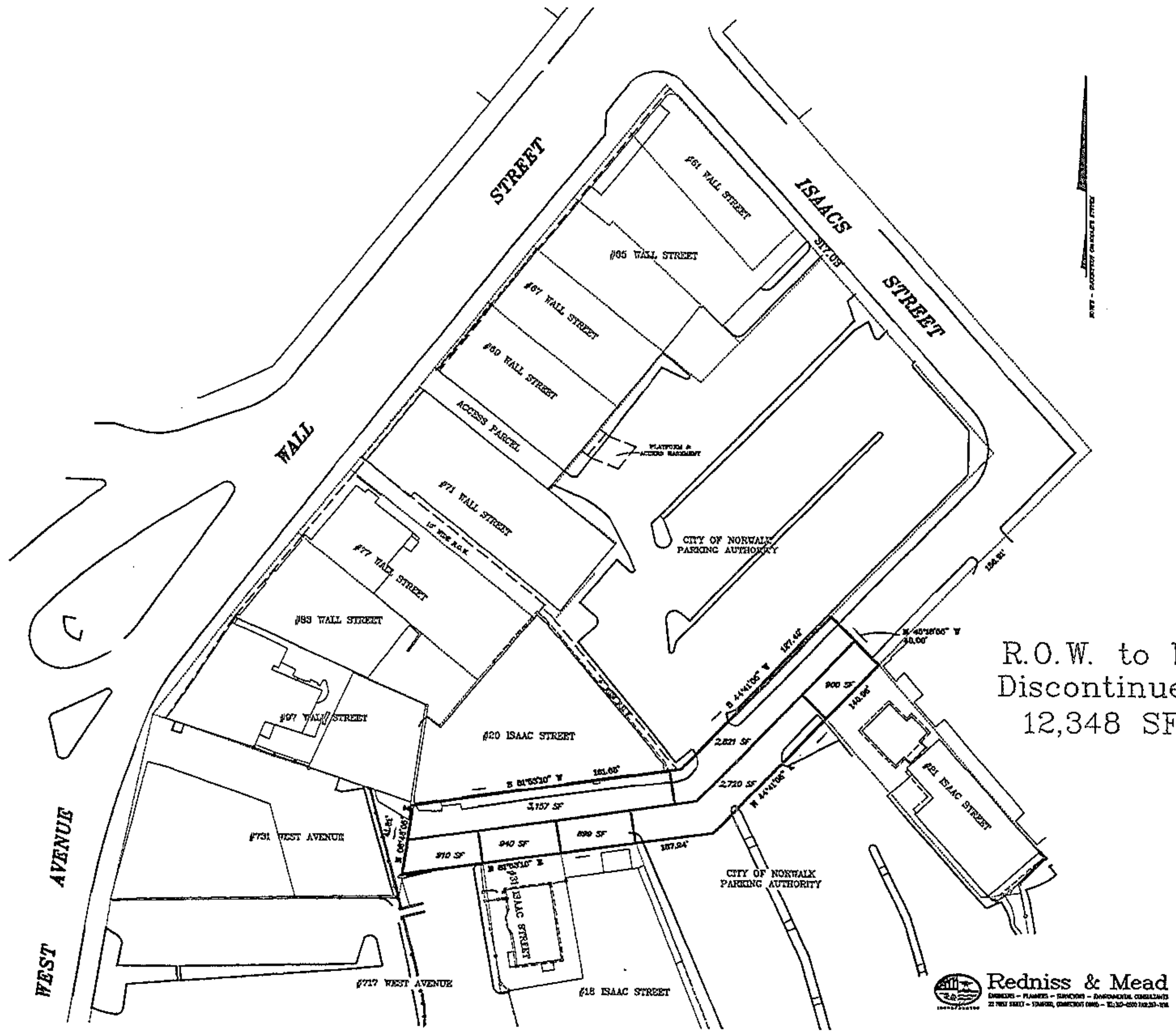
On this ____ day of __________, 20__, before me, __________________, the undersigned officer, personally appeared _________________, Chairman of the REDEVELOPMENT AGENCY OF THE CITY OF NORWALK, signer and sealer of the foregoing instrument and acknowledged the same to be the free act and deed of said Redevelopment Agency of the City of Norwalk, and ___ free act and deed as Chairman, before me.

____

Commissioner of the Superior Court

Exhibit H

(Survey Showing Portion of Isaacs Street to be Abandoned)



R.O.W. to be Discontinued 12,348 SF

Exhibit I

(City License Agreement)

TEMPORARY EASEMENT AND LICENSE AGREEMENT
FOR

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

This Agreement is entered into this day of 2007, by and between the **CITY OF NORWALK**, a municipal corporation organized and existing under the laws of the State of Connecticut, acting herein by, Richard A. Moccia, its Mayor, duly authorized, (hereinafter the Grantor), for good and valuable consideration received to its full satisfaction of a licensed professional engineering firm established pursuant to the laws of the State of Connecticut, having its offices at acting herein by ,its Principal, duly authorized (hereinafter the Grantee).

WHEREAS, the City of Norwalk and the Norwalk Redevelopment Agency of the City of Norwalk have been working together to implement the Wall Street Redevelopment Project (the Project), encompassing real property owned by the City of Norwalk known as the located at , Norwalk, (hereinafter "Parcel 2A"); and

WHEREAS, in order to accomplish the implementation of the Project, the Redevelopment Agency of the City of Norwalk has determined it to be necessary to obtain a detailed and accurate understanding of the geotechnical and environmental conditions impacting Parcel 2A; and

WHEREAS, the Grantee is an independent environmental consultant hired by the Redevelopment Agency of the City of Norwalk to perform the necessary environmental testing and subsurface investigation of the real property identified herein.

NOW, THEREFORE: the parties hereby acknowledge and agree to the following terms and conditions.

GRANT OF LICENSE

1. The City of Norwalk, as Grantor, does hereby grant, and confirm unto the Grantee, a temporary license and working easement as described herein over, under, through and upon the real property shown and depicted as   on the attached Property Survey,   which is attached hereto and incorporated herein as Exhibit A and including the area of the adjacent municipal sidewalks and the abutting roadways all as depicted on the survey described above. The real property over which the temporary easement is granted is hereinafter referred to as the "Property".

TEMPORARY LICENSE TERMS

2. Permission is hereby given to the Grantee, its agents, employees, contractors and subcontractors, to enter at agreed-upon times onto the Property described herein solely to conduct such geotechnical and environmental tests and related activities in connection with the Grantee's implementation of the Plan (the Work). The permission hereby granted is limited to such activities as are necessary and incident to the performance of such testing in accordance with all applicable professional

standards of practice.

3. The permission hereby granted shall be effective from the date hereof and shall continue throughout the conduct and final completion of the Work. In no event, however, will such permission and license hereby granted continue beyond , 2007.

4. Notwithstanding the above, Grantor may at any time, terminate this Agreement, and the rights and privileges hereby granted in the event of a breach by Grantee, or anyone working on its behalf of any of the terms, restrictions or requirements of this Agreement.

5. The parties understand and agree that the Work will be performed by and on behalf of the Grantee by individuals authorized and licensed to perform such work within the State of Connecticut (the Subcontractors). The Grantee hereby agrees for itself, its employees, agents and its Subcontractors to be bound by the terms, requirements and obligations of this Agreement concerning the conduct of the Work on the Property and to exercise the permission hereby granted in such a way as to minimize any resulting interference with the Grantor's current use of the Property and to minimize, to the extent reasonably practicable, all potential disturbances to the Property.

INSURANCE

6. Grantee shall provide at its own cost and expense through the effective period of this License, insurance covering its

activities and those activities performed by any subcontractors hereunder. All policies of insurance shall name the City of Norwalk as an additional insured. Such insurance shall include (i) public liability coverage for all damages arising out of bodily injuries or death and for all damages arising out of injury to or destruction of property; and (ii) property damage coverage insuring against claims for all damages caused to the Property as a result of Grantee's activities hereunder. Such coverage shall be in a minimum amount of One Million Dollars per occurrence or accident and Two Million Dollars in the general aggregate and shall be carried under a policy written on a per occurrence basis only. The above insurance shall include standard liability coverage for pollution and/or environmental impairment. The required insurance shall be evidenced by a certificate of insurance provided to the Grantor's Corporation Counsel prior to entrance upon the Property by Grantee or its agents.

GENERAL TERMS

7. This Agreement and the permission granted hereunder is subject to the following covenants and conditions:

A. The Grantee shall coordinate its activities with the Grantor so as to minimize, to the fullest extent reasonably possible and practicable, any resulting interference with the ongoing use and operation of the Property. The Grantee will provide Grantor with such prior notice of its plans and schedule for the conduct of the Work as may be reasonably required by Grantor's Director of Public Works.

B. Grantee shall be responsible for obtaining all permits, licenses and approvals as may be required from any governmental entity in connection with its performance of the Work. However, no further permission, in addition to that granted hereunder, shall be needed from the Grantor for the Work or the performance of any required restoration of the Property.

C. Upon completion of the Work the Grantee will be responsible for the following: (i) promptly restoring the Property as closely as possible to its condition as existed immediately prior to Grantee's entrance thereon, which restoration will be subject to the reasonable approval of the Grantor, acting by its Director of Public Works; and (ii) providing Grantor's Director of Public Works with written documentation confirming all test results, analyses and recommendations, if any, concerning the Property resulting from the Work.

D. Grantee shall indemnify and hold Grantor, its agents, officers and employees, harmless from and against any and all injuries, claims, damages, liabilities, costs, losses and expenses, including reasonable attorney's fees, arising out of, caused by or resulting from any or all activities performed in connection with the Property, including any entrance on the Property by Grantee, its Subcontractors, agents or employees.

This indemnity shall not be limited by any insurance coverage provided, or any term or condition of this Agreement and shall survive the expiration or earlier termination of this Agreement.

E. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Connecticut. Any action hereunder shall be brought in the Judicial District of Stamford/Norwalk.

F. This Agreement shall constitute the entire agreement between the parties concerning the permission hereby granted. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent specifically incorporated into this Agreement.

G. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

H. Grantee expressly acknowledges that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Property by virtue of the permission granted under this License Agreement.

TO HAVE AND TO HOLD the above granted license and the permission hereinbefore described to the said Grantee by said Grantor. The Grantee hereby represents to the CITY as follows:

That it is a legally existing entity under the laws of the

State of Connecticut, that it has, and has exercised, the required corporate power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Agreement and to assume the responsibilities and obligations created hereunder; and

That this Agreement is duly executed and delivered by an authorized corporate officer, in accordance with such officer's powers to bind the Grantee hereunder, and constitutes a valid and binding obligation enforceable in accordance with its terms, conditions and provisions.

IN WITNESS WHEREOF, the parties have caused these presents to be signed and their seals affixed this ________ day of

_________________, 2007.

Signed, Sealed and Delivered
in the Presence of:

CITY OF NORWALK

____
Witness

______________________________ By:______________________________
Witness

Richard A. Moccia
Its Mayor
Duly Authorized

Signed, Sealed and Delivered
in the Presence of:

____
Witness

______________________________ By:______________________________

Witness

Its
Duly Authorized

STATE OF CONNECTICUT)
)ss. Norwalk
COUNTY OF FAIRFIELD) ________________, 2007

Personally appeared, before me, Richard A. Moccia, who acknowledged himself to be the Mayor of the **CITY OF NORWALK,** and that he as such Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the **CITY OF NORWALK** by himself as such Mayor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

____
Commissioner of Superior Court
Notary Public

STATE OF CONNECTICUT)
)ss. Norwalk
COUNTY OF FAIRFIELD) ________________, 2007

Personally appeared, before me, , who acknowledged himself to be the of , and that he as such Principal, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of by himself as such.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

____
Commissioner of Superior Court
Notary Public

APPROVED AS TO FORM
OFFICE OF CORPORATION COUNSEL:

By:______________________

Exhibit J

(Appendix A to 49CFR Part 26 – Guidance Concerning Good Faith Efforts)

APPENDIX A TO 49 CFR PART 26 – GUIDANCE CONCERNING GOOD FAITH EFFORTS

I. When, as a recipient, you establish a Contract goal on a DOT-assisted Contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a Contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE Contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE Contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a Contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a Contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the Contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate DBE participation, even when the prime Contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as Contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the Contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime Contractor to perform the work of a Contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the Contract. For example, when the apparent successful bidder fails to meet the Contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal.. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Exhibit K

(Proposed Plan Amendments)

Exhibit L

(Real Property Tax Phase-In Schedules)

THE NATIONAL DEVELOPMENT COUNCIL

TO: Timothy Sheehan
Munro Johnson

FROM: Kevin F. Gremse

DATE: August 17, 2007

RE: Site 2A
Taxes and Infrastructure Debt Service Requirements
SIXTH UPDATE

Per your request, the National Development Council (NDC) has performed an updated analysis for the Site 2A proposed development by POKO Partners, LLC (POKO). This three-phase +/- $150 million development consists of the following proposed uses;

- 149 residential rental units; 89 (60%) market and 60 (40%) affordable.
- 245 residential condominium units; 171 (70%) market and 74 (30%) affordable
- 63,013 square feet of commercial retail space.
- 791 parking spaces; 386 (49%) of which will be public parking.

The attached analysis includes a determination for the following;

- Projected taxes for the first fifteen years, based upon recommendations for fixing tax assessments or conveying a partial tax-exemption.
- Debt service on the tax-exempt bond issue required to fund the public infrastructure.
- Summary of net taxes (projected taxes less debt service on bond) to the City of Norwalk.

I. TAXES FOR THE FIRST FIFTEEN YEARS

Taxes were estimated by assuming a proposed phase-in schedule or partial exemption for each of the three uses (residential rental, commercial retail, and residential condominium) for each of the three phases. These taxes were aggregated for the first fifteen years.

A. Residential Rental

1. Taxes will be based upon a formula of;
7.5% of Effective Gross Rent (EGR)
for a period of 15 years, with 3% annual escalators.
2. It should be noted that the EGR includes rent on both the residential rental units as well as the rent from the parking spaces allocated to the residential rental units.

3. An average affordable rent of $1,500 and average market rent of $2,350 for the first phase is assumed.
4. An average affordable rent $1,550 and $2,450 for the third phase is assumed.
5. A 5% vacancy factor is assumed.
6. The residential tax agreement is proposed for fifteen years and is consistent with Section 12-65 of CT Statutes:

B. Commercial Retail Taxes

1. Seven (7)-Year Phase-in
2. Year 1 40% of Full Taxes
3. Years 2 – 7 40% of Full Taxes plus 10% each subsequent year until year 7
4. Taxes are estimated based upon the formula of;
*Estimated "as complete" fair market value (FMV) * 1.1%*
5. 1.1% is the reported "effective tax rate," per City of Norwalk tax assessor.
6. The FMV is derived through the income approach by dividing the projected net operating income (NOI) by an assumed capitalization rate of 8.5%.
7. The commercial tax agreement is proposed per Section 12-65c of CT Statutes.
8. Per the recommendations of RKG Associates, no parking revenue from the condo parking spaces is assumed. <u>Parking revenue is only assumed from the public parking spaces.</u>
9. An average rent of $20/SF for the commercial retail rent in the first phase is assumed. For the theater, an annual rental income of $125,000 is assumed.
10. The commercial retail space is adjusted to $20/SF in the second phase
11. The commercial retail space is adjusted to $30/SF in the third phase.

C. Residential Condominiums

1. Taxes of market units for the first two phases of the development will be based upon the formula of;
*aggregate gross square feet * $2/SF, for first five years.*
2. Taxes of affordable units for the first two phases of the development will be based upon the formula of;
*aggregate gross square feet * $2/SF, for first five years.*
3. The $2/SF on the first two phases is assumed to be applied immediately after certificate of occupancy.
4. The proposed taxes for the first two phases, at $2/SF, represent approximately 50% savings to the condominium owners.

5. Taxes for the market and affordable units in the third phase will be based upon the fair market value * 1.1% effective tax rate.
6. The residential condominium tax agreement is proposed per Section 12-65c of CT Statutes.
7. A 3% annual tax escalator is assumed after the five-year period.

II. DEBT SERVICE ON TAX-EXEMPT BOND

A. A public infrastructure cost of $4,271,460, per the Norwalk Redevelopment Agency, is assumed.
B. A 20-year term and 5.0% interest rate is assumed.
C. Considering the phased approach of the development, it is recommended that the bond be structured with three years of "interest-only" payments.
D. Based upon the above assumptions, "interest-only" payments for the first three years are approximately $214,000.
E. Based upon the above assumptions, principal and interest payments, years four through twenty, are approximately $373,000.
F. Capitalized debt service payments may be built into the bond issue, if appropriate and/or necessary.
G. It is assumed that the bond is issued and fully disbursed during the first year, even though the infrastructure improvements are for a three-phase development.

III. SUMMARY OF NET TAXES (PROJECTED TAXES LESS DEBT SERVICE ON BOND) TO CITY OF NORWALK

A. The estimated taxes are sufficient in each of the first fifteen years to cover the debt service on the infrastructure bond issue.
B. The City nets substantially more taxes in every year than what is presently collected on all properties that comprise the 2a redevelopment site. The total current tax collection on the properties that comprise the 2A site is a reported $142,000.
C. During the fifteen years, the average net taxes to the City will average approximately $1 million annually.
D. The projected net tax collection based upon the above recommendations for the first fifteen-year period is approximately $16.7 million.
E. The City's general fund nets at least 50% of the total taxes in most years. In other words, the debt service payments absorb less than 50% of the gross estimated taxes in all years, except for years one (37%), two (40%), three (37%), and four (38%).
F. The projected taxes are almost six times higher than the taxes estimated to be collected based upon the current land use.
G. If the properties per the proposed development were taxed at full assessment, the taxes during the same fifteen-year period is an estimated $20.0 million.

H. The aggregate benefit accorded to the development over a fifteen year period of time is $3.3 million.

I. The aggregate public benefit accorded to the Wall Street Redevelopment site is $7.5 million, comprised of the $4.2 million bond issue for the infrastructure and the $3.3 million tax benefit. The $7.5 million public subsidy leverages a $150 million investment for a mixed-use redevelopment in a long under-performing area of the City. In other words, the City of Norwalk's exposure of funds is only 5% of the total development costs. For a pioneering redevelopment that is expected to help re-create the Wall Street market, this is an outstanding leverage factor the City. Furthermore, since the bond issue's debt service is retired through revenues from the project, the true public subsidy of the development is actually the $3.3 million in tax relief. The tax relief only constitutes 2.2% of the total development costs.

J. Of the $3.3 in tax relief offered through the above proposals, $1.3 million, or forty percent (40%), of the tax relief is provided to the condo homebuyers.

Parcel 2a
Assumptions

Debt Service on Pubic Infrastructure Needs									
Term	20								
Interest Only	3								
Amortization	17								
Rate	5.00%								
Amount	4,271,460								
Current Taxes on Site 2A	142,000								
Interest Only Pmts., 1st 3 yrs	213,573								
Amortized Debt Service, Years 3 - 20	373,491								
	Phase I	**%**	**Phase II**	**%**	**Phase III**	**%**	**Total**	**%**	
Residential Rental									
Residential Rental Units	54		0		95		149		
Market Rate Apts	32	59%	0		57	60%	89	60%	
Affordable Market Rate Apts	22	41%	0		38	40%	60	40%	
Average Market Rent	2,350		0		2,450				
Average Affordable Rent	1,500		0		1,550				
Annual Market Residential Income	902,400		0		1,675,800				
Annual Affordable Residential Income	396,000		0		706,800				
Annual Residential Income	1,298,400		0		2,382,600		3,681,000		
Vacancy Rate	5.00%		0		5.00%				
Effective Gross Residential Income	1,233,480		0		2,263,470		3,496,950		
Residential Tax as a % of EGR	7.50%		7.50%		7.50%				
Tax Escalator	1.03		1.03		1.03				
Operating Expenses/Unit	5,500.00				6,000.00				
Commercial									
Commercial Space	24,913		12,090		26,010		63,013		
Parking Spaces	235		276		280		791		
Public Parking Spaces	94	40%	179	65%	112	40%	386	49%	
Residential Parking Spaces	141	60%	97	35%	168	60%	407	51%	
Tax Escalator	1.03		1.03		1.03				
Vacancy	10.00%		10.00%		10.00%				
Residential Condominiums									
Condo Units	54		96		95		245		
Market Rate Condo Units	38	70%	66	69%	66	69%	171	70%	
Affordable Condo Units	16	30%	28	29%	29	31%	74	30%	
Average Sizeof Condo Unit	1,150		1,150		1,150				
Average Price/SF for Condo Unit	340		370		390				
Average Market-Rate Condo Price	391,000		425,500		448,500				
Average Affordable Condo Price	205,000		210,000		230,000				
Valuation of Market Condos	14,858,000		28,083,000		42,607,500				
Valuation of Affordable Condos	3,280,000		5,880,000		6,670,000				
Valuation of Units	18,138,000		33,963,000		49,277,500		101,378,500		
Effective Tax Rate *(from assessor)*	1.10%		1.10%		1.10%				
% Sold First Year	50.00%		50.00%		50.00%				
% Sold Second Year	75.00%		75.00%		75.00%				
% Sold Third Year	100.00%		100.00%		100.00%				
Total Square Footage of Condo Units	62,100		108,100		109,250				
Tax/SF	2.00		2.00						
Proposed Taxes with Exemption ($2/SF)	124,200		216,200						
Avg Tax/Unit with exemption	2,300		2,300						
Tax/Market Unit without exemption	4,301		4,681						
Savings/Market Unit with exemption	2,001	53%	2,381	49%					

Parcel 2a
Proposed Taxes

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Phase I															
Residential Rental Taxes	92,511	95,286	98,145	101,089	104,122	107,246	110,463	113,777	117,190	120,706	124,327	128,057	131,899	135,856	139,931
Commercial Taxes	22,588	28,234	33,881	39,528	45,175	50,822	56,469	58,163	59,908	61,705	63,556	65,463	67,427	69,450	71,533
Residential Condo Taxes	124,200	124,200	124,200	124,200	124,200	231,296	238,235	245,382	252,743	260,326	268,136	276,180	284,465	292,999	301,789
Phase 2 and 3 Base Properties	106,937	106,937	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Phase I Taxes	346,236	354,658	256,226	264,817	273,497	389,364	405,167	417,322	429,841	442,737	456,019	469,699	483,790	498,304	513,253
Phase II															
Residential Rental Taxes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Commercial Taxes	0	0	22,541	28,176	33,811	39,447	45,082	50,717	56,352	58,043	59,784	61,578	63,425	65,328	67,288
Residential Condo Taxes	0	0	216,200	216,200	216,200	216,200	216,200	433,097	446,090	459,472	473,256	487,454	502,078	517,140	532,654
Phase 3 Base Properties	0	0	79,612	79,612	79,612	0	0	0	0	0	0	0	0	0	0
Total Phase II Taxes	0	0	318,353	323,988	329,623	255,647	261,282	483,814	502,442	517,515	533,041	549,032	565,503	582,468	599,942
Phase III															
Residential Rental Taxes	0	0	0	0	0	169,760	174,853	180,099	185,502	191,067	196,799	202,703	208,784	215,047	221,499
Commercial Taxes	0	0	0	0	0	42,058	52,572	63,087	73,601	84,115	94,630	105,144	108,299	111,547	114,894
Residential Condo Taxes	0	0	0	0	0	542,053	558,314	575,063	592,315	610,085	628,387	647,239	666,656	686,656	707,256
Total Phase III Taxes	0	0	0	0	0	753,870	785,739	818,249	851,418	885,267	919,816	955,086	983,738	1,013,251	1,043,648
Gross Taxes	**346,236**	**354,658**	**574,579**	**588,806**	**603,120**	**1,398,881**	**1,452,188**	**1,719,384**	**1,783,701**	**1,845,519**	**1,908,875**	**1,973,817**	**2,033,031**	**2,094,022**	**2,156,843**
Less Debt Service on Bonds	(213,573)	(213,573)	(213,573)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)
Net Taxes	132,663	141,085	361,006	215,315	229,630	1,025,390	1,078,697	1,345,894	1,410,211	1,472,028	1,535,385	1,600,326	1,659,541	1,720,532	1,783,352
Current Taxes	142,300	146,569	150,966	155,495	160,160	164,965	169,914	175,011	180,261	185,669	191,239	196,976	202,886	208,972	215,242
Net Gain from Current Taxes	(9,637)	(5,484)	210,040	59,820	69,470	860,425	908,784	1,170,882	1,229,949	1,286,359	1,344,145	1,403,350	1,456,655	1,511,559	1,568,111
Net Taxes/Gross Taxes	38%	40%	63%	37%	38%	73%	74%	78%	79%	80%	80%	81%	82%	82%	83%
Net Taxes to City/15 years	15,711,053														
Estimated Taxes/Current Use	2,646,625														
Discount Rate	5%														
NPV Existing Taxes	1,782,955														
NPV of Proposed Net Taxes	9,574,410														
Average Net Taxes to City	1,047,404														

Parcel 2a
Taxes at Full Valuation

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Phase I															
Residential Rental Taxes	128,766	132,629	136,608	140,706	144,927	149,275	153,753	158,366	163,117	168,010	173,051	178,242	183,590	189,097	194,770
Commercial Taxes	56,469	58,163	59,908	61,705	63,556	65,463	67,427	69,450	71,533	73,679	75,889	78,166	80,511	82,926	85,414
Residential Condo Taxes	199,518	205,504	211,669	218,019	224,559	231,296	238,235	245,382	252,743	260,326	268,136	276,180	284,465	292,999	301,789
Phase 2 and 3 Base Properties	106,937	106,937	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Phase I Taxes	491,690	503,232	408,184	420,430	433,043	446,034	459,415	473,197	487,393	502,015	517,076	532,588	548,566	565,022	581,973
Phase II															
Residential Rental Taxes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Commercial Taxes		0	56,352	58,043	59,784	61,578	63,425	65,328	67,288	69,306	71,385	73,527	75,733	78,005	80,345
Residential Condo Taxes	0	0	373,593	384,801	396,345	408,235	420,482	433,097	446,090	459,472	473,256	487,454	502,078	517,140	532,654
Phase 3 Base Properties	0	0	79,612	79,612	79,612	0	0	0	0	0	0	0	0	0	0
Total Phase II Taxes	0	0	509,557	522,456	535,741	469,813	483,907	498,424	513,377	528,778	544,642	560,981	577,811	595,145	612,999
Phase III															
Residential Rental Taxes	0	0	0	0	0	232,852	239,838	247,033	254,444	262,077	269,939	278,038	286,379	294,970	303,819
Commercial Taxes	0	0	0	0	0	105,144	108,299	111,547	114,894	118,341	121,891	125,548	129,314	133,194	137,189
Residential Condo Taxes	0	0	0	0	0	542,053	558,314	542,053	558,314	575,063	592,315	610,085	628,387	647,239	666,656
Total Phase III Taxes	0	0	0	0	0	880,049	906,450	900,633	927,652	955,481	984,146	1,013,670	1,044,080	1,075,403	1,107,665
Gross Taxes	**491,690**	**503,232**	**917,742**	**942,885**	**968,784**	**1,795,896**	**1,849,773**	**1,872,255**	**1,928,422**	**1,986,275**	**2,045,863**	**2,107,239**	**2,170,456**	**2,235,570**	**2,302,637**
Less D/S on Bonds	(213,573)	(213,573)	(213,573)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)	(373,491)
Net Taxes	278,117	289,659	704,169	569,395	595,293	1,422,405	1,476,282	1,498,764	1,554,932	1,612,784	1,672,373	1,733,749	1,796,966	1,862,079	1,929,146
Current Taxes	142,300	146,569	150,966	155,495	160,160	164,965	169,914	175,011	180,261	185,669	191,239	196,976	202,886	208,972	215,242
Net Gain/(Loss) from Current	135,817	143,090	553,203	413,900	435,133	1,257,440	1,306,368	1,323,753	1,374,670	1,427,115	1,481,133	1,536,772	1,594,080	1,653,107	1,713,905
Net Taxes/Gross Taxes	57%	58%	77%	60%	61%	79%	80%	80%	81%	81%	82%	82%	83%	83%	84%
Net over 15 years, full	18,996,113														
Net over 15 years, proposed	15,711,053														
Proposed Reduction	3,285,059														
Avg Annual City Net Taxes	1,266,408														
Discount Rate	5%														
NPV of Exisiting Taxes	1,782,955														
NPV of Net Taxes at Full Value	10,169,863														

Parcel 2a
Proposed/ Full Taxes Comparison

	1	2	3	4	5	6	7	8	9	10	11	12	13	13	15
Phase I Taxes															
Taxes at Full Valuaton	491,690	506,441	408,184	420,430	433,043	446,034	459,415	473,197	487,393	502,015	517,076	532,588	548,566	565,022	581,973
Proposed Taxes	346,236	354,658	256,226	264,817	273,497	389,364	389,364	417,322	429,841	442,737	456,019	469,699	483,790	498,304	513,253
Differential	145,454	151,783	151,958	155,612	159,546	56,670	70,051	55,876	57,552	59,279	61,057	62,889	64,775	66,719.	68,720
Phase II Taxes															
Taxes at Full Valuation	0	0	509,557	522,456	535,741	469,813	483,907	498,424	513,377	528,778	544,642	560,981	577,811	595,145	612,999
Proposed Taxes	0	0	318,353	323,988	329,623	255,647	261,282	483,814	502,442	517,515	533,041	549,032	565,503	582,468	599,942
Differential	0	0	191,204	198,468	206,118	214,166	222,625	14,611	10,935	11,263	11,601	11,949	12,308	12,677	13,057
Phase III Taxes															
Taxes at Full Valuation	0	0	0	0	0	880,049	906,450	900,633	927,652	955,481	984,146	1,013,670	1,044,080	1,075,403	1,107,665
Proposed Taxes	0	0	0	0	0	753,870	785,739	818,249	851,418	885,267	919,816	955,086	983,738	1,013,251	1,043,648
Differential	0	0	0	0	0	126,179	120,711	82,384	76,234	70,214	64,330	58,584	60,342	62,152	64,017
Total Tax Benefit by Year	**145,454**	**151,783**	**343,162**	**354,080**	**365,663**	**397,015**	**413,388**	**152,871**	**144,721**	**140,756**	**136,988**	**133,422**	**137,425**	**141,548**	**145,794**
Aggregate Tax Benefit	3,304,070														
Residential Condo Full Assessment and Phase-in Comparision															
Phase I Condo Benefit	75,318	81,304	87,469	93,819	100,359	0	0	0	0	0	0	0	0	0	0
Phase II Condo Benefit	0	0	157,393	168,601	180,145	192,035	204,282	0	0	0	0	0	0	0	0
Phase III Condo Benefit	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Condo Benefit	75,318	81,304	244,862	262,419	280,504	192,035	204,282	0	0	0	0	0	0	0	0

Condo Phase-in Benefit	1,340,724
Condo Benefit/% of Aggregate Benefit	40.58%

Site 2a
Commercial Valuation

	Phase I POKO	Phase II POKO	Phase III POKO
Assumptions			
Commercial Space	12,853	12,090	26,010
Theatre Space	12,060	0	0
Commercial Rent	20	20	30
Theatre Rent	n/a	0	40
Vacancy	10.00%	10.00%	10.00%
Public Parking Spaces	94	179	112
Parking Expenses/Space	0	0	0
Proforma			
Commercial Rent	257,060	241,800	780,300
Theatre Income	125,000	0	0
Public Parking Income	165,440	315,744	197,120
Gross Income	547,500	557,544	977,420
Less Vacancy	(54,750)	(55,754)	(97,742)
Operating Expenses	(56,400)	(66,340)	(67,200)
NOI	436,350	435,450	812,478
Cap Rate	8.50%	8.50%	8.50%
Valuation	5,133,529	5,122,936	9,558,565
Effective Tax Rate	1.10%	1.10%	1.10%
Taxes at Full Assessment	56,469	56,352	105,144
Phase-in Schedule			
Year 1	40%	40%	40%
Year 2	10%	10%	10%
Year 3	10%	10%	10%
Year 4	10%	10%	10%
Year 5	10%	10%	10%
Year 6	10%	10%	10%
Year 7	10%	10%	10%
	100%	100%	100%

Site 2a
Rental Residential Valuation

	Phase I	Phase II	Phase III
Residential Rental Units	54		95
Market Rate Apts	32		57
Average Market Rent	2,350		2,450
Affordable Market Rate Apts	22		38
Average Affordable Rent	1,500		1,550
Annual Market Residential Income	902,400		1,675,800
Annual Affordable Res. Income	396,000		706,800
Annual Res. Income	1,298,400		2,382,600
Vacancy Rate	5.00%		5.00%
Effective Gross Residential Rent	1,233,480		2,263,470
Op Expenses	(297,000)		(570,000)
NOI	936,480		1,693,470
Cap Rate	8.00%		8.00%
Valuation	**11,706,000**		**21,168,375**
Tax Rate	**1.10%**		**1.10%**
Taxes with Full Valuation	**128,766**		**232,852**
Per Unit	**2,385**		**2,451**
Annual Taxes at Full Valuation	128,766		232,852
Taxes at 10% EGR	129,840		226,347
Proposed Annual Taxes, at 7.5% EGR	92,511		169,760
Annual Savings to Development	36,255		63,092

Site 2a
Annual Proposed Taxes by Type

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Residential Rental Taxes	92,511	95,286	98,145	101,089	104,122	277,006	285,316	293,876	302,692	311,773	321,126	330,759	340,682	350,903	361,430
Residential/% of Total Taxes	26.72%	26.87%	17.08%	17.17%	17.26%	19.80%	19.65%	17.09%	16.97%	16.89%	17.18%	16.76%	16.76%	16.76%	16.76%
Avg Tax/Unit	1,713	1,765	1,817	1,872	1,928	1,859	1,915	1,972	2,031	2,092	2,155	2,220	2,286	2,355	2,426
Commercial Taxes	22,588	28,234	56,422	67,704	78,986	132,326	154,123	171,966	189,861	203,863	217,970	232,185	239,150	246,325	253,715
Commercial/% of Total Taxes	6.52%	7.96%	9.82%	11.50%	13.10%	9.46%	10.61%	10.00%	10.64%	11.05%	11.66%	11.76%	11.76%	11.76%	11.76%
Condo Taxes	124,200	124,200	340,400	340,400	340,400	989,549	1,012,749	1,253,542	1,291,148	1,329,883	1,329,883	1,410,873	1,453,199	1,496,795	1,541,699
Condo Taxes/% of Taxes	35.87%	35.02%	59.24%	57.81%	56.44%	70.74%	69.74%	72.91%	72.39%	72.06%	71.16%	71.48%	71.48%	71.48%	71.48%
Taxes on Ph. 2 & 3 Properties	106,937	106,937	0	0	0	0	0	0	0	0	0	0	0	0	0
Ph. 2 & 3/% of Taxes	30.89%	30.15%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Taxes on Ph. 3 Properties	0	0	79,612	79,612	79,612	0	0	0	0	0	0	0	0	0	0
Ph. 3 Taxes/% of Total Taxes	0.00%	0.00%	13.86%	13.52%	13.20%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Total Taxes	**346,236**	**354,658**	**574,579**	**588,806**	**603,120**	**1,398,881**	**1,452,188**	**1,719,384**	**1,783,701**	**1,845,519**	**1,868,979**	**1,973,817**	**2,033,031**	**2,094,022**	**2,156,843**
	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Exhibit M

(Sustainable Design Practices Checklist)

LAND DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF NORWALK, NORWALK REDEVELOPMENT AGENCY, AND POKO IWSR DEVELOPERS, LLC		
Exhibit M: Sustainable Design Initiatives Checklist **To be scored by the Agency's selected Design Reviewer upon submittal by the developer of Construction Plans and Working Drawings, under Article III of the Land Disposition and Development Agreement.**		
Comment	**Sustainable Sites - 14 Points**	**Points**
	Erosion and Sedimentation Control	
	Site Selection	
	Urban Redevelopment	
	Brownfield Redevelopment	
	Public Transportation Alternative	
	Bicycle Storage and Changing Rooms	
	Alternative Fuel Vehicles	
	Parking Capacity and Carpooling	
	Protect and Restore Open Space	
	Reduced Site Disturbance of Development Footprint	
	Stormwater Management	
	Exterior Design Landscaped Non-Roof Reduce Heat Islands	
	Exterior Design Landscaped Roof Reduce Heat Islands	
	Light Pollution Reduction	
	Water Efficiency - 5 Points	
	Water Efficient Landscaping, Reduced by 50%	
	Water Efficient Landscaping, No Potable Use or No Irrigation	
	Innovative Wastewater Technologies	
	Water Use Reduction, 20% Reduction	
	Water Use Reduction, 30% Reduction	
	Energy and Atmosphere - 7 Points	
	Minimum Energy Performance	
	CFC Reduction in HVAC&R Equipment	
	Optimize Energy Perfomance - Note: 1 to 10 Points	
	Renewable Energy, 5%	
	Renewable Energy, 10%	
	Renewable Energy, 20%	
	Ozone Depletion	
	Materials and Resources - 14 Points	
	Storage and Collection of Recyclables	
	Building Reuse, Maintain 75% of Existing Shell	
	Building Reuse, Maintain 100% of Shell	
	Building Reuse, Maintain 100% Shell and 50% Non-Shell	

	Construction Waste Management, Divert 50%	
	Construction Waste Management, Divert 75%	
	Resource Reuse, Specify 5%	
	Resource Reuse, Specify 10%	
	Recycled Content, Specify 5% (post consumer +1/2 post-industrial)	
	Recycled Content, Specify 10% (post consumer +1/2 post-industrial)	
	Local/Regional Materials, 20% Manufactured Locally	
	Local/Regional Materials, of 20% Above, 50% Harvested Locally	
	Rapidly Renewable Materials	
	Certified Wood	
	Indoor Environmental Quality - 16 Points	
	Minimum IAQ Performance	
	Environmental Tobacco Smoke (ETS) Control	
	Carbon Dioxide (CO2) Monitoring	
	Ventilation Effectiveness	
	Construction IAQ Management Plan, During Construction	
	Construction IAQ Management Plan, Before Occupancy	
	Low-Emitting Materials, Paints	
	Low-Emitting Materials, Carpet	
	Low-Emitting Materials, Composite Wood and Agrifiber	
	Indoor Chemical and Pollutant Source Control	
	Controllability of Systems, Perimeter	
	Controllability of Systems, Non-Perimeter	
	Thermal Comfort, Comply with ASHRAE 55-1992	
	Thermal Comfort, Permanent Monitoring System	
	Daylight and Views, Daylight 75% of Spaces	
	Daylight and Views, Views of 90% Spaces	
	Innovation and Design Process - 4 Points	
	Innovation in Design: Combined Heat and Power (CHP)	
	Innovation in Design: Automated Parking	
	Innovation in Design: Photovoltaic	
	Innovation in Design: Other	

TERMS AND CONDITIONS

Part II

of
LAND DISPOSITION & DEVELOPMENT AGREEMENT

By and Between

THE CITY OF NORWALK, CONNECTICUT,
THE REDEVELOPMENT AGENCY OF THE CITY OF NORWALK

AND

POKO-IWSR DEVELOPERS LLC, Redeveloper

PART II

CONTENTS

ARTICLE I. PREPARATION OF PROPERTY FOR REDEVELOPMENT

[INTENTIONALLY DELETED]

ARTICLE II. RIGHTS OF ACCESS TO PROPERTY

SECTION 201. <u>**Right of Entry for Utility Service.**</u> The Agency reserves for itself, the City, and any public utility company, as may be appropriate, the unqualified right to enter upon the Property upon prior reasonable notice to Redeveloper (except in an emergency when no such notice shall be required) at all reasonable times for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the Property boundary lines and provided for in the easements described or referred to in **Section 11.1 of Part I** hereof.

SECTION 202. <u>**Redeveloper Not to Construct Over Utility Easements.**</u> The Redeveloper shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in **Sections 11.1 of Part I** hereof, unless such construction is provided for in such easement or has been approved by the City. If approval for such construction is requested by the Redeveloper, the Agency shall use its best efforts to assure that such approval shall not be withheld unreasonably.

SECTION 203. <u>**Access to Property.**</u> Prior to the conveyance of the Municipal Parking Lot by the Agency to the Redeveloper, the Agency shall permit Redeveloper and representatives of the Redeveloper to place signs on the Municipal Parking Lot (upon receipt of the prior written consent of the Norwalk Parking Authority and/or the City) and to have access to any part of the Property as to which the Agency holds title, at all reasonable times for the purpose of obtaining data and making various tests concerning the Municipal Parking Lot necessary to carry out the Agreement or deemed appropriate to the construction of the Improvements and financing thereof, provided the Redeveloper agrees not to unreasonably interfere with the operation of the Municipal Parking Lot by the Norwalk Parking Authority. After the conveyance of the Property by the Agency to the Redeveloper, the Redeveloper shall permit the representatives of the Agency, the City, and State access to the Property upon prior reasonable notice to Redeveloper (except in an emergency when no such notice shall be required) at all reasonable times which any of them deems reasonably necessary for the purposes of the Agreement, including but not limited to, inspection of all work being performed in connection with the construction of the Improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Section.

ARTICLE III. CONSTRUCTION PLANS; CONSTRUCTION OF IMPROVEMENTS; CERTIFICATE OF COMPLETION

SECTION 301. <u>**Plans for Construction of Improvements.**</u> Plans and specifications with respect to the redevelopment of the Property and the construction of Improvements thereon shall be in substantial conformity with the Redevelopment Plan, the Agreement, and all applicable State and local laws and regulations. The Redeveloper shall submit to the Agency, for approval by the Agency and the Common Council in accordance with **Sections 3.2, 3.3 and 3.4 of Part I** hereof, plans, drawings, specifications, and related documents, and the proposed construction schedule (collectively, the **"Construction Plans"**); said Construction Plans shall consist of the site plan, floor plans for all levels, elevations in all directions, the property uses and mix (unit count, square foot, parking spaces), exterior finish material, landscaping plan, pedestrian and traffic circulation plan, and a progress schedule with respect to the improvements to be constructed by the Redeveloper on the Property, in reasonably sufficient completeness and detail to show that such improvements and construction thereof will be substantially in accordance with the provisions of the Redevelopment Plan and the Agreement.

SECTION 302. Changes in Construction Plans **[INTENTIONALLY DELETED]**

SECTION 303. Evidence of Equity Capital and Mortgage Financing. **[INTENTIONALLY DELETED]**

SECTION 304. **Approvals of Construction Plans and Evidence of Financing As Conditions Precedent to Conveyance.** **[INTENTIONALLY DELETED]**

SECTION 305. **Commencement and Completion of Construction of Improvements.** The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, and the **Isaacs Street Municipal Parking Lot Deed, the Leonard Street Municipal Parking Lot Deed and the Acquisition Property Deeds** shall contain covenants on the part of the Redeveloper for itself and such successors and assigns, that the Redeveloper, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Improvements thereon, and that, such construction shall in any event be begun within the period specified in **Section 3.12 of Part I** hereof and be completed within the period specified in such **Section 3.12**, subject, however, to extensions of time to commence and/or complete the construction of such Improvements as otherwise permitted or provided for in this Agreement. It is intended and agreed, and the **Isaacs Street Municipal Parking Lot Deed, the Leonard Street Municipal Parking Lot Deed and the Acquisition Property Deeds** shall so expressly provide, that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement itself, be, to the fullest extent permitted by law and equity, binding for the benefit of the Norwalk community, the City and the Agency and enforceable by the Agency and the City against the Redeveloper and its successors and assigns to or of the Property or any part thereof or any interest therein.

SECTION 306. **Progress Reports.** **[INTENTIONALLY DELETED]**

SECTION 307. <u>Certificate of Completion. [INTENTIONALLY DELETED]</u>

ARTICLE IV. RESTRICTION UPON USE OF PROPERTY

SECTION 401. <u>Restrictions on Use.</u> The Redeveloper agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the **Isaacs Street Municipal Parking Lot Deed, the Leonard Street Municipal Parking Lot Deed and the Acquisition Property Deeds** shall contain covenants on the part of the Redeveloper for itself, and such successors and assigns, that the Redeveloper, and such successors and assigns shall:

(a) Devote the Property to, and only to and in accordance with uses proposed in the Land Use chapter of the Wall Street Redevelopment Plan;

(b) Not use the Property for, nor allow the property to be used for Adult Use Establishments, as defined in §118-100 of the Building Zone Regulations of the City of Norwalk; and

(c) Not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin or sex in the sale, lease or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

SECTION 402. <u>Covenants; Binding Upon Successors in Interest; Period of Duration.</u> It is intended and agreed, and the **Isaacs Street Municipal Parking Lot Deed, the Leonard Street Municipal Parking Lot Deed and the Acquisition Property Deeds** shall so expressly provide, that the agreements and covenants provided in Section 401 hereof, shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, its successors and assigns, the City and any successor in interest to the Property, or any part thereof, and the owner of any other land (or of any interest in such land) in the Project Area which is subject to the land use requirements and restrictions of the Redevelopment Plan, and the State of Connecticut and the United States (in the case of the covenant provided in subdivision (c) Section 401 hereof), against the Redeveloper, its successors and assigns and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the agreement and covenant provided in subdivisions (a) and (b) of Section 401 hereof shall remain in effect for the period of time, or until the date, specified or referred to in **Article XIV of Part I** hereof (at which time such agreement and covenant shall terminate) and that the agreements and covenants provided in subdivision (c) of Section 401 hereof shall remain in effect without limitation as to time: <u>Provided,</u> That such agreements and covenants shall be binding on the Redeveloper itself, and each party in possession or occupancy, respectively, only for such period as such successor or party shall have title to, or an interest, or possession or occupancy of, the Property or part thereof. The terms "uses specified in the Redevelopment Plan" and "land use" referring to provisions of the Redevelopment Plan, or similar language, in the Agreement shall include the land and all building, housing, and other requirements or restrictions of the Redevelopment Plan pertaining to such land.

SECTION 403. **Agency, United States and State of Connecticut Rights To Enforce.** In amplification, and not in restriction of, the provisions of the preceding Section, it is intended and agreed that the Agency and the City and their successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 401 hereof, and the United States and State of Connecticut shall be deemed a beneficiary of the covenant provided in subdivision (c) of Section 401 hereof, both for and in their or its own right and also for the purpose of protecting the interests of the Norwalk community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall (and the **Isaacs Street Municipal Parking Lot Deed, the Leonard Street Municipal Parking Lot Deed and the Acquisition Property Deeds** shall so state) run in favor of the Agency, the United States and the State of Connecticut for the entire period during which such agreements and covenants shall be in force and effect as contemplated in Section 402, without regard to whether the Agency or the United States or the State of Connecticut has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Agency shall have the right, in the event of any breach of any such agreement or covenant, and the United States and the State of Connecticut shall have the right in the event of any breach of the covenant provided in subdivision (c) of Section 401 hereof, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

ARTICLE V. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER
[INTENTIONALLY DELETED]

ARTICLE VI. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

SECTION 601. **Limitation Upon Encumbrance of Property.** Prior to the completion of the Improvements, as evidenced by the issuance of a Certificate of Completion therefore by the Agency, neither the Redeveloper nor any successor in interest to the Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property, except for the purposes of obtaining (a) funds only to the extent necessary for making the Improvements and (b) such additional funds, if any, in an amount not to exceed the purchase prices paid or payable by the Redeveloper for the Property plus all Acquisition Expenses and other Project Costs incurred by Redeveloper in connection with the Project, and further, with respect to the Isaac Street Municipal Parking Lot and the Leonard Street Municipal Parking Lot, no encumbrance or lien shall be made on or attached to the Isaac Street Municipal Parking Lot or the Leonard Street Municipal Parking Lot, except for the purposes of obtaining (a) funds only to the extent necessary for making the Improvements and (b) and Project Costs incurred by Redeveloper in connection with the Project (excluding Acquisition Expenses and land costs incurred in connection with the purchase of Project Property other than the Municipal Parking Lot). The Redeveloper (or successor in interest) shall notify the Agency in advance of any financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Property, or any part thereof, and in any event it shall promptly notify the Agency of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Redeveloper or otherwise. For the purposes of such mortgage financing as may be made pursuant to the Agreement, the Property may, at the option of the Redeveloper (or successor in interest), be divided into several parts or parcels, ground or master leases or subjected to a common interest or other form of ownership regime, provided that such subdivision, lease or ownership form, is not inconsistent with the purposes of the Redevelopment Plan and the Agreement and is approved in writing by the Agency.

SECTION 602. **Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by the Agreement (including any such holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Property or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself), shall in no wise be obligated by the provisions of the Agreement to construct or complete the Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or in any Deed from the City or the Agency be construed to so obligate such holder. Time frames set forth in this Agreement for the performance by Redeveloper of its obligations for commencement of construction of the Project, or any Phase thereof, shall be waived by the Agency and the City, as provided pursuant to §8-137 of the Statutes, with respect to any bona fide mortgage placed upon the Property by the Redeveloper in order to obtain financing for the Project. However, nothing in this section or any other section or provision of the Agreement shall be deemed or construed to permit or authorize any such mortgage holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Redevelopment Plan and in the Agreement.

SECTION 603. **Copy of Notice of Default to Mortgagee.** Whenever the Agency shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under the Agreement, the Agency shall at the same time and in the same manner as required herein for the giving of notices forward a copy of such notice or demand to each holder of any mortgage authorized by the Agreement who has given written notice to the City and the Agency of its status as such mortgagee, at the last address of such holder shown in the records of the Agency.

SECTION 604. **Mortgagee's Option To Cure Defaults.** After any breach or default by Redeveloper referred to in Section 603 hereof, each holder of a mortgage shall (insofar as the rights of the Agency are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Property covered by its mortgage) and to add the cost thereof to the mortgage debt and the lien of its mortgage: Provided, That if the breach or default is with respect to construction of the Improvements, nothing contained in this Section or any other Section of the Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect Improvements or construction already made) without first having expressly assumed the obligation to the Agency and City, by written agreement satisfactory to the Agency, to complete, in the manner provided in the Agreement, the Improvements on the Project Property or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the Improvements relating to the Property or applicable part thereof shall be entitled, upon written request made to the Agency, to have a Certificate of Completion issued by the Agency to such effect in the manner provided in **Section 3.13 of Part I** hereof. Any such certification shall, if so requested by such holder, mean and provide that any remedies or rights with respect to recapture of or reversion or revesting of title to the Property that the Agency shall have or be entitled to because of failure of the Redeveloper or any successor in interest to the Property, or any part thereof, to cure or remedy any default with respect to the construction of the Improvements on other parts or parcels of the Property, or because of any other default in or breach of the Agreement by the Redeveloper or such successor, shall not apply to the part or parcel of the Property or part thereof to which such certification relates.

SECTION 605. **Agency's and/or City's Option To Pay Mortgage Debt or Purchase Property.** In any case, where, subsequent to default or breach by the Redeveloper (or successor in interest) under the Agreement, the holder of any mortgage on the Property or part thereof

(a) Has the option to construct or complete the Improvements relating to the Property or part thereof covered by its mortgage or to which it has obtained title, but has not elected to exercise such option for a period of one hundred eighty (180) days after the holder has been notified by the Agency or City of the default or breach; or

(b) Undertakes construction or completion of the Improvements but does not complete such construction within the period as agreed upon by the Agency and such holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in the Agreement), and such default shall not have been cured within one hundred eighty (180) days after written demand by the Agency or City so to do;

the Agency and the City shall have the option (and every mortgage instrument made prior to completion of the Improvements with respect to the Project Property by the

Redeveloper or successor in interest shall so provide) of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Property (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the Agency shall be entitled, at its option, to a conveyance to it of the Property or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any, incurred by such holder in and as a direct result of the subsequent ownership and management of the Property; (iv) the costs of any Improvements made by such holder; and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence. Nothing herein shall obligate the Agency and/or City to exercise the option herein granted.

SECTION 606. **Agency's Option To Cure Mortgage Default.** In the event of a default or breach prior to the completion of the Improvements by the Redeveloper, or any successor in interest, in or of any of its obligations under, and to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the Property or part thereof, the Agency may at its option cure such default or breach, in which case the Agency shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by the Agreement, operation of law, or otherwise, to reimbursement from the Redeveloper or successor in interest of all actual and reasonable costs and expenses incurred by the Agency in curing such default or breach and to a lien upon the Property (or the part thereof to which the mortgage, encumbrance, or lien relates) for such reimbursement: Provided, that any such lien shall be subject always to the lien of (including any lien contemplated, because of advances yet to be made, by) any then existing mortgages on the Property authorized by the Agreement.

SECTION 607. **Mortgage and Holder.** For the purposes of the Agreement: The term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust. Without the prior written consent of the Agency, the term "mortgage", "mortgagee" and "holder" shall not include or refer to a mortgage held by a Person which is an Affiliate of the Redeveloper or to the Person holding same.

SECTION 608. **Modifications to Agreement For Benefit of Institutional Lenders and Institutional Investors.** The City and the Agency agree to cooperate in good faith with the Redeveloper in its efforts to obtain financing for the Project. In this regard, the City and the Agency agree, at the request of the Redeveloper, that they will enter into such amendments or modifications to this Agreement, or such "recognition" agreements, as may be required and requested by one or more Institutional Lenders and/or Institutional Investors providing debt and/or equity financing for the Project in order to better enable them to foreclose on the security for, and otherwise to better exercise and/or enforce their rights and remedies under the documents evidencing and securing, such financing. Nothing contained herein shall be construed as requiring the City to amend the general purpose or intent of the Redevelopment Plan.

SECTION 609. <u>**Rights and Duties of Mortgagee Upon Acquisition of Property.**</u>

(a) If a mortgagee or its affiliate, via the exercise of its rights and remedies under the documents evidencing and securing any Project financing, acquires fee simple title to the Property or any part thereof, the mortgagee, at its option either:

(i) Shall assume all of the obligations of the Redeveloper under this Agreement, and complete the Project or the applicable portion thereof, in accordance with this Agreement or;

(ii) Sell, assign, or transfer fee simple title to the Property or such portion thereof as it shall have acquired, to a purchaser, assignee, or transferee who shall expressly assume all of the covenants, agreements, and obligations of the Redeveloper under this Agreement in respect to the Property, or the portion thereof so transferred, by written instrument reasonably satisfactory to the Agency forthwith recorded among the Land Records of the City of Norwalk; or

(iii) If the Agency exercises the option available to it pursuant to Section 605 hereof, shall assign its mortgage to the Agency, or reconvey fee simple title to the Property or any part thereof to the Agency upon the Agency's payment of the amounts provided in Section 605 hereof.

(b) In the event the holder of the mortgage completes the Project or applicable portion thereof in accordance with this Agreement, the Agency shall issue to the mortgage holder a Certificate of Completion in accordance with **Section 3.13 of Part I** hereof, and thereafter the mortgagee may sell, assign, or transfer any interest in or to the completed phase of the Project or any part thereof, including but not limited to fee simple interest, to any purchaser, assignee, or transferee, who shall expressly assume all of the covenants, agreements, and obligations of the Redeveloper under this Agreement in respect to the Property or part thereof by written instrument, reasonably satisfactory to the Agency, recorded among the Land Records of the City of Norwalk.

ARTICLE VII. REMEDIES [INTENTIONALLY DELETED]

ARTICLE VIII. MISCELLANEOUS

SECTION 801. No member, official, or employee of the Agency or City nor any person retained by the City or Agency to assist in the negotiation or implementation of this Agreement or the Redevelopment Plan, shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. Absent fraud, no member, partner, official, officer, director, shareholder, agent, or employee of any party to the Agreement shall be personally liable to the other party, or any successor in interest, in the event of any default or breach by either party or for any amount which may become due to either party or successor or on any obligations under the terms of the Agreement.

SECTION 802. <u>Equal Employment Opportunity.</u> The Redeveloper, for itself and its success and assigns, agrees that during the construction of the Improvements provided for in the Agreement:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Redeveloper will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Redeveloper will send to each labor union or representative of workers with which the Redeveloper has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the labor union or workers' representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Redeveloper will materially comply with all provisions of Executive order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Redeveloper will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit upon prior reasonably notice and at reasonable times access to the Redeveloper's books, records, and accounts by the Agency, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Redeveloper's material noncompliance with the nondiscrimination clauses of this Section within any applicable notice and cure period, or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Redeveloper may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Redeveloper will include the provisions of Paragraphs (a) through (g) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontract, or purchase order as the Agency or the Department of Housing and Urban Development may reasonably direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Redeveloper becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Agency or the Department of Housing and Urban Development, the Redeveloper may request the United States to enter into such litigation to protect the interests of the United States. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Section shall be changed to read. "During the performance of this Contract, the Contractor agrees as follows: ", and the term "Redeveloper" shall be changed to "Contractor".

SECTION 803. Provisions Not Merged With Deeds, as the context may require. None of the provisions of the Agreement are intended to or shall be merged by reason of any deed transferring title to the Property from the Agency to the Redeveloper or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of the Agreement.

SECTION 804. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.