Norwalk Historical Commission
July 23, 2014 7PM EST
Conference Room 101
City Hall
125 East Avenue
Norwalk, CT

1. Call to Order

2. Acceptance of Minutes – June 25, 2014 - Regular Commission Meeting

3. Public Participation

4. Chairman's Report – Commissioner Westmoreland

5. Reports – Boards
   A. Norwalk Historical Society – Diane Jellerette
   B. Lockwood Mathews Mansion Museum – Patsy Brescia

6. Reports
   A. Buildings – Commissioner Westmoreland

   B. Cemeteries – Commissioner Cuzzone

   C. Finance – Commissioner Betts

7. Old Business

8. New Business
   Review and approve "Option to Purchase Agreement By and Between The City of Norwalk, Connecticut and Head of the Harbor South, LLC, Redeveloper, Wall Street Area – Development Parcel 3 (South)" and "Terms and Conditions Part II of Option to Purchase Agreement By and Between The City of Norwalk, Connecticut and Head of the Harbor South, LLC, Redeveloper".

9. Adjournment

OPTION TO PURCHASE AGREEMENT

By and Between

THE CITY OF NORWALK, CONNECTICUT

AND

HEAD OF THE HARBOR SOUTH, LLC, Redeveloper

WALL STREET AREA – DEVELOPMENT PARCEL 3 (South)

NORWALK, CONNECTICUT

DATED: ___________, 2014

Approved by Norwalk Common Council on _________, 2014

LIST OF EXHIBITS

AGREEMENT, consisting of this Part I and Part II annexed hereto and made a part hereof (which Part I and Part II are together hereinafter referred to as the "**Agreemen**t")made on or as part of the _____ day of ________, 2014, 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")**, and **HEAD OF THE HARBOR SOUTH, LLC,** a Connecticut limited liability company organized and existing under the laws of the State of Connecticut and having a place of business at 10 Wall Street, Norwalk, Connecticut 06850, (hereinafter referred to as the **"Redeveloper"),** an affiliate of M.F. DiScala & Company, Inc,.

WITNESSETH:

WHEREAS, the Redevelopment Agency of the City of Norwalk (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 General Statutes of the State of Connecticut (the **"Statutes"**), which Redevelopment Plan was approved as hereinafter described, as modified on March 13, 2007 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 Development 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 Norwalk Land Records in Volume 5490, at Page 170 and is incorporated herein by reference; 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, 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, the Agency conducted three Public Hearings on the Redevelopment Plan on February 18, 2004, March 15, 2004, and March 29, 2004, and

WHEREAS, having held public hearings thereon, the Agency approved the 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 Redevelopment Plan on July 1, 2004, and

WHEREAS, on July 13, 2004, the Common Council approved the Redevelopment Plan, and set forth the required time period within which parcels of land within the Tier I Development Parcels in the Project Area are to be acquired, and

WHEREAS, pursuant to authorization of the Common Council, a Request for Proposals was issued for the redevelopment of Development Parcel 3 in accordance with the provisions of the Redevelopment Plan for said parcel, and

WHEREAS, after review of responses to the Request for Proposals, M.F. DiScala & Company, Inc. was approved by the Common Council on March 8, 2005, as the redeveloper with which the City and Agency would enter into exclusive negotiations for the redevelopment of Parcel 3 **("Development Parcel 3")**, and

WHEREAS, the Redeveloper is an Affiliate of M.F. DiScala & Company, Inc., and

WHEREAS, the Redeveloper has proposed to the City a plan for redevelopment of a portion of the Wall Street Project Area comprised of that portion of Development Parcel 3 located south of Wall Street **("Project Site")** together with related infrastructure and off-site improvements, which plan includes residential, mixed use, commercial office space, parking and other improvements, within the Project Site in accordance with the Redevelopment Plan **("Project Site 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; will substantially increase the tax revenue generated by 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, the Norwalk Historical Commission has jurisdiction over and control of the Cuty owned real property upon which the Mill Hill Museum is located; and

WHEREAS, this Option Agreement sets forth the conditions and responsibilities of each of the parties hereto with respect to the Redeveloper being conveyed certain publicly owned land by the City and 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
PROJECT SITE

Section 1.1. Improvements. The Redeveloper shall construct on the Project Site the following Improvements, which shall be developed and constructed in accordance with the Project Site Plan (which may not be modified without the prior written consent of the Common Council), the Redevelopment Plan and the Plan Requirements: not more than sixty (60) residential units available for purchase and/or lease and not more than six thousand (6,000) square feet of commercial office space, together with all required parking for the Improvements on the Project Site and appropriate landscaping, pedestrian and vehicular circulation areas, including without limitation, a waterfront walkway on the Project Site and the Infrastructure Improvements set forth on **Exhibit B** attached hereto which will require a text amendment to satisfy the Zoning Regulations. Simultaneously with the conveyance of the City Owned Property to the Redeveloper, the Redeveloper agrees to execute and record on the Norwalk Land Records an Easement Agreement, a copy of which is attached hereto as **Exhibit E**, granting the City the right to use certain parking spaces on the Project Site as more specifically described in said Easement Agreement. The Redeveloper acknowledges that the Zoning Regulations will require the Redeveloper to provide affordable housing units as part of the Project and the Redeveloper agrees that all such affordable housing units shall be located on the Project Site and hereby waives any rights it may have to request that the affordable housing units be located outside of the Project Site.

Within ninety (90) days after the date of this Agreement, the Redeveloper shall file with the Zoning Commission all applications necessary to complete the Project and any required zoning modifications and text amendments approved by the Zoning Commission, at Redeveloper's sole cost and expense. If the Redeveloper secures such land use approvals as it reasonably deems necessary to enable the Redeveloper to construct sixty (60) residential units and six thousand (6,000) square feet of commercial office space on the Project Site and notifies the City in writing that it has obtained such approvals within six (6) months after the execution of this Agreement (the "Deadline"), then this Agreement shall remain in full force and effect. If the Redeveloper fails to so notify the City on or before said date, then this Agreement shall automatically terminate. Notwithstanding the foregoing and provided the Redeveloper has made diligent efforts to meet the Deadline and has timely provided the Zoning Commission with any requests the Commission may have made, the Redeveloper shall be entitled to two- thirty day extensions of the Deadline if it has not obtained said approvals and notifies the City's Corporation Counsel in writing prior to the Deadline for the first extension period and prior to expiration of the first extension period for the second extension period.

Construction of the Improvements on the Project Site shall be commenced by the Redeveloper within one hundred twenty days (120) days after the completion of the Utility Relocation as set forth in Article 1.5 herein and the Improvements shall be finally completed within thirty (30) months after conveyance of the City Owned Property to the Redeveloper (as evidenced by Certificate(s) of Zoning Compliance issued by the Zoning Department).

The City agrees to make the repairs to the retaining walls along Wall Street and Smith Street as set forth on **Exhibit G** attached hereto and made a part hereof. The funds necessary to make such repairs shall be provided by the City and administered by the Norwalk Redevelopment Agency. The Redeveloper acknowledges that it shall be required to repair any damage it may cause to the retaining walls along Wall Street and Smith Street due to the Redeveloper's Project or arising out of Redeveloper's work on the Project or at the Project Site and not shown on **Exhibit G.**.

<u>Section 1.2 Smith Street Abandonment</u>. Subject to and in accordance with the provisions of this Section 1.2 and subject to the City retaining such easements on Smith Street as it deems necessary, the City agrees to abandon the portion of Smith Street as designated on **Exhibit C** attached ("Smith Street"). It is understood and agreed by the parties that the City shall not be required to release any interest in Smith Street to the Redeveloper until such time as the following has been completed: (i) Redeveloper has received all necessary land use approvals to enable the Redeveloper to construct the Improvements on the Project Site; (ii) Redeveloper has deposited cash security in the amount set forth in Section 2.1 hereof to insure the construction of the Infrastructure Improvements set forth on **Exhibit B** attached hereto; and (iii) Redeveloper has submitted to the City evidence satisfactory to the City that the Redeveloper has equity capital and commitments for mortgage financing necessary for the construction of the Improvements. The City shall release any interest that the City may have in the portion of Smith Street to be abandoned to the Redeveloper in the same manner and subject to the same limitations as are set forth in Subsections 2, 3, 4, 5, 6 and 7 of Section 1.3 hereof. The City agrees to commence the process of abandonment within thirty (30) days of the Zoning Commission approval of all necessary Applications to construct the Project. In the event that the abandonment of Smith Street by the City and any applicable appeal period has not been completed within six (6) months after the approval of the Project Site by the Zoning Commission , then the Redeveloper, as its sole and exclusive remedy, shall have the right to terminate this Agreement by written notice to the City within thirty (30) days after expiration of said six (6) month period.

The Norwalk Redevelopment Agency on behalf of the Redeveloper 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 provided for in this Agreement to be discontinued or abandoned. The abandonment of a portion of Smith Street shall be subject to the provisions set forth in this Section 1.2 hereof. The effectuation of any such street abandonment, shall be subject to the requisite approvals of any and all Governmental Authorities having jurisdiction over such processes, each Commission acting independently. The City via its Department of Public Works will prepare, submit and pursue applications for such approvals. The City shall pay for all costs associated with the abandonment process using such funding made available by the City and administered by the Norwalk Redevelopment Agency. Upon the granting of such approvals, and subject to the Redeveloper satisfying the conditions hereinabove set forth in this Section 1.2, the City will release its interest in the portion of Smith Street to be abandoned to Redeveloper simultaneously with the conveyance of the City Owned Property to the Redeveloper pursuant to Section 1.3 hereof. The City, at the request of the Redeveloper, but no sooner than the completion of the Smith Street abandonment and transfer of the City Owned Property to the Redeveloper pursuant to Section 1.3 hereof, and no later than one (1) year after the conveyance of the City Owned Property to 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.

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 be borne by the City in the manner so stated above. The City agrees to waive all fees associated with the abandonment.

Notwithstanding anything contained in this Agreement to the contrary, the City's obligations hereunder to pay for the cost of abandoning Smith Street and its share of Utility Relocation shall be limited to $350,000.00 which funds shall be provided by the Capital Budget Fund appropriated by the City and administered by the Norwalk Redevelopment Agency, and any such costs in excess of that amount shall be borne by the Redeveloper.

Section 1.3 Conveyance of City Owned Property to Redeveloper.

1. In consideration of the Redeveloper agreeing to construct the Infrastructure Improvements and subject to the terms and conditions of this Agreement, the City shall, subject to obtaining all requisite municipal approvals, convey to the Redeveloper the City Owned Property as designated on Exhibit C attached hereto ("City Owned Property") for the purpose of constructing the Improvements on the Project Site in accordance with Section 1.1 hereof, upon the terms and conditions set forth below.

2. Time and Place for the Delivery of Deed. The closing shall take place at City Hall, 125 East Avenue, Norwalk, CT simultaneously with the release of the City's interest in the portion of Smith Street to be abandoned to the Redeveloper in accordance with Section 1.2 hereof. The City shall notify the Redeveloper, in writing, when it is prepared to close and the Redeveloper shall have thirty (30) days after receipt of said notice to close.

3. Form of Deed. The City shall convey title to the City Owned Property to the Redeveloper by quit claim deed ("**Deed**"). Such conveyance and title shall, in addition 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; and an easement enabling the general public to have perpetual access to and use of the public improvements on the Project Site.

4. Recordation of Deed. The Redeveloper shall promptly file the Deed for recordation upon the Land Records of the City of Norwalk and the Redeveloper shall pay all costs of recording the Deed.

5. Apportionment of Current Taxes. With respect to any tax period during which the City, on the one hand, and the Redeveloper on the other hand, both had title to and possession of the City Owned Property or any portion thereof, taxes allocable to the City Owned Property or such portion thereof, as the case may be, for such period shall be prorated between the City 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 City Owned 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 any other tax exempt entity, the Redeveloper shall make a payment in lieu of taxes based upon the assessed value of City Owned 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 the City Owned Property immediately prior to the transfer of title from the City to the Redeveloper, which assessment shall be based on the physical condition of the City Owned Property immediately prior to such conveyance.

Additionally, the City agrees that the tax formula used in establishing the property assessment will accommodate the income valuation approach based on the mixed use nature of the property and account for any and all recorded deed restrictions and public easements contained on the property.

6. Condition of Property. The Redeveloper agrees that it has fully inspected the City Owned Property and is fully satisfied with the condition thereof.

The Redeveloper acknowledges that it is accepting the City Owned 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 City Owned Property, other than those herein expressly set forth. The provisions of this section shall survive the closing and the delivery of the Deed to the Redeveloper.

7. <u>Transfers of "Establishments</u>." To the extent that the transfer of any of the parcels of the City Owned Property or Smith Street from the City to the Redeveloper constitutes the transfer of an "Establishment" within the meaning of Section 22a-134 of the Statutes, the City 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 City be required to execute any Transfer Act forms to the extent that same would provide that the City 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, as certifying party and as party assuming responsibility for performance of any remedial work. All costs associated with such filing shall be paid by the Redeveloper.

<u>Section 1.4 Public Access Easements.</u>

The Redeveloper hereby acknowledges its obligations and agrees to fulfill the same to provide public access easements in accordance with Article IV hereof.

<u>Section 1.5 Utility Relocation.</u>

A. (i) The Norwalk Redevelopment Agency, in conjunction with the City's Public Works Department and in accordance with Section 8-133a (and, if at any time applicable, Sections 8-194 and 32-224(i)) of the Statutes, will arrange in accordance with a plan prepared by the Redeveloper and approved by the City (and subject to the approval of all Governmental Authorities having jurisdiction, including without limitation the Norwalk Department of Public Works) for the relocation in a timely manner of all utility services to be removed from or terminated within the boundaries of Smith Street, as provided in the Redevelopment Plan, as same may be amended, or as provided for in this Agreement including telephone, cable, water, gas and electricity. The sewers shall not be relocated. In addition, the City, subject to review and approval by all Governmental Authorities having jurisdiction, including without limitation the Norwalk Department of Public Works, will approve such modifications to the layout set forth in the Redevelopment Plan for both existing utilities remaining on Smith Street, 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 Project Site Plan, and/or Pre-Construction Plans, as approved by the City.

(ii) 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 Smith

Street 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 Project Site Plan. All costs and expenses relating to the foregoing shall be paid by the Redeveloper. The location of existing utility services and proposed utility services on Smith Street are set forth on attached **Exhibit F-1 and Exhibit F-2**, respectively.

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

1. Redeveloper 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 located outside of the boundaries of Smith Street, pay the cost of all utility services located within the boundaries of Smith Street which may be required to increase the capacity of any such utility in order to support the Project and to perform any and all work required to provide hook-ups between the public utility facilities located on Smith Street and the remainder of the Project Site, including without limitation, the installation of such conduits, lines and other facilities within the boundaries of Development Parcel 3, 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.

2. Section 8-133a of the Statutes

The City will proceed pursuant to §8-133a of the Statutes to issue appropriate orders for temporary and/or permanent readjustment, relocation or removal of any "public service facility" (as defined in said §8-133a) located on Smith Street required by reason of the closing of any public streets and/or construction of the Improvements and carrying out of the Plan. The costs of such readjustment, relocation or removal of such public service facilities which is required by said §8-133a, to be borne by the City, subject , however, to the limitation set forth in the last paragraph of Section 1.2 above. 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 Project Site Plan, or Pre-Construction Plans, as approved by the City.

C. The City agrees to use reasonable efforts to coordinate the design and construction of utility infrastructure with the relevant utility service providers.

Section 1.6 Infrastructure Improvements and Funding

The parties agree that for the Project Site to be developed as envisioned in the Redevelopment Plan and this Agreement there are substantial public infrastructure improvements that the Redeveloper has agreed to construct. These Infrastructure Improvements are identified on **Exhibit B** attached hereto and made a part hereof, which include but are not limited to: reconstruct, pave and maintain the portion of Smith Street that is to be abandoned and grant the City a perpetual non-exclusive easement, in common with others, permitting the general public to pass and repass for both pedestrians and vehicles (in a manner approved by the Norwalk Traffic Commission for on street parking substantially along the abandoned portion of Smith Street; construct and maintain a public plaza and construct a gazebo amenity on the boardwalk , both of which shall be open and accessible to the general public; construct a public stairway and walkway from the Project site to Mill Hill; and provide public access to the boardwalk from behind the buildings on Wall Street at a cost of not less than $660,000.00. The Redeveloper agrees that it will fund and undertake any and all Infrastructure Improvements at its sole cost and expense.

ARTICLE II
DEPOSIT

Section 2.1. <u>Amount of Deposit; Time of Payment.</u>

The Redeveloper shall deliver to the City's Finance Director a bank or certified check in the sum of $660,000.00, simultaneously with the release of the City's interest in a portion of Smith Street to the Redeveloper and the conveyance of the City Owned Property to the Redeveloper.

<u>Section 2.2 Security Account.</u>

Within three (3) Business Days after the receipt by the City of the initial Deposit check, a check shall be deposited by the City into an interest-bearing escrow account established and maintained by the City. The funds (the "Security Deposit") shall be deposited into an account entitled "City of Norwalk - Security Account f/b/o Head of the Harbor South, LLC" (the "Security Account"). The City shall determine at which financial institution(s) and in what investment vehicle(s) to maintain said Security Account, and all interest earned on the Security Deposit shall be used for the anticipated improvements. The Security Account shall be maintained by the City, and disbursements therefrom shall be made only, in accordance with the provisions of this Agreement. The Security Deposit shall be released to the Redeveloper in four (4) installments, as follows: up to a maximum of twenty-five (25%) percent of the initial Security Deposit upon completion of twenty-five (25%) percent of the Project; up to a maximum of an additional twenty-five (25%) percent of the initial Security Deposit upon completion of fifty (50%) percent of the Project; up to a maximum of an additional twenty-five (25%) percent of the initial Security Deposit upon completion of seventy-five (75%) percent of the Project; and the balance, including any interest earned on the Security Account, upon the issuance of a Certificate of Occupancy for the entire Project.

The amount of each installment shall be the lesser of (i) the estimated cost of each Infrastructure Improvement as set forth on **Exhibit B** attached hereto or (ii) the actual cost incurred by the Redeveloper for each Infrastructure Improvement, for which a Certificate of Occupancy has been issued and for which a prior distribution has not been made to the Redeveloper, not to exceed the maximum allowable distribution set forth above. The Redeveloper shall request each such distribution and such request shall be accompanied by satisfactory proof of the Redeveloper's cost of each Infrastructure Improvement for which a distribution is requested.

ARTICLE III
LICENSE AGREEMENTS FOR ACCESS TO ALL CITY OWNED PROPERTY

Section 3.1

Upon execution of this Agreement, and prior to accessing any City Owned Property or Smith Street, the Redeveloper shall obtain an Encroachment Permit form the Norwalk DPW and enter into a License Agreement according to the City's customary form, affording the Redeveloper reasonable access to the City Owned Property and Smith Street as shown on Exhibit C for all reasonable purposes relevant to this Agreement.

ARTICLE IV
EASEMENTS

Section 4.1

In the deed or deeds conveying the City Owned Property and releasing its interest in the portion of Smith Street to be abandoned to the Redeveloper, the City may reserve easements, in favor of the City, and/or in favor of any public utility company or other utility service provider to install, construct, maintain, repair and replace underground "**Utility Lines**", including thereby pipes, valves, wires, conduits and other components of such underground Utility Lines, together with such transformers, pedestals, manholes and other appurtenances of such Utility Lines that must reasonably be located above ground according to the City's customary form, as well as public access easements over areas designated on the Redevelopment Plan, this Agreement or as may be required by the Zoning Regulations for use by the general public. The City shall maintain all municipal utilities that are within its customary authority to do so.

Section 4.2

The Redeveloper shall grant easements similar to those set forth in Section 4.1 above, with respect to any portion of the Project Area owned by the Redeveloper, as reasonably requested by the City from time to time to such persons, including the general public, as the City may direct.

Section 4.3

The Redeveloper shall grant public access easements with respect to any portion of the Project Area owned by the Redeveloper and related to the referenced public improvements as reasonably requested by the City from time to time, including waterway access and other public access over areas designated for public access in the Redevelopment Plan or as may be required by the Zoning Regulations or this Agreement.

Section 4.4

Any easement to the City shall be in form consistent with the City's practices in this regard.

ARTICLE V
ADULT USES PROHIBITED

Section 5.1

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."

Section 5.2

The provisions of this Article V 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 the Property or any portion thereof. This prohibition shall also be included in the Deed.

ARTICLE VI
ASSIGNMENT AND TRANSFER

Section 6.1

Notwithstanding the provisions of Article III of Part II hereof, it is specifically agreed by the City and the Redeveloper that the following specified transfers shall be deemed not to be "transfers of real property by Redeveloper" requiring consent of the City (as set forth in Section 8–137 of the Statutes) and will be permitted with prior written notice to the City (provided that such transfer(s) do not result in M. F. DiScala & Company, Inc. ceasing to have operational control of the management of the business affairs of the Redeveloper and its Affiliates.

A. Transfers to any Person who or which is a partner, member, shareholder or other beneficial owner of an interest in the Redeveloper; or

B. Transfers with respect to the Redeveloper's rights in this Agreement or all or any portion of the Project Site to any Affiliate of Redeveloper.

For purposes of this Agreement, the term "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.

For purposes of this Agreement, the term "Person" shall mean any individual, firm, partnership, association, syndicate, company, trust, corporation, limited liability company, or other legal entity of any kind.

ARTICLE VII
PERIOD OF DURATION OF COVENANT ON USE

Section 7.1

The covenant pertaining to the uses of the Project Site, set forth in Section 201 of Part II hereof, shall remain in effect from the date of execution of this Agreement and shall be a covenant running with the land comprising the Project Site in perpetuity 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 Site.

ARTICLE VIII
NOTICES AND DEMANDS

Section 8.1

A notice, demand, or other communications under this Agreement by any party shall be sent to all the other parties. Such notice shall be deemed sufficiently given or delivered if sent by registered or certified mail, postage prepaid, return receipt requested, as follows:

A. In the case of the Redeveloper, c/o M. F. DiScala & Company, Inc., 10 Wall Street, Norwalk, Connecticut 06850, with a copy to ______________________________; 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 Harry W. Rilling, 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.

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 City.

ARTICLE IX
AMENDMENT OF REDEVELOPMENT PLAN

Section 9.1

Upon execution of this Agreement, the Redeveloper will prepare and submit, and pursue approval and adoption of the following amendment to the Redevelopment Plan:

A. Add "Office Use" as a permitted use on the Project Site.

B. Modify Map 3 of the Redevelopment Plan entitled *Proposed Development* to be made consistent with the actual approved development plans. (To be done by the Norwalk Redevelopment Agency)

C. Per the affirmative vote of the Common Council the City shall apply for and advance a zoning modification through the Zoning Commission to rezone the City parcel to CBD-C.

ARTICLE X
REDEVELOPER'S AGREEMENT

Section 10.1

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 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 there under 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.

Section 10.2

The City agrees that a similar provision will be added to all other Land Disposition Agreements and Development Agreements in the Project Area.

ARTICLE XI
MISCELLANEOUS

Section 11.1

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

Section 11.2

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 11.3

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 11.4

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 11.5

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 11.6

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 11.7

The Redeveloper agrees to provide facilities for the 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.

ARTICLE XII

COUNTERPARTS

Section 12.1

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

IN WITNESS WHEREOF, the City and the Redeveloper, have caused this Agreement to be duly executed each in its own behalf by the Mayor of the City 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:

CITY OF NORWALK

_______________________ By: _______________________
Harry W. Rilling
Its Mayor

____

HEAD OF THE HARBOR SOUTH, LLC

_______________________ By: _______________________

Its

____

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

On this the ___ day of _____________, 2014, before me, the undersigned officer, personally appeared HARRY W. RILLING, 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.

____

Notary Public
Commissioner of the Superior Court

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

The foregoing instrument was acknowledged before me this ___ day of _______________, 2014, by ____________________, ___________, on behalf of HEAD OF THE HARBOR SOUTH, LLC, a _________managed Connecticut limited liability company, on behalf of the company.

____

Notary Public
Commissioner of the Superior Court

LIST OF EXHIBITS

Exhibit A – Conceptual Master Site Plan

Exhibit B – Infrastructure Improvements

Exhibit C – Survey

Exhibit D – Form of Easement

Exhibit E — Shared Parking Agreement

Exhibit F-1 –Existing Utility Services

Exhibit F-2 –Proposed Utility Services

Exhibit A

(Project Site Plan)

Apr 18, 2014-10:47am Plotted By: SansoneM
Tighe & Bond, Inc. J:\N\N0762\08_Head of the Harbor\Drawing\0_Current\Sheet\EXHIBIT-01.dwg

ZONING DATA:

ZONE - CBDC
LOT AREA = 78,310 SF.

	REQUIRED/ ALLOWED	PROVIDED
MAX. BLDG. HEIGHT	4 ST. (48 FT.)	4 ST. (48 FT.)
MIN. LOT AREA	-	78,310 SF.
MIN. FRONT YARD	-	-
MIN. SIDE YARD	-	-
MIN. AGG. SIDE YARD	20'	20'
MIN. REAR YARD	25'	30'
MAX. BLDG. COVERAGE	40% (31,324 SF.)	37.6% (24,000 SF.)
MAX. LOT COVERAGE	80% (62,400 SF.)	67% (52,000 SF.)
MIN. OPEN SPACE	20% (15,600)	39.7% (31,000 SF.)
MAX. F.A.R.	1.0 (78,310 SF.)	1.0 (78,000 SF.)
MAX. RESIDENTIAL DENSITY (1/1,300 SF.)	(60 UNITS)	(60 UNITS)
MIN. WORKFORCE HOUSING	10%	10%
MIN. RECREATION AREA	150 SF. / UNIT (9,000 SF.)	26,000 SF.
PARKING	105 SPACES	105 SPACES

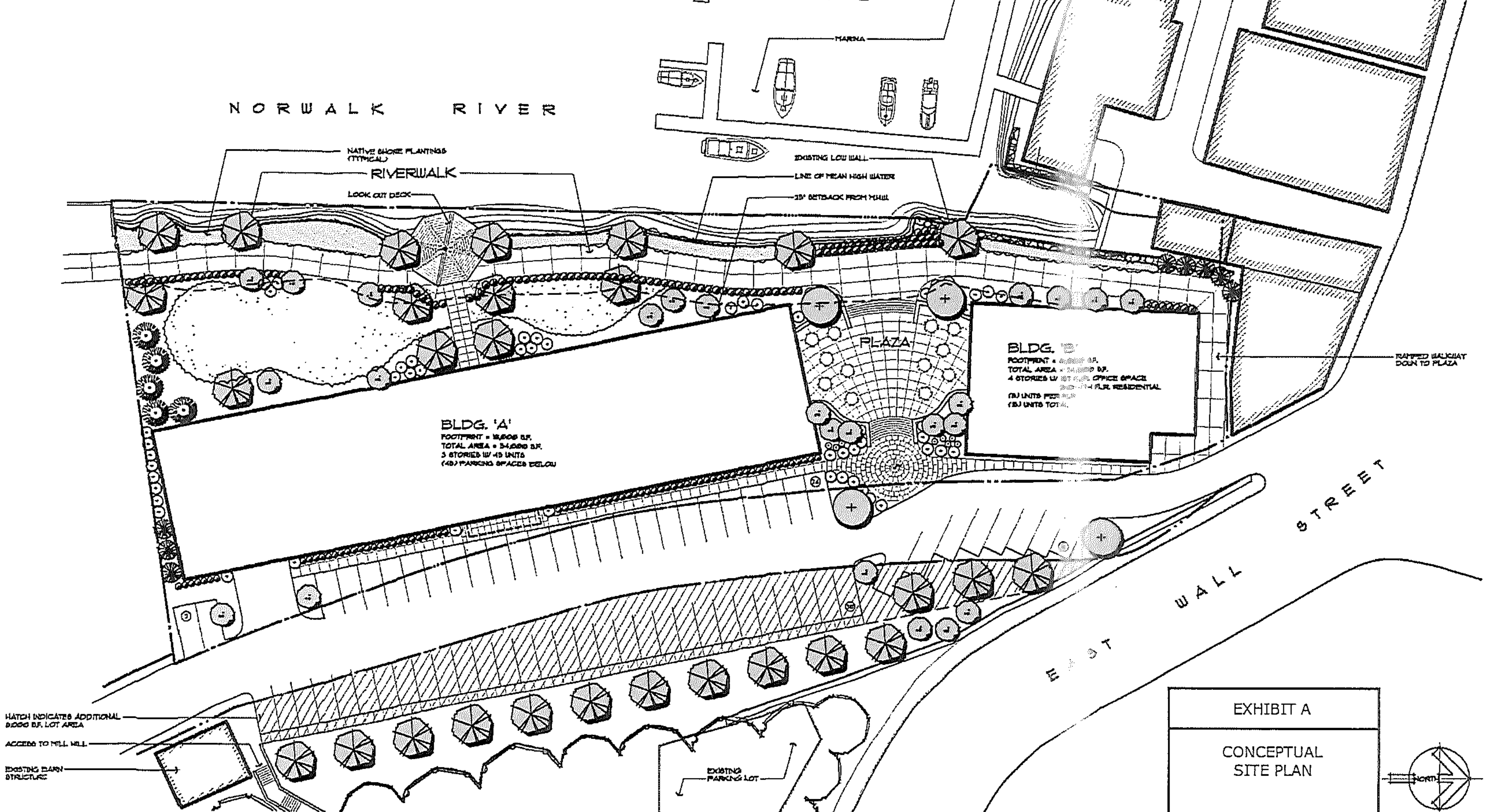


EXHIBIT A

CONCEPTUAL SITE PLAN

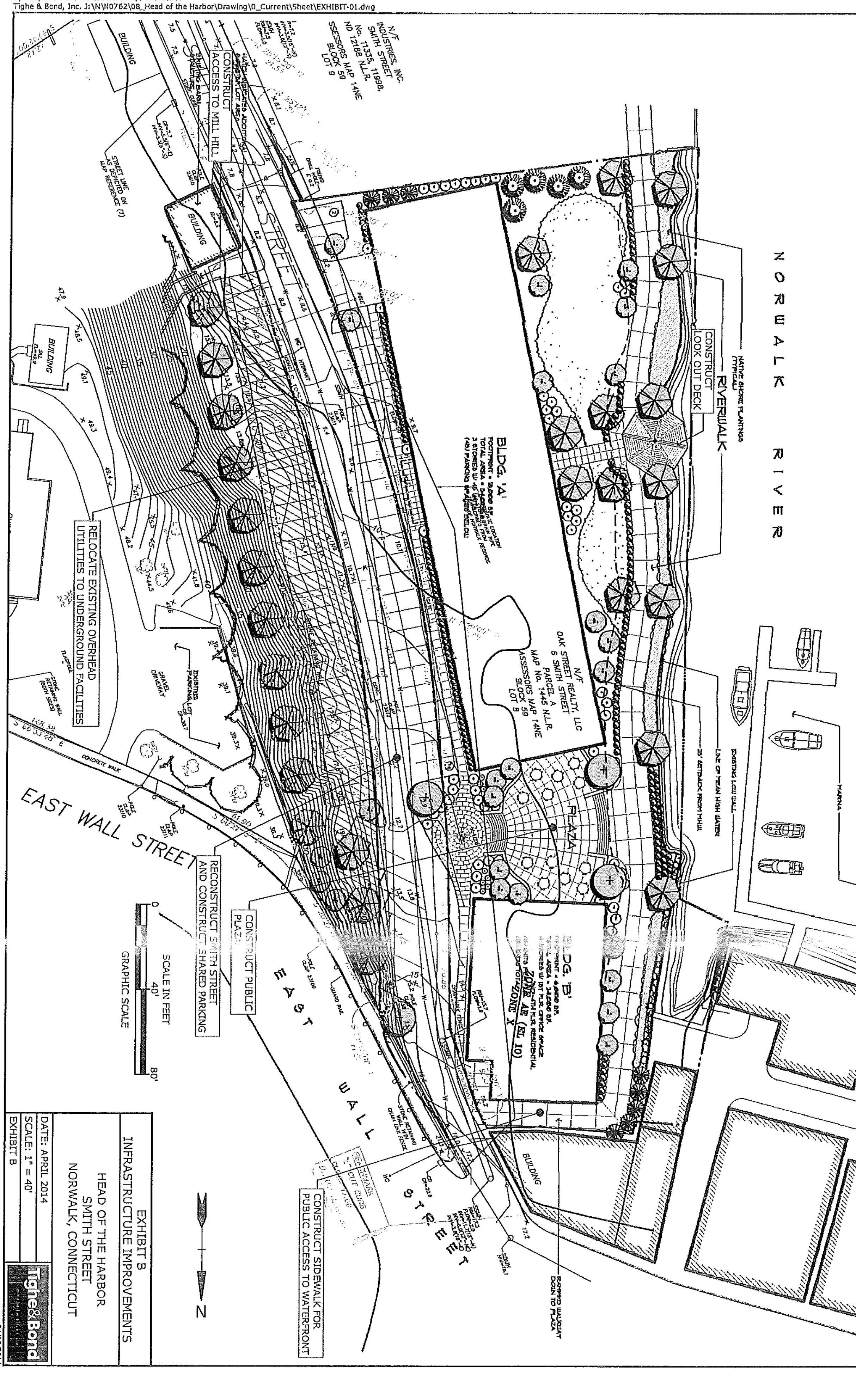
Architect:	The SULLIVAN Architectural Group, 1226 Post Road Fairfield, Connecticut 06824, ph: (203) 254-8680 fx: (203) 254-8683
Project:	HEAD OF THE HARBOR-SOUTH, Smith Street, Norwalk, Connecticut
Drawing Title:	CONCEPT SITE PLAN
Date:	04/25/11
Project No.	0804
Drawn by:	SPT
Scale:	1"=20'
	SC-01

04/18/2014

Exhibit B
(Infrastructure Improvements)

Exhibit B
(Infrastructure Improvements)

Apr 18, 2014-10:49am Plotted By: SansoneM
Tighe & Bond, Inc. J:\N\N0762\08_Head of the Harbor\Drawing\0_Current\Sheet\EXHIBIT-01.dwg



SCHEDULE C

Tighe&Bond
Consulting Engineers
Environmental Specialists

Prep'd Date	6/19/2012	By	JHC
Ch'kd Date	6/19/2012	By	JAR
Town of	Norwalk, CT		
Funds			
Town No.			
Project No.	23-0762-4		
Sheet No.	1	of	1

Opinion of Probable Cost
for the Construction of

Project Description Head of the Harbor - Public Improvements
Norwalk, CT

BASE CONTRACT

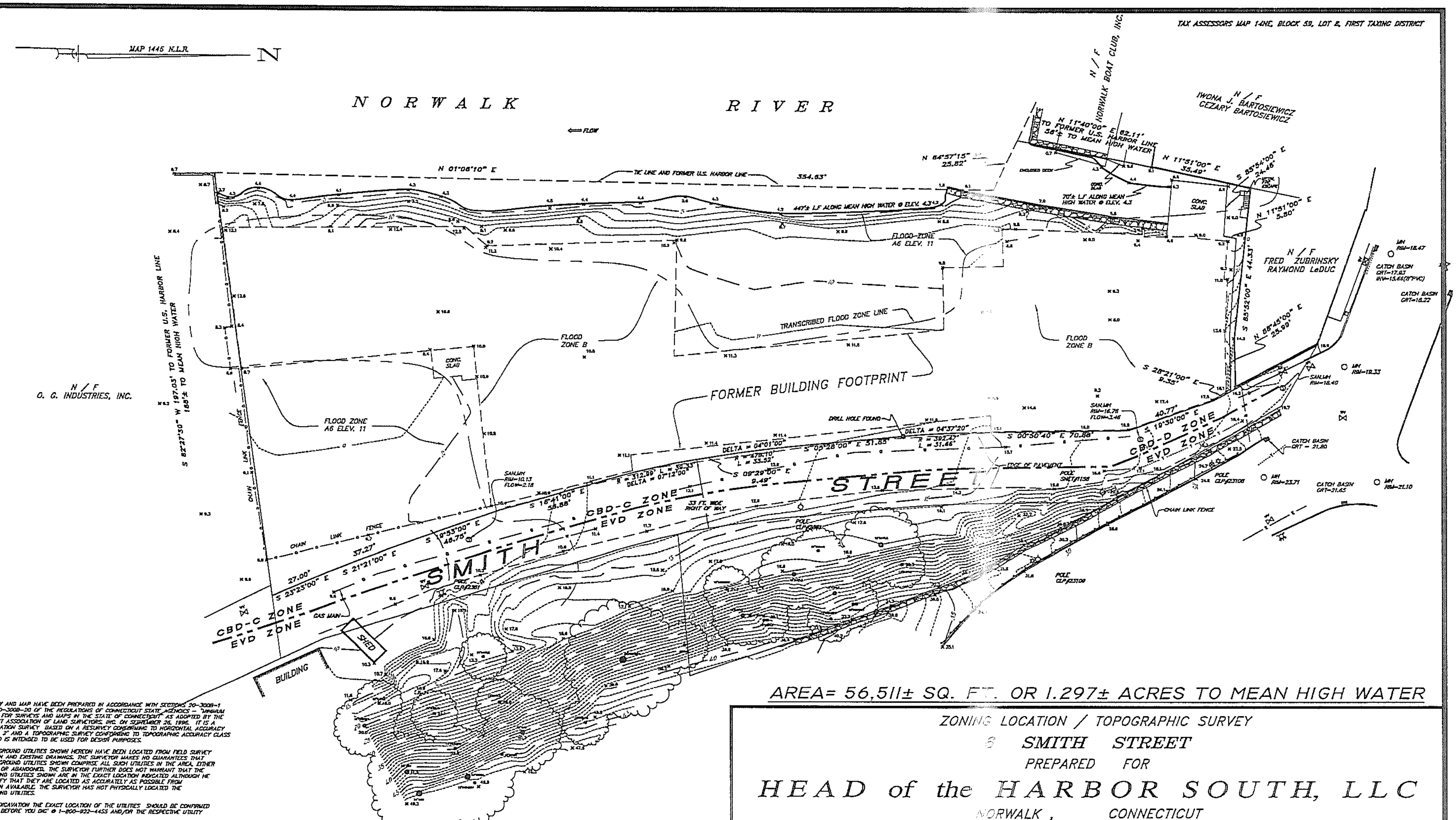
FROM STA ______ **TO STA** ______
A LENGTH ______ **FEET AS SHOWN ON THE PLANS**

No.	Item	Unit	Quantity	Price	Amount
1	Clearing & Grubbing	LS	1	$10,000.00	$10,000
2	Rough Grading	SY	4,000	$2.50	$10,000
3	Temp. Soil Erosion & Water Pollution	LS	1	$5,000.00	$5,000
4	Bituminous Concrete, Class 1	Ton	750	$100.00	$75,000
5	Processed Aggregate Base	CY	860	$30.00	$25,800
6	Handrails	LF	105	$200.00	$21,000
7	Plaza Retaining Walls	CY	110	$650.00	$71,500
8	Concrete Sidewalk - Plaza & Riverwalk	SF	12,600	$12.00	$151,200
9	Plaza Stairs	CY	20	$1,000.00	$20,000
10	Concrete Curbing	LF	1,110	$25.00	$27,750
11	Mill Hill Access - Stairs & Walkway	LS	1	$110,000.00	$110,000
12	Historic Street Light Poles	Each	6	$5,000.00	$30,000
13	Gazebo	LS	1	$40,000.00	$40,000
14	Bollard Lights	Each	30	$1,000.00	$30,000
15	Lighting Conduit & Trenching	LF	2,500	$15.00	$37,500
16	Landscaping	Allow	1	$25,000.00	$25,000
17	Plaza Drainage System	Allow	1	$15,000.00	$15,000
18	Benches	Each	5	$1,000.00	$5,000
19	Trash Receptacles	Each	5	$250.00	$1,250
	Subtotal				$711,000
	Contingency (10%)				$71,100
	TOTAL			SAY	$780,000

Notes:

1. Pile work along the boardwalk is not included.
2. Item materials, sizes, etc. are based on memo from the Sullivan Group dated June 19, 2012 and Concept Site Plan dated April 28, 2011.
3. Limits of work included in this Opinion of Probable Cost are shown on the attached sketch.
4. Stairway and walkway to Mill Hill was assumed to be approximately 150 linear feet based on available mapping.

Exhibit C
(Survey)



GRAPHIC SCALE

1 inch = 20 ft.

VERTICAL DATUM: MEAN SEA LEVEL N.G.V.D 1929

THIS SURVEY AND MAP HAVE BEEN PREPARED IN ACCORDANCE WITH SECTIONS 20-300B-1 THROUGH 20-300B-20 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES – "MINIMUM STANDARDS FOR SURVEYS AND MAPS IN THE STATE OF CONNECTICUT" AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF LAND SURVEYORS, INC. ON SEPTEMBER 26, 1996. IT IS A ZONING LOCATION SURVEY BASED ON A RESURVEY CONFORMING TO HORIZONTAL ACCURACY CLASS 'A – 2' AND A TOPOGRAPHIC SURVEY CONFORMING TO TOPOGRAPHIC ACCURACY CLASS 'T – 2' AND IS INTENDED TO BE USED FOR DESIGN PURPOSES.

THE UNDERGROUND UTILITIES SHOWN HEREON HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

PRIOR TO EXCAVATION THE EXACT LOCATION OF THE UTILITIES SHOULD BE CONFIRMED WITH 'CALL BEFORE YOU DIG' @ 1-800-922-4455 AND/OR THE RESPECTIVE UTILITY COMPANIES.

THIS SURVEY WAS PREPARED FOR A SPECIFIC PURPOSE. ANY USE OTHER THAN THAT WHICH WAS ORIGINALLY INTENDED IS A MISUSE OF THIS INFORMATION AND RENDERS THE PREPARERS DECLARATION NULL AND VOID.

UNAUTHORIZED ALTERATIONS OR ADDITIONS TO THIS SURVEY, WHICH BEARS THE SURVEYORS EMBOSSED SEAL, RENDERS ANY DECLARATION SHOWN HEREON NULL AND VOID.

DISTANCES SHOWN ± FROM BUILDINGS TO PROPERTY LINES ARE SCALED ONLY AND ARE NOT TO BE USED TO ESTABLISH BOUNDARIES.

REFER TO MAP NO. 1445 NORWALK LAND RECORDS.

PROPERTY IS LOCATED IN A 'CBDC' ZONE.

FLOOD ZONE INFORMATION SHOWN HEREON TRANSCRIBED FROM THE F.E.M.A. FLOOD INSURANCE RATE MAP COMMUNITY PANEL 090012 0008 C DATED REVISED AUGUST 19, 1986.

AREA= 56,511± SQ. FT. OR 1.297± ACRES TO MEAN HIGH WATER

ZONING LOCATION / TOPOGRAPHIC SURVEY

8 SMITH STREET

PREPARED FOR

HEAD of the HARBOR SOUTH, LLC

NORWALK , CONNECTICUT

SCALE : 1" = 20' FEBRUARY 1, 2005

TO MY KNOWLEDGE AND BELIEF, THIS MAP IS SUBSTANTIALLY CORRECT AS NOTED HEREON.
PREPARED TO CLASS 'A – 2' & 'T – 2' STANDARDS

Mark S. Lebow Conn. P.L.S. Reg. No. 15564

WILLIAM W. SEYMOUR & ASSOCIATES, P.C.

LAND SURVEYORS ~ DARIEN , CONN. ©

(REF. TO 02-10621.DWG) 04-11264T.DWG

Exhibit D
(Form of Easement)

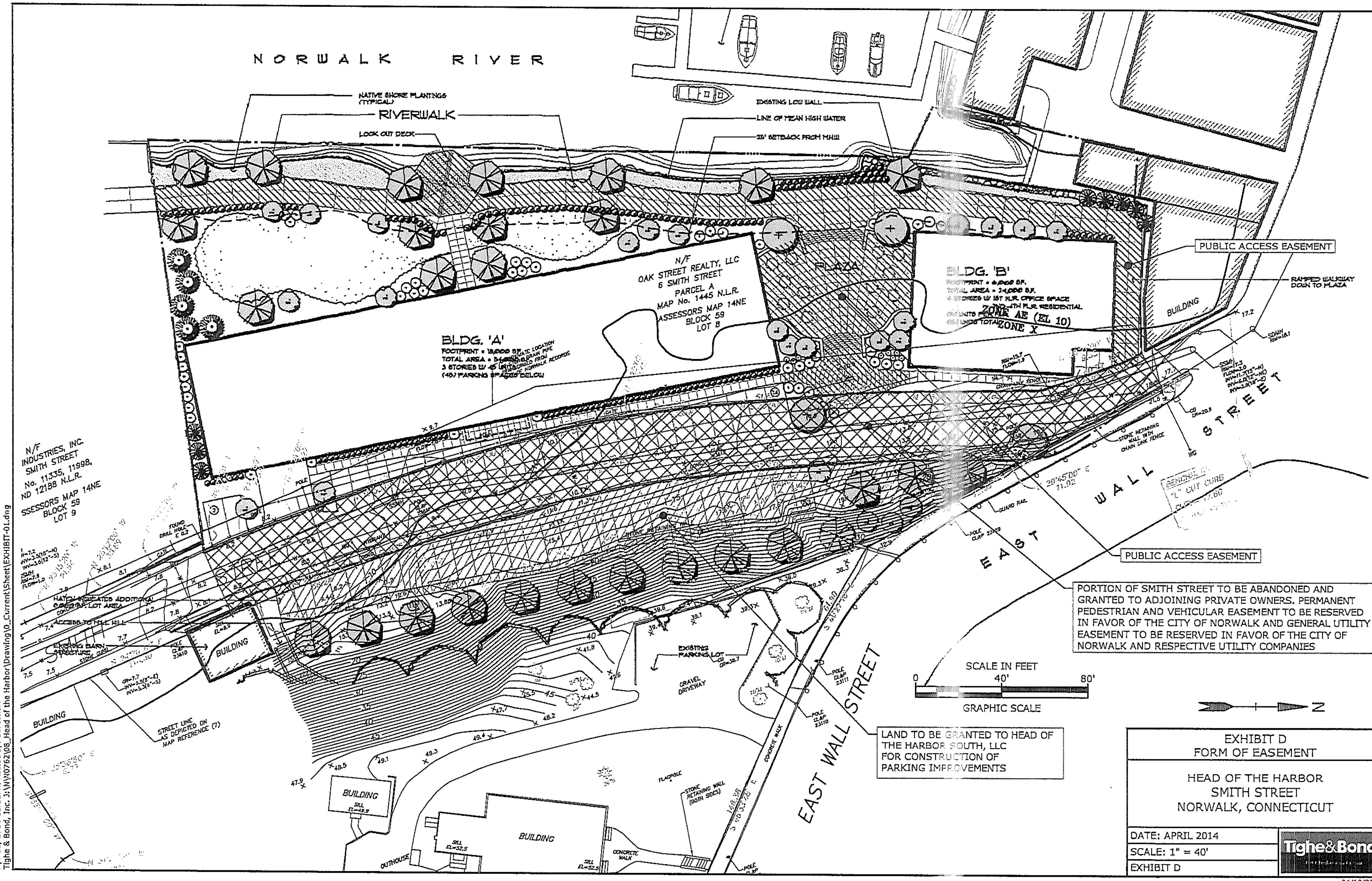


EXHIBIT D
FORM OF EASEMENT

HEAD OF THE HARBOR
SMITH STREET
NORWALK, CONNECTICUT

DATE: APRIL 2014
SCALE: 1" = 40'
EXHIBIT D

Tighe&Bond

04/18/2014

Exhibit E
(Parking Easement)

PARKING EASEMENT AGREEMENT
BY AND BETWEEN
HEAD OF THE HARBOR SOUTH, LLC, AS GRANTOR
AND
CITY OF NORWALK, CONNECTICUT, AS GRANTEE

KNOW ALL MEN BY THESE PRESENTS, that as of the ____ day of _________, 2014, ____________________ ("Grantor") , a Connecticut ___________________ having a business address of ___________________, ________________, Connecticut, for the consideration of ONE DOLLAR ($1.00) and other valuable consideration, received to its full satisfaction of the City of Norwalk ("Grantee"), a body politic and municipal subdivision of the State of Connecticut, does hereby give, grant, bargain, sell and confirm unto Grantee, its successors and assigns, a right, privilege and easement in, over, upon and through the premises, more particularly described in **Exhibit A** attached hereto (the "Burdened Premises"), for purposes of parking, as more particularly described herein, and said easement shall be appurtenant to the parcel owned by Grantee more particularly described in **Exhibit B** attached hereto (the "Benefited Premises"). The use of the Burdened Premises shall be in common with the use thereof by Grantor, its successors and assigns. The easements, privileges and rights granted herein shall run with the land and shall inure to the benefit of, and bind the successors and assigns of, Grantor and Grantee, in perpetuity.

1. Parking Easement. Grantor hereby grants the right to the use of fifteen (15) exclusive parking spaces (the "Parking Spaces"), located upon the Burdened Premises, for the benefit of Grantee, its successors, assigns, tenants, guests and invitees. The location of the Parking Spaces is specified in that certain plan entitled "_____________" prepared by _________________________, dated ________________, revised ____________ (the "Parking Plan"), a copy of which is attached hereto as **Exhibit C**, and shall consist of contiguously situated spaces. The dimensions of the Parking Spaces shall be sufficient to satisfy applicable zoning requirements for full size cars and Grantor shall be responsible for compliance with any legal requirements which become applicable to the Parking Spaces because of any use or development of the Burdened Premises. Grantee may not use the Parking Spaces at the Burdened Premises for the parking of commercial trucks or other large commercial vehicles.

2. Maintenance. Grantor shall, at its sole cost and expense and consistent with good quality standards, light, maintain and repair the Parking Spaces at the Burdened Premises including, but not limited to, the removal of all trash, snow, and ice from, and the drainage, repaving, sealing and striping of the walkways and parking areas located at the Burdened Premises (collectively, the "Maintenance").

3. Security. Neither Grantee nor Grantor shall be obligated to furnish security to the Parking Spaces at the Burdened Premises.

4. Insurance. Grantor and Grantee shall maintain general liability insurance with respect to the Parking Spaces at the Burdened Premises, naming the other party as additional insureds, and shall pay the premium therefor in the same proportion as set forth above. Grantor shall maintain "all risk" insurance with respect to the Parking Spaces at the Burdened Premises. All such policies shall be with such companies and in such form and amounts as shall be commercially reasonable for an office building parking area in Norwalk, Connecticut.

5. Casualty. In the event of a casualty, or condemnation in which the Parking Spaces of the Burdened Premises arc reduced or lost, the number of parking spaces available for Grantee's use under this Easement shall not be reduced, but the affected parking spaces shall be rebuilt or restored by Grantor. The parties shall mutually cooperate in the rebuilding or restoring the Parking Spaces under this paragraph.

6. Compliance with Laws. Grantor shall be responsible, at its sole cost and expense, for assuring that the Burdened Premises is at all times in compliance with applicable laws, now and hereafter in effect.

7. Indemnification. Grantee and Grantor hereby agree to indemnify, defend and hold harmless each other, their officers, directors, agents and employees, and their respective heirs, executors, administrators, successors and assigns (each, an "Indemnified Party") from and against any and all indebtedness, claims, liabilities, damages, penalties and losses, costs and expenses (including court costs and reasonable attorneys' fees) arising out of any breach of this Easement, and from and against any and all claims, liabilities, damages, penalties and losses, costs and expenses (including court costs and reasonable attorneys' fees) incurred by an Indemnified Party incident to, resulting from or in any way arising out of any negligent willful or wanton act or omission of either party, its successors, assigns, agents and employees relating to this Easement. Each party, however, releases the other from any claim, liability, or the like covered by insurance for the benefit of such party, and each party's insurance shall be written to deny the insurer rights of subrogation. The parties shall and do hereby assume and agree to pay for the defense of all such claims, demands, suits, and proceedings. The provisions of this section shall survive the expiration or early termination of this easement; shall be separate and independent of any term or requirement hereof; and shall not be limited by reason of any insurance coverage.

8. Alternate Parking Arrangements. During construction, repair, renovation or alterations to any improvements by Grantor, which activities reduce the availability and use of the Burdened Premises for the Grantee, Grantor shall use all reasonable efforts to minimize any disruption to Grantee, its successors, assigns, tenants, guests and invitees and Grantor shall provide reasonable replacement parking on the Burdened Premises, or within a reasonable distance from the Burdened Premises for use by Grantee, during such period of reduced availability.

9. Successors and Assigns. This Easement and the obligations hereunder shall run with the land and be binding on and inure to the benefit of Grantor and Grantee and their respective successors and assigns in interest.

10. Headings. The subject headings of paragraphs of this Easement are included for purposes of convenience only, and shall not affect the construction or interpretation of any provision.

11. Self-Help. If either party shall materially breach this Easement and does not, after notice of the breach, promptly commence and diligently pursue a reasonable and appropriate cure of the breach to completion, the other party shall have the right (but not the obligation), in addition to its other rights and remedies, to take any reasonable action to cure the breach. In such event, the breaching party shall pay all costs incurred by the other party, together with interest from the date incurred at the then current, prime rate as announced in the Wall Street Journal or comparable publication.

12. No Merger. Grantor and Grantee hereby agree that it is their intention not to merge title to the Burdened Premises and the Benefited Premises in Grantor. It is the intent of the parties to create this Easement in order to satisfy the applicable parking requirements for Mill Hill based on the Norwalk Zoning Regulations.

TO HAVE AND TO HOLD the above described easement, unto Grantee, and unto its successors and assigns, forever, subject to the foregoing conditions. While each party shall have the right to recover damages for a breach of this Easement and the right to specifically enforce its terms, this easement shall not be terminable for default. The prevailing party may recover its reasonable legal fees in any action hereunder.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Easement to be executed as of the day and year first above written.

HEAD OF THE HARBOR SOUTH, LLC,
GRANTOR

______________________ By: ______________________

Witness:

Its
Duly Authorized

[Acknowledgement on next page]

STATE OF CONNECTICUT)
)ss.
COUNTY OF FAIRFIELD) ____________________, 2014

Personally appeared ________________________________, who acknowledged himself/herself to be the ______________________ of HEAD OF THE HARBOR SOUTH, LLC, a ____________, and that he/she as such ____________________, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of HEAD OF THE HARBOR SOUTH, LLC, by himself/herself as _____________________, before me.

____
Commissioner of Superior Court
Notary Public

Exhibit F-1
(Existing Utility Services)

Jul 17, 2014-9:07am Plotted By: JAR
Tighe & Bond, Inc. J:\N\N0762\08_Head of the Harbor\Drawing\0_Current\Sheet\EXHIBIT-F.dwg

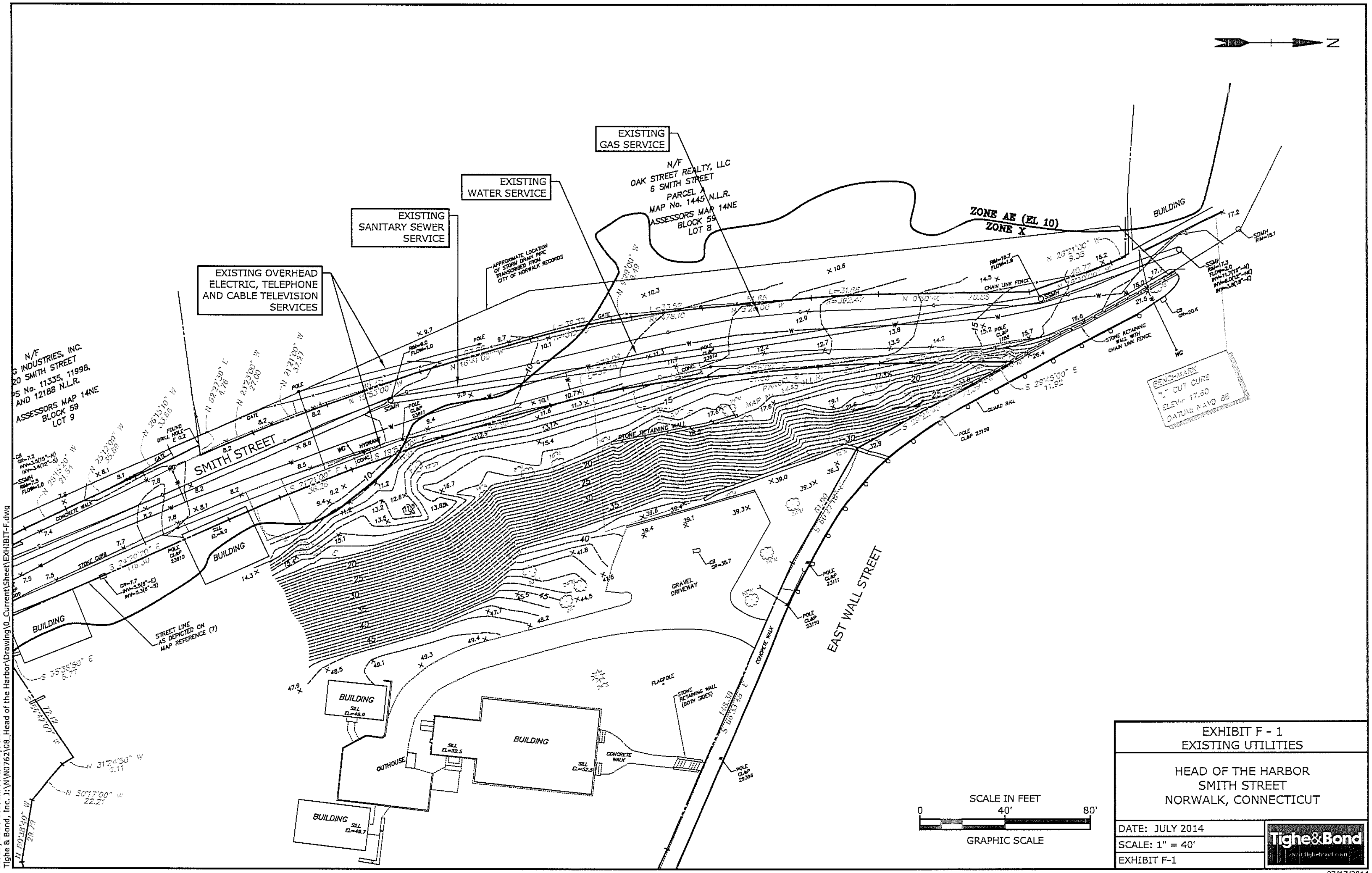


EXHIBIT F - 1
EXISTING UTILITIES

HEAD OF THE HARBOR
SMITH STREET
NORWALK, CONNECTICUT

DATE: JULY 2014
SCALE: 1" = 40'
EXHIBIT F-1

Tighe&Bond

07/17/2014

Exhibit F-1
(Proposed Utility Services)

Jul 17, 2014-9:09am Plotted By: JAR
Tighe & Bond, Inc. J:\N\N0762\08_Head of the Harbor\Drawing\0_Current\Sheet\EXHIBIT-F.dwg

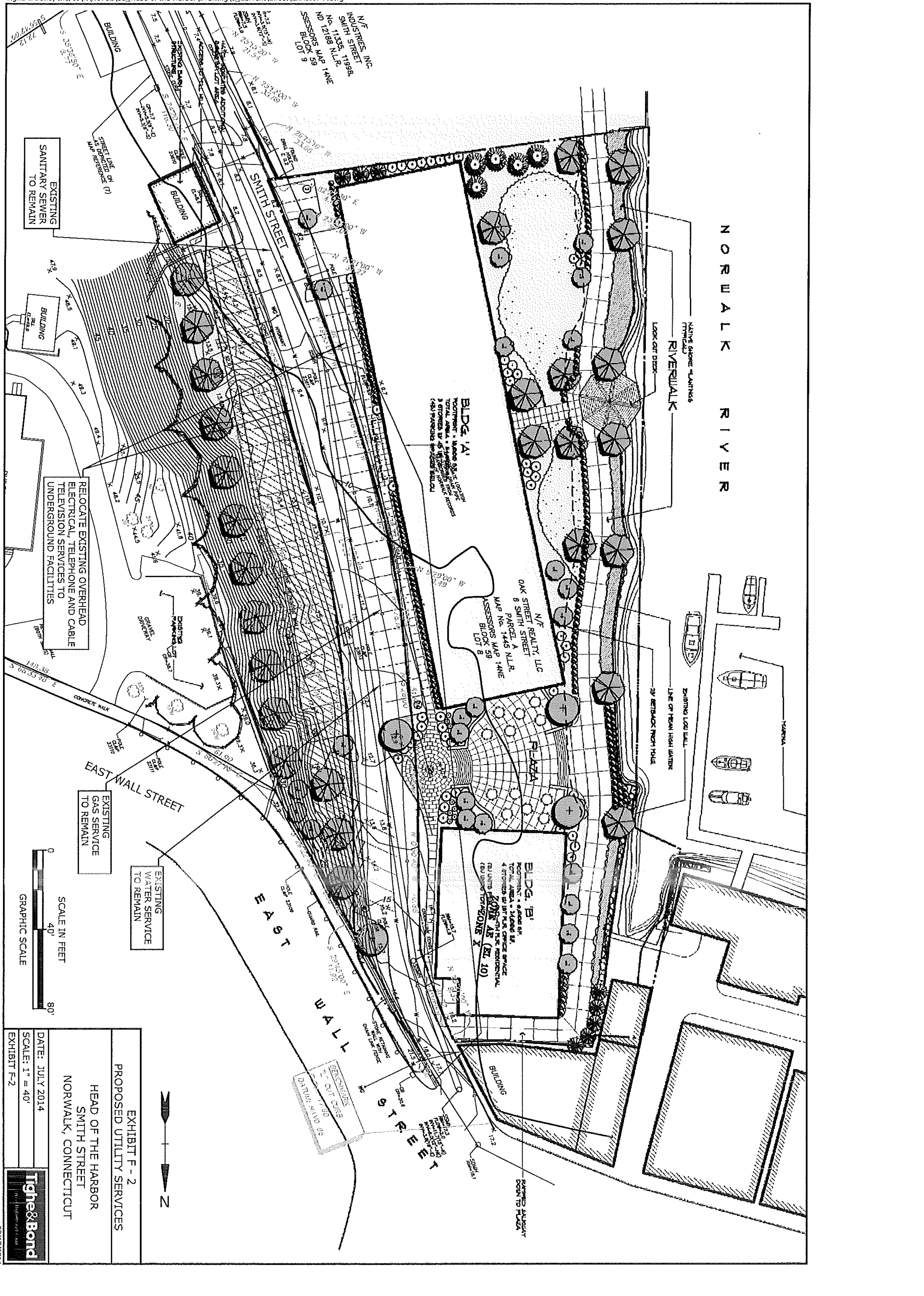


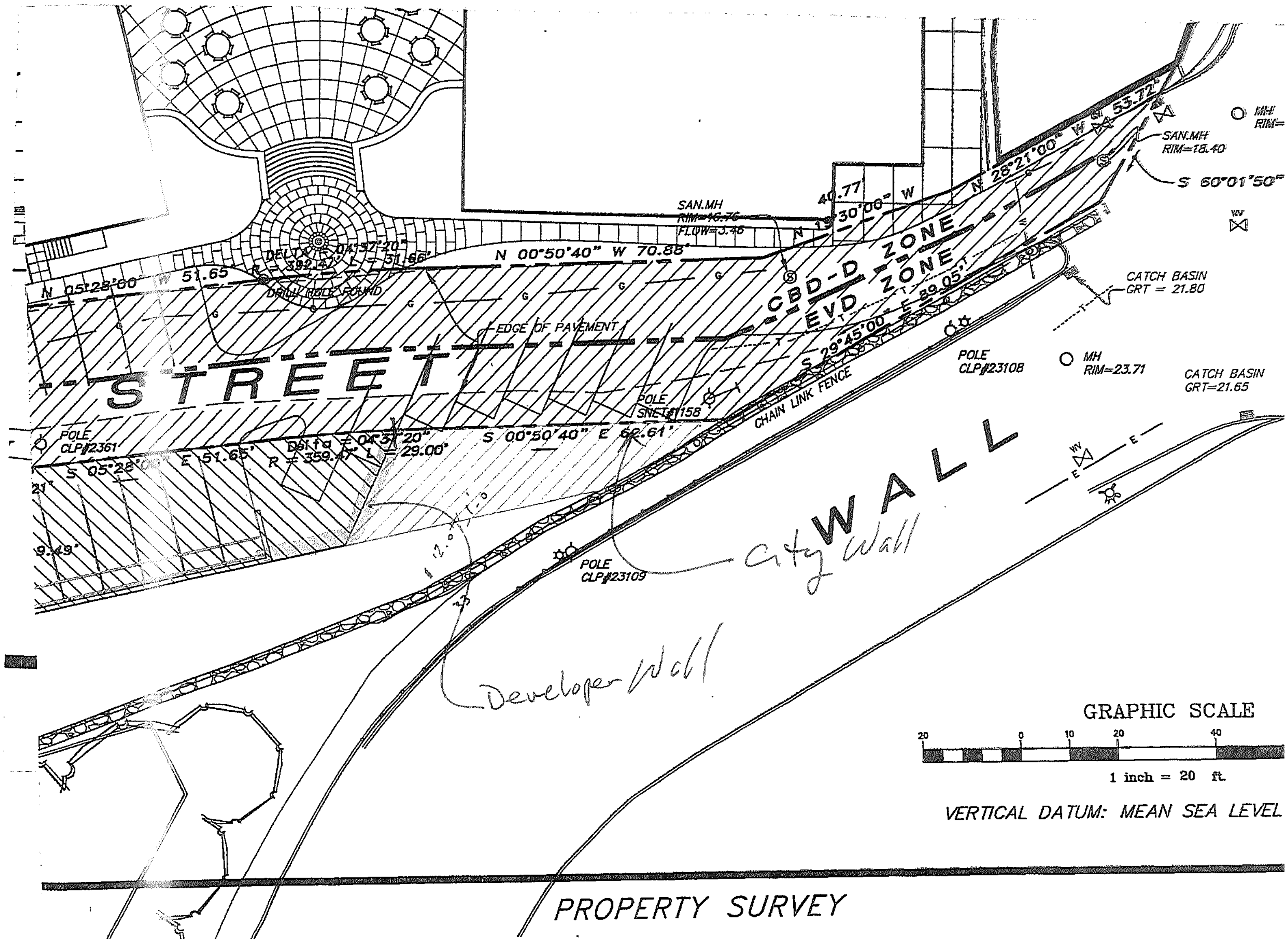
EXHIBIT F - 2
PROPOSED UTILITY SERVICES
HEAD OF THE HARBOR
SMITH STREET
NORWALK, CONNECTICUT

DATE: JULY 2014
SCALE: 1" = 40'
EXHIBIT F-2

Tighe&Bond

07/17/2014

Exhibit G
(Retaining Wall Repairs to be made by City)



PROPERTY SURVEY

DEPICTING

A PORTION OF SMITH STREET

CITY OF NORWALK
DEPARTMENT OF PUBLIC WORKS
P.O. Box 5125
?5 East Avenue
Norwalk, CT 06856-5125

JOB: East Wall / Smith Street Wall
SHEET NO. 1 OF
CALCULATED BY: BLS DATE
CHECKED BY DATE
SCALE: Estimate Const. Cost

Use Pricing from Rowayton Avenue Project now Under Construction.

Structure Exc.	$ 91,305
Pervious Str. Backf.	78,640
Class A Conc.	110,550
Cement Rubble	231,200
Underdrains	50,000

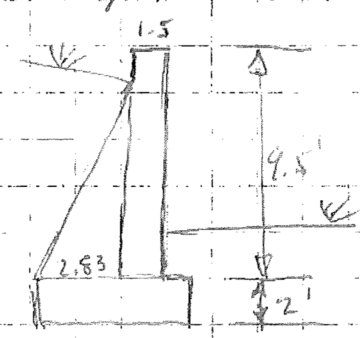
$561,695 / 578 C.Y. = $972 / C.Y.

Avg Price

Estimate C.Y. of Wall

3' → 12' Exp. Face 775 Long

Avg Height 7.5' High (Exposed)



Vol. of Cement Rubble

$V = 1.5 \times 9.5 = 14.25$

$\frac{1}{2} \times 2.83 \times 8.5 = 12.03$

26.28

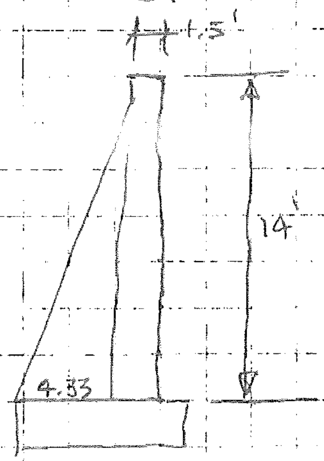
≈ 1 C.Y. / LF

For 775' $ 75,330

CITY OF NORWALK
DEPARTMENT OF PUBLIC WORKS
P.O. Box 5125
:5 East Avenue
Norwalk, CT 06856-5125

JOB East Wall / Smith St
SHEET NO. 2 OF
CALCULATED BY BRS DATE
CHECKED BY DATE
SCALE

For 12' Exposed Face



Vol/LF

$1.5 \times 14 = 21.0$

$\frac{1}{2} \times 4.33 \times 13 = 28.1$

49.1 / 27

= 1.82 cy/LF

For 77.5 LF

\$ = 1.82 × 77.5 × \$972/cy = \$137,100

Totals
137,100
75,330
50,000 ← Sidewalk/misc.
\$262,430
26,243
288,673 10% Contingencies

use \$290,000

CITY OF NORWALK
DEPARTMENT OF PUBLIC WORKS
P.O. Box 5125
125 East Avenue
Norwalk, CT 06856-5125

JOB ______
SHEET NO. ______ OF ______
CALCULATED BY ______ DATE ______
CHECKED BY ______ DATE ______
SCALE ______