

Wilmington, Delaware
August 20, 2020

#4846

Sponsor:

**Council
Member
Harlee**

WHEREAS, Section 8-204 of the Wilmington City Charter provides that the Department of Public Works of the City of Wilmington (the “Department”) may with the specific authority of Council by resolution accept on behalf of the City of Wilmington (the “City”) the gift of real estate, which in this case is the assignment of a sanitary sewer right-of-way located in the Riverfront; and

WHEREAS, the Riverfront Development Corporation (“RDC”) pursuant to a Sanitary Sewer Right-of-Way Agreement dated May 23, 2012 (the “Agreement”) previously accepted from the Red Brick Building LLC the responsibility for the installation, maintenance and repair of certain sewer lines and related equipment including located on Tax Parcel No. 26-049.00-022; and

WHEREAS, RDC now intends to convey, and the Department intends to accept on behalf of the City, the assignment of many of those rights and responsibilities outlined in the Agreement pertaining to this right-of-way, including the responsibility for the maintenance, improvement and repair of certain sewer lines, related equipment and a pumping station, as they are more particularly described in a document and its exhibits styled “Assignment of Sanitary Sewer Right-of-Way Agreement” (the “Assignment”) attached and incorporated here as Exhibit “A”;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON, that pursuant to Section 8-204 of the City Charter that the attached Assignment is approved, thereby authorizing the Department to accept on behalf of the City the rights and responsibilities described therein.

Passed by City Council,

Attest: _____
City Clerk

SYNOPSIS: This resolution approves an agreement where the City accepts by assignment ownership and responsibility for a sanitary sewer right-of-way along with the related lines and equipment, including a pump station, located on Tax Parcel No. 26-049.00-022.

W0111172

Tax Parcel No.: 26-049.00-022
Prepared by / Return to:
Monzack Mersky McLaughlin and Browder, P.A.
1201 North Orange Street, Suite 400
Wilmington, DE 19801

ASSIGNMENT OF SANITARY SEWER RIGHT-OF-WAY AGREEMENT

THIS ASSIGNMENT OF SANITARY SEWER RIGHT-OF-WAY AGREEMENT

(“Assignment”) is made this ____ day of _____ 2020, by and between Riverfront Development Corporation of Delaware, a Delaware corporation (“Assignor” or “RDC”) and the City of Wilmington, a Delaware municipal corporation (“Assignee” or the “City”).

WITNESSETH:

- A. **WHEREAS**, Assignor is the “Grantee” under that certain Sanitary Sewer Right-of-Way Agreement dated May 23, 2012 (the “Sewer Agreement”) which is attached as Exhibit A and incorporated by reference herein and made part of this Assignment; and
- B. **WHEREAS**, Assignee wishes to take over full responsibility for the installation, maintenance and repair of certain sewer lines and related equipment to be located on the property subject to the Sewer Agreement including, without limitation, replacement of the existing pump station.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor and Assignee, each intending to be legally bound, do hereby agree as follows:

1. **Incorporation by Reference.** Recitals A and B are incorporated by reference and made part of this Assignment.

2. **Assignment of Interest.** Assignor hereby assigns all of its right, title and interest, without representation or warranty, to the City of Wilmington.

3. **Assumption of Responsibilities.** Assignee hereby accepts the assignment and agrees to assume full responsibility for the operation, maintenance, repair and replacement, including installation of a new pump station and such additional sewer lines as may be required.

4. **Indemnification and Hold Harmless.** Assignee agrees to indemnify and hold Assignor harmless from any and all claims, losses, costs or expenses related to the responsibilities assumed by the Assignee for the operation, maintenance, repair and replacement, including installation, maintenance and continued operation of the new pump station and such additional sewer lines as may be required, including without limitation, any and all liability arising directly or indirectly out of the provisions of the Sewer Agreement. It is further understood that the provisions in Paragraph 9 of the Sewer Agreement, which specifically limit damage claims by either party shall apply to this Assignment as well; provided however, that

RDC agrees to indemnify and hold the City harmless from any and all environmental conditions located on the property covered by the Sewer Agreement and any injuries or damages to person or property as a result thereof that arise solely out of the environmental condition of the Sewer Agreement property which exists as of the effective date of this Assignment; it being specifically understood that RDC shall assume no liability whatsoever for any acts or conditions which arise after the effective date of this Assignment.

5. **Notice.** For purposes of this Assignment, all notices required hereunder shall be given by certified mail, return receipt requested, or by overnight courier service (with receipted delivery), or by hand delivery to:

Assignor: Riverfront Development Corporation of Delaware
815 Justison Street
Wilmington, Delaware 19801
Attention: Executive Director
Phone: (302) 425-4890
Fax: (302) 425-4897

With a copy to: Monzack Mersky McLaughlin and Browder, P.A.
1201 North Orange Street, Suite 400
Wilmington, DE 19801
Attention: Melvyn I. Monzack, Esq.
Phone: (302) 656-8162
Fax: (302) 656-2769

Assignee: City of Wilmington
Department of Public Works
Louis L. Redding City/County Building
800 North French Street, 6th Floor
Wilmington, Delaware 19801
Attention: Vincent R. Carroccia, Deputy Commissioner
Phone: (302) 576-3081
Fax: (302) 571-4579

With a copy to: City of Wilmington Law Department
Louis L. Redding City/County Building
800 North French Street, 9th Floor
Attention: City Solicitor
Phone: (302) 576-2178
Fax:

6. **Entire Agreement.** This Assignment and the documents which it references constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Assignment shall not be binding on either party except to the extent incorporated in this Assignment.

[SIGNATURE PAGE TO FOLLOW]

**ASSIGNOR/RDC:
RIVERFRONT DEVELOPMENT
CORPORATION OF DELAWARE**

**ASSIGNEE/CITY:
CITY OF WILMINGTON**

WITNESS

_____(SEAL)
Name: Vincent R. Carroccia
Title: Deputy Commissioner

STATE OF DELAWARE)
) ss.
NEW CASTLE COUNTY)

On this _____ day of _____, 2020, there did appear before me, a Notary Public for the State and County aforesaid Vincent R. Carroccia, the Deputy Commissioner of Public Works for the City of Wilmington, who did execute the foregoing Assignment of Sanitary Sewer Right-of-Way Agreement on behalf of the City of Wilmington.

Notary Public:
My Commission Expires:

EXHIBIT A
SANITARY SEWER RIGHT-OF-WAY AGREEMENT

COPY



20120802-0042955

Pages: 16 F: \$288.00

08/02/12 10:11:16 AM

T20120824166

Michael E. Kozikowski
New Castle Recorder MISC

Tax Parcel No.: 26-049.00-022

Prepared by / Return to:

Monzack Mersky McLaughlin and Browder, P.A.

1201 N. Orange Street, Suite 400

Wilmington, DE 19801

SANITARY SEWER RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT, made this 30 day of May 2012, between Red Brick Building, LLC (hereinafter called "Grantor") and Riverfront Development Corporation of Delaware (hereinafter called "Grantee").

WITNESSETH:

WHEREAS, Grantor owns a tract of land situate in the City of Wilmington, State of Delaware, identified in the New Castle County Assessment Office as Parcel No. 26-049.00-022 (the "Property"), which Property is more particularly shown as Parcel No. 26-049.00-022 on Exhibit A attached hereto and made a part hereof.

WHEREAS, Grantee owns a tract of land situate in the City of Wilmington, State of Delaware identified in the New Castle County Assessment Office as Parcel No. 26-049.00-016 (the "Benefitted Parcel") (which Benefitted Parcel is more particularly shown on Exhibit A attached hereto as Parcel No. 26-049.00-016 and made a part hereof) and desires to obtain from Grantor and Grantor desires to grant to Grantee for the benefit of the Benefitted Parcel, pursuant to the express terms and provisions contained herein, the limited non-exclusive sewer line easement and right-of-way as described herein upon, over and under a portion of the Property.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and in consideration of the payment to Grantor of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged by Grantor, Grantee and Grantor, each intending to be legally bound hereby, do hereby agree as follows:

1. The term "Sewer Lines", when used in this instrument, shall refer to the sanitary sewer pipe lines, conduits, manholes, drains, markers, service connections and other related accessories and appurtenances of Grantee specifically shown on the Easement Plan attached hereto as Exhibit B.

2. Grantor hereby gives and grants to the Grantee the free and uninterrupted right, liberty and privilege:

(a) To install, construct, reconstruct, replace, remove, inspect, operate, repair, make connections with and maintain perpetually that portion of the Sewer Lines to be located, upon, over and on the strip of land belonging to Grantor as shown on Exhibit B, the location of

which is more particularly identified and described by the metes and bounds description attached hereto as Exhibit C, for the benefit of the Benefitted Parcel.

(b) To transport sewage from the Benefitted Parcel through said Sewer Lines in compliance with all laws.

To have and to hold the same perpetually to Grantee and its successors or assigns, together with the right and privilege at any and all times to enter the Grantor's tract of land, or any part thereof, which is reasonably necessary for the purpose of gaining access to the strip of land described in Exhibit C, provided that prior to entry, Grantee gives to Grantor reasonable advance notification of the nature of any intended work on the premises and the expected duration of such work and the names of the persons gaining access and customary proof of insurance, for the purpose of installing, constructing, reconstructing, replacing, removing, inspecting, operating, repairing, maintaining, and/or making connections with the Sewer Lines or other appropriate means of access to the Sewer Lines; all upon the condition that Grantee will at all times during the construction, reconstruction, replacement, removal, repair or maintenance of the Sewer Lines, cause every reasonable means to be used to protect from injury or damage all property, including lawns, trees, shrubbery, fences, buildings, walls, roads, water courses, natural features, or any existing improvement thereto, and any personal property located thereon and the business activities of any business serviced by the Grantee's pumping station located on Grantor's tract of land, and will at all times after doing any work in connection with the construction, reconstruction, replacement, removal, repair or maintenance of the Sewer Lines, cause the said premises to be restored to the condition in which the same were found before such work was undertaken, including replacement and/or repair of damaged property, to the extent reasonably possible under the circumstances and consistent with the rights and privileges herein granted.

3. Grantee currently has the benefit of sewer easement(s) for the existing sewer lines and related appurtenances across the Property as shown on Exhibit D hereto as the green dotted line on the Property that is labeled "Sanitary to be Abandoned" (the "Existing Sewer Line to be Abandoned"). The grant of the easement for the Sewer Lines in paragraph 2 above is expressly conditioned upon Grantee's abandonment of the Existing Sewer Line to be Abandoned as provided herein and Grantee's relinquishment of any easement or other rights related thereto as provided herein. Grantee shall, when constructing the Sewer Line, at Grantee's sole cost and expense, discontinue use of the Existing Sewer Line to be Abandoned and cause the same to be capped, drained, cleaned and abandoned in place in accordance with standard industry practice (the "Existing Sewer Line Abandonment"). Upon completion of construction of the Sewer Lines and the corresponding Existing Sewer Line Abandonment, Grantee hereby relinquishes any easement or other rights that it may have to the Existing Sewer Lines to be Abandoned.

4. Grantee acknowledges that the Property was formerly part of a former industrial site including the Dravo Shipyard. Grantee represents that Grantee has extensive knowledge of the environmental conditions in and around the Property through its extensive development activities in the area. Grantee hereby acknowledges and agrees that it is accepting the Property and the easement area shown in the Easement Plan in its "as is" condition with any and all environmental conditions therein. Grantee is and shall be responsible to design, construct and

build the Sewer Lines in compliance with all laws, including all environmental and health and safety laws. As between Grantor and Grantee (its tenants and successors and assigns), Grantee shall be solely responsible for any and all costs and expenses incurred in connection with any environmental conditions encountered on the Property. Grantee agrees to comply with any and all requirements of the Delaware Department of Natural Resources and Environmental Control in connection with all of its activities on the Property. Grantor hereby indemnifies, defends and holds Grantee (and its tenants and successors and assigns) harmless from and against any and all costs, claims, losses, expenses, liabilities, damages, penalties and causes of action arising under any federal, state or local environmental laws, regulations, ordinances, rules and directives, common law or equity, or any other laws pertaining to the condition of the Easement Area or Property during the term of this Easement or arising out or required by Grantee's activities on the Property (whether within or outside of the easement area). Grantee shall provide Grantor prior written notice before conducting any site disturbing activities on the Property and Grantee shall provide Grantor copies of any and all reports, test results, agreements, documents and correspondence generated with respect to Grantee's activities on the Property and environmental conditions, laws and/or compliance.

5. The Sewer Lines installed pursuant to this Agreement shall remain the property of Grantee and all maintenance, repairs and removals of said Sewer Lines shall be the responsibility of and shall be done at the sole cost and expense of Grantee. Grantee shall keep and maintain its facilities in compliance with all applicable laws, codes and regulations.

6. Grantor does hereby covenant that it is lawfully seized and possessed of good and marketable title in fee simple to the aforesaid tract of land subject to all easements and restrictions of record and that it has a good and lawful right to grant the rights and privileges herein granted to Grantee.

7. The provisions of this Indenture shall be binding upon and inure to the benefit of Grantee, its successors and assigns, and Grantor, its heirs, executors, administrators, successors and assigns.

8. Any liability for personal injury or to any worker employed by Grantee or its agents for construction, maintenance or repair purposes pursuant to this agreement, or to third persons, as well as any liability for damage to the property where this easement is located, which arises as a result of construction, repair, maintenance or other activity pursuant to this agreement, shall be borne entirely by Grantee or its successors or assigns. Grantee agrees to indemnify and hold harmless Grantor from and against any and all loss or liability for personal injury or property damage when such injury or damage shall result from, arise out of, or be attributable to any construction, repair or maintenance undertaken or pursuant to this agreement. Such indemnification shall include all costs of defending any threatened or actual lawsuit, with limitation, expert witness fees, attorneys' fees and any other related matters.

9. Notwithstanding anything contained in this Agreement to the contrary, in no event shall either party be liable to the other party under this Agreement for any consequential, incidental, exemplary or punitive damages, or for lost profits.

10. For purposes of this Agreement, all notices required hereunder shall be given by certified mail, return receipt requested, or by overnight courier service (with receipted delivery) or by hand-delivery to:

If to GRANTOR:

Red Brick Building, LLC
234 North James Street
Newport, Delaware 19804

Attn: Manager

If to GRANTEE:

Riverfront Development Corporation of Delaware
Chase Center on the Riverfront
800 South Madison Street
Wilmington, DE 19801
Attn: Executive Director

Notices shall be effective when received or upon attempted delivery if receipt is refused, or, if sent by overnight courier service, deemed to be received (if not earlier actually received) two (2) business days after being provided to such overnight courier service.

11. This Agreement shall be a covenant running with the Property and shall bind the parties hereto, and their respective successors and assigns. This Agreement will be recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware.

12. This Agreement shall be governed by the substantive laws of the State of Delaware without regard to its conflicts of laws principles, and, except as otherwise provided herein, the State and Federal courts in the City of Wilmington, Delaware shall have exclusive jurisdiction over any proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement.

13. This Agreement may not be amended except by a written agreement executed by Grantor and Grantee.

14. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

15. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, under seal on the day and year first above written.

GRANTOR:
RED BRICK BUILDING, LLC


WITNESS

By:  (SEAL)
Name: Gregory Pettinaro
Title: Manager

GRANTEE:
**RIVERFRONT DEVELOPMENT
CORPORATION OF DELAWARE**

ATTEST:



By:  (SEAL)
Name: 
Title: 

On the 23rd day of May, 2012, before me personally came Gregory Pettinaro, who being duly sworn, did acknowledge that he is the Manager of Red Brick Building, LLC, a Delaware limited liability company, and that as such Gregory Pettinaro as Manager, being authorized to do so, acknowledged the foregoing instrument on behalf of said limited liability company for the purpose therein contained. In testimony whereof, I have hereunto subscribed my name.

[illegible]

On the 30th day of May, 2012, before me personally came Michael S. Ruzicki, who being duly sworn, did acknowledge that he is Exec. Director of Qualifon Development Corp, a Delaware corporation, and that as such Exec. Director being authorized to do so, acknowledged the foregoing instrument on behalf of said corporation for the purpose therein contained. In testimony whereof, I have hereunto subscribed my name.

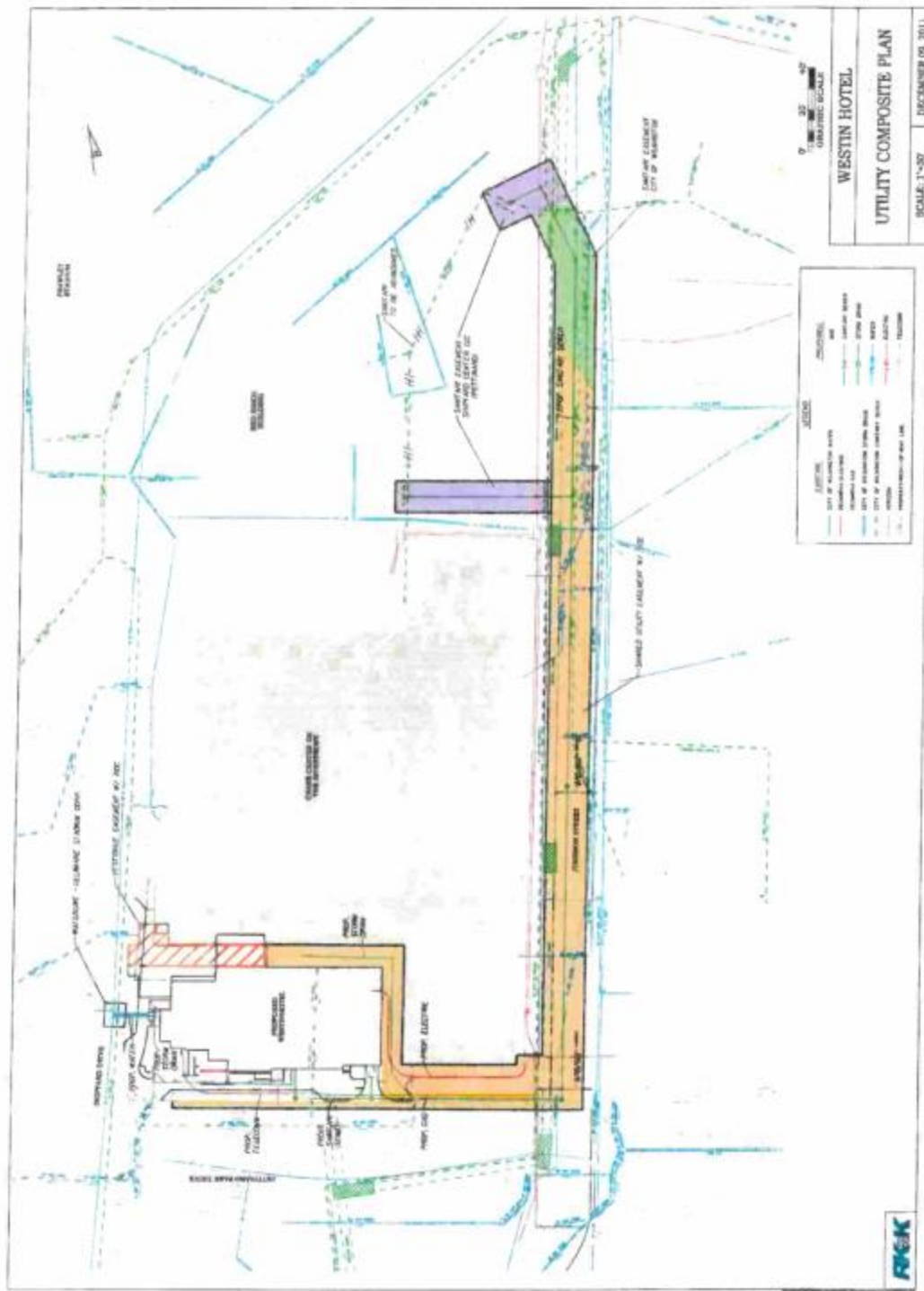
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Exhibit A
The Property

ALL that certain piece, parcel or lot of land situate in the City of Wilmington, New Castle County and State of Delaware, being Parcel "E", as shown on a certain property plan, Remainder of Parcel #1 and Parcel "D" and Parcel "E"; Harbor Associates, as prepared by Howard L. Robertson, Inc., dated November 5, 1998 also as shown on the Major Subdivision Plan, Harbor Associates, as recorded in the Office of the Recorder of Deeds in and for New Castle County in Microfilm No. 11496 and being more particularly bounded and described as follows, to wit:

BEGINNING at a point in the Northwestern side of South Madison Street (formerly known as Marsh Road) (at 60 feet wide), a corner for Parcel "E" & Parcel "B" said point of beginning, being distant the following three courses and distances from the point of intersection of the centerline of South Madison Street (Marsh Road) at 33 feet wide with the centerline of Beech Street: (1) By the said centerline of South Madison Street, S 05 degrees 22 minutes 00 seconds W., 455 feet to a point; (2) Thence leaving the centerline of South Madison Street, N 82 degrees 09 minutes 00 seconds W., 30.02 feet to a point in the Northwestern side of South Madison Street (at 60 feet wide), (3) Thereby, S 05 degrees 44 minutes 30 seconds W., 65.35 feet to the point of beginning; THENCE from said point of beginning by the Northwestern side of South Madison Street the following two courses and distances: (1) S 05 degrees 44 minutes 30 seconds W., 13.35 feet to a point; (2) S 08 degrees 52 minutes 30 seconds W., 298.39 feet to a point in the Southwesterly terminus of South Madison Street; THENCE thereby and by the Northeasterly terminus of a 52-foot wide utilities easement and by the Northeasterly terminus of a 40-foot wide access easement, S 27 degrees 17 minutes 30 seconds E., 88.11 feet to a point, a corner for Lands now or formerly of Riverfront Development Corporation of Delaware. THENCE thereby and by the Southeasterly sides of the aforementioned 52-foot wide easement and 40-foot wide easement, S 08 degrees 52 minutes 30 seconds W., 124.68 feet to a point, a corner for Parcel "F"; THENCE thereby and crossing the aforementioned 52-foot wide easement and 40-foot wide easement, N 81 degrees 07 minutes 52 seconds W., 426.77 feet (Erroneously described in prior deed as 462.77) to a point in line of Parcel B; THENCE thereby and by the Southeasterly side of a 50-foot wide access easement the following three courses and distances: (1) N 08 degrees 52 minutes 30 seconds E., 150.66 feet to a point of curve of a curve to the right having a radius of 40 feet; (2) By said curve to the right an arc distance of 33.37 feet to a point of tangency; (3) N 56 degrees 40 minutes 34 seconds E., 487.18 feet to the point and place of Beginning. Be the contents what they may.

Exhibit B
Easement Plan



0 30 60 90
Feet
Graphic Scale

WESTIN HOTEL

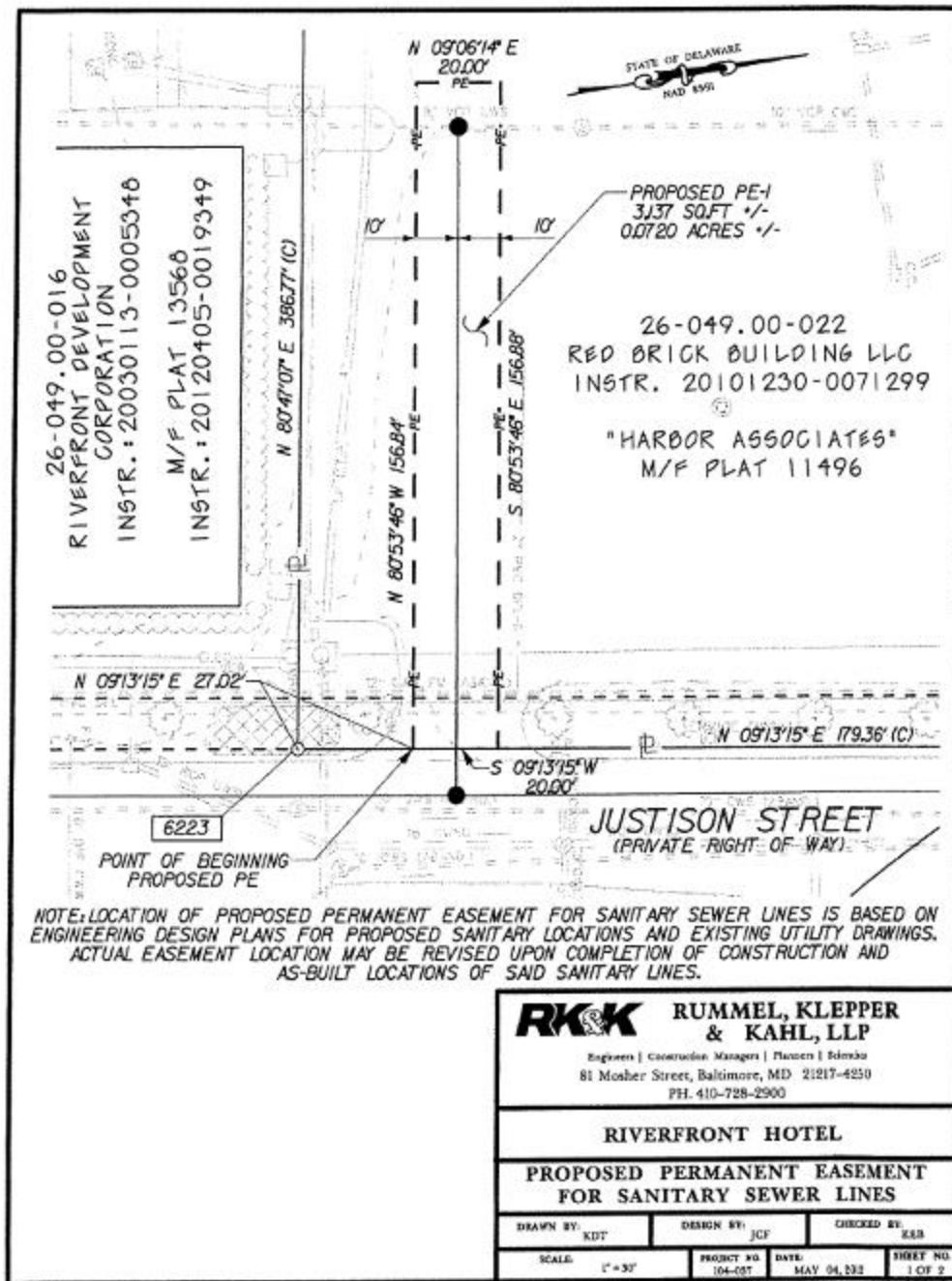
UTILITY COMPOSITE PLAN

SCALE: 1"=30'
DECEMBER 09, 2011

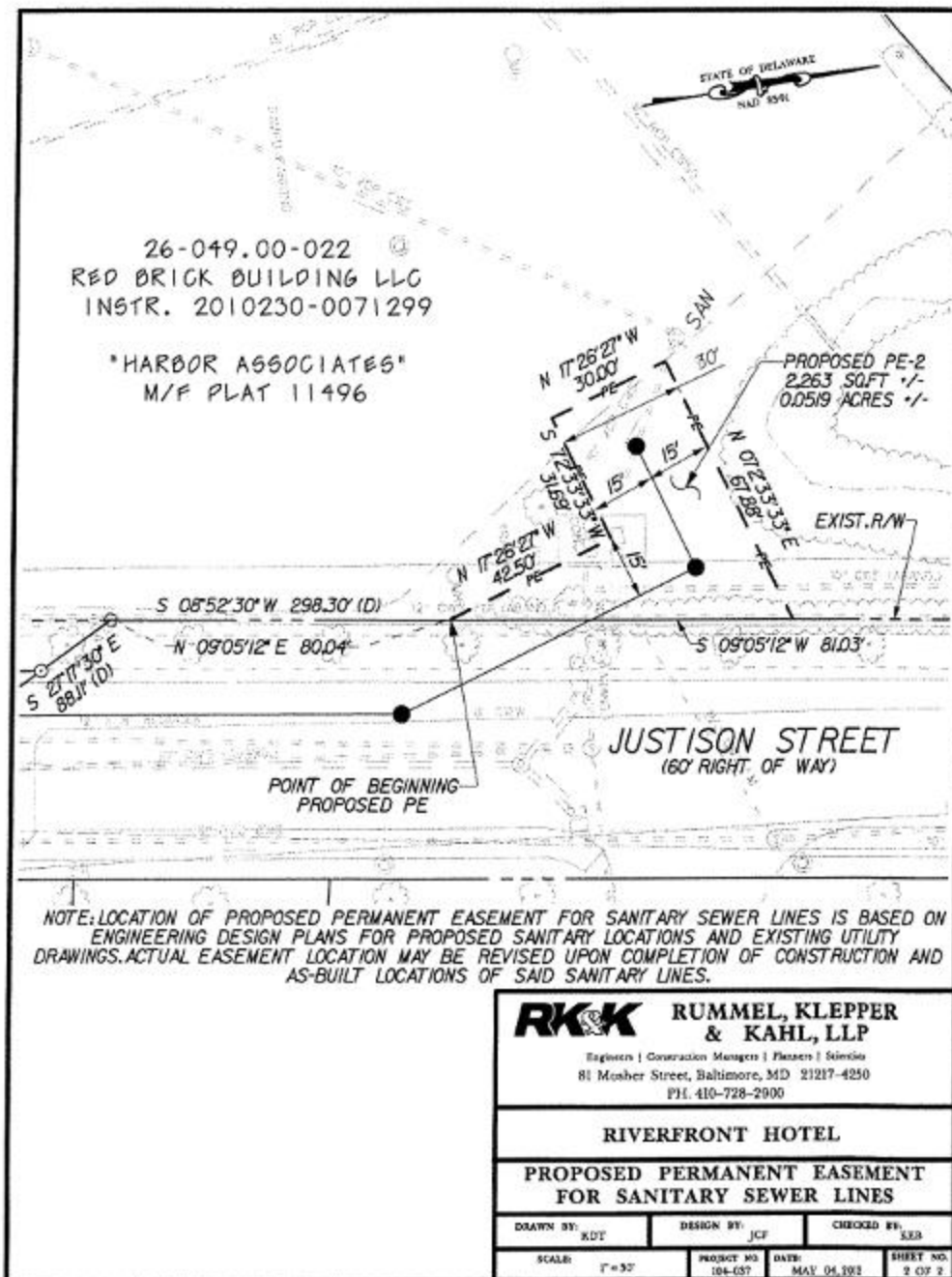
EXISTING	PROPOSED
<ul style="list-style-type: none"> 1" CITY OF ALABAMA WATER 2" CITY OF ALABAMA SEWER 3" CITY OF ALABAMA GAS 4" CITY OF ALABAMA ELECTRIC 5" CITY OF ALABAMA CABLE 6" CITY OF ALABAMA TELEPHONE 7" CITY OF ALABAMA FIBER 8" CITY OF ALABAMA RAILROAD 9" CITY OF ALABAMA HIGHWAY 10" CITY OF ALABAMA AIRPORT 11" CITY OF ALABAMA MARINA 12" CITY OF ALABAMA PORT 13" CITY OF ALABAMA AIRCRAFT 14" CITY OF ALABAMA SPACE 15" CITY OF ALABAMA DEFENSE 16" CITY OF ALABAMA ENERGY 17" CITY OF ALABAMA HEALTH 18" CITY OF ALABAMA EDUCATION 19" CITY OF ALABAMA RESEARCH 20" CITY OF ALABAMA DEVELOPMENT 	<ul style="list-style-type: none"> 1" CITY OF ALABAMA WATER 2" CITY OF ALABAMA SEWER 3" CITY OF ALABAMA GAS 4" CITY OF ALABAMA ELECTRIC 5" CITY OF ALABAMA CABLE 6" CITY OF ALABAMA TELEPHONE 7" CITY OF ALABAMA FIBER 8" CITY OF ALABAMA RAILROAD 9" CITY OF ALABAMA HIGHWAY 10" CITY OF ALABAMA AIRPORT 11" CITY OF ALABAMA MARINA 12" CITY OF ALABAMA PORT 13" CITY OF ALABAMA AIRCRAFT 14" CITY OF ALABAMA SPACE 15" CITY OF ALABAMA DEFENSE 16" CITY OF ALABAMA ENERGY 17" CITY OF ALABAMA HEALTH 18" CITY OF ALABAMA EDUCATION 19" CITY OF ALABAMA RESEARCH 20" CITY OF ALABAMA DEVELOPMENT

ARK

Exhibit C
Easement Area
(Metes and Bounds)



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Exhibit D

Existing Sewer Line to be Abandoned

