

[Handwritten Signature]

FROM

NAME & TITLE	Daniel P. Henson, III, ^{Acting} Commissioner
AGENCY NAME & ADDRESS	Dept. of Housing & Community Development 417 E. Fayette Street - Benton Bldg.
SUBJECT	Belt's Landing Condominium Promenade Easement Agreement

CITY of
BALTIMORE
MEMO



TO

DATE:
March 12, 1993

Honorable President and Members
of the Board of Estimates

Dear Madam President and Members:

ACTION REQUESTED OF BOARD OF ESTIMATES:

Approval of the execution of a Promenade Easement Agreement between the City and the Belt's Landing Condominium, Inc.

AMOUNT OF MONEY AND SOURCES:

Not Applicable

BACKGROUND/EXPLANATION:

To enhance waterfront redevelopment in several neighborhoods of the city, urban renewal legislation was passed to require the establishment of public pedestrian easements along the water's edge. These contiguous easements are forming the Baltimore Waterfront Promenade. The Promenade, when complete, will link the Canton, Fells Point, Inner Harbor East, Little Italy and South Baltimore neighborhoods with the Inner Harbor Promenade.

In order to complete another section of the Promenade, this Promenade Easement Agreement has been finalized between the City and the Belt's Landing Condominium. It establishes an approximate twenty foot wide public right-of-way along the water's edge and a public access corridor between Fell Street and the Promenade. Both are identified in and required by the Fells Point Urban Renewal Plan's Waterfront Standards and Controls. As part of the completed condominium project, the developer has, at their expense constructed a brick pedestrian walkway and a landscaping strip to comprise the easement.

Period lighting and benches are also to be installed. This twenty four-hour Promenade, as outlined in the Agreement, is to be perpetually maintained by the Condominium Association.

Approved By The Board of Estimates


Clerk

MAR 24 1993

Date

DH:RQ:scr

cc: Mayor Kurt L. Schmoke
Mr. Hayes Brown

PEDESTRIAN PROMENADE EASEMENT AGREEMENT

THIS AGREEMENT, is made this _____ day of MAR 24 1993, 1993 by and between BELT'S LANDING, a CONDOMINIUM, INCORPORATED, a membership corporation formed under the laws of the State of Maryland (hereinafter "Grantor"), and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation of the State of Maryland (hereinafter "City") with approval of the City's Board of Estimates.

WHEREAS, the Grantor is a membership corporation composed of the unit owners in Belt's Landing Condominium (the "Condominium") located at 960 Fell Street in Baltimore City; and presently governed by a Second Amended and Restated Declaration dated September 25, 1992 and recorded among the Land Records of Baltimore City in Liber S.E.B. No. 3391, folio 1 (the "Declaration"); and

WHEREAS, the Condominium is located on Baltimore Harbor in the Fells Point Urban Renewal Area, and certain portions of the Common Elements of the Condominium are intended to be made a part of the Baltimore Waterfront Promenade and a public access corridor thereto.

NOW, THEREFORE, for and in consideration of the mutual obligations of the parties hereto, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto for themselves, their successors and assigns, hereby agree as follows:

1. Grant of Easement. The Grantor, acting pursuant to its powers under §11-125(f) of the Maryland Condominium Act requiring the approval of 66-2/3% of the votes of unit owners and their mortgagees and pursuant to Section 9.E of the Declaration, hereby grants to the City a perpetual, non-exclusive easement for pedestrian ingress and egress in, over and through the property shown on Schedule A (hereinafter "Easement Area"), being a part of the Common Elements of the Condominium. The City may exercise the easement only upon the terms and subject to the conditions which are set forth in the provisions of this Agreement.

2. Limitations on Exercise of Easement.

(a) Notwithstanding that the easement has been granted as of the date hereof, the easement may not be exercised until the Easement Improvements (as defined in Section 4) have been completed, as evidenced by the City's issuance of a certificate of completion for all such Easement Improvements.

(b) The easement may be exercised only for pedestrian access to and from the adjoining public streets and walkways and for pedestrian traffic through the Easement Area 24 hours a day (the "Easement Hours"); except that in the deck area surrounding the Pier Building (as defined in Declaration) and hatched on Schedule A, the easement may be exercised only in the hours from dawn to dusk. The Grantor may place, with approval from the City, signs on the Promenade in the vicinity of the Pier Building stating that the aforesaid area is closed to the public from dusk to dawn. No person otherwise entitled by the provisions of this Agreement to enter upon and use the Easement Area shall do so other than in accordance with applicable law and the terms of this Agreement. Reasonable rules concerning noise, dress, conduct and concerns of a similar nature regarding exercise of the easement shall be established by the City, posted at and enforced with respect to the Easement Area during the period within which the easement is exercised. Nothing contained herein shall be deemed to limit City's right to install non-commercial signs and educational plaques within the Easement Area after consultation with Grantor. City or the Baltimore Harbor Endowment shall be solely responsible for the installation, maintenance and replacement of such signs.

(c) Nothing in the provisions of this Agreement shall be deemed in any way to confer upon the City, or its officers, employees, agents, or members of the general public any easement or other right entitling the City or any other such person (without the prior, express, written consent of the Grantor which may be given or withheld in its sole and absolute discretion) to

bring any boat or other vessel into the waters adjoining the Easement Area, or to place, anchor, tie-up, or dock any boat or other vessel at or adjacent to any pier, walkway, piling, or other portion of the Easement Area, or to enter or exit any portion of the Easement Area from any boat or other vessel, all of which rights are hereby expressly reserved to and by the Grantor for the benefit of the Unit Owners in the Condominium.

3. Benefit of Easement.

(a) The benefit of the easement shall run to the City. The City may, in its exercise of the easement, allow the use of the Easement Area for and only for pedestrian access, by its officers, employees, agents, and members of the general public, subject to the limitations set forth in paragraph 2(b) above.

(b) Nothing in the provisions of this Agreement shall be deemed in any way to alter or impair the Grantor's rights to use and enjoy the Easement Area or to allow the use and enjoyment of the Easement Area by the Unit Owners and their agents, employees, tenants, invitees, visitors, or guests, provided that such use and enjoyment does not interfere with or impair the City's ability to use and enjoy the Easement Area in accordance with the provisions of this Agreement.

(c) Nothing in the provisions of this Agreement shall be deemed in any way to constitute, or to require or call for, the dedication of any Easement Area, Easement Improvements, or any portion thereof to public use, it being intended by the parties hereto that all of the same be and remain the property of the Unit Owners in the Condominium, subject to the operation and effect of this Agreement.

4. Easement Improvements. The Grantor shall construct, or cause to be constructed, at no expense to the City, the improvements set forth in Schedule B (the "Easement Improvements"), using first class materials and in accordance with all applicable building codes, and other law, within the period prescribed in Schedule B.

5. Maintenance and Repairs.

(a) The Grantor, as agent of the Unit Owners, shall, throughout the term of this Agreement, be responsible for maintaining and keeping in good order and repair the Easement Area and Easement Improvements including structural elements of the Easement Improvements including, by way of example rather than of limitation, any supporting piles, support members, and bulkheading. The maintenance which the Grantor is required to perform shall include by way of example rather than of limitation, sweeping the Easement Area and removing all items of trash and refuse, keeping it clean of snow and ice, maintaining trash baskets or other trash receptacles at reasonable intervals from one another and regularly removing or causing to be removed all trash deposited therein, and maintaining all, if any, above surface utility poles, lighting fixtures, benches, railings and life rings.

(b) The Grantor shall, throughout the term of this Agreement, cause to be provided the electricity required to any and all light fixtures which may be located, from time to time, within the Easement Area.

(c) The City shall at its expense cause the Easement Area to be patrolled during the Easement Hours by the Baltimore City Police Department, as if the Easement Area were a public street or sidewalk, notwithstanding that the Easement Area is privately owned; provided, however, that in the portion of the Easement Area cross-hatched on Schedule A such patrolling shall not be required during the hours from dusk to dawn.

6. Insurance and Indemnification.

(a) The Grantor shall keep all of the Easement Improvements insured against loss or damage by fire, vandalism or other cause within the coverage of an ordinary fire and extended coverage insurance policy. Such policy shall be in an amount not less than 100% of replacement cost of such Easement Improvements, subject to reasonable deductibles. Grantor shall on written

request furnish a certificate evidencing such insurance to the City. Grantor shall promptly make any repair, restoration or replacement to such Easement Improvements made necessary by damage or destruction whether or not such insurance is actually carried. Such insurance may be covered under a blanket policy covering other improvements and property which shall provide for a waiver of subrogation against the City unless such waiver is unobtainable from the company offering such insurance without any additional premium.

(b) The Grantor shall defend, indemnify, and hold harmless the City against and from any liability or claim of liability for bodily injury, death or property damage arising out of any negligence of the Grantor in maintaining or repairing the Easement Area or Easement Improvements as set forth in this Agreement, notwithstanding any policy of policies of insurance.

(c) The Grantor shall defend, indemnify, and hold harmless the City against and from any liability or claim of liability for bodily injury, death or property damage from any cause and mechanic's liens occurring or arising during the period before the City first becomes entitled to exercise the easement as provided in Section 2(a) of this Agreement, notwithstanding any policy or policies of insurance.

(d) The City shall maintain under its self insurance program liability insurance against claims for bodily injury or death and property damage in the Easement Area occasioned by accident or other occurrence during the Easement Hours.

(e) Except for any liability or claim of liability against which the City is indemnified by the Owner, the City shall defend, indemnify, and hold harmless the Grantor and the Unit Owners against and from any liability or claim of liability to third parties for bodily injury, death, or property damage arising out of the lawful or unlawful use of the Easement Area during the Easement Hours by any person. Nothing contained in this Section 6 shall be deemed a waiver of the City's

governmental immunity if it should be applicable as a defense against any claim.

7. Default. If either party fails to perform any provision, covenant, or condition of this Agreement then, in such event, the other shall have the right, upon 10 days written notice, to proceed to take such action as is necessary to cure such default, all in the name of and for the account of the breaching party. The breaching party shall on demand reimburse the other party for the money actually expended in accomplishing such cure, together with all reasonable out-of-pocket expenses plus interest at the rate of 15% per annum. If the other party shall in good faith deem that an emergency is occurring or has occurred, so that a default requires immediate cure, no notice shall be required and such party shall be entitled to take action without notice, provided notice is given as soon thereafter as possible. No default, action, or inaction shall give any party the right to terminate this Agreement or to deny access to the Easement Area.

8. Notices. Any notice, demand, consent, approval, request or communication to be provided hereunder to a party shall be in writing and deemed to have been provided three (3) business days after being sent certified mail, postage prepaid, return receipt requested, to the addresses of such parties as are set forth in Schedule C.

9. Amendment. Any amendment to this Agreement must be executed in writing and with the same formality as this Agreement.

10. Headings. The headings of the sections are provided for and only for convenience of reference, and shall not be considered in construing their contents.

11. Exhibits. Each writing, schedule or exhibit referred to herein as being attached hereto is hereby made a part of this Agreement.

12. Agreement to Run with the Land. The rights and obligations of the Grantor hereunder shall run with the land shall be binding upon and shall inure to the benefit of those persons holding interests in such land, from time to time. Furthermore, the rights and obligations of the Grantor or any of the Unit Owners shall cease upon termination of their respective interests in the land, provided that there remains no uncured default under this Agreement.

13. Severability. No determination by any court, government body or otherwise that any provision of this Agreement or any amendment thereof is invalid or unenforceable shall affect the validity or enforceability of any other provision.

14. Disclaimer of Partnership. Nothing in the provisions of this Agreement shall be deemed in any way to create between the parties any relationship or partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

IN WITNESS WHEREOF, each party hereto has executed and sealed this Agreement that day and year first above written.

AS WITNESS the hands and seals of the parties hereto.

[SIGNATURES ON NEXT PAGE]

ATTEST:

BELT'S LANDING, a Condominium,
Incorporated

JMM
Secretary

By: Elliott J. Sharaby (SEAL)
President

ATTEST:

MAYOR & CITY COUNCIL OF BALTIMORE

[Signature]
Custodian of the City Seal

By: Robert Hearn (SEAL)
Robert Hearn, Commissioner, HCD

ALTERNATE

Approved by the Board of Estimates:

Shirley G. Williams **MAR 24 1993**
Secretary Date
CLERK

Approved for form and legal sufficiency:

[Signature] 22 Feb 93
Principal Counsel Date

STATE OF MARYLAND)
CITY OF BALTIMORE)

ss:

MAR 24 1993

I HEREBY CERTIFY that on this ___ day of _____, 199_, before me, a Notary Public of the State of Maryland, personally appeared Robert Hearn, Commissioner of the Department of Housing and Community Development, who signed the foregoing Agreement in my presence and acknowledged it to be the act of the Mayor and City Council of Baltimore.

Marion C. Navarra
Notary Public

My Commission Expires: 8-15-93

STATE OF MARYLAND)
CITY OF BALTIMORE)

ss:

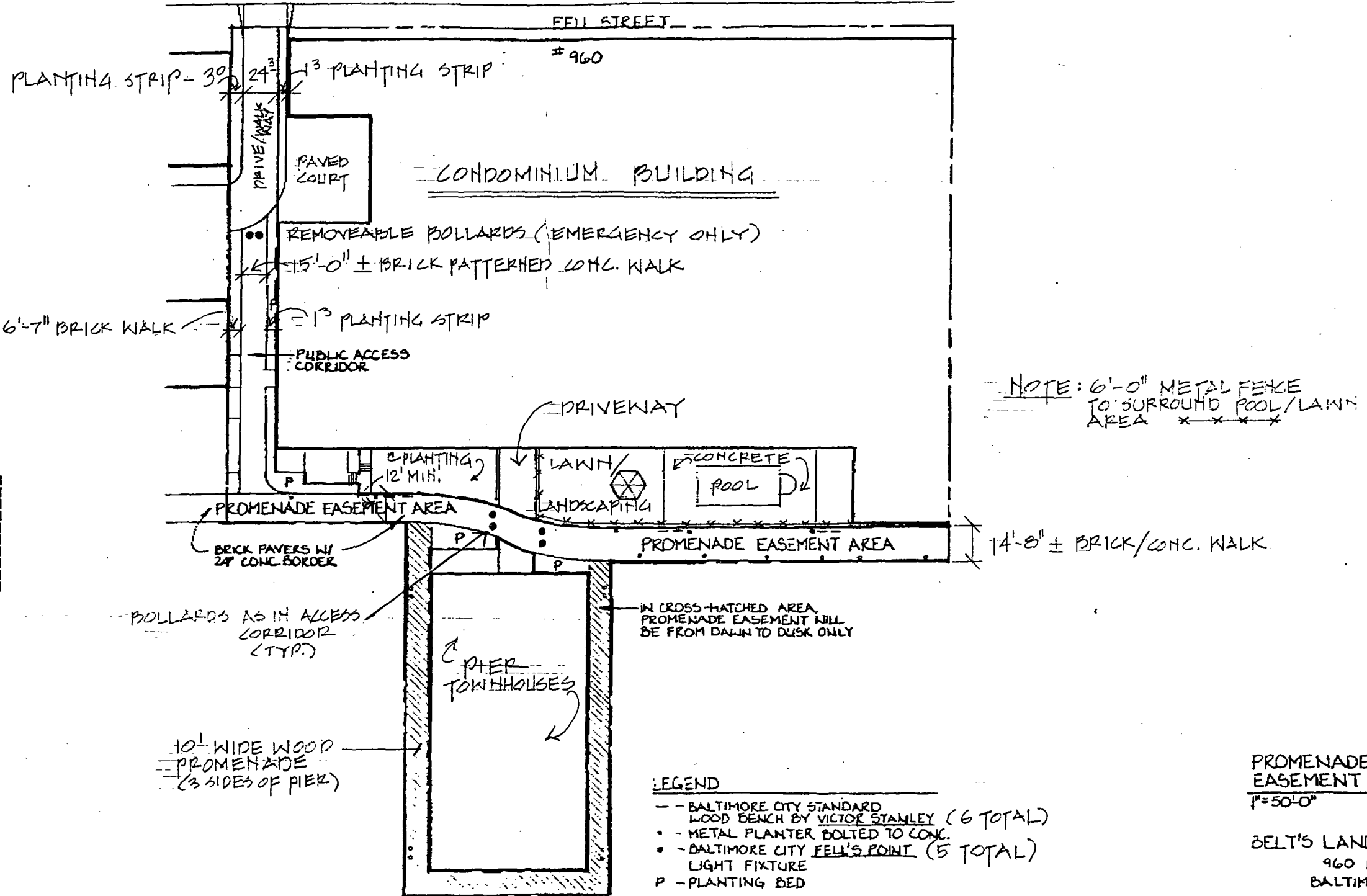
I HEREBY CERTIFY that on this 17th day of February, 1992, before me, a Notary Public of the State of Maryland, personally appeared Elliott J. Sharaby, President, and Joel M. Gamel, Secretary of Belt's Landing, a Condominium, Incorporated, who signed the foregoing Agreement and acknowledged it to be the act of Belt's Wharf Landing, a Condominium, Incorporated, and who further acknowledged and certified that the foregoing Agreement was approved by the percentage of votes required by law and by the Declaration of the Condominium.

Eileen C. Morales
Notary Public

My Commission Expires: 2/1/94

Page 8 of an 8 page Promenade Easement Agreement between Belt's Landing, a Condominium, Incorporated, and the Mayor and City Council of Baltimore

SCHEDULE A



PROMENADE AND ACCESS EASEMENT PLAN

1" = 50'-0" R.M.S. REV 11/13/02

BELT'S LANDING CONDOMINIUM 960 FELL STREET BALTIMORE, MARYLAND 21231

SCHEDULE B

BELT'S LANDING PROMENADE

<u>Work to be Completed</u>	<u>Time</u>
Paving of brick walk	6 months
Lighting per approved plan	6 months
Benches per approved plan	6 months
Landscaping per approved plan	6 months, plus weather delays

SCHEDULE C

Notice Addresses:

1. Mayor & City Council of Baltimore
c/o Commissioner, HCD
Attn: Planning Division
417 E. Fayette Street, Room 1201
Baltimore, MD 21202

with copy to

- Baltimore City Department of Law
Real Estate Section
149 City Hall
Baltimore, MD 21202
2. Belt's Landing Condominium
c/o David O. Feldmann, Inc., Managing Agent
107 Sudbrook Lane
Baltimore, MD 21208-4129