

Contact: Kimberly Clark
Tel. No.: 410-837-9305

MEMORANDUM

TO: HONORABLE PRESIDENT AND MEMBERS OF
THE BOARD OF ESTIMATES

FROM: M. J. Brodie, President *MJ Brodie*
Baltimore Development Corporation

DATE: October 15, 2002

SUBJECT: Bond Street Wharf Bulkhead and Promenade

ACTION REQUESTED BY BOARD OF ESTIMATES:

The Baltimore Development Corporation (BDC) respectfully requests that the Board of Estimates approve: (a) an Option Agreement by and between Bond Street Wharf, LLC and the Mayor and City Council of Baltimore for purchase of a permanent easement through a portion of the property known as Bond Street Wharf for \$3,250,000 ; and, (b) a Pedestrian Promenade Easement Agreement for the Property known as Constellation Planned Unit Development Parcel A

AMOUNT OF MONEY AND SOURCE OF FUNDS:

Amount: \$3,250,000
Source: MVR Funds

BACKGROUND/EXPLANATION:

Bond Street Wharf, a nearly completed state of the art office building located on the Fells Point waterfront is part of the \$90 million Fells Landing Project which will also include retail, housing and parking. The architectural firm of RTKL and Brown Investments will be located in the new office building. The construction of the project involved bulkhead improvement, shoreline stabilization and an extension of the City's waterfront promenade through the project.

HONORABLE PRESIDENT AND
MEMBERS OF THE BOARD OF ESTIMATES
October 14, 2002
Page 2

The City investment of \$3,250,000 will be used to purchase the easement, provide for public open space and allow for a major piece of the waterfront promenade to be completed. The purchase price is based on an appraisal, the scope of work for which was completed under the guidance of the City Law and Real Estate Departments.

The funds were appropriated in FY 2003 CIP to match State Transportation Enhancement Program (TEP) funds. The State has committed \$3.25 million for Phase II of the project, which includes bulkhead, promenade and a public park along the waterfront. The City's goal is to complete the Waterfront Promenade by 2004 and this parcel is an integral piece of the critical path. The City will not be responsible for maintenance of the Fells Landing promenade.

MBE/WBE PARTICIPATION

The Developer agrees to comply with Article 5, Subtitle 28 of the Baltimore City Code (2000 Edition) regarding participation by Minority Business Enterprises (MBE) and Women's Business Enterprises (WBE) in its development of the project.

All documents have been reviewed and approved as to form and legal sufficiency by the Law Department.

RECOMMENDED FOR APPROVAL BY THE BOARD OF ESTIMATES:

Peggy Watson, Director of Finance

Date

APPROVED BY THE BOARD OF ESTIMATES

Bernice W. Taylor

Clerk

OCT 30 2002

Date

Attachments
kac/boebondstreetwharf

OCT 30 2002

THIS OPTION, made this ___ day of _____, in the year Two Thousand Two, by and between BOND STREET WHARF, LLC, a Maryland limited liability company of Baltimore City, in the State of Maryland, hereinafter called Optionor and the MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation of the State of Maryland, Optionee, hereinafter called City.

WITNESSETH, that in consideration of the sum of One Dollar (\$1.00) paid by said City to Said Optionor, the receipt of which is hereby acknowledged by said Optionor, said Optionor hereby grants unto said City, its successors and assigns, the exclusive right or privilege of purchasing the following property now owned by said Optionor and described as follows:

A non-exclusive permanent easement for pedestrian ingress and egress upon a portion of the property known as "Bond Street Wharf" on Thames Street in the Fells Point area of Baltimore City, Maryland, such easement area more particularly shown on Exhibit A attached hereto (Easement Area). The use or the Easement Area will be subject to certain terms and conditions of the Deed (defined below) and any other related agreements between the Optionor and the City. The term "deed" as used in this Option means the Pedestrian Promenade Easement Agreement attached hereto, at and for the price of Three Million Two Hundred Fifty Thousand (\$3,250,000) Dollars, lawful money of the United States of America, and upon the following terms of payment: Cash, without interest, at the time of the transfer of title to the City.

Notice of Election by the City, its successors or assigns, to purchase the aforesaid property, shall be in writing and shall be given to the Optionor, heirs, personal representatives, successors or assigns, within thirty (30) days from the date of this option.

Upon the giving of such Notice of Election by said City and, within fifteen (15) days of the completion of the work herein described, the Optionor shall convey to the Optionee by special warranty deed, a good and marketable easement title to the aforesaid property, free and clear of any and all liens or encumbrances, except as expressly set forth herein. Settlement shall be made at such place, date and time to be designated by the City Solicitor of Baltimore.

All expenses for examination of title, title insurance and conveyancing shall be paid by the Optionor.

Except with respect to construction and/or permanent financing, the Optionor shall not mortgage, encumber or otherwise dispose of the aforesaid property or any part thereof prior to the expiration of this option or any part thereof prior to the expiration of this option without first having obtained the prior written consent of the City, its successors or assigns, to do so.

All loss or damage to the aforesaid property or any improvements thereon by fire or other casualty shall be at the risk of the Optionor, until a deed has been executed, delivered and accepted by the City.

The Optionor hereby grants permission to the City, its successors and assigns, and its agents or employees to enter upon the aforesaid property for the purpose of surveying.

The Optionor hereby agrees to give the City full possession of the aforesaid property upon delivery of the said deed and receipt of the said purchase money, unless special arrangements be made on or before the time of settlement for taking possession of said property at a later date.

This Option shall not be revocable after the thirty (30) day period described above, and shall remain in force thereafter until settlement which shall be held within one (1) year from date hereof.

In the event the Optionor cannot convey a good and merchantable easement title to the City as aforesaid then the City shall have the following rights:

1. The City may permit the Optionor to take any action necessary to perfect his title and remove any legal grounds of objection to said title, at the sole cost and expense of the Optionor. Any such action must be completed within sixty (60) days from the receipt of notice from the City of such legal defect or defects in the said title; or

2. The City may take any and all such action as may be deemed necessary to perfect the title to the aforesaid property and all and all costs and expenses incurred in connection therewith shall be paid by the Optionor to the City.

In the event the City fails to elect to purchase the aforesaid property at the time and in the manner therein provided, it shall be deemed to have forfeited his right to do so, and all consideration which may have passed hereunder shall be forfeited to the Optionor.

This Option shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns and this Option contains the entire understanding between the parties hereto.

If more than one person, either Optionor or City, joins in the execution of this Option, and if any party of the feminine sex, the relative words herein shall be read as if written in the plural, or in the feminine gender, as the case may be, and the words "Optionor" and "City" where used herein shall be construed to include every and each of their heirs, executors, administrators, successors and assigns.

It is further agreed that the consideration recited herein is complete payment for the easement rights; that it includes the title and interest of any lessee, tenant or other parties, as well as the Optionors and it is the obligation of the Optionor herein to assume the responsibility of satisfying the rights of any said lessee, tenant and other parties under leases on this property.

Notwithstanding anything to the contrary contained herein, settlement shall occur when all of the improvements have been certified by the architect as having completed in a good and workmanlike manner in accordance with the plans and specifications described on Exhibit B and that the same has additionally been accepted by the City Department of Public Works, the Department of Planning and BDC. In the event that any of the foregoing agencies fail to approve or disapprove the completion of the improvements within ten (10) days of the written request for such approval by Optionor, such agency shall be deemed to have approved and accepted the improvements.

AS WITNESS, the hands and seals of the parties hereto:

WITNESSES:

BOND STREET WHARF, LLC

By: Presidential Investors Limited Partnership
LLLP, Managing Member

By: H&S Properties Development Corp.,
General Partner

By: [Signature]
Name: Michael S. Beatty
Title: Vice President

[Signature]

Approved:

[Signature]
Commissioner

MAYOR AND CITY COUNCIL OF
BALTIMORE

By: [Signature]
Real Estate Officer

Department of Housing and Community
Development

Acceptance by Real Estate Officer subject
to the approval of the Board of Estimates

Approved as to form and legal sufficiency,
this 7 day of October, _____

Approved by Board of Estimates Baltimore City
on the _____ day of OCT 30 2002

City Solicitor

[Signature]
Clerk Date

[Signature]
Assistant City Solicitor

EXHIBIT A

Plan of Easement Area

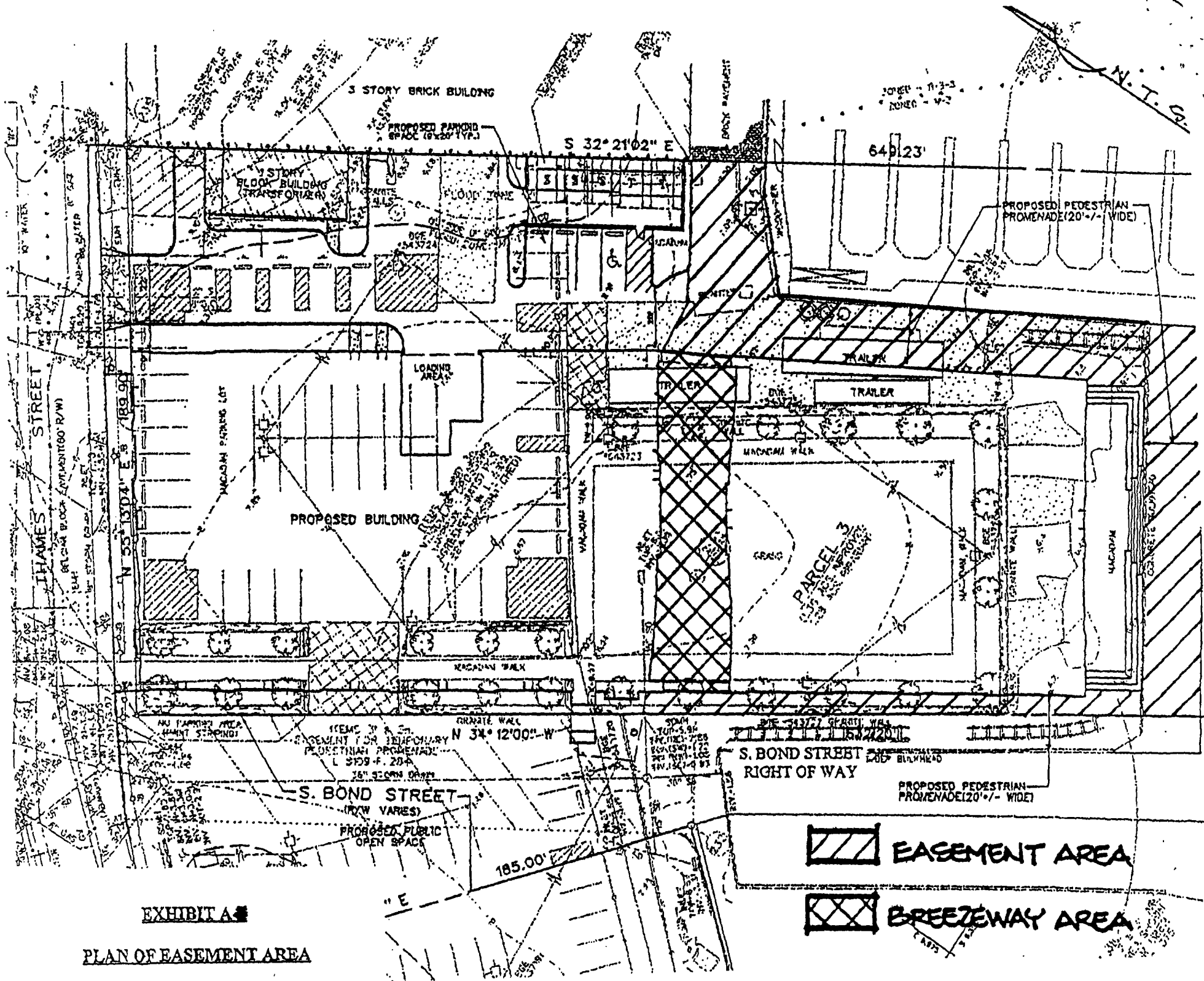


EXHIBIT A

PLAN OF EASEMENT AREA

EXHIBIT B

List of Plans and Specifications

BOND STREET WHARF BULKHEAD AND PROMENADE

Updated August 21, 2002

Contracts 1-5 Based on STV Bond Street Wharf Reconstruction plans and specifications dated August and Whitney Bailey Cox Magnani plans and specifications BH-1 BH-10 (revs dated April 9, 2002)

- | | | |
|---|-----------------|----------------------------------|
| 1 | Subcontractor | Martin G. Imbach |
| | Item of Work | Marine Bulkhead |
| | Contract Signed | 4/11/02 |
| 2 | Subcontractor | AR-CE Enterprises |
| | Item of Work | Bulkhead Steel Waler |
| | P.O. Signed | 1/31/02 |
| 3 | Subcontractor | Metro West Concrete |
| | Item of Work | Bulkhead Concrete |
| | P.O. Signed | 6/17/02 |
| 4 | Subcontractor | Vibra Tech |
| | Item of Work | Vibration Testing |
| | P.O. Signed | 2/26/02 |
| 5 | Subcontractor | STV Inc. |
| | Item of Work | Construction Mgmt and Inspection |
| | P.O. Signed | 11/13/01 |

Below listed contract #6 is based on STV Bond Street Wharf Promenade Alternate #2 Plans and Specifications dated 6-4-2002

- | | | |
|---|-----------------|-------------------|
| 6 | Subcontractor | Monumental Paving |
| | Item of Work | Concrete/Paving |
| | Contract Signed | 8/6/02 |

PEDESTRIAN PROMENADE
EASEMENT AGREEMENT
Constellation Planned Unit Development/Parcel A

THIS AGREEMENT (this "Agreement"), is made this 20th day of May 2002 by and between **BOND STREET WHARF, LLC**, a Maryland limited liability company (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.

RECITALS

WHEREAS, Grantor is the owner of certain property located in Baltimore City, Maryland and described on Exhibit A-1 attached hereto (the "Property"); and

WHEREAS, Grantor is developing upon the Property a mixed use retail/office project, and, in connection with such development, Grantor has agreed to grant to the City a non-exclusive easement upon a portion of the Property to be improved as a pedestrian waterfront promenade; and

WHEREAS, the parties have entered into this Agreement to set forth the terms and conditions under which such an easement to use the pedestrian waterfront promenade shall be granted.

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. Grantor hereby grants to the City a non-exclusive permanent easement for pedestrian ingress and egress in, over and through the portion of the property described as the "Easement Area" in Exhibit A-2 (the "Easement Area") to be improved as a pedestrian walkway. The City may exercise the easement hereby granted only upon the terms and conditions set forth in this Agreement. The easement hereby granted shall become effective (the "Effective Date") only upon the completion of all improvements to be located thereon, including, without limitation, the bulkhead and pedestrian promenade to be constructed in the Easement Area. Prior to the Effective Date, Grantor shall have the right, exercisable in its sole and absolute discretion, to reconfigure the improvements to be constructed within the Easement Area in order to coordinate the construction of such improvements with other development upon the Property. Without limiting the foregoing sentence, Grantor

reserves the right upon not less than seven (7) days notice to the City to gate and limit access to the breezeway area as shown on Exhibit A-2 with the City's approval, not to be unreasonably withheld.

2. Limitations on Exercise of Easement. The easement hereby granted may be exercised only for pedestrian traffic to and from adjoining public streets and walkways and for pedestrian traffic through the Easement Area during the hours and subject to any special restrictions and limitations as set forth on Exhibit B attached hereto. All persons using the Easement Area shall do so in accordance with the terms and conditions hereof and with applicable law. Reasonable rules concerning noise, dress, conduct and concerns of a similar nature regarding exercise of the Easement shall be established by the Grantor and the City, which shall be posted at and enforced with respect to the Easement Area during the period within which the easement hereby granted is in effect.

3. No Boats. Nothing in the provisions of this Agreement (including, without limitation, Section 2 hereof) shall be deemed in any way to confer upon 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.

4. Benefit of Easement. The benefit of the easement shall run to the City. The City may, at its exercise of the easement; allow the use of the Easement Area only for pedestrian access, by its officers, employees, agents and members of the general public.

5. Grantor's Right of Enjoyment. Nothing in 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 Grantor's agents, officers, partners, 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 the Agreement.

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 or the improvements located therein, 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 Grantor, subject to the operation and effect of this Agreement.

6. Easement Improvements. Without limiting Grantor's rights set forth in Section 1 hereof, Grantor shall retain the right to review and approve all proposed improvements in the Easement Area. The proposed improvements to be made in the Easement Area are generally shown on Exhibit C.

7. Maintenance and Repairs. Grantor shall, throughout the term of this Agreement, be responsible for maintaining and keeping in a safe condition and in good order and repair the Easement Area and all improvements forming a part thereof and/or located therein. Notwithstanding the foregoing, if the City or a related entity forms a Special Benefits District, promenade park district, or any other entity to maintain the Baltimore City Promenade or other such waterfront easement areas, the maintenance and repair obligation described herein shall be transferred to that such entity.

The City shall at its expense cause the Easement Area to be patrolled 24 hours per day seven days a week 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.

8. Insurance and Indemnification. 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 the failure of the Grantor in maintaining or repairing the Easement Area or Easement Improvements as set forth in this Agreement, notwithstanding any policy or policies of insurance.

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 occurrences.

Except for any liability or claim of liability against which the City is indemnified by Grantor, the City shall defend, indemnify, and hold harmless the Grantor against and from any liability or claim of liability to third parties for bodily injury, death, and property damage arising out of the lawful or unlawful use of the Easement Area during the Easement Hours (as defined on Exhibit B) by any person.

9. 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 ten (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 fifteen percent (15%) per annum. If the other party shall in good faith deem that an emergency 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.

10. 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 Exhibit D.

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

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

13. Rule Against Perpetuities. To avoid the rule against perpetuities, the Effective Date of this Agreement shall take place no later than five (5) years from the date hereof.

14. Exhibit. Each writing, schedule or exhibit referred to herein as being attached hereto is hereby made a party of this Agreement.

EXHIBIT A-1 Property Description

EXHIBIT A-2: Plan of Easement Area

EXHIBIT B: Special Restrictions and Limitations

EXHIBIT C: Easement Area Improvements

EXHIBIT D: Notice Addresses

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

ATTEST:

BOND STREET WHARF, LLC, a
Maryland limited liability company

By: SBER South Bond Street LLC, a
Maryland limited liability company,
its Managing Member

By: SBER Development Services LLC,
a Maryland limited liability
company, its Managing Member

Amos Marib

By: [Signature]
Carl W. Struever,
Managing Member

ATTEST:

[Signature]
Custodian of the City Seal

Alternate

MAYOR AND CITY COUNCIL OF BALTIMORE

By: [Signature]
Commissioner, HCD

Approved by the Board of Estimates:

[Signature] **OCT 30 2002**
Secretary CLC/NC Date

Approved for form and legal sufficiency:

[Signature] 10/1/02
Principal Counsel Date

STATE OF MARYLAND
COUNTY OF _____

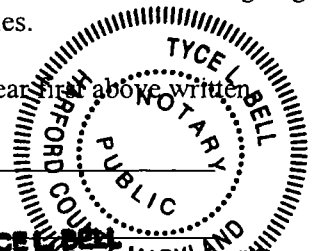
SS:

I HEREBY CERTIFY, that on this 20 day of May, 2002, before me, a Notary Public of the State of Maryland, personally appeared Carl W. Struever, who acknowledged himself to be the Managing Member of SBER Development Services, LLC, Managing Member of SBER South Bond Street LLC, Managing Member of Bond Street Wharf, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the forgoing Agreement for the purposes contained therein as the duly authorized member of said entities.

IN WITNESS THEREOF, I have hereunto affixed by hand and official seal the day and year first above written

Tyce L. Bell
Notary Public

My Commission Expires: TYCE L. BELL



**NOTARY PUBLIC STATE OF MARYLAND
HARFORD COUNTY
MY COMMISSION EXPIRES 12/18/05**

STATE OF MARYLAND
CITY OF BALTIMORE

SS:

I HEREBY CERTIFY, that on this 14th day of October, 2002, before me, a Notary Public of the State of Maryland, personally appeared Paul T. Grayson, Commissioner of Department of Housing and Community Development, who signed the foregoing Agreement in my presence and acknowledged it to the Mayor and City Council of Baltimore.

Lechia Gaymon-Dukes
Notary Public

My Commission Expires: 2/26/03

EXHIBIT A-1

PROPERTY DESCRIPTION

Constellation Planned Unit Development/Parcel A

BEGINNING FOR THE SAME at that point formed by the intersection of the southeasterly right of way line of Thames Street (60 feet wide) and the northeasterly right of way line of South Bond Street (right of way width varies), at the beginning of that same 2.637 acres parcel of land as fifthly described in a conveyance from Douglas S. Perry, unto Constellation Properties, Inc., by a deed dated July 23, 1992 and recorded among the Land Records of the City of Baltimore, Maryland in Liber S.E.B. 3348 at folio 047; thence running with and binding on the 1st through the 4th lines therein, the four following courses and distances, as now surveyed by STV Incorporated, with all bearings herein being referenced to the Grid Meridian as established by the Baltimore City Topographical Survey Commission, and a survey prepared by Beavin Company, dated December 10, 1993, revised May 20, 1994; and binding along said southeasterly right of way of Thames Street:

1. North 55°13'04" East, 189.90 feet to a point; thence leaving said Thames Street, and continuing,
2. South 32°21'02" East, 649.23 feet to a point on the U.S. Army Corps of Engineers Pierhead and Harbor Line of the Patapsco River, established February 2, 1957, shown on Baltimore City Plat 7-A-2030; thence running with a binding on same,
3. South 60°7'39" West, 169.58 feet to a point; thence leaving said Pierhead and Harbor Line and running on said northeasterly right of way line of South Bond Street, in part,
4. North 34°12'00" West, 632.20 feet to the point of beginning.

CONTAINING 114,990 square feet or 2.6398 acres of land, more or less.

EXHIBIT A-2

PLAN OF EASEMENT AREA

Brown's Wharf

STV INCORPORATED

WED 12:23 FAX 410 298 2794

07/03/02

THAMES STREET

EXHIBIT A-2

PLAN OF EASEMENT AREA

3 STORY BRICK BUILDING

PROPOSED PARKING SPACE (6'x20' TYP.)

S 32° 21' 02" E

649.23'

PROPOSED PEDESTRIAN PROMENADE (20'-7" WIDE)

1 STORY BLOCK BUILDING (TRANSFORMER)

LOADING AREA

TRAILER


TRAILER

PROPOSED BUILDING
Bond Street Wharf

S. BOND STREET
RIGHT OF WAY

PROPOSED PEDESTRIAN PROMENADE (20'-7" WIDE)

 EASEMENT AREA

 BREEZEWAY AREA

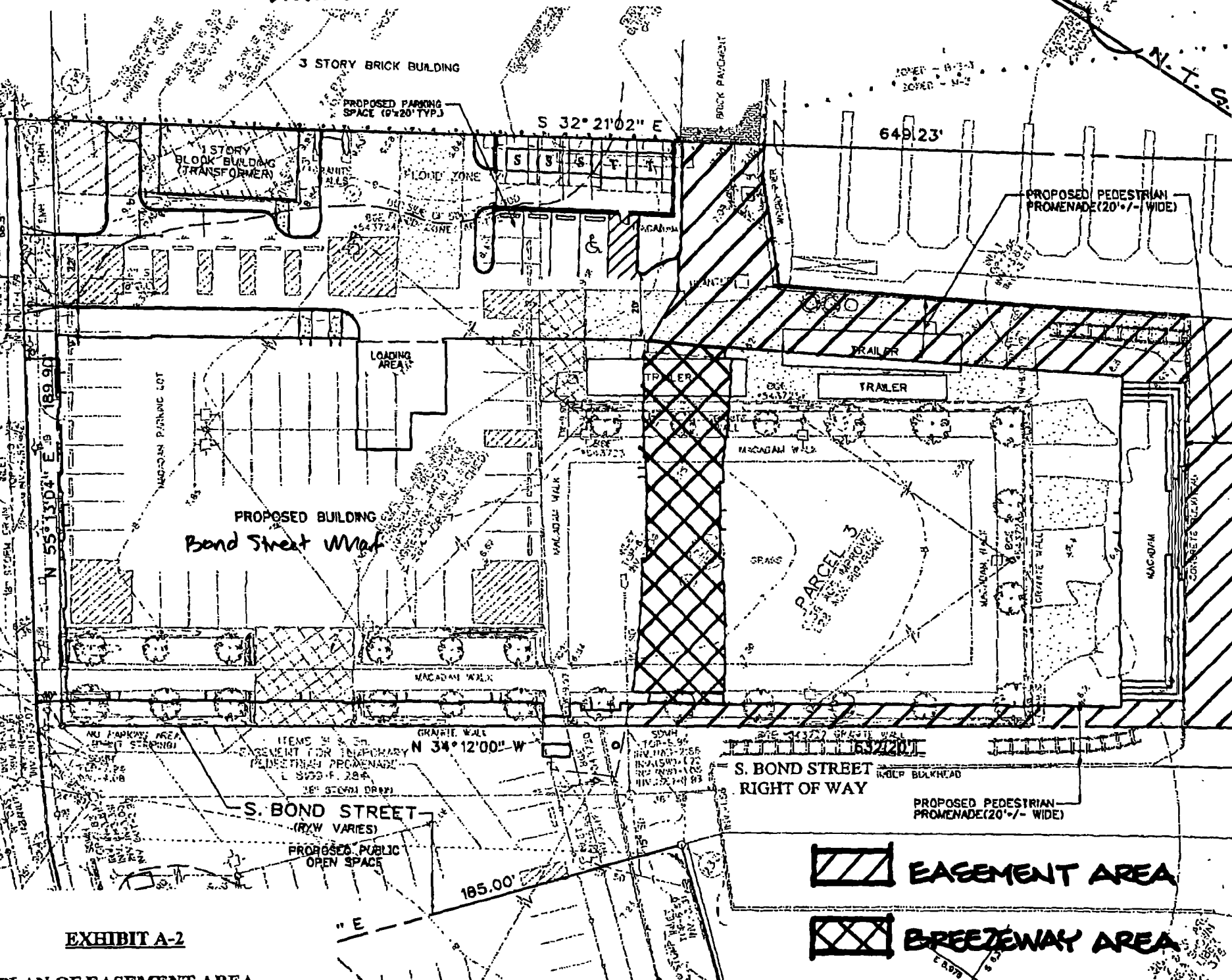


EXHIBIT B

SPECIAL RESTRICTIONS AND LIMITATIONS

Temporary Closing of Easement Area: The Grantor retains the right to temporarily close the easement area for maintenance and repairs. The Grantor will provide written notification to the City and the Fells Point Task Force seven days prior to any temporary closings.

Hours for Pedestrian Use of Easement Area: The Easement Area shall be open for pedestrian traffic 24 hours per day.

Breezeway: Grantor reserves the right upon not less than seven (7) days notice to the City to gate and limit access to the breezeway area as shown on Exhibit A-2 with the City's approval, not to be unreasonably withheld.

EXHIBIT C
EASEMENT IMPROVEMENTS

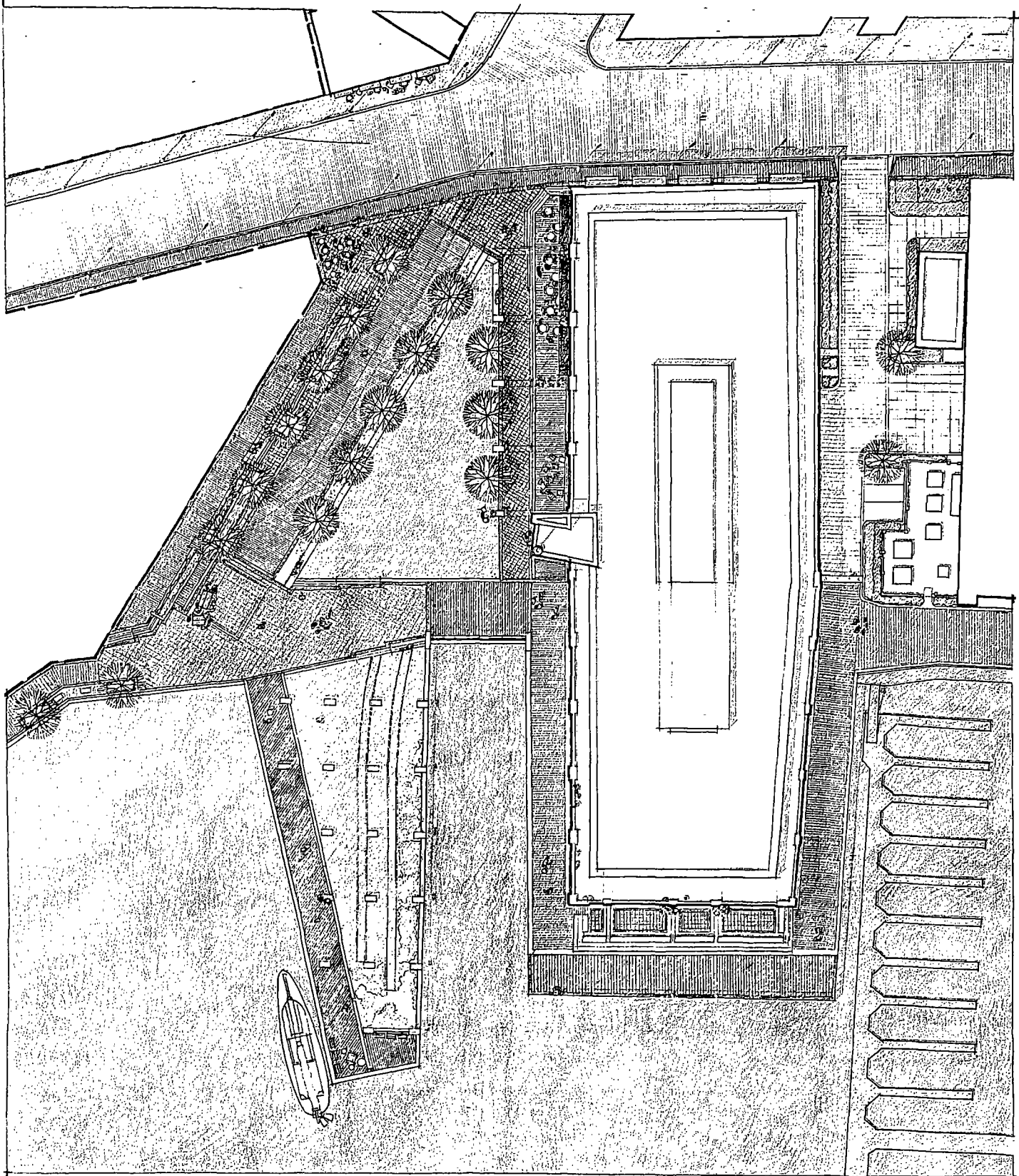


EXHIBIT D

NOTICE ADDRESSES

If to the Grantor, notice shall be sent to:

Bond Street Wharf, LLC
c/o Struever Bros. Eccles & Rouse, Inc.
1040 Hull St.
Suite 200
Baltimore, MD 21230
Attention: Property Management

with a copy to:

Mark P. Keener, Esquire
Gallagher, Evelius & Jones, LLP
Park Charles
218 N. Charles Street
Suite 400
Baltimore, MD 21201

If to City, notice shall be sent to:

Mayor and City Council of Baltimore
C/o Planning Department
417 E. Fayette Street, 8th Fl
Baltimore, MD 21202
Attn: Director

With a copy to:

Baltimore City Department of Law
Real Estate Section, Room 149
Baltimore, MD 21202