

## EASEMENT DEED AND AGREEMENT

THIS EASEMENT DEED AND AGREEMENT (this "Agreement"), is made this 10th day of December, 2002, by and between HARBORVIEW LIMITED PARTNERSHIP NO. 2, (hereinafter "Grantor") and the STATE OF MARYLAND to the use of the Department of Natural Resources (hereinafter "State").

WHEREAS Grantor is the owner of that property located in Baltimore City, Maryland and more fully described in Schedule A attached hereto (the "Property").

WHEREAS the Grantor has agreed to grant to the State a permanent improved easement for the purposes of a pedestrian walkway, which easement may be assigned to the Mayor and City Council of Baltimore ("City") as provided for in paragraph 11 below.

NOW THEREFORE, for 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 hereby grants to the State a non-exclusive easement for pedestrian ingress and egress (the "Easement") in, over and through those areas of the Property labeled "Promenade Easement Area" on Schedule B attached hereto (hereinafter "Easement Area") for a public walkway. The State may exercise the Easement only upon the terms and subject to the conditions, which are set forth in the provisions of this Agreement.

The owner of adjoining land units in the Harborview Lot 2 Land Condominium intends to construct buildings and other improvements upon the said land units. From and after the commencement of construction of the buildings and other improvements on the land units adjacent to the Property and continuing until the owners thereof complete construction of the buildings and improvements on said land units, the Grantor may deny all access to the Easement Area, but in no event longer than fifty four (54) months.

2. Limitations on Exercise of Easement. 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 twenty four (24) hours a day and subject to any special restrictions and limitations as set forth on Schedule C attached hereto. 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. Reasonable rules concerning noise, dress, conduct and concerns of a similar nature regarding exercise of the Easement may be established by the holder of the Easement, posted at and enforced with respect to the Easement Area during the period within which the Easement is exercised.

Nothing in the provisions of this Agreement shall be deemed in any way to confer upon the State, or its officers, employees, agents, or members of the general public any easement or other right entitling the State 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.

3. Benefit of Easement. The benefit of the Easement shall run to the State, but may be assigned in accordance with Section 10 hereof. The State may, in 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.

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 Grantor, subject to the operation and effect of this Agreement.

4. Easement Improvements. The Grantor shall perform the work set forth in Schedule D (the "Easement Improvements") within the period prescribed in Schedule D using Tax Increment bond financing provided under Baltimore City Ordinance 02-338 and companion Ordinances.

5. Grantor's Covenant Not to Fill Additional Waters. Grantor, its successors and assigns, hereby covenants and agrees it shall not fill the waters of Baltimore Harbor east of the Easement Area from the eastern boundary of the Easement Area to the Pierhead and Bulkhead line established at the time of this Agreement by the U.S. Army Corp of Engineers, the intention being that the Easement shall be for a waterfront promenade with waterview of the Baltimore Harbor, but Seller reserves the right to enlarge and improve the existing piers as part of the development of the condominium in accordance with the Condominium Plat prepared by Whitney, Bailey, Cox & Magnani, LLC, dated October 29, 2002, and entitled "Harborview Lot 2 Land Condominium", and recorded among the Land Records of Baltimore City in Condominium Plat Book FMC No. 386 and to construct piers, docks, boatslips and other water-dependent uses on and above submerged land owned by Grantor as may be permitted under applicable laws, rules and regulations. This covenant shall run with the land.

6. Maintenance and Repairs. The 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 the Easement Improvements.

From and after the date this Easement is assigned to the City, 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.

7. Insurance and Indemnification. (a) Until this Easement is assigned to the City, the Grantor shall defend (if requested by the State), indemnify, and hold harmless the State against and from any liability or claim or liability or cost for bodily injury, economic loss of any person, firm or corporation, death or property damage arising out of the failure of Grantor to properly design and construct the Easement Area or the original improvements therein.

(b) Until this Easement is assigned to the City, the Grantor, shall defend (if requested by the State), indemnify, and hold harmless the State against and from any liability or claim of liability or cost for bodily injury, economic loss of any person, firm or corporation, death or property damage arising out of construction operations associated with the development of the adjacent property or within the Easement Area, any negligent or intentionally tortious act, misconduct, or omission of the Grantor, its employees, contractors and agents, while maintaining or repairing the Easement Area, and the failure of the Grantor in maintaining or repairing the Easement Area or Easement Improvements as set forth in this Agreement.

(c) The Grantor shall maintain at its expense, insurance against loss or liability in connection with bodily injury, death, property damage or destruction, arising out of Grantor's, or its agents, employees, or officers, construction, maintenance and repair activities within the Easement Area under one or more policies of General Comprehensive Liability insurance having such limits not less than a minimum coverage of \$5,000,000 combined single limit per occurrence. Each such policy shall (a) name the State as the co-insured thereunder, and (b) by its terms, be cancelable only on at least thirty (30) days prior written notice to the State, and (c) be issued by an insurer of recognized responsibility licensed to issue such policy in Maryland who have an A.M. best rating of A or better. Grantor shall provide the State a copy of the Certificate of Insurance.

(d) From and after the date this Easement is assigned to the City, the following provisions shall apply: 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.

(e) From and after the date this Easement is assigned to the City 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. This provision is not binding upon the State.

for any liability or claim of liability against which the City is indemnified by the 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, or property damage arising out of the lawful or unlawful use of the Easement Area by any person. This provision is not binding upon the State.

8. 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 and after the Easement is assigned to the City the breaching party shall also pay to the non-breaching party interest on said expenditures and expenses at the rate of 12% 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.

9. 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 E.

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

11. Assignment. The rights, title, and interest of the State hereunder except those provisions which clearly enure only to the State and specify that they terminate upon assignment to the City, may be assigned to City by an assignment instrument executed only by the State and City, without the need for the Grantor to join therein or consent thereto. Notice of such assignment shall be sent to Grantor. Following such assignment all obligations of the Grantor shall run to and be enforceable solely by the City; and the State shall have no responsibility hereunder to the City or the Grantor. The term "Grantor" shall never be deemed to refer to the State.

12. Burden of Easement. The burden of this Agreement shall run with and bind upon the title to the Property, subject, however to the provisions of this paragraph 11. The Grantor, and any subsequent owners of all or any portion of the Property shall be liable only for such obligations as shall accrue hereunder while they are owners of all or a portion of the Property. Matters which are not disclosed or discovered until after title has passed from the Grantor or any subsequent owner but the causes of which arose, or were sustained, or set in motion during the ownership of the Grantor or any subsequent owner shall be deemed to have

motion during the ownership of the Grantor or any subsequent owner shall be deemed to have accrued during ownership. The Grantor currently owns of all the Property.

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

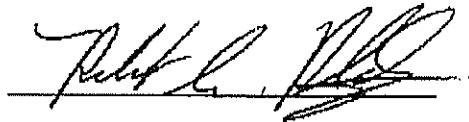
14. Exhibits. Each writing, schedule or exhibit referred to herein as being attached hereto is hereby made a part of this Agreement.

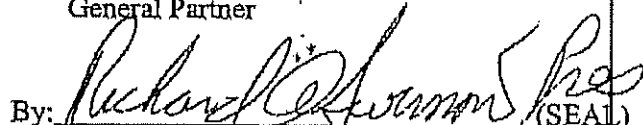
- SCHEDULE A: Description of Property
- SCHEDULE B: Plan of Easement Area with Improvements
- SCHEDULE C: Hours of Use and Special Restrictions
- SCHEDULE D: Easement Improvements to be Constructed
- SCHEDULE E: Addresses to Whom Notice Concerning This Agreement Are to be Sent

WITNESS the hands and seals of the parties hereto.

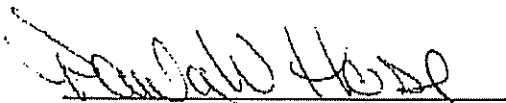
WITNESS/ATTEST:

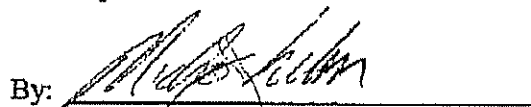
HARBORVIEW LIMITED PARTNERSHIP NO. 2  
By: Harborview Properties, Inc.,  
General Partner

  
\_\_\_\_\_


By:  (SEAL)  
Richard A. Swinow, President

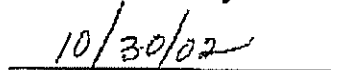
STATE OF MARYLAND to the use of  
The Department of Natural Resources

  
\_\_\_\_\_

By:   
Michael J. Nelson, Assistant Secretary

Approved as to form and  
legal sufficiency

  
Sally A. Lowe  
Assistant Attorney General

  
Date

Approved by Board of Public Works of the State of Maryland at a meeting held on the 7<sup>th</sup> day of August, 2002.

WITNESS:

Parris N. Glendening  
PARRIS N. GLENDENING, Governor

Sheila C. McDonald  
Sheila C. McDonald  
Acting Executive Secretary

31 RP  
DGS

William Donald Schaefer  
WILLIAM DONALD SCHAEFER, Comptroller

Nancy K. Kopp  
NANCY K. KOPP, Treasurer

STATE OF MARYLAND, ~~CITY~~ COUNTY OF Baltimore, TO WIT:

I HEREBY CERTIFY, that on this 30<sup>th</sup> day of October, 2002, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Richard A. Swirnow, who acknowledged himself to be the President of Harborview Properties, Inc., a corporation, General Partner of Harborview Limited Partnership No. 2, and as such, being authorized so to do, executed the foregoing Easement Agreement for the purposes therein contained by signing the name of Harborview Properties, Inc. by himself as President.

AS WITNESS my hand and Notarial Seal.

[Signature]

Notary Public

My Commission Expires: 6-1-03

STATE OF MARYLAND, COUNTY OF Anne Arundel, TO WIT:

I HEREBY CERTIFY, that on this 31 day of October, 2002, before me the subscriber, a Notary Public of the State of Maryland, personally appeared MICHAEL J. NELSON, Assistant Secretary of the Department of Natural Resources of the State of Maryland, known to me, or satisfactorily proven to be the person whose name is subscribed to the within instrument, who signed the same in my presence and acknowledged that he executed the same for the purposes therein contained and in the capacity therein stated.

AS WITNESS my hand and Notarial Seal.

[Signature]  
Notary Public

My Commission Expires: 3-13-2006

STATE OF MARYLAND, COUNTY OF Anne Arundel, TO WIT:

I HEREBY CERTIFY, that on this 4th day of November, 2002, before me the subscriber, a Notary Public of the State of Maryland, personally appeared PARRIS N. GLENDENING, Governor, member of the Board of Public Works of the State of Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Easement Agreement, who signed the same in my presence, and acknowledged that he executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

[Signature]  
Notary Public

Marlon Boschert  
NOTARY PUBLIC  
Anne Arundel County, Maryland  
My Commission Expires 12/01/03

My Commission Expires: \_\_\_\_\_

STATE OF MARYLAND, COUNTY OF Anne Arundel, TO WIT:

I HEREBY CERTIFY, that on this 4<sup>th</sup> day of November, 2002, before me the subscriber, a Notary Public of the State of Maryland, personally appeared WILLIAM DONALD SCHAEFER, Comptroller, member of the Board of Public Works of the State of Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Easement Agreement, who signed the same in my presence, and acknowledged that he executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Marlon Boschert  
Notary Public

Marlon Boschert  
NOTARY PUBLIC

My Commission Expires: Anne Arundel County, Maryland  
~~My Commission Expires 12/01/03~~

STATE OF MARYLAND, COUNTY OF Anne Arundel, TO WIT:

I HEREBY CERTIFY, that on this 4<sup>th</sup> day of November, 2002, before me the subscriber, a Notary Public of the State of Maryland, personally appeared NANCY K. KOPP, Treasurer, member of the Board of Public Works of the State of Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Easement Agreement, who signed the same in my presence, and acknowledged that she executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Marlon Boschert  
Notary Public

Marlon Boschert  
NOTARY PUBLIC

My Commission Expires: Anne Arundel County, Maryland  
~~My Commission Expires 12/01/03~~

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned Maryland attorney or by a party to this instrument.

Sally A. Lowe  
Sally A. Lowe, Attorney At Law



SCHEDULE A

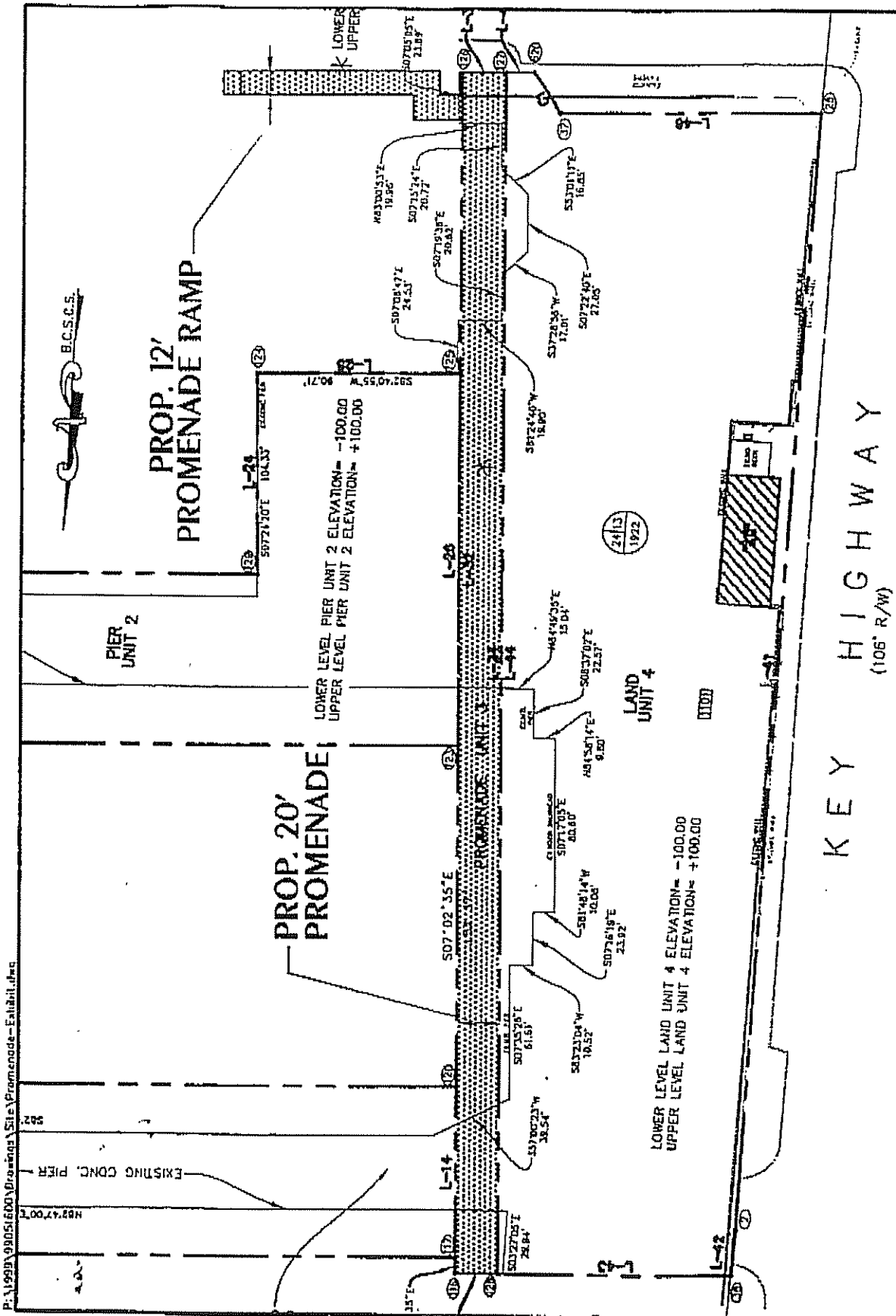
DESCRIPTION OF PROPERTY

KNOWN AS

LAND UNIT 3, HARBORVIEW LOT 2 LAND CONDOMINIUM  
WARD 24 SECTION 13 BLOCK 1922 LOT 2  
CITY OF BALTIMORE, MARYLAND

Being known and designated as Land Unit 3, as laid out and shown on a condominium plat entitled "Harborview Lot 2 Land Condominium", dated October 29, 2002, prepared by Whitney, Bailey, Cox & Magnani, LLC (WBCM) which plat is recorded among the Land Records of Baltimore City in Condominium Plat Book FMC No. 386.

SCHEDULE B



PROPERTY OF  
 HARBORVIEW LIMITED PARTNERSHIP NO.2  
 1101 KEY HIGHWAY AND PORTION OF PROPERTY OF  
 HARBORVIEW LIMITED PARTNERSHIP NO.7  
 WARD 24; SECTION 13; BLOCK 1922; LOT 2 BALTIMORE CITY, MARYLAND 21230

DATE: 9/24/02  
 SCALE: 1"=60'

WHITNEY  
 BAILEY  
 COX  
 MAGNANI, LLC 410-324-4100 (FAX)

CONSULTING ENGINEERS  
 849 FAIRMOUNT AVE.  
 BALTIMORE, MD 21286  
 410-512-4500

PROMENADE  
 EXHIBIT

DATE: 9/24/02  
 SCALE: 1"=60'

DATE: 9/24/02  
 SCALE: 1"=60'

DATE: 9/24/02  
 SCALE: 1"=60'

DATE: 9/24/02  
 SCALE: 1"=60'

SCHEDULE C

HOURS OF USE AND SPECIAL RESTRICTIONS

Re: Pedestrian Promenade Easement Agreement Harborview Lot 2

HOURS OF USE: The easement rights granted herein may be exercised by the holder of the Easement on a continuous basis (twenty-four hours a day, seven days a week) in the Easement Area. ("Easement Hours").

SPECIAL RESTRICTIONS AND LIMITATIONS: The Grantor retains the right to temporarily close the Easement Area for maintenance and repairs, or other activities of a temporary nature, said temporary closure shall not exceed ninety (90) days without written authorization of the holder of the Easement. Except in an emergency, the Grantor will provide written notification to the holder of the Easement seven days prior to any temporary closings .

SCHEDULE DHARBORVIEW LOT 2 LAND CONDOMINIUM  
EASEMENT IMPROVEMENTS TO BE CONSTRUCTED

Harborview Lot 2 is a residential development located along Key Highway. A public promenade is to be constructed along the shoreline as part of the overall improvements of the site. The promenade easement will begin at the north boundary of the site and traverse south parallel with the proposed bulkhead to 100 Harborview Drive.

The promenade located on the fast land, paralleling the new bulkhead, will be 20 feet wide. The surface of the promenade will mostly be hardscaped with brick pavers and concrete. Along the promenade easement there will be grass areas and/or planting beds and sidewalks to the proposed townhomes. Construction of the promenade improvements shall be in accordance with Sec. 1(f) of Baltimore City Ordinance No. 02-336 (approved May 16, 2002).

All construction of the Easement Improvements shall be completed within thirty-six (36) months from the date of this Easement Deed and Agreement.

SCHEDULE E

ADDRESSES TO WHOM NOTICE CONCERNING THIS AGREEMENT ARE TO BE SENT

Re: Pedestrian Promenade Easement Agreement Harborview Lot 2

THE GRANTOR:

112 E. 25<sup>th</sup> Street  
Baltimore, Maryland 21218  
ATTN: Franklin C. Wise, Esquire  
Fax - 410-338-1105

David H. Fishman, Esquire  
Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC  
The Garrett Building  
233 East Redwood Street  
Baltimore, Maryland 21202-3332  
Fax - 410-576-4246

THE STATE:

Assistant Secretary of Real Estate  
Department of General Services  
301 W. Preston Street  
Baltimore, Maryland 21201  
Fax - 410-333-7144

AFTER ASSIGNMENT TO THE CITY:

Commissioner  
Baltimore City Department of Housing and Community Development  
417 East Fayette Street, Suite 1300  
Baltimore, Maryland 21202

Promenade Commissioner  
Baltimore City Department of Planning  
417 East Fayette Street, 8<sup>th</sup> Floor  
Baltimore, Maryland 21202

Baltimore City Law Department  
City Hall, Room LL31  
100 North Holliday Street  
Baltimore, Maryland 21202