


<b>FROM</b>	NAME & TITLE	CHARLES C. GRAVES III, DIRECTOR <i>CG</i>	CITY of BALTIMORE <b>MEMO</b> <i>60-61</i>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 <sup>TH</sup> FLOOR		
	SUBJECT	PROMENADE EASEMENT AGREEMENTS FOR JACKSON'S WHARF DEVELOPMENT		

DATE: October 9, 2002

**TO**  
Honorable President and Members  
of the Board of Estimates  
City Hall, Room 400

Dear President and Members:

**ACTION REQUESTED OF THE BOARD OF ESTIMATES:**

The Board is requested to approve the execution of a permanent Pedestrian Promenade Easement Agreement for SRH Jackson's Wharf, LLC for the property known as ~~1401-1411~~ Thames Street (Jackson's Wharf).  
*1501-1511*

**AMOUNT OF MONEY AND SOURCE OF FUNDS:**

N/A

**BACKGROUND/EXPLANATION:**

As an objective to complete Baltimore's Waterfront Promenade system, the Fells Point Waterfront Urban Renewal Plan requires waterfront property owners to construct a permanent promenade when their property is redeveloped from industrial to commercial or residential use. The Plan also requires the property owner to donate to the City of Baltimore a public easement over said promenade area. Some waterfront sites are additionally required to grant public access corridors from Thames Street to connect to the promenade system.

The Jackson's Wharf property will be redeveloped as a mixed retail/residential project. This promenade easement agreement will guarantee public access along and to the waterfront on this site. The Jackson's Wharf promenade easement will connect with existing promenades and easements on adjoining properties.

This development has gone through lengthy community and city review processes. The plans for the developments and the locations for the promenades and access corridors conform to the requirements set forth by the Fells Point Waterfront Urban Renewal Plan.

CCG/LRF/jh

**APPROVED BY BOARD OF ESTIMATES:**

*Bernice M. Taylor*

Clerk

*OCT 16 2002*

Date

PEDESTRIAN PROMENADE  
EASEMENT AGREEMENT

THIS AGREEMENT (this "Agreement"), is made this \_\_\_\_\_ day of OCT 16 2002 by and between **SRH JACKSON'S 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/residential 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.

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: Easement Area Restrictions

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:

SRH JACKSON'S WHARF, LLC, a Maryland limited liability company

By: SBER/H & S Holdings LLC, a Maryland limited liability company, its Managing Member

By: SBER Fells Point LLC, a Maryland limited liability company, its Managing Member

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

[Signature]

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 10 2012**  
Secretary Date  
CLERK

Approved for form and legal sufficiency:

[Signature] 10/1/12  
Principal Counsel Date

STATE OF MARYLAND  
COUNTY OF \_\_\_\_\_

SS:

I HEREBY CERTIFY, that on this 15 day of August, 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 Fells Point, LLC, Managing Member of SBER/H & S Holdings LLC, Managing Member of SRH JACKSON'S 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 foregoing 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.

Tyler L. Bell  
Notary Public

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



**TYLER 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 4th day of October, 2002, before me, a Notary Public of the State of Maryland, personally appeared Paul T. Braziano, 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.

Rosene L. Chandler  
Notary Public

My Commission Expires: 11-02-02

**EXHIBIT A-1**

**PROPERTY DESCRIPTION**



**EXHIBIT A-2**

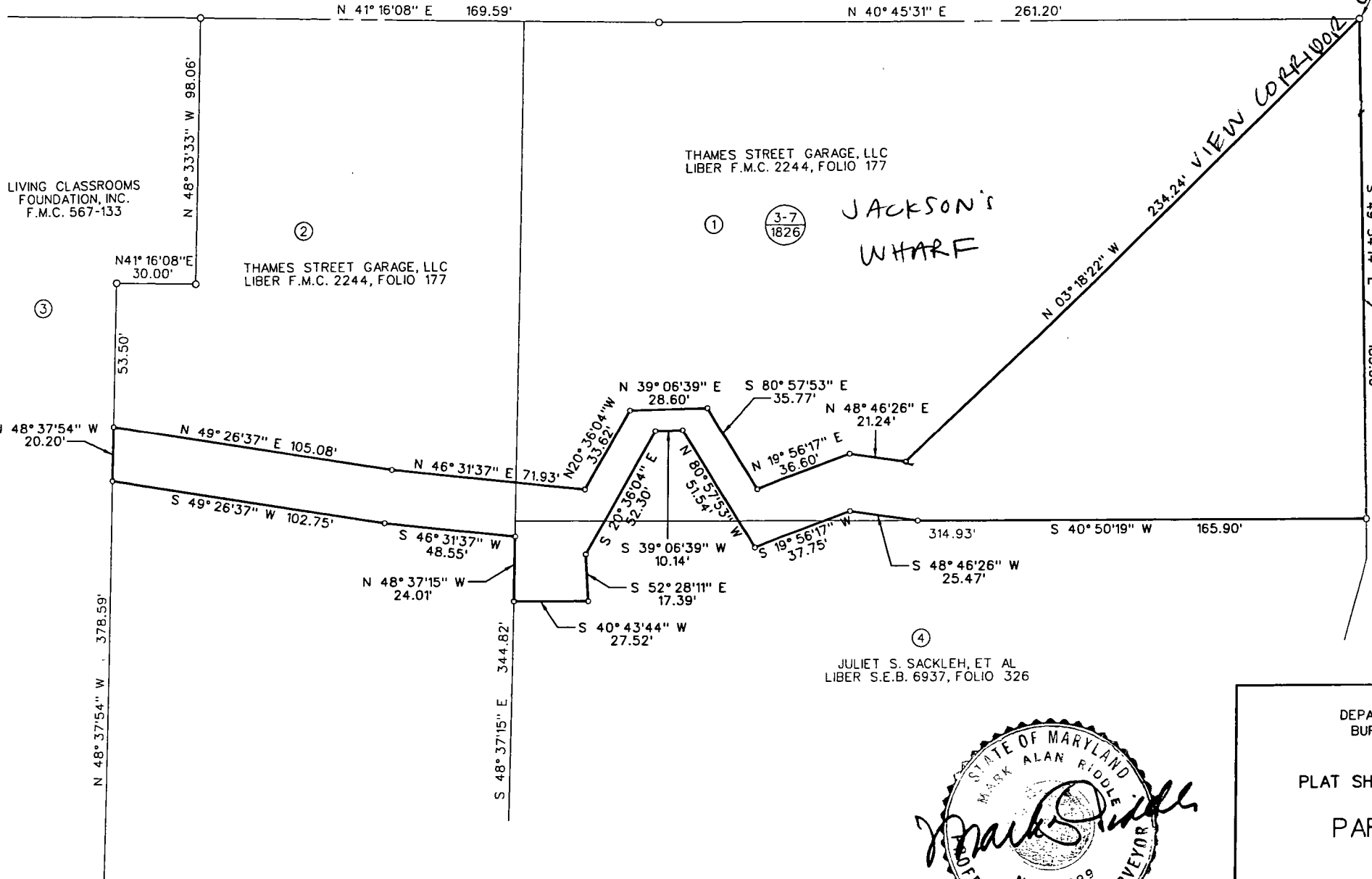
**PLAN OF EASEMENT AREA**

RW

THAMES STREET

(60' R/W)

6,131.270  
E 5,816.890



LIVING CLASSROOMS  
FOUNDATION, INC.  
F.M.C. 567-133

THAMES STREET GARAGE, LLC  
LIBER F.M.C. 2244, FOLIO 177

THAMES STREET GARAGE, LLC  
LIBER F.M.C. 2244, FOLIO 177

JACKSON'S  
WHARF

S. BOND STREET  
(R/W VARIES)

BOND  
STREET  
WHARF

JULIET S. SACKLEH, ET AL  
LIBER S.E.B. 6937, FOLIO 326



CITY OF BALTIMORE  
DEPARTMENT OF PUBLIC WORKS  
BUREAU OF TRANSPORTATION

PLAT SHOWING RIGHT OF WAY FOR

PARCELS 'B' & 'C'  
PROMENADE

SCALE: 1"=40'	DATE: JUNE, 2002
SURVEY CONTROL SECTION	SHEET 1 OF 1

FILE: F:\PROJECTS\10356\EM410356.dgn  
DATE: 12-Jun-02 10:54

RW

**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 seven days prior to any temporary closings unless an emergency necessitates immediate action. Repairs will be expeditiously performed allowing for timely reopening.

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

Outdoor Seating: The Grantor retains the right to have outdoor seating within 25 feet of the eastern face of Parcel B as shown on Exhibit C.

Events: Grantor expressly reserves the right to temporarily close the Easement Area in connection with any public or private event held in the easement area provided that:

1. there are no more than twelve (12) events held per calendar year (not including the Fells Point Fun Festival or similar successor event)
2. no such event shall extend beyond twenty-four (24) hours in duration (except in connection with the Fells Point Fun Festival or similar successor event, which may extend up to seventy-two (72) hours)
3. no such event shall include amplified music or public address without the necessary City permit
4. City of Baltimore-owned land portion of plaza shall not be included
5. a twelve (12) foot clear walk surface promenade route shall be maintained along the water's edge between Bond Street Wharf (Parcel A) and the Isaac Myers/Frederick Douglass Maritime Museum
6. grantor shall operate or shall cause such events to be operated in accordance with applicable laws, rules and regulations, including, without limitation, any permits or approvals specifically required in connection therewith
7. grantor shall be entitled to charge a maintenance and operations fee for all such events
8. grantor notifies the City of Baltimore (Department of Planning) seven (7) days prior to any and each event.

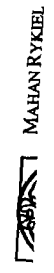
**EXHIBIT C**

**EASEMENT IMPROVEMENTS**

NO.	DESCRIPTION	DATE	BY
3	MD.		

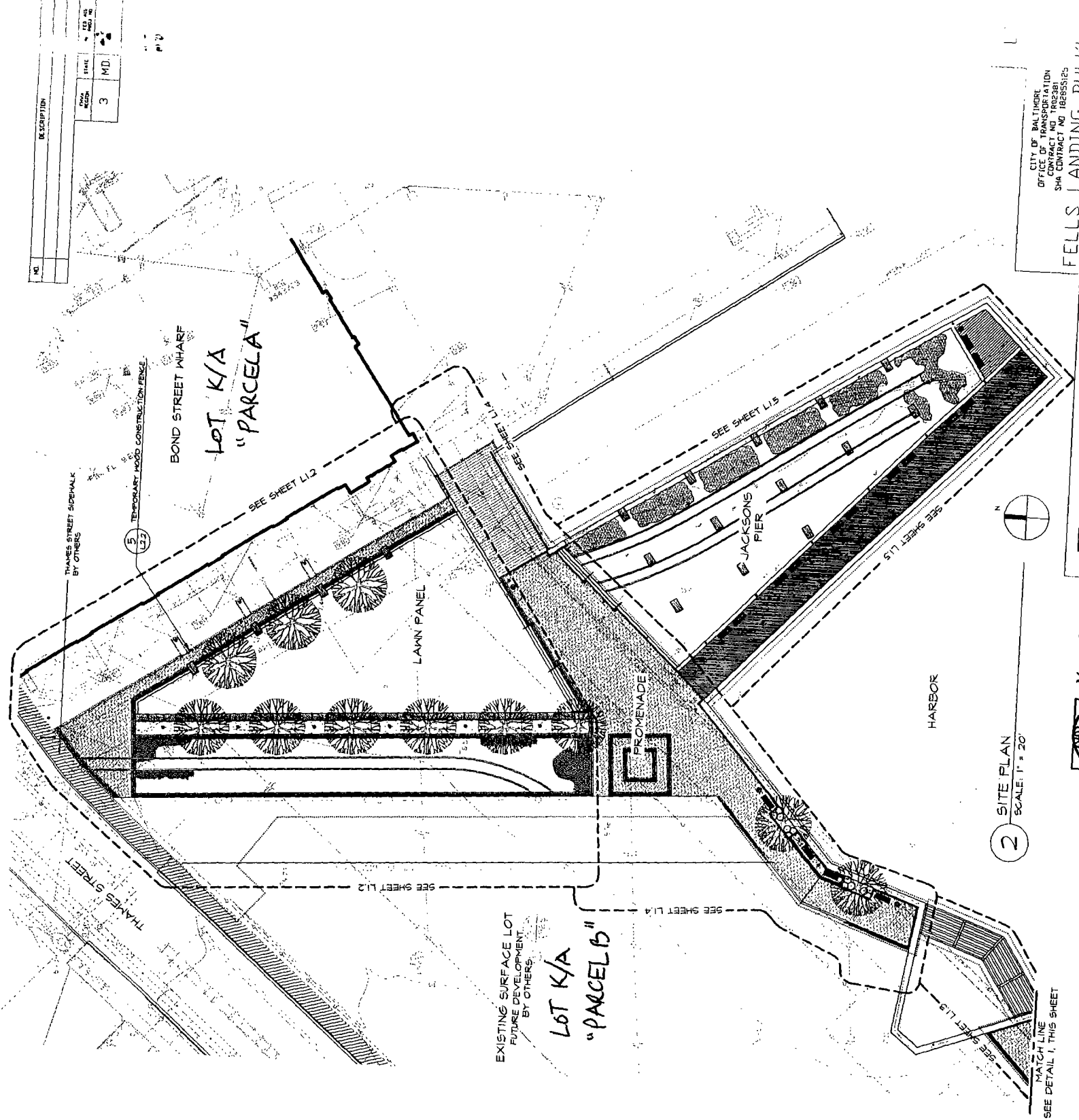
CITY OF BALTIMORE  
 OFFICE OF TRANSPORTATION  
 CONTRACT NO. 182381  
 SHA CONTRACT NO. 182381S2

STV INCORPORATED






MAHAN RYKIEL

FELLS LANDING BULKHEAD AND PROMENADE

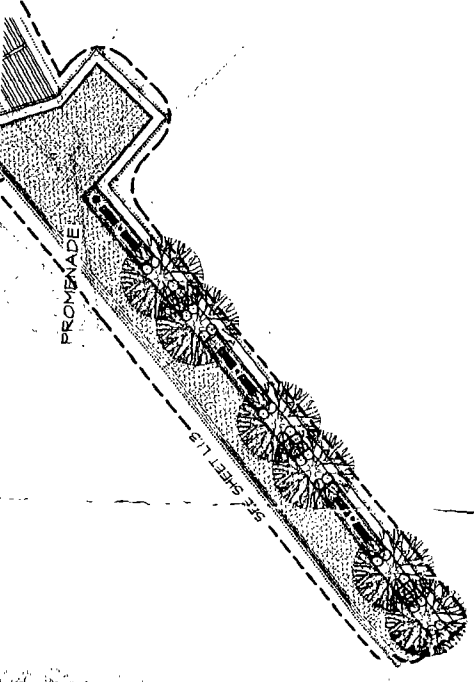


2 SITE PLAN  
 SCALE: 1" = 20'

LEGEND

-  BRICK PAVING, SEE ENLARGEMENTS FOR PATTERNS
-  LIMIT OF WORK
-  OTTERBEIN LIGHT POLE AND FIXTURE

MATCH LINE  
 SEE DETAIL 2, THIS SHEET



1 SITE PLAN  
 SCALE: 1" = 20'

**EXHIBIT D**

**NOTICE ADDRESSES**

If to the Grantor, notice shall be sent to:

SRH Jackson's Wharf, LLC  
c/o Struever Bros. Eccles & Rouse, Inc.  
1040 Hull St.  
Suite 200  
Baltimore, MD 21230  
Attention: Carl W. Struever

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, 8<sup>th</sup> Fl  
Baltimore, MD 21202  
Attn: Director

With a copy to:  
Baltimore City Department of Law  
Real Estate Section, Room 149  
Baltimore, MD 21202