


[Handwritten signature]

[Handwritten initials]

FROM	NAME & TITLE	OTIS ROLLEY, III, DIRECTOR	CITY of BALTIMORE MEMO <i>[Handwritten initials]</i>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 TH FLOOR		
	SUBJECT	PROMENADE EASEMENT AGREEMENT FOR UNION WHARF DEVELOPMENT		

DATE: December 10, 2003

TO

Honorable President and Members
Of the Board of Estimates
City Hall, Room 204

ACTION REQUESTED OF THE BOARD OF ESTIMATES:

The Board is requested to approve the execution of a permanent Pedestrian Promenade Easement Agreement with Union Wharf, LLC for the property known as 901-933 South Wolfe Street.

AMOUNT OF MONEY AND SOURCE OF FUNDS:

N/A

BACKGROUND/EXPLANATION:

As an objective to complete Baltimore's Waterfront Promenade system, the Fells Point 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 donate to the City a public easement over said promenade area.

The Union Wharf property, mainly a vacant site along the east side of Wolfe Street, is proposed to be redeveloped as a mixed-use project. It was formerly occupied by the Arundel Concrete Company. This permanent promenade easement agreement will guarantee public access along the waterfront on this site. Eventually this promenade will link with proposed promenades to the north at the Thames Point development and to the south with the proposed Swann's Wharf development site.

The Union Wharf development has gone through a lengthy community and city review process. The plans for the development and the location for the promenade conform to the requirements set forth by the Fells Point Urban Renewal Plan.

APPROVED BY BOARD OF ESTIMATES:

DEC 17 2003

[Handwritten signature]

Date

Ass't Clerk

**PEDESTRIAN PROMENADE
EASEMENT DEED AND AGREEMENT**

DEC 17 2003

THIS PEDESTRIAN PROMENADE EASEMENT DEED AND AGREEMENT (this "Agreement"), is made this _____ day of _____, 2003, by and between UNION WHARF, LLC (formerly known as Arundel Station, LLC, 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 the owner of that property located at 901-933 S. Wolfe Street, Baltimore City, Maryland, which property was deeded to Grantor by The Arundel Corporation by deed dated May 25, 2000, being the same property described in deeds recorded among the land records of Baltimore City in Liber 1085, folio 271 and Liber JC No. 832, folio 227, and more fully described in Schedule A attached hereto (the "Property"); and

WHEREAS, the Grantor has agreed to grant to the City a permanent, improved, non-exclusive easement for the purposes of a pedestrian walkway, which walkway shall be part of the Baltimore Waterfront Promenade, and a temporary, non-exclusive easement for construction of such walkway.

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 City a non-exclusive easement for pedestrian ingress and egress (the "Easement") in, over and through those areas of the Property labeled "Right of Way" on Schedule B attached hereto (hereinafter "Easement Area") for a public walkway. 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. The Easement may be exercised only for pedestrian access to and from the adjoining public streets, walkways, and promenade easement areas, and for pedestrian traffic through the Easement Area twenty four (24) hours a day (the "Easement Hours") 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 regulations and rules concerning noise, dress, conduct, hours of use, 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. Use of the Easement Area shall be limited to pedestrian traffic and shall not include any motor vehicular traffic (other than temporary emergency use of the Easement Area by City vehicles).

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.

3. Benefit of Easement. 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 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, any Easement Improvements (as defined below) in or on the Easement Area, 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 City shall perform the work as set forth in Schedule D (the "Easement Improvements") according to the plans and specifications relating thereto within the time period prescribed in Schedule D.

5. Maintenance and Repairs. The Grantor shall, after completion of the Easement Improvements, be responsible for maintaining the keeping in a safe condition and in good order and repair the Easement Area and the Easement Improvements. After completion of the Easement Improvements, to the extent permitted by law and the terms and conditions of the City's construction contract documents, the City shall assign all of its rights, including, without limitation, all warranties, under contracts between the City and any contractor hired by the City to construct any Easement Improvement.

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.

6. Insurance and Indemnification. The Grantor shall defend, indemnify, and hold harmless the City against and from any liability or claim for bodily injury, death or property damage arising out the negligent failure of the Grantor to maintain or repair the Easement Area or Easement Improvements as set forth in this Agreement, notwithstanding any policy or policies of insurance; provided, however, in no event shall the City waive any right to sovereign immunity or liability limitations which would be applicable with respect to any such claim or liability

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.

Except 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 during the Easement Hours.

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 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; provided, however, that in the event the City fails to substantially complete the Easement Improvements so that the Easement Area is available for pedestrian usage within the time period set forth in Schedule D, then the easement granted by Grantor hereby shall automatically expire without further action by Grantor. The City hereby agrees to execute such deed or other instrument as the Grantor may reasonably request to evidence such expiration.

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 E.

9. Amendment. Any amendment of 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. Schedules. Each writing, schedule or exhibit referred to herein as being attached hereto is hereby made a part of this Agreement.

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 12. The Grantor, and any subsequent owners or interest holders of all or any portion of the Property shall be liable only for such obligations as shall accrue and remain unsatisfied hereunder while they are owners of all or a portion of the Property.

13. Construction Easement. Grantor hereby grants to City, its contractors and agents, a temporary, non-exclusive construction easement (the "Construction Easement") over, under and across the entire Easement Area for the period commencing on the date of this Agreement and ending on the earlier of (i) the date on which the Easement Improvements are completed or (ii) the third (3rd) anniversary of the date of this Agreement (the "Construction Easement Period"). Grantor further agrees to provide access to the City and its contractors during the Construction Easement Period to such additional areas adjacent to the Easement Area on the Property as may be reasonably necessary for the construction of the Easement Improvements, subject to reasonable limitations to be established by Grantor and to the continued use of the Property by Grantor, its tenants, assigns and licensees. Grantor agrees to execute right of entry agreements or temporary construction easements with respect to the Property in furtherance thereof.

The Construction Easement may be exercised only by the City and its contractors for access to the Easement Area and construction of the Easement Improvements thereon, and shall not be exercised by the general public.

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 Construction Easement Period. 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 during the Construction Easement Period.

SCHEDULE A: Description of Property

SCHEDULE B: Plan of Easement Area with Improvements

SCHEDULE C: Special Restrictions and Limitations

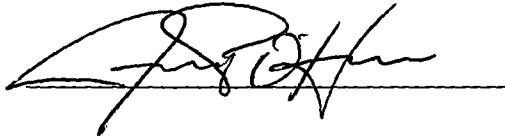
SCHEDULE D: Easement Improvements to be Constructed; Time Period

SCHEDULE E: Address to Whom Notice Should Be Sent

IN witness whereof, the parties have executed this Agreement as of the day and year first above written.

GRANTOR : UNION WHARF, LLC

ATTEST:



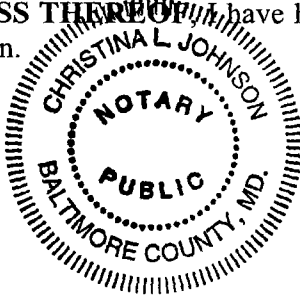
By:  (SEAL)
NAME: *Larry Silverstein*
TITLE: *Authorized Member*


STATE OF MARYLAND
City of Baltimore

SS:

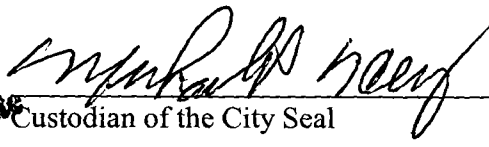
I HEREBY CERTIFY, that on this 27th day of October, 2003, before me, a Notary Public of the State of Maryland, personally appeared *Larry Silverstein*, who acknowledged himself to be an authorized member, of **UNION WHARF, LLC**, and that he as such being authorized so to do, executed the forgoing Agreement for the purposes contained on behalf of the **UNION WHARF, LLC**.

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

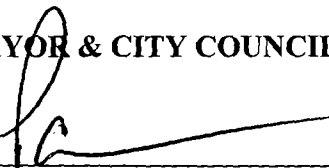



Notary Public
My Commission Expires: 4/1/05

ATTEST:


Custodian of the City Seal

MAYOR & CITY COUNCIL OF BALTIMORE

By: 
NAME: *Paul Graziano*
TITLE: *Commissioner of Department of Housing and Community Development*

APPROVED BY BOARD OF ESTIMATES


ASSISTANT CLERK

DEC 17 2003

Approved for form and legal sufficiency:

Richard E. Keegan 10/30/03

~~Principal Counsel~~

Date

Chief Solicitor

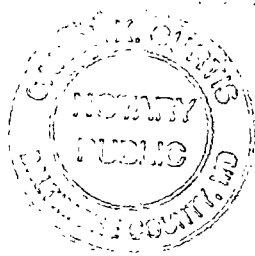
STATE OF MARYLAND

SS:

City of Baltimore

I HEREBY CERTIFY, that on this 3rd day of Dec, 2003, before me, a Notary Public of the State of Maryland, personally appeared Paul Graziano, 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.

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



Carol K. Curtis
Notary Public

My Commission Expires: 5-1-04

SCHEDULE A
DESCRIPTION OF PROPERTY

THIS DEED, Made this 25th day of May, 2000, by and between THE ARUNDEL CORPORATION, a Maryland corporation, Grantor, party of the first part and ARUNDEL STATION, LLC, a Maryland limited liability company, Grantee, party of the second part.

WITNESSETH, That in consideration of the sum of THREE MILLION ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$3,100,000.00), the actual consideration paid and other good and valuable considerations, the receipt of which is hereby acknowledged, the said party of the first part does grant and convey to the party of the second part, its successors and/or assigns, in fee simple, all that parcel of land situate in City of Baltimore, State of Maryland, and described as follows:

BEGINNING FOR THE FIRST at the corner formed by the intersection of the south side of Thames Street (formerly George Street) and the east side of Wolfe Street; and running thence southerly bounding on the east side of Wolfe Street 130 feet); thence easterly parallel with Thames Street to the water of the northeast branch of the Patapsco River; thence northerly bounding on said Water to Thames Street; and thence westerly bounding on Thames Street to the place of beginning. The improvements thereon being known as Nos. 901 through 913 South Wolfe Street.

BEING the same property described in a Deed dated October 31, 1986 and recorded among the Land Records of Baltimore City in Liber 1085, folio 271 which was granted and conveyed by Albert H. Taylor unto the Grantor herein.

BEGINNING FOR THE SECOND thereof on the easternmost side of Wolfe Street as it runs diagonally at the northwest corner of Lot No. 86 and designated on the Plat of Fells Addition to Baltimore Town as fixed by the consent of the parties interested therein and as established by the City Commissioner on the application Hezekiah Waters on the 3rd day of June, 1809 and which place of beginning is designated to be on the easternmost side of Wolfe Street northwesterly (50) feet and seven (7) inches from the southwest corner of said Hezekiah Water brick warehouse erected on Lot 86 and running thence northerly binding on Wolfe Street two hundred and thirty-four feet (234') and ten inches (10") to the northwest corner of the lot of ground assigned by John Lee to William Priceby by Deed dated the 13th day of April, 1808 and recorded among the Land Records of Baltimore City in Liber W.G. No. 97, folio 84, said northwest corner being at a distance of one hundred and thirty feet (130) southerly from the southeast corner of Wolfe and Thames Street thence easterly parallel with Thames Street six hundred sixty-eight feet (668') more or less to the pierhead line established under Act of Assembly Chapter No. 195 of 1876 thence southerly binding on said pierhead line two hundred twenty-eight feet (228') more or less to intersect the northern outline of Lot No. 86 and established as aforesaid if extended easterly and thence westerly reversing said line so extended and binding hereon six hundred forty feet (640') more or less, to the place of beginning.

BEING the same property described in a Deed recorded among the Land Records of Baltimore City in Liber JC No. 832, folio 227.

SUBJECT TO the following restriction which shall run with and bind the land herein described:

- (a) The property herein shall not be used for the re-sale and/or distribution of stone, sand, minerals or other similar building and construction materials; and
- (b) The property herein shall not be used for the storage of stone, sand, minerals or other similar building and construction materials, except to the extent that (i)

such materials are stored for the account of the Grantee, its successors and/or assigns of any tenant thereof in connection with an off-site construction project, or (ii) such materials are stored on the property in connection with construction on the property by Grantee or Grantee's successors and/or assigns.

The above restrictions shall expire twenty (20) years from the date of this Deed.

BY the execution of this Deed, the party of the first part hereby certifies under the penalties of perjury that the actual consideration paid or to be paid, including the amount of any mortgage or deed of trust outstanding, is as hereinbefore set forth.

The party of the first part hereby certifies that the within transaction does not involve a sale, lease, exchange or other transfer of all or substantially all the property and assets of the within Grantor.

TOGETHER WITH the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the described parcel of land and premises to the said party of the second part, its successors and/or assigns, in fee simple.

AND the said party of the first part hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that it will warrant specially the property hereby granted; and that it will execute such further assurances of the same as may be requisite.

WITNESS:

THE ARUNDEL CORPORATION,
a Maryland corporation

Kathleen M. Johnson

BY: David E. Willard, II (SEAL)

Name:
Title:

STATE OF MARYLAND, ~~CITY~~/COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, That on this 24TH day of MAY, 2000, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared DAVID E. WILLARD, II who acknowledged himself to be the _____ President of THE ARUNDEL CORPORATION, a Maryland corporation, and that he as such _____ President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing in my presence, the name of the corporation by himself as such _____ President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Kathleen M. Johnson
NOTARY PUBLIC

My Commission Expires: 7/1/00

THIS IS TO CERTIFY THAT THE WITHIN INSTRUMENT HAS BEEN PREPARED BY OR UNDER THE SUPERVISION OF THE UNDERSIGNED MARYLAND ATTORNEY.

J. Paul Rieger, Jr., Esquire

H:\ROBIN\00FILES\1000119\DEED

SCHEDULE B
PLAN OF EASEMENT AREA WITH IMPROVEMENTS



STV Incorporated

7125 Ambassador Road, Suite 200
Baltimore, Maryland 21244-2722
(410) 944-9112 fax: (410) 298-2794

**Description of
A Variable Width Public Access Easement
Through the Lands of Arundel Station, LLC
Ward 2, Section 6, Block 1875
Baltimore, Maryland**

COMMENCING for the same at the beginning of the fourth or 640 foot line of the second described parcel of land as conveyed by deed dated May 26, 2000 by and between The Arundel Corporation to Arundel Station, LLC as recorded among the Land Records of Baltimore City, Maryland in Liber F.M.C. 399 at Folio 374; thence departing said point so fixed and binding on said 640 foot line, South 86° 40' 39" West 20.64 feet to the Point of Beginning of this description; thence continuing to binding on said 640 foot line with meridian reference to the Baltimore City Survey Control System, as now surveyed

1. South 86° 40' 39" West, 20.00 feet; thence departing said 640 foot line so as to cross and include a portion of the lands of said Arundel Station, LLC
2. North 03° 27' 31" West, 126.54 feet; thence
3. North 48° 27' 22" West, 15.16 feet; thence
4. South 86° 32' 30" West, 326.75 feet; thence
5. North 03° 27' 30" West, 204.48 feet; thence
6. South 86° 32' 30" West, 30.99 feet; thence
7. North 03° 27' 30" West, 20.75 feet to intersect with the southerly right-of-way line of Thames Street, having a right-of-way width of 70.00 feet; thence binding on said Thames Street, in part thereof
8. North 87° 02' 00" East, 87.12 feet; thence departing said Thames Street and continuing through the lands of Arundel Station, LLC
9. South 03° 27' 30" East, 56.71 feet; thence
10. South 86° 32' 30" West, 27.12 feet; thence
11. South 03° 27' 30" East, 122.77 feet; thence
12. South 48° 27' 29" East, 35.35 feet; thence




STV Incorporated

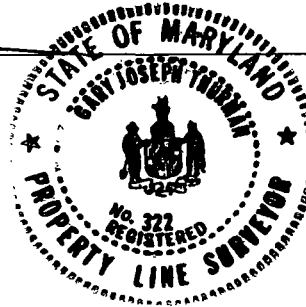
Description of
A Variable Width Public Access Easement
Through the Lands of Arundel Station, LLC
Page 2

13. North 86° 32' 30" East, 292.47 feet; thence
14. South 48° 27' 22" East, 28.28 feet; thence
15. South 03° 27' 31" East, 137.30 feet to the point of beginning,

CONTAINING 16,524.9 square feet or 0.379 of an acre of land, more or less.

BEING a portion of the lands as conveyed by deed dated May 26, 2000 by and between The Arundel Corporation to Arundel Station, LLC as recorded among the Land Records of Baltimore City, Maryland in Liber F.M.C. 399 at Folio 374.

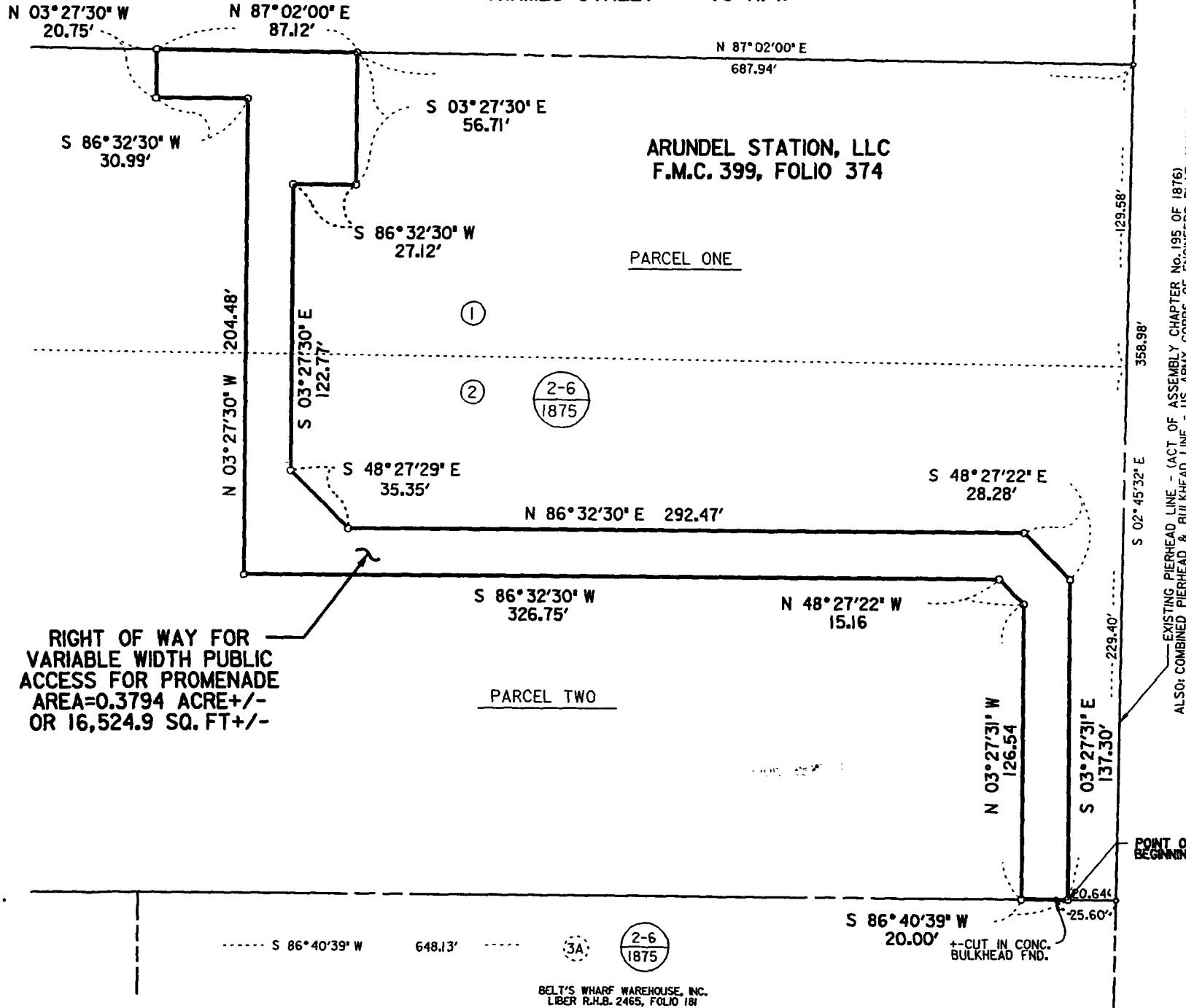

STV Incorporated
Gary J. Thurman
Registered Property Line Surveyor
Maryland License No. 322



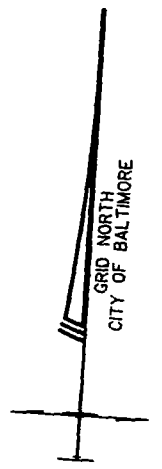
29-109-03
Date

Project Job No. 0310232

THAMES STREET 70' R/W



NORTHWEST BRANCH - PATAPSCO RIVER



CITY OF BALTIMORE
 DEPARTMENT OF PUBLIC WORKS
 BUREAU OF TRANSPORTATION

PLAT SHOWING AREA FOR
 VARIABLE WIDTH PUBLIC ACCESS
 FOR PROMENADE

UNION WHARF

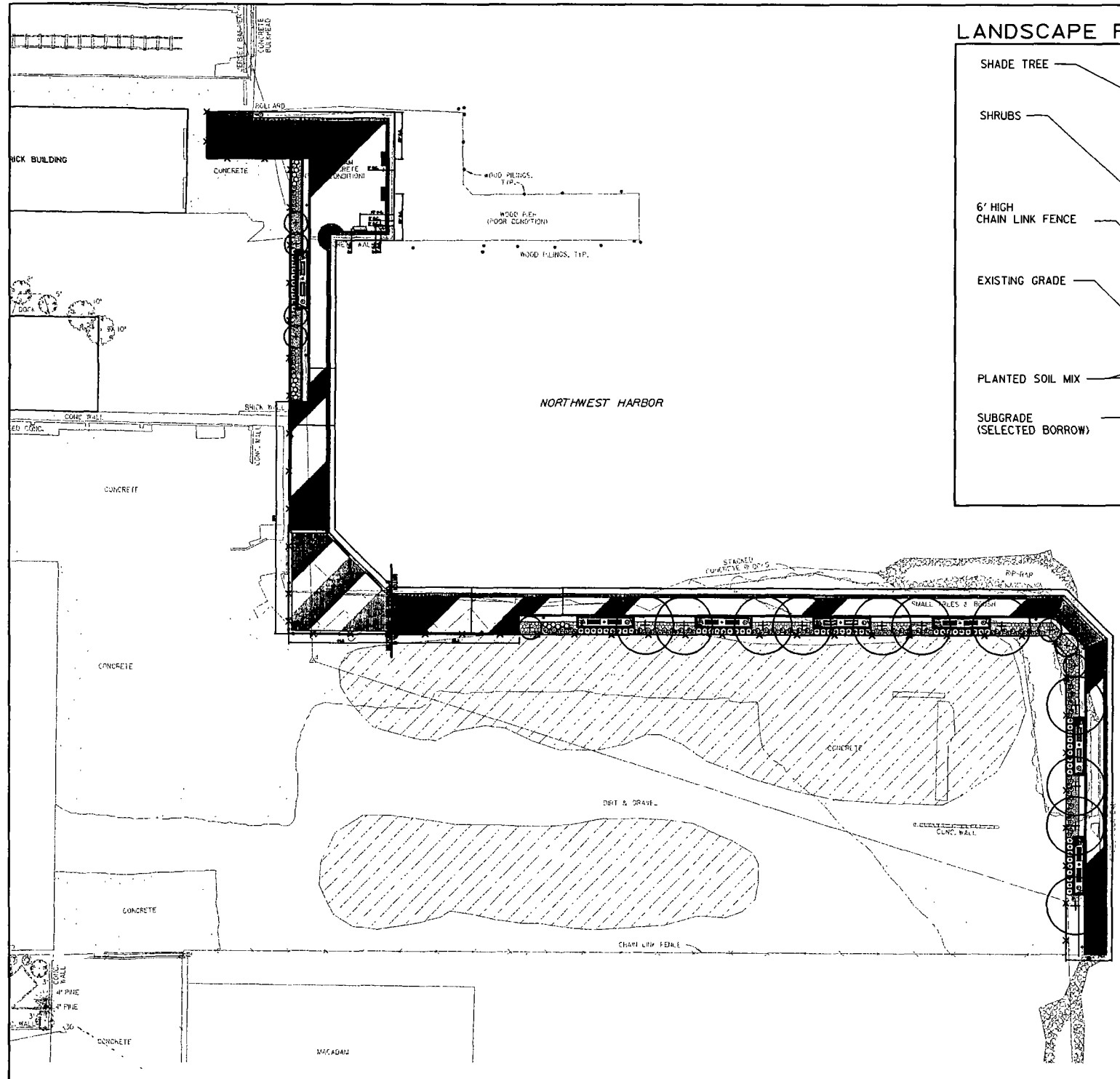
SCALE: 1"=60'	DATE: AUGUST 21, 2003
SURVEY CONTROL SECTION	SHEET 1 OF 1

SCHEDULE C
SPECIAL RESTRICTIONS

SPECIAL RESTRICTIONS AND LIMITATIONS: The Grantor reserves and retains the right to temporarily close the Easement Area in order to (i) complete the commercial and residential improvements to be constructed on the Property and (ii) from time to time, maintain and repair the Easement Area and the Easement Improvements; provided, however, such temporary closure for completion of the commercial and residential improvements to be constructed on the Property shall not exceed one (1) year and, thereafter, such temporary closure for maintenance and repair shall not exceed ninety (90) days at any one time without, in each case, the authorization of the City. Except in the event of an emergency, the Grantor will provide written notification to the City seven (7) days prior to any temporary closure of the Easement Area or any portion thereof.

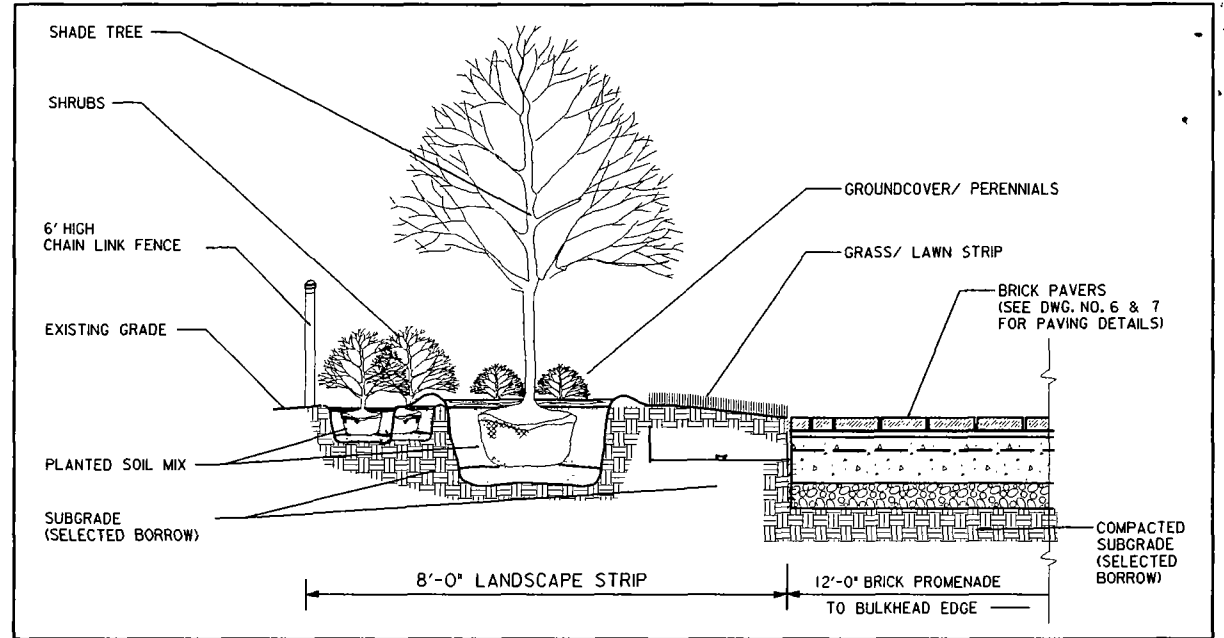
SCHEDULE D
EASEMENT IMPROVEMENTS TO BE CONSTRUCTED; TIME PERIOD

The promenade and other Easement Improvements to be built on the Easement Area shall be constructed in accordance with the Plans and Specifications attached hereto and shall be completed within thirty six (36) months of the date of this Agreement.



LANDSCAPE PLANTING STRIP TYPICAL SECTION:

Not To Scale



LEGEND

- ⊕ SHADE TREE
- ⊙ ORNAMENTAL TREE
- SHRUBS
- GROUNDCOVER/ PERENNIALS
- ORNAMENTAL GRASSES
- ▬ BENCH (TYP.)
- OTTERBEIN LIGHT POLE & FIXTURE (TYP.)
- TRASH RECEPTACLE (TYP.)

CITY OF BALTIMORE
DEPARTMENT OF PUBLIC WORKS
BUREAU OF TRANSPORTATION

EASEMENT IMPROVEMENTS
TO BE CONSTRUCTED

UNION WHARF

SCALE: 1"=60'

DATE: AUGUST 21, 2003

SURVEY CONTROL SECTION

SHEET 1 OF 1

SCHEDULE E
ADDRESSES TO WHOM NOTICE ARE TO BE SENT

THE GRANTOR:

Union Wharf, LLC
1821 Lancaster Street, Suite 120
Baltimore, Maryland 21231
Attention: Larry Silverstein

James P. O'Hare, Esq.
McGuireWoods LLP
Seven St. Paul Street, Suite 1000
Baltimore, Maryland 21202

THE CITY:

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

Promenade Coordinator
Baltimore City Department of Planning
417 East Fayette Street, 8th Floor
Baltimore, Maryland 21202

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