

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this day of , 1998 by and between the MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation of the State of Maryland, hereinafter called LESSOR and SEWELL A. BROWN III, hereinafter called LESSEE.

WHEREAS, the City owns a bulkhead located in Fells Point of Baltimore, Maryland at the foot of Broadway being the western portion of South Ann Street as shown on the attached Exhibit A which is incorporated herein;

WHEREAS, the Lessee owns the land and buildings adjacent to the east side of the bulkhead/pier and operates for mixed commercial uses including restaurant, retail, office, and other facilities;

WHEREAS, the Lessee has made a significant financial investment in the public improvements of South Ann Street including sidewalk and period lighting;

WHEREAS, the Lessee desires to use the pier, which herein after shall be referred to as the "bulkhead", for certain limited purposes in connection with the facilities and activities for the Lessee's mixed use development and seeks to work in cooperation with the City to reinforce the historic legacy of Fells Point;

WITNESSETH, that in consideration of the rent hereinafter specified to be paid, and the performance of the covenants herein set forth, Lessor hereby leases unto the Lessee, the following property located in the City of Baltimore, State of Maryland.

I. DESCRIPTION OF PROPERTY:

Docking rights along a portion of the bulkhead located on the west side of South Ann Street consisting of 149 lineal feet as shown on Exhibit A, herein attached.

II. USE:

A. The said premises are to be used to conduct boat docking for the patrons of Fells Point area and Lessee's retail/commercial shops adjacent to the bulkhead.

B. Lessor recognizes and acknowledges that the water taxi has docking rights along the South Ann Street bulkhead and Lessee at no time shall prevent access to water taxi(s) to dock in the designated area on Exhibit A.

C. That the right of the Lessee, its successors and assignees, to free water access and right to use and occupy the newly constructed bulkhead on South Ann Street shall be subject, in every respect, to (a) the operation and effect of Section 5-2 of the Public Local Laws of Baltimore City (1980) and Article 10, Sections 21, 30, 36, 49 and 50 of the Baltimore City Code (1983 Repl.Vol.), and of any supplements thereto or amendments thereof or other duly constituted public authority, and of any supplements or amendments thereof; (b) the Lessor retains priority in use of the bulkhead to dock boats 90 feet (90') along the eastern portion of South Ann Street commencing at the corner of Thames and Ann Streets as shown on Exhibit A, herein attached.

D. Use of the bulkhead and adjacent sidewalk for storage of materials or working space shall not be permitted. To the greatest extent practicable, emergency maintenance shall be contained on board the boat.

3. TERM OPTION TO RENEW:

A. The term of this Lease shall be for seven (7) years and shall commence October 15, 1998 and shall terminate October 14, 2005.

B. Provided Lessee is not in default of any of the terms of this Lease, the Lessor hereby grants to Lessee the option or options to renew this Lease for one additional five (5) year period provided that Lessee gives Lessor at least ninety (90) days written notice prior to the expiration of the original term.. In the event that Lessee exercises its option to renew and Lessor agrees to such renewal, all provisions of this Lease shall apply during the renewal term except as provided in Article 4B.

C. It is agreed by the parties hereto that upon the expiration of the original term, and any renewal thereof, if renewed as set forth herein, this Lease shall terminate and there shall be no further right of renewal.

D. Notwithstanding anything herein to the contrary, Lessor hereby reserves the right, in the event the property herein described is required by the City, in its sole judgement, for municipal uses, to terminate the Lease Agreement at any time during the original or renewal term by giving to Lessee ninety (90) days written notice thereof. It is agreed between the parties that the Lessee has the right to terminate this Lease Agreement at any time during the original or renewal term by giving the Lessor ninety (90) days written notice thereof. All improvements, repairs or alterations which Lessee may be permitted to make on the demised premises shall become the property of Lessor upon termination as aforesaid, without payment therefor by Lessor, and free of any claims by Lessee for damages due to or caused by said terminations.

4. RENT:

A. The annual rent for said premises shall be \$3,576.00 (Three Thousand Five Hundred Seventy Six Dollars) payable annually, subject to the provisions of Article 4C.

B. The rent for the renewal shall be \$5,000 (Five Thousand Dollars) payable annually in advance.

C. The Lessee has constructed public improvement totaling \$38,915.44 to South Ann Street area, which are further described in Exhibit B herein attached. The Lessee shall be credited the annual rent for the original term as a reimbursement for these improvements.

D. Should Lessor exercise its rights under Article 3D, Lessee shall have no further rights for payment for improvements described in Exhibit B.

5. RESPONSIBILITIES OF LESSEE:

The Lessee, its successors, and assignees covenant and agrees that it shall at its own expense do and continue to do throughout the original term and any renewal thereof, the following:

A. Repair and replace any damage done to the surface and structural areas of the bulkhead including, but not limited to walls, bulkheads, fender piles, cleats, fender system,

cap, logs, adjacent and attached to the demised area which were caused by the negligent or intentional act of Lessee or its Sub-lessee.

B Lessee shall maintain bulkhead in good condition, order and condition and perform all necessary repairs caused by the use of the Lessee and its Sub-Lessee, normal wear and tear excepted.. Specification and plans for said repairs shall be approved by the Lessor, prior to repairs being made.

C. Lessee shall be responsible for maintenance and repair of structural areas of the bulkhead which were caused by the negligent or intentional acts of Lessee or its sub-lessees. Specifications and plans for said repairs shall be approved by Lessor prior to repairs being made.

D. Cart off and remove from the demised premises all dirt, ashes, sweepings, rubbish and litter occasioned, created or deposited thereon by Lessee or its sub-Lessees.

E. Not throw or allow to be thrown, at any time, into the water from either the demised premises or from any boat, vessel, barge or other watercraft any dirt, ashes, sweepings, rubbish, or litter.

F. Observe and keep all laws and ordinances applicable to the demised premises.

G. Prohibit any boat repair and or restoration of vessels unless of an emergency nature to be carried out along the demised premises as further described in Article 2D.

H. The Lessee, its successors or assignees accepts the demised premises with all improvements thereon, "AS IS", and without any representation or warranties, expressed or implied, in respect thereof, or in respect of their condition or the use and occupation that may be made thereof, the Lessor shall in no event be liable for any defects.

I. The Lessee, its successors or assignees recognize that the water taxi shall at all times have access to the southwest portion of the bulkhead.

6. ASSIGNMENT OR SUB-LETTING:

The Lessee, its successors or assignees, will not assign this Lease Agreement to anyone without first obtaining the consent, in writing, and no assignment by Lessee, in

violation of the provisions of this Lease, shall vest in any such assignee any right or title in or to the leasehold estate hereby created. Any assignment as may be permitted hereunder, shall be subject to the legal operation and effect of each and every one of the terms of this Lease.

7. LESSEE'S CARE AND SURRENDER OF PREMISES:

The Lessee, its successors and assignees, will during the term and any renewal thereof keep the bulkhead and appurtenances in good order and condition and will upon the expiration of the term, or at the sooner termination thereof, by forfeiture or otherwise, deliver up the bulkhead in reasonable good condition, with normal wear and tear. Lessee shall not be responsible for any repair necessary or damage caused to the Bulkhead which was not caused in whole or in part by the negligent or intentional act of Lessee, Sub-Lessee, its servants, guests, agents and employees. Lessee will pay for the repair or cause to be promptly repaired any damages to the bulkhead directly attributed to the negligent or intentional acts of its servants, guests, agents and employees. However, nothing in this paragraph shall be construed to limit the obligation of Lessee assumed under Article 5 thereof.

3. DEFAULT BY LESSEE:

Subject to Article 4A and 4C, Lessee shall, pay the said rent specified herein within ten (10) days after due date, and Lessee shall perform all of the covenants and conditions to which it is obligated hereunder. If Lessee shall be in default or shall fail to perform any of the other covenants and conditions to which it is obligated hereunder, Lessor shall, before taking any action or pursuing any remedy on account of said default, give Lessee thirty (30) days' notice specifying the default complained of, and Lessee shall cure said default within the said thirty (30) day period, provided, however, that if the said default be of such nature that it cannot be cured within the said period of time, then Lessee shall commence the correction of said default within the said period of thirty (30) days and shall complete the same as expeditiously as possible; provided, however, that Lessee shall not

be considered in default in curing such default if prevented from doing so by reason of fire, casualty, strikes, lockouts or labor disturbances, by act of God or the public enemy by order, direction or lawful interference by any municipal, state or governmental official or agency, or by any cause beyond Lessee's control, but if and when the occurrence or condition which delayed or prevented the remedying of such default shall cease or be removed, it shall be the obligation of the Lessee to remedy such default without further delay.

In event the Lessee shall fail to correct or cure said default within the time hereinbefore provided, then and in that event, Lessor may, at its election but shall not be obligated to, do any of the following;

(a) Distrain for rent due and unpaid, Lessee hereby agreeing that all property on the premises at the time of default and for thirty (30) days after removal therefrom, may be followed and shall be liable for distress for rent.

(b) In addition to the foregoing, without further notice and without the necessity of resorting to legal action, enter upon and take possession of the premises, thereby terminating the Lease; or

(c) Continue the Lease and after obtaining possession of the leased premises, re-let the premises as agent of Lessee for the best rent obtainable from a responsible Lessee for the unexpired term of this Lease, deducting from any amounts received thereby all reasonable expenses incurred by Lessor in connection with such re-rental, and crediting Lessee with the balance of rent collected upon such re-letting; Lessee to remain liable for any deficits.

No mention in this Lease of any specific remedy or right shall preclude Lessor from exercising any other right or from having any other remedy or from maintaining any action to which it may be otherwise entitled, either in law or equity; and the failure of Lessor to insist in any one or more instances upon a strict performance of any covenants of Lessee under this Lease, or to exercise any option or right herein contained, shall not be

construed as a waiver or relinquishment for the future of such covenants, right, or option, but the same shall remain in full force and effect unless the contrary is expressly stated in writing by Lessor.

Notwithstanding anything to the contrary contained herein, it is understood and agreed between the parties to this Lease that in the event of the failure by the Lessee to do and complete any of the work referred to in Article 5, that the Lessor, after thirty (30) days written notice to the Lessee to do said work, shall have the additional right to do said work at the sole cost and expense of the Lessee.

9. TAXES:

A. The Mayor and City Council of Baltimore, acting by and through the State of Maryland, Department of Assessments, hereby reserves the right to value, assess, and tax, any improvements on the demised premises and Lessee, its successors and assignees, hereby agrees to pay any such tax, as well as, all charges for water, electricity (if any) and minor privileges, and nothing in this Lease shall be taken as abridging or impairing in any respect any lawful powers of valuation, assessment or taxation that may now or hereafter be exercisable by the State of Maryland, or the Mayor and City Council of Baltimore, in relation to any right of interest that said Lessee, its successors or assignees, may acquire hereunder. If any tax is levied on the said premises and such amount is charged to Lessee hereunder, Lessee shall have the right, in Lessee's sole election, to terminate this Lease by the giving of 5 days written notice to Lessor. Lessee shall notify Lessor within 5 days after receipt of tax bill of such termination. In such event, Lessee shall have no obligation to pay any tax or assessment under this section.

B. Should Lessee elect to terminate this agreement, Lessee shall terminate all Sub-Lessees without further notice to Lessor.

C. Should Lessee fail to notify Lessor within the aforementioned time, Lessee shall pay tax bill in full without further notification by Lessor.

10. INDEMNIFICATION:

A. Lessee agrees to indemnify, defend and hold harmless, the Lessor, its appointed and elected officials, employees, agents, representatives from and against liability from all claims, demands, suits and judgements, including cost of defense thereof, which are caused by, and arise out of the negligent acts or willful misconduct of the Lessee in the performance of its duties and obligations under this agreement, or failure to abide by its obligations under this agreement

B. The Lessor agrees to indemnify, defend, and hold harmless, Lessee, its employees, agents and representatives, from and against liability for all claims, demands, suits and judgements to the extent permitted under the Local Government Tort Claims Act, which are caused by, and arise out of the negligent acts or omissions or willful misconduct of the City, its appointed and elected officials, employees, agents and representatives, or for failure to abide by its obligations under this agreement.

11. LIABILITY INSURANCE:

Lessee shall procure and maintain during the life of this Agreement the following required insurance coverage:

A. Protection and Indemnity Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages, caused by the ingress and egress from boats.

B. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, except the reduction of the applicable aggregate limit claims paid, until after forty-five (45) days prior written notice has been given to the Lessor. There will be an exception for non-payment of premium, which is ten days' notice of cancellation.

C. Insurance is to be placed with insurers with a Best's rating of no less than A'VII, or, if not rated with Best's with minimum surpluses the equivalent of Best's surplus size VII and must be licensed/approved to do business in the State of Maryland.

D. The Lessee shall furnish the Lessor a "Certificate of Insurance" with a copy of the additional insured endorsement as verification that coverage is in force. The Lessor reserves the right to require a complete copy of insurance policy at any time.

E. The Lessor shall not be responsible for any damages to the boat or boats while they are docked at the South Ann Street bulkhead or any other property owned by the Lessee and his guests, invitees, employees, or sub-tenants, unless such damage or loss is caused in whole or in part by the negligent act or omission of the Lessor..

12. DAMAGE OR DESTRUCTION:

In the event of a casualty to the bulkhead sufficient to curtail the use by the Lessee, the decision to repair or replace the bulkhead will be within the sole discretion of the Lessor. In the event that the Lessor decides not to repair or replace the said bulkhead this Lease Agreement will automatically terminate following written notice from the Lessor to the Lessee unless Lessee agrees to rebuild, repair or replace the said bulkhead at its own expense in a manner approved by the Lessor and commences said rebuilding, repairs or replacement within a reasonable time.

13. NOTICES:

Any notice or other communication pursuant to this Lease Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or on the third business day after being mailed by United State Registered or Certified Mail, postage paid, the following addresses:

(REPRESENTING LESSOR)
The Comptroller of Baltimore City
City Hall, Room 204
100 North Holliday Street
Baltimore, Maryland 21202
Attn: Harbor Master

(REPRESENTING LESSEE)
S. A. Brown III
949 Fell Street
Baltimore, Maryland 21231

14. PAYMENT BY LESSEE:

All payments of rent or monies required hereunder to be paid by the Lessee to the Lessor shall be made to:

Director of Finance
c/o Harbor Master
City Hall, Room 304
100 N. Holliday Street
Baltimore, Maryland 21202

or to such other person and address that may be designated in writing by the Lessor and written notice thereof given to the Lessee.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed by their duly authorized representatives as of the date first written above.

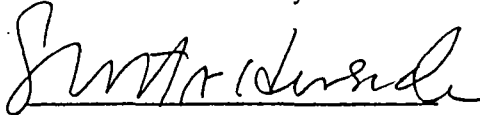
WITNESS/ATTEST:

MAYOR AND CITY COUNCIL
OF BALTIMORE

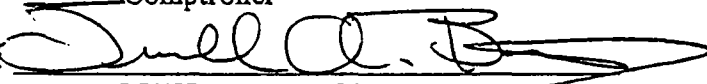
Custodian of the City Seal

BY: _____

Joan M. Pratt, CPA
Comptroller



BY: _____



SEWELL A. BROWN, III

STATE OF MARYLAND
TO WIT;
CITY OF BALTIMORE

I HEREBY CERTIFY THAT ON THIS _____ day of _____, 1998 before me, the Subscriber, A Notary Public of the State of Maryland in and for the City of Baltimore, personally appeared JOAN M. PRATT, Comptroller, and by virtue and in pursuance of the power and authority hereby conferred upon her, acknowledged the afore going Lease Agreement to be the act and deed of the MAYOR AND CITY COUNCIL OF BALTIMORE, and in my presence signed the same.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission expires: _____

STATE OF MARYLAND
TO WIT:
CITY OF BALTIMORE

I HEREBY CERTIFY THAT ON THIS 13th day of October, 1998 before me, the Subscriber, a Notary Public of the State of Maryland in and for the City of Baltimore, personally appeared Sewell A. Brown, III, one of the parties in the afore going Lease Agreement and he acknowledged the agreement to be his act and deed, and in my presence signed the same.

WITNESS my hand and Notarial Seal.

Susan O. Zaretsky
NOTARY PUBLIC

My Commission expires: 12/1/00

EXHIBIT B

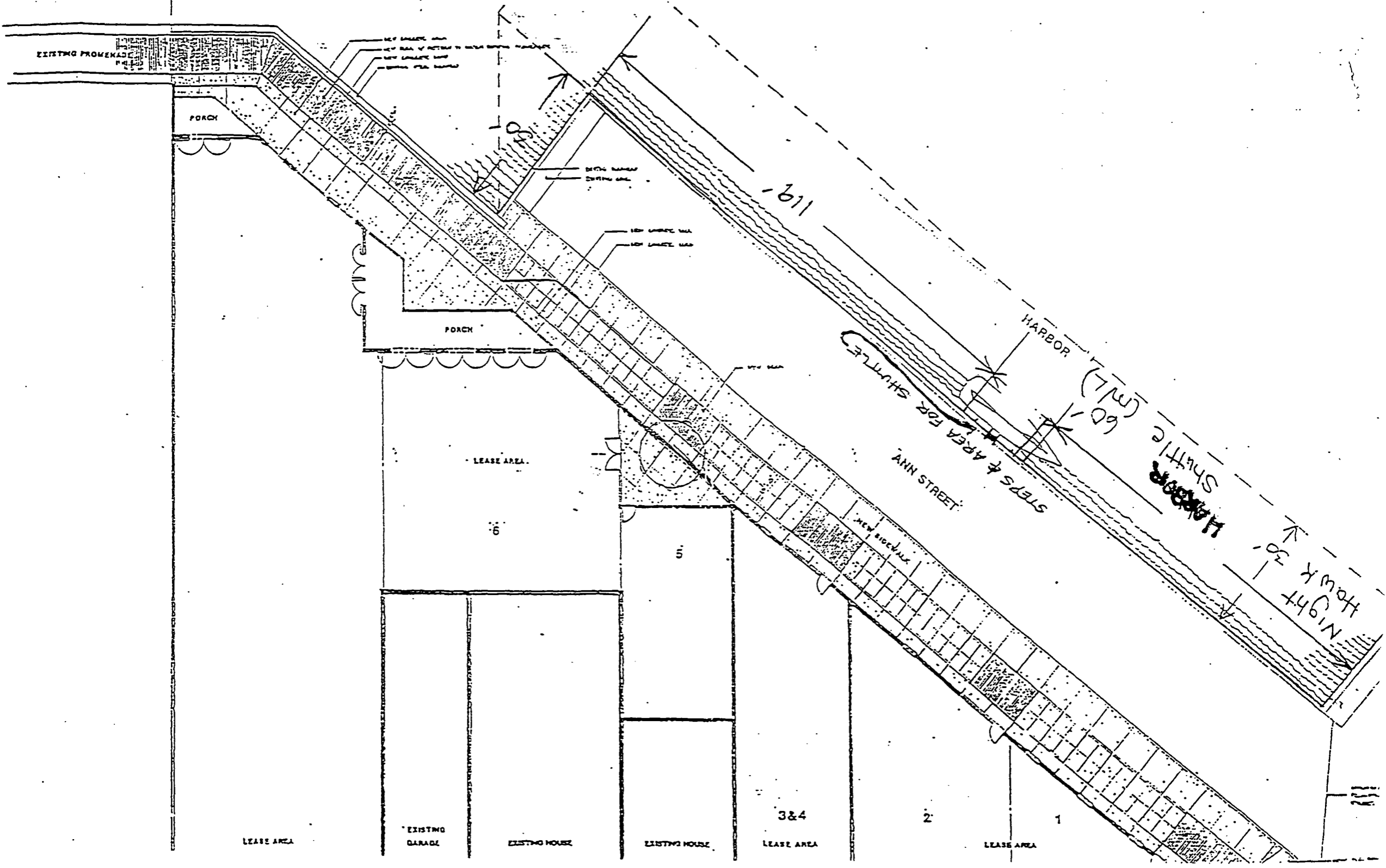
ANN STREET SIDEWALK COSTS
Project Completion: April, 1992

| | | |
|--|-------|--------------------|
| Pattern Sidewalk 226' x 18' = 4,068 sq. ft. @ \$4.05 | = | \$16,475.40 |
| Curb with Gutter 240 L.F. @ \$13.95 | = | \$ 3,348.00 |
| Engineering Costs (Drawings, Permits, etc.) | = | \$ 7,155.00 |
| Fixtures and Lights with Hand Boxes 7 ea. | = | \$ 8,340.04 |
| 1" Conduit and Connectors for Lights | = | \$ 423.50 |
| Forms for Hand Boxes and Lights (Materials & Labor) | = | \$ 808.50 |
| Debris Removal (Old Concrete Walks, etc.) | = | <u>\$ 2,365.00</u> |
| | TOTAL | <u>\$38,915.44</u> |

EXHIBIT C

Lessee shall maintain, institute and enforce the following rules:

1. Lessee shall comply with Ordinance No. 141 adopted by the Mayor and City Council of Baltimore on August 6, 1980, and the following rules and regulations are hereby adopted and promulgated governing activities in waters of the Inner Harbor as described in said Ordinance.
2. Swimming is prohibited.
3. Activities in waters of Fells Point, such as boat races, parades and displays, etc. shall not be permitted without prior written consent of the City or its authorized representative.
4. Repair of vessels is prohibited except for emergency repairs required for safety prior to removal to a repair yard.
5. Unsafe activities at the water's edge are prohibited.
6. There shall be no obstruction of Ann Street. Nothing shall be stored. No part of the street shall be decorated or furnished by Lessee or any sub-Lessee in any manner without the consent of Lessor.
7. All garbage and trash must be placed in appropriate trash bags and deposited in the containers provided in and around the Pier.
8. Nothing shall be done in any side ties, or in, on, or to the street which may structurally change any of the Pier nor shall anything be altered or constructed in or removed from the street except upon the prior written consent of the Lessor.
9. Lessee shall be responsible for installation of any water and electricity to service Pier and side ties at Lessee's expense. Should the Lessee elect to install the aforementioned, all permits must be applied for and granted prior to installation. Any such installation that damages the Pier and bulkhead shall be repaired at Lessee's expense.
10. No noxious or offensive activity shall be carried on in any side tie or in the street, nor shall anything be done therein which may be or become a nuisance to the public. Lessee or sub-Lessee shall keep the volume of any radio, television, or musical instrument in their slip, sufficiently reduced at all times so as not to disturb the adjacent property owners or other boaters.
11. No side tie shall be used for any unlawful purpose, and Lessee shall not permit any unlawful act to be carried out by sub-Lessee.



EXISTING PROMENADE

PORCH

PORCH

LEASE AREA

LEASE AREA

EXISTING GARAGE

EXISTING HOUSE

EXISTING HOUSE

LEASE AREA

LEASE AREA

119

HARBOR

ANN STREET

STEPS & AREA FOR SHUTTLE

Harbor Shuttle (M/L) 60'

NIGHT HAWK 30'

3&4

2

1

5'

6'

NEW BRICK WALL
NEW WALL OF RETAIN TO HOLD DOWN
NEW CONCRETE WALL
NEW CONCRETE WALL

DRIVING BARREL
DRIVING WALL

NEW CONCRETE WALL
NEW CONCRETE WALL

NEW WALL

NEW BRICK WALL