

**PEDESTRIAN PROMENADE  
EASEMENT AGREEMENT**

THIS PEDESTRIAN PROMENADE AGREEMENT (the "Agreement"), is made this day of OCT 16 2002, 2002, by and between EAST HARBOR MARINE CENTER, L.L.C., 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.

WHEREAS the Grantor has agreed to grant to the City a permanent easement to be part of the Baltimore Waterfront Promenade.

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 20 foot (20') wide non-exclusive easement for pedestrian ingress and egress in, over and through the property described as a promenade (including without limitation the Floating Promenade, as described hereinafter), and shown in single and cross hatch sections of Exhibit A for a pedestrian walkway (hereinafter "Easement Area"). The parties entered into an Interim Pedestrian Promenade Easement Agreement dated September 5, 1996 (the "Interim Agreement"), pursuant to which the Grantor constructed the floating portion of the promenade shown on Exhibit A which is currently in use (the "Floating Promenade"). It is the intention of the parties that the Floating Promenade shall be utilized during the term of this Agreement and the land portion of the Easement shown in single hatch on Exhibit A shall be utilized only as provided on Exhibit B hereto. Upon execution of this Agreement by all parties hereto and recordation of same among the Land Records of Baltimore City, this Agreement shall be deemed to supercede and replace the Interim Agreement and the Interim Agreement shall automatically become null and void and of no further force and effect. The City may exercise the easement provided herein 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 granted herein 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. The Easement may not be used as access to the waters of the Baltimore harbor as it lays adjacent to the Grantor's property, except by the Grantor or with the written consent of the Grantor. 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 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.

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 alter or impair the Grantor's rights to use and enjoy the Easement Area (including, but not limited to, the Grantor's right, expressly herein reserved, to install utilities, lighting conduit pole bases, and any other utility related equipment in 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 this 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 the Easement Area, Easement Improvements (as defined hereinafter) 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 has completed the construction of the Easement Area (the "Easement Improvements") to the satisfaction of the City, subject to the provisions of Exhibit B hereto. The Grantor shall retain the right to review and approve all future proposed improvements in the Easement Area, such approval not to be unreasonably withheld for reconstruction of the floating portion of the Easement Area after any damage thereto.

5. 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.

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.

If the Floating Promenade is substantially damaged or destroyed and is not repaired or replaced within a reasonable period after written notice from the City, the Floating Promenade shall be completely replaced by the land portion of the Easement Area shown in single hatch on Exhibit A.

6. Insurance and Indemnification.

The Grantor shall defend, indemnify, and hold harmless the City against and from any liability or claim or liability for bodily injury, death or property damage arising out of the failure of the Grantor in maintaining or repairing the Easement Area or the 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 and 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 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 and unlawful use of the Easement Area during the Easement Hours by any person.

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 15% 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.

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 C.

9. Amendment. Any amendment of this Agreement must be executed in writing and with the same formality as this Agreement and recorded among the Land Records of Baltimore City.

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

EXHIBIT A: Plan of Easement Area with Easement Improvements

SCHEDULE B: Hours of Use and Special Restrictions

SCHEDULE C: Addresses to Whom All Notices Concerning This Agreement Shall Be Sent

WITNESS:

EAST HARBOR MARINE CENTER, L.L.C.

Antoinette Mesaris

By: Selvin Passen, M.D. (SEAL)  
Selvin Passen, M.D.  
Managing Member

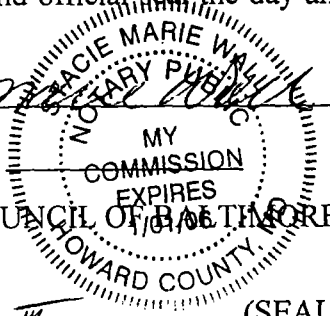
STATE OF MARYLAND )  
CITY OF BALTIMORE )

SS:

I HEREBY CERTIFY that on this 15<sup>th</sup> day of April, 2002, before me, a Notary Public of the State of Maryland, personally appeared Selvin Passen, M.D. who acknowledged himself to be the Managing Member of East Harbor Marine Center, L.L.C., and that he as such being authorized to do so, executed the foregoing Agreement for the purposes contained on behalf of the Corporation.

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

Marie Marie W...  
Notary Public  
My Commission Expires: \_\_\_\_\_



MAYOR AND CITY COUNCIL OF BALTIMORE

By: De Long (SEAL)

Title: First Deputy Commissioner  
(DHCD)

ATTEST:

Michael Green  
Custodian of the City Seal

Approved by the Board of Estimates:

Bence Day OCT 18 2002  
Secretary Date  
CLERK

Approved for form and legal sufficiency:

Richard E. Kagan 7/26/02  
Principal Counsel Date

STATE OF MARYLAND )  
CITY OF BALTIMORE )

SS:

I HEREBY CERTIFY that on this 1<sup>st</sup> day of October, 2002, before me, a Notary Public of the State of Maryland, personally appeared Paul T. Graziano, Commissioner of Department of Housing and Community Development, who signed the foregoing Agreement in my presence and acknowledged it to be the act of the Mayor and City Council of Baltimore.

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

Luca Blake  
Notary Public  
My Commission Expires: 4/12/03

EXHIBIT A

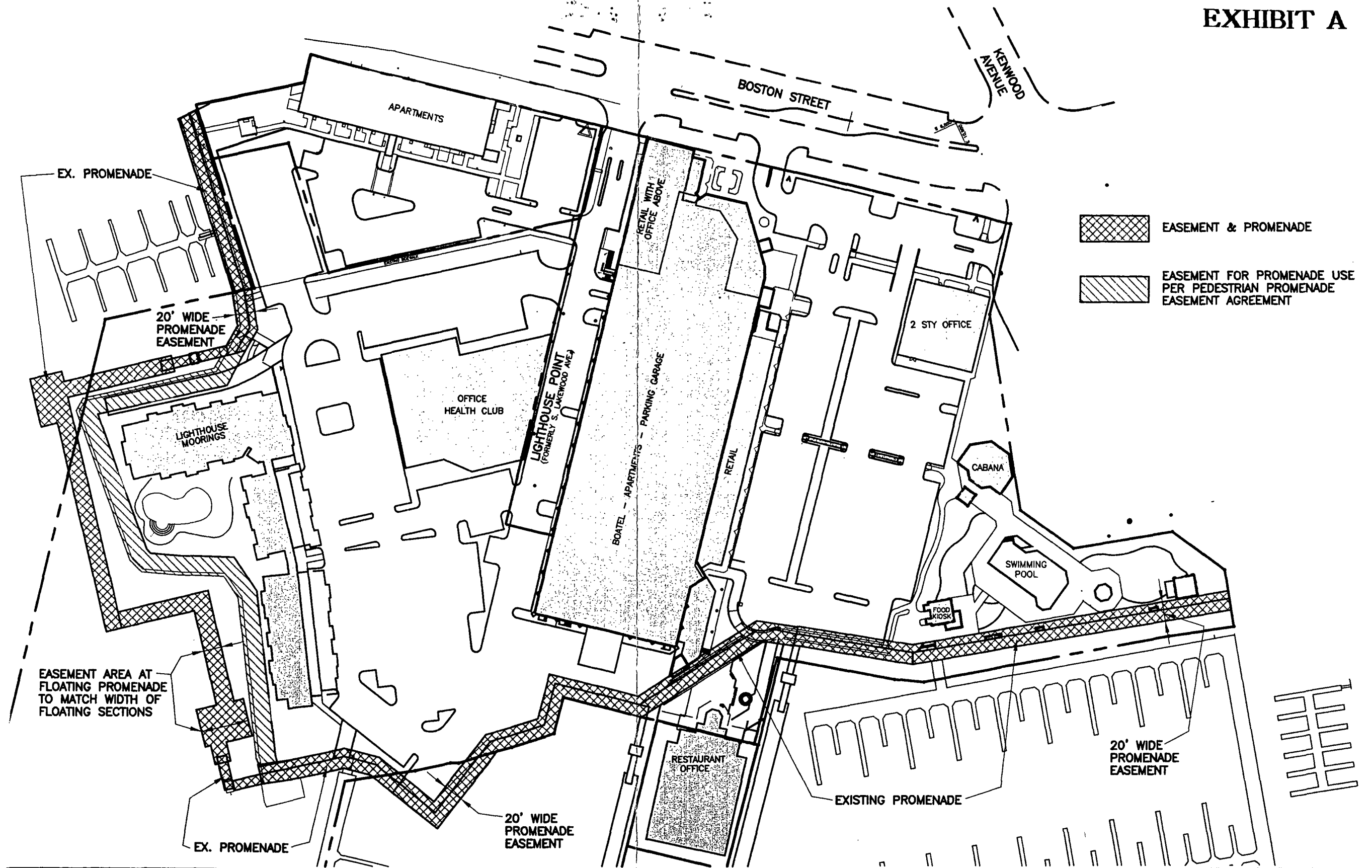
TO

PEDESTRIAN PROMENADE  
EASEMENT AGREEMENT  
BY AND BETWEEN  
EAST HARBOR MARINE CENTER, L.L.C.

AND

THE MAYOR AND CITY COUNCIL OF BALTIMORE

*(SEE ATTACHED PLAT)*



PROMENADE EASEMENT PLAN

Lighthouse Point

PSON INC.  
- SITE PLANNING

429 E. Lake Avenue  
Baltimore, Maryland 21212  
Phone 410-532-0101  
Fax 410-532-0104

SCALE: 1" = 100'  
APRIL 11, 2002

2600-2800 Boston Street  
Baltimore, Maryland

EXHIBIT B

TO

PEDESTRIAN PROMENADE  
EASEMENT AGREEMENT  
BY AND BETWEEN  
EAST HARBOR MARINE CENTER, L.L.C.

AND

THE MAYOR AND CITY COUNCIL OF BALTIMORE

For the cross-hatched areas shown on Exhibit A attached hereto: twenty-four hours a day, seven days a week, subject to approximately twenty minute intervals of exclusive use by the Grantor for boat, vehicular and pedestrian access to and from the Grantor's property and the Baltimore harbor between the areas on Exhibit A identified as "Restaurant Office" and the single-hatched area shown thereon closest thereto.

For the single-hatched areas shown on Exhibit A attached hereto: dawn to dusk, seven days a week.

Any temporary closing of the Easement Area, or portions of the Easement Area, for special events requires notification to the City at least one week prior to closure. Each such temporary closing shall be limited to no more than three (3) consecutive days.

EXHIBIT C

TO

PEDESTRIAN PROMENADE  
EASEMENT AGREEMENT  
BY AND BETWEEN  
EAST HARBOR MARINE CENTER, L.L.C.

AND

THE MAYOR AND CITY COUNCIL OF BALTIMORE

PARTIES TO WHOM ALL NOTICES SHALL BE SENT

1. Selvin Passen, M.D.  
East Harbor Marine Center, L.L.C.  
Suite 626, 2700 Lighthouse Point East  
Baltimore, Maryland 21224
2. Leslie S. Ries  
Rosenberg Proutt Funk & Greenberg, LLP  
2115 Allfirst Building  
25 South Charles Street  
Baltimore, Maryland 21201
3. Charles C. Graves, III  
Baltimore City Department of Planning  
417 East Fayette Street, 8<sup>th</sup> Floor  
Baltimore, Maryland 21202
4. Robert M. Quilter  
Department of Planning  
417 E. Fayette Street, 8<sup>th</sup> Floor  
Baltimore, Maryland 21202
5. Thurman W. Zollicoffer, Jr.  
City Solicitor  
Baltimore City Law Department  
City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21201