

Murphy, Brad

From: Fred Mohs [fred@mmwp-law.com]
Sent: Monday, December 06, 2010 4:19 PM
To: Schumacher, Michael; Cnare, Lauren; Kerr, Julia; Nan Fey; erics@cow.s.org; jolson@operationfreshstart.org; michael.heifetz@deancare.com; jabowser@facstaff.wisc.edu; mabasford@charter.net; timothy_gruber@yahoo.com; avandrzejews@wisc.edu
Cc: Murphy, Brad; Mayor; mverveer@yahoo.com; Maniaci, Bridget; Capitol Neighborhoods - Executive Committee
Subject: Public Access Management Agreement with Edgewater

Existing Conditions

In the long tortured process that our City has endured involving the Edgewater, a recurring subject has been the subject of the nature of the conditions and responsibilities that would be attached to the public spaces. The current Edgewater is a quiet, albeit an uninspired, property. It does not call attention to itself, particularly on winter evenings a necklace of light from the distant shore is a reminder that there is a big lake out there. Automobiles come and go almost without notice. The most damaging effect of the current Edgewater has to do with sound. Busses with traveling roadshows or bands park in the Edgewater's driveway or on Wisconsin Avenue with their engines running for up to 24-hours. Delivery trucks, usually semis, come and go during the early morning hours with their back-up beepers audible throughout the neighborhood as their drivers try to negotiate the difficult access. Finally, the most recently installed air-conditioning compressor is sadly audible throughout the neighborhood. Things could be worse. From the point of view of the Mansion Hill Historic District and the residential neighborhood that needs to be a success if the Historic District is to succeed, the following subjects come to mind.

Lighting.

There is nothing in the Use Agreement that requires lighting that will contribute to the residential neighborhood, particularly Two Langdon Street, one of the original fuller mansion which is immediately next door to what will become the driveway for the new hotel. Gene Devitt, Chairman of the Mansion Hill Historic District, will speak for the Korb family who owns the property. The residents of Two Langdon, and also the Kennedy Manor at One Langdon, will be affected by any unwelcomed sound coming from the hotel. We assume that the City will require heating and ventilating equipment that will not produce any audible sound, but up to this point, our concerns about the use of the public space have been deferred pending creation of this document. On summer nights, the Union Terrace sometimes has a band concert that can be clearly heard up on Wisconsin Avenue. Would such a band be prohibited? We hope so, but there is nothing in this document that would regulate sound coming from the hotel.

The properties at the head of Wisconsin Avenue have an unwritten, but highly successful pact between them that provides that residents do not play music that can be heard outside of their own premises. You can walk by those properties, including the Edgewater at any time and rarely will you hear any music emanating from the Edgewater or individual apartments. Will the public space continue this pattern or will it usher in a new and destructive era? This document should answer that question.

Lakeview.

Another subject that was left for incorporation in this document is the extent to which the view of Lake Mendota from the intersection of Langdon Street and Wisconsin Avenue could be interrupted either by tree plantings or other structures such as banners, flags, or tents. The neighborhood had suggested a site line running generally from the corner of Langdon and Wisconsin toward the lake at the edge of the public space which would be the line over which nothing should be planted or built. This would leave plenty of space for plantings and also could accommodate a tent if the tent was located on the part of the public area away from the lake. The public should be assured that the view that they have contributed will be there for posterity. We should not have to trust to luck.

Lighting

At the initial meeting between the neighborhood and Bob Dunn, Bob Dunn promised that there would be no exterior lighting on the building. The final plan approved by the City Council incorporated lighting. That subject will be further examined by the UDC as to the extent of the lighting. However, at this point, there is significant lighting planned to be installed over the entire hotel. Needless to say, this is exactly what should not exist in a historic district. If built, this hotel will be famous or infamous on its own and will certainly be easily identifiable because it will be by far the tallest building along Lake Mendota. The Edgewater, if built, will not have to duke it out for attention like hotels on the Las Vegas Strip.

The lighting of the hotel and the public areas are important because they directly affect the neighbors at Two Langdon Street who now look out onto an environment that is basically quiet and fairly dimly lit. Real care should be taken to be sure that lighting is subdued and respects the residential neighborhood.

Long-term Enforceability.

This document will need to be enforced over a long period of time and it would be foolish to assume that all of the owners will be highly responsible and cooperative. Just like the current owners, they may seek to escape the requirements of the proposed document. Remember, the current hotel is approximately nine feet higher than the hotel that was approved. The City did nothing. All of this means nothing if it is unenforceable, or if there is not the will to enforce it.

Under the "Maintenance" section it states that "Manager shall be solely responsible for ensuring the Public Access Components are maintained on a continuous basis." It goes on to recite areas that should be maintained. Now look at the maps and the extensive plantings that are provided. What would happen if some of the trees start to die and they just are not replaced? Does this document contain anything that could require the City to force the owner to replant? We do not have to look too far from the Edgewater to discern that there are owners who have little interest in reinvesting in their properties or maintaining them.

As a suggestion, the City Attorney might look at how private companies, who are contracting for maintenance define and detail what the responsibilities will be. Ideally, the City would reserve the power to come in and do the job themselves if the property owner wasn't willing or able to perform. The bottom line is that the public should not have to endure years of a rundown street end on Wisconsin Avenue because of a financial or attitude deficiency on the part of a current owner.

Conclusion

All of the subjects that have been raised in this document have been the subject of testimony before your commission and other city committees, but somehow or other they have not become a part of

this document. Additionally, the kind of sit-down discussion that should have taken place about this document has not happened. The result is document that does not deliver to the public what the public has been promised. It has provided for the reservation of some rights, but contains nothing about obligations that are in any way enforceable and can assure the public that there will be delivery in those areas. The final suggested provision provides for an unlimited term for this agreement unless "terminated due to an uncured material default." What is a "default?" This document has not been drafted with an eye toward actually enforcing it. Unfortunately, if this document is not strengthened we can confidently predict that the public will be powerless and disappointed. There is no reason that this agreement cannot work for the owner and still produce effective, enforceable protections for the public. It needs more work.

Sincerely,
Frederic E. Mohs
Mohs, MacDonald, Widder & Paradise
20 North Carroll Street
Madison, WI 53703
Phone: (608)256-1978
Fax: (608)257-1106

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3. Notice of Debt Collection, if applicable. If this transmission contains any information on any non-business debt alleged to be owed to any client of Mohs, MacDonald, Widder & Paradise, then you are also hereby notified that Mohs, MacDonald, Widder & Paradise is a debt collector, who is attempting to collect a debt. Information obtained will be used for that purpose. Also, if you have previously received a Discharge in Bankruptcy, this communication should not be construed as an attempt to collect a debt.

Murphy, Brad

From: Tim Gruber [timothy_gruber@yahoo.com]
Sent: Monday, December 06, 2010 2:33 PM
To: Murphy, Brad
Subject: Fw: Edgewater public access management agreement

Brad:
This is for "communications" on the agenda. The question of proper notice may come up.
Tim

----- Forwarded Message -----

From: Joanne Brown <jebrown49@yahoo.com>
To: district18@cityofmadison.com; district3@cityofmadison.com; district13@cityofmadison.com; nef@nanfey.net; erics@cows.org; jolson@operationfreshstart.org; michael.heifetz@deancare.com; jabowser@facstaff.wisc.edu; mabasford@charter.net; timothy_gruber@yahoo.com; avandrzejewski@wisc.edu
Sent: Mon, December 6, 2010 1:25:29 PM
Subject: Edgewater public access management agreement

Dear Commissioners,

On your original agenda for this afternoon was the Edgewater public access management agreement. I understand that an amended agenda was posted last Friday, per ordinance notice requirements, which included the following:

5. 20664 Authorizing the Mayor and City Clerk to execute a Public Access Management Agreement with Edgewater Hotel Company LLC to govern the use, access, maintenance, operation and management of certain components of the proposed expansion of the Edgewater Hotel

Agenda Amendment #2: This matter should be referred to an upcoming Plan Commission meeting at the request of Ald. Maniaci, 2nd District. The first amended agenda was incorrect.

It's my understanding that there is now a possibility that this item may indeed come up to the Plan Commission, even though the published notice of the meeting states that the matter will be referred to another meeting. It is also my understanding that new documents, not yet available to the public, will be transmitted to the Plan Commission for decision tonight.

Should either of these events transpire, I urge you, Commissioners, to refuse to take up the matter of the public access agreement because it has not been properly noticed for the public and because all the documents have not been made available in a timely fashion. Madison must remain committed to open government, not a government where decisions are made without proper notice or authority.

Thank you.

Joanne Brown

Joanne Brown
1932 West Lawn Ave.
Madison, WI 53711

Murphy, Brad

From: Tim Gruber [timothy_gruber@yahoo.com]
Sent: Monday, December 06, 2010 2:35 PM
To: Murphy, Brad
Subject: Fw: Agenda Item for tonight

Another communication...

----- Forwarded Message -----

From: Katherine Rankin <kitty.rankin@gmail.com>
To: district18@cityofmadison.com; district3@cityofmadison.com; district13@cityofmadison.com; nef@nanfey.net; erics@cows.org; jolson@operationfreshstart.org; michael.heifetz@deancare.com; jabowser@facstaff.wisc.edu; mabasford@charter.net; timothy_gruber@yahoo.com; Aavandrzejews@wisc.edu
Sent: Mon, December 6, 2010 1:06:37 PM
Subject: Agenda Item for tonight

Hi,

I am writing to you about an item you have on the agenda, which is listed as "should be referred." I have no opinion on this issue. I do have an opinion, however, about discussing an item that has been listed in the agenda for referral. It begs credibility to take an item that the public has been told won't be discussed and then discuss it anyway. This is not good government. Please take it up at a later meeting.

Kitty Rankin

--
Katherine Rankin
Preservation Consultant
2818 Ridge Road
Madison WI 53705
608-231-1618

EXHIBIT B-1

PUBLIC ACCESS COMPONENTS

Public Access Components to be included on the upper terrace and pedestrian pathways to the waterfront.

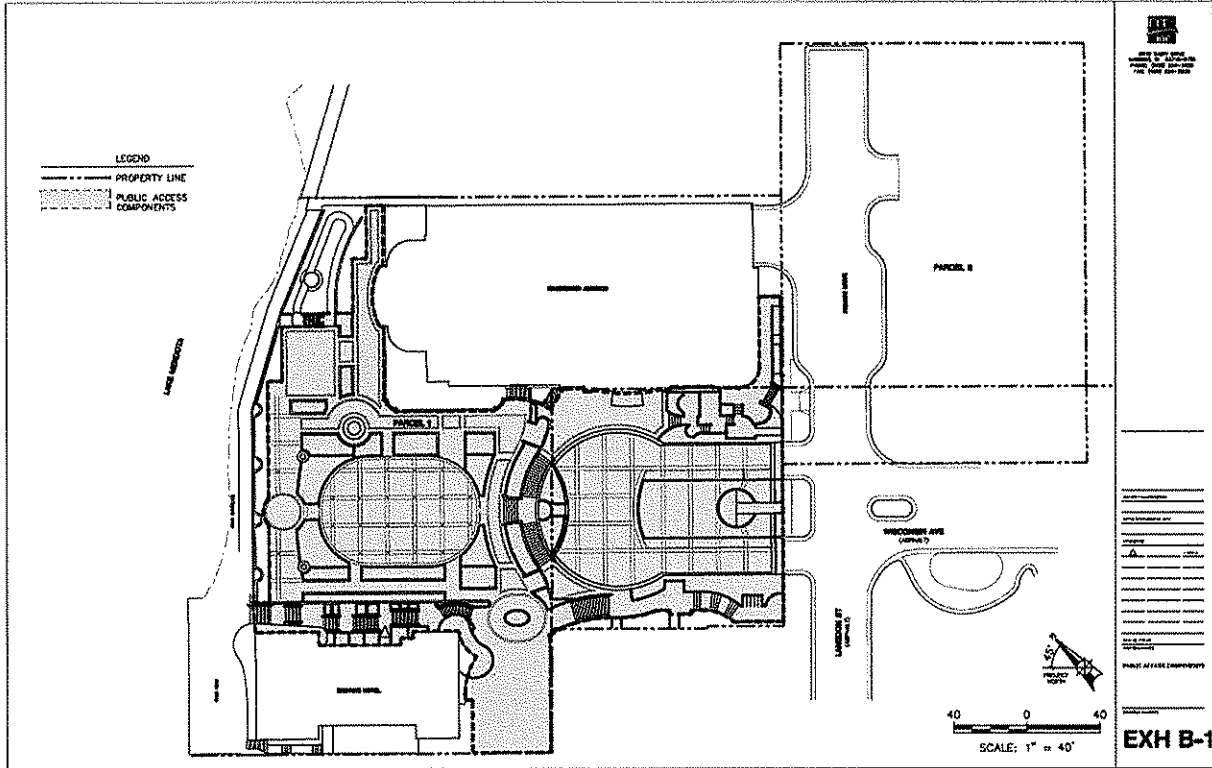


EXHIBIT B-2

PUBLIC ACCESS COMPONENTS

Public Access Components to be included along the waterfront.

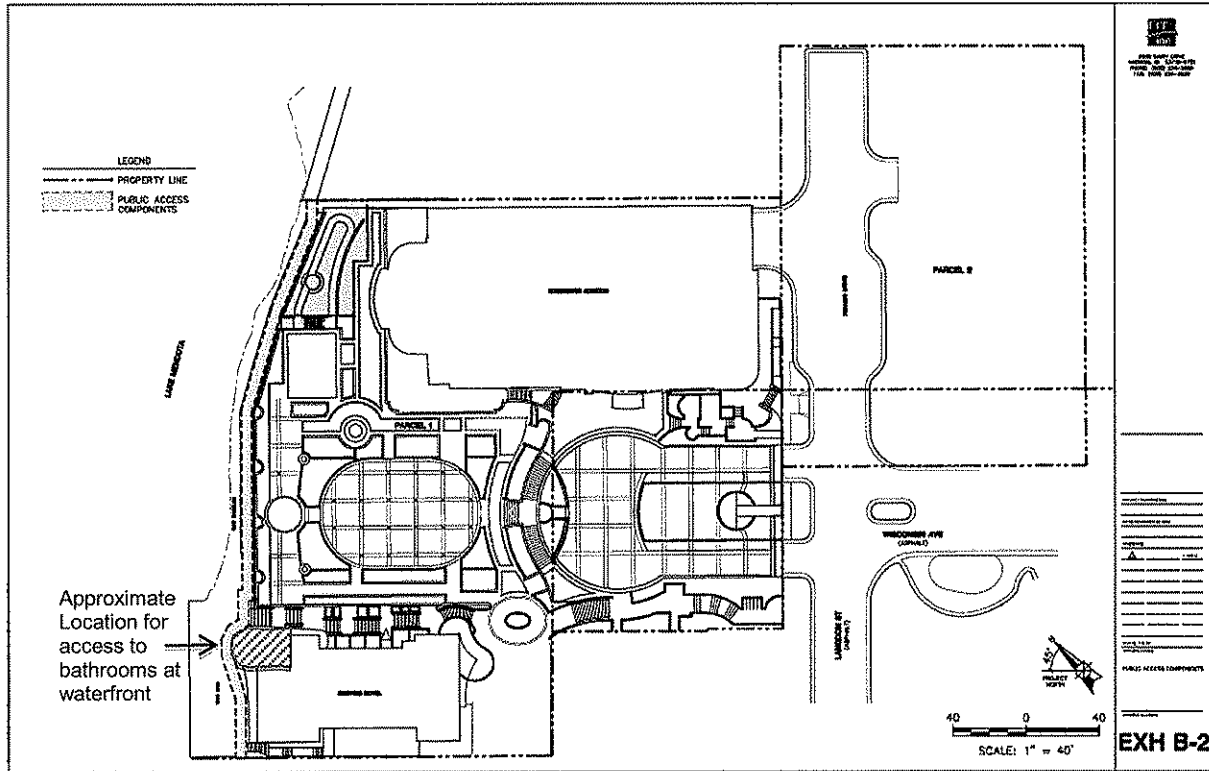


EXHIBIT B-3

ADA ACCESS

ADA Access shall be provided in accordance with the ADA Access Easement. The ADA compliant access route is depicted on the following diagrams.

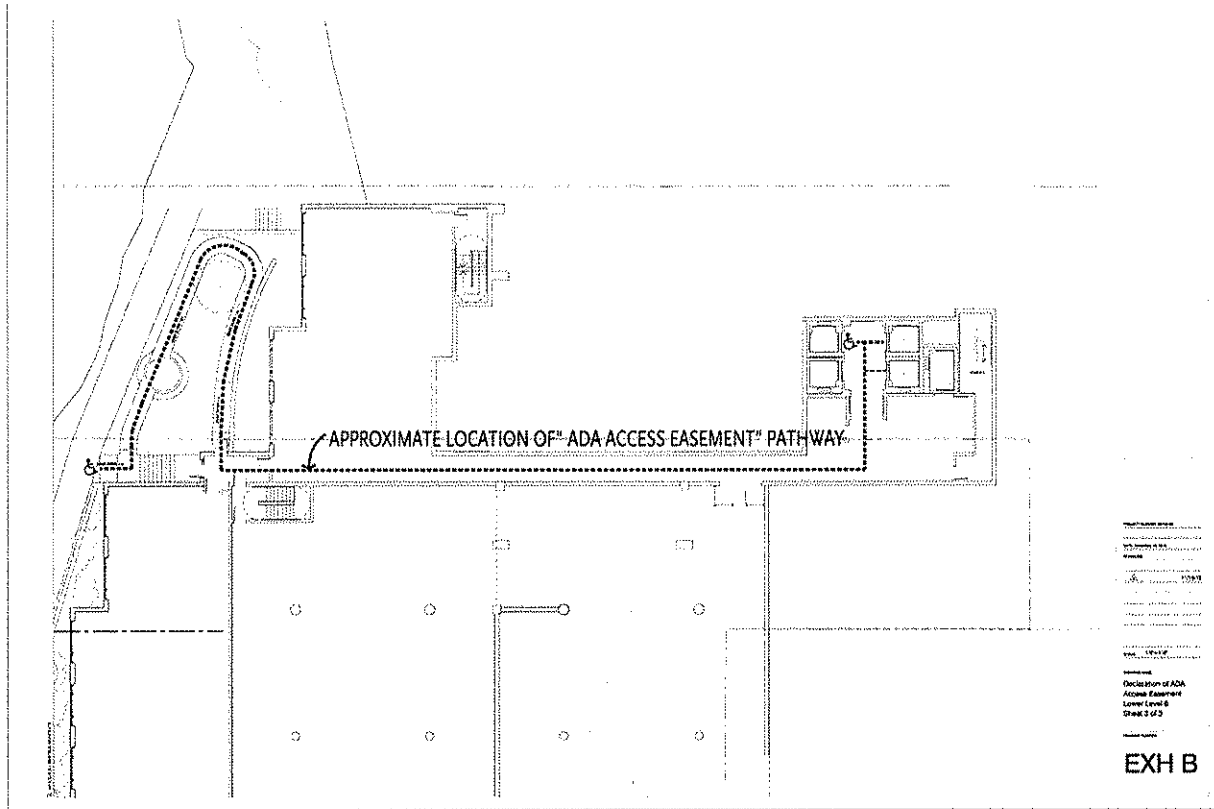


EXHIBIT B-3

ADA ACCESS (Cont.)

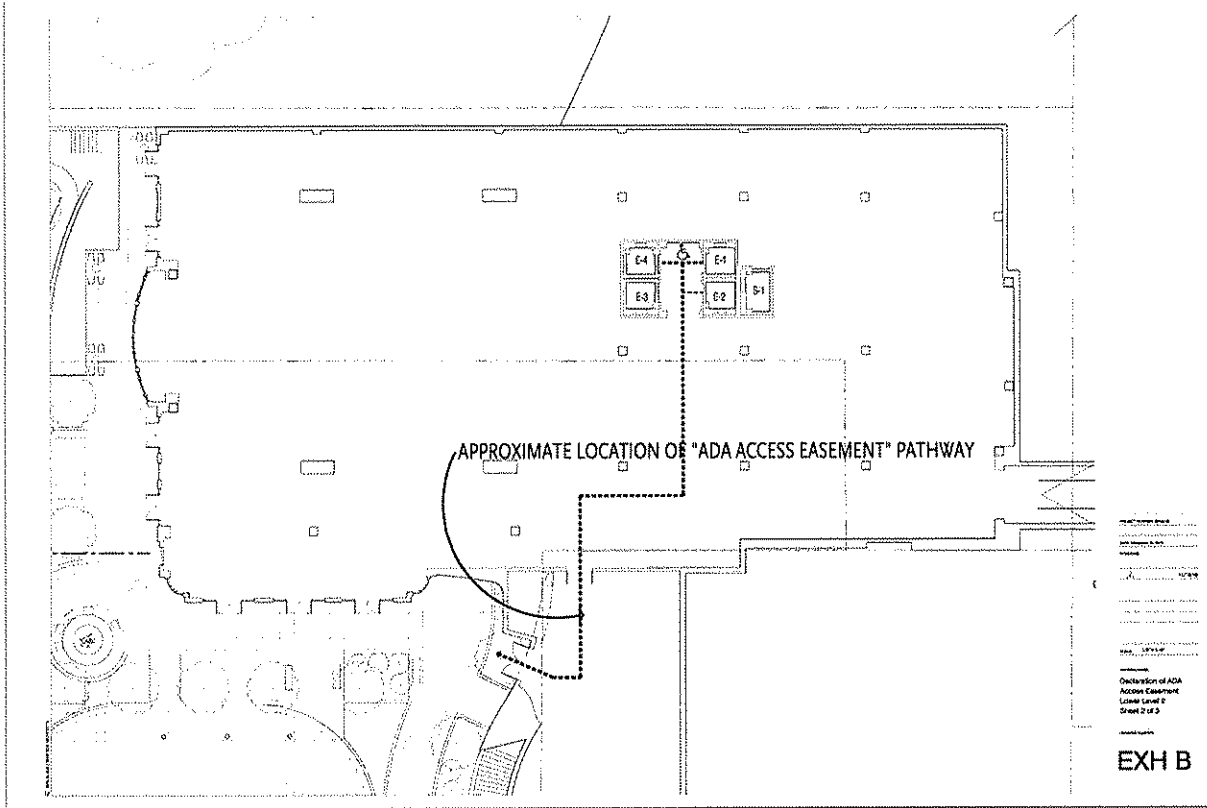


EXHIBIT B-3

ADA ACCESS (Cont.)

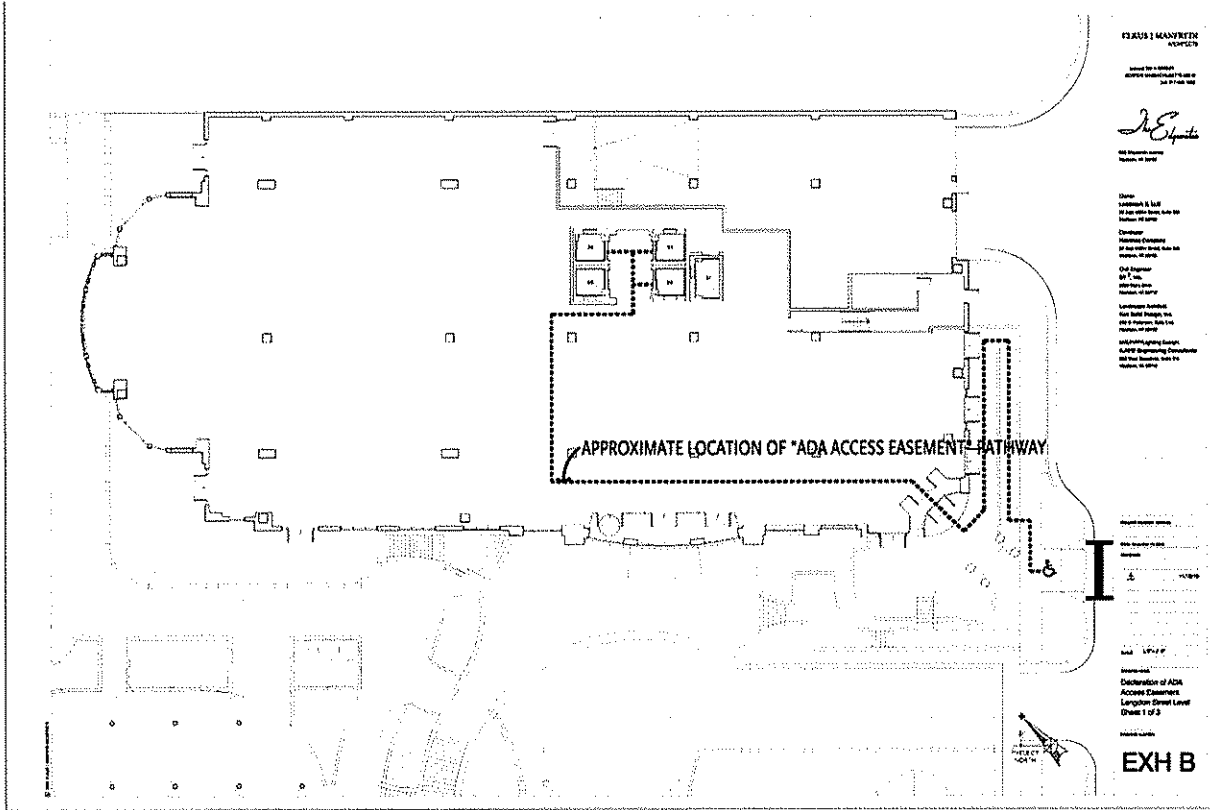


EXHIBIT C

CITY SITE

[Insert legal description from BT2]

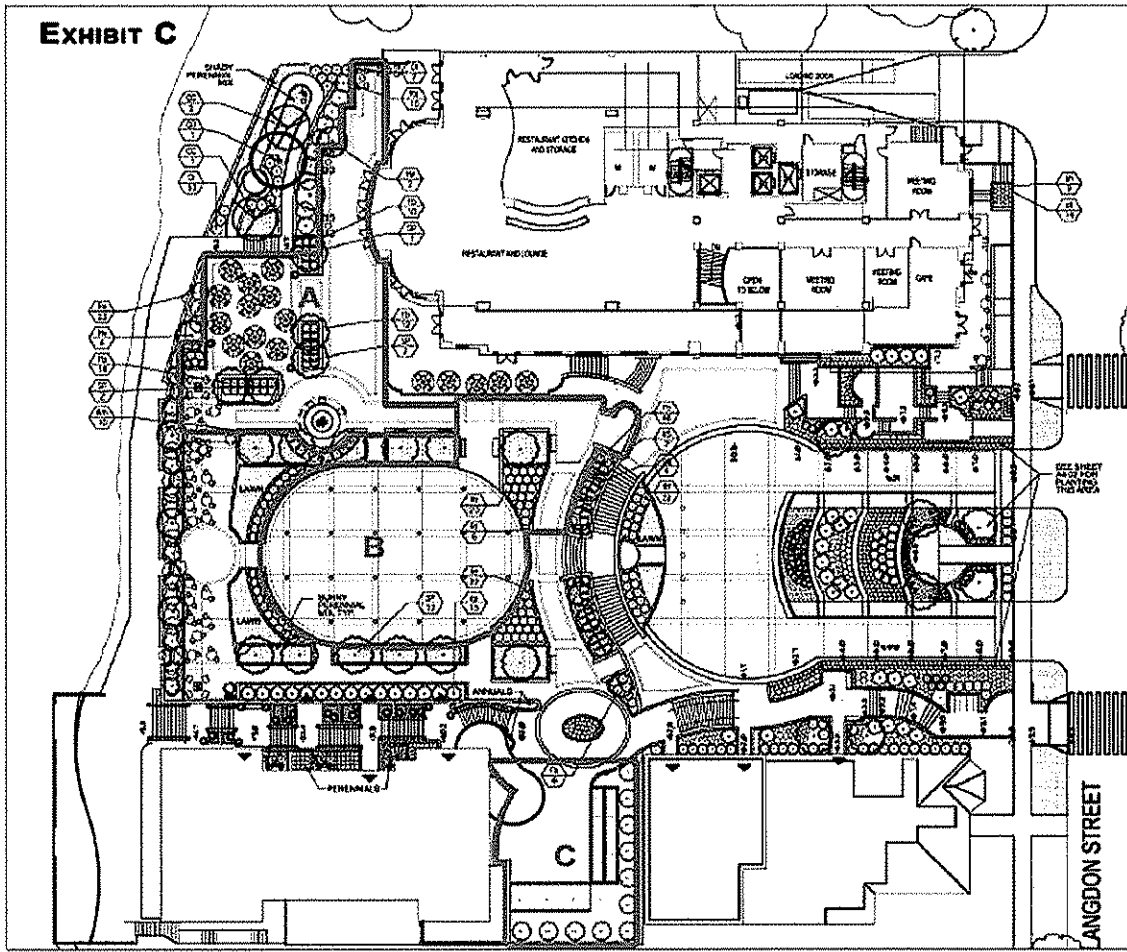
OUT

DRAFT

EXHIBIT ~~D~~ C

GENERAL EVENTS AREAS

The following attachment describes three areas (areas "A", "B", and "C") on which General Events can be held in accordance with the terms and conditions of this Agreement.



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[Exhibit D]