

**TERM SHEET**  
**PUBLIC ACCESS MANAGEMENT AGREEMENT**  
**May 12, 2010**

The purpose of this term sheet (“Term Sheet”) is to outline the principal terms and conditions of a management agreement (the “Management Agreement”) to be established by and between the City of Madison, a Wisconsin municipal corporation located in Dane County, Wisconsin (“City”) and Landmark X, LLC, a Wisconsin based limited liability corporation, or its assigns (“Owner” or “Developer”) for the access, use, management, operation and maintenance of the Public Access Components of the Project as defined herein. The terms incorporated into the Management Agreement will include:

**THE PROJECT:** The Owner is proposing to redevelop the property located at 666 Wisconsin Avenue in Madison, Wisconsin which includes the renovation and expansion of the existing hotel to include not less than 180 hotel rooms; 2 levels of condominiums and/or additional hotel rooms, restaurants, ballrooms, meetings space, spa and fitness facilities, administrative offices, parking and/or other uses which will be approved as part of the Planned Unit Development (“PUD”) for the Project.

As part of the proposed redevelopment the Owner desires to create publicly accessible and improved spaces along the Lake Mendota waterfront that will serve as an amenity to Madison residents and visitors. The proposed improvements include outdoor terraces along the Lake Mendota shoreline, improved access and amenities to the shoreline, improved pedestrian pathways at the waterfront and increase ADA accessibility to the waterfront. The specific components that will be included as part of the public access components (the “Public Access Components”) of the Project are defined in more detail in this Term Sheet.

The proposed improvements provide significant enhancements to the public access, open space and amenities that are provided to the site and which correspond to those requirements that were outlined and approved by the City of Madison under the 1965 Street Vacation Ordinance and subsequent amendments thereto.

**TERM:** The term (“Term”) shall be in effect until terminated by mutual consent of the parties.

**SITE DESCRIPTION:** The Public Access Components (as defined herein) will be subject to the terms and conditions of the Management Agreement and will be constructed, maintained and operated on two separate sites (collectively the “Site”), which are defined herein and include:

1. The hotel site (the “Hotel Site”) includes approximately 1.52 acres of land which will be privately held by the Owner and on which a portion of the Public Access Components will be constructed. The parcels that make up the Hotel Site are further depicted on the attached Exhibit A to this Term

Sheet.

2. The City site (the "City Site") includes approximately .38 acres of land which serves as a portion of the Wisconsin Avenue right-of-way and which shall be incorporated into the Project under a separate agreement between the City and the Developer. The parcel that makes up the City Site is further depicted on the attached Exhibit A to this Term Sheet.

**PUBLIC ACCESS  
COMPONENTS:**

The Public Access Components are defined as outdoor improvements on the Hotel Site and the City Site as outlined in this Section and which are further described in Exhibit B1 and Exhibit B2 attached hereto and as approved in the PUD for the Project. For the purpose of the Management Agreement the Public Access Components shall include, but not be limited to, outdoor terraces as highlighted in Exhibit B1, public restrooms off the terrace and at the waterfront, the stairway to the water, and the improvements along the pathway adjacent to the waterfront, including the green space in front of the new podium building. Also included as part of the Public Access Components is a perpetual easement for the use of an ADA compliant access route through the building to improvements on the terraces and waterfront.

Outdoor areas which are specifically excluded from the Public Access Components are those areas which are dedicated to the use and operation of the hotel, restaurants or other components of the Project, including, but not limited to, the dining terraces serving the restaurant spaces, and; the outdoor balconies and terraces attached to, or adjacent to the hotel rooms, guest suites and condominiums, and; the roof terraces serving the property. These areas shall be further described as an Exhibit of the Management Agreement.

**PUBLIC ACCESS  
AND USE:**

Public access shall be maintained on the Public Access Components during the Hours of Operation subject to the Events provisions outlined herein. The public shall have the right to use the Public Access Components for any lawful purpose during the Hours of Operation except that such use may not be disruptive to the on-going operations of the hotel, restaurants, other businesses or Events associated with, or held at, the Project.

Furthermore, the Public Access Components shall be operated and maintained in an orderly manner that is consistent with the standards of operation for the Hotel property on the Site.

The public is specifically granted the right to bring food and beverages for their own consumption to the Public Access Components subject to the provisions of the Management Agreement. The transport and consumption of food and beverages shall be limited to reasonable personal use. Notwithstanding the foregoing, the use of grills, steamers, coolers, vending equipment or similar apparatus are specifically restricted on the Public Access Components. In no event shall the public be allowed to bring alcoholic beverages to the Site. Furthermore, the Public Access Components on the Hotel Site shall be designated as non-smoking areas.

**HOURS OF OPERATION:**

The Public Access Components shall be open to the public from 7:00 am to 11:00 pm, 365 days per year (the "Hours of Operation"). The Owner shall provide continuous access to the Public Access Components during the Hours of Operation.

**HOTEL OPERATOR:**

The hotel operator ("Hotel Operator") shall be a subsidiary or assignee of Landmark X, LLC or its assigns that is responsible for the management and operation of the Hotel, restaurants, food and beverage operations, catering and events coordination at the Project. The Hotel Operator shall be responsible for overseeing the day-to-day operations, daily cleaning and the on-going security for the Public Access Components.

**EVENTS:**

The Hotel Operator shall have the exclusive right to organize, host and cater public and/or private events ("Events") on the Public Access Components provided that the following conditions are maintained at all times:

**General Events:**

General events ("General Events") shall be defined as Events that may occur on a year-around basis under the terms and conditions below:

- General Events shall occur in the areas designated on the attached **Exhibit C** (the "General Events Areas") The Owner shall maintain access to all other Public Access Components for the use and enjoyment of the general public at all times subject to the Special Events provisions outlined herein;
- General Events in the Public Access Components shall be limited to the hours between 8:00 am and 11:00 pm;
- Temporary structures, furniture and fixtures such as tents, tables/chairs, kiosks, etc. shall be allowed to be constructed and/or placed in the General Events Areas by the Hotel Operator or Events Promoter to support events provided that such structures shall be constructed and removed in a timely manner so as to minimize the disruption to public access and public use of the space(s) during non-Event periods.

**Special Events:**

The Owner shall have the right to close and/or secure the Public Access Components for special events ("Special Events") which may occur from time-to-time in the Public Access Components and which require the Hotel Operator to monitor the occupancy and/or provide additional services and/or management of the Public Access Components while said event is occurring. Special Events may occur in the Public Access Components under the following conditions:

- Special Events shall not occur more than fifteen (15) days per year.

- Special Events in the Public Access Components shall be limited to the hours between 8:00 am and 11:00 pm;
- Temporary structures, furniture and fixtures such as tents, tables/chairs, kiosks, etc. shall be allowed to be constructed and/or placed on the Hotel Site by the Hotel Operator or Events promoter to support events provided that such structures shall be constructed and removed in a timely manner so as to minimize the disruption to public access and public use of the space(s) during non-Event periods.

**Community Events:**

The Hotel Operator will agree to reserve space within the General Events Areas for not less than eight (8) events per year for community, non-profit and/or community-based organizations (the “Community Events”). At least five (5) of these days will be during the months of April – September and all dates shall be on a schedule to be determined by the Hotel Operator. If necessary, rain dates will be scheduled based on the availability of the General Events Areas. The Hotel Operator will not charge rental rates for the General Events Areas during these events.

**ACTIVITIES IN THE PUBLIC ACCESS COMPONENTS:**

The Hotel Operator shall have the right to plan, operate and promote activities (“Activities”) on the Public Access Components which shall be accessible to the general public during the hours of operation in accordance with the terms and conditions of the Management Agreement and Madison General Ordinances.

**SALE OF GOODS AND SERVICES:**

The Hotel Operator, or its assigns, shall have the exclusive right to sell goods and/or services on the Site including the exclusive right to cater Events or service the Public Access Components on the Site. No solicitation or commercial photography or similar services shall be allowed on the Site without permission of the Hotel Operator.

If the Hotel Operator, or its assigns, intends to sell goods and/or services on the City Site the Hotel Operator shall be subject to the permit and other regulations included in Section 9.13 of the Madison General Ordinances governing the sale of goods and services in Streets, Sidewalks, Alleys and Gutters.

**OUTDOOR SEATING AREAS:**

The Owner shall provide outdoor seating in the Public Access Components which shall include, at a minimum, tables, chairs, benches and other seating areas as are shown on the approved Landscape Plan in the PUD for the Project.

**MAINTENANCE:**

The Owner shall be responsible for the on-going maintenance of the space under the terms and conditions of the Management Agreement. The standards for maintenance shall be further defined in the terms and conditions of the Management Agreement and shall include provisions for:

- Irrigation and Landscaping Requirement;
- Hardscape Maintenance;
- Snow and Ice Removal;

- Debris and Litter Removal;
- Drainage Clean Up, Repair and Maintenance;
- Repair of Damaged Property.

**SECURITY:**

Hotel Operator shall have the right to close and secure the Public Access Components between the hours of 11:00 pm and 7:00 am. Notwithstanding the foregoing, the Hotel Operator shall maintain a reasonable pathway for person(s) to enter and exit the Project or any components thereof (e.g. guest rooms, restaurants, spa, banquet facilities, et al.) at all times either through the Project or through the Public Access Components.

At any time, the Hotel Operator shall have the right to ask any person(s) to leave said Public Access Components if that person(s) is in violation of the provisions outlined in the Management Agreement, is negatively impacting the protection, use and enjoyment of visitors to the Public Access Components and/or Project, and/or; is in violation of the rules and regulations of the Madison General Ordinances.

**EXHIBIT A**  
**SITE DESCRIPTION**

For the purpose of the Management Agreement that Hotel Site and City Site are described on the attached boundary map with legal description.

**PARCEL DESCRIPTION – HOTEL SITE:**

**PARCEL 1:**

All that part of Lot Five (5), lying Northwest of the Southeast 126 feet thereof, in Block Seventy-eight (78), Madison, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin.

**PARCEL 2:**

All of that portion of vacated Wisconsin Avenue, in the City of Madison. Dane County. Wisconsin, lying Northwesterly of a line parallel to the Northwesterly line of Langdon Street extended Northeasterly and 126 feet Northwesterly from such extended line of Langdon Street.

**PARCEL 3:**

Part of Block Two Hundred Sixty-three (263), Madison, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin, described as follows: Beginning at the most southerly corner of Block 94, said point being the point of intersection of the Northwest line of East Gilman Street with the Northeast line of Wisconsin Avenue; thence Northwesterly along said Northeasterly line of Wisconsin Avenue 383.6 feet to the point of beginning of this description; thence Northeasterly at right angles to last described line 45.0 feet; thence Northwesterly parallel with the Northeast line of Wisconsin Avenue (now vacated) 186.4 feet to an iron stake, on a meander line, which is 36.0 feet more or less Southeasterly from the low water mark of Lake Mendota; thence Southwesterly along said meander line 45.0 feet to an iron stake on the Northeast line of Wisconsin Avenue which is 48.6 feet Southeasterly from the low water mark of Lake Mendota and also 186.4 feet Northwesterly from the point of beginning; thence Southeasterly along said line 186.4 feet to the point of beginning. Also, all land lying Northwesterly of above described meander line to the low water mark of Lake Mendota.

PARCEL 1, 2, & 3 Contain 48,230 SQFT/ 1.09 Acres more or less.

**PARCEL 4:**

Part of Block Two Hundred Sixty-three (263), Madison, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin, described as follows: Beginning at the most southerly corner of Block 94, said point being the point of intersection of the Northwest line of East Gilman Street with the Northeast line of Wisconsin Avenue; thence Northwesterly along said Northeasterly line of Wisconsin Avenue 383.6 feet to the point of beginning of this description; thence N44°22'39"E, 45.32 feet; thence N44°12'40"W, 234.4 feet more or less to the shore of Lake Mendota; thence Northeasterly, 65 feet more or less, along the shore of Lake Mendota; thence S44°12'40"E, 263.8' feet more or less; thence S45°47'23"W, 105.00 feet; thence N44°32'43"W, 53.52 feet along said Northeasterly line of Wisconsin Avenue to the point of beginning.

PARCEL 4 Contains 18,820 SQFT/0.43 Acres more or less.

**PARCEL DESCRIPTION – CITY SITE:  
[TO BE ADDED TO EXHIBIT IN MANAGEMENT AGREEMENT]**

**EXHIBIT B**  
**PUBLIC ACCESS COMPONENTS**

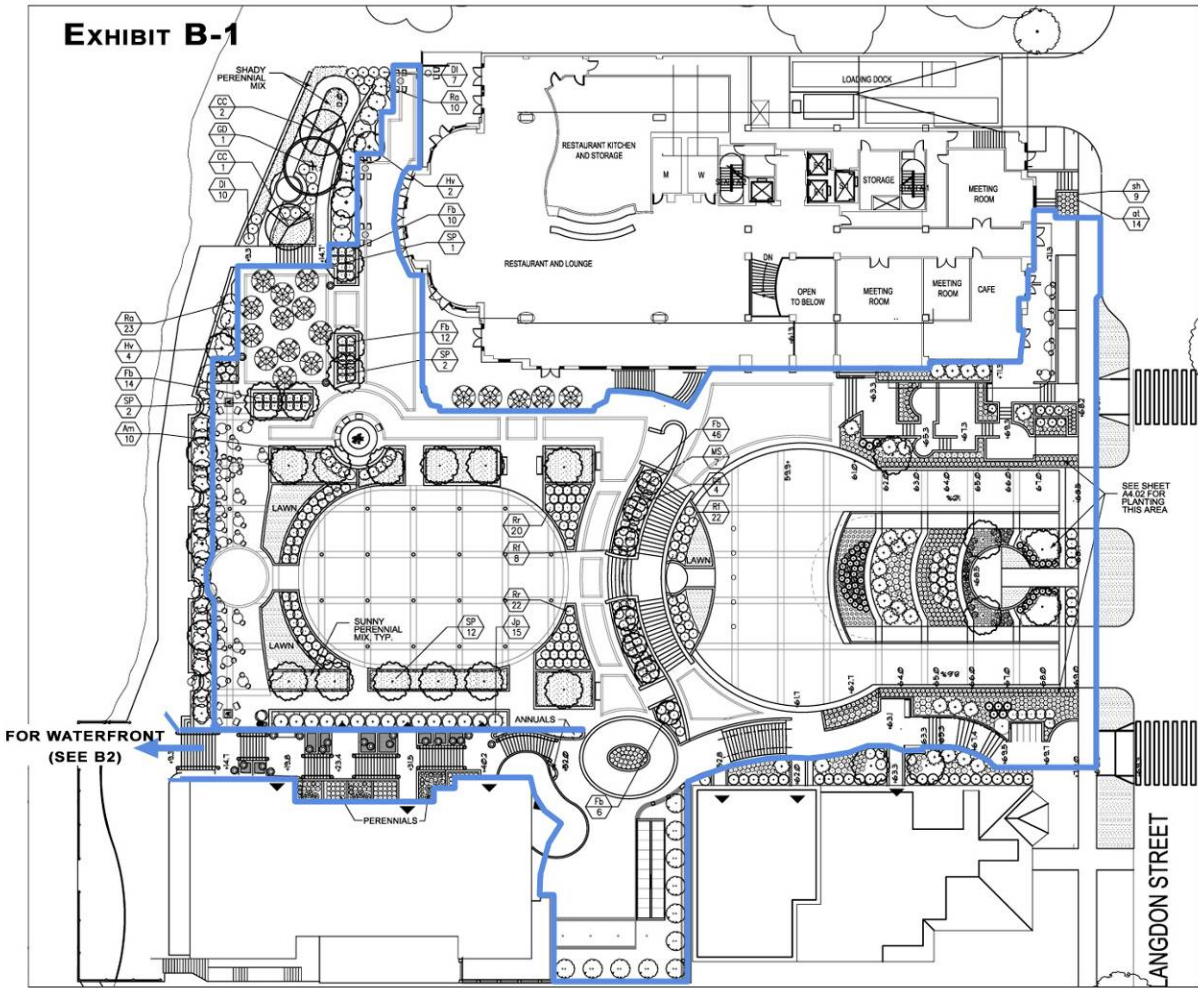
Attached hereto are Exhibit B-1 and B-2 which describe the Public Access Components of the Project. There are two pages to this Exhibit which include the following:

Exhibit B-1: Describes the Public Access Components to be included on the upper terraces and the pedestrian pathways to the waterfront.

Exhibit B-2: Describes the Public Access Components to be included along the Waterfront.



**EXHIBIT B-1  
PUBLIC ACCESS COMPONENTS**



**EXHIBIT B-2  
PUBLIC ACCESS COMPONENTS**

**EXHIBIT B-2**

