

Document No.

DRAFT AS OF 1/6/11

**DECLARATION OF PUBLIC RESTROOM ACCESS
EASEMENT**

Return to:
Matthew C. Carlson, Esq.
Michael Best and Friedrich LLP
P.O. Box 1806
Madison, WI 53701

Parcel IDs: See Exhibit A attached hereto

THIS DECLARATION OF PUBLIC RESTROOM ACCESS EASEMENT (the "Declaration") is made this ___ day of _____, 20__ by Edgewater Hotel Company, LLC, a Wisconsin Limited Liability Company ("Grantor") for the benefit of the City of Madison, a Wisconsin municipal corporation (the "City").

WITNESSETH:

WHEREAS, the Grantor is the owner of that certain real property and improvements commonly known as the Edgewater Hotel, 666 Wisconsin Avenue, Madison, Wisconsin, and legally described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Grantor has been granted the necessary approvals by the City pursuant to a Planned Unit Development Ordinance adopted by the City and recorded on _____ as Document No. _____ for the redevelopment of the Property (the "Recorded PUD"); and

WHEREAS, pursuant to the approval of the Recorded PUD for the redevelopment of the Property, Grantor and the City entered into that certain Public Access Management Agreement dated as of the same date hereof (the "Management Agreement"), which Management Agreement requires Grantor to create certain areas of the Property which shall be designated as areas to be accessible and open to the general public as further described therein; and

WHEREAS, pursuant to the Management Agreement, Grantor is required to grant a perpetual, non-exclusive easement to the City for the benefit of the public for access to certain designated restroom facilities located on or adjacent to the Property (the "Restroom Access"); and

Easement”), which Restroom Access Easement shall be subject to the terms and conditions further set forth below and as contained in the Management Agreement.

NOW, THEREFORE, in consideration of the promises set forth herein and as contained in the Management Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor declares as follows:

1. Restroom Access Easement. Grantor hereby grants to the City for the benefit of the public, a perpetual, non-exclusive “Restroom Access Easement” consisting of a right to access and use only those certain designated restroom facilities located on the Property that are described herein. Notwithstanding anything to the contrary set forth herein, the rights and interests granted pursuant to the Restroom Access Easement shall not include any rights, title or interests in (i) the improvements constituting the pathway to and/or the restroom facilities that are subject to the Restroom Access Easement, or (ii) in any of the air or subterranean rights above or below the portion of the Property subject to the Restroom Access Easement.

(a) The approximate location of the specific pathway to and restroom facilities subject to the Restroom Access Easement are generally depicted on Exhibit B attached hereto and incorporated herein. Grantor reserves the unilateral right to modify and/or alter the location of the pathway to the restroom facilities subject to the Restroom Access Easement in any manner. Grantor shall provide notice to the City Planning Director of any material modification and/or alteration to the location of the route of access to the restroom facilities subject to the Restroom Access Easement, although no prior approval or consent of the City Planning Director or any other City agency shall be required. Grantor reserves the right to modify and/or alter the physical location of the restroom facilities subject to the Restroom Access Easement, subject to the approval by the City Director of Planning and Community and Economic Development or his or her designee (the “Planning Director”). In the event Grantor desires to modify and/or alter the physical location of the restroom facilities subject to the Restroom Access Easement, Grantor shall provide the Planning Director with a written notice that shall include a designation of the proposed modification. The Planning Director shall review the proposed modification to determine whether the modification is reasonably compatible with the Recorded PUD (as same may be amended from time to time). In the event that the Planning Director determines that the modification is reasonably compatible with the Recorded PUD, the Planning Director shall direct the City Zoning Administrator to issue a permit for a minor alteration to the Recorded PUD approving the modification. In the event that the Planning Director determines that the modification is not reasonably compatible with the Recorded PUD (as same may be amended from time to time), the Grantor may apply to the City Plan Commission for its review and approval pursuant to the requirements for an alteration to a Planned Unit Development per City ordinances.

(b) Notwithstanding anything to the contrary set forth herein, the management, operation, access to and use of the restroom facilities subject to the Restroom Access Easement shall be in accordance with the terms, conditions and restrictions set forth in the Management Agreement. In addition, notwithstanding anything to the contrary set forth herein, Grantor shall (i) provide access to the restroom facilities located on the terrace level (as shown on sheet 2 of Exhibit B) for public use pursuant to the Restroom Access Easement during the hours of operation described in the Management Agreement and (ii) provide access to the restroom facilities located on the waterfront

level (as shown on sheet 1 of Exhibit B) for public use pursuant to the Restroom Access Easement during those times that the hotel and restaurant spaces in which such restroom facilities are situated are open to the public.

2. Maintenance. Grantor shall be responsible for all maintenance and repair of the improvements constituting the restroom facilities subject to the Restroom Access Easement in accordance with the terms and conditions of the Management Agreement.

3. Reservation of Use. Grantor reserves the right to use and occupy the Property and the improvements constituting the restroom facilities subject to the Restroom Access Easement in any manner consistent with the use and operation of the Property pursuant to the Recorded PUD (as amended from time to time), the Management Agreement (as amended from time to time), any Conditional Use Permits issued for the Property and/or any other agreements, permits, approvals or similar actions as approved by the Madison Common Council or other municipal bodies with jurisdiction over the Property, provided that such use and occupancy shall not unreasonably interfere with or disturb the public use of the restroom facilities subject to the Restroom Access Easement except as otherwise set forth in the Management Agreement and this Declaration.

4. Obstructions. Grantor, and any person permitted to use the restroom facilities subject to the Restroom Access Easement pursuant to the terms of this Declaration and the Management Agreement, shall not unreasonably interfere with the use and enjoyment of the Restroom Access Easement in accordance with the terms and conditions of this Declaration and the Management Agreement, provided, however, that temporary obstructions or closures to and within all or a part of the restroom facilities subject to the Restroom Access Easement pursuant to Section 1 above, resulting from weather conditions, a public safety emergency declared by any government official or agency, remodeling and/or repair of the building improvements through and in which the pathway to and restroom facilities are located, any other circumstances beyond the reasonable control of Grantor, or as may be necessary for the performance of maintenance, repair or other obligations required under the Management Agreement, shall be permitted. Except as may be permitted pursuant to the previous sentence and/or as otherwise set forth in the Management Agreement, no permanent barriers, fences, dividers or other obstructions shall be constructed which prevent, prohibit, impede or discourage the reasonable use of the restroom facilities subject to the Restroom Access Easement.

5. Covenants Run with Land. All of the terms, conditions, covenants and easements set forth herein shall run with the land and shall inure to the benefit of and be binding upon the parties hereto, and their heirs, successors, transferees and assigns.

6. Governing Law. This Declaration shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

7. Amendment. Except as set forth in Section 1 above, this Declaration may not otherwise be amended and/or modified except by a written document executed and acknowledged by the Grantor and the City, and/or their respective successors and assigns.

8. Severability. If any term, covenant, or condition of this Declaration or the application thereof to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this Declaration, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

9. Enforcement. Enforcement of this Declaration shall be in accordance with the terms and conditions of the Management Agreement.

10. Recitals. The above stated recitals are hereby incorporated into this Declaration.

11. Interpretation. Notwithstanding anything to the contrary set forth herein, in the event of any inconsistency or conflict between the terms, conditions and restrictions of this Declaration and the Management Agreement (as same may be amended from time to time) with regard to the use of, access to, occupancy and/or management of the Property and the easement rights granted and reserved herein, the Management Agreement shall control.

12. Damage or Destruction. Notwithstanding anything to the contrary set forth herein, in the event that the buildings and improvements in which the pathway to and/or location of the restroom facilities subject to the Restroom Access Easement as then situated on the Property shall be damaged by fire or other casualty and if such damage or casualty renders all or a substantial portion of the buildings and improvements in which the pathway to and/or location of the restroom facilities subject to the Restroom Access Easement incapable of being repaired such that they cannot be used for the intended purpose, Grantor shall have the unilateral right to terminate this Declaration by recording a termination and release of the rights, title and interests granted herein with the Dane County Register of Deeds office. Notwithstanding anything to the contrary set forth in the previous sentence, in the event that Grantor elects to repair or rebuild the buildings and improvements in which the pathway to and/or location of the restroom facilities subject to the Restroom Access Easement as then situated on the Property, Grantor agrees to grant an easement to the City for the benefit of the public on terms and conditions reasonably consistent with those set forth in this Declaration for a pathway to and the use of certain restroom facilities in a modified location on the Property to be reasonably agreed to by Grantor and the City Planning Division.

[SIGNATURES ON NEXT PAGE FOLLOWING]

EXHIBIT A

Legal Description of Property

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:

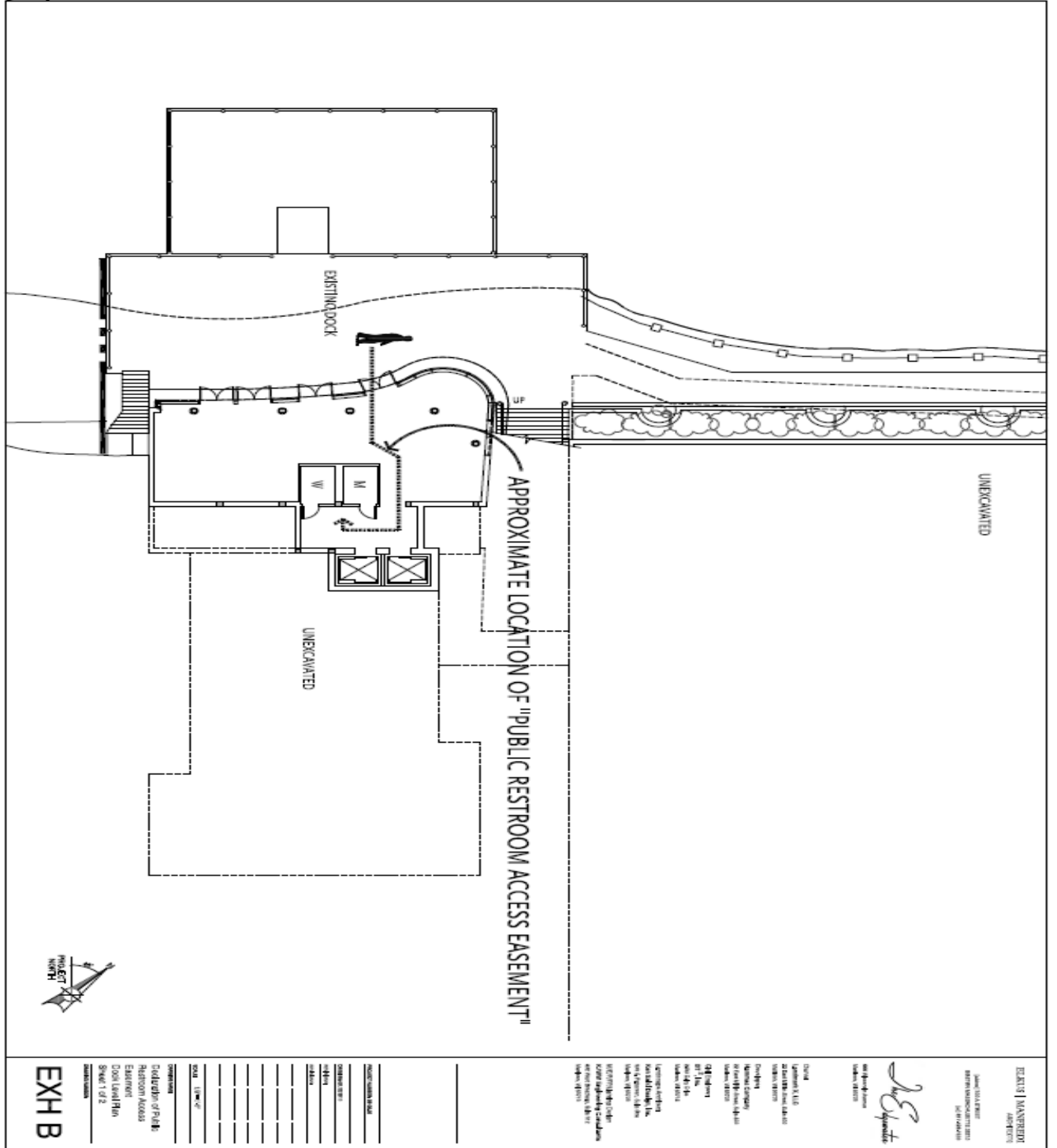
Part of Block Two Hundred Sixty-three (263), Madison, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin, described as follows: Beginning at the most southerly corner of Block 94, said point being the point of intersection of the Northwest line of East Gilman Street 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.

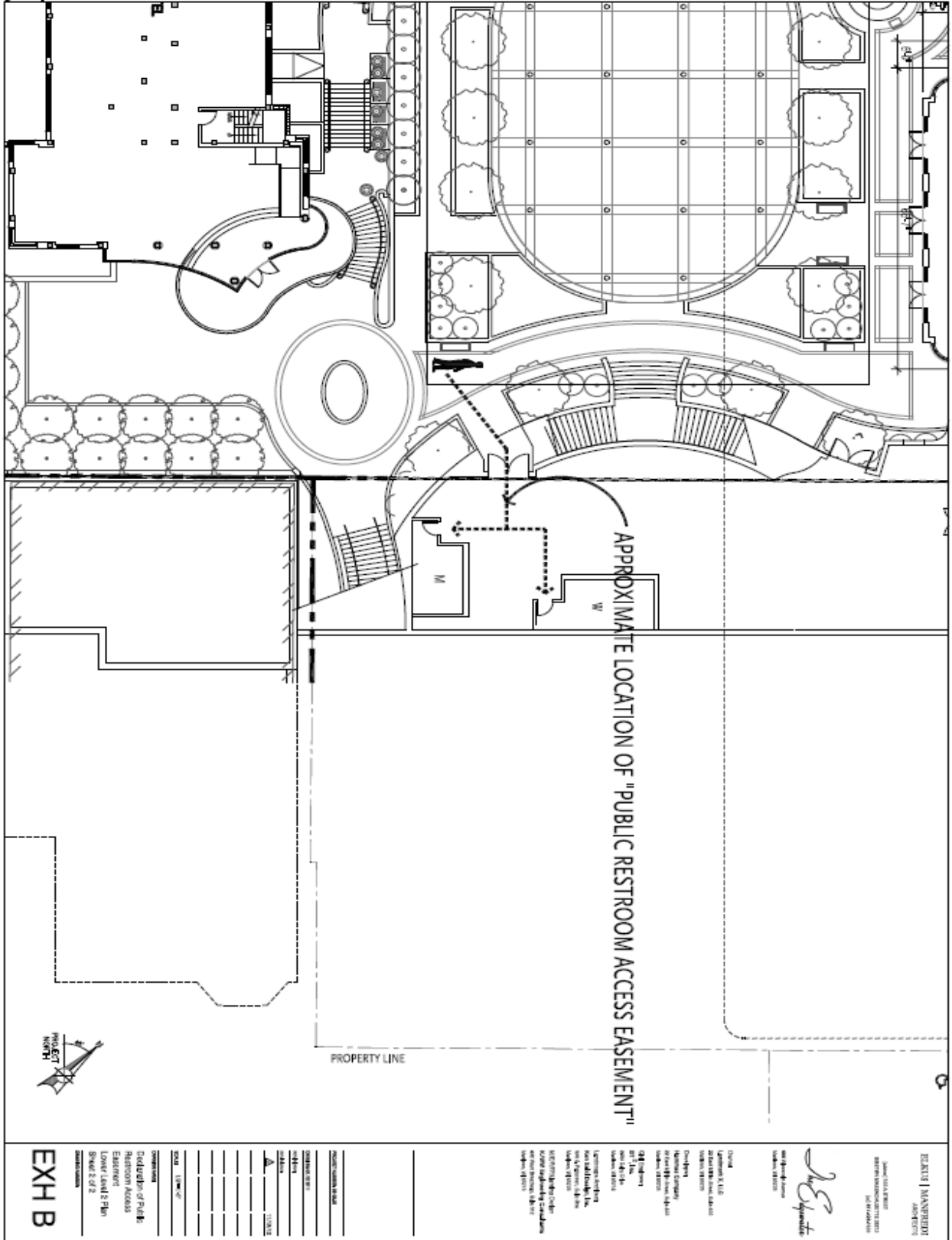
PARCEL 4:

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.

EXHIBIT B

Depiction of Approximate Pathway to and Location of Restroom Facilities Subject to Restroom Access Easement





ELKINS | MANFREDO
ARCHITECTS

1000 10th Street
Boulder, Colorado 80502
303.440.1111
www.elkinsmanfreedo.com

Signature
Architect
1/15/2012

OWNER: [illegible]
PROJECT: [illegible]
DATE: [illegible]
SCALE: [illegible]
SHEET: [illegible]

EXH B

DECLARATION OF PUBLIC RESTROOM ACCESS EASEMENT
LOWER LEVEL 2 PLAN
SHEET 2 OF 2