

Document No.

DRAFT AS OF 1/6/11

**DECLARATION OF PUBLIC PEDESTRIAN PATHWAY
TO SHORELINE 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 PEDESTRIAN PATHWAY TO SHORELINE 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 a public pedestrian pathway from the Wisconsin Avenue public right-of-way to the public pedestrian walkway situated

along the shoreline of Lake Mendota (the “Pedestrian Shoreline Access Easement”), which Pedestrian Shoreline Access Easement shall be subject to the terms and conditions further set forth below and as contained in the Management Agreement; and

WHEREAS, the City had previously reserved and obtained for the benefit of the public certain rights for public pedestrian access to the Lake Mendota shoreline over and across the Property (the “Prior Pedestrian Shoreline Access”) pursuant to the terms, conditions and restrictions set forth in that certain Ordinance of the City No. 1761 adopted on January 28, 1965 and recorded with the Dane County Register of Deeds on February 1, 1965 as Document No. 1123724, as amended November 10, 1966, September 28, 1967, November 9, 1971, and May 18, 2010 (collectively, the “1965 Ordinance”); and

WHEREAS, the City was granted an easement for the Prior Pedestrian Shoreline Access that was recorded against a portion of the Property pursuant to that certain Easement for Public Sidewalk and Parking Purposes dated as of January 29, 1975 and recorded with the Dane County Register of Deeds in Volume 553, Pages 715 – 717 as Document No. 1419537 (the “Prior Easement”); and

WHEREAS, the Pedestrian Shoreline Access Easement granted herein (i) amends, restates and clarifies the location, terms and conditions of the Prior Pedestrian Shoreline Access, and (ii) replaces and supersedes in its entirety the rights and interests granted to the City for the benefit of the public with regard to the Prior Pedestrian Shoreline Access pursuant to the Prior Easement, and the terms and conditions of the Management Agreement and this Declaration shall control in the event of any conflict therewith.

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. Pedestrian Shoreline Access Easement.

(a) Grantor hereby grants to the City for the benefit of the public, a perpetual, non-exclusive “Pedestrian Shoreline Access Easement” consisting of a pathway over and across certain pedestrian walkways and staircases situated on the Property as designated by Grantor for the purpose of allowing pedestrian foot traffic from the Wisconsin Avenue public right-of-way to the public pedestrian walkway situated along the shoreline of Lake Mendota. Notwithstanding anything to the contrary set forth herein, the rights and interests granted pursuant to the Pedestrian Shoreline Access Easement shall not include any rights, title or interests in (i) the improvements over, across and through which the Pedestrian Shoreline Access Easement pathway is situated, (ii) or in any of the air or subterranean rights above or below the pathway. Grantor shall cause the improvements constituting the general route of the Pedestrian Shoreline Access Easement to be constructed in accordance with the plans submitted and approved pursuant to the Recorded PUD and the approved construction plans and as further set forth in the Management Agreement. Notwithstanding anything to the contrary set forth herein, the management, operation, access to and use of the Pedestrian Shoreline Access Easement shall be in accordance with the terms, conditions and restrictions set forth in the Management Agreement.

(b) The approximate route of the Pedestrian Shoreline Access Easement is generally depicted on Exhibit B attached hereto and incorporated herein. Grantor reserves the right to modify and/or alter the route of the Pedestrian Shoreline Access Easement in any manner, 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 route of the Pedestrian 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.

2. Maintenance. Grantor shall be responsible for all maintenance and repair of the improvements constituting the general route of the Pedestrian Shoreline 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 Pedestrian Shoreline 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 Pedestrian Shoreline Access Easement except as otherwise set forth in the Management Agreement.

4. Obstructions. Grantor, and any person permitted to use the Pedestrian Shoreline Access Easement pursuant to the terms of this Declaration and the Management Agreement, shall not unreasonably interfere with the use and enjoyment of the Pedestrian Shoreline 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 pathway constituting the general route of the Pedestrian Shoreline Access Easement resulting from weather conditions, a public safety emergency declared by any government official or agency, 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 temporarily 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 across the pathway constituting the general route of the Pedestrian Shoreline Access Easement which prevent, prohibit, impede or discourage the free and uninterrupted flow of pedestrian foot traffic.

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, the Management Agreement shall control.

[SIGNATURES ON NEXT PAGE FOLLOWING]

IN WITNESS WHEREOF, Grantor has caused this Declaration to be executed by its duly authorized representative as of the date and year first above written.

GRANTOR:

EDGEWATER HOTEL COMPANY, LLC

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this _____ day of _____, 20____, the above named _____, who acknowledged himself/herself to be the _____ of Edgewater Hotel Company, LLC, and to me known to be the person who executed the foregoing instrument as such officer of such entity, by its authority, and acknowledged the same.

Name: _____
Notary Public, State of Wisconsin
My Commission: _____

THIS DOCUMENT PREPARED BY:
Matthew C. Carlson, Esq.
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
P.O. Box 1806
Madison, WI 53701-1806
(608) 257 - 3501

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 Location of Pedestrian Shoreline Access Easement Pathway

