

# Hammes Company

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Madison, Wisconsin 53703  
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March 19, 2009

Anne Zellhoefer  
Office of the City Attorney  
**CITY OF MADISON**  
210 Martin Luther King Jr. Blvd, Room 401  
Madison, WI 53703

Dear Anne,

Attached with this letter is a copy of the Term Sheet outlining the primary terms and conditions for the Management of the Public Access Components that will be made part of the Edgewater Redevelopment Project if approved.

This term sheet reflects the provisions, terms and conditions that we have discussed related to the access and management of these spaces. Per our discussions, I am providing a copy of this letter and Term Sheet in the packages that will be distributed to the Plan Commission on March 19, 2010.

I look forward to working with you on the Management Agreement.

Thank you.

Sincerely,  
**LANDMARK X, LLC**



Amy Supple  
Development Director

**TERM SHEET**  
**PUBLIC ACCESS MANAGEMENT AGREEMENT**  
**March 19, 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") 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 to 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 and 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 coterminous with the term of the 1965 Street Vacation Ordinance and any amendments thereto.

**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. 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.

**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 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.

**ACTIVITIES IN  
THE PUBLIC  
ACCESS  
COMPONENTS:**

The Owner 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 on site. No solicitation or commercial photography 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 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.

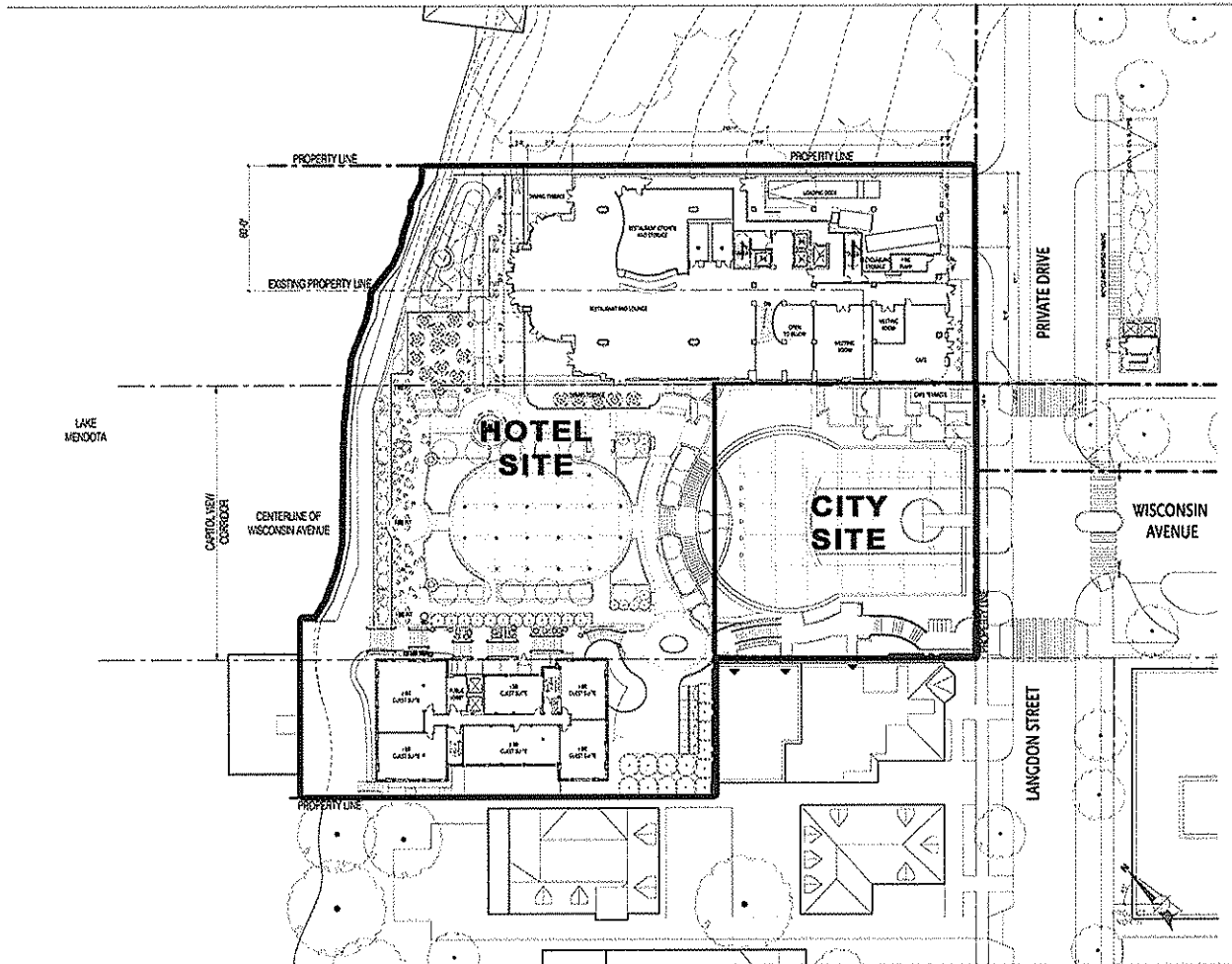
**SECURITY:**

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 on 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**



**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

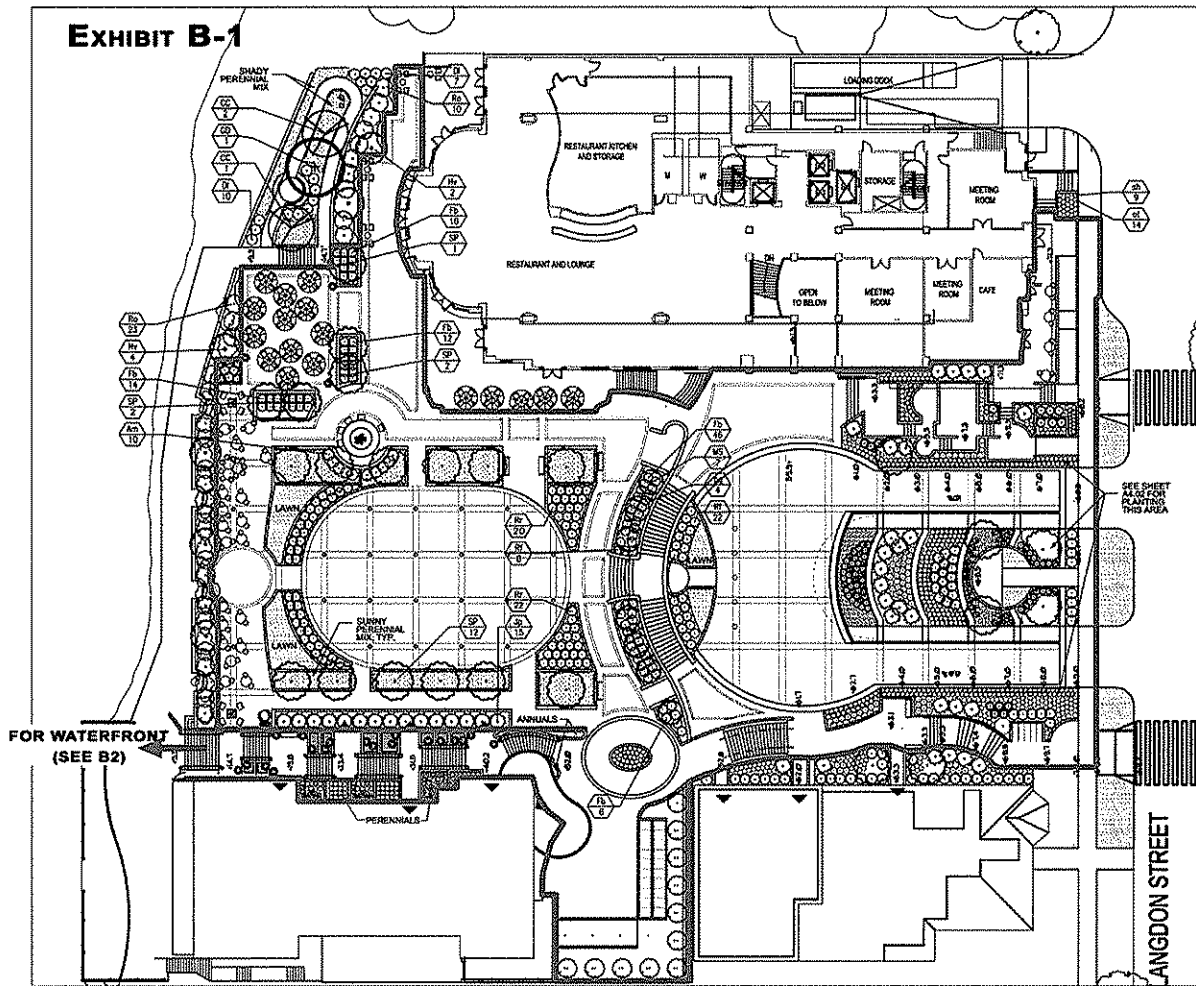
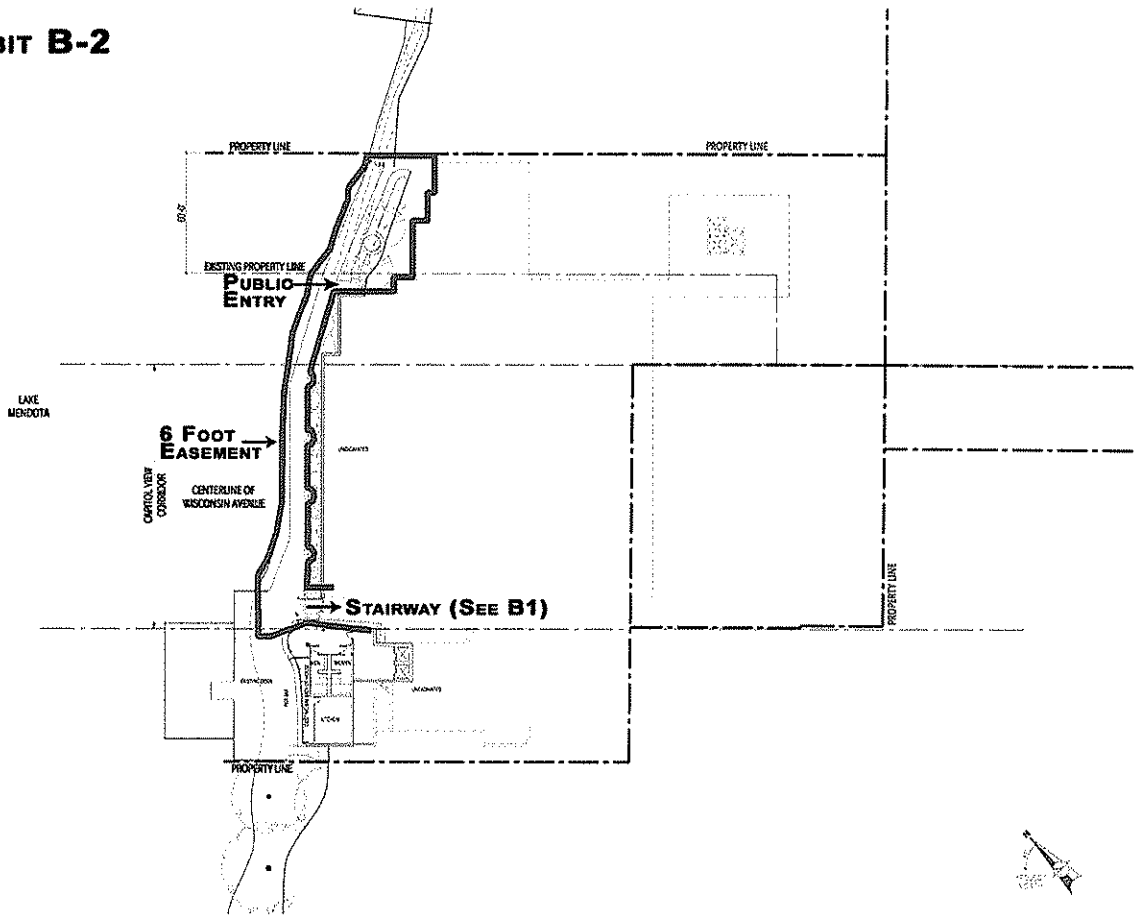


EXHIBIT B-2  
PUBLIC ACCESS COMPONENTS

EXHIBIT B-2



**EXHIBIT 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 Term Sheet.

