

Document No.

DRAFT AS OF 1/6/11

DECLARATION OF PUBLIC PARKING EASEMENT

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

Parcel IDs: See Exhibit A attached hereto

THIS DECLARATION OF PUBLIC PARKING EASEMENT (the "Declaration") is made this ___ day of _____, 20__, by Wisconsin Avenue Parking 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 the real property described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, the City has granted the necessary approvals to Landmark X, LLC, a Wisconsin limited liability company ("Landmark") pursuant to a Planned Unit Development Ordinance adopted by the City and recorded on _____ as Document No. _____ for the construction and use of a private drive (the "Private Drive") and a subterranean parking structure (the "Subterranean Parking Structure") on the Property (the "Recorded PUD"); and

WHEREAS, pursuant to the approvals granted by the City, Landmark X, LLC is required to cause its affiliate, Grantor, to grant a perpetual easement to the City for the benefit of the public for the exclusive use of four (4) vehicular parking spaces to be situated in the Subterranean Parking Structure (the "Public Parking Easement"), together with the non-exclusive right of ingress and egress to and from the parking spaces across the Private Drive and through the Subterranean Parking Structure as may be reasonably required to provide vehicular access to the Wisconsin Avenue public right-of-way, which Public Parking Easement shall be subject to the terms and conditions further set forth below; and

WHEREAS, the City had previously reserved and obtained for the benefit of the public certain rights for public parking on a parcel adjacent to the Property (the “Prior Parking Rights”) 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 Parking Rights 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 Public Parking Easement granted herein (i) amends, restates and clarifies the location, terms and conditions of the Prior Parking Rights 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 Parking Rights pursuant to the Prior Easement, and the terms and conditions of this Declaration shall control in the event of any conflict therewith.

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

1. Public Parking Easement. Grantor hereby grants to the City for the benefit of the public, a perpetual, exclusive easement for public vehicular parking in and on four (4) vehicular parking spaces located within the Subterranean Parking Structure (the “Public Parking Easement”), which parking spaces subject to the Public Parking Easement are generally depicted on Exhibit B attached hereto and incorporated herein (the “Easement Area”), together with the non-exclusive right of ingress and egress to and from the parking spaces across the portions of the Private Drive and through the Subterranean Parking Structure as may be reasonably required to provide vehicular access to the Wisconsin Avenue public right-of-way (the “Access Route”). Grantor shall cause the improvements constituting the Easement Area and Access Route to be constructed in accordance with the plans submitted and approved pursuant to the Recorded PUD and the approved construction plans. In the event the as-built location of the Easement Area vary from that described in this Declaration, Grantor shall have the right to record an amendment to this Declaration providing a corrected legal description of the Easement Area.

2. Public Use of Easement Area. The general public shall have the exclusive right to park standard sized passenger vehicles (which shall not include recreational vehicles, campers, extended cab trucks or vans, tractors, trailers, buses, and/or any other vehicles of a shape and size that would interfere with the parking or circulation of other vehicles within the Subterranean Parking Structure) in the four (4) parking spaces situated in the Easement Area on a first-come, first-served basis, 24 hours a day, 365 days a year. The parking of a vehicle in a space shall be limited to a maximum of a one (1) hour duration. In the event that a vehicle is parked in a space for more than one (1) hour, Grantor shall (i) be entitled to collect a fee for the time in excess of one (1) hour at the parking rates then in effect for the Subterranean Parking Structure, and/or (ii) have the right, but not

the obligation, to cause the vehicle to be removed from the Property at the expense of the vehicle's owner. Except as set forth in the previous sentence, the general public shall not be charged a fee for the use of the four (4) parking spaces.

3. Maintenance. Grantor shall be responsible, at its sole cost, for all daily and long term maintenance, cleaning, repairs and appearance of the Easement Area and Access Drive, such that the Easement Area and Access Drive, shall be operated and maintained in an orderly manner.

4. Right to Relocate Easement Area. Grantor shall have the right, subject to the approval of the City Director of Planning and Community and Economic Development or his or her designee (the "Planning Director"), to relocate the Easement Area and designate an alternative easement area and Access Route, provided that the alternative easement area provides (a) a total of four (4) vehicular parking spaces, and (b) a reasonably direct vehicular access route of ingress and egress from a public right-of-way to the relocated parking easement area. Notwithstanding anything to the contrary set forth herein, the relocation of the four (4) vehicular parking spaces to an exterior location shall not be deemed unreasonable, provided such relocation is not contrary to the Recorded PUD or then existing City ordinances. In the event Grantor desires to relocate the Easement Area and designate an alternative easement area and Access Route, Grantor shall provide the Planning Director with a written notice that shall include a designation of the proposed relocation. 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 relocation 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 relocation. In the event that the Planning Director determines that the relocation 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..

5. Reservation of Use. Grantor, for itself and on behalf of the owner, operator and manager of the Edgewater Hotel, reserves the right to use, occupy and operate the Property pursuant to the Recorded PUD (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, operation and occupancy shall not materially interfere with the public use of the Easement Area as described herein. Notwithstanding anything to the contrary set forth in this Declaration, the operation, use and occupancy of the Subterranean Parking Structure and Private Drive by Grantor, and/or by the owner, manager or operator of the Edgewater Hotel, for parking vehicles, staging vehicles, loading and unloading trucks and buses and valet services, shall not be deemed to interfere materially with the general public's use of the Easement Area and Access Drive.

6. Obstructions. Subject to the reservation of rights set forth in Section 5 above, Grantor, and any person permitted to use the Public Parking Easement pursuant to the terms of this Declaration, shall not unreasonably interfere with the use and enjoyment of the Public Parking Easement in accordance with the terms and conditions of this Declaration, provided, however, that

temporary obstructions or closures to and within all or a part of the Easement Area as may be necessary as a result of weather conditions, a public safety emergency declared by any government official or agency, any other circumstances beyond the reasonable control of Grantor or for the performance of maintenance, repair or other obligations required under this Declaration shall be permitted. Except as may be temporarily permitted pursuant to the previous sentence and/or as otherwise set forth in this Declaration, no permanent barriers, fences, dividers or other obstructions shall be constructed on or across the Easement Area or Access Drive which prevent, prohibit, impede or discourage the reasonable use of the Easement Area and Access Drive.

7. 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.

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

9. Amendment. Except as specifically set forth in Section 1 and 4, this Declaration may not otherwise be changed except by a written document executed and acknowledged by the Grantor and the City, and/or their respective successors and assigns.

10. 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.

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

12. Damage or Destruction. Notwithstanding anything to the contrary set forth herein, in the event that the buildings and improvements upon which the Easement Area and Access Drive are 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 upon which the Easement Area and Access Drive are situated 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, rebuild the buildings and improvements or build other improvements upon which the Easement Area and Access Drive are 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 vehicular access to and use of four (4) parking stalls in a modified location on the Property to be reasonably agreed to by Grantor and the City Planning Division.

[SIGNATURE ON NEXT PAGE FOLLOWING]

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EXHIBIT A

Legal Description of Property

A part of Block Ninety Four (94) and 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 330.08 feet to the Point of Beginning of this description; thence N45°47'23"E, 187.80 feet; thence S44°11'00"E, 165.69 feet; Thence S45°40'16"W, 187.25 feet; Thence N44°32'43"W, 166.08 along said Northeasterly line of Wisconsin Avenue to the Point of Beginning.

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EXHIBIT B

Description of Easement Area

Subject to Grantor's right to relocate the Easement Area as described in Sections 1 and 4 of this Declaration, the four (4) parking spaces constituting the "Easement Area" are generally described as the four (4) parking spaces in the Subterranean Parking Structure, the approximate location of which are depicted on the attached Site Plan.

[See attached Site Plan on next page following]

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