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City Attorney Michael May
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Re: Entertainment License for The Edgewater Hotel; Public Access Management Agreement (PAMA) between the City of Madison and The Edgewater Hotel Company LLC, dated November 9, 2012

Dear City Attorney May:

We are writing to follow up on our letter dated August 14, 2017 and our subsequent meetings with your office to discuss our client's position concerning the relationship between the Entertainment License and the PAMA. As we previously articulated, by entering into the PAMA, the City has granted to The Edgewater Hotel the "**sole and exclusive right** to determine operating policy, standards of operation, quality of service and any other matters affecting the operation, management and maintenance of the Public Access Components," which includes the right to host events on The Grand Plaza from 8:00 a.m. to 11:00 p.m., 365 days per year. Consistent with this agreement, in 2014, the City Council granted an entertainment license to The Edgewater Hotel, subject only to the terms and conditions of the PAMA. Since opening, the Edgewater has 1) operated well within the restrictions set by the PAMA; 2) renewed its alcohol license annually without comment or question with respect to an entertainment license, and; 3) never been cited or ticketed for noise violations or any other complaint.

The rights granted under the PAMA are absolute and cannot be unilaterally altered or limited by either party. This is the conclusion your office reached when asked to provide advice to the ALRC in 2014 during the initial licensing process: "[t]he ALRC may not alter, condition, or further restrict any of the terms contained in the PAMA without the agreement of the Council and the Edgewater." See City Atty. Memo, 5/12/14, p. 2. The Edgewater Hotel has invested more than \$34M in creating the Public Access Components in reliance on the City's promise to be bound by the terms of the PAMA. Any attempt to now limit or restrict the hotel's rights under the PAMA would be a breach of the agreement, leaving the hotel with no option but to vigorously defend the investment it made on the basis of the rights it was granted by the City.

Having said that, our client has consistently demonstrated a willingness to respond to the concerns of its neighbors. For example, since opening nearly three years ago, The Edgewater management team has met with Alder Zellers on a bi-monthly basis and has participated in annual neighborhood meetings to receive direct feedback on its events and operations. Where reasonable concerns about events and sound levels were expressed, The Edgewater has worked in good faith to respond to those concerns. Importantly, by no means are these concerns shared universally by the neighborhood, as was demonstrated by a neighborhood

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meeting held at the hotel in June where there was more than 2:1 support for concerts and events at The Edgewater, with several of the most vocal advocates being located on or adjacent to the Edgewater property. The Edgewater's management team has taken actions to self-police and attempted to mitigate the concerns certain neighbors have expressed, including changing procedures to assure The Edgewater remains in control of sound levels (not the bands or clients), limiting hours of events and purchasing sound-directing and sound-baffling AV equipment to mitigate sound transfer into the neighborhood. While these measures have not and will not stop sound transfer completely, by and large, they have had significant positive benefits to addressing the concerns as expressed.

Although these efforts have had positive results, we have been asked as part of the Entertainment License process to consider further operational adjustments to address concerns in four areas as were defined by Alder Zellers and the City in previous meetings and confirmed in the meeting held on September 11, 2017 in your offices. These include:

1. The number of amplified live music events on the Grand Plaza
2. Sound levels which are audible at street level
3. Equipment and the direction of speakers
4. The length of music at festivals (*i.e.* all-day events)

The Edgewater has been working on a plan to address these concerns in a manner that will also maintain a viable business and meet the commitment The Edgewater made to the broader Madison Community to create and sustain a vibrant public place.

The good news is: there is substantial demand for public events of all kinds on The Grand Plaza, giving the public access to our lakes through high-quality events at no cost to the public. This is the commitment The Edgewater made in the PAMA—to create a great civic place on Lake Mendota that is open and accessible to the public. The Edgewater has delivered on this promise. And many of the events held at The Edgewater do not have amplified live music/DJ and do not require an Entertainment License (*e.g.* movie nights, wedding ceremonies, corporate events, food festivals, ice skating, etc.).

The Edgewater has carefully considered all of the public input to date, including comments from neighbors and from Alder Zellers. Enclosed is a copy of The Edgewater's "Plan of Operation." We believe the parameters outlined in this document will provide a viable operating structure and a positive outcome for all parties. Following is an explanation of how the Plan of Operations addresses each of the four concerns summarized above:

1. *The number of amplified live music events on the Grand Plaza*

The PAMA provides The Edgewater with the sole and exclusive right to determine the schedule of events for the Grand Plaza. Consistent with its rights and responsibilities under the PAMA, the hotel has put forward a schedule of events for the coming year that responds to the input the

hotel has received from all stakeholders. Most importantly, The Edgewater has responded to concerns about the summer concert series by cutting back the number of planned events by more than 50%. These events and their frequency have been raised as the primary concern of certain neighbors that have complained about events, and this plan responds in a fair and reasonable manner directly to those concerns.

2. Sound levels which are audible at Street Level

The Edgewater has addressed this issue with a two-pronged strategy. First, as part of its previous mitigation measures, The Edgewater purchased a band shell which has sound baffling panels to limit the transfer of sound into the neighborhood. The band shell only just arrived in July, and has been used twice during recent events. When in use, the sound differential from the Grand Plaza level to the street level dropped by 20-decibels, (a reduction of approximately four times the perceived volume). While the band shell does not prevent all sound from escaping the property, it substantially mitigates sound transfer to adjacent properties. The Edgewater has made the commitment in the Plan of Operation to erect the band shell when there are amplified live music events on the Grand Plaza.

In addition to the band shell, The Edgewater has proposed a limit on decibel level as measured at the center line of Wisconsin Avenue and Langdon Street to 80 dBA. This plan is 10 dB lower (a reduction of approximately two times the perceived volume) than what was negotiated for the neighbors surrounding Breese Stevens Field, Central Park and what the City requires for events at its own City parks. Thus, the Edgewater's self-imposed sound limit is substantially lower than what the City has deemed appropriate and acceptable in other neighborhoods. Not only that, the hotel's self-imposed Sound Plan removes any personal bias, is easily manageable, and provides clear and objective measures.

3. Equipment and the direction of speakers

A concern was expressed about the positioning of the band shell and the direction of the speakers. For reasons of pedestrian flow and exiting, and for the safety of the public, The Edgewater does not feel it would be positive to reposition the band shell in front of the Grand Stair to the plaza. This said, The Edgewater has positioned the band shell in a corner to face the water vs. the neighborhood. The Edgewater will direct speakers to point toward the water, attempting to avoid reverberation on The Edgewater's or other structures.

4. The length of music at festival events (all-day events)

Previously, amplified live music and DJ's at these events would begin at 11:00 a.m. In response to a concern from several neighbors that these festival events were too long, the enclosed Plan of Operation modifies the start time so that live entertainment at these events will not begin prior to 2:00 p.m.

As outlined above, the attached Plan of Operation responds to input the hotel has received from stakeholders in a fair and reasonable manner that also allows The Edgewater to successfully



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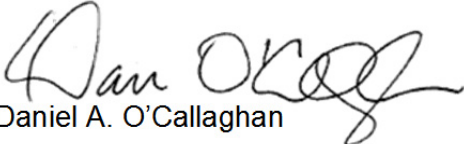
operate and meet its obligations under the PAMA and other licensing. This plan is not a renegotiation of the rights granted under the PAMA. Instead, it is an exercise of the hotel's rights under section 9 of the PAMA to "determine the schedule of said Events ... and the terms and conditions under which Events shall be held." We believe it is an appropriate and reasonable response to the concerns that have been voiced.

Our client hopes that the information shared in this letter, including the enclosed Plan of Operation, is received by its neighbors and by the City as yet another sign of the hotel's good faith efforts to be a responsible civic partner.

The Edgewater Hotel takes great pride in not only being a first class hotel to be enjoyed by visitors from around the world, but also in being an accessible community asset for all of the many residents of the Greater Madison community. Indeed, people are taking note of the example set by the hotel. A recent, in-depth profile by an NPR correspondent identifies the historic Edgewater Hotel as "a bellwether for America's hospitality industry." ("The intrinsic philosophy of the Edgewater's owners is to serve as a first-class full service hotel while simultaneously embracing the local community with activities from ice skating in the winter to free live music concerts and Friday fish dinners on the lakefront plaza.").¹ This is recognition that the entire city can be proud of.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP


Daniel A. O'Callaghan

Enclosure

cc: Mr. Robert P. Dunn
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¹ Available online at: <http://kcbx.org/post/madison-wisconsin-s-historic-edgewater-hotel-bellwether-america-s-hospitality-industry#stream/0>.



**THE EDGEWATER HOTEL
LIVE ENTERTAINMENT LICENSE – PLAN OF OPERATION**

Pursuant to City of Madison ordinances governing live amplified music and/or DJ performances (“Live Entertainment”) offered at establishments that are licensed to serve alcohol, and consistent with the rights granted to The Edgewater Hotel under the Public Access Management Agreement (PAMA) between the City and The Edgewater, following is The Edgewater’s plan of operation (required under MGO 38.06(12)(d)1.g.) for events featuring Live Entertainment. This plan of operation is not applicable to events at the property, including those held on the Grand Plaza, that do not feature Live Entertainment. The Edgewater will operate the hotel and the Grand Plaza pursuant to this plan of operation and this plan of operation may be enforced by the City of Madison as part of the hotel’s Entertainment License. The specific terms and conditions set forth in this plan have been prepared by The Edgewater voluntarily and The Edgewater reserves all of the rights it has been granted under the PAMA. Consistent with its rights under the PAMA, The Edgewater may propose changes to this Plan of Operation from time to time.

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- 1.0 Schedule of Events
- 2.0 Sound Plan
- 3.0 Security Plan

1.0 SCHEDULE OF EVENTS

A. PROPERTY

The Edgewater hosts a variety of weddings, corporate events and other private functions at the property that are contracted with third parties throughout the year. These events could occur indoors or outdoors in The Grand Ballroom, function spaces (e.g. Red Crown Club, Sky Bar, Mendota Ballroom, Madison Room, etc.), the restaurants and other public areas. The number, scheduling and frequency of these events (with or without Live Entertainment) will be determined by The Edgewater, in its sole discretion. Any events featuring Live Entertainment will be operated pursuant to the hotel’s Security Plan (see Section 3.0 below).

B. OUTDOOR LIVE ENTERTAINMENT EVENTS ON GRAND PLAZA

Use of the Grand Plaza and other outdoor spaces on The Edgewater property are governed by the PAMA. By entering into the PAMA, the City has granted to The Edgewater Hotel the “sole and exclusive right to determine operating policy, standards of operation, quality of service and any other matters affecting the operation, management and maintenance” of the Grand Plaza, including the right to host events on the Grand Plaza from 8:00 a.m. to 11:00 p.m., 365 days per year. All events on the Grand Plaza featuring Live Entertainment will be operated pursuant to the hotel’s Sound Plan (see Section 2.0 below) and the hotel’s Security Plan (see Section 3.0 below). With regard to Live Entertainment on the Grand Plaza, The Edgewater is exercising its rights under Section 9 of the PAMA (“to determine the schedule of said Events ... and the terms and conditions under which Events shall be held”) by offering the following schedule:

1. Holiday Events. The Edgewater intends to program The Grand Plaza with events, on or around national holidays, which may include, but are not limited to:
 - Memorial Day
 - Fourth of July
 - Labor Day
 - Thanksgiving / Holiday Tree Lighting
 - Christmas

Live Entertainment at these holiday events will generally not begin prior to 2:00 p.m.



2. Summer Concert Series. The Edgewater intends to program The Grand Plaza with a Summer Concert Series open to the general public, all involving Live Entertainment, each year during the season running from the first weekend in June through the last weekend in August. The Edgewater intends to schedule no more than 20 of these Summer Concert Series events per season. Note, this is less than half of what our prior and planned schedule would hold, and what has been held in previous years.
3. Other Public Events. In addition to the Summer Concert Series, The Edgewater intends to program The Grand Plaza with other events that are open to the general public which involve Live Entertainment. Examples of these types of events include, without limitation, graduation events, Oyster Fest, Ice Rink Opening Party, Make Music Madison, and Football Tailgates. The Edgewater intends to schedule no more than 30 of these Other Public Events with Live Entertainment throughout the year, with no more than 20 of those 30 events taking place between May and October.
4. Weddings, Corporate Events and Other Private Functions. The Edgewater hosts a variety of weddings, corporate events and other private functions that are contracted with third-parties (*e.g.* CrossFit, Mendota Gridiron Kick Off) on the Grand Plaza throughout the year, some of which may involve Live Entertainment. The number, scheduling and frequency of these events will be determined by The Edgewater (in accordance with market demand), in its sole discretion, subject to the terms and conditions of the PAMA.

Note: the above schedule of Grand Plaza events in no way limits the rights of The Edgewater to host events on the Grand Plaza that do not require an Entertainment License (including, but not limited to, non-amplified music performances and amplified sound events (*e.g.* movies, etc.) that do not include musical performances), 365 days a year, in accordance with the terms of the PAMA.

2.0 SOUND PLAN

The proposed sound plan for all Outdoor Events (Grand Plaza) is as follows:

General Standards

1. The Edgewater will maintain an amplified sound level of no greater than a sustained 95 dBA (across all octave bandwidths) at the sound production stage/plaza level for each amplified live music event. Further, The Edgewater will also maintain a dBA level under 80 at the street level, the measurement of which shall be taken at the mid-point of the intersection of Langdon and Wisconsin Avenue. This is a *maximum* level for amplified live music events; it is anticipated that many of these events will operate well below this level.
2. Sound levels will be measured beginning at a pre-event sound check and not less than every 30 minutes through the duration of the amplified live music events.
3. Measurements will be taken by a professional sound engineer employed with, or contracted by, The Edgewater.
4. Sound levels will be measured with a Type 1 sound level meter manufactured according to standards prescribed by the American National Standards Institute in specification S1.4 (Revised 1971).
5. All artist contracts will include the agreed upon decibel levels.
6. All third party contracts for events will require that the clients of The Edgewater adhere to these standards and that The Edgewater will monitor and control the sound production for said events.
7. The Edgewater will use the band shell during amplified live music events unless the larger tent is in place for said event, in which case, the band shell cannot be erected safely. The Edgewater may leave in place the band shell, larger tent and other related temporary event structures between events, at its discretion.



Exceptions

1. In limited instances, The Edgewater may host events that allow dBA levels in excess of the above restrictions (e.g. Fourth of July, Labor Day, larger concert, ticketed event, etc.) provided:
 - a. such instances will not occur more than five (5) times per year;
 - b. notification of such events will be provided to both the City of Madison Police Department and the District 2 Alder at least 7 days prior to said event;
 - c. the sound level for such events will not exceed 100 dBA at the sound production stage/plaza level and 90 dBA at street level, measured from the mid-point of the intersection of Langdon and Wisconsin Avenue.

In accordance with City ordinances, The Edgewater will follow all lawful directives of the Madison Police Department and will work with the department to ensure sound is maintained at reasonable levels in accordance with this plan.

Further, The Edgewater pledges to continue working with neighbors to address reasonable noise concerns that may arise from time to time and to implement reasonable measures to mitigate such concerns. As part of this commitment, The Edgewater will host an annual neighborhood meeting in the spring to review the event plan for the coming year and will have a representative attend the monthly meetings of Capital Neighborhoods Inc. to stay informed about any noise concerns that may arise.

3.0 SECURITY PLAN

The purpose of this Security Plan is to:

- Provide a safe environment for staff and visitors
- Prevent the disruption of the event/services
- Protect property against damage or loss

Security & Crowd Control

The Edgewater Hotel typically utilizes its own staff to provide additional security as needed for Live Entertainment events. The Edgewater's standard operating procedures include detailed security protocols, and we host regular training of our Managers. Additionally, The Edgewater has contracted with outside vendors to provide life safety training in CPR and fire safety. The Madison Police Department has also provided managers with training regarding active shooter situations.

For Live Entertainment events where attendance is expected to be in excess of 500 people, we typically also hire one or more security officers from a third-party firm to work the event. They typically dress in security uniforms as provided by their employer.

The outside security contractors provide additional crowd control and monitoring as needed. Their instructions are to patrol the outside public areas (e.g. plaza) and parking structure for any disturbances that might occur.

If a disturbance occurs that they are unable to resolve, they have strict instructions to contact the Madison Police Department.

Parking Lot Control

The Edgewater Hotel utilizes two parking garages that guests attending our Live Entertainment events may use. The first is a public garage, Wisconsin Avenue Parking Garage. If needed, overflow parking will be routed to the Edgewater Hotel Garage located under the public garage. The parking structure has gated entry and all guests must pull a ticket for entrance and must insert the ticket for exiting. The gate functions as our parking control to ensure orderly entrance and exiting during the events.



Entrance to Event

A number of Live Entertainment events held on the Grand Plaza are generally open to the public and are typically not ticketed. As such, people attending the events do not form a line for entrance, rather they come and go as they please.

Managing Liquor Sales

Per The Edgewater Hotel’s Standard Operating Procedures, bartenders are required to check the identification of any person who appears under 30 years of age, and to refuse service to those people who are underage or appear to have fake identifications. This includes persons under 21 years of age who are with a parent. If the patron does not accept the decision of the bartender, the bartender has strict instructions to contact the Food & Beverage Director or Director of Outlets who will come and assess the situation. If necessary, the Food & Beverage Director or Director of Outlets will confiscate the fake ID and escort the minor off property.

Further, all bartenders have been trained in refusing service and ejecting anyone who is overly intoxicated, threatening, obnoxious, fighting, obscene, loud and boisterous, or who the bartender on duty feels should not be present at The Edgewater. All bartenders have been instructed to call the Madison Police Department in the event a situation escalates out of their comfort level.

Edgewater Management

The following employees are employed by the Edgewater in a Management Capacity: The Edgewater Staff knows and understands that these are the individuals who are in charge during the events at The Edgewater.

<u>Employee Name</u>	<u>Birth Date</u>	<u>Title</u>
Michael W Pratt		Sales and Marketing - Director of Group Sales
Jason C Wells		Room Revenue - Assistant Rooms Director
Michael Tonsfeldt		Administrative and General - Training Director
Alexandra E Essenburg		The Boat House - Restaurant Manager
Amy Supple		Administrative and General - Managing Director
Allison J Crawford		Room Revenue - Front Office Manager
Kelleye M Heydon		Health Club/Spa - Spa Director
Chad A Wunderlich		The State House - Restaurant Manager
Kelly McElwain		Health Club/Spa - Salon Supervisor
Robert Caston		Sales and Marketing - Director of Group Sales
Laura Klocke		Administrative and General - Controller
James Freeman		Administrative and General - MIS Manager
Timothy Albrecht		Property Operation and Maintenance - Director of Engineering
Kelsey C Kane		Administrative and General - Human Resources Manager
Fadi Takouz		The State House - Director of Food and Beverage
Claire E Varrelmann		Sales and Marketing - Director of Marketing
Anselm N Lwali		Room Revenue - Rooms Director
Igor Latvel		Food Banquets, Local - Banquet Manager
Elizaveta Chernousova		The State House - Restaurant Manager
Melanie Gautreau		Administrative and General - Director of Special Events
Juan R Martinez		Executive Chef

Dress of Security Personnel

Edgewater employees wear uniforms and name tags indicating they are such. Outside security personnel are either in suits or wear uniforms (depending on the event). Designated personnel, and outside guards, have walkie-talkies to communicate issues through departments and to the front desk.