

Document No.

DRAFT AS OF 1/6/11

DECLARATION OF ADA 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 ADA 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 an access pathway that is compliant with the requirements existing as of the date hereof of the Americans with Disability Act of 1990 (as amended from time to time) (the "ADA") from the Langdon Street public right-of-

way through the improvements to be constructed on the Property to the public pedestrian walkway along the Lake Mendota shoreline (the “ADA Access Easement”), which ADA 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. ADA Access Easement. Grantor hereby grants to the City for the benefit of the public, a perpetual, non-exclusive “ADA Access Easement” over, across and through those certain portions of the Property consisting of publicly accessible entranceways, lobby areas, hallways and elevators for the sole purpose of providing an access pathway that is compliant with ADA requirements existing as of the date hereof from the Langdon Street public right-of-way to the public pedestrian walkway along the Lake Mendota shoreline. Notwithstanding anything to the contrary set forth herein, the rights and interests granted pursuant to the ADA Access Easement shall not include any rights, title or interests in (i) the improvements over, across and through which the ADA compliant access pathway is situated, (ii) or in any of the air or subterranean rights above or below the pathway. The approximate route of the ADA Access Easement is generally depicted on Exhibit B attached hereto and incorporated herein, although Grantor reserves the unilateral right to modify and/or alter the route of the ADA Access Easement in any manner, provided the modified route is compliant with ADA requirements then in effect. Grantor shall provide notice to the City Planning Division of any material modification and/or alteration to the route of the ADA Access Easement, although no prior approval or consent of the City Planning Division or any other City agency shall be required. Grantor shall cause the improvements constituting the general route of the ADA 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 ADA Access Easement shall be in accordance with the terms, conditions and restrictions set forth in the Management Agreement and the rules and regulations adopted by the Grantor with regard to the operation and management of the hotel located on the Property.

2. Maintenance. Grantor shall be responsible for all maintenance and repair of the improvements constituting the general ADA Access Easement route 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 ADA 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 ADA Access Easement except as otherwise set forth in the Management Agreement. In addition, notwithstanding anything to the contrary set forth herein, temporary obstructions or closures to and

within all or a part of the pathway constituting the general route of the ADA Access Easement 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 constituting the general route of the ADA Access Easement is 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

4. 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.

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

6. Amendment. Except with regard to Grantor's right unilateral right to alter or modify the route of the ADA Access Easement as set forth in Section 1 above, 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.

7. 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.

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

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

10. 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 rights granted and reserved herein, the Management Agreement shall control.

11. Damage or Destruction. Notwithstanding anything to the contrary set forth herein, in the event that the buildings and improvements in which the pathway of the ADA Access Easement is 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 is 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 or rebuild the buildings and improvements in which the pathway of the ADA Access Easement is 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 an ADA compliant pathway in a modified location on the Property to be reasonably agreed to by Grantor and the City Planning Division.

[SIGNATURES ON NEXT PAGE FOLLOWING]

DRAFT

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.

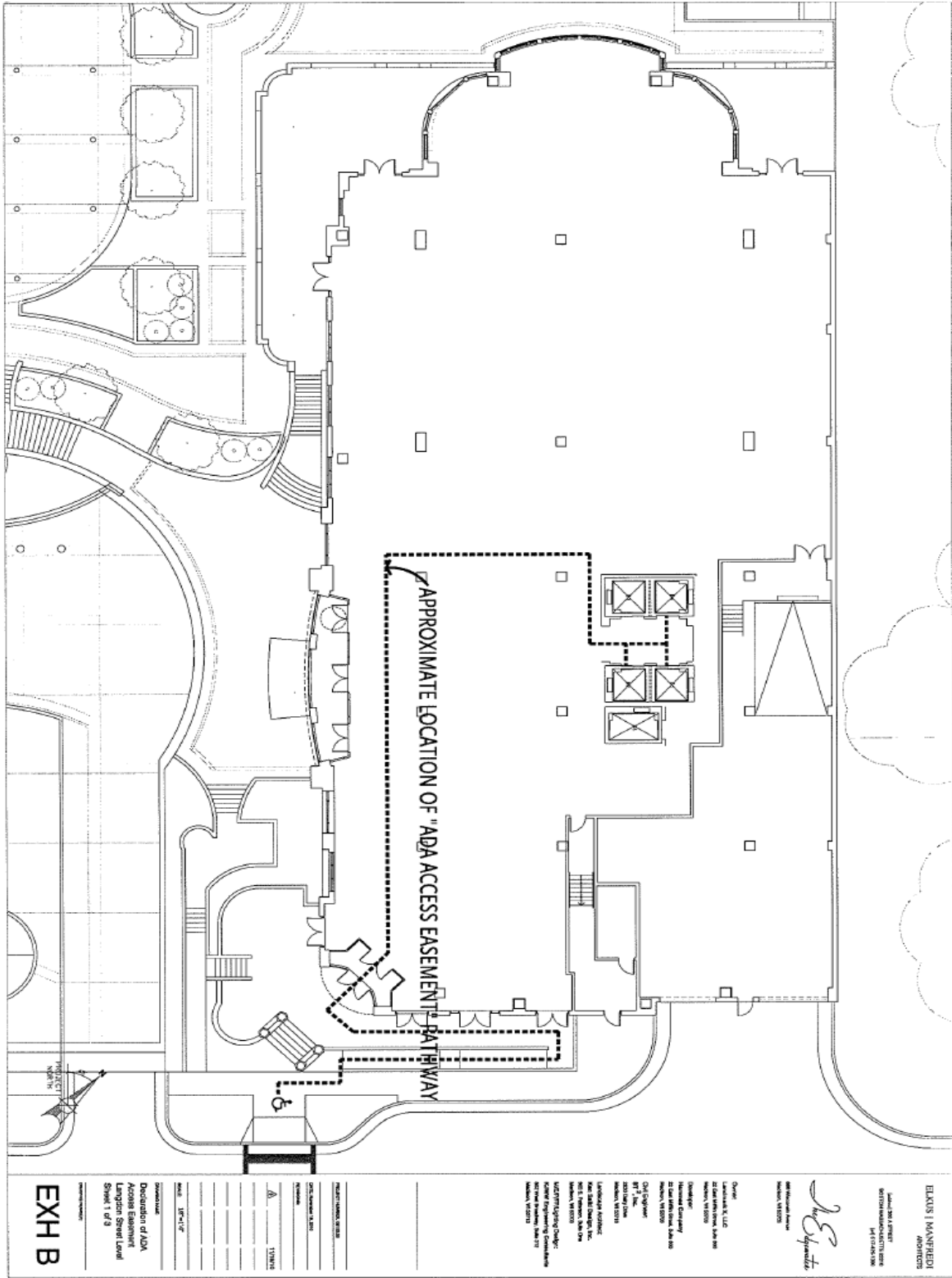
PARCEL 3:

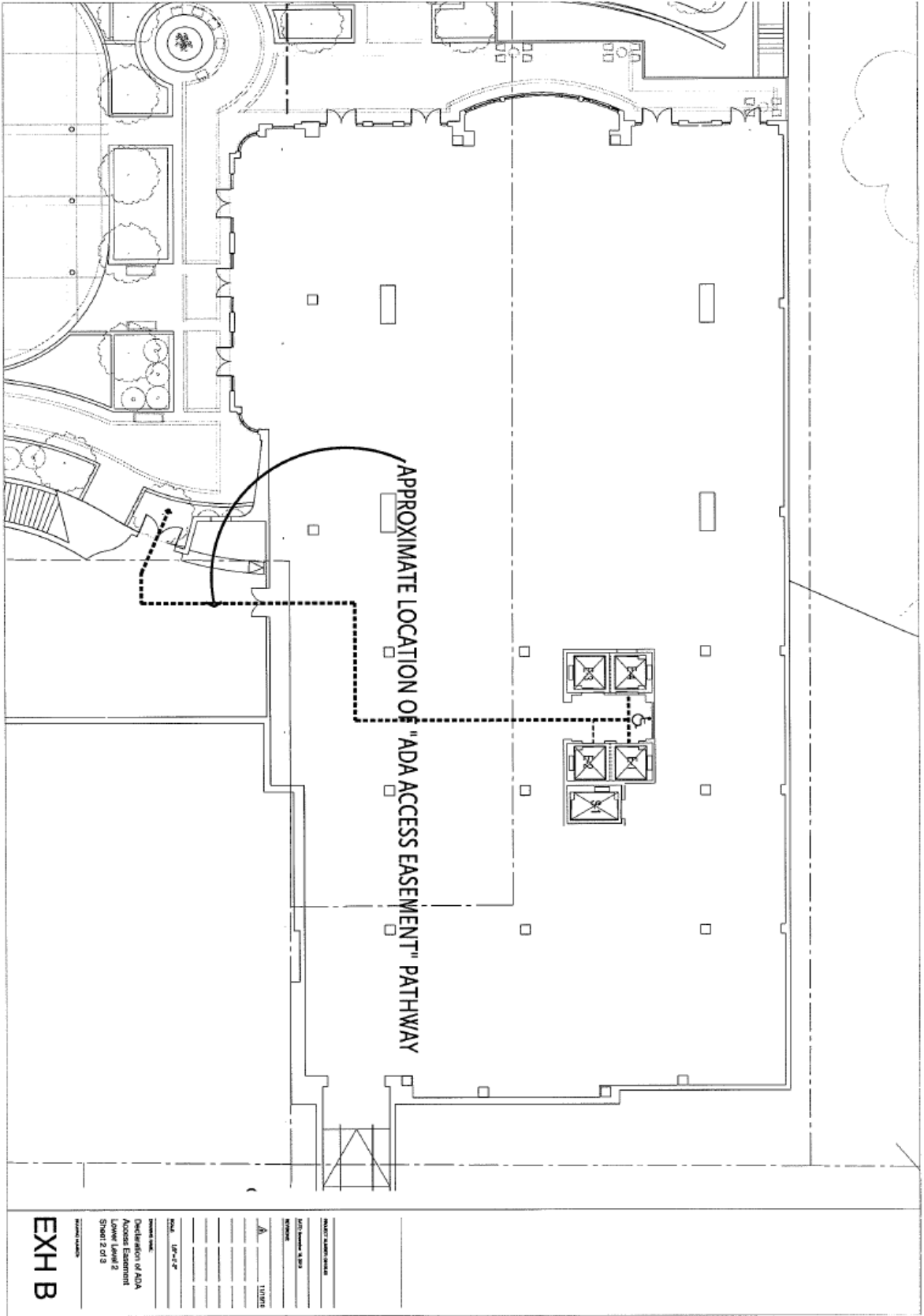
Part of Block Two Hundred Sixty-three (263), Madison, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin, described as follows: Beginning at the most southerly corner of Block 94, said point being the point of intersection of the Northwest line of East Gilman Street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

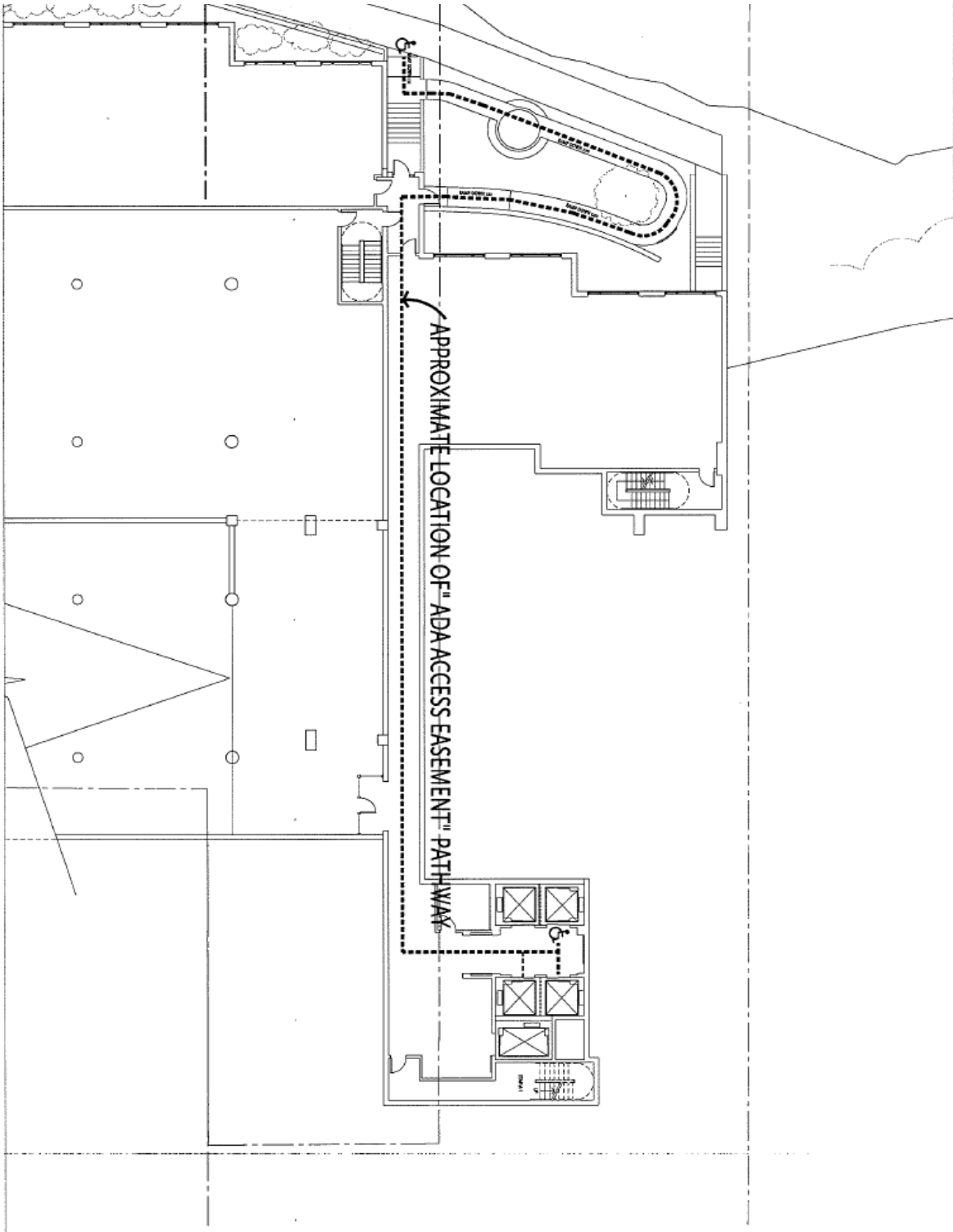




EXH B

PROJECT NAME: _____
 DATE: _____
 DRAWING NO.: _____
 SHEET NO.: _____
 SCALE: 1/8" = 1'-0"
 PROJECT LOCATION: _____
 DRAWN BY: _____
 CHECKED BY: _____
 APPROVED BY: _____
 DATE: _____

DECLARATION OF ADA
 ACCESS EASEMENT
 SHEET 2 OF 3



PROJECT NUMBER: 026544-0003\8042042.1
 DATE: 1/11/12
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]
 TITLE: 11/11/12
 PROJECT NAME: Declaration of ADA Access Easement
 Level 8 of 8
 SHEET 3 OF 3
EXH B