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August 11, 2017

City of Madison Alcohol License Review Committee
210 Martin Luther King Jr Blvd
Room 103, City-County Building
Madison, WI 53703

Re: Entertainment License for The Edgewater Hotel

Dear ALRC Members:

The Edgewater Management Company, LLC recently filed an application seeking re-issuance of the entertainment license for The Edgewater Hotel. The hotel's original entertainment license was granted by the Common Council in 2014, along with an alcohol license, before the hotel opened for business. During the approval process for the alcohol and entertainment licenses, all parties involved acknowledged that the Public Access Management Agreement (PAMA), an agreement between the City and the hotel, is the definitive document governing use of the hotel's outdoor areas (defined in the PAMA as the "Public Access Components"). The PAMA grants the hotel broad authority to program these areas with events between the hours of 8:00 a.m. and 11:00 p.m., 365 days a year, including the right to host live entertainment. A copy of the PAMA is enclosed for your reference.

Despite the fact that The Edgewater has been through the City's annual alcohol license renewal process each year for the past three years, only recently did the City notify the hotel that the hotel's entertainment license had not been properly processed. The Edgewater immediately took action to address the issue. The pending application seeks re-authorization of the same license that was granted to The Edgewater in 2014: an entertainment license subject to the terms and conditions of the PAMA. When reviewing the application, we believe the ALRC should be aware of the following.

The PAMA is the controlling agreement.

The City and the hotel entered into the PAMA as an integral part of the entitlements for redevelopment of the property. The PAMA, which was carefully negotiated by both parties, received a great deal of public scrutiny and debate before the agreement was ultimately approved by the city council and recorded against the title to the hotel property. The PAMA establishes a clear and definitive set of rights that each party—the hotel and the city—secured with respect to use of the Public Access Components. The purpose of the agreement is set forth in Section 3(b): "... the sole purpose of this Agreement is to govern the operations and management of the Public Access Components, and activities and events within the Public Access Components."

August 11, 2017
Page 2

In a 2014 memo, the City Attorney's office was asked by ALRC to provide guidance on the following question: "How does the entertainment license interact with the expectations of the PAMA and current land use approvals?" The City Attorney responded:

Under the PAMA, the City acknowledged that the Hotel Operator or Manager is permitted to hold Events and conduct daily activities and operations, which may involve the use of audio-visual equipment and the serving of food and beverages, in and around the open terrace and other public access areas consistent with the terms of the PAMA.

...

Through its approval of and execution of the PAMA, the City has agreed to the use of the open terrace areas of the Edgewater Hotel between the hours of 8 am and 11 pm for certain Events. *The ALRC may not alter, condition, or further restrict any of the terms contained in the PAMA without the agreement of the Council and Edgewater.* If issued, the Entertainment License should include the same hours of operation as set forth in the PAMA.

(Emphasis added.) A copy of this memo is enclosed for your reference.

The right to hold events, including live entertainment, is addressed in the PAMA.

In exchange for The Edgewater's grant of public access to its property, the City granted The Edgewater the rights spelled out in the PAMA, including the right to program Events (a term defined in the PAMA) within the Public Access Components between the hours of 8:00 a.m. to 11:00 p.m., 365 days per year. Section 9 of the PAMA explicitly provides that the hotel manager shall have the sole and absolute discretion in determining the Events to be held, the schedule of Events, and all of the terms and conditions under which those Events can be held.

The decision whether to have live music or DJs as part of those Events is therefore a decision clearly reserved to The Edgewater under the terms of the PAMA. The only applicable limitation imposed by the PAMA with respect to amplified sound is found in Section 9 of the PAMA, which provides that any audio equipment employed for an Event "shall be constructed and removed in a timely manner" (*i.e.* no permanent installations of audio equipment are allowed).

Just as the rights of public access The Edgewater granted to the City are rights that run with the land and cannot be limited or restricted beyond the terms of the PAMA, the rights the City granted to The Edgewater to operate the Public Access Components are rights that run with the land and cannot be limited or restricted beyond the terms of the PAMA.

The PAMA grants the hotel the right to hold events from 8 a.m. to 11 p.m. 365 days a year.

As noted above, the PAMA grants The Edgewater the right to program the Public Access Components with events between the hours of 8:00 a.m. to 11:00 p.m., 365 days per year, including the right to host live entertainment. The PAMA groups "events" into three different categories: (i) general events, (ii) special events (events where access to portions of the Public Access Components may be restricted), and (iii) community events (events for the

August 11, 2017

Page 3

benefit of a non-profit or community-based organization). The hotel manager is required to reserve the Public Access Components for “not less than eight (8) Community Events per year.” With regard to Special Events, the PAMA limits these Special Events to no more than fifteen (15) days per year. Finally, with regard to General Events, the PAMA places no limit on their number or frequency. Instead, the schedule and frequency of General Events is a right that the PAMA explicitly grants to the hotel manager to exercise in its “sole and absolute discretion.” (See PAMA, para. 9.) Any attempt to impose a limit on the number of General Events that are allowed under the PAMA would be inconsistent with its terms.

The terms of the PAMA cannot be unilaterally altered by either party.

Just as The Edgewater would be in breach of the agreement if it decided to hold an event past 11:00 p.m. or if it decided to hold more than the fifteen “Special Events” where access to the plaza was restricted, the City would likewise be in breach of the agreement if it imposed a new condition requiring all events to end by 10:00 p.m. or if it limited in the number of live entertainment events the hotel is permitted to host. The PAMA required The Edgewater to construct certain improvements on its property (e.g. the plaza, the stairway to the water, etc.) and to grant the public a permanent right to access those portions of the property. In exchange, The Edgewater was granted certain rights with respect to the operation of those areas. And although The Edgewater never received the \$16M of tax increment financing that was intended to offset the cost of constructing the Public Access Components, The Edgewater nonetheless upheld its end of the bargain by constructing those improvements and by granting permanent public access. So, too, must the City uphold its end of the bargain by allowing The Edgewater to manage those areas according to the terms of the PAMA. The Edgewater spent \$34M to construct those amenities in reliance on the promises made by the City in the PAMA and the hotel should be able to rely on those promises.

The plaza was designed and intended to be a vibrant civic space to be enjoyed by all of Madison’s residents and visitors.

From the very beginning, the plaza was always envisioned as a civic space that would host the exact types of events that are now taking place. The Edgewater has not deviated in any manner from the original intent nor has the hotel violated any operating conditions, including allowing open and public access to the waterfront. As anyone who was living in Madison at the time can attest, The Edgewater Hotel was thoroughly vetted over a multi-year entitlement process that stretched from 2009-2014. Countless hours were spent discussing every last detail of the hotel, right down to the window mullions.

The redevelopment of The Edgewater Hotel was one of the most closely watched and actively debated projects of any in the City’s history. It would be disingenuous to now suggest that the plaza was never intended to be an active place, programmed with numerous events throughout the year, including live performances. In fact, one of the primary purposes of the PAMA was to ensure that the plaza could not be cordoned off by the hotel for use only by paying guests who would quietly sip coffee while enjoying the spectacular lake views the property affords. The PAMA was intended to ensure that the entire community had access to the lake and could enjoy

August 11, 2017

Page 4

the programming that was to be offered in this one-of-a-kind setting. The Edgewater has been faithful to that vision.

The hotel has always acted within the limitations imposed by the PAMA.

Since opening, The Edgewater has operated the Public Access Components well within the scope of the PAMA and the terms and conditions of the entertainment license granted by the Common Council in 2014. For example, although the PAMA allows events to take place until 11:00 pm each night, out of consideration for its neighbors and our guests, The Edgewater generally concludes all of its events on the plaza by 9:00 pm. This is consistent with the desires expressed by Ald. Zellers during the public hearing on the original entertainment license in 2014. Although Ald. Zellers acknowledged that the City lacked the authority to impose restrictions beyond those contained in the PAMA, she nonetheless expressed a desire for more limited hours of operation (see enclosed letter). The Edgewater has honored that request.

The hotel has always acted responsibly in addressing neighborhood concerns.

The Edgewater has maintained an active dialogue with its neighbors. This past May the hotel participated in a neighborhood meeting facilitated by Ald. Zellers. In response to the concerns the hotel heard from some of its closest neighbors about musical performances, the hotel offered to invest more than \$40,000 in a custom-designed band shell, which is intended to reduce unwanted sound transmission. Fabrication of this new band shell (which had to be custom-designed because of the requirement under the PAMA that it be a temporary structure capable of being set up and taken down on an event-by-event basis) was recently completed and the band shell is being delivered to the hotel this month.

The new band shell is not the only step The Edgewater has taken in addressing noise concerns. For example, the hotel has contracted with a sound engineer to be on site for the duration of all live music events on the plaza to monitor and test sound at a pre-event sound check as well as for the duration of the event. This gives the hotel greater control over sound levels, as compared to leaving it up to individual musicians or groups. The hotel has also revised its policies and booking contracts to ensure that hotel staff are able to control the sound levels. The Edgewater has been diligent about self-policing its events and on a number of occasions the hotel has required bands to adjust their amplification of sound in order to decrease any impact to the neighbors and hotel guests.

The hotel has never been cited for violating City noise ordinances.

Although the PAMA is the controlling agreement with respect to programming of events on the plaza, it does not trump the City's noise ordinances. Noise complaints have, on occasion, been called in to the City of Madison Police Department. To be clear, complaints about events on the plaza are the exception, not the norm. For example, in the eight-month period between August 2016 and March 2017, MPD reported receiving eleven complaints related to music at the Edgewater. None of these complaints—or any other complaints, for that matter—have ever resulted in a citation or a finding that city ordinances have been violated. The hotel has put in place strict protocols that require hotel staff to cooperate with MPD in responding to any noise complaints and to immediately make adjustments to sound levels when requested.

August 11, 2017

Page 5

The Edgewater Hotel has demonstrated a willingness to go above and beyond.

Although the PAMA grants The Edgewater the right to host events on the plaza until 11:00 at night, as a general rule, all events on the plaza end by 9:00 p.m. Being a good neighbor and a responsible business operator is important to The Edgewater. In response to noise concerns voiced at a neighborhood meeting in May, The Edgewater was asked to monitor decibel levels and to consider purchasing a band shell in an effort to limit sound transfer to nearby properties. The Edgewater has done both. As noted above, the band shell was purchased and will be delivered to the hotel this month.

The decibel readings taken by the hotel over the past few months have led the hotel to develop a set of standards that will be implemented for all live entertainment events going forward. The Edgewater is incorporating these standards into the plan of operation required of all entertainment license applicants under MGO 38.06(12)(d)1.g. An updated copy of that plan is enclosed with this letter. Please consider the enclosed update to be an addendum to the pending application. The written standards are intended to ensure that all live entertainment events held on the plaza are operated within appropriate sound levels. The standards, which are modeled on standards employed at other venues in the City, such as Breese Stevens and Central Park, provide an objective measure that will be easily enforceable by MPD in the event of any future noise complaints. The Edgewater acknowledges and agrees that, per MGO 38.06(12)(d)1.g., the Security Plan/Plan of Operation is an integral and enforceable component of any entertainment license issued by the common council.

The Edgewater Hotel and its outdoor spaces are valuable community assets.

The Edgewater Hotel is a significant part of the hotel industry in Madison. The City and its residents are the beneficiaries of a significant fiscal impact that will continue to grow. The Edgewater has done everything it promised—and more. The Edgewater will continue to be good stewards of this unique community asset as the hotel looks for ways to host great civic events in the future. In so doing, The Edgewater pledges to continue working collaboratively with the City and the Mansion Hill neighborhood to address any concerns that may arise from time to time.

To date, The Edgewater has honored the promise it made to the Greater Madison Community to open the waterfront and make the plaza a vibrant public space. This commitment has included hosting many events that are free, open-to-the-public and family friendly – drawing local and regional visitors who bring an economic impact to downtown Madison. The recent 2017 Reebok CrossFit Games, which drew hundreds of competitors and thousands of visitors to the City, is a great example of the positive economic impact that The Edgewater Hotel helps to provide. The Edgewater Hotel served as the flagship hotel for the games and hosted the opening ceremony on the plaza. This event was a tremendous success for the community.



August 11, 2017
Page 6

For all of these reasons expressed above, we look forward to the re-authorization of an entertainment license for The Edgewater Hotel, subject to the terms and conditions of the PAMA.

Respectfully submitted,

MICHAEL BEST & FRIEDRICH LLP

A handwritten signature in blue ink, appearing to read 'Matthew C. Carlson', written over a light blue rectangular background.

Matthew C. Carlson

Enclosures

- A. Public Access and Management Agreement
- B. 2014 correspondence from Ald. Zellers to ALRC
- C. City Attorney Memo, dated May 12, 2014
- D. Edgewater Hotel – Security/Operational Plan, rev. 8/11/17

cc: Ald. Ledell Zellers
City Attorney Michael May
Assistant City Attorney John Strange
Assistant City Attorney Roger Allen
Assistant City Attorney Jennifer Zilavy
Ms. Amy Supple

B

Dear ALRC members,

It is my understanding based on the city attorney's opinion that neither the ALRC nor the Common Council has discretion to deny an entertainment license for the Edgewater nor to have conditions on that license related to amplified music. That is disappointing since the venue is so close to residences and in other similar situations restrictions on amplified music seems to be routine. It is my hope that in the interests of being a good neighbor that the Edgewater would agree to stop amplified music by 10:00 pm week nights and by 11:00 pm on Friday and Saturday nights.

Sincerely,
Ledell

Alder Ledell Zellers
608 417 9521

D

The Edgewater Hotel – Live Entertainment

Security Plan/Plan of Operation – MGO 38.06(12)(d)1.g.

Event Security Guidelines - Purpose

The purpose of these guidelines is to:

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

Overview of Events/Dates

As a hotel and community space, The Edgewater hosts both private and public live entertainment events on the licensed premises. Live entertainment events are hosted by The Edgewater, as well as by third parties contracting for space within the licensed premises. Live entertainment varies by the type of event and includes live musical (individual, band and DJ) performances.

The outdoor plaza and dock spaces are programed, operated and managed in accordance with the terms and conditions of the Public Access Management Agreement (PAMA) executed between the applicant and the City of Madison.

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 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

Events held on the Edgewater 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.

Sound Plan for Outdoor Live Entertainment Events

Use of the plaza and other outdoor spaces on The Edgewater property are governed by a Public Access Management Agreement (PAMA) entered into between the City and the Edgewater. Use of these outdoor spaces must also comply with all applicable City ordinances. In order to host live entertainment, The Edgewater is required to hold an entertainment license from the City under chapter 38 of the City Code. At all times when live entertainment is being hosted outdoors on the Edgewater property, The Edgewater shall operate within the requirements of MGO 24.08 (Noise Regulation) and the conditions stated in the PAMA. Further, The Edgewater will comply with the following standards, which are incorporated as part of The Edgewater's Security Plan/Plan of Operation, required under MGO 38.06(12)(d)1.g.

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 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 live entertainment events; it is anticipated that many 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 event.
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.

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 four (4) 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 db 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 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.