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Document Number

**AGREEMENT TO UNDERTAKE DEVELOPMENT
BY AND AMONG
THE CITY OF MADISON,
THE COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF MADISON
AND MARCUS HOTELS, INC.**

Recording Area

Name and Return Address

Henry A. Gempeler, Esq.
Foley & Lardner
P.O. Box 1497
Madison, WI 53701-1497

60-0709-242-0116-7; 60-0709-242-0115-9

Parcel Identification Numbers (PINs)

F. Party in Position of a Surety with Respect to Obligations. Hotel Developer for itself and its successors and assigns and for all other persons who are or who shall become, whether by express or implied assumption, or otherwise liable upon or subject to any obligation or burden under this Agreement, hereby waives to the fullest extent permitted by law and equity any and all claims and defenses otherwise available on the ground of it being, or having become a person in the position of surety, whether real, personal or otherwise, or whether by agreement or operation of law, including without limitation on the generality of the foregoing, any and all claims and defenses based upon extension of time, indulgence or modification of the terms of the contract.

XI. EMPLOYEE RELATIONS

A. Nondiscrimination. Hotel Developer for itself, its successors and assigns, agrees that in the performance of all obligations and responsibilities under the terms and conditions of this Agreement, that it will in all respects adhere to and comply with and contract for and enforce adherence to and compliance with the terms and conditions of the Equal Opportunities Ordinance of the City of Madison, Sec. 3.23, Madison General Ordinances, and will contract for and enforce adherence by and compliance with said Equal Opportunities Ordinance by the architect, contractor and subcontractors during construction of the Project, including but not limited to the employment of all individuals working on the Project and working in the rental of the Project. In connection with the performance of work under this Agreement, Hotel Developer agrees not to discriminate against any employee or applicant for employment because of sex, race, religion, color and national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. Hotel Developer agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex or national origin.

B. Work Force Utilization. As used herein, the word "Contractor" means Construction Contractor. The Contractor agrees that, within thirty (30) days after the effective date of the construction contract, the Contractor will provide to the City of Madison Department of Affirmative Action certain workforce utilization statistics, using a form to be furnished by the City.

If the construction contract is still in effect, or if the City enters into a new construction contract with the Contractor, within one (1) year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form must be submitted to the City Department of Affirmative Action no later than one (1) year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of the construction contract, the Contractor will notify the City of Madison Department of Affirmative Action of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice

will include a job description, classification, qualifications, and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department of Affirmative Action if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

C. Affirmative Action. The requirements set forth in Appendix E attached hereto are incorporated herein by reference.

D. Prevailing Wages. The Construction Contractor shall pay its employees the wage rates established by Sec. 4.23, Madison General Ordinances, and its referenced sections and shall require in its contracts and subcontracts for work on the Project, adherence by those contractors, subcontractors and agents to the wage rates established by such Section 4.23 and its referenced sections. The Construction Contractor and its contractors, subcontractors and agents shall also adhere to the requirements of Madison General Ordinances Sec. 23.01(1)(d) "Payrolls and Records," Sec. 23.01(1)(j) "Evidence of Compliance by Contractor," and Sec. 23.01(1)(k) "Evidence of Compliance by Agent and Subcontractor" with the exception that the reference to "City Engineer" and "Department of Public Works" shall be to the City agency administering the project.

E. Employee Plan. The Hotel Developer shall offer and provide the following Employee Plan to Eligible Employees (as defined below) at the Hotel Development:

1. Eligible Employees. The following Employee Plan shall apply to all full-time employees of Hotel Developer who work at the Hotel Development ("Eligible Employees"). The Employee Plan shall not apply to part-time employees (defined as employees working less than 32 hours per week); probationary and training employees (provided, however, such employees shall be included if otherwise qualified upon successfully completing probationary period and the training period); trainee positions (provided, however, that such employees shall be included if otherwise eligible upon successfully completing the training period); casual employees; seasonal employees; tipped, service charged and commissioned employees; piece-work employees; and special Visa/off-shore employees.

2. Wages. All Eligible Employees shall be paid wages at an hourly rate equal to or in excess of \$6.56 effective in calendar year 1998. This hourly rate shall be adjusted annually on the anniversary date of the opening of the Hotel Development to reflect the change over the prior twelve (12) months in the Consumer Price Index as calculated by the U.S. Department of Commerce applicable to the City of Madison. In no event, however, shall the wage rates as established hereunder increase by more than four percent (4%) in any given year.

3. Benefits. The Hotel Developer shall also offer on a cost sharing basis to all Eligible Employees a benefit package similar to benefits offered and in effect at other Hotel Developer hotel projects at the time of opening of the Hotel Development. (Benefit programs currently in effect at other hotel projects include health, dental,

vision, life and disability (short and long term) insurance, vacation and holiday pay, and certain pension programs. The benefit package may vary at the time of opening of the Hotel Development and no assurance is given herein with respect to the specific elements of the benefit package which will be in effect at the time of opening of the Hotel Development.) The Hotel Developer agrees that any such benefit package offered to Eligible Employees shall include average employer contributions of no less than \$1.00 per hour. Hotel Developer may also offer to certain employees meals and uniforms.

4. **Extraordinary Events.** If after reaching Stabilized Operations, as defined in Section VI.M.2 above, economic or other conditions or events occur which cause the Hotel Development's operation to fall below Stabilized Operations by more than five percent (5%) for a 6 month period, the Hotel Developer reserves the right consistent with any other agreements then in effect to modify, alter or otherwise change the wages or benefits set forth above. If such wages or benefits are adjusted, and if after doing so the Hotel Development resumes Stabilized Operations, the Hotel Developer shall reinstate the Employee Plan for all Eligible Employees consistent with the above provided that in doing so the Hotel Development maintains Stabilized Operations.

5. **Employee Representation.** In the event that some or all of the Eligible Employees are subsequently certified and represented by a union organization then the above Employee Plan shall not apply to such represented employees and the wages, benefits and other conditions of employment shall be determined through the normal collective bargaining process as governed by the applicable Federal and State law then in effect.

6. **Representation Neutrality.** The Hotel Developer further agrees that it will remain neutral with respect to any organizational petition filed by its employees pursuant to applicable law and shall take no position either for or against such petition; provided, however, the Hotel Developer reserves, herein, the right to correct misstatements or distortions of fact.

F. **Notification of Position Openings.** To the extent applicable, the Hotel Developer shall comply with the provisions of Section 64.46(6c) of the Wisconsin Statutes with respect to notification of position openings.

XII. SPECIAL PROVISIONS

A. **Wisconsin Law.** This Agreement shall be deemed to have been made in the State of Wisconsin and its validity, construction, performance, breach and operation shall be governed by the laws of the State of Wisconsin. No provision of this Agreement shall be construed to require the City or CDA to take any action in violation of law. No waiver by the City or CDA of any defect shall affect any subsequent default or breach of duty or contract or shall impair the exercise of any right or remedy accruing upon any default or the exercise thereof, nor shall it be construed as a waiver of any such default or breach of duty or contract

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Approved as to form .

Eunice Gibson
Eunice Gibson, City Attorney 3/24/99

Countersigned:

Gale Dushack
Gale Dushack, City Comptroller

CITY OF MADISON, WISCONSIN

Susan J. M. Bauman
Susan J. M. Bauman, Mayor

Ray Fisher
Ray Fisher, City Clerk

COMMUNITY DEVELOPMENT
AUTHORITY OF THE CITY OF MADISON

By: Carol A. Biendseil
Carol A. Biendseil, Chairperson

By: Percy Brown
Percy Brown, Acting Secretary

MARCUS HOTELS, INC.

By: _____

Name: _____

Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Approved as to form:

CITY OF MADISON, WISCONSIN

Eunice Gibson, City Attorney

Susan J. M. Bauman, Mayor

Countersigned:

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Ray Fisher, City Clerk

COMMUNITY DEVELOPMENT
AUTHORITY OF THE CITY OF MADISON

By: _____
Carol A. Biendseil, Chairperson

By: _____
Percy Brown, Acting Secretary

MARCUS HOTELS, INC.

By: 

Name: Lee A. Berthelsen

Its: President