

Document Number

**GRANT OF RIGHT
OF FIRST REFUSAL
AGREEMENT**

Name and Return Address
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P.O. Box 1497
Madison, WI 53701-1497

60-0709-242-0701-6

Parcel Identification Number(s)

GRANT OF RIGHT OF FIRST REFUSAL

THIS GRANT OF RIGHT OF FIRST REFUSAL AGREEMENT (this "Agreement") is made and entered into as this 15th day of April, 1999 by and among the CITY OF MADISON, a municipal corporation (the "City"), the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, a redevelopment authority created under Section 66.4325, Wis. Stats. (the "CDA"), and MARCUS HOTELS, INC., a Wisconsin corporation ("Hotel Developer").

WITNESSETH:

WHEREAS, the CDA, City and Hotel Developer have entered into an Agreement to Undertake Development dated March 19, 1999 (the "Development Agreement"), which sets forth the respective rights and obligations of the parties with respect to the development, construction and operation of the Project and Hotel Development (as defined therein); and

WHEREAS, pursuant to the terms of the Development Agreement, the parties have agreed to enter into this Agreement regarding the future development of the area commonly known as Block 88 in the City of Madison, Wisconsin and more particularly described in Exhibit A (the "Block 88 Property").

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Development Agreement.

2. Right of First Refusal. The Block 88 Property may not be Transferred (as hereinafter defined) without Hotel Developer first being given the right of first refusal provided for herein. If at any time during the term of this Agreement, the City or CDA receives an unsolicited bona fide offer ("Offer") to purchase, lease, sublease or otherwise transfer (each a "Transfer") all or any portion of the City's or CDA's interest in the Block 88 Property, for the purpose of constructing, developing or undertaking a hotel, motel or other project which contains any rooms or lodging which are subject to the room tax under Section 4.21 of the Madison General Ordinances (the "Development Proposal"), and if the City and/or CDA are willing to accept the Offer, the City and CDA may Transfer the Block 88 Property, or the portion specified in the Offer (the "Offered Property"), only after the City has first notified Hotel Developer in writing (the "City's Notice") of the proposed Transfer of the Block 88 Property or the Offered Property, the price, rent (if applicable) and all terms on which it is proposed to be Transferred, and the identity of the proposed transferee (the "Proposed Transferee"). Hotel Developer shall then have the option to purchase, lease, sublease or accept the Transfer of ("Purchase") the Block 88 Property or Offered Property from the City/CDA at a price, rent (if applicable) or consideration equal to the price, rent or consideration, as the case may be, specified in the City's Notice and shall undertake ("Develop") the Development Proposal on the Block 88 Property consistent with the terms and conditions of the Offer. Hotel Developer's option to Purchase the Block 88 Property or Offered Property shall be exercised, if at all, by written notice from Hotel Developer to the City, given within sixty (60) days after receipt by Hotel Developer of the City's Notice. If Hotel Developer does not exercise its option to Purchase the Block 88 Property or the Offered Property within the time provided, the City and CDA may then, at any time within eighteen (18) months following the expiration of the sixty (60) day period referred to above, Transfer the Block 88 Property or Offered Property on terms no more favorable to the Proposed Transferee than the terms stated in the City's Notice. If the City or CDA fails to Transfer the Block 88 Property or the Offered Property to the Proposed Transferee on the terms set forth in the City's Notice within such 18-month period, then the obligations of the City and CDA and the rights of Hotel Developer under this Paragraph 2 shall be renewed with respect to such Offer and any other bona fide offers. If Hotel Developer does exercise its option to Purchase, then Hotel Developer shall, contingent on its being satisfied with its inspection and evaluation of the Block 88 Property or the Offered Property, as the case may be, as provided below, Purchase the Block 88 Property or the Offered Property at the price and within the period set forth in the City's Notice (subject to extension as necessary to allow for the sixty (60) day period described above), and such Purchase shall only be contingent upon the City's and CDA's obligation to deliver merchantable title (which title shall be subject to such easements, restrictions, covenants of record and land use laws and regulations reviewed by Hotel Developer as provided below) to the Block 88 Property or the Offered Property or execution of

a lease, if applicable; and Hotel Developer's commitment to undertake the Development Proposal contemplated under the terms and conditions of the Offer will be subject to the reasonable satisfaction of conditions as set forth in the Offer and the City Notice as negotiated with the City/CDA. During the sixty (60) day period referred to above, Hotel Developer shall be entitled to conduct such inspections and evaluations of the Block 88 Property or the Offered Property as it deems necessary or appropriate in order to make an election within said sixty (60) day period to purchase or lease, as applicable, or decline to purchase or lease, as applicable, the property in question, including without limitation, an evaluation of the easements, restrictions, covenants of record and land use laws affecting the subject property. Such election shall be subject to the approval of Hotel Developer's Board of Directors. The Hotel Developer shall notify the City in writing within such sixty (60) day period if it rescinds its election to purchase due to its dissatisfaction with such inspection or its Board of Directors not approving such transaction, in which case such election to purchase shall be null and void. The City and CDA shall permit Hotel Developer to have access to the Block 88 Property or the Offered Property, as the case may be, upon reasonable notice in order that Hotel Developer may conduct the inspections referred to above.

3. Exclusive Negotiation Periods.

a. Phase I Period. In addition to the right of first refusal described in Paragraph 2 above, if, for the period commencing as of the date hereof and ending on the later of (i) twelve (12) years after the date of the Bond Issue or (ii) the date the Hotel Development has achieved and maintained Stabilized Operations for the Hotel Stabilization Period (the "Phase I Period"), the City or CDA has not received an Offer as defined in Paragraph 2 above and the City and/or CDA intends to undertake, develop, promote, participate in or solicit a Development Proposal which involves a hotel, motel or other project which contains any rooms or lodging which are subject to the room tax under Section 4.21 of the Madison General Ordinances, then the City and CDA shall, prior to soliciting such a Development Proposal or otherwise undertaking the proposed project, notify the Hotel Developer in writing of the proposed project, its terms and conditions (the "Development Notice"). The Hotel Developer shall be granted an exclusive right to negotiate with the City and CDA regarding the Development Proposal, its terms and conditions, for a period of not less than one hundred fifty (150) days following receipt of the Development Notice during which time the City/CDA shall negotiate exclusively with the Hotel Developer and shall take no action of any kind to encourage or solicit interest in the Development Proposal from third parties (the "Exclusive Negotiation Period"). Hotel Developer's option to undertake the Development Proposal (the "Option to Develop") shall be exercised, if at all, by written notice from Hotel Developer to the City given within the Exclusive Negotiation Period unless the time period is otherwise extended by mutual agreement of the parties. During the Exclusive Negotiation Period the parties shall negotiate in good faith regarding the Development Proposal. If Hotel Developer does not exercise its Option to Develop, or fails to successfully negotiate the terms of the Development Proposal, within the time provided, the City and CDA may then, at any time within eighteen (18) months following the expiration of the Exclusive Negotiation Period, enter into a development agreement with, or transfer the Block 88 Property to, any third party developer (the "Proposed Developer") for the Development

Proposal on terms substantially the same as and no more favorable to the Proposed Developer than the Development Proposal presented to, and negotiated with, Hotel Developer during the Exclusive Negotiation Period; such terms to include a substantially similar project in both type and size and no greater public assistance to or participation in the proposed project including, but not limited to, funds, loans, grants, financing, site assembly and infrastructure, public improvements and services. If the City or CDA fails to enter into a development agreement with or transfer the Block 88 Property to the Proposed Developer within such 18-month period, or, prior to the end of such 18-month period, provides the Hotel Developer with written notice of its intent not to enter into a development agreement with or transfer the Block 88 Property to the Proposed Developer, then the obligations of the City and CDA and rights of Hotel Developer under this Paragraph 3(a) shall be renewed with respect to such Development Proposal and any other Development Proposals; except that the Exclusive Negotiation Period shall be reduced to 75 days if the Development Proposal to be negotiated is substantially the same as a Development Proposal previously negotiated with the Hotel Developer. The Hotel Developer, City and CDA agree to resolve all disputes, claims and differences arising between them as to whether terms provided to the Proposed Developer include greater public assistance or participation in the proposed project by arbitration between the Hotel Developer and the City/CDA. The Hotel Developer and the City/CDA shall each select one impartial arbitrator and the two arbitrators thus selected shall select a third impartial arbitrator. The arbitration panel so selected shall apply such rules of procedure and render such award by majority vote as the panel shall deem appropriate. The costs and expenses of the arbitration panel shall be shared equally by the Hotel Developer and the City/CDA. If Hotel Developer does exercise its Option to Develop, then Hotel Developer shall undertake the Development Proposal on the Block 88 Property consistent with terms and conditions negotiated with City/CDA during the Exclusive Negotiation Period. During the Exclusive Negotiation Period referred to above, Hotel Developer shall be entitled to conduct such inspections and evaluations of the Block 88 Property as is deemed necessary or appropriate in order to make an election within the Exclusive Negotiation Period to undertake the proposed project, including without limitation, an evaluation of the easements, restrictions, covenants of record and land use laws affecting the subject property. If Hotel Developer does exercise its Option to Develop, its commitment to undertake the Development Proposal will be subject to the reasonable satisfaction of conditions as negotiated with the City/CDA.

b. Phase II Period. In addition to the right of first refusal described in Paragraph 2 above, if, after expiration of the Phase I Period and during the term of this Agreement (the "Phase II Period"), the City or CDA has not received an Offer as defined in Paragraph 2 above and the City or CDA intends to undertake, develop, promote, participate in or solicit a Development Proposal which involves a hotel, motel or other project which contains any rooms or lodging which are subject to the room tax under Section 4.21 of the Madison General Ordinances, then the City and CDA shall only be permitted to undertake, develop, promote, participate in or solicit such a Development Proposal by issuing a public Request for Proposal ("RFP") for such Development Proposal. The RFP shall be open to all potential developers of such Development Proposal including the Hotel Developer and shall comply with all applicable state and local laws, ordinances, rules and regulations. The RFP shall expressly provide that if the developer selected by the City to complete the Development

Proposal (the "RFP Developer") is not the Hotel Developer, then such RFP Developer shall be required to negotiate exclusively and in good faith with Hotel Developer for a period of not less than one hundred twenty (120) days following the City's acceptance of the RFP Developer's proposal regarding the terms of the Hotel Developer's operation and management of the hotel/motel component of the accepted Development Proposal (the "Hotel/Motel Component"), and shall be prohibited during such period from taking any action of any kind to encourage or solicit proposals from any third parties with respect to the operation and management of the Hotel/Motel Component. If the RFP Developer and the Hotel Developer are unable to successfully negotiate the terms of the Hotel Developer's operation and management of the Hotel/Motel Component during the 120-day period provided above, then, within the eighteen (18) month period following the expiration of such 120-day period, the RFP Developer shall be allowed to negotiate and enter into an agreement regarding the operation and management of the Hotel/Motel Component with any third party; provided however, that any such agreement shall contain terms which are substantially the same as and no more favorable to such third party as the terms proposed by the RFP Developer to the Hotel Developer during their 120-day exclusive negotiation period. The RFP shall also provide that if the RFP Developer fails to enter into any such agreement with a third party within such 18-month period, or, prior to the end of such 18-month period, provides the Hotel Developer with its intent not to enter into any such agreement with a third party, then the RFP Developer's obligation to negotiate in good faith with Hotel Developer as provided hereunder for a period of not less than 120 days shall be renewed; except that the negotiation period shall be reduced to 60 days if the Hotel/Motel Component of the Development Proposal is substantially the same as the one previously presented to and negotiated with the Hotel Developer. The RFP shall also provide that any disputes, claims and differences arising between the Hotel Developer and RFP Developer as to whether the terms of any agreement between the RFP Developer and a third party are "substantially similar and no more favorable" than the terms proposed to the Hotel Developer shall be resolved by arbitration as provided in Paragraph 3(a) above. During the 120-day negotiation period described in this Paragraph 3(b), the Hotel Developer shall be entitled to review the accepted Development Proposal and conduct such inspections and evaluations of the Block 88 Property as is deemed necessary or appropriate by the Hotel Developer in order for the Hotel Developer to determine within such period whether it desires to operate and manage the Hotel/Motel Component, including without limitation, an evaluation of the easements, restrictions, covenants of record and land use laws affecting the subject property.

The provisions of Paragraphs 3(a) and 3(b) above do not apply to any project undertaken, developed, promoted, participated in by the City or CDA which includes in whole or in part a publicly owned and operated Convention Center, Conference Center, Visitor's Center or expansion to the Convention Center, unless such project also includes hotel/motel services, which in such an event the Hotel Developer shall have the rights provided in Paragraphs 3(a) and 3(b) above with respect to the hotel/motel services portion of the proposed development.

4. Closing. The closing of the Transfer of the Block 88 Property or Offered Property to Hotel Developer pursuant to the right of first refusal shall occur on the closing date

specified in the City's Notice or such other date mutually agreed to by the parties. If there is a transfer of the Block 88 Property or Offered Property under Paragraph 3(a), the closing for such transfer shall occur on the date set forth in the Development Proposal or such other date mutually agreed to by the parties. Any such transfer shall be accompanied by execution of such documentation as may be reasonably required by the parties hereto and their legal counsel, and each of the parties hereto shall cooperate in completing such conveyance and shall execute any documentation reasonably requested by the other party hereto.

5. Title. In the event that Hotel Developer elects to purchase the Block 88 Property or Offered Property, the City and CDA shall, upon payment by Hotel Developer of the purchase price at closing, convey the Block 88 Property or Offered Property by warranty deed, bill of sale, and other appropriate devices, free and clear of all liens and encumbrances and all security interests related thereto unless otherwise provided in the Offer or Development Proposal, as the case may be.

6. Possession. In the event that Hotel Developer elects to purchase the Block 88 Property or Offered Property, legal possession and occupancy (subject to the rights of tenants in possession) shall be delivered to Hotel Developer on the day of closing. In the event that Hotel Developer elects to lease or sublease the Block 88 Property or Offered Property, occupancy shall be delivered to Hotel Developer consistent with the terms of the Offer or Development Proposal, as the case may be.

7. Prorations. Unless otherwise provided in the Offer or Development Proposal, in the event that Hotel Developer elects to purchase the Block 88 Property or Offered Property: (a) rents and water and sewer charges shall be prorated as of the date of closing and accrued income and expenses, for the date of closing shall accrue to the City/CDA, (b) real and personal property taxes shall be prorated at the closing based on the net general taxes for the then current year, if known, otherwise on the most recently available assessment and mill rate, (c) special assessments, if any, for work on site actually commenced, noticed or levied prior to the date of closing shall be paid by the City/CDA, and (d) the real estate transfer tax (if any) shall be paid by the City/CDA.

8. Title Insurance. In the event that Hotel Developer elects to purchase, lease or otherwise accept the transfer of the Block 88 Property or Offered Property, the City/CDA shall furnish and deliver to Hotel Developer for examination at least fifteen (15) days prior to the date set for closing a commitment for an owner's policy of title insurance in the amount of the full purchase price naming Hotel Developer as insured, as Hotel Developer's interest may appear, written by a title insurance company licensed to do business in the State of Wisconsin, which commitment shall insure the City/CDA's title to be in the condition called for by this Agreement, except for mortgages, judgments and other liens which will be satisfied out of the proceeds of the sale. The policy for such title insurance shall be issued at closing at the City/CDA's expense.

9. Memorandum. This Agreement or a memorandum hereof may be recorded by either party hereto. The rights of Hotel Developer described herein shall be deemed to run with the Block 88 Property.

10. Time of the Essence. Time is of the essence as to the exercise of the right of first refusal described herein and all other dates referenced herein, as well as to legal possession and occupancy following closing.

11. Rule Against Perpetuities. In the event it shall have been determined by a court of competent jurisdiction that any of the interests conveyed or assigned or purported to be conveyed or assigned herein are void as against any rule against perpetuities or Chapter 700 of the Wisconsin Statutes, or its successor, the life or lives of such interest or interests shall be deemed without any further action on the part of any party to be the longest life or lives possible without violation of any such rule or statute, as it is the intention of the parties hereto that the interest conveyed herein shall not be in violation of any such rule or statute.

12. Invalidity. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

13. Notice. All notices hereunder shall be in writing and shall be delivered personally or sent by United States mail, certified or registered, return receipt requested, postage prepaid, and addressed as follows or to such other address as a party may give notice of in writing to the other party,

City: City Clerk
City-County Building, Rm. 103
210 Martin Luther King, Jr. Blvd.
Madison, WI 53709

With copies to: City Attorney
City-County Building, Rm. 401
210 Martin Luther King, Jr. Blvd.
Madison, WI 53710

City Comptroller
City-County Building, Rm. 406
210 Martin Luther King, Jr. Blvd.
Madison, WI 53710

Director of Planning and Development
Madison Municipal Building
215 Martin Luther King, Jr. Blvd.
Madison, WI 53710

CDA: Executive Director
Community Development Authority
for the City of Madison
Madison Municipal Building
215 Martin Luther King, Jr. Blvd.
Madison, WI 53710

With copies to: City Attorney
City-County Building, Room 401
210 Martin Luther King, Jr. Blvd.
Madison, WI 53709

City Comptroller
City-County Building, Rm. 406
210 Martin Luther King, Jr. Blvd.
Madison, WI 53710

Hotel Developer: Marcus Hotels, Inc.
250 East Wisconsin Avenue
Suite 1503
Milwaukee, WI 53202
Attention: Lee Berthelsen,
President and CEO

With copies to: Henry A. Gempeler
Foley & Lardner
150 E. Gilman Street
Madison, WI 53701

Marcus Corporation
250 East Wisconsin Avenue
Suite 1700
Milwaukee, WI 53202
Attention: Thomas Kissinger,
Esquire, Secretary

14. Applicable Law. This Agreement has been made and entered into in the State of Wisconsin and shall be enforceable and interpreted under the laws of such state.

15. Term. The term of this Agreement shall commence on the date hereof and end on the later of (i) the date Hotel Developer acquires the Site and Project pursuant to the Option Agreements or (ii) final maturity of the Bonds.

16. Hotel Developer's Rights. In the event any Offer or Development Proposal hereunder applies to only a portion of the Block 88 Property, Hotel Developer's rights hereunder shall apply to such Offer or Development Proposal as well as any and all subsequent Offers and Development Proposals for the remaining portion(s) of the Block 88 Property.

17. Change in Development. In the event the City or CDA Transfers all or any portion of the Block 88 Property to a third party for any purpose which does not involve the construction, development or undertaking of a hotel, motel or other project which contains any rooms or lodging which are subject to the room tax under Section 4.21 of the Madison General Ordinances (a "Hotel Project"), and after such Transfer, the third party transferee or any subsequent transferee intends to develop the property for use as a Hotel Project during the term of this Agreement, then Hotel Developer's rights hereunder shall be in full force and effect as between Hotel Developer and the then current owner of the Block 88 Property to be developed.

18. Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of the other parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement
as of the first day set forth above.

MARCUS HOTELS, INC.

By: Lee A. Berthelsen
Name: Lee A. Berthelsen
Title: President

AUTHENTICATION

Signature of Lee A. Berthelsen, President of Marcus Hotels,
Inc., authenticated this 13th day of April, 1999.

Janice L. Gauthier
Name: Janice L. Gauthier
Member, State Bar of Wisconsin

Approved as to form:

CITY OF MADISON, WISCONSIN

Eunice Gibson, City Attorney

By: _____
Susan J. M. Bauman, Mayor

Countersigned:

By: _____
Ray Fisher, City Clerk

Gale Dushack, City Comptroller

AUTHENTICATION

Signatures of Susan J. M. Bauman, Mayor, and Ray Fisher, City Clerk, of the
City of Madison, Wisconsin, a Wisconsin municipal corporation, authenticated this ____ day of
_____, 1999.

Name: _____
Member, State Bar of Wisconsin

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the first day set forth above.

MARCUS HOTELS, INC.

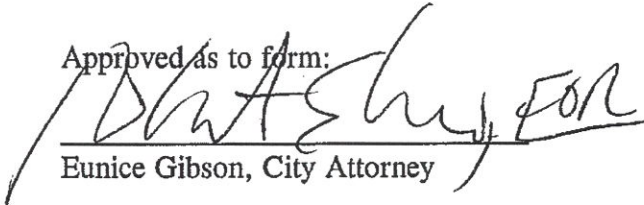
By: _____
Name: _____
Title: _____

AUTHENTICATION

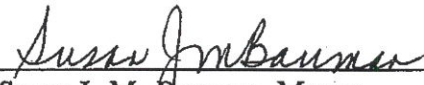
Signature of _____, _____ of Marcus Hotels, Inc., authenticated this ____ day of _____, 1999.

Name: _____
Member, State Bar of Wisconsin

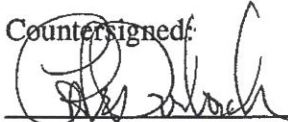
Approved as to form:

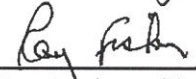

Eunice Gibson, City Attorney

CITY OF MADISON, WISCONSIN

By: 
Susan J. M. Bauman, Mayor

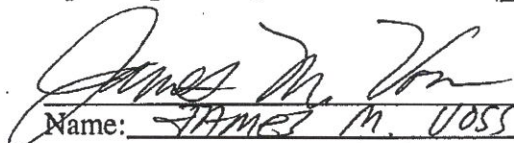
Countersigned:


Gale Dushack, City Comptroller

By: 
Ray Fisher, City Clerk

AUTHENTICATION

Signatures of Susan J. M. Bauman, Mayor, and Ray Fisher, City Clerk, of the City of Madison, Wisconsin, a Wisconsin municipal corporation, authenticated this 5th day of April, 1999.


Name: JAMES M. VOSS
Member, State Bar of Wisconsin

COMMUNITY DEVELOPMENT
AUTHORITY OF THE CITY OF
MADISON

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

By: Percy Brown
Percy Brown, Acting Secretary

AUTHENTICATION

Signatures of Carol A. Biendseil, Chairperson, and Percy Brown, Acting
Secretary of the Community Development Authority of the City of Madison, authenticated this
15th day of April, 1999.

James M. Voss
Name: JAMES M. VOSS
Member, State Bar of Wisconsin

This instrument was drafted by Attorney Michael P. Hickmann, Foley & Lardner, P.O. Box 1497, Madison,
Wisconsin 53701-1497.

Exhibit A

LEGAL DESCRIPTION

All of Block 88, Original Plat of the City of Madison, in the City of Madison, Dane County, Wisconsin.