

court having jurisdiction over such action. For the purposes of this Dispute Resolution Section only, the terms "party" and "parties" shall include any parent corporation, subsidiary or affiliate of Lender involved in the servicing, management or administration of any obligation described in or evidenced by this Agreement, together with the officers, employees, successors and assigns of each of the foregoing.

(b) Special Rules.

(i) The arbitration shall be conducted in any U.S. state where real or tangible personal property collateral is located, or if there is no such collateral, in the City and County where Lender is located pursuant to its address for notice purposes in this Agreement.

(ii) The arbitration shall be administered by AAA, who will appoint an arbitrator. If AAA is unwilling or unable to administer or legally precluded from administering the arbitration, or if AAA is unwilling or unable to enforce or legally precluded from enforcing any and all provisions of this Dispute Resolution Section, then any party to this Agreement may substitute, without the necessity of the agreement or consent of the other party or parties, another arbitration organization that has similar procedures to AAA but that will observe and enforce any and all provisions of this Dispute Resolution Section. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million Dollars (\$5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Agreement, referred to collectively as the "arbitrator").

(iii) All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration and completed within ninety (90) days from the date of commencement; provided, however, that upon a showing of good cause, the arbitrator shall be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(iv) The judgment and the award, if any, of the arbitrator shall be issued within thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any. The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration.

(v) The arbitrator will give effect to statutes of limitation and any waivers thereof in determining the disposition of any Dispute and may dismiss one or more claims in the arbitration on the basis that such claim or claims is or are barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Dispute is the equivalent of the filing of a lawsuit.

(vi) Any dispute concerning this Dispute Resolution Section, including any such dispute as to the validity or enforceability hereof or whether a Dispute is arbitrable, shall be determined by the arbitrator; provided, however, that the arbitrator shall not be permitted to vary the express provisions of these Special Rules or the Reservations of Rights in subsection (c) below.

(vii) The arbitrator shall have the power to award legal fees and costs pursuant to the terms of this Agreement.

(viii) The arbitration will take place on an individual basis without reference to, resort to, or consideration of any form of class or class action.

(c) Reservations of Rights. Nothing in this Agreement shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Agreement, or (ii) apply to or limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment, or the appointment of a receiver, or (D) to pursue rights against a party to this Agreement in a third-party proceeding in any action brought against Lender in a state, federal or international court, tribunal or hearing body (including actions in specialty courts, such as bankruptcy and patent courts). Lender may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration proceeding brought pursuant to this Agreement. Neither the exercise of

self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the Dispute occasioning resort to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any Dispute.

(d) Conflicting Provisions for Dispute Resolution. If there is any conflict between the terms, conditions and provisions of this Section and those of any other provision or agreement for arbitration or dispute resolution, the terms, conditions and provisions of this Section shall prevail as to any Dispute arising out of or relating to (i) this Agreement, (ii) any other Loan Document, (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In any other situation, if the resolution of a given Dispute is specifically governed by another provision or agreement for arbitration or dispute resolution, the other provision or agreement shall prevail with respect to said Dispute.

(e) Jury Trial Waiver in Arbitration. By agreeing to this Section, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Dispute.

7. **WAIVER OF JURY TRIAL.**

**WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY "DISPUTE" (FOR PURPOSES OF THIS SECTION, AS DEFINED ABOVE) AS SET FORTH IN THIS AGREEMENT, TO THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND THE PARTIES HERETO HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. THE PARTIES HERETO ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

8 Notice of Final Agreement. This Agreement is the entire agreement between the parties with respect to modifications of documents provided for herein and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. The following notice is applicable only if the original amount of the Modified Note was in excess of \$50,000.00 and the Modified Note was originally executed on or after September 1, 1989:

**"THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN PARTIES."**

EXECUTED to be effective as of the Modification Date.

**LENDER:**

CITY OF SAN MARCOS, TEXAS, a Texas municipal corporation

By

D. Leary  
Dan O'Leary, City Manager

**BORROWER:**

John Q. Hammons, Trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as Amended and Restated, a Missouri Trust

By

JQH  
John Q. Hammons, Trustee

**ADDITIONAL OBLIGOR:**

JQH SAN MARCOS DEVELOPMENT, LLC,  
a Missouri limited liability company

By: John Q. Hammons Hotels Development, LLC,  
a Missouri limited liability company,  
Its Sole Member

JQH  
John Q. Hammons, President

THE STATE OF Texas §

COUNTY OF Hays §

This instrument was acknowledged before me on October 17, 2007, by Dan O'Leary, City Manager of the City of San Marcos, Texas, a Texas municipal corporation, on behalf of said municipal corporation.



Karen Smith  
Notary Public, State of Texas

THE STATE OF Missouri §  
COUNTY OF Greene §

This instrument was acknowledged before me on Sept. 26, 2007, by John Q. Hammons, Trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as Amended and Restated, a Missouri Trust.

[SEAL]

Karen L. Collette  
Notary Public, State of MISSOURI



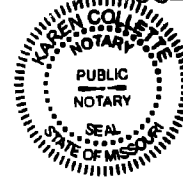
Karen Collette Comm # 06492797  
Greene County State of Missouri  
My Commission Expires Nov 30, 2010

THE STATE OF Missouri §  
COUNTY OF Greene §

This instrument was acknowledged before me on Sept. 26, 2007, by John Q. Hammons, President of John Q. Hammons Hotels Development, LLC, a Missouri limited liability company, sole member of JQH-San Marcos Development, LLC, a Missouri limited liability company

[SEAL]

Karen L. Collette  
Notary Public, State of MISSOURI



Karen Collette Comm # 06492797  
Greene County State of Missouri  
My Commission Expires Nov 30, 2010

After recording, return to:

Ms. Teresa Ereon Giltner  
Cox Smith Matthews Incorporated  
112 East Pecan, Suite 1800  
San Antonio, Texas 78205

**FOURTH AMENDMENT  
TO  
MASTER DEVELOPMENT AGREEMENT**

This Fourth Amendment to Master Development Agreement (hereinafter referred to as the "Amendment") is executed and entered into effective as of the 6<sup>th</sup> day of September, 2007, by and between The City of San Marcos, Texas, a Texas municipal corporation (the "City"), JQH-San Marcos Development, LLC, a Missouri limited liability company ("JQH"), and John Q. Hammons, Trustee of The Revocable Trust of John Q. Hammons, Dated December 28, 1989, as amended and restated ("Guarantor").

**RECITALS:**

The following Recitals form the basis of, and are, therefore, made a part of, this Amendment:

(a) City and JQH previously entered into that one certain Master Development Agreement dated effective as of March 6, 2006, as amended by that certain (i) First Amendment to Master Development Agreement dated effective September 14, 2006, (ii) Second Amendment to Master Development Agreement dated effective October 3, 2006, and (iii) Third Amendment to Master Development Agreement dated effective as of November 9, 2006 (said agreement as heretofore amended being herein called the "Development Agreement"); and

(b) City, JQH and Guarantor agree to further amend and modify the Development Agreement as set forth below.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, JQH, Guarantor and City hereby covenant and agree as follows:

**I. Amendments to the Development Agreement**

1.1 Exhibit "C" to the Development Agreement is hereby amended by deleting the form currently attached to the Development Agreement as said Exhibit and substituting in its place the form attached hereto as Exhibit "C".

**II. General Provisions**

2.1 Incorporation by Reference; Defined Terms. All exhibits and other documents which are referred to in this Amendment are hereby incorporated in this Amendment by reference for all purposes. Each capitalized term used herein, and not otherwise defined, shall have the meaning ascribed to such term in the Development Agreement.

2.2 Entire Agreement. This Amendment, together with the Development Agreement, and the Related Documents, constitute the entire understanding and agreement between City and JQH with respect to the matters contemplated in the Development Agreement and supersede all

prior written or oral understandings or agreements between City or JQH with respect to the subject matter addressed in the Development Agreement or the Related Agreements. In the event of a conflict between this Amendment, the Development Agreement and Related Agreements, the terms and conditions of this Amendment shall control.

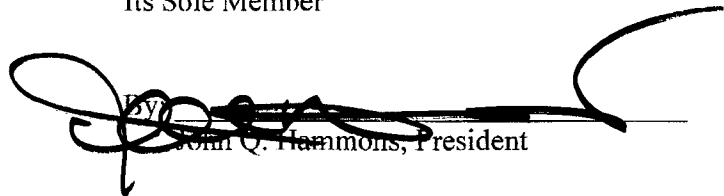
2.3 Guarantor Consent. Guarantor hereby executes this Amendment for purposes of affirming its Trust Guaranty Agreement dated effective March 6, 2006 and hereby acknowledges and agrees that (i) this Amendment does not modify, amend or otherwise change its duties and obligations thereunder; and (ii) said Guaranty Agreement continues in accordance with its terms with respect to the Development Agreement, as amended and/or reinstated in this Amendment.

IN WITNESS WHEREOF, City, JQH and Guarantor have executed this Amendment as of the day and year first above written.

**JQH:**

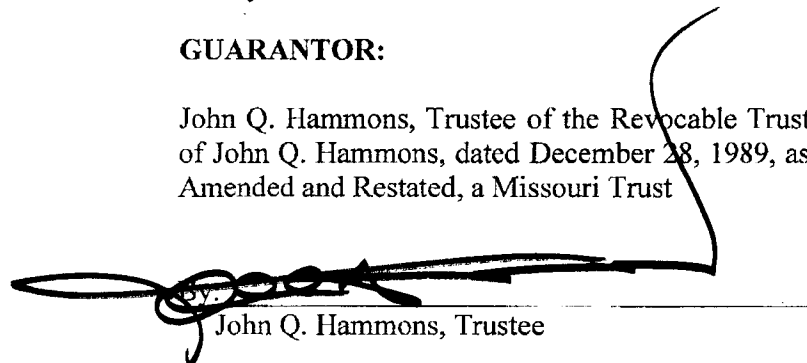
JQH – SAN MARCOS DEVELOPMENT, LLC., a  
Missouri limited liability company

By: John Q. Hammons Hotels Development, LLC,  
Its Sole Member

  
By: John Q. Hammons, President


**GUARANTOR:**

John Q. Hammons, Trustee of the Revocable Trust  
of John Q. Hammons, dated December 28, 1989, as  
Amended and Restated, a Missouri Trust

  
By: John Q. Hammons, Trustee

**CITY:**

CITY OF SAN MARCOS, TEXAS, a Texas  
municipal corporation

By:   
Dan O'Leary, City Manager

## **CONFERENCE CENTER LEASE AGREEMENT**

THIS CONFERENCE CENTER LEASE AGREEMENT (this "Lease") is made as of the 10<sup>th</sup> day of September, 2007 (the "Commencement Date"), by and between the City of San Marcos, Texas, a municipal corporation of the State of Texas and a home rule city, as lessor and JQH – San Marcos Development, LLC, a Missouri limited liability company, as lessee. Lessor (as defined herein) and Lessee (as defined herein) sometimes are referred to herein collectively as the "Parties" or singularly as a "Party".

### **RECITALS**

A. Lessor and Lessee have entered into that certain Master Development Agreement (the "Master Agreement"), dated effective March 6, 2006, providing for, among other things, the acquisition, construction, and operation by Lessee of a full service upscale hotel, and the construction by Lessor of an upscale conference center facility and related improvements, including parking areas, constructed upon the Land (defined below), containing meeting rooms, and an 80,000 square foot conference center, with one (1) large ballroom sufficient to lawfully accommodate 1,000 people for a banquet-style event.

B. Pursuant to the terms of the Master Agreement, Lessor has agreed to lease the Conference Center to Lessee, on the terms and conditions set forth herein, this Lease being the "Lease" referenced in the Master Agreement.

### **ARTICLE 1**

#### **Grant, Term of Lease and Certain Definitions**

1.1 Leasing Clause. Upon and subject to the terms and provisions contained herein, Lessor does hereby lease, demise and let unto Lessee, and Lessee does hereby take and lease from Lessor, the Leased Premises, to have and to hold the Leased Premises for the term and subject to the provisions hereinafter provided.

1.2 Term. The term of this Lease shall be for a period commencing on the Operational Date and terminating on January 31, 2032 (the "Expiration Date"). Lessor shall deliver possession of the Leased Premises to Lessee on the Operational Date.

1.3 Certain Definitions. The following terms shall have the meaning set forth in this Section 1.3:

(a) "Affiliate" shall mean, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the capital stock having ordinary voting power in the election of directors of such Person, (b) each Person that controls, is controlled by or is under common control with such Person, and (c) in the case of individuals, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of the Person. For purposes of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the

ownership of voting securities, by contract, by virtue of being an executive officer or a director or otherwise.

(b) “AV Taxes” shall mean any and all property taxes and ad valorem taxes assessed against the Leased Premises or Lessee’s interest therein that accrue during the Term.

(c) “Base Rent” shall mean the lease payments for the Leased Premises provided in Article 2 hereof.

(d) [Intentionally Omitted].

(e) “City” shall mean in all instances the City of San Marcos, Texas, a municipal corporation of the State of Texas and a home rule city and shall not include any assignee of Lessor’s rights and obligations under this Lease.

(f) “City Use” shall have the meaning set forth in Section 5.1(b).

(g) “Commencement Date” shall mean the date first set forth above in the introductory paragraph of this Lease.

(h) “Conference Center” shall mean an approximately 80,000 square foot building to be constructed on the Land adjacent to the Hotel, containing meeting rooms, and one (1) large ballroom sufficient to lawfully accommodate 1,000 people for a banquet-style event.

(i) “Event of Default” shall have the meaning set forth in Section 8.1.

(j) “Force Majeure” shall mean any unforeseeable causes beyond a Party’s control and without such Party’s fault or negligence, including, but not limited to, acts of god, acts of the public enemy, acts of the United States government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather or unforeseen environmental or archaeological conditions requiring investigation/mitigation by federal, state or local laws.

(k) “Hazardous Materials” shall have the meaning set forth in Section 6.8(c).

(l) “Impositions” shall mean all taxes and assessments against either the Leased Premises, or Lessee’s interest therein that accrue during and are applicable to the Term.

(m) “Improvements” shall mean all buildings, structures, equipment, improvements, fixtures and Related Infrastructure from time to time connected, installed or situated on the Land, including all landscaping.

(n) “JQH” shall mean in all instances JQH – San Marcos Development, LLC, a Missouri limited liability company, and shall not include any assignee of its rights and obligations under this Lease.

(o) “Land” shall mean the tract of land situated in the City of San Marcos, Hays County, Texas, described in Exhibit A attached hereto and made a part hereof for all purposes.



(p) “Lease” shall mean this Conference Center Lease Agreement by and between Lessor, as lessor, and Lessee, as lessee, covering the Leased Premises.

(q) “Lease Year” shall mean for the first Lease Year the period of time commencing on the Operational Date and ending on the last day of the 12<sup>th</sup> full calendar month thereafter and for each successive Lease Year, other than the last year, the twelve full calendar month period commencing on the day following the expiration of the preceding Lease Year. The final Lease Year shall commence on the day following the expiration of the immediately preceding Lease Year and shall continue until the Expiration Date.

(r) “Leased Premises” shall mean the Conference Center and Related Infrastructure, including, without limitation, parking areas constructed upon the Land.

(s) “Lessee” shall mean JQH – San Marcos Development, LLC, a Missouri limited liability company, or any assignee thereof as provided in Section 8.1 hereof.

(t) “Lessor” shall mean the City of San Marcos, Texas, a duly incorporated home rule city of the State of Texas, located in Hays County, Texas, or any assignee thereof.

(u) “Lessor Entity” shall mean Lessor or any governmental body, agency or political subdivision to whom Lessor’s power to levy, assess or collect ad valorem taxes is transferred by law or contract.

(v) “Master Agreement” shall have the meaning set forth in the Recitals.

(w) “Operational Date” shall mean the date on which construction has been substantially completed on the Conference Center.

(x) “Person” shall mean any person or entity.

(y) “Plans” shall mean the Plans relating to the Leased Premises as developed in accordance with the Design Build Contract entered into by the City in accordance with the Master Agreement.

(z) “Related Infrastructure” shall mean any automobile parking areas, water or sewer facilities, plazas, landscaped areas, pedestrian circulation areas or other construction on the Land in connection with the use and/or operation of the Conference Center.

(aa) “Taxable Bond Debt” shall have the meaning ascribed to it in the Master Agreement.

(bb) “Term” shall mean the term of this Lease as provided in Section 1.2 hereof

(cc) “Trust” shall mean The Revocable Trust of John Q. Hammons dated December 28, 1989, as amended and restated, a Missouri trust.

## ARTICLE 2

### Lease Payment

2.1 Base Rent. Subject to adjustment pursuant to Section 7.1(b) of this Lease, base rent ("Base Rent") shall be payable by Lessee semi-annually on each January 15<sup>th</sup> and July 15<sup>th</sup> of the Term, commencing on July 15, 2008, with subsequent payments being due on each January 15<sup>th</sup> and July 15<sup>th</sup> of every calendar year during the Term thereafter. Each rent payment shall be in the amount shown for same on the schedule attached hereto as "Schedule "1". Base Rent shall be paid without notice, demand, setoff or abatement. In addition to the Base Rent, Lessee shall pay, as additional rent, an amount equal to the total of all payments the City has made on the Taxable Bond Debt between the time the Taxable Bond Debt is first issued to, but not including, the Operational Date, which amount must be paid by Lessee on the Operational Date. In the event that the Operational Date has not occurred as of July 15, 2008, then the first payment of Base Rent owed hereunder shall be paid on the first January 15<sup>th</sup> or July 15<sup>th</sup> following the Operational Date.

2.2 Late Payment Charge. Other remedies for nonpayment notwithstanding, if any installment of Base Rent or additional rent, as the case may be, is not received by Lessor on or before the fifth (5<sup>th</sup>) day after the date on which such payment is due, Lessee agrees to pay Lessor a late payment charge in the amount of five percent (5%) of such past due amount in addition to all other amounts owed under this Lease.

2.3 Holding Over. If Lessee fails to surrender the Leased Premises at the expiration or termination of the Term, occupancy of the Leased Premises after the termination or expiration shall be that of a tenancy at sufferance. Lessee's occupancy of the Leased Premises during the holdover shall be subject to all the terms and provisions of this Lease and Lessee shall pay to Lessor an amount (on a per month basis without reduction for partial months during the holdover) equal to one-twelfth of two hundred percent (200%) of the sum of the annual Base Rent for the period immediately preceding the holdover. No holdover by Lessee or payment by Lessee after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Lessor from immediate recovery of possession of the Leased Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Lessor is unable to deliver possession of the Leased Premises to a new tenant, or to perform improvements for a new tenant, as a result of Lessee's holdover and Lessee fails to vacate the Leased Premises within fifteen (15) days after Lessor notifies Lessee of Lessor's inability to deliver possession, or perform improvements, Lessee shall be liable to Lessor for all damages, including, without limitation, consequential damages, that Lessor suffers from the holdover. **Notwithstanding anything herein to the contrary, Lessor and Lessee specifically agree that no notice to terminate Lessee's tenancy hereunder will be required from and after the expiration of the Term under Section 91.001 or Section 24.005 of the Texas Property Code before Lessor files a forcible detainer suit on grounds that the Lessee is holding over beyond the end of the rental Term hereof.**

## ARTICLE 3

### Impositions and Utilities

3.1 Payment of Impositions. Except as provided elsewhere in this Article 3, Lessee shall pay all Impositions before the same become delinquent, and Lessee, at the request of Lessor, shall furnish to Lessor receipts or copies thereof showing payment of such Impositions. Lessee shall be entitled to pay any Impositions in installments as and to the extent the same may be permitted by the applicable taxing authority or claimant. Lessor agrees to cooperate with Lessee in seeking the delivery of all notices of Impositions to Lessee directly from the applicable taxing authorities. Lessor shall promptly deliver all notices of Impositions to Lessee which are delivered to Lessor. In no event shall Lessee be in default under this Lease for failure to pay any Impositions before the same become delinquent for which the notice of such Impositions shall have been delivered to Lessor and not forwarded or delivered to Lessee at least thirty (30) days before the date the same become delinquent.

3.2 Contest of Impositions. If the levy of any of the Impositions shall be deemed by Lessee to be improper, illegal or excessive, or if Lessee desires in good faith to contest the Impositions for any other reason, Lessee may, at Lessee's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as Lessee shall deem necessary and appropriate. Subject to the foregoing, any item of contested Impositions need not be paid until the earlier of (i) the time it is finally adjudged to be valid; or (ii) such time as the entity assessing the Impositions commences foreclosure proceedings or similar action against the Leased Premises or Lessor's interest therein, it being agreed that Lessee may not take any action or fail to pay any Impositions if such action or failure would result in the commencement of any such foreclosure procedures or similar action. Lessee shall be entitled to any refund of any Impositions (and the penalties or interest thereon) refunded by the levying authority pursuant to any such proceeding or contest, if such Impositions shall have been either (a) paid directly by Lessee, or (b) paid directly by Lessor and Lessor was reimbursed therefor by Lessee.

3.3 Standing. If Lessee determines that it lacks standing to contest any Impositions imposed by a governmental authority other than any Lessor Entity or to obtain an extended payment period for any such non-Lessor Entity Impositions, Lessor (to the maximum extent allowed by law) and at Lessee's expense shall join in such contest or otherwise provide Lessee with sufficient authority to obtain such standing.

3.4 Certain Provisions Related to AV Taxes and Special Impositions. Lessor and Lessee acknowledge that the Leased Premises, other than Lessee's leasehold interest therein, presently are presumed to be exempt from AV Taxes under the laws of the State of Texas as of the Commencement Date, and it is the intention of the Parties that during the Term, Lessee not incur any AV Taxes relating to the Leased Premises other than as such AV Taxes pertain to Lessee's leasehold interest in such Leased Premises or to any personal property of Lessee located in or about the Leased Premises. Lessor, at the request and sole expense of Lessee, agrees to jointly take and pursue such lawful actions with Lessee, including, if necessary, judicial actions, as may be available, to protect and defend the title of Lessor in and to the Leased Premises, against the levy, assessment or collection of AV Taxes. If, for any reason, the Leased Premises or interest of Lessor or Lessee in and to any of the Leased Premises should no longer be exempt

from AV Taxes by reason of a change of law or otherwise, or any Lessor Entity or other entity levies and assesses an AV Tax against the Leased Premises or the interest of Lessee in the Leased Premises, then (A) Lessee shall, to the extent required by Lessor, pay such AV Taxes before they become delinquent, subject to Lessee's right of contest as provided in Section 3.2 hereof; and (B) such AV Taxes shall be due and payable in a timely manner.

3.5 Utilities. Lessee shall pay all bills for utility service provided to the Leased Premises, excluding the utility services that are part of the cost of constructing the Conference Center.

## ARTICLE 4

### Improvements

4.1 Lessee Alterations. Lessee shall not make or allow to be made any alterations, physical additions or improvements (collectively referred to herein as "Lessee Alterations") in or to the Leased Premises without complying with all local, state and federal ordinances, laws, statutes and without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, that consent shall not be required for Lessee Alterations to the Conference Center that will not affect the exterior appearance, the systems or the structural elements of the Conference Center. Lessee shall not interfere with or disrupt the structural integrity of the Conference Center during the construction of any Lessee Alteration. In any event, Lessee shall provide Lessor with a copy of the plans and specifications for any such Lessee Alterations. Any alterations, physical additions or improvements to the Leased Premises made by Lessor or Lessee shall become the property of Lessor and must be surrendered to Lessor upon the termination of this Lease without credit to Lessee; provided, however, Lessor, at its option, may require Lessee to remove any physical additions and/or repair any alterations in order to restore the Leased Premises to the condition existing at the Operational Date, with all costs of removal and/or alterations to be borne by Lessee, provided that Lessee shall not be required to remove any physical additions or improvements if Lessor agrees at the time of approval of such additions or improvements that they do not have to be so removed. Lessee shall not make any Lessee Alterations during the Term that interfere with the development or use of the Conference Center primarily as a public conference and meeting facility.

4.2 Furniture, Movable Trade Fixtures and Equipment. To the extent Lessor purchases any Lessor Equipment (as defined in the Master Agreement) pursuant to the terms of the Master Agreement, Lessee shall have the right to use the Lessor Equipment in connection with its operations at the Leased Premises. Lessee must maintain any and all Lessor Equipment in good condition and repair on a regular and ongoing basis and replace such Lessor Equipment with reasonably comparable items as needed should same become worn out or obsolete. Upon termination of this Lease, Lessee shall deliver up the Leased Premises with the Lessor Equipment (or reasonably comparable replacements thereof) in the same condition existing at the Operational Date, loss by casualty (except to the extent Lessee is required under this Lease to repair casualty damage) excepted.

Except for the Lessor Equipment, if any, purchased pursuant to the terms of the Master Agreement, Lessee shall be solely responsible for providing all furniture, trade fixtures and equipment necessary for the use and operation of the Leased Premises. Any and all such

equipment provided by Lessee must be comparable to that currently found in the Frisco, Texas property currently operated by John Q. Hammons Hotels Management, LLC (the "Frisco Property"). Lessee must, throughout the Term of this Lease, furnish and equip the Leased Premises with such furnishings, equipment and personal property as (i) are necessary for the operation of an upscale conference center; and (ii) are at least comparable to those currently found in the Frisco Property. Any furniture, trade fixtures and equipment provided by Lessee shall remain the property of Lessee and may be removed from the Leased Premises by Lessee at the expiration of the Term provided Lessee is not then in default under this Lease and provided further that Lessee must repair any and all damage caused to the Lease Premises as a result of such removal. Lessee and Lessor shall, throughout the Term, maintain a list of the Lessor Equipment and any and all replacement equipment for same. On or before January 31 of each calendar year during the Term, commencing January 31, 2009, the Lessee must conduct a physical inventory of the Lessor Equipment and provide a listing of the Lessor Equipment and, to the extent any of same has become worn out or obsolete during the preceding twelve (12) month period, a notation of such fact and a list of the replacement equipment for same must be included on said inventory list. Once purchased by Lessee, any such replacement equipment shall become part of the Lessor's Equipment for all purposes under this Lease.

## ARTICLE 5

### Use of Premises

#### 5.1 Use.

(a) Lessee shall use the Leased Premises during the Term solely for the operation of a conference, meeting and exhibit center for holding conventions, meetings, and exhibits and for the benefit of the City and the general public. Lessee must, throughout the Term of this Lease, continuously operate and maintain the Conference Center as an upscale conference center, and without limiting the foregoing, in compliance with the current standards established by John Q. Hammons Hotels & Resorts for operating and maintaining other upscale conference centers owned, leased or managed by it.

(b) Subject to agreed scheduling procedures, the City shall have the right to use the large ballroom in the Conference Center a minimum of one (1) time per year and at least one of the smaller meeting rooms in the Conference Center a minimum of one (1) time per month (the "City Use"), all at no charge, other than charges for room set up and any food and beverage service requested by the City which will be billed at the standard rates for same which are in effect at the time the service is provided. The scheduling of the large ballroom in the Conference Center for City Use shall be mutually agreed upon by Lessee and the City within one hundred eight (180) days prior to the expiration of the previous Lease Year, unless another scheduling procedure should be agreed upon between the City and Lessee, subject to the scheduled availability of such room (i.e. the City may not preempt the then scheduled use of such room by any other party).

5.2 Compliance with Laws. Lessee agrees not to use the Leased Premises for any use or purpose in violation of any valid and applicable law, regulation or ordinance of the United States, the State of Texas, the City of San Marcos or other lawful governmental authority having jurisdiction over the Leased Premises, including, without limitation, the Americans with

Disabilities Act of 1990, as amended; provided, however, there shall be no violation by Lessee of this provision (i) so long as Lessee shall, in good faith within a reasonable time after Lessee acquires actual knowledge thereof, by appropriate proceedings and with due diligence, contest the alleged violation or the validity or applicability of the law, regulation or ordinance; (ii) until Lessee has had a reasonable time after a final adjudication that such law, regulation or ordinance, in fact, has been violated; and (iii) so long as neither Lessor nor any portion of the Leased Premises, during the period of such contest, will be subject to any liability, loss, penalty or forfeiture.

### 5.3 Maintenance; Casualty.

(a) Lessor is not required to make any improvements, replacements or repairs of any kind or character to the non-structural portions of the Leased Premises during the Term. Lessor shall, however, maintain, repair and replace, at its sole cost and expense, the roof, foundation and structural soundness of exterior walls (excluding windows and doors) and interior load-bearing walls and columns of the Conference Center, and the HVAC systems located on the Leased Premises which serve the Conference Center (without any obligation to clean or perform any maintenance of such systems reasonably necessary to ensure optimal function including, without limitation, any scheduled maintenance of any component of such system recommended by the manufacturer thereof) in good repair and condition except for reasonable wear and tear and damage by casualty or condemnation. Notwithstanding anything to the contrary herein, if the need for any repair or replacement is caused by the negligence or willful misconduct of Lessee, its employees, agents or contractors, then cost of such repair or replacement shall be paid solely by Lessee immediately upon demand for same by Lessor. Nothing contained herein entitles Lessee to make any repairs, alterations or additions to the Leased Premises at Lessor's expense or to terminate this Lease based on the physical condition of the Leased Premises; provided, however, in the event Lessee has provided notice to Lessor of the need for any maintenance, repair or replacement which is the obligation of Lessor pursuant to this Section 5.3(a) and Lessor has not commenced such maintenance, repair or replacement within thirty (30) days of such notice, or, if such maintenance, repair or replacement is required to cure or prevent any condition that materially interferes with Lessee's operations, as soon as reasonably practicable after such notice, and does not thereafter pursue completion of such maintenance, repair or replacement with diligence, Lessee may make such repair and invoice Lessor for the reasonable cost and expense of same and Lessor shall reimburse Lessee such reasonable costs and expenses within sixty (60) days of the invoice.

(b) Except for the maintenance, repair and replacement obligations expressly assumed by Lessor pursuant to paragraph (a) of this Section 5.3, Lessee shall, at its sole cost and expense, maintain the entirety of the Leased Premises in an upscale condition at all times throughout the Term, reasonable wear and tear, obsolescence, loss by casualty (except to the extent Lessee is required under this Lease to repair casualty damage) and damage that Lessor is required to repair pursuant to this Lease excepted. Without limiting the foregoing, Lessee must make all repairs and replacements necessary to keep the Leased Premises (including, without limitation, all Improvements constructed thereon) in the required condition. Upon termination of this Lease, Lessee shall deliver up the Leased Premises then situated thereon in the condition existing at the Operational Date reasonable wear and tear, obsolescence, and loss by casualty (except to the extent Lessee is required under this Lease to repair casualty damage) excepted.

(c) To the extent any of the components of the Leased Premises which Lessee is obligated to maintain and repair hereunder are covered by a warranty provided by the manufacturer thereof, Lessee agrees to take all such actions, including the manufacturer's required and/or recommended scheduled maintenance, necessary to maintain the warranty without impairment. Furthermore, regardless of whether any such component is covered by a manufacturer's warranty, to the extent the manufacturer of any component of the Leased Premises that Lessee is obligated to repair under this Lease recommends regularly scheduled maintenance for the component, Lessee shall be obligated to comply with the manufacturer's recommendations. Specifically included in the foregoing obligation is the obligation of Lessee to perform all scheduled maintenance recommended by the manufacturers of the HVAC system servicing the Leased Premises at the times recommended by such manufacturer

(d) With regard to casualty damage to the Leased Premises, Lessee shall, as soon as reasonably practicable but in no event later than ninety (90) days after the date of a casualty, commence the work of repair, reconstruction or replacement of the damaged Improvement and proceed with all due diligence until completion. Notwithstanding the foregoing sentence, if the casualty occurs during the last twelve (12) calendar months of the Term and the extent of damage to the Leased Premises is greater than fifty percent (50%) of the then replacement value thereof (exclusive of the value of the Land), Lessee shall have the option, within ninety (90) days from the date of the occurrence of such casualty damage, to terminate this Lease by giving written notice of such termination to Lessor within said 90-day period, in which event (i) this Lease shall terminate as of the termination date specified in such notice to Lessor, which shall not be less than thirty (30) days after the date of such notice; (ii) Lessee shall no longer be required to pay Base Rent for any period subsequent to such termination date; (iii) Lessee shall not be required to repair the damage; (iv) all insurance proceeds available as a result of such damage shall be paid to and be the property of Lessor; and (v) the Parties shall have no further liability or obligations one to the other except for liabilities incurred or accruing prior to such termination date or as may be expressly provided for herein.

#### 5.4 Operational Rights and Restrictions; Revenue.

(a) Subject to clause (c) of this Section 5.4, Lessee shall be entitled to all revenues generated from and associated with the operation of the Conference Center for the Term, provided that (i) such revenues derive from uses permitted by Section 5.1 of this Lease and (ii) the Standard Rates (as defined herein), and any variances thereof, associated with such revenues have been approved in writing by the City pursuant to this Section 5.4.

(b) Subject to the terms and provisions of this Lease, Lessee shall have full and exclusive control of the management and operation of the Conference Center, including all booking and catering rights; provided, however, that Lessee shall not assign such rights or grant or enter into any licenses, subleases, management agreements, operating agreements or any other agreements of any nature transferring such rights except in connection with an assignment of this Lease permitted by Section 7.1.

(c) Lessee shall make the Conference Center available to Hotel users and non-Hotel users on an equal, non-discriminatory basis with the goals of maximizing revenue for the Hotel and increasing tourism within the City of San Marcos.

(d) Lessee shall not grant to any Person the right to use the Conference Center unless Lessee has obtained approval of the range of standard rates (depending on other factors, including number of room nights, amount of food and beverage consumption, etc.) for such use (the "Standard Rates") from the City, which approval shall not be unreasonably withheld. Lessee shall not change the Standard Rates, or charge any Person other than the Standard Rates unless Lessee first obtains written approval from the City, which approval shall not be unreasonably withheld. For purposes hereof, Standard Rates shall include, without limitation, any and all fees, charges, discounts, set-offs, penalties, loans, rebates, service charges, mark-ups, or any other cost or reduction associated with the use of Conference Center.

(e) Lessor shall retain the naming rights for the Conference Center and any of the ballrooms and meeting rooms located within the Conference Center and shall be entitled to all revenues generated from and associated with such naming rights. Subject to the terms hereof, Lessor may, in its sole discretion, assign such rights or grant or enter into any other agreements of any nature transferring such rights, whether or not such assignment or agreement is concomitant with an assignment of this Lease. Lessee must use the name of the Conference Center in all of its promotional materials and efforts for the Hotel (as defined in the Master Agreement) including, without limitation, Lessee's website and/or any other website advertising or promoting the Hotel; provided, however, that Lessee may not use the name of the Conference Center for any other purpose without the prior written consent of Lessor. Notwithstanding any of the foregoing appearing to the contrary, Lessor may not name the Conference Center or any of the rooms located therein in a fashion that would result in a violation of the franchise agreement for the Hotel nor shall Lessor name either the Conference Center or any of the constituent rooms in a manner which Lessee, in its sole discretion, believes would be offensive to the public generally.

5.5 Signs. No signs, advertisements logos or notices of any type may be erected, painted or placed in, on or about the Leased Premises, except those of such color, size, style and in such places as are first approved in writing by Lessor.

## ARTICLE 6

### Insurance and Indemnity

6.1 Liability Insurance. Lessee agrees, at its sole expense, to obtain and maintain commercial general liability insurance at all times during the Term hereof with reputable insurance companies authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits from time to time of the greater of (i) \$5,000,000 with respect to any one occurrence and the aggregate of all occurrences during a given policy period and (ii) those customarily held by owners/operators of similar projects in the State of Texas, protecting Lessor and Lessee against any liability, damage, claim or demand arising out of or connected with the condition or use of the Leased Premises. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired) and independent contractor liability as well as products and completed operations coverage. Such insurance coverage must be written on an "occurrence" basis. The insurance required to be maintained by Lessee, may be maintained by any combination of single policies and/or umbrella or blanket policies, so long as the level of coverage is not impaired or reduced by the use thereof. Lessor and its elected officials shall be



named as additional insureds, as their interests appear, on all insurance policies required by this Section 6.1. If Lessee's liability insurance policies do not contain the standard ISO Separation of Insureds Provision, or a substantially similar clause, such liability insurance policies shall be endorsed to provide cross-liability coverage at Lessee's expense.

6.2 Worker's Compensation Insurance. Lessee agrees, at its sole expense, to obtain and maintain workers' compensation insurance, as required by applicable law, during the Term. The policy will be endorsed to provide a waiver of subrogation as to Lessor.

6.3 Property Insurance. At all times during the Term of this Lease, Lessee shall, at its sole expense, maintain a policy or policies of special form commercial property insurance (ISO Special Causes of Loss Form (CP 10 30) or its equivalent), with all premiums paid in advance, issued by and binding upon an insurance company reasonably acceptable to Lessor and authorized to transact business in the State of Texas, insuring all buildings and structures included in the Leased Premises, and covering all trade fixtures, equipment, furniture and other personal property located in the Leased Premises, for the amount of the full replacement cost thereof as of the date of the loss (exclusive of foundation and excavation cost and costs of underground flues, pipes, drains and other uninsurable items) with a deductible amount no greater than that retained by owners of similar properties in the State of Texas at the time the policy in question is obtained. Lessor shall be named as the loss payee, on all such policies. Furthermore, no policy of insurance required under this Section 6.3 shall be written such that the proceeds thereof will produce less than the minimum of coverage required hereunder by reason of co-insurance provisions or otherwise.

6.4 Additional Coverage/Requirements of Policies. In addition to the insurance required in Sections 6.1, 6.2 and 6.3 hereof, Lessee must also maintain such other insurance, both in terms of (i) risks insured and scope of coverage, and (ii) amounts of coverage, as may from time to time during the Term be customarily carried by owners/operators of properties similar to the Leased Premises in the State of Texas with the effect that at any given time during the Term, Lessee shall maintain such additional insurance coverage on the Leased Premises and its operations thereon equal to that carried by the owners/operators of other similar conference center facilities in the State of Texas.

All insurance required of Lessee under this Article 6 shall be primary and non-contributing with any insurance that may be carried by Lessor. Also, each policy of insurance required under this Article 6 shall (i) be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-IX or better and be qualified or authorized by the laws of the State of Texas to assume the risk covered by such policy; (ii) provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to Lessor and (iii) provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of the named insureds which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. On the Operational Date and thereafter as Lessor may require, Lessee shall provide Lessor with certificates of insurance, or other evidence and documentation, acceptable to Lessor evidencing Lessee's full compliance with the insurance requirements of this Lease. If requested by Lessor, Lessee shall provide Lessor with certified copies of any of the required policies. Lessee shall promptly pay all premiums when due on such insurance and not less than fifteen (15) days prior to the expiration date of each such policy, deliver to Lessor acceptable evidence of insurance,

such as a renewal policy or policies marked "Premium Paid", or other evidence satisfactory to Lessor, reflecting that all required insurance is current and in force. Lessee will immediately give notice to Lessor of any cancellation of, or change in, any insurance policy required to be maintained hereunder. Lessee may satisfy any insurance requirement hereunder by providing one or more "blanket" insurance policies provided same is reasonably acceptable to Lessor.

6.5 WAIVER. LESSOR AND LESSEE HEREBY WAIVE ALL CLAIMS, RIGHTS OF RECOVERY AND CAUSES OF ACTION THAT EITHER PARTY OR ANY PARTY CLAIMING BY, THROUGH OR UNDER SUCH PARTY BY SUBROGATION OR OTHERWISE MAY NOW OR HEREAFTER HAVE AGAINST THE OTHER PARTY OR ANY OF THE OTHER PARTY'S PRESENT AND FUTURE SUBSIDIARIES, AFFILIATES, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, DIRECT OR INDIRECT STOCKHOLDERS, AGENTS, OTHER REPRESENTATIVES, SUCCESSORS AND ASSIGNS FOR LOSS OR DAMAGE TO PROPERTY OF LESSOR AND LESSEE, EVEN IF CAUSED BY THE NEGLIGENCE OR FAULT OF THE RELEASED PARTY OR ITS PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES, TO THE EXTENT THAT THE LOSSES OR DAMAGES ARE COVERED BY THE INSURANCE POLICIES ACTUALLY MAINTAINED PURSUANT TO SECTION 6.3 OF THIS LEASE.

6.6 Adjustment of Losses. Any loss under any such insurance policy required under Section 6.3 hereof shall be made payable to Lessor for the benefit of Lessee and Lessor, to the end that Lessor shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Leased Premises, to be applied pursuant to Section 6.7 below. Any accumulation of interest on the insurance proceeds collected by Lessee shall be added to, and become a part of, the fund being held by Lessor for the benefit of Lessor and Lessee. The adjustment of losses with the insurer shall be made by Lessor.

6.7 Application of Proceeds of Property Insurance. All proceeds payable pursuant to the provision of any policies of property insurance required to be carried under the terms of this Lease (net of reasonable expenses of collection) shall be applied for the following purposes:

(a) All such net proceeds shall first be used, subject to any other terms and conditions contained in this Lease, to fund the rebuilding, restoration and repair of the portion of the Leased Premises which have become destroyed or damaged for which such proceeds are payable, such funds to be released by Lessor to Lessee on such terms and conditions as Lessor may reasonably require; and

(b) Following completion of all work under subsection (a) above, any proceeds not disbursed pursuant to subsection (a) above shall be applied to or as directed by Lessor in its sole discretion.

6.8 Environmental Investigation and Remediation.

(a) Lessee represents and warrants that it has undertaken a reasonable investigation of the environmental condition of the Land, and the results of Lessee's environmental investigation did not identify any condition relating to the environment that could reasonably be expected to materially and adversely impact Lessee's ability to conduct its

operations at the Leased Premises. Lessor makes no representation or warranty concerning the condition of the Leased Premises.

(b) Lessee shall be responsible, at its sole expense, for performing any environmental investigation and remediation work which may be required in connection with the use and occupancy of the Leased Premises and which is caused by the presence of Hazardous Materials on the Leased Premises, except and to the extent the presence thereof results solely from the act of Lessor or its officers, employees, agents or representatives. Such environmental investigation and remediation work shall be conducted in accordance with all applicable laws. Lessee shall notify and advise Lessor of the remediation Lessee will undertake and the procedures to be used. Lessee shall complete the remediation with due diligence and shall comply with, and shall cause its agents and contractors to comply with, all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. Lessee's obligation as provided herein to undertake environmental investigation and remediation of the Leased Premises shall be a continuing obligation of Lessee which shall survive throughout the Term.

(c) The term "Hazardous Materials" means any substance, material or waste which is now or hereafter classified or considered to be hazardous, toxic or dangerous under any federal, state or local laws, rules and regulations (collectively, "Laws") affecting the Leased Premises relating to pollution or the protection of human health, natural resources or the environment, but shall exclude any such items that are necessary for the ordinary performance of Lessee's or any sublessee's business activities, provided that such are used, stored or disposed of in compliance with all Laws. If Lessee breaches its obligations under this Section 6.8 and such breach is not cured following notice and within the applicable cure period specified in Article 8 below, Lessor may take any and all action reasonably appropriate to remedy such breach and Lessee shall promptly pay all reasonable costs incurred by Lessor in connection therewith.

(d) The provisions of this Section 6.8 shall survive the termination of this Lease and are solely for the benefit of Lessor and Lessee and shall not be deemed for the benefit of any other person or entity.

## ARTICLE 7

### Assignment and Subletting

#### 7.1 Assignment and Subletting.

(a) Lessee shall not sell, convey, assign or sublet this Lease or all or any portion of the leasehold estate created hereby without the express prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, that in no event shall Lessor be obligated to consent to any assignment or subletting if (i) same is to a public entity exempt from AV Taxes (a "Tax Exempt Entity") or to any Person who, in Lessor's reasonable discretion, does not have the same level of experience and/or reputation for quality as John Q. Hammons Hotels & Resorts in operating conference centers such as the Conference Center or (ii) at the time of such assignment or subletting the Hotel is not concurrently sold to the Person to whom the Lease is being assigned or the Leased Premises sublet. Lessee shall, in connection with any proposed assignment or sublease, provide notice to Lessor of the name and address of

any proposed assignee or sublessee, together with a complete copy of the proposed assignment agreement or sublease. Upon any such assignment, the assignee shall execute and deliver to Lessor a written assumption, in form and substance reasonably satisfactory to Lessor, of all of the obligations of Lessee pertaining to the Leased Premises and accruing under this Lease after such assignment. No assignment or subletting by Lessee shall release, or be deemed or construed as releasing, Lessee from its obligations and liabilities hereunder. Furthermore, neither the City's consent to any assignment or subletting, nor any assignment made pursuant to clause (d) of this Section 7.1, shall constitute, or be deemed or construed as constituting, either (i) City's consent to any subsequent assignment or subletting or (ii) a waiver of the City's right to consent to any subsequent assignment or subletting. Any Change of Control (as defined herein) with respect to Lessee during the term of this Lease shall be deemed an assignment by Lessee and therefore subject to the terms of this Section 7.1(a). For purposes of this Section 7.1(a), a "Change of Control" means a direct change of the power to direct or cause the direction in the management or policies of Lessee through a change in ownership of the membership interests in Lessee, either directly or indirectly (including, without limitation, a change in the ownership of JQH Development (as defined herein)), or otherwise.

(b) In addition to the prohibitions against transfer of this Lease and the leasehold estate created thereby set forth in paragraph (a) of this Section 7.1, the Master Agreement contains a prohibition against the transfer of the Hotel to a Tax Exempt Entity. If, notwithstanding such prohibition, the Hotel is transferred to a Tax Exempt Entity, then in addition to constituting an Event of Default under this Lease, and without limiting Lessor's rights as a result of such Event of Default, Base Rent for the Lease Year in which such transfer occurs and each subsequent Lease Year during the Term shall thereupon automatically increase, effective immediately with the increased amount for the then current Lease Year being due on the date of such transfer, to an annual amount equal to one hundred percent (100%) of the City's annual debt service (including principal and interest) on the bond debt issued by the City to finance its construction of the Conference Center pursuant to the terms of the Master Agreement during the applicable Lease Year, and Lessee shall be required to pay the additional amounts required to be paid to the City pursuant to Section 4.1.4 of the Master Agreement as a result of such transfer.

(c) No sublessee shall have any right to sublease or otherwise assign or encumber its interest in, or to grant any license for the use of, the Leased Premises.

(d) Notwithstanding any of the foregoing appearing to the contrary, Lessee may assign all of its rights in and to this Lease pursuant to that certain Sponsor Entity Right of First Refusal Agreement (the "ROFR Agreement") dated as of September 16, 2005 by and among the Trust and JD Holdings, LLC at any time after the Commencement Date; provided (i) such assignment is to JD Holdings, LLC or any other entity to whom JD Holdings, LLC may assign its rights under the ROFR Agreement without the consent of John Q. Hammons or the Trust; and (ii) the entity receiving the assignment expressly assumes all of the covenants and obligations of Lessee herein in a writing acceptable to the City in its sole discretion.

## ARTICLE 8

### Default of Lessee

8.1 Default. Lessee shall be in default if any of the following events (each an “Event of Default”) shall occur: (a) the failure on the part of Lessee to pay, when due, Base Rent or any other payment required pursuant to this Lease (a “Monetary Default”) and the continuation of such failure for ten (10) days after Lessor has provided to Lessee a written notice of such failure; (b) the sale, conveyance, assignment or subletting of this Lease or all or any portion of the leasehold estate created hereby other than as permitted under Section 7.1 of this Lease (an “Assignment Default”); (c) the transfer of the Hotel to a Tax Exempt Entity (a “Hotel Transfer Default”); (d) the failure of Lessee to comply with its obligations under Article 6 of this Lease (an “Insurance Default”); (e) the failure on the part of Lessee to comply with any term, provision or covenant of this Lease (other than a Monetary Default, an Insurance Default, or an Assignment Default), and the continuation of such failure for a period of thirty (30) days from and after the date notice of such failure is given by Lessor to Lessee; provided, however, no Event of Default shall exist if Lessee shall have commenced to cure such failure and shall be proceeding with reasonable diligence to completely cure such failure (provided such failure must be cured within ninety (90) days after such notice); (f) the occurrence of an Event of Default (as defined in the Master Agreement) under the Master Agreement; (g) the making of any general assignment for the benefit of creditors by Lessee or any guarantor of Lessee’s obligations under this Lease; (h) the filing of a voluntary petition in bankruptcy or a voluntary petition for an arrangement or reorganization under the United States Federal Bankruptcy Act (or similar statute or law of any foreign jurisdiction) by Lessee or any guarantor of Lessee’s obligations hereunder; (i) the appointment of a receiver or trustee for all or substantially all of Lessee’s interest in the Leased Premises or its leasehold estate hereunder if not removed within ninety (90) days; (j) the entry of a final judgment, order or decree of a court of competent jurisdiction adjudicating Lessee or any guarantor of Lessee’s obligations hereunder to be bankrupt, and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal therefrom; or (k) any guaranty of Lessee’s obligations hereunder is found by a court of competent jurisdiction to be unenforceable, invalid, void or otherwise impaired so as not to be enforceable in strict accordance with its terms as written.

8.2 Remedies. Upon the occurrence of any Event of Default set forth in this Lease, Lessor is entitled to pursue any one or more of the remedies set forth herein without any notice or demand:

(a) Without declaring this Lease terminated, Lessor may enter upon and take possession of the Leased Premises, without judicial process, and, in compliance with applicable law, lock out, expel or remove Lessee and any other Person who may be occupying all or any part of the Leased Premises without being liable for any claim for damages, in which event Lessor shall be entitled to receive (i) all Base Rent and other amounts accrued hereunder as of the date of termination of possession, (ii) reimbursement of any reasonable expenditures made by Lessor in order to relet the Leased Premises, including, but not limited to, leasing commissions, lease incentives, remodeling and repair costs and (iii) all Base Rent and other net sums required hereunder to be paid by Lessee during the remainder of the Term, diminished by any net sums thereafter received by Lessor through reletting the Leased Premises during such period, after

deducting all costs incurred by Lessor in reletting the Leased Premises. Lessor shall use reasonable efforts to relet the Leased Premises on such terms as Lessor in its sole discretion may determine (including a term different from the Term, rental concessions and alterations to, and improvement of, the Leased Premises). Lessor shall not be liable for, nor shall Lessee's obligations hereunder be diminished because of, Lessor's failure to relet the Leased Premises or to collect rent due for such reletting. Lessor shall not be entitled to the excess of any consideration retained by reletting over the Base Rent due hereunder. Reentry by Lessor in the Leased Premises shall not affect Lessee's obligations hereunder for the unexpired Term; rather, Lessor may, from time to time, bring an action against Lessee to collect amounts due by Lessee, without the necessity of Lessor waiting until the expiration of the Term. Unless Lessor delivers written notice to Lessee expressly stating that it has elected to terminate this Lease, all actions taken to dispossess or exclude Lessee from the Leased Premises shall be deemed to be taken under this Section 8.2(a). If Lessor elects to proceed under this Section 8.2(a), it may at any time elect to terminate this Lease under Section 8.2(c).

(b) Without declaring this Lease terminated, Lessor may enter upon the Leased Premises, without judicial process and without being liable for any claim for damages, and do whatever Lessee is obligated to do under the terms of this Lease. Lessee agrees to reimburse Lessor on demand for any reasonable expenses which Lessor may incur in effecting compliance with Lessee's obligations under this Lease; further, Lessee agrees that Lessor will not be liable for any damages resulting to Lessee from effecting compliance with Lessee's obligations under this Lease except to the extent caused by the negligence or willful misconduct of Lessor or otherwise.

(c) Lessor may terminate this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to surrender the Leased Premises, Lessor may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises, without judicial process, and, in compliance with applicable law, lock out, expel or remove Lessee and any other person who may be occupying all or any part of the Leased Premises without being liable for any claim for damages. Lessee agrees to pay on demand the amount of all loss and damage which Lessor may suffer by reason of the termination of this Lease under this Section, including without limitation, loss and damage due to the failure of Lessee to maintain and or repair the Leased Premises as required hereunder. In addition, upon termination Lessor may collect from Lessee an amount equal to the difference between the then present value of the amount of all future rentals required to be paid under this Lease from the date Lessor terminates this Lease until the original termination date, less the then present value of the fair market rental value of the Leased Premises during such period, both calculated using a discount rate of seven percent (7%) per annum. Notwithstanding anything contained in this Lease to the contrary, this Lease may be terminated by Lessor only by delivering written notice of such termination to Lessee, and no other act or omission of Lessor constitutes a termination of this Lease.

(d) Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Lessee being evicted or dispossessed for any cause, or in the event of Lessor obtaining possession of the Leased Premises by reason of the violation by Lessee of any of the covenants and conditions of this Lease or otherwise. The rights

given to Lessor herein are in addition to any rights that may be given to Lessor by any statute or otherwise.

(c) Lessor's pursuit of any remedy specified in this Lease will not constitute an election to pursue that remedy only, nor preclude Lessor from pursuing any other remedy available at law or in equity, nor constitute a forfeiture or waiver of any Base Rent or other amount due to Lessor as described herein.

## ARTICLE 9

### Default of Lessor

9.1 Defaults and Remedies. In the event of any breach by Lessor of any covenant of Lessor under this Lease, Lessee shall have the right to deliver to Lessor a written notice specifying such breach, and unless within ninety (90) days from and after the date of delivery of such notice Lessor shall have commenced to remove or to cure such breach or occurrence and shall be proceeding with reasonable diligence to completely remove or cure such breach or occurrence (provided such breach or occurrence must be cured within one hundred eighty (180) days after such notice), then Lessee shall have all remedies available at law or in equity.

## ARTICLE 10

### Condemnation

10.1 Definitions. Whenever used in this Article 10, the following words shall have the definitions and meanings hereinafter set forth:

(a) "Condemnation Proceeding". Any action brought for the purpose of any taking of the Leased Premises, or any part thereof or of any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), by competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

(b) "Taking" or "Taken". The event and date of vesting of title to the Leased Premises or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), pursuant to a Condemnation Proceeding.

10.2 Efforts to Prevent Taking. Lessor shall use its reasonable efforts to cause all other competent authorities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Leased Premises, or any part thereof or any interest therein, during the Term of this Lease which would materially interfere with the use of the Conference Center.

10.3 Entire Taking. If all or substantially all of the Leased Premises shall be Taken in Condemnation Proceedings, Base Rent shall be fully abated from and after the date of such Taking and from and after such date Lessee and Lessor shall not have any other obligations

under this Lease with respect to the Leased Premises, except for those obligations which expressly survive the termination hereof.

#### 10.4 Partial Taking.

(a) If less than all of the Leased Premises shall be Taken in any Condemnation Proceeding, a fair and equitable portion of the Base Rent attributable to the portion of the Leased Premises Taken shall be abated from and after the date of such partial Taking, and from and after such date Lessee and Lessor shall not have any other obligations under this Lease with respect to the portion of the Leased Premises that has been Taken, except for those obligations which expressly survive the termination hereof.

(b) If, following such Taking, the remaining Leased Premises are not sufficient to operate a conference center as intended by the Parties hereto, then Lessee, at its election, may terminate this Lease, whereupon the Base Rent shall be fully abated from and after the date of such partial Taking, and from and after such date Lessee and Lessor shall not have any further obligations under this Lease with respect to the Leased Premises, except for those obligations which expressly survive the termination hereof. Such election to vacate must be exercised no later than ninety (90) days after the date of such Taking.

(c) If Lessee does not elect, or does not have the right, to vacate the Leased Premises upon any partial taking, then (i) the Leased Premises shall be reduced by the portion thereof Taken, and the Base Rent payable hereunder shall be equitably reduced during the unexpired portion of the Term as provided above, and (ii) Lessor shall commence and proceed with reasonable diligence to repair or reconstruct the remaining Improvements on the Leased Premises, if any; provided, however, Lessor's obligation to so repair or reconstruct the remaining improvements shall be limited to the proceeds of the condemnation award actually received by Lessor.

10.5 Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Leased Premises shall be Taken, the Base Rent shall be reduced during the duration of such Taking in a fair and equitable manner that reflects the inability of Lessee to use the affected portion of the Leased Premises. A Taking shall be considered "temporary" only if the period of time during which Lessee is deprived of usage of all or part of the Leased Premises as the result of such Taking does not materially interfere with the ability of Lessee to use and operate the Leased Premises as a conference center in the manner contemplated by the Parties hereto. Any other "Taking" that is not "temporary" as described above shall be treated as an entire Taking under Section 10.3 above or as a partial Taking under Section 10.4 above.

#### 10.6 Condemnation Award.

(a) No Taking shall have the effect of terminating this Lease. None of the provisions of this Article 10 shall affect the right, title or interest of Lessee in the leasehold interest created by this Lease. For the purposes of determining the portion of any condemnation award to which Lessee is entitled to receive from the condemning authority as a matter of law, Lessee's right, title and interest in the Leased Premises shall be granted and arising under this Lease without consideration of this Article 10. This Article 10 pertains only to Lessee's and



Lessor's continuing obligations under this Lease following a Taking and to the agreement between Lessor and Lessee regarding any condemnation awards.

(b) Any condemnation award shall be divided between Lessor and Lessee in accordance with the relative amounts expended by each party for capital costs pertaining to the Leased Premises. Lessor shall deliver to Lessee that portion of any condemnation award that Lessor may receive to which Lessee is entitled as provided in this Section 10.6(b). The provisions of this Section 10.6(b) shall survive any termination pursuant to the terms of this Article 10.

10.7 Settlement of Proceeds. Lessor shall not make any settlement with the condemning authority in any Condemnation proceedings nor convey or agree to convey the whole or any portion of the Leased Premises to such authority in lieu of condemnation without first obtaining the written consent of Lessee, which consent will not be unreasonably withheld or delayed.

## ARTICLE 11

### Representations, Warranties and Special Covenants

11.1 Lessor's Representations, Warranties and Special Covenants. Lessor hereby represents, warrants and covenants as follows:

(a) Existence. Lessor is a home rule municipal corporation of the State of Texas duly incorporated and currently existing pursuant to the constitution and laws of the State of Texas, including the Texas Local Government Code and Texas Government Code.

(b) Authority. Lessor has all requisite power and authority to own the Leased Premises, to execute, deliver and perform its obligations under this Lease and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance of its obligations under this Lease and the consummation of the transactions herein contemplated.

(c) Binding, Obligation. This Lease is a valid and binding obligation of Lessor and is enforceable against Lessor in accordance with its terms subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors rights or (b) general principles of equity.

(d) No Defaults. The execution by Lessor of this Lease and the consummation by Lessor of the transactions contemplated hereby (i) do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under Lessor's charter or any resolution, indenture, agreement, instrument or obligation to which Lessor is a party or by which the Leased Premises or any portion thereof is bound, other than any breach or default that would not have a material adverse effect on the performance by Lessor of its obligations under this Lease; and (ii) do not, to the actual knowledge of Lessor, constitute, a violation of any law, order, rule or regulation applicable to Lessor or any portion of the Leased Premises of any court

or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessor or any portion of the Leased Premises.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessor to enter into this Lease, make the agreements herein contained or perform the obligations of Lessor hereunder other than those which have been obtained.

(f) Quiet Enjoyment. During the Term of this Lease and subject to the terms of this Lease, Lessee shall have the quiet enjoyment and peaceable possession of the Leased Premises.

(g) Proceedings. There are no actions, suits or proceedings pending or, to the actual knowledge of Lessor, without independent investigation, threatened or asserted against Lessor, affecting Lessor or any portion of the Leased Premises, at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(h) Impositions. Lessor has not received any notice of any condemnation actions, special assessments or increases in the assessed valuation of taxes or any Impositions of any nature which are pending or being contemplated with respect to the Leased Premises or any portion thereof.

(i) Compliance with Laws. Lessor has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to the Leased Premises or any portion thereof.

(j) Limitations. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LEASE IS MADE BY LESSOR WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE LEASED PREMISES, ITS MERCHANTABILITY, ITS CONDITION OR ITS FITNESS FOR LESSEE'S INTENDED USE OR FOR ANY PARTICULAR PURPOSE.

#### 11.2 Lessee's Representations, Warranties and Special Covenants.

(a) Existence. Lessee is duly organized and validly existing under the laws of the state of its organization and is authorized to do business in the State of Texas.

(b) Authority. Lessee has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease is a valid and binding obligation of Lessee and is enforceable against Lessee in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors rights or (b) general principles of equity.

(d) No Default. The execution by Lessee of this Lease and the consummation by Lessee of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or the lapse of time or both would ripen into default under, the organizational documents of Lessee or under any indenture, agreement, instrument or obligation to which Lessee is a party or is bound.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessee to enter into this Lease, make the agreements herein contained or perform the obligations of Lessee hereunder other than those which have been obtained.

(f) Proceedings. There are no actions, suits or proceedings pending or, to the actual knowledge of Lessee, without independent investigation, threatened or asserted against Lessee, affecting Lessee at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(g) As-Is. UPON COMMENCEMENT OF ITS OPERATIONS IN THE LEASED PREMISES, LESSEE SHALL BE DEEMED TO HAVE ACCEPTED THE LEASED PREMISES IN THEIR THEN EXISTING "AS-IS" CONDITION WITH ALL FAULTS, AND SUBJECT TO ALL RECORDED MATTERS, LAWS, ORDINANCES, AND GOVERNMENTAL REGULATIONS AND ORDERS; PROVIDED THAT, LESSEE'S ACCEPTANCE OF THE LEASED PREMISES SHALL NOT RELIEVE LESSOR FROM ANY MAINTENANCE AND REPAIR OBLIGATIONS SET FORTH IN THIS LEASE. LESSEE ACKNOWLEDGES THAT LESSOR HAS NOT MADE ANY WARRANTY OR REPRESENTATION OF ANY KIND, EITHER EXPRESS OR IMPLIED AS TO THE CONDITION OF THE LEASED PREMISES OR THE SUITABILITY OF THE LEASED PREMISES FOR LESSEE'S INTENDED USE, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE. COMMENCEMENT OF LESSEE'S OPERATIONS IN THE LEASED PREMISES IS INTENDED BY THE PARTIES TO BE CONCLUSIVE EVIDENCE THAT LESSEE ACCEPTS THE LEASED PREMISES.

## ARTICLE 12

### Miscellaneous

12.1 Inspection. Lessee shall permit Lessor and its agents, upon no less than twenty-four (24) hours prior written notice (except in cases where Lessor reasonably believes that a bona fide emergency exists, in which event no prior notice will be needed and no limitation on such entry shall apply), to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that any such inspection does not unreasonably interfere with Lessee's operations at the Leased Premise

12.2 Estoppel Certificates. Lessee and Lessor shall, at any time and from time to time (but not more frequently than once per Lease Year) upon not less than ten (10) days prior written request by the other Party, execute, acknowledge and deliver to Lessor or Lessee, as the case may be, a statement in writing certifying (a) its ownership of the interest of Lessor or Lessee

hereunder, as the case may be, (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the Base Rent and any other charges have been paid, and (d) that, to the then current actual knowledge, without independent investigation of Lessor or Lessee, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default).

12.3 Release. If requested by Lessor, Lessee shall, upon termination of this Lease, execute and deliver to Lessor an appropriate release, in form proper for recording, of all Lessee's interest in the Leased Premises, and Lessor is hereby granted an irrevocable power of attorney, which is coupled with an interest, to execute such release if Lessee fails to do so within ten (10) days of Lessor's request. Upon request of Lessee, Lessor will execute and deliver a written cancellation and termination of this Lease and release of all claims (if none are then outstanding) in proper form for recording to the extent such release is appropriate under the provisions hereof.

12.4 Interest on Past Due Amounts. Should Lessee fail to pay any amounts due to the Lessor hereunder when due, same shall bear interest from the date due until the date of payment at the lesser of twelve percent (12%) per annum or the highest rate allowed by applicable law. For purposes of determining the highest rate allowed by law, should Chapter 303 of the Texas Finance Code ever be deemed to apply to any such amounts, it is expressly agreed that the interest ceiling will be the "weekly ceiling" as defined in the Texas Finance Code, provided that if any applicable law permits a greater rate of interest, the law permitting the greatest rate of interest shall apply.

12.5 Notices. All payments required to be made by Lessee must be paid to Lessor at the address set forth below. All notices, demands, and other communications required to be given or made hereunder shall be in writing and shall be duly given if delivered by hand, messenger, facsimile or reputable overnight courier or if mailed by certified or registered mail, first class postage prepaid, to the respective parties hereto at the addresses set forth below, or to such other address furnished in writing to the other party hereto, and shall be deemed received upon the earlier of (i) actual receipt and (ii) (whether or not actually received) four (4) days after such mailing or upon receipt of confirmation of successful transmission of facsimile by the transmitting facsimile.

If to Lessee:

JQH – San Marcos Development, LLC  
a Missouri limited liability company  
300 John Q. Hammons Parkway, Suite 900  
Springfield, Missouri 65806  
Fax (417) 873-3540

With copies to:

Debra Mallonee Shantz, General Counsel  
John Q. Hammons Hotels & Resorts  
300 John Q. Hammons Parkway, Suite 900  
Springfield, Missouri 65806  
Fax (417) 864-4300

If to Lessor:                      Attn: City Manager  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666  
Fax: (512) 396-4656

With a copy to:                      Attn: City Attorney  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666  
Telephone: (512) 393-8000  
Facsimile: (512) 396-4656

12.6 Successors and Assigns. Except as expressly provided in Article 7, this Lease may not be assigned without the prior written consent of the other Party hereto. Subject to the foregoing, this Lease shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.

12.7 Amendment. Except as expressly provided herein, neither this Lease nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

12.8 Headings and Subheadings. The headings of the articles, sections, paragraphs and subparagraphs of this Lease are for convenience or reference only and in no way define, limit, extend or describe the scope of this Lease or the intent of any provisions hereof.

12.9 Unavoidable Default and Delays. After the Commencement Date, the time within which any Party to this Lease shall be required to perform any act under this Lease, other than the payment, when due, of Base Rent or any other payment by Lessee, shall be extended by a period of time equal to the number of days during which performance of such act is delayed by casualty, damage, strikes or lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the Party seeking the extension (except for financial circumstances or events or matters that may be resolved by the payment of money).

12.10 Severability. In the event one or more of the terms or provisions of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

12.11 Governing Law. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS OF THE STATE OF TEXAS APPLICABLE TO A LEASE EXECUTED, DELIVERED AND PERFORMED IN SUCH

STATE, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAW.

12.12 Venue for Actions. The venue for any legal action arising out of this Lease shall lie exclusively in Hays County, Texas.

12.13 Attorneys' Fees. Should either Party to this Lease engage the services of attorneys or institute legal proceedings to enforce its rights or remedies under this Lease, the prevailing party to such dispute or proceedings shall be entitled to recover its reasonable attorneys' fees, court costs and similar costs incurred in connection with the resolution of such dispute or the institution, prosecution or defense in such proceedings from the other Party.

12.14 Relationship of Parties. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of Lessor and Lessee. It is understood and agreed that this Lease does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

12.15 Net Lease. It is the intention of Lessor and Lessee that the Base Rent payable under this Lease after the Commencement Date and all Impositions and other costs related to Lessee's use or operation of the Leased Premises under this Lease, shall be absolutely net to Lessor, and that Lessee shall pay during the Term, without any offset or deduction whatsoever, all such Impositions and other costs due by Lessee under this Lease. Lessee's covenant to pay Base Rent and additional rent is independent of every other covenant in this Lease.

12.16 Non-Waiver. No Party shall have or be deemed to have waived any Event of Default under this Lease by the other Party unless such waiver is embodied in a document signed by the waiving Party that describes the Event of Default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Lease, unless such waiver is embodied in a document signed by such Party that describes any such remedy that is being waived.

12.17 Obligations to Defend Validity of Lease. If litigation is filed by a third party against Lessee or Lessor in an effort to enjoin either Party's performance of this Lease, the Parties hereto who are named as parties in such action shall take all commercially reasonable steps to support and defend the validity and enforceability of this Lease. Either Party may intervene in any such matter in which the other Party hereto has been named as a defendant. Each Party shall be responsible for its attorneys' fees and costs of litigation.

12.18 Survival. Covenants in this Lease providing for performance after termination of this Lease shall survive the termination of this Lease.

12.19 Entire Agreement. This Lease (including the Exhibits attached hereto and incorporated herein, if any) and the other documents delivered pursuant to this Lease or referenced herein constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof. There are no representations, promises or agreements of Lessor or Lessee regarding the subject matter of this Lease not contained in this Lease, the Exhibits attached hereto or the other documents delivered pursuant to this Lease or referenced herein.

12.20 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

12.21 Limitation on Damages. Anything to the contrary in this Lease notwithstanding, Lessee hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or negligent act of Lessor or its representatives, agents or employees.

Notwithstanding anything contained herein appearing to the contrary, it is expressly agreed that any liability of Lessor to Lessee for money damages arising out of a breach of Lessor's obligations hereunder shall be limited to an amount equal to Lessor's equity interest in the Conference Center and the Land.

12.22 Memorandum of Lease Agreement. Upon either Party's request, the other Party shall execute and allow such party to record in Hays County, Texas, a Memorandum of Lease Agreement with respect to this Lease. In the event such a Memorandum is recorded, the parties agree that upon a termination of this Lease, the Parties shall execute and record a termination of such Memorandum of Lease Agreement.

12.23 Termination of Master Agreement. In the event the Master Agreement is terminated pursuant to the terms of Section 6.1 thereof, it is expressly agreed that this Lease shall terminate as well and neither Party shall have any rights or obligations one unto the other hereunder. Furthermore, it is expressly agreed that Lessor shall have no obligation to construct the Conference Center, and hence no liability hereunder, in the event Lessee fails to construct the Hotel pursuant to the terms of the Master Agreement.

12.24 Renewal Right. To the extent Lessor may lawfully do so without (i) violating any provisions of Texas law applicable to Lessor, or (ii) same resulting in this Lease being deemed or construed as a sale of the Leased Premises under any applicable law, Lessor hereby grants Lessee the right to renew this Lease (the "Renewal Option") for a period of fifteen (15) years (the "Renewal Term") following the Expiration Date on the same terms and conditions contained in this Lease except that the annual Base Rent for each year of the Renewal Term shall be the greater of (i) the product obtained by multiplying \$565,762.50, being the Base Rent for the last year of the Original Term, times the CPI Adjustment Factor (as defined herein) or (ii) \$565,762.50. A Base Rent payment in the amount of one-half (1/2) of the annual Base Rent for the Renewal Term shall be due and payable on each July 15 and January 15 during the Renewal Term with the first such payment being due on July 15, 2032 (i.e., if the annual Base Rent for each year of the renewal term is \$700,000.00, a rent payment in the amount of \$350,000.00 would be due on July 15, 2032 and on each January 15<sup>th</sup> and July 15<sup>th</sup> thereafter). Lessee's Renewal Option may be exercised only if (i) Lessee is not in default under this Lease at the time

of exercise of such Renewal Option and/or at the time the Renewal Term is to commence and (ii) Lessee has fully performed all the material conditions of this Lease prior to such exercise, including, but without limitation, Lessee's obligation to continuously operate the Leased Premises in accordance with the terms of Section 5.1(a) hercof. Written notice of Lessee's election to exercise the Renewal Option must be given to Lessor at least two (2) years, but not more than three (3) years, prior to the Expiration Date. If Lessee does not give such notice timely, then Lessee's right to renew this Lease shall expire and be of no further force and effect, and Lessor shall have no obligation whatsoever to notify Lessee of its failure to exercise such renewal rights. Furthermore, notwithstanding anything contained herein to the contrary, the renewal rights contained in this Section 12.24 shall be personal to Lessee and shall not inure to the benefit of any assignee of Lessee, other than the assignee under an assignment permitted under Section 7.1(d) of this Lease.

For purposes hereof, "CPI Adjustment Factor" shall mean the amount derived by dividing the CPI (as herein defined) most recently published as of the Expiration Date by the CPI most recently published as of the Operational Date. For purposes hereof "CPI" means the National Consumer Price Index for All Urban Consumers, U.S. City Average (all items 1982 - 1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau"). If the CPI should ever cease to be published by the Bureau during the lease term, the CPI Adjustment Factor shall be computed by using an economic index reasonably selected by Lessor, of generally recognized standing, that reflects the increase or decrease of the purchasing power of the dollar.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Lease as of the date first set forth above.

**LESSEE:**

JQH - SAN MARCOS DEVELOPMENT, LLC, a  
Missouri limited liability company

By: John Q. Hammons Hotels Development, LLC,  
Its Sole Member

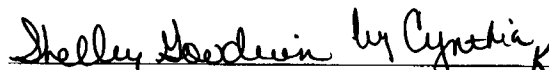
  
By: \_\_\_\_\_  
John Q. Hammons, President

**LESSOR:**

CITY OF SAN MARCOS, TEXAS, a Texas  
municipal corporation

By:   
By: \_\_\_\_\_  
Dan O'Leary, City Manager

ATTEST:

By:  by Cynthia Knox  
Shelley Goodwin, Interim City Clerk



## **EXHIBIT "A"**

Lot 1, Block A, EMBASSY SUITES AND CITY OF SAN MARCOS CONFERENCE CENTER SUBDIVISION, City of San Marcos, Hays County, Texas, as recorded in Book 14, Page(s) 103-104 of the Plat Records of Hays County, Texas.

**SCHEDULE 1 TO CONFERENCE CENTER LEASE**

**BASE RENT PAYMENT SCHEDULE**

<b>Payment Date</b>	<b>Payment Amount</b>
July 15, 2008	\$614,907.29
January 15, 2009	\$194,181.25
July 15, 2009	\$194,181.25
January 15, 2010	\$194,181.25
July 15, 2010	\$194,181.25
January 15, 2011	\$359,181.25
July 15, 2011	\$189,850.00
January 15, 2012	\$364,850.00
July 15, 2012	\$185,256.25
January 15, 2013	\$370,256.25
July 15, 2013	\$180,353.75
January 15, 2014	\$375,353.75
July 15, 2014	\$175,137.50
January 15, 2015	\$380,137.50
July 15, 2015	\$169,500.00
January 15, 2016	\$384,500.00
July 15, 2016	\$163,587.50
January 15, 2017	\$393,587.50
July 15, 2017	\$157,262.50
January 15, 2018	\$397,262.50
July 15, 2018	\$150,662.50
January 15, 2019	\$405,662.50
July 15, 2019	\$143,650.00
January 15, 2020	\$413,650.00
July 15, 2020	\$136,090.00
January 15, 2021	\$421,090.00
July 15, 2021	\$128,110.00
January 15, 2022	\$428,110.00
July 15, 2022	\$119,710.00
January 15, 2023	\$439,710.00
July 15, 2023	\$110,750.00
January 15, 2024	\$450,750.00
July 15, 2024	\$101,060.00
January 15, 2025	\$456,060.00
July 15, 2025	\$90,942.50
January 15, 2026	\$470,942.50

July 15, 2026	\$80,112.50
January 15, 2027	\$480,112.50
July 15, 2027	\$68,712.50
January 15, 2028	\$493,712.50
July 15, 2028	\$56,493.75
January 15, 2029	\$506,493.75
July 15, 2029	\$43,556.25
January 15, 2030	\$518,556.25
July 15, 2030	\$29,900.00
January 15, 2031	\$534,900.00
July 15, 2031	\$15,381.25
January 15, 2032	\$550,381.25