

## SUBORDINATION AGREEMENT

Property Commonly Known As  
The San Marcos Embassy Suites

This SUBORDINATION AGREEMENT (this "Agreement") is made as of \_\_\_\_\_, 2018, between THE CITY OF SAN MARCOS, TEXAS, a municipal corporation of the State of Texas ("Landlord") and GOLDMAN SACHS MORTGAGE COMPANY and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with their respective successors and assigns, collectively, "Lender").

### RECITALS

A. The Landlord and JQH - San Marcos Development, LLC, a Missouri limited liability company (together with its successors and assigns, the "Original Lessee"), have entered into that certain Conference Center Lease Agreement, dated as of September 10, 2007 (the "Lease"). Lessee has transferred its interest in the Lease to JDHQ HOTELS LLC, a Delaware limited liability company, whose address is 2398 East Camelback Road, Suite 1000, Phoenix, Arizona 85016 ("Purchaser"). Landlord executed that certain Conference Center Lessor Estoppel, as of April 17, 2018 for the benefit of Purchaser and Lender (the "Estoppel")

B. Original Lessee entered into that certain Deed of Trust (so called herein) dated as of January 17, 2007 in favor of Landlord, recorded at Volume 3109, Page 365 of the Real Property Records of Hays County, Texas, and evidenced by that certain Financing Statement recorded at Volume 3109, Page 383 of the Real Property Records of Hays County, Texas, to secure the payment and performance of the obligations described in said Deed of Trust, including, without limitation, the terms of that certain Deed of Trust Note dated July 15, 2005 by John Q. Hammons, as Trustee of the Revocable Trust of John Q. Hammons, dated December 28, 1989, as amended and restated, in the original principal amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) as said note has heretofore been modified and amended, (said lien and security interests created under the Deed of Trust being herein collectively the "City Lien").

C. Purchaser is mortgaging its interest in the Lease to Lender pursuant that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Mortgage") dated as of May 17, 2018, by Purchaser, as grantor to DAVID M. RATCHFORD, an individual, having an address at 601 Travis Street, Suite 1875, Houston, TX 77002, as trustee, in trust of the benefit of Lender to secure debt in the amount of \$63,000,000 (the "Loan").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby agree as follows:

### AGREEMENT

Landlord does hereby agree to subordinate and make inferior the City Lien to the lien held by Lender on Tenant's hotel in San Marcos, Texas, and no other property, pursuant to the Mortgage. It is hereby expressly acknowledged that the Mortgage is paramount and superior to the City Lien.

2. Lender hereby represents to Landlord that the Mortgage creates a lien on Tenant's hotel property in San Marcos, Texas, currently known as the San Marcos Embassy Suites, and no other property

3. Landlord and Lender acknowledge and agree as follows: (i) so long as any portion of the Loan remains outstanding, Landlord shall not demand payment under or seek foreclosure of the City Lien, except with the prior written consent of Lender, and acknowledges that any such exercise without the prior written consent of Lender is an event of default under the Loan entitling Lender to foreclose on the Mortgage (for the avoidance of doubt, the foregoing clause (i) shall not affect Landlord's rights pursuant to the terms and conditions of the Lease, including, but not limited to, its exercise of remedies, under the Lease); (ii) Landlord will accept the exercise of rights by Lender under the City Lien (including a cure of any default thereunder) as if they had been exercised by Purchaser; (iii) the Landlord shall not, directly or indirectly, transfer, pledge or assign the City Lien or any of the rights or beneficial, economic or other interests of Landlord therein to any Person; (iv) the terms of the City Lien will not be amended or otherwise modified in any respect without the consent of Lender, which consent may be withheld in Lender's sole discretion; (v) a copy of all notices with respect to the City Lien delivered by Landlord to Tenant shall be promptly delivered to Lender; (vi) Landlord shall give prompt notice to Lender of any default under the City Lien; (vii) the Mortgage may be extended and modified without notice to Landlord and that any such extension or modification will not affect the priority of the Mortgage or this subordination of the City Lien to the Mortgage; (viii) so long as any portion of the Loan remains outstanding, Landlord shall not initiate any bankruptcy or similar proceeding in respect of Tenant; (ix) upon any insolvency of Tenant or the commencement of any bankruptcy or similar proceeding by or against the Tenant, Landlord shall cooperate with Lender in any action for the liquidation, composition, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of all or any of the Loan or the City Lien, or the application of the assets of Tenant to the payment or liquidation thereof to make elections with respect to the assets of Tenant, including, without limitation, elections with respect to any proposed plan of reorganization; (x) Lender agrees that upon any insolvency of Tenant or the commencement of any bankruptcy or similar proceeding by or against the Tenant not to take any action that would impair the continued operation of the Conference Center or any other rights of the Landlord under the terms of the Lease; and (xi) Landlord hereby further agrees that it shall not take any action in bad faith, to frustrate, delay or hinder the recovery or payment of Lender under the Loan. Furthermore, Landlord consents to, and agrees that in the future it shall consent to and shall not object to or take any other action to oppose any motion or request seeking (1) relief for Lender against any stay or injunction therein against collection of the Loan, including, but not limited to, any motion made by or on behalf of Lender therein to lift such stay or injunction for the purposes of foreclosing the Mortgage and (2) use of cash collateral pledged in favor of Lender. Notwithstanding anything to the contrary contained in the Estoppel, any transfer of the Lease or the equity interest in Purchaser, as applicable, by Lender (or anyone whose title derives directly or indirectly from a Lender, including a purchaser at any foreclosure sale) following the acquisition of the Lease or such equity interest through foreclosure or assignment in lieu of foreclosure, shall be subject to the terms and provisions of Section 7.1(a) of the Lease.

4. Notices. Any notice, communication, request or other document or demand required or permitted under this Agreement with respect to Landlord or Lender shall be in writing

and shall be deemed delivered on the earlier to occur of (i) receipt or (ii) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to (or to such other addresses as such party may hereafter designate by written notice to Lessor):

If the case of the Lender:

Goldman Sachs Mortgage Company  
Attention: General Counsel  
200 West Street  
New York, NY 10282

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP One Liberty Plaza  
New York City, NY 10006  
Attention: John V. Harrison  
Email: [jharrison@cgsh.com](mailto:jharrison@cgsh.com)

JPMorgan Chase Bank, National Association  
383 Madison Avenue  
New York, New York 10179  
Attention: Thomas Nicholas Cassino

JPMorgan Chase Bank, National Association  
383 Madison Avenue  
New York, New York 10179  
Attention: Nancy Alto

In the case of the Landlord:

Attn: City Manager  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666  
Telephone: (512) 393-8100  
Facsimile: (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

2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

3. Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by the Lessor and delivered to the Lender.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Subordination Agreement to be duly executed and delivered as of the day and year first above written.

**LANDLORD:**

THE CITY OF SAN MARCOS, TEXAS, a  
municipal corporation of the State of Texas  
and a home rule city,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## ACKNOWLEDGMENTS

STATE OF \_\_\_\_\_)

: ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2018, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

**LENDER:**

GOLDMAN SACHS MORTGAGE  
COMPANY, a New York limited  
partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ACKNOWLEDGMENTS

STATE OF \_\_\_\_\_)

: ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2018, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION, a banking association  
chartered under the laws of the United States

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ACKNOWLEDGMENTS

STATE OF \_\_\_\_\_)

: ss.:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2018, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.