

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign an Amendment to the Chapter 380 Economic Development Program Agreement ("Agreement") by and between the **CITY OF EL PASO, TEXAS** and **1 TEXAS TOWER, LLC** and **HOTEL DULCINEA, LLC** to support and facilitate the development of a hotel, which includes the redevelopment, rehabilitation and improvement of the downtown building commonly known as the Texas Tower, located at **109 North Oregon Street, El Paso, Texas 79901**. The Amendment will require the Applicant increase the minimum investment amount to \$20 million.

APPROVED this 22<sup>nd</sup> day of November, 2022.



**CITY OF EL PASO**

*[Handwritten signature of Oscar Leeser]*

Oscar Leeser  
Mayor

**ATTEST:**

*[Handwritten signature of Laura D. Prine]*

Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

*[Handwritten signature of Juan S. Gonzalez]*

Juan S. Gonzalez  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT**

*[Handwritten signature of Elizabeth K. Triggs]*

Elizabeth K. Triggs, Director  
Economic & International Development

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

AMENDMENT  
TO CHAPTER 380  
ECONOMIC DEVELOPMENT AGREEMENT

This Amendment to that certain Chapter 380 Economic Development Agreement for the redevelopment of the property at 109 North Oregon Street is made this 22 day of November, 2022, by and between the City of El Paso, a Municipal Corporation organized and existing under the laws of the State of Texas (the "City"), and 1 TEXAS TOWER, LLC ("Texas Tower") and HOTEL DULCINEA, LLC ("Hotel Dulcinea"), collectively "Applicants" and each individually an "Applicant", both Texas limited liability companies.

**WHEREAS**, on May 24, 2022, the City and Applicants entered into a Chapter 380 Economic Development Agreement for the redevelopment of the property at 109 North Oregon Street ("Agreement");

**WHEREAS**, the Agreement may be amended under the provisions of Section 8. A. Amendments. of the Agreement;

**WHEREAS**, the parties desire to amend the Agreement to better reflect the specific parameters surrounding Applicants' redevelopment, rehabilitation and improvement to the downtown building commonly known as the Texas Tower, located at 109 North Oregon Street, El Paso, Texas 79901.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Specific subsections of **SECTION 1. DEFINITIONS** of the Agreement are amended to read as follows:

**H. Construction Materials Sales Tax Rebate** means a one-time 100 percent rebate of the City's one percent (1%) Sales and Use Tax Receipts for materials and labor of taxable items used in the construction of the Development, provided, however, that under no circumstances shall the total rebate amount granted by the City exceed the amount specified in Section 4(A) of this Agreement.

**S. Hotel Franchise** means a franchise for at least a 3-star Canopy By Hilton Hotel.

**T. Local Hotel Occupancy Tax Rebate** means a 25 percent rebate of the City's portion of the hotel occupancy tax collected in connection with the Hotel for 10 years, provided, however, that under no circumstances shall the total rebate amount granted by the City exceed the amount specified in Section 4(A) of this Agreement. Receipt of the rebate on the City's



portion of the hotel occupancy tax by Applicants is not contingent on the Development's participation in the State Convention Center Hotel Program.

- U. **Minimum Appraisal Value** means upon the issuance of the certificate of occupancy (temporary or permanent) for the Hotel, or December 31, 2026, whichever occurs first, the value of the real and personal property and improvements of the Development after the construction of the Development below which the Applicant cannot protest nor contest the appraised value of the Development with the El Paso Central Appraisal District during the Term of this Agreement. Under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent or determinative for appraisal purposes or be used in any way to determine market value. For the purposes of this Agreement, the Minimum Appraisal Value shall be \$5,455,100.00.
  
- V. **Minimum Investment** means all Qualified Expenditures, including, without limitation, those costs incurred, self-performed or contracted to third parties by the Applicant over the course of the redevelopment, rehabilitation, and improvement of the Development. For the purposes of this Agreement, the Minimum Investment amount shall be \$20,000,000.00.
  
- W. **Property Tax Rebate** means a 100 percent rebate of the City's portion of the combined incremental ad valorem real and personal property tax revenue generated by or for the Real Property above the Base Year Value for the Development. This rebate shall be limited to a 13-year period within the Grant Period provided, however, that under no circumstances shall the total rebate amount granted by the City exceed the amount specified in Section 4(A) of this Agreement. Receipt of the Property Tax Rebate is not contingent on the Development's participation in the State Convention Center Hotel Program.
  
- Z. **Retail Sales and Use Tax Rebate** means a rebate of 100 percent of the City's one percent Sales Tax Receipts generated by and attributable solely to the Applicants and the Applicant's Retailers, tenant's and/or occupants' sales of Taxable Items consummated at the Hotel in the immediately prior calendar year and remitted from the State Comptroller to the City. For purposes of this Agreement, sales and use tax revenue generated in areas of the building not included in the Development as defined in Section 1(J) of this Agreement shall not be eligible for Retail Sales and Use Tax Rebate under the terms of this Agreement. This rebate shall be limited to a 10-year period within the Grant Period provided, however, that under no circumstances shall the total rebate amount granted by the City exceed the amount specified in Section 4(A) of this Agreement. Receipt of the Retail Sales and Use Tax Rebate is not



contingent on the Development's participation in the State Convention Center Hotel Program. To receive the Sales and Use Tax Rebate, the Applicant must complete and submit Exhibit D and provide as an annual attachment to the Grant Submittal Package.

2. Specific subsections of **SECTION 2. TERM AND GRANT PERIOD** of the Agreement are amended to read as follows:

**A. Term and Effective Date.** The Term of this Agreement shall commence on the Effective Date and shall terminate on the first to occur: (i) the date when the Grant is fully paid; (ii) 18 years from the Effective Date; (iii) the proper termination of this Agreement in accordance with applicable provisions contained herein; or (iv) termination by mutual consent of the parties in writing; provided, however, that failure of Applicant to receive its certificate(s) of occupancy (either temporary or permanent) no later than December 31, 2026, shall result in the immediate termination of this Agreement. For the purposes of this Agreement, "certificate(s) of occupancy" does not include temporary certificate(s) of occupancy.

**B. Grant Period and Grant Payment Eligibility.** The Grant Period shall begin when the Applicant submits to the City the initial State and City Grant Submittal Packages to be no later than January 1, 2027, with early submission being acceptable. Subsequent submittals will be due by April 1 for the previous calendar year. Applicant's eligibility for Grant payments shall be limited to 13 consecutive years for the Property Tax Rebate; and 10 consecutive years for the Local Hotel Occupancy Tax Rebate, Retail Sales and Use Tax Rebate, State Hotel Occupancy Tax Rebate, and State Hotel Sales Tax Rebate, within the Term of this Agreement and subject to the provisions and tenets contained in this Agreement. The City shall annually review the Applicant's eligibility for Grant payments in accordance with Exhibits C-1, C-2, and D during the Grant Period.

3. Subsection A. of **SECTION 3. OBLIGATIONS OF THE APPLICANT** of the Agreement is amended to read as follows:

**A. Development.** Applicant agrees to develop and construct, at its sole cost, the Development; and further agrees:

- 1) That it shall make or cause to be made the Minimum Investment in the development and construction of the Development;
- 2) That the Development shall preserve the exterior façade of the building in a manner consistent with the renderings attached hereto in **Exhibit A**;
- 3) That the Development signage shall comply with the hardware and illumination types specified in Chapter 21.80.020 of the City municipal code.

- 4) That the Development shall be completed in accordance with the requirements and review provisions of Chapter 20.20 of the City municipal code, where applicable;
- 5) That it shall diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations; and moreover, shall give preference and priority to local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency;
- 6) That it shall develop and construct, at its sole cost an approximately 120 room at least 3-star Canopy by Hilton Hotel, as further conceptually shown on **Exhibit A**, attached hereto;
- 7) That it shall make a Minimum Investment in an amount of **\$20,000,000.00** towards the Development, no later than **December 31, 2026**;
- 8) That it shall obtain a certificate of occupancy for the Development no later than four (4) years from the Effective Date of this Agreement.; and
- 9) That the Development shall be limited in its use to uses consistent with the development and operation of the Hotel and consistent with the City's development goals, which is the encouraging of development and redevelopment of Downtown El Paso.

4. The 1<sup>st</sup> full sentence of Subsection D. of **SECTION 3. OBLIGATIONS OF THE APPLICANT** of the Agreement is amended to read as follows:

On or before January 1, 2027 and continuing on a quarterly basis of each year thereafter, but not to exceed 10 consecutive years, Applicants will provide to the City, and maintain during the Term of this Agreement, a list of each Retailer that occupies or occupied the Development during the Grant Period, including the taxpayer identification number, taxpayer outlet number (as shown on the Texas sales tax permit), taxpayer name and taxpayer location as reported to the State Comptroller, and any other information required by the State Comptroller to generate and provide the City with the State Comptroller's sales tax report for the Grant Period, provided however, Applicants shall not be required to provide any such information or reporting to the City or any other party for any occupants at the Development that are not part of any incentives (for example the restaurant used by Café Central).



5. Subsection E.2. of **SECTION 3. OBLIGATIONS OF THE APPLICANT** of the Agreement is amended to read as follows:

2. Concurrent with the submittal of the initial City Grant Submittal Package, Applicant will submit to the City documentation as may be reasonably necessary to verify: (i) the expenditure of the Minimum Investment; (ii) receipt of a final certificate(s) of occupancy for the Development that allows the Applicant to fully occupy and the public to fully access the Development, receipt of which shall have been received no later than December 31, 2026; (iii) reasonable documentation confirming the rebate amount due to the Applicant for the Construction Materials Sales Tax Rebate; and (iv) reasonable documentation confirming the rebate amount due to the Applicant for the Local Hotel Occupancy Tax Rebate, Property Tax Rebate, Sales and Use Tax Rebate. Any subsequent City Grant Submittal Packages shall require that the Applicant submit City documentation as may be reasonably necessary to verify the rebate amount due to the Applicant for the: (i) Local Hotel Occupancy Tax Rebate (if applicable); Property Tax Rebate; and Sales and Use Tax Rebate (if any), provided however, the City shall be required to request in writing any such documentation reasonably necessary to verify the rebate amount due to the Applicant from Applicant within 90 days after Applicant has submitted the City Grant Submittal Package or no additional documentation shall be required to be submitted by Applicant, and shall be deemed acceptable.

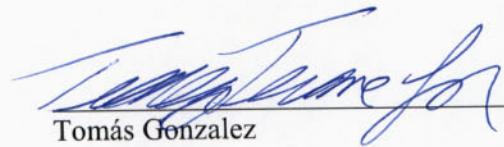
6. Subsection A. of **SECTION 4. OBLIGATIONS OF THE CITY** of the Agreement is amended to read as follows:

1. The City agrees to provide a one-time Construction Materials Rebate provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in accordance with the terms and provisions of this Agreement, and due with the initial City Grant Submittal Package;
2. The City agrees to provide the Local Hotel Occupancy Tax Rebate provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in accordance with the terms and provisions of this Agreement;
3. The City agrees to provide the Property Tax Rebate provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in accordance with the terms and provisions of this Agreement;

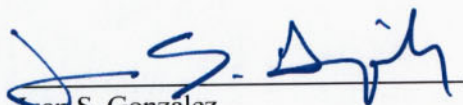
4. The City agrees to provide the Retail Sales and Use Tax Rebate provided Applicants' performance, Applicants' request for payment, and the payment provided by the City are in accordance with the terms and provisions of this Agreement; and
5. In no event shall the maximum, aggregate amount of City Grant Payments exceed 12.7% of the Total Investment.
6. Except as expressly provided herein, the City agrees to process and pay to Applicant any eligible Grant payment within 90 days receipt of the Applicant's complete annual City Grant Submittal Package.
7. Subsection C.6. of **SECTION 4. OBLIGATIONS OF THE CITY** of the Agreement is revised from "6." To "4."; reflecting the next number in sequence.
8. Exhibit A is replaced in its entirety by Attachment A to this Amendment;
9. Exhibit C-2 **City Grant Submittal Package** is replaced in its entirety by Attachment B to this Amendment;
10. All terms and conditions of the Agreement and all subsequent Amendments thereto, except as herein revised, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 22nd day of November, 2022


**CITY**  
**THE CITY OF EL PASO:**

  
Tomás Gonzalez  
City Manger

**APPROVED AS TO FORM:**

  
Juan S. Gonzalez  
Senior Assistant City Attorney

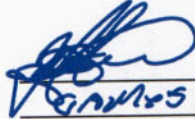
**APPROVED AS TO CONTENT:**

  
Elizabeth Triggs  
Director, Economic & International  
Development



**APPLICANT(S)**

**1 TEXAS TOWER, LLC,**  
a Texas Limited Liability Company



JAMES F. SCHEAR

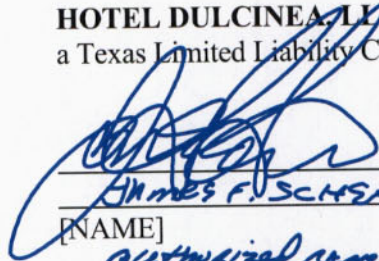
[NAME]

Authorized Representative

[SIGNATORY CAPACITY]

**And**

**HOTEL DULCINEA, LLC,**  
a Texas Limited Liability Company



JAMES F. SCHEAR

[NAME]

Authorized Representative

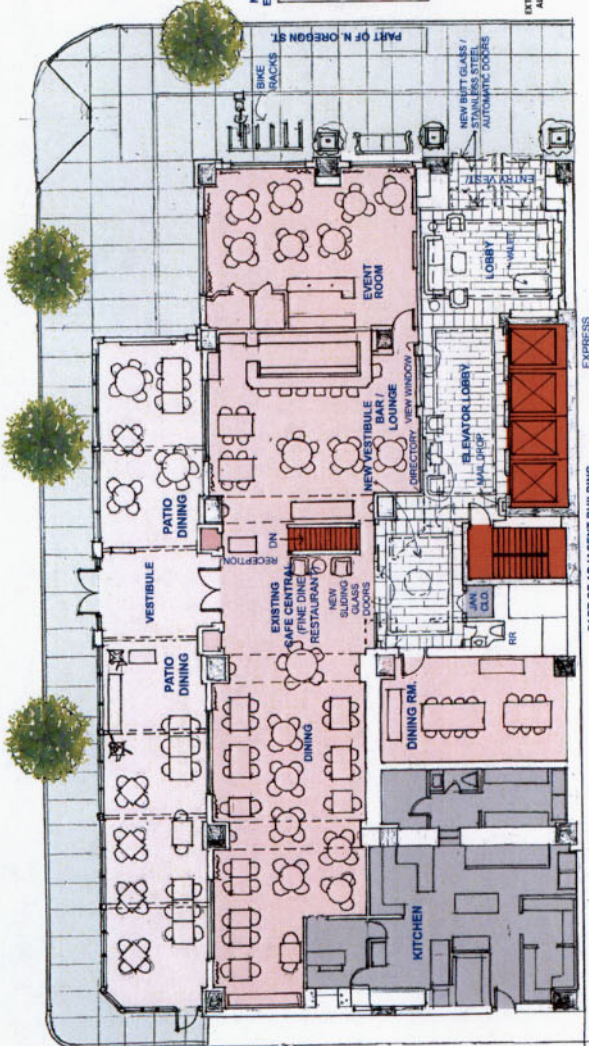
[SIGNATORY CAPACITY]



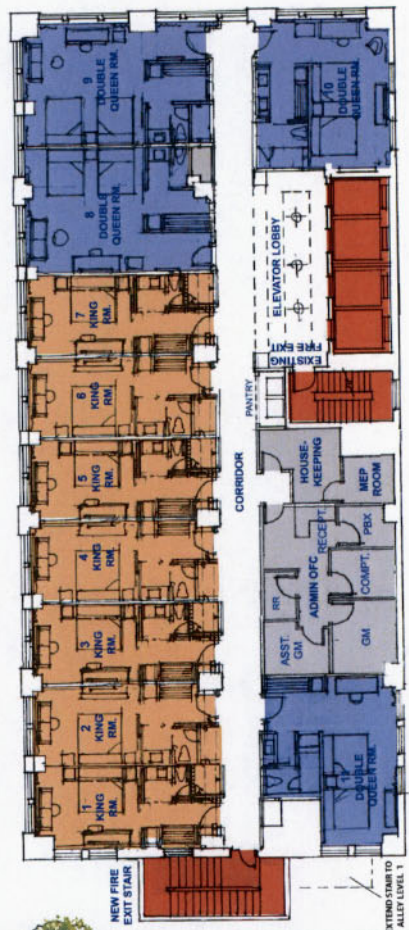
**ATTACHMENT “A”**

**Replacement of Exhibit A Project Renderings & Description of Amenities**

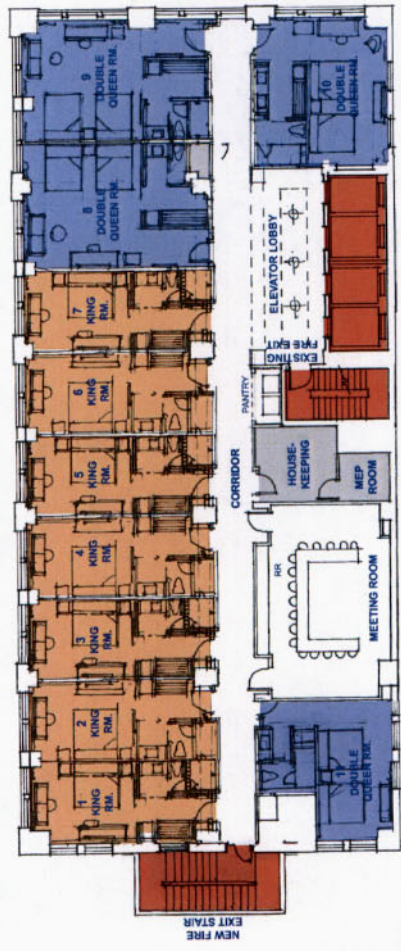
**[ATTACHED]**



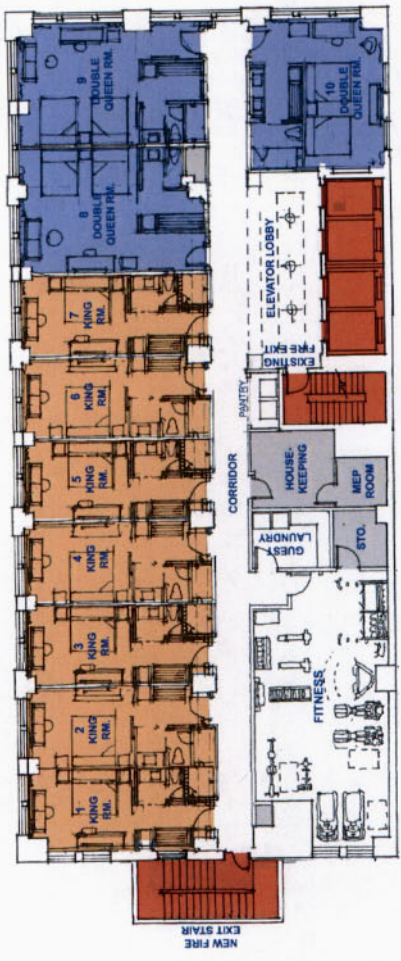
**GROUND FLOOR PLAN**  
SCALE: 1/8" = 1'-0"



**2ND FLOOR PLAN**  
SCALE: 1/8" = 1'-0"



**3RD AND 4TH FLOOR PLAN**  
SCALE: 1/8" = 1'-0"



**5TH FLOOR PLAN**  
SCALE: 1/8" = 1'-0"



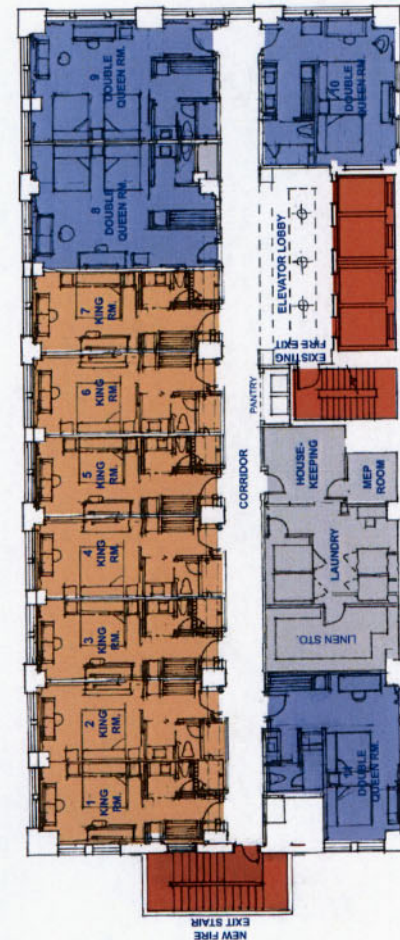
ARCHITECTURE • PLANNING • INTERIORS  
3221A WEST ALABAMA • HOUSTON, TEXAS 77098  
Office 713-522-1054 • Fax 713-522-4496 • info@mcs-houston.com

**CANOPY by HILTON - A BUILDING CONVERSION PROJECT**

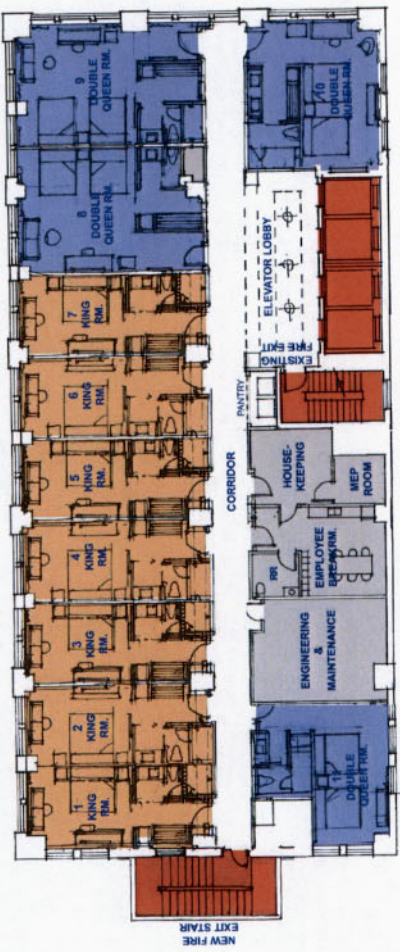
N. OREGON ST., EL PASO, TX

2022 09 26

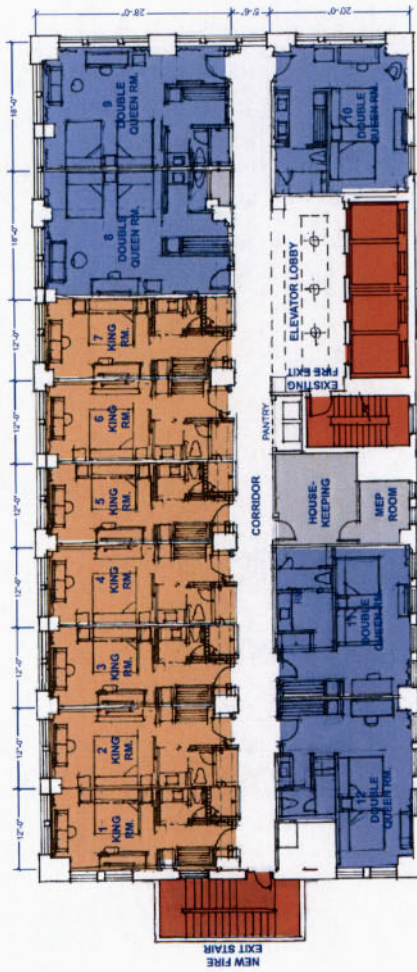




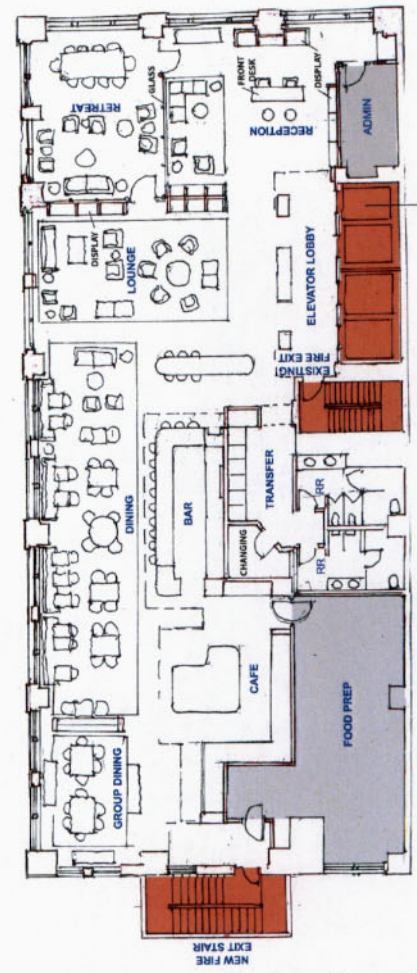
6TH FLOOR PLAN  
SCALE: 1/8" = 1'-0"



7TH FLOOR PLAN  
SCALE: 1/8" = 1'-0"



TYPICAL 8TH TO 14TH FLOOR PLAN  
SCALE: 1/8" = 1'-0"



FIFTEENTH FLOOR PLAN  
SCALE: 1/8" = 1'-0"

EXPRESS  
CHECK-IN  
ACCESS



HOTEL ROOM COUNT			
Floor	King	Double Queen	Total
Ground Floor	7	4	11
2nd Floor	7	4	11
3rd Floor	7	4	11
4th Floor	7	4	11
5th Floor	7	4	11
6th Floor	7	4	11
7th Floor	7	4	11
8th Floor	7	4	11
9th Floor	7	4	11
10th Floor	7	4	11
11th Floor	7	4	11
12th Floor	7	4	11
13th Floor	7	4	11
14th Floor	7	4	11
15th Floor	7	4	11
<b>Grand Total</b>	<b>91</b>	<b>56</b>	<b>149</b>



FACADE ALONG N. OREGON ST.  
SCALE: 3/32" = 1'-0"



ARCHITECTURE • PLANNING • INTERIORS  
3221A WEST ALABAMA • HOUSTON, TEXAS 77098  
Office 713-522-1054 • Fax 713-522-4496 • info@mcs-houston.com

2022 07 26

**CANOPY by HILTON - A BUILDING CONVERSION PROJECT**

N. OREGON ST., EL PASO, TX



**ATTACHMENT "B"**

Replacement of Exhibit C-2 City Grant Submittal Package

**[ATTACHED]**

**EXHIBIT C-2**  
**City Grant Submittal Package**

\_\_\_\_\_(The Applicant) believes that it has substantially met its obligations under the Chapter 380 Agreement executed on \_\_\_\_\_ (date). Pursuant to the Agreement, the Applicant submits this Grant Submittal Package Form in compliance with said Agreement and in anticipation of receiving the Grant in consideration for his obligations met under the Agreement.

As required by the Agreement, the following information is submitted.

1. **[INITIAL GRANT SUBMITTAL ONLY]** Copies of all applicable approvals and permits.
2. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation to evidence minimum expenditures amounting to **\$20,000,000** including but not limited to
  - a. Stamped **PAID** invoices
  - b. Copies of checks proving payment – corresponding to paid invoices
  - c. Receipts for purchase of construction materials (must show amount of taxes paid)
  - d. Bank statements (in the event a transaction was paid with a credit or debit card)
  - e. Contractor pay applications, notarized with lien releases
3. **[INITIAL GRANT SUBMITTAL ONLY]** Documentation evidencing the materials and labor of Taxable Items used in the construction of the Development eligible for rebate to Applicant under the Construction Materials Sales Tax Rebate.
4. **[INITIAL GRANT SUBMITTAL ONLY]** Copy of Certificate of Occupancy in accordance with the requirements provided in Section **3(A)(7)**.
5. Documentation evidencing payment of Local Hotel Occupancy Tax for \_\_\_\_\_ (Quarter & Year, or Year only if paid annually).
6. Property tax payment receipts showing proof of payment for tax year \_\_\_\_\_.
7. Retailers Report – Listing of retailers located at the development
8. Waiver of Sales Tax Confidentiality Forms (**EXHIBIT D**) from Retailers on the Retailers Report who have provided such waivers (with Duty to Update)

It is understood by the Applicant that the City of El Paso has up to **90 days** to process this request and reserves the right to deny the Grant claim if the Applicant has failed to comply with the terms of the Agreement.



By the signature of the Applicant below, the Applicant hereby certifies that: (1) the copies of the receipts attached to this Grant Submittal Package Form represent Qualified Expenditures incurred in construction to the Development; (2) the Applicant has paid or caused to be paid the City's local sales and use taxes associated with the Qualified Expenditures; and (3) that the copies of the receipts and copies of the permits attached herein are true and correct.

**APPLICANT:** \_\_\_\_\_

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

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

**ACKNOWLEDGMENT**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF EL PASO**    §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by \_\_\_\_\_, as \_\_\_\_\_  
of \_\_\_\_\_ (APPLICANT / COMPANY).

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_