

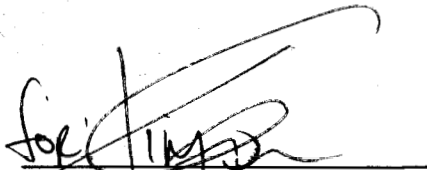
RESOLUTIONCITY CLERK DEPT.
2016 SEP 13 AM 11:42**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign an Economic Incentive Agreement by and between CITY OF EL PASO ("City") and Hotel Sancho Panza, LLC ("Applicant") for the development of a Convention Center Hotel to be located at 616-618 North Santa Fe Street, El Paso, Texas.

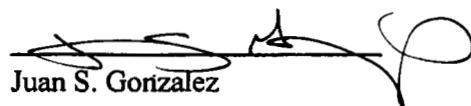
APPROVED this 20th day of September, 2016.

CITY OF EL PASO


Oscar Leaser
Mayor


ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT:


for Cary Westin, Director
Economic & International Development

**CITY OF EL PASO
AND
HOTEL SANCHO PANZA, LLC,**

CITY CLERK DEPT.
2016 SEP 14 PM 5:03

**CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (this "Agreement") is made and entered into by and between the **CITY OF EL PASO, TEXAS** ("hereinafter referred to as "**CITY**"), a Texas home rule municipal corporation, and **HOTEL SANCHO PANZA, LLC**, (hereinafter "**HSP**"), a Nevada limited liability company, for the purposes and considerations stated below:

WHEREAS, the **HSP** desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Chapter 380"); and

WHEREAS, the **CITY** desires to provide, pursuant to Chapter 380, an incentive to **HSP** to develop the Hotel as defined below; and

WHEREAS, the **CITY** has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the **CITY** of El Paso; and

WHEREAS, the **CITY** determines that a grant of funds to **HSP** will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the **CITY**; and

WHEREAS, the **CITY** recognizes that tourism, both for business and for pleasure, is a significant component of the **CITY's** economy and cites the importance of the Convention Center and surrounding hotels as critical elements in the **CITY's** efforts to promote tourism in the **CITY**, and

WHEREAS, the **CITY** and **HSP** desire that development of the Hotel, includes construction and/or installation of certain infrastructure, as set forth in this Agreement; and

WHEREAS, the creation of a Hotel will encourage increased economic development in the **CITY**, provide significant increases in the **CITY'S** sales tax revenues, and improve the **CITY'S** ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, **HSP** is willing to construct a Hotel, on real property owned by the **CITY**, and in accordance with the terms and conditions of this Agreement. This property is located within the Tax Increment Reinvestment Zone Number Five ("TIRZ5"), **CITY** of

El Paso and is subject to development under the TIRZ5 Amended Final Project Plan and Final Reinvestment Zone Financing Plan, as defined by Section 311.011 of the Texas Tax Code, which has been approved by the **CITY** Council; and

WHEREAS, the construction of the Hotel by **HSP** shall be in accordance with the guidelines set forth in the **CITY** of El Paso Economic Development Incentive Policy; and

WHEREAS, the **CITY** has concluded and hereby finds that this Agreement clearly promotes economic development in the **CITY** of El Paso through its support of the Convention Center business, its ability to bolster the tourism industry, providing additional employment opportunities to the citizens of the **CITY** and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the **CITY** and **HSP**.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. TERM.

This Agreement shall be effective for Sixteen (16) years from the Effective Date of this Agreement. However, **HSP's** incentives shall be limited to thirteen (13) consecutive years ("Rebate Period") and Ten (10) consecutive years ("Grant Period") within the term of this Agreement, pursuant to the Sections 4 (b) and 4 (a), respectively.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program and Agreement, together with all exhibits and schedules attached to this Agreement, if any.
- (b) **Base Year Value.** The words "Base Year Value" mean the amount designated as fair market value of the **REAL PROPERTY** by the El Paso Central Appraisal District on January 1 of the year this agreement is signed. However, under no circumstances shall the Base Year Value be interpreted to be equivalent or determinative for appraisal purposes or to be utilized in any way to determine market value. For the purposes of this Agreement, the Base Year Value is Five Hundred Twelve Thousand and 00/100ths dollars (\$512,000.00).
- (c) **CITY.** The word "**CITY**" means the **CITY** of El Paso, Texas.
- (d) **Comprehensive Plan.** The words "Comprehensive Plan" means the **CITY** of El Paso's Comprehensive Plan entitled "Plan El Paso" adopted by the El Paso **CITY** Council on March 6, 2012.

- (e) **Convention and Tourist Facilities.** The words "Convention and Tourists Facilities" mean and include the following: El Paso Convention Center, located at 1 Civic Center Plaza, El Paso, Texas, 79901; El Paso Museum of Art, located at 1 Arts Festival Plaza, El Paso, Texas, 79901; El Paso Museum of History, located at 12901 Gateway West, El Paso, Texas, 79928; Plaza Theatre Performing Arts Center, located at 125 Pioneer Plaza, El Paso, Texas, 79901; and the Baseball Stadium, located at 2 Civic Center Plaza, El Paso, Texas, 79901.
- (f) **Development.** The word "Development" means the planned Hotel (also known as **HOTEL SANCHO PANZA**) as described by *Exhibit A* attached to this Agreement.
- (g) **Downtown Plan.** The words "Downtown Plan" means the Downtown 2015 Plan adopted by El Paso **CITY** Council on October 31, 2007, and incorporated into the Comprehensive Plan pursuant to the provisions of Section 213.002 of the Texas Local Government Code.
- (h) **Event Room Block.** The words "Event Room Block" means Fifty (50) rooms per year, non-cumulative at a discounted rate of Seventy-Five Percent (75%) of the Best Available Rate (B.A.R.).
- (i) **Full-Time Employment.** The words "Full-Time Employment" mean a job requiring a minimum of One Thousand Six Hundred (1,600) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including 50% company paid health insurance, receiving a sustainable wage in an amount of at least \$8.50 per hour, and employed at the Hotel in the **CITY** of El Paso, Texas.
- (j) **[INTENTIONALLY DELETED]**
- (k) **Grant.** The word "Grant" means the economic development grant paid by **CITY** to **HSP** in accordance with this Agreement and contingent on the **CITY** receiving the "State Hotel Sales Tax Revenue" and "State Hotel Occupancy Tax Revenue" by operation of Texas Government Code Section 2303.5055.
- (l) **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to **CITY** on a quarterly basis as a condition of receipt of any Grant.
- (m) **Ground Lease.** The words "Ground Lease" mean the certain lease agreement to which the **CITY** will lease the "Real Property" to **HSP** upon which the development will be built.
- (n) **Hotel Franchise.** The words "Hotel Franchise" mean a franchise for a Marriott Courtyard or other hotel of equivalent or better quality.

- (o) **Hotel.** The word "Hotel" means the hotel, as described by *Exhibit A* owned and operated by **HOTEL SANCHO PANZA, LLC** and generally located at 616-618 Santa Fe, El Paso, Texas 79901.
- (p) **HOTEL SANCHO PANZA, LLC.** The words "**HOTEL SANCHO PANZA**" mean the HOTEL SANCHO PANZA, LLC, a Nevada limited liability company. For the purposes of this Agreement, Hotel Sancho Panza's address is 109 N. Oregon Street, Suite 1300, El Paso, Texas 79901.
- (q) **Minimum Appraisal Value.** The words "Minimum Appraisal Value" mean the value of the real and personal property and improvement of the Development during and after the construction of the Development below which Applicant and its Affiliate(s) may not protest nor contest the appraised value of the Development with the El Paso Central Appraisal District during the term of this Agreement. Thereafter, under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent or determinative for appraisal purposes or to be utilized in any way to determine market value. For the purposes of this Agreement, the Minimum Appraisal Value is Eight Million and 00/100th dollars (\$8,000,000.00).
- (r) **Property Tax Rebate.** The words "Property Tax Rebate" means a One Hundred Percent (100%) rebate of the **CITY's** portion of the incremental ad valorem property tax revenue generated by the subject property above the Base Year Value for the DEVELOPMENT and payable from the **CITY's** General Fund. This rebate will be paid for a period of up to 13 years or up to the maximum amount of Eight Hundred Forty-Four Thousand, Eighty-Nine and 30/100ths dollars (\$844,089.30), whichever event occurs first. If this Development is not able to qualify to participate in the State's Convention Center Hotel program or the Purchase Option in Lease Contract is exercised on or before the 12th rebate year; one year will be deducted from the Property Tax Rebate period and the maximum amount of rebate will be reduced by Fifteen Thousand, Five Hundred Eighty-Seven and 00/100ths dollars (\$15,587.00) for a maximum amount of Eight Hundred Twenty-Eight Thousand, Five Hundred Two and 30/100ths dollars (\$828,502.30).
- (s) **REAL PROPERTY.** The words "**REAL PROPERTY**" means the land owned by the **CITY** to be leased to **HSP**, more specifically described in *Exhibit A* of this Agreement.
- (t) **Retailer(s).** The word "Retailer(s)" means tenants and lessees of the **REAL PROPERTY** required by the State Comptroller to collect Sales and Use Tax or Mixed Beverage Tax on taxable sales consummated in the **CITY** at the **REAL PROPERTY** covered by Chapter 151 and Chapter 183 of the Texas Tax Code.



- (u) **Qualified Expenditures.** The words "Qualified Expenditures" means those direct costs incurred by **HSP** in the development, construction, renovation, or rehabilitation of the Hotel.
- (v) **State Comptroller.** The words "State Comptroller" means the Office of the Texas Comptroller of Public Accounts, or any successor agency.
- (w) **State Hotel Occupancy Tax Revenue.** The words "State Hotel Occupancy Tax Revenue" means the amount of revenue from the hotel occupancy tax assessed and collected by the State of Texas pursuant to Chapter 156 of the Texas Tax Code and refunded to the City by operation of Section 351.101 of the Texas Tax Code, and that is derived from or attributable to the Hotel.
- (x) **State Hotel Sales Tax Revenue.** The words "State Hotel Sales Tax Revenue" means the amount of revenue from a sales tax lawfully assessed and collected by the State of Texas pursuant to Texas Tax Code Section 151 that is derived from or attributable to sales transacted in the Hotel, whether by HSP or another person or entity, for merchandise or sales physically located in the Hotel and/or the Hotel Garage, and refunded to the City by operation of Sections 351.102 and 151.429, as applicable, of the Texas Tax Code.
- (y) **Submittal Package.** The words "Submittal Package" mean the documentation required to be supplied to **CITY** on a yearly basis as a condition of receipt of any Grant or Property Tax Rebate.

SECTION 3. OBLIGATIONS OF HSP.

During the term of this Agreement, **HSP** shall comply with the following terms and conditions; provided that **HSP'S** inability or refusal to comply with the terms and conditions set forth in Section 3(a)(1)-(4) shall, subject to the provisions in Section 5, result in a termination of this Agreement and a release of both parties from the term hereof:

(a) Hotel Development and Construction.

- (1) **GROUND LEASE.** The **CITY** and **KTKK, LLC** shall execute the Ground Lease simultaneously upon execution of this Agreement. As permitted in Section 272.001(b)(6) of the Texas Local Government Code, the Ground Lease shall grant **KTKK** an option to Purchase the REAL PROPERTY from the **CITY**, and shall grant the **CITY** the right to Put the REAL PROPERTY to **KTKK**. The Ground Lease shall allow **KTKK** to sublease the REAL PROPERTY to **HSP** to effectuate the development contemplated and described in this Incentive Agreement.
- (2) **HOTEL SANCHO PANZA** agrees to develop and construct, at its sole cost, an approximately 140 room Marriott Courtyard Hotel (or hotel brand



of equal or higher quality) and a parking structure, with an on-site bar, swimming pool, and other amenities common in a convention center hotel. **HOTEL SANCHO PANZA** shall commence construction repairs to Hotel within eight (8) months of the effective date of this Agreement. **HOTEL SANCHO PANZA** shall receive a certificate of occupancy, and be open for business to the general public within thirty-six (36) months from the execution of this Agreement. The Hotel shall be an approximately one hundred forty (140) room Hotel. **HOTEL SANCHO PANZA** agrees that it shall make Qualified Expenditures of not less than Eight Million Dollars (\$8,000,000.00) in the Hotel and/or equipment installed in the Hotel. **HOTEL SANCHO PANZA** shall submit receipts to the **CITY** for Qualified Expenditures towards the purchase, operations, construction, design and/or improvement of Hotel, in a minimum amount of Eight Million Dollars (\$8,000,000.00) within thirty-six (36) months of the effective date of this Agreement.

- (3) **HOTEL SANCHO PANZA** agrees that it shall create, staff, and maintain twenty-five (25) Full-Time Employment positions for its Hotel within thirty-six (36) months from the effective date of this Agreement, and shall maintain twenty-five (25) Full-Time Employment positions for its Hotel through the full term of this Agreement. **HOTEL SANCHO PANZA** shall maintain the full-time jobs for each quarter of each fiscal year with the total per day hours worked averaged over each fiscal quarter.

HOTEL SANCHO PANZA upon request shall provide an annual report by April 1 certifying the status of compliance through the life of the Agreement of new jobs created, new investments and any other relevant information. Documentation for jobs may be in the form of quarterly IRS 941 returns, Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and the positions filled, and such other reports as may reasonably be required.

HOTEL SANCHO PANZA, during normal business hours, at its principal place of business, shall allow **CITY** reasonable access to its employment records and books, and other books and records that are related to the other described economic development consideration and incentives, to verify employment records and any other records related to other economic development consideration and incentives, but the confidentiality of such records will be maintained.

- (4) As consideration for the agreement of the **CITY** contained herein, **HSP** agrees that it will diligently and faithfully in a good and workmanlike manner pursue the commencement and completion of construction and renovation on the **REAL PROPERTY** consistent with the requirements set forth herein. **HSP** agrees that construction and renovation to the **REAL PROPERTY** will be in accordance with all applicable federal, state, and local laws and

regulations. Moreover, **HSP** agrees to 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. The **REAL PROPERTY** 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 or redevelopment of Downtown El Paso.

(b) Grant Submittal Package & Retailers Report.

On or before the September 1st of the first complete calendar year after the Hotel is open for business and continuing on a quarterly basis of each year thereafter, but not to exceed ten (10) consecutive years, HSP 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 Comptroller's Sales Tax Report for the Grant Period (the "Retailers Report"). The Grant Submittal Package will be due within ninety (90) days of the date any Sales and HOT Taxes are due paid by HSP to the State. Any submission after this ninety (90) day window will be considered late and untimely.

(c) Waivers of Sales Tax Confidentiality.

HSP shall cause the Retailers to provide, for the benefit of the CITY and HSP, and maintain during the term of this Agreement a Waiver of Sales Tax Confidentiality from each Retailer which authorizes the Texas State Comptroller to release to the CITY and **HSP** Texas Sales and Use Tax information pertaining to the sale of Taxable Items by Retailers at the Development during the term of this Agreement substantially in the form attached hereto as Exhibit D. **HSP** will be responsible for obtaining the Waivers of Sales Tax Confidentiality from Retailers and providing the Waivers of Sales Tax Confidentiality to the CITY. **HSP** shall cause the Retailers to maintain an effective Waiver of Sales Tax Confidentiality during the term of this Agreement. The CITY will verify all such information, but the CITY shall not have an obligation to otherwise collect sales tax information and will have no obligation to make payments under this Agreement without such sales and use tax payment confirmation from the State Comptroller.

The confidential sales tax information provided or reported by the State Comptroller to the CITY shall be used to determine the amount of the Grant payment that **HSP** is eligible to receive. For any particular Grant Submittal Package and Grant amount determination, the CITY shall only consider the



Sales and Use Tax Receipts attributable to Retailers that appear on the Retailers Report and that have a valid and effective Waiver of Sales Tax Confidentiality on file with the CITY.

While this Agreement is in effect, **HSP** shall, upon request of CITY, provide such additional documentation as may be reasonably requested by the CITY to evidence, support and establish the Sales and Use Tax Receipts.

(d) **Property Tax Rebate Submittal Package.**

On or before September 1st of the first complete calendar year after the Hotel first opens for business and continuing on or before September 1st of each year thereafter, but not to exceed the time period described in Section 2 (r) above (the "Property Tax Rebate Period"), **HSP** agrees to submit to the **CITY** a Property Tax Rebate Submittal Package containing the following:

- (1) **HSP'S** property tax rebate request letter (or fax) stating the **CITY'S** portion of the incremental ad valorem property tax paid by **HSP** for the applicable year, and the amount due **HSP** by the **CITY**.
- (2) **HSP'S** property tax payment receipts for the **REAL PROPERTY** and **PERSONALTY** added to the **REAL PROPERTY** by **HSP**.
- (3) **HSP'S** certification of the documentation required by Section 3 (d)(2) of this Agreement, evidencing the amount of ad valorem property tax paid by **HSP**.

(e) **Form of Submittal Packages**

Unless otherwise agreed by the **CITY** and **HSP**, each Submittal Package shall be in the form attached hereto as **Exhibit B**, **Exhibit C**, and **Exhibit D**. The Parties will comply with Texas Government Code Section 2303.5055 which regulates the submission of refund, rebate, or payment of tax proceeds to a qualified hotel project and will conform with the parameters stated in Exhibit B. Failure to timely submit a Submittal Package is a waiver of the specific Grant or Property Tax Rebate, associated with missing portion of the Submittal Package and otherwise due to **HSP** for the period that would have been covered by a timely submitted Submittal Package. If **HSP** shall fail to timely submit a Submittal Package for a particular period, then the **CITY** may, but is not obligated to, give **HSP** written notice of **HSP'S** failure to timely submit such package, and **HSP** shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such package. **CITY'S** determination of the amount of Property Tax Rebate due to **HSP** is subject to reallocation upon the resolution of **HSP'S** protest, within the terms of this Agreement, of the Central Appraisal District's valuation of the Real and Personal Property associated with the Development. The **CITY'S** determination of the amount of the Grant or Property Tax Rebate

due to **HSP** is final; provided, however **HSP** may appeal to the El Paso **CITY** Council within thirty (30) days of payment, the **CITY** Council shall hear the appeal within thirty (30) days, and the **CITY** Council's determination of the amount of the Grant or Property Tax Rebate shall be final subject to Judicial Determination; provided, however, nothing herein shall limit (or be construed to limit) **HSP** rights and remedies as described in Section 5 of this Agreement.

(f) **Property Value**

HSP covenants and agrees that during the term of this Agreement it shall not challenge or permit anyone else to take actions on its behalf to challenge any assessments by the El Paso Central Appraisal District of Eight Million and 00/100 Dollars (\$8,000,000.00) or lower. It is the intent of the parties that the minimum assessed value of the Personalty and Real Property on the tax rolls have a base value of Eight Million and 00/100 Dollars (\$8,000,000.00) during the term of this agreement and any affirmative act by **HSP** to reduce the assessed value to amount lower than Eight Million and 00/100 Dollars (\$8,000,000.00) will be an event of default that will result in termination of this Agreement. This Personalty and Real Property value should in no way be interpreted to affect the values set by the Central Appraisal District for tax purposes. Upon the termination of this Agreement, **HSP** agrees that neither this Agreement, nor the values contained within, will be utilized to contest appraisal values or in the determination of the market value of the Development. Non-compliance under this section will be considered an Event of Default and subject to the provisions under Section 5.

(g) **Event Room Block.**

HSP agrees to provide to the **CITY** an Event Room Block for visitors of Convention and Tourist Facilities during the term of this Agreement. **HSP** agrees to provide the rooms to the **CITY** in accordance with Section 2 (h) of this Agreement. **HSP** will provide an Event Room Block to visitors of Convention and Tourist Facilities with thirty (30) days advance notice of the event or convention and receipt of negotiated deposit and room use contract.

SECTION 4. OBLIGATIONS OF CITY.

During the term of this Agreement and so long as an event of default has not occurred and is continuing as set forth in Section 5 of this Agreement (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), **CITY** shall comply with the following terms and conditions:

(a) **Grant Payments.**

(1) For each calendar year during the term of this Agreement and beginning in the first full calendar year after the date **HSP** first opens the Hotel to the



general public, an amount equal to one hundred percent (100%) of the "State Hotel Sales Tax Revenue" and "State Hotel Occupancy Tax Revenue" generated by and attributed solely to the Hotel in the immediately prior calendar year and remitted from the State Comptroller to **CITY**, shall be tendered by the **CITY** as a Grant by the **CITY** to **HSP** on a quarterly basis upon **HSP'S** satisfaction of the requirements this Agreement. Such Grant payments will continue until the expiration or termination of this Agreement, the expiration of the Grant Period, or the expiration of the statutorily limited period of ten (10) consecutive years. This grant and the amount of payments is solely contingent upon the **CITY'S** receipt of the "State Hotel Sales Tax Revenue" and "State Hotel Occupancy Tax Revenue" from the State Comptroller. Accepting the aforementioned, **HSP** shall have no recourse should **CITY** not be able to provide to **HSP** the Grant payments contemplated in this section.

(2) The **CITY** agrees to process any Grant payments to **HSP** within Ninety (90) days of receipt from the State Comptroller.

(b) Property Tax Rebate Payments.

For each calendar year during the term of this Agreement and beginning in the first complete calendar year after the Hotel opens for business, the Property Tax Rebate shall be tendered by **CITY** to **HSP** on a yearly basis upon **HSP'S** satisfaction of Section 3(d). Such Grant payments will continue until the earlier of: expiration or termination of this Agreement or expiration of the Grant Period. The maximum amount paid over the Property Tax Rebate Period shall not exceed the amounts stated in Section 2(r), above. The **CITY** agrees to process any Property Tax Rebate payments within Ninety (90) days after receipt of **HSP'S** Property Tax Rebate Submittal Package and any other documents reasonably necessary to calculate and process the Property Tax Rebate payment.

(c) General Fund Obligations

The **CITY** agrees to promptly process and remit to **HSP** all payments in accordance with terms of this Agreement. It is expressly understood by the parties to this Agreement that, except as otherwise provided herein, the payments contemplated in this Agreement in no way obligates the **CITY'S** general fund or any monies or credits of the **CITY** and creates no debt of, nor any liability to, **HSP** or third parties beyond the specific obligations contained herein. All payments made by the **CITY** under this Agreement are subject to appropriation of such funds for such payments to be paid in the budget year for which they are made.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **Failure to Maintain Hotel.** Failure to operate a Hotel on the **REAL PROPERTY** for the term of this Agreement or to operate the hotel as a full service hotel as specified in Section 3(a) of this Agreement, and if **HSP** fails to cure such failure within Ninety (90) days after written notice from the **CITY** describing such failure, or if such failure cannot be cured within such Ninety (90) day period in the exercise of all due diligence, then if **HSP** fails to commence such cure within such Ninety (90) day period or fails to continuously thereafter diligently prosecute the cure of such failure.
- (b) **False Statements.** Any written warranty, representation or statement made or furnished to the **CITY** by **HSP** under this Agreement or any document(s) related hereto furnished to the **CITY** by **HSP** is/are false or misleading in any material and substantial respect, either now or at the time made or furnished, and **HSP** fails to cure same within Ninety (90) days after written notice from the **CITY** describing the violation, or if such violation cannot be cured within such Ninety (90) day period in the exercise of all due diligence, then if **HSP** fails to commence such cure within such Ninety (90) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if **HSP** obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and **HSP** fails to provide written notice to the **CITY** of the false or misleading nature of such warranty, representation or statement within thirty (30) days after **HSP** learns of its false or misleading nature.
- (c) **Insolvency.** The dissolution or termination of **HSP'S** existence as a going business or concern, **HSP'S** insolvency, appointment of receiver for any part of **HSP'S** portion of the Property, any assignment of all or substantially all of the assets of **HSP** for the benefit of creditors of **HSP**, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against **HSP**.
- (d) **Construction of Hotel.** **HSP'S** failure to comply with its construction obligations set forth in this Agreement and **HSP** fails to cure same within Ninety (90) days after written notice from the **CITY** unless such failure cannot be cured within such Ninety (90) day period in the exercise of all due diligence, then if **HSP** fails to commence such cure within such Ninety (90) day period or fails to continuously thereafter diligently prosecute the cure of such failure, shall be an event of default. Except to the extent such failure is caused by any act or failure to act on the part of the **CITY**.
- (e) **[INTENTIONALLY DELETED]**
- (f) **Property Taxes.** If **HSP** allows its property taxes owed to the **CITY** to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within ninety (90) days after written notice thereof from the **CITY**. **HSP** shall have the right to contest the appraised value of the Hotel, but in no event shall **HSP** contest the value of the Hotel on the tax rolls of the El Paso Central Appraisal District during the term of this Agreement at the Minimum Appraisal Value or less. Hotel Sancho Panza reserves all rights under the Tax Code.



- (g) **Failure to Cure.** If any Event of Default by **HSP** shall occur, and after **HSP** fails to cure same in accordance herewith, then this Agreement is terminated and the **CITY'S** obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

SECTION 6. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.

CITY may terminate this Agreement without an event of default by **HSP** and effective immediately if (i) any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including case law holding that a Chapter 380 Economic Development Agreement rebating Sales and Use Taxes such as this Agreement is an unconstitutional debt; or (ii) the federal government implements the Streamlined Sales and Use Tax or similar legislation in such a manner as to change the consummation of a sales and use tax event to a tax site outside of the **CITY** thereby eliminating the **CITY'S** rights in the sales tax proceeds paid by **HSP** for the Hotel. Unless prohibited by law the Property Tax Rebate shall continue.

SECTION 7. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment. Notwithstanding anything to the contrary contained herein, any written amendments between the Parties which pertain to the City's qualifying to receive the "State Hotel Sales Tax Revenue" and "State Hotel Occupancy Tax Revenue" by operation of Texas Government Code Section 2303.5055 as contemplated in Sections 2(k) and 4(a) of this Agreement may be approved by either City Council or the City Manager, as determined by City Staff.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- (c) **Assignment.** **HSP** understands and agrees that the **CITY** expressly prohibits **HSP** from selling, transferring, assigning, or conveying, in any way, any rights associated with this Agreement to anyone, except **HSP's** LENDER or KTKK Land LLC without the **CITY'S** prior written consent. Any attempts to assign without the prior written consent of the **CITY** is void and shall be considered an event of default and may, at the option of the **CITY**, result in termination of this Agreement.



- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. **CITY** warrants and represents that the individual executing this Agreement on behalf of **CITY** has full authority to execute this Agreement and bind **CITY** to the same. **HSP** warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (f) **Encumbrances.** Other than a lien for acquisition, Marriot Funding, James Scherr Loan, construction funding, permanent funding and the lien for ad valorem taxes not yet due and payable, **HSP** agrees that it shall not place any encumbrances on the **REAL PROPERTY** without first obtaining the written permission of the **CITY** Manager or her designee. Failure to obtain such permission will be considered an act of default and will immediately terminate this Agreement.
- (g) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date on which the El Paso **CITY** Council approves this Agreement.
- (h) **Filing.** This Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of **HSP**.
- (i) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (j) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, certified first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY: City of El Paso
CITY Manager
P.O. Box 1890

AS4

El Paso, Texas 79950-1890

Copy to: City of El Paso
Director, Economic and International Development
P.O. Box 1890
El Paso, Texas 79950-1890

HSP: Hotel Sancho Panza, LLC
109 N. Oregon Street
Suite 1300
El Paso, Texas 79901

Copy to: William Ehrlich
444 Executive Center Boulevard
Suite 240
El Paso, TX 79902-1039

Copy to: Jim Scherr
109 N. Oregon Street
Suite 1300
El Paso, TX 79901

- (k) **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the **CITY**, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Hotel unless specifically enumerated herein.
- (l) **Revenue Sharing Agreement.** The **CITY** designates this Agreement as a revenue sharing agreement, thereby entitling the **CITY** to request Sales and Use Tax information from the State Comptroller, pursuant to section 321.3022 of the Texas Tax Code, as amended.
- (m) **Sale or Transfer.** Upon any sale or other transfer of ownership rights in the Property, **HSP** shall notify the **CITY** in writing of such sale or transfer within sixty (60) business days of such sale or transfer. Such provision is a material term of this Agreement and the failure to notify the **CITY** of such sale or transfer within the applicable period shall constitute a default.
- (n) **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- (o) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

(p) **Employment of Undocumented Workers.**

- (i) **HSP** agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001;
- (ii) If convicted of a violation under 8 U.S.C. Section 1324a(f), **HSP** shall repay the amount of the Grant payments received by **HSP** from the **CITY** as of the date of such violation not later than one hundred twenty (120) days after the date **HSP** is notified by **CITY** of a violation of this section, plus interest from the date the Grant payment(s) was paid to **HSP**, at the rate of five percent (5%) per annum. The interest will accrue from the date the Grant payment(s) were paid to **HSP** until the date the reimbursement payments are repaid to **CITY**. **CITY** may also recover court costs and reasonable attorneys' fees incurred in an action to recover the Grant payment(s) subject to repayment under this section; and
- (iii) **HSP** is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom **HSP** contracts.

(SIGNATURES ON NEXT PAGE)

A handwritten signature in black ink, appearing to be the initials 'BA' or similar, located in the bottom right corner of the page.

2016 SEP 14 PM 5:03

15th IN WITNESS WHEREOF, the parties have executed this Agreement on this day of September, 2016.

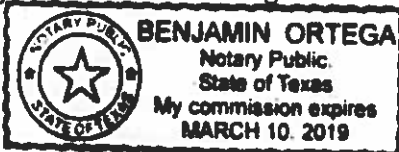
HOTEL SANCHO PANZA:

HOTEL SANCHO PANZA, LLC, a
Nevada limited liability company:

By: [Signature]
Name: JAMES F. SCHERR
Title: Authorized Representative
Date: 9/15/16

STATE OF TEXAS §
COUNTY OF El Paso §

This instrument was acknowledged before me on the 15th day of September, 2016, by James F. Scherr as _____ and by _____ as _____ of **HOTEL SANCHO PANZA, LLC**, a limited liability company, organized and existing under the laws of the State of Nevada.



My Commission Expires:

3/10/2019

[Signature]
Notary Public, State of Texas

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

2016 SEP 14 PM 5:04

CITY:

CITY OF EL PASO, TEXAS

By: 
for Tomás González
City Manager

APPROVED AS TO FORM:


Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT


Cary Westin, Managing Director
Economic and
International Development

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This Instrument was acknowledged before me on the 3rd day of October, 2016, by Tomás González, City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas. mark sutter for




Notary Public, State of Texas

EXHIBIT A

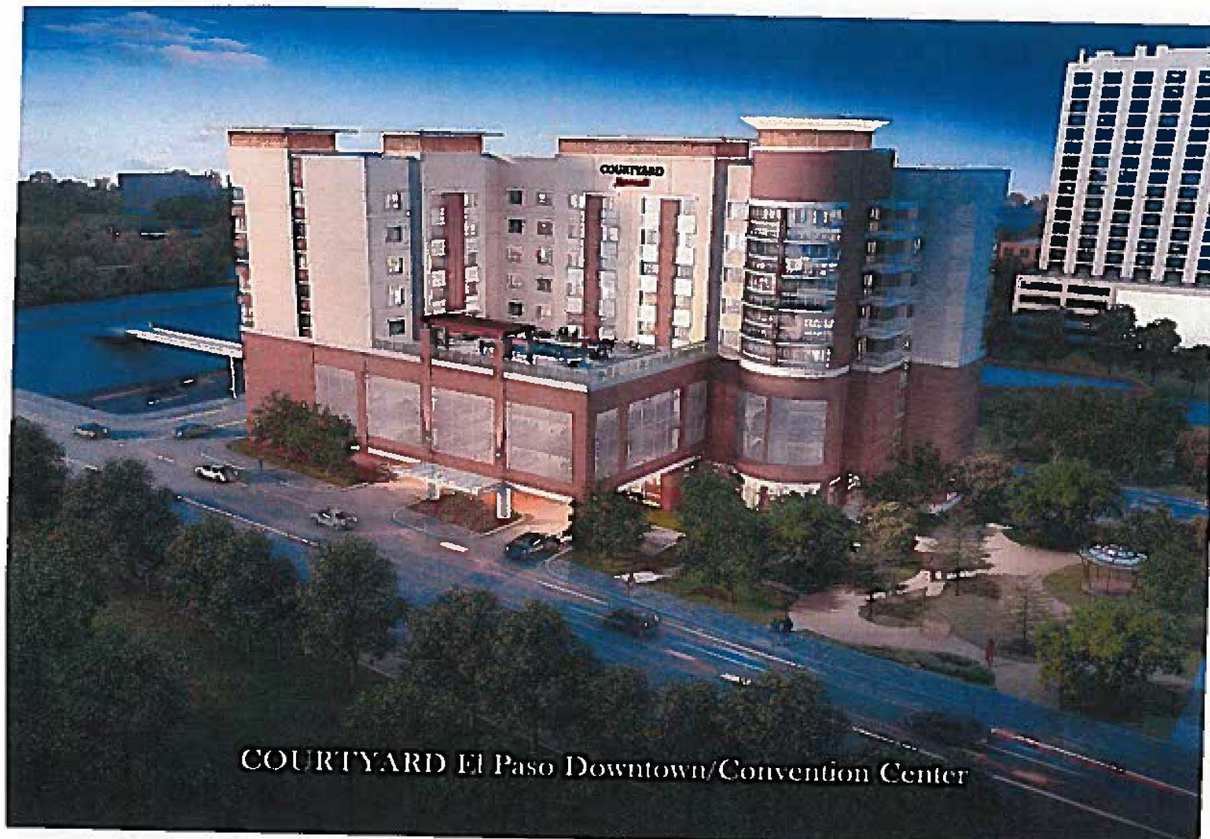
[Legal Description / Hotel Description]

Legal Description

All that certain tract or parcel of land situated in the City of El Paso, El Paso County, Texas, being the South Sixteen and Two-Thirds feet of Lot 37 and all of Lots 38 through 42, Block 5, Satterthwaite Addition, El Paso, El Paso County, Texas.

Hotel Description

- One Hundred Forty (140) Rooms
- Marriott Courtyard
- At least four (4) stories of guestrooms
- Ground level restaurant and bar
- Swimming Pool
- Other amenities common to Marriott Courtyard Hotel



A handwritten signature in blue ink, located in the bottom right corner of the page.

2016 SEP 14 PM 5:04

EXHIBIT B**[Grant Submittal Package Form]**

HOTEL SANCHO PANZA, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of **HOTEL SANCHO PANZA, LLC**.

This Grant Submittal Package Form is submitted in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations _____ met _____ therein.

As required by the Agreement, the following information is submitted as documentation required for the reimbursement of _____ expenses detailed and attached hereon representing eligible expenses incurred from _____ to _____.

1. Documentation required by Section 3(a) (1),(2), and (4) of the Agreement *[Initial Submission Only]*.
2. Documentation evidencing the Qualified Expenditures as contemplated in Section 2 (u) in the amount of at least Eight Million and 00/100ths dollars (\$8,000,000.00). *[Initial Submission Only]*
3. Documentation required by Section 3(a)
4. All appropriate and substantiating documents detailing eligible Grant Payment amount requested within the following parameters:
 - a. City shall have 30 days to review the grant request application and the applicant's compliance with Agreement.
 - b. After the thirty-day period, City shall submit rebate request within three business days to the State for reimbursement.
 - c. After receipt of funds from the State of Texas, City shall have 60 days to pay the State Hot and State Sales tax grant to the applicant.

HOTEL SANCHO PANZA, LLC will be responsible for ensuring that the City's 30 day processing period and any timelines placed by the State are taken into account in insuring to submit this grant request to the City in a timely manner.

[Grant Submittal Form Continues on the following page]



2016 SEP 14 PM 5:04

It is understood by **HOTEL SANCHO PANZA, LLC** that the City of El Paso has up to ninety (90) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

HOTEL SANCHO PANZA, LLC

Name: _____

Title: _____

STATE OF TEXAS §

§

COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20____, by _____, as _____ of **HOTEL SANCHO PANZA, LLC**, on behalf of said entity (APPLICANT).

Notary Public, State of Texas

My Commission Expires:



EXHIBIT C

[Property Tax Rebate Submittal Package Form]

HOTEL SANCHO PANZA, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement dated the ____ day of _____, 20__ and signed by _____ of **HOTEL SANCHO PANZA, LLC**.

This Property Tax Rebate Submittal Package Form is submitted in compliance with the Agreement and in anticipation of receiving the Property Tax Rebate payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted as documentation required for the reimbursement of _____ expenses detailed and attached hereon representing eligible expenses incurred from _____ to _____.

1. Documentation required by Section 3(e) (1)-(3) of the Agreement.
2. All appropriate and substantiating documents detailing eligible reimbursement amount requested.

It is understood by **HOTEL SANCHO PANZA, LLC** that the City of El Paso has up to Ninety (90) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

HOTEL SANCHO PANZA, LLC

Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____, as _____ of **HOTEL SANCHO PANZA, LLC**, on behalf of said entity (APPLICANT).

Notary Public, State of Texas

My Commission Expires:



2016 SEP 14 PM 5:04

EXHIBIT D**[Waiver of Sales and Use Tax or Mixed Beverage Tax Confidentiality]**

Date _____

I authorize the State of Texas Comptroller of Public Accounts to release [sales / mixed beverage] tax information pertaining to the taxpayer indicated below to _____, a _____, its successors, assigns or nominees, and the **City of El Paso, Texas**. I understand that this waiver applies only to place of business located at _____ in the City of El Paso, El Paso County, Texas.

Please print or type the following information as shown on your Texas [Sales and Use Tax Permit / Liquor Permit / Beer License]:

Name of Taxpayer Listed on Texas Sales Tax Permit:

Name Under Which Taxpayer is Doing Business (d/b/a or Store Name):

Taxpayer Mailing Address:

Physical Location of Business Permitted for [Sales Tax / Mixed Beverage Sales Tax] in El Paso, Texas:

Texas Taxpayer ID Number
Tax Outlet Number / TABC Number

Authorized Signature

Printed Name:

Title:

Phone:

The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return or a Texas Mixed Beverage Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.