

Regular Council Meeting
December 15, 2022

FRESNO CITY COUNCIL



Supplement Packet

ITEM(S)

**JOINT MEETING OF THE CITY COUNCIL, FRESNO
REVITALIZATION CORPORATION, THE CITY OF FRESNO IN ITS
CAPACITY AS HOUSING SUCCESSOR TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO, AND THE SUCCESSOR
AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF
FRESNO**

1-QQ (22-1885)

Actions pertaining to the affordable residential housing project at 1241-1263 Broadway Mall, commonly known as Hotel Fresno

1. ***RESOLUTION - Supporting Broadway Plaza Family Apartments, LP's Hotel Fresno project and awarding \$1.5 million in Permanent Local Housing Allocation funds for development of the Hotel Fresno Housing Project in downtown Fresno (District 3) (Subject to Mayor's Veto) (City Action Only)
2. Approve a Fourth Amendment to the Amended and Restated Owner Participation Agreement with Broadway Plaza Family Apartments, LP

Contents of Supplement: Executed copy of the Fourth Amendment
Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

RECORDING REQUESTED BY:

City of Fresno
No Fee-Gov't. Code Sections
6103 and 27383

WHEN RECORDED, MAIL TO:

City of Fresno as Housing Successor to the
Redevelopment Agency of the City of Fresno
848 M Street, Third Floor
Fresno, CA 93721
Attention: Executive Director

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**FOURTH AMENDMENT TO AMENDED AND RESTATED OWNER PARTICIPATION
AGREEMENT**

by and between

City of Fresno in its capacity as Housing Successor to the Redevelopment Agency of the
City of Fresno,
a municipal corporation

and

Broadway Plaza Family Apartments, LP, a California limited partnership

and

APEC International, LLC, a California limited liability company,
APEC Development, LLC, a California limited liability company, and

1241 – 1263 Broadway Mall also described as APN: 466-214-31 together with the
Parking Lot described as APN: 466-214-32
Residential Project
Fresno, CA 93721

**FOURTH AMENDMENT TO
AMENDED AND RESTATED OWNER PARTICIPATION AGREEMENT**

THIS FOURTH AMENDMENT TO AMENDED AND RESTATED OWNER PARTICIPATION AGREEMENT (Amendment) is entered as of December 15, 2022 (Effective Date), between the CITY OF FRESNO, IN ITS CAPACITY AS HOUSING SUCCESSOR TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a municipal corporation, (Agency) and BROADWAY PLAZA FAMILY APARTMENTS , LP, a California limited partnership (Owner) successor in interest to HOTEL FRESNO APARTMENTS, LP, a California limited partnership (HFALP) successor interest to APEC INTERNATIONAL LLC, a California limited liability company (APEC International), and APEC Development, LLC, a California limited liability company (APEC Development) (collectively, the entities shall be called the APEC Affiliates).

RECITALS

A. WHEREAS, Owner is the successor in interest to that certain Amended and Restated Owner Participation Agreement dated January 29, 2015 (OPA), for that certain project commonly known as the Hotel Fresno located at 1241/1263 Broadway Plaza, Fresno, CA, 93721 (Project), which was assigned by APEC International to HFALP pursuant to that certain Assignment and Assumption of Amended and Restated Owner Participation Agreement dated November 4, 2016, and was assigned by HFALP to Owner pursuant to that certain Assignment and Assumption of Owner Participation Agreement dated April 18, 2019. The Project involves the redevelopment of the Hotel Fresno property (Property) for residential purposes. Said Amended and Restated Owner Participation Agreement dated January 29, 2015, and Assignment and Assumption of Owner Participation Agreement dated April 18, 2019, were recorded in the Official Records on August 6, 2021, as Document Number 2021-0075028.

B. WHEREAS, HFALP and the APEC affiliates previously requested modifications to the OPA and related documents (OPA Documents) including the Performance and Payment Schedule; Budget Financial Plan; Funding Sources; Financing Plan; Affordable Units; Promissory Note; Deed of Trust; the Regulatory Agreement and Declaration of Covenants and Restrictions; and the Lease which was the subject of the First Amendment to the Amended and Restated Ownership Agreement dated September 27, 2018, and recorded in the Official Records on November 9, 2018, as Document Number 2018-0136779.

C. WHEREAS, the Agency, the Owner and the APEC Affiliates further amended the terms of the OPA in a Second Amendment to the Amended and Restated Ownership Agreement dated August 6, 2020, and recorded in the Official Records on May 6, 2021, as Document Number 2021-0075028, to extend the current deadline to complete construction and obtain an occupancy permit, and require that Owner and APEC Affiliates take financial responsibility for any and all additional costs incurred by Agency as a result of the requested extension.

D. WHEREAS, the Agency, the Owner, and the APEC Affiliates further amended the terms of the OPA in a Third Amendment dated September 1, 2021, and recorded in the Official Records on September 2, 2021, as Document Number 2021-0144503, to extend the deadline to complete construction and obtain an occupancy permit and revise Owner and APEC Affiliates' obligation for any and all additional costs incurred by Agency as a result of the requested extension.

E. WHEREAS, the Agency, Owner and the APEC Affiliates wish to further amend the terms of the OPA to modify the Agency's timing to release the balance of Loan Funds to Owner or APEC Affiliates and to revise the PBID Assessments owed by Owner or APEC Affiliates to Agency.

NOW, THEREFORE, BE IT RESOLVED, that the Agency, the Owner, and the APEC AFFILIATES hereby amend the terms of the OPA as follows:

1. Section 10 of the First Amendment to the OPA is hereby deleted in its entirety and shall be replaced as follows:

Agency will release the balance of Loan funds to Owner following written confirmation that electric utility service ("electrification") has been supplied to 1241-1263 Broadway Mall, less any funds expended to clear title on the Adjacent Undeveloped Property and the PBID Assessments as defined below and in Section 3 of the Third Amendment. Agency will deed the Adjacent Undeveloped Property to Owner or APEC Affiliates upon the latter of Owner closing on permanent financing or issuance of a Certificate of Completion.

2. Section 3 of the Third Amendment is deleted in its entirety and replaced with the following:

"Owner and/or APEC Affiliates shall take financial responsibility for the additional costs incurred by Agency as a result of Owner's requested extensions, which shall be payment owed to the County of Fresno for both the 2020-2021 and 2021-2022, 2022-2023 Property-based Business Improvement District Special Assessments for the Kidney Lot (APNs 466-214-26, -27, -28 and -30) (PBID Assessments) for a combined total amount not to exceed \$21,134.50. Owner and APEC Affiliates agree the Agency shall charge the PBID Assessments against the Owner's Loan. The parties understand and agree that a "charge against the Owner's Loan" means the remaining amount of Owner's Loan will be reduced, in this case, by the PBID Assessments referenced in this Section."

3. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the OPA.

4. Except as expressly set forth herein, the terms and conditions of the OPA shall remain in full force and effect.

5. In the event of a conflict between this Amendment and the OPA, the terms of this Amendment shall control.

6. In the event this Amendment is not executed by the Owner and APEC Affiliates and delivered to Agency within 10 days of City Council approval, this Amendment shall be null and void.

[SIGNATURE PAGE TO FOLLOW]


IN WITNESS WHEREOF, Agency, Owner and APEC Affiliates have signed this Amendment effective as of the date first above written.

City of Fresno in its capacity as Housing
Successor to the Redevelopment Agency
of the City of Fresno

Broadway Plaza Family Apartments, LP.
By: Broadway Plaza-H, LLC, a California
limited liability company

By: APEC International, LLC.,
A California limited liability company
Managing Member


By: _____
Name: Marlene Murphey
Title: Executive Director
(Attach notary certificate
acknowledgment)

of By: 
Eugene Kim, Managing Member

Date: _____

APEC International, LLC.,
A California limited liability company

APPROVED AS TO FORM:
Andrew Janz
City Attorney

By: 
Eugene Kim, Managing Member

By: _____
Tracy N. Parvanian Date
Supervising Deputy City Attorney

APEC Development, LLC,
a California limited liability company

By: 
Eugene Kim, Managing Member

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy

See Attached
CA Notary Certificate

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT


A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

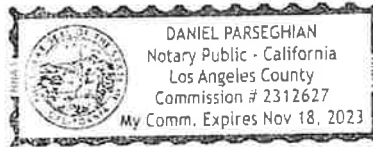
State of California
County of Los Angeles

On December 9, 2022, before me, Daniel Parseghian, Notary Public personally appeared **Eugene Kim** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Daniel Parseghian



OPTIONAL _____

Description of Attached Document

Title or Type of Document: Fourth Amendment to Amended and Restated Owner Participation Agreement

Capacity of Signer: Self

Document Date: December 9, 2022