

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)

**SECOND 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

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

THIS SECOND AMENDMENT TO AMENDED AND RESTATED OWNER PARTICIPATION AGREEMENT (Amendment) is entered as of July 31, 2020 (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.

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 (First Amendment.)

C. WHEREAS, the Agency, the Owner and the APEC Affiliates wish to further amend the terms of the OPA in order 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.

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

1. The Performance and Payment Schedule (Exhibit B to the OPA) is hereby deleted in its entirety and replaced with the "Revised Exhibit B" attached to this Second Amendment.

2. Owner and/or APEC Affiliates shall take financial responsibility for the additional costs incurred by Agency as a result of Owner's requested extension, which shall be payment owed to the County of Fresno for the 2020-2021 Property-based Business Improvement District Special Assessment for the Kidney Lot (APNs 466-214-26, -27, -28

and -30) (PBID Assessment) in an amount not to exceed \$15,000.00. Owner and APEC Affiliates agree the Agency shall charge the PBID Assessment 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 Assessment.

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.

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

[SIGNATURE PAGE TO FOLLOW]

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

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

Date: _____

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: Tracy N. Parvavian
Tracy N. Parvavian Date
Senior Deputy City Attorney 7-7-20

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

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: [Signature]
Eugene Kim, Managing Member

APEC International, LLC.,
A California limited liability company

By: [Signature]
Eugene Kim, Managing Member

APEC Development, LLC,
a California limited liability company

By: [Signature]
Eugene Kim, Managing Member

REVISED EXHIBIT "B"
Performance and Payment Schedule (July 31 2020)

SCHEDULE OF PERFORMANCE

<u>Items to be Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
<p>Amended and Restated Owner Participation Agreement Terms and Conditions. The Developer, the City of Fresno, and the Housing Successor Agency to the City of Fresno shall agree upon the terms and conditions of, the amended and restated Owner Participation Agreement (originally dated March 9, 2011).</p>	<p>Prior to Dec 10, 2014</p>	<p>Completed</p>
<p>Commitment Letter. The Housing Successor Agency to the City of Fresno shall issue a commitment letter to Developer consistent with the terms and conditions of the amended and restated Owner Participation Agreement.</p>	<p>Prior to Dec 10, 2014</p>	<p>Completed</p>
<p>Purchase and Sale Agreements. The Developer, the City of Fresno, and the Housing Successor Agency to the City of Fresno shall enter into the necessary purchase and sale agreements or letter of intent for the sale of that certain real property as described therein to Developer.</p>	<p>Prior to Dec 10, 2014</p>	<p>Completed</p>
<p>Submission of AHSC Application. Developer shall submit an application to the California Strategic Growth Council-AHSC Program.</p>		<p>Completed</p>
<p>AHSC Award. The Developer shall receive notification of the AHSC Award.</p>		<p>Completed</p>
<p>Submission of Plans. The Developer shall submit Building, Civil Engineering, and Fire Protection Plans to the City of Fresno for review.</p>	<p>March 2016</p>	<p>Completed</p>



<u>Items to be Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
<p>Submittal of TCAC Application Pursuant to the First Amendment to the Amended and Restated Owner Participation Agreement, the Developer was allowed to utilize 4% tax credits (in lieu of 9% tax credits), and the Developer submitted a 4% tax credit application to TCAC on or about October 12, 2018.</p>		Completed
<p>4% TCAC Award Pursuant to the First Amendment to the Amended and Restated Owner Participation Agreement, the Developer was allowed to utilize 4% tax credits (in lieu of 9% tax credits), and the Developer received a 4% tax credit award from TCAC on December 12, 2018.</p>		Completed
<p>Amended and Restated Owner Participation Agreement Documents. The Developer, the City of Fresno, and the Housing Successor Agency execute all of formal documents required to amend and restate the Owner Participation Agreement. Including an Amended and Restated OPA, Note, Deed of Trust, and Regulatory Agreement.</p>		Completed
<p>Submission and Approval--Certificates of Insurance. The Developer shall furnish the Agency appropriate certificates of bodily injury and property damage insurance policies.</p>	Upon closing. June 27, 2019.	Completed
<p>Loan Disbursement. The Agency shall disburse the loan proceeds in accordance with the Amended and Restated OPA documents.</p>		
<p>Outside Date to Secure Funding. Pursuant to the First Amendment to the Amended and Restated Owner Participation Agreement, the outside date to secure construction financing was December 31, 2018.</p>	December 31, 2018	Completed

<u>Items to be Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
<p>Commencement of Construction of Developer's Improvements. Within 30 days after receipt of the required building permits by the Developer, construction shall commence on the improvements to be constructed on the Project Site. Pursuant to the First Amendment to the Amended and Restated Owner Participation Agreement, the Developer was to obtain construction permits by June 30, 2019. The Developer obtained construction permits on March 2, 2018. Construction started approximately July 1, 2019.</p>	<p>On a schedule that will coordinate with the Developer's Construction Schedule.</p>	<p>Completed</p>
<p>Completion of Construction of Developer Improvements. The Developer shall complete construction of the improvements. Pursuant First Amendment to the Amended and Restated Owner Participation Agreement, the Developer was to obtain occupancy permits by July 31, 2020. Pursuant to the Second Amendment to the Amended and Restated Owner Participation Agreement, the Developer is to obtain occupancy permits by July 31, 2021.</p>	<p>On a schedule that will coordinate with the Developer's Construction Schedule.</p>	<p>July 31, 2021</p>
<p>Issuance—Certificate of Completion. The Agency shall furnish the Developer with a Certificate of Completion on the Project.</p>	<p>Promptly after completion of all construction and upon written request thereof by the Developer.</p>	<p>July 31, 2021</p>

The above Schedule of Performance is based upon the Developer obtaining a 9% tax credit allocation from the CA Tax Credit Allocation Committee in first tax credit round of 2016. If the Developer does not receive a 9% tax credit allocation in the 2016 first tax credit round, then the Schedule of Performance shall be revised to allow the Developer to submit an application in the 2016 second 9% tax credit round. Pursuant to the First Amendment to the Amended and Restated Owner Participation Agreement, the Developer was allowed to utilize 4% tax credits (in lieu of 9% tax credits). The above Schedule of Performance is based on the 4% tax credit allocation obtained by the Developer on December 12, 2018.

Improvements shall be completed with ___ months of start of construction.

Construction to commence by: Month ___ Day ___ Year _____
 Construction to be complete by: Month ___ Day ___ Year _____ ("Completion Date")



CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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 Fresno }

On 07/07/2020 before me, D. CONSULTER MARTINS Notary Public
(Here insert name and title of the officer)

personally appeared Eugene Kim,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in (his)/her/their authorized capacity(ies), and that by (his)/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

D. CONSULTER

Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Second Amendment to Amended
(Title or description of attached document)

And Restated owner Participation Agreement
(Title or description of attached document continued)

Number of Pages 7 Document Date 07/31/2020

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other MANAGING member

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.