

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
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TDD/TTY No. (415) 554-5227

## MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Dean Preston, Chair  
Government Audit and Oversight Committee

FROM: Stephanie Cabrera, Assistant Clerk

DATE: September 19, 2022

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, September 20, 2022

The following file should be presented as COMMITTEE REPORT at the regular Board meeting on Tuesday, September 20, 2022. This RESOLUTION was acted upon at the regular Government Audit and Oversight Committee meeting on Thursday, September 15, 2022, at 10:00 a.m., by the votes indicated.

**Item No. 26                      File No. 220798**

**[Tolling Agreement - PK Domestic Property LLC - Hotel Adagio - Real Property Transfer Tax Dispute]**

Resolution approving a Tolling Agreement to extend the statute of limitations for PK Domestic Property LLC for Hotel Adagio to bring potential litigation against the City and County of San Francisco for a refund of real property transfer tax to allow for possible resolution of the matter without litigation.

**RECOMMENDED AS A COMMITTEE REPORT**

Vote:                      Supervisor Dean Preston - Aye  
                                 Supervisor Connie Chan - Aye  
                                 Supervisor Shamann Walton - Aye  
                                 Supervisor Rafael Mandelman - Excused

Cc: Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Alisa Somera, Legislative Deputy  
Anne Pearson, Deputy City Attorney

File No. 220798

Committee Item No. 7

Board Item No. 26

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight  
Board of Supervisors Meeting:

Date: September 15, 2022  
Date: September 20, 2022

#### Cmte Board

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU – CBA FY2022-2024 - Clean                |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU – CBA FY2022-2024 - Redline              |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

- |                                     |                                     |                     |
|-------------------------------------|-------------------------------------|---------------------|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Tolling Agmt 070622 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____               |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____               |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____               |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | _____               |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____               |

Prepared by: Stephanie Cabrera

Date: September 7, 2022

Prepared by: Stephanie Cabrera

Date: September 16, 2022

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Tolling Agreement - PK Domestic Property LLC - Hotel Adagio - Real Property Transfer Tax  
2 Dispute]

2

3 **Resolution approving a Tolling Agreement to extend the statute of limitations for**  
4 **PK Domestic Property LLC for Hotel Adagio to bring potential litigation against the City**  
5 **and County of San Francisco for a refund of real property transfer tax to allow for**  
6 **possible resolution of the matter without litigation.**

7

8 WHEREAS, The City and County of San Francisco (the "City") imposed real property  
9 transfer taxes, penalties, and interest for the September 18, 2019 change in ownership of the  
10 Hotel Adagio, based on a consideration or value of the real property of \$111,050,000, rather  
11 than the declared consideration or value of the real property of \$63,000,000; and

12 WHEREAS, PK Domestic Property LLC paid the transfer taxes, penalties, and interest  
13 on October 5, 2020, and filed a claim for refund on November 16, 2020 (the "Claim"); and

14 WHEREAS, The value of the Hotel Adagio real property as of the September 18, 2019  
15 change in ownership is currently the subject of an assessment appeal before the  
16 San Francisco Assessment Appeals Board, the outcome of which may permit the City and  
17 PK Domestic Property LLC to resolve the Claim without litigation; and

18 WHEREAS, To avoid the need for potentially unnecessary litigation, the City and  
19 PK Domestic Property LLC have agreed that the limitations period for any potential litigation  
20 related to the Claim shall be extended under the terms set forth in the Tolling Agreement on  
21 file with the Clerk of the Board of Supervisors in File No 220798, now, therefore, be

22 RESOLVED, That the Board of Supervisors authorizes the City to agree that the  
23 statute of limitations for PK Domestic Property LLC to file an action against the City with

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1     respect to the Claim shall be extended to and including June 30, 2023, under the terms set  
2     forth in the Tolling Agreement.

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## **TOLLING AGREEMENT**

This tolling agreement (“Agreement”) is entered into by and between PK Domestic Property LLC, on behalf of itself, its subsidiaries, successors and assigns, and each of them, if any (hereinafter referred to individually and collectively as “CLAIMANT”), and the City and County of San Francisco, together with its elective and/or appointive boards, agents, servants, employees, consultants, departments, commissioners, and officers (hereinafter referred to individually and collectively as “CITY”), hereinafter each referred to as a “Party” and collectively as the “Parties.”

### **I. Tolling Provision.**

The statute of limitations for CLAIMANT to file an action in San Francisco Superior Court for a refund of CLAIMANT’s payment of real property transfer taxes, penalties, interest, and fees under San Francisco Business and Tax Regulations Code Article 12-C for the amounts and on the grounds set forth in CLAIMANT’s claim for refund filed on November 16, 2020, San Francisco Claim Number 21-00846, attached hereto as Exhibit A, is hereby extended to and including June 30, 2023.

### **II. Modification.**

This Agreement can be extended or otherwise modified only in writing signed by the Parties. This Agreement shall constitute the entire understanding between the Parties concerning the subject matter of this Agreement.

### **III. Sole Purpose of the Agreement; No Effect on Liability.**

Except as specifically stated in this Agreement, this Agreement shall in no way affect, waive, or limit any rights, claims, or defenses of any of the Parties to this Agreement, other than the statute of limitations as described above, if any. This Agreement shall not be deemed to constitute an admission of any liability by any of the Parties thereto. This Agreement cannot be introduced into evidence in any action in court, arbitration, or mediation, except to enforce its terms.

### **IV. Applicability.**

This Agreement shall bind and benefit each of the Parties and their respective predecessors, successors, and assigns, as applicable.

### **V. Governing Law.**

This Agreement shall be governed by and interpreted pursuant to the laws of the State of California.

### **VI. Severability of Provisions.**

If any provision of this Agreement is found to be unenforceable or unlawful, the remaining provisions of this Agreement shall remain fully effective and enforceable.

**VII. Counterparts.**

This Agreement may be signed in counterparts and each signed counterpart shall be deemed an original document, but all of which together shall constitute one and the same instrument.

**VIII. Entire Agreement.**

This Agreement is the entire agreement of all who are bound by it with respect to the matters addressed herein.

**IX. Understanding and Interpretation.**

Each Party or other person bound by this Agreement has read and understood this Agreement and so warrants. Each Party or other person bound by this Agreement has received independent legal advice about the advisability of signing this Agreement. All Parties to this Agreement agree that the rule of construction of contracts that ambiguities shall be resolved against the drafter shall not be used or applied in interpretation of any provision of this Agreement. Headings in this Agreement are inserted for convenience only and shall not constitute part hereof for any purpose whatever.

**X. Binding Agreement.**

Each person signing this Agreement warrants that he or she has authority to bind the entity on whose behalf he or she signs. This Agreement shall be Binding upon and inure to the benefit of each Party signing it and their respective successors, assigns, and legal representatives.

**XI. Required Approval.**

CLAIMANT acknowledges that this Agreement is contingent upon the approval of the Board of Supervisors by resolution. This Agreement shall not be effective or binding as against either Party unless and until such approval has been obtained.

Dated: 7-2-2022

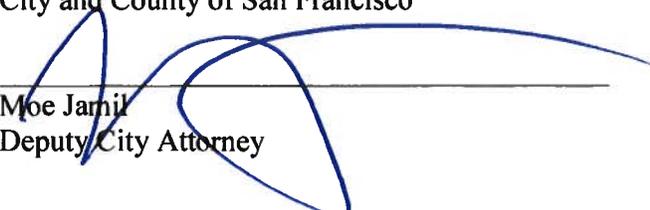
For Claimant PK Domestic Property LLC

Signature: 

Name and Title

City and County of San Francisco

Dated: 7-6-2022

  
Moe Jamil  
Deputy City Attorney

# Exhibit A

# CITY AND COUNTY OF SAN FRANCISCO

## Claim For Tax Refund

Before completing this form please read the instructions on the back. You have one year from the date of payment or the date the return accompanying the payment was due, whichever is later, to submit this form and supporting documentation to **CONTROLLER'S OFFICE, CLAIMS DIVISION, 1390 MARKET STREET, 7<sup>TH</sup> FLOOR, SAN FRANCISCO, CA 94102-5402.**

You must file a separate claim for tax refund for each type of tax.

**ASSESSOR**

**21-00846**

<p><b>1. CLAIMANT'S NAME:</b> <u>PK Domestic Property LLC</u> (DBA) Owner's Name: <u>c/o Park Hotels &amp; Resorts</u> Address: <u>1775 Tysons Blvd., 7th Floor</u> <u>McLean, VA 22102 c/o Brigham Manrique</u> Telephone: <u>(571) 302-5716</u></p>	<p><b>2. IF CLAIMANT IS A BUSINESS:</b></p> <p>Type of Ownership</p> <p><input type="checkbox"/> Individual</p> <p><input type="checkbox"/> Partnership</p> <p><input type="checkbox"/> Corporation</p> <p><input checked="" type="checkbox"/> Other: <u>LLC</u></p>
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**3. FEDERAL TAXPAYER ID #** 45-2628088

4. TAX PAID INFORMATION					
Business Account Number or Assessor's Parcel Number	Paid By	Date Paid	Receipt Number	Amount Paid	Period Covered
a. 0305-008; 0305-009	PK DomesticPropertyLLC	10/05/2020	202026103	\$2,119,005	N/A
b.					
c.					

<p><b>5. BASIS OF CLAIM:</b> State all facts that support your claim for tax refund. If your refund applies to only a portion of the tax paid, please explain what portion it applies to.</p> <p>The real property transferred on 9/18/19 for a sales price of \$63,000,000. Transfer tax paid was \$1,890,000. Subsequently notice of a deficiency determination was received indicating a real property value of \$111,050,000 and requiring that additional transfer tax of \$1,441,500, penalties in the amount of \$504,525, and interest of \$172,980 for the total of \$2,119,005 be paid. We are requesting a refund for the additional transfer tax, penalties and interest paid because they were based on an incorrect real property value.</p>	<p style="text-align: center;"><b>Applicable Tax (check one)</b></p> <p><input type="checkbox"/> Gross Receipts Tax</p> <p><input type="checkbox"/> Hotel Tax</p> <p><input type="checkbox"/> Parking Tax</p> <p><input type="checkbox"/> Payroll Expense Tax</p> <p><input type="checkbox"/> Stadium Operator's Tax</p> <p><input type="checkbox"/> Real Property Transfer Tax</p> <p><input type="checkbox"/> Utility User's Tax</p> <p><input type="checkbox"/> Other _____</p>
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**6. REFUND AMOUNT:**      \$2,119,005 plus interest at 3% from date of payment

**7. SIGNATURE OF CLAIMANT OR REPRESENTATIVE:**

I declare under penalty of perjury that the foregoing is true and correct. "I certify I filed this claim within one year of my paying the tax or, within one year of the due date of my tax return." The undersigned is the taxpayer or other person determined to be liable for the tax or said person's guardian or conservator. I am not an agent or the taxpayer's attorney.

<p>X <u>Spw</u></p>	<p><u>11.09.2020</u></p>	
<p>Signature of Claimant or Representative</p>	<p>Date</p>	
<p>Scott Winer</p>	<p>Senior Vice President</p>	
<p>Print Name</p>	<p>Title</p>	

RECEIVED  
 20 NOV 16 PM 3:01  
 CITY & COUNTY OF  
 SAN FRANCISCO  
 CONTROLLER  
 Revised 11/14  
 0908.FS



**BEV / JLL Analysis**

**Hotel Adagio, Autograph Collection  
San Francisco, CO**

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Net Operating Income To The Going Concern		\$7,827,409
Less Brand Premium		\$ 1,196,887
Personal Property Value	\$ 6,200,000	
TPP Yield Rate (Interest Rate plus Risk)	<u>9.50%</u>	
Less Total Return On and Of Income Attributable to Personal Property		\$ 589,000
Net Income Attributed to Property and Brand / Ownership Transition Cost		\$ 6,041,522
Brand / Ownership Transition Cost		
Initial Franchise Fee	\$ 100,000	
Opening Advertising	\$ 125,000	
Pre-Opening Training and Service	\$ 172,900	
Reservation Systems	\$ 314,000	
Start-Up Costs (\$4,000/Room)	\$ 684,000	
Working Capital (\$4,000/Room)	\$ 684,000	
	<u>\$ 2,079,900</u>	
Return on/of Brand / Ownership Transition Cost (Inte:	<u>14.50%</u>	
Less Total Income Attributed to the Brand / Ownership Transition Cost		\$ 301,586
<b>NET INCOME ATTRIBUTED TO REAL &amp; TANGIBLE PERSONAL PROPERTY</b>		<b>\$ 5,739,937</b>
Capitalization Rate Including Effective Tax Rate		8.25%
Indicated Value of Real and Tangible Personal Property		\$ 69,574,992
Return of Personal Property		\$ 6,200,000
Reserve Fund Transfer (Cash)		\$ 120,298
Indicated Value of Real Property		\$ 63,254,694
Rounded		<b>\$ 63,000,000</b>
Per Room		\$ 368,421



October 28, 2020

USPS Certified Mail: 7020 0090 0001 7972 9883

Controller's Office – Claims Division  
1390 Market Street – 7<sup>th</sup> Floor  
San Francisco, CA 94102-5402

Re: Claim for Real Property Transfer Tax Refunds

To whom it may concern:

We are submitting the attached executed Claim for Real Property Transfer Tax Refund forms along with supporting documentation and letters of authorization for the following properties:

Hotel Adagio 0305-008/009  
Le Meridien 0229-020

Hyatt Centric Fisherman's Wharf 0029-007  
JW Marriott Union Square 0229-020

Please contact Jodi Garman either by email [jodi.garman@am.jll.com](mailto:jodi.garman@am.jll.com) or by phone (813) 229-3991 with any questions.

Thank you for your time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Malena Garcia Smith".

Malena Garcia Smith  
Executive Assistant

Enclosures



November 10, 2020

USPS Certified Mail: 7020 0090 0001 7972 9883

City and County of San Francisco  
Controller's Office – Claims Division  
1390 Market Street – 7<sup>th</sup> Floor  
San Francisco, CA 94102-5402

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JW Marriott Union Square 0229-020

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Thank you for your time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Malena Garcia Smith", with a long horizontal flourish extending to the right.

Malena Garcia Smith  
Executive Assistant

Enclosures