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April 16, 2018

Chairman Huizar and Members of the PLUM Committee
c/o City Clerk
Los Angeles City Hall
200 North Spring Street
Los Angeles, CA 90012

**RE: Supplemental Letter Re: Appeal of Case No. APCC-2015-3032-SPE-SPPA-SPP-MS
Regarding April 11, 2018 Council Motion to Adopt Grandfathered and Phased
Inclusionary Housing Ordinance/ CF 18-0289**

Dear Honorable Chairman and Members of the PLUM Committee:

On March 29, 2018, Sapphire Equity, LLC (the "Applicant" and "Appellant") filed a limited appeal challenging the imposition of "Condition 15" of a Letter of Determination dated March 14, 2018 ("Letter of Determination") issued by the Central Area Planning Commission in Case No. APCC-2015-3032-SPE-SPPA-SPP-MS, approving the Sapphire project ("Sapphire Project" or "Project"). Condition 15 unfairly attempts to impose the inclusionary housing requirement of Section 11.C the Central City West Specific Plan ("Specific Plan") on the Project, requiring it to provide 15 percent of its 369 rental dwelling units as restricted affordable units or pay an in-lieu fee. Condition 15 was raised for the first time at a final public hearing on February 26, 2018, following a nearly three year entitlement process in which no such requirement was ever mentioned.

As set forth in further detail in the letter submitted with the March 29, 2018 appeal, in 2009, Specific Plan Section 11.C's inclusionary housing provisions and in-lieu fee were held preempted by state law and thus ruled void as applied to rental units in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, 1412 ("*Palmer*"). As also set forth in our appeal letter, the 2017 statute AB 1505, which allowed cities to adopt inclusionary housing ordinances as of January 1, 2018, did not retroactively invalidate *Palmer* or otherwise automatically revive Section 11.C of the Specific Plan. (3/29/18 appeal letter, at pp. 6 -14.) Rather, the law is clear that if the City wishes to impose Section 11.C of the Specific Plan under the authority of AB 1505, it must implement a new ordinance. (Id.)

On April 11, 2018, Honorable Councilman Cedillo introduced a motion that was seconded by the Honorable Chairman of the PLUM Committee Councilman Huizar and approved by the Council that ordered the City Planning Department to prepare just such an ordinance. In ordering the preparation of an ordinance implementing Section 11.C of the Specific Plan, the motion, attached here as **Exhibit A**, recognizes that: (1) the Specific Plan Inclusionary Housing requirement under Section 11.C was voided as to rental units by *Palmer*; (2)



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AB 1505 authorized the City to adopt inclusionary housing ordinances as of January 1, 2018; (3) that an ordinance is necessary to provide notice to stakeholders and create an equitable process by which a severely economically impactful inclusionary housing requirement is implemented; (4) that the City must create “a deliberative process of informing stakeholders about its change of position on the unenforceability of the Specific Plan’s inclusionary housing requirement”; and (5) the motion requires the forthcoming ordinance to provide a 120-day grace period following its future effective date that would invalidate the applicability of the inclusionary housing requirement of Section 11.C of the Specific Plan as to the Project. (See Exhibit A emphasis added.) In bringing the motion, the Council has clearly recognized that springing such an economically devastating condition on projects by surprise with no notice or opportunity to plan is manifestly unfair, will result in projects becoming economically infeasible, and would worsen the City’s housing crisis.

In light of the new motion and pending ordinance and the motion’s statement mandating an official change of position by the City on the present enforceability of Section 11.C of the Specific Plan, the City cannot now impose Condition 15 on the Project. In light thereof, the City should grant this appeal and remove Condition 15 from the Letter of Determination, which should otherwise remain as-is. We also sincerely thank the Honorable members of the City Council for initiating a fair ordinance that will protect substantial financial investment in the City and avoid unjust results.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Ryan M. Leaderman', written over a horizontal line.

Ryan M. Leaderman

cc. Gerald Gubatan
Lisa Webber
Kevin Keller
Terry Macias-Kaufmann, Esq.
Adrienne Khorasanee, Esq.
Sergio Ibarra
Daniel Taban
Bill Delvac, Esq.
Andrew Brady, Esq.

Attachments: Exhibit A (4/11/18 Council Motion)
WEST281163137.3

Council Motions

Introduced in the Council meeting of April 11, 2018

The following Council Motions were introduced during today's City Council meeting. Council file numbers have not been assigned at this time and are currently being processed. To obtain the Council file numbers, please refer to the Council and Committee Referral "Hot Sheet" for the date listed above.

The Los Angeles City Council established the Central City West Specific Plan on April 3, 1991, under Ordinance No. 166,703. The Specific Plan was last updated on December 27, 2009, under Ordinance No. 180,983. Section 11, Subsection C of the Specific Plan imposed on new residential and residential mixed-use development projects with ten or more dwelling units an inclusionary housing requirement to construct affordable housing units or pay an alternative in-lieu payment to fund the construction of affordable units.

In 2009, in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 (*Palmer*), the Second District Court of Appeal held that the Specific Plan's inclusionary housing provisions for rental units, including the affordable housing and in-lieu payment provisions, were preempted by the state Costa-Hawkins Rental Housing Act. Since the 2009 *Palmer* decision, the City has treated the Specific Plan's inclusionary housing requirement for residential rental units as unenforceable, and entitlement applicants have prepared and processed their requests for project compliance in reliance on the City's position.

On September 29, 2017, Assembly Bill 1505 was signed into law by the Governor. AB 1505 authorizes the legislative body of any county or city to adopt ordinances to "require, as a condition of development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, low income, very low income, or extremely low income households" as specified in State Law. AB 1505 further states the ordinance shall provide alternative means of compliance that may include in-lieu fees. Furthermore, AB 1505's recitals state it was enacted with the express purpose of allowing the inclusionary housing provisions held preempted by the *Palmer* decision. AB 1505 became effective on January 1, 2018.

To ensure the fair and equitable imposition of the Specific Plan's inclusionary housing requirements, which have not been enforced since 2009, on proposed rental housing projects currently in the planning stages, the City Council recognizes that a phased implementation of these requirements is necessary to protect the reasonable expectations of entitlement applicants with planned residential and mixed-use projects in the land development pipeline. On December 13, 2017, the Council approved the Affordable Housing Linkage Fee Ordinance (Ordinance No. 185342) which included a phased implementation approach with respect to imposition of the fee, thus allowing the real estate market to accordingly adjust and allow proposed developments in the planning stages to factor in the imposition of affordable rental units or in-lieu fee payments in assembling financing. A similar phased implementation approach would provide for sufficient advance notice, time and opportunity to appropriately plan a new development. In addition, in order to avoid confusion and increase certainty, the City ought to execute a deliberative process of informing stakeholders about its change of position on the unenforceability the Specific Plan's inclusionary housing requirement, given that its imposition at a late stage in planning may have an adverse economic impact on project feasibility and ultimately housing production. Additional clarifications are also necessary to ensure that the Specific Plan's inclusionary requirements are implemented consistently with the City's Density Bonus Ordinance and State Density Bonus Law.


I THEREFORE MOVE that the Council instruct the Planning Department, in consultation with the City Attorney, to prepare and present an ordinance to include in the Central City West Specific Plan the following additional provisions:

- a) For the first 120 days following the effective date of this ordinance, no inclusionary housing requirement under Section 11.C of the Specific Plan shall be imposed on any rental housing project for which a Building Permit Application or complete planning or zoning entitlement application has been or is submitted. For purposes of this ordinance, a complete planning or zoning entitlement application is an application that has been accepted by the Department of City Planning and for which the application fees have been paid or for which a vesting tentative tract map has been filed and has been deemed complete. If an Applicant submitted a Building Permit Application or a

complete planning or zoning entitlement application for a development project, that development project shall not be subject to the re-established Specific Plan Section 11.C;

- b) An Applicant for a rental housing project that is subject to Specific Plan Section 11.C who submits a Building Permit Application or a complete Planning or zoning entitlement application (whichever is first):
 - a. 121 days following the effective date of this ordinance shall be required to provide one-third of the total affordable requirement or in lieu payment specified under Specific Plan Section 11.C;
 - b. 306 days after the effective date of this ordinance shall be required to provide two-thirds of the total affordable requirement or in lieu payment specified under Specific Plan Section 11.C;
 - c. 485 days or more after the effective date of this ordinance shall be required to provide the total affordable requirement or in lieu payment specified under Specific Plan Section 11.C;
- c) An Applicant for a rental housing project that is subject to the Affordable Linkage Fee Ordinance under LAMC Section 19.18 may elect to pay the Affordable Housing Linkage Fee in lieu of complying with the inclusionary housing requirements of Section 11.C of the Specific Plan. An Applicant shall pay a cash deposit, as determined by the Department of City Planning, which shall collect and remit the deposited amount to the City Treasurer for deposit into the Central City West Housing Fund, as established by Article 23, Section 5.115.6 of the Los Angeles Administrative Code;
- d) For the purpose of determining the required set aside under Specific Plan Section 11.C, "dwelling units with the Project" shall have the same meaning as the term as "total units" or "total dwelling units" in Government Code Section 65915(b)(3);
- e) For the purpose of compliance with Specific Plan Section 11.C's set aside requirement, an 8% Very Low Income set aside may be provided as an alternative to a 15% Low Income set aside.

PRESENTED BY: _____


GILBERT A. CEDILLO
Councilmember, 1st District

SECONDED BY: _____



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