CITY OF CARSON

PLANNING COMMISSION STAFF REPORT

PUBLIC HEARING:	July 12, 2011
SUBJECT:	Appeal of Director's Determination
APPLICANT/PROPERTY OWNER:	Mr. Ebbí Azzízzí, President San Miguel Apartments, Inc. 3660 Wilshire Boulevard, Suite 530 Los Angeles, California 90010
REPRESENTATIVE:	Mr. Stephen Joseph 350 Bay Street, Suite 100-328 San Francisco, CA 94133
REQUEST:	An appeal of the Director's Decision to not accept any applications to allow the Don Dominguez Apartments to operate beyond November 23, 2011.
PROPERTY INVOLVED:	19702–19822 South Main Street

COMMISSION ACTION

____ Concurred with staff

____ Did not concur with staff

____ Other

COMMISSIONERS' VOTE

AYE	NO		AYE	NO	
		Chairman Faletogo			**Gordon**
		Vice-Chair Park			**Saenz**
		Brimmer			**Schaefer**
		Diaz			**Verrett**
		Goolsby			

Item No. 11B

I. Introduction

On May 16, 2011, San Miguel Apartments, Inc., filed an appeal of the City's Planning Officer decision to not accept any applications requesting the Don Dominguez Apartments to operate beyond the November 23, 2011 closure date (Exhibit No. 1). The Planning Commission is asked to consider the appeal of San Miguel Apartments, Inc., d/b/a/ Don Dominguez Apartments, located at 19702 to 19822 South Main Street (the "Applicant"), of the determination of the City's Planning Officer, dated May 4, 2011, to reject two applications (Exhibit No. 2).

The first application attempts to seek an "Extension of Nonconforming Privilege," (Exhibit No. 3) and the second application applies for a "Zone Change and Conditional Use Permit" (Exhibit No. 4) (collective, the "Applications").

The ***sole question*** before the Planning Commission in the pending appeal is whether, pursuant to Carson Municipal Code Section 9173.4 (Appeals), to instruct City staff to accept these applications and process the same for future consideration by the Planning Commission on their merits. For the reasons set forth herein, both staff and the Office of the City Attorney advise the Planning Commission that the 2003 Facility Closure Agreement prohibits the filing of the applications and both applications are either incomplete or insufficient, as a matter of law, or both. Accordingly, staff and the City Attorney recommend denial of the appeal.

II. Background

In 1982, the city of Carson adopted Ordinance No. 82-590. This ordinance designated any residential use of the Don Dominguez Apartments, located at 19702 to 19822 South Main Street, Carson, (the "Property") as a "legal nonconforming use." As such, under the Carson Municipal Code, use of the Property for an apartment complex was lawful only for the period of time necessary to "amortize" the Applicant's investment in the same. After the expiration of such amortization period, the apartment use on the Property must be terminated.

In August 2003, the Applicant and the city of Carson entered into and executed that certain "Facility Closure Agreement" ("Agreement"). Notably, that Agreement made clear that the city of Carson had the authority "in its absolute discretion" to issue a notice of abatement requiring the closure of the apartment complex (Exhibit No. 5).

In adopting Resolution No. 03-1953, the Planning Commission determined that the abatement date for the residential use of the Property would be April 15, 2002. The Planning Commission then granted the Applicant's request for an extension of that date and authorized an extended abatement date of July 31, 2008, finding that such an extension would "ensure that San Miguel achieves a reasonable amortization of its fixed investment."

Subsequently, the Planning Commission again permitted the continued residential use of the Property beyond the already-extended July 31, 2008, abatement date.

However, in so doing, the Planning Commission found that "in no event shall the abatement date be extended beyond November 23, 2011." Resolution No. 03-1953, and the findings contained therein, long ago become final and are beyond administrative appeal or legal challenge. Two such findings are particularly noteworthy in consideration of the Applicant's pending appeals.

First, Resolution No. 03-1953 included a finding that an extended abatement date of July 31, 2008, was a sufficient period of time. Second, the Planning Commission determined that, were the Applicant to file an application for a ***new*** abatement date, the city would lack the legal authority to extend same, and would be required, as a matter of law, to "disapprove the request for the extension of time."

Under the terms of the Agreement, this Applicant accepted and agreed to the November 23, 2011, abatement date approved by the Planning Commission, and affirmatively promised to "terminate the residential use" of the Don Dominguez Apartments "on or before the abatement date." In addition, in keeping with Resolution No. 03-1953, the Agreement includes an affirmative covenant that this Applicant "shall not apply to the City for [a] further extension of the abatement date for Don Dominguez Apartments."

Against this historical backdrop, on or about March 15, 2011, legal counsel for this Applicant attempted to submit the Applications at issue in this appeal at the planning counter in city hall. The Applications were rejected as incomplete as set forth in Section 9173.1 of the Carson Municipal Code and as not eligible for submittal due to the terms of the Agreement.

Next, on March 15, 2011, the Applicant's legal counsel attempted to re-submit the applications electronically, without tendering the required fees. He was again promptly notified by city staff on March 22, 2011, of the obligations of the Agreement, the inability of the city to accept electronic filings, and that the applications would not be accepted unaccompanied by a negotiable instrument for the payment of required fees.

With the concurrence of the Planning Officer, the Applicant's legal counsel again re-submitted the Applications, complete with the payment of some of the required fees, on April 5, 2011. On May 4, 2011, city staff returned to the Applicant's legal counsel both Applications and all checks for fees. Both applications were deemed to be legally incomplete and insufficient, within the meaning of Government Code § 65943(b), because neither applications contains information that would constitute grounds for an exception to the affirmative covenant, signed in writing, by a representative of Applicant, that the same "***shall not apply to*** [the] ***City for*** [a] ***further extension*** of the abatement date." (Exhibit No. 2.)

A timely appeal of this determination was filed by the Applicant, with the accompanying fee on May 16, 2011. Notice of the same was given, in the manner required by law, and all tenants were provided a copy of the public hearing notice.

During the pendency of this appeal, city staff have learned of a legal proceeding initiated by Watson Partners, LP, the owners of the underlying real property, and this Applicant. In the written minute order of the Los Angeles Superior Court, the judge ruled that the "latest abatement date by which all residential use of the property must cease . . . [is] November 23, 2011 (Exhibit No. 6, pg. 3). The Los Angeles County Superior Court also rules that the "'Facility Closure Agreement . . . [obligated this Applicant] not [to] apply to the City for further extension of the abatement date . . . .'" (Exhibit No. 6, pg. 3.)

Finally, the Los Angeles County Superior Court concluded that this Applicant "would vacate the property by November 23, 2011, at the latest, and would not seek a further extension of the abatement date. The City and its City Attorney have advised [this Applicant] that it is bound by the terms of the Facility Closure Agreement." (Exhibit No. 6, pg. 3.) As a consequence of these rulings, the Los Angeles County Superior Court has ordered the appointment of a Receiver to perform many of the duties that should be performed by this Applicant, and specifically to assure that this use is terminated by November 23, 2011 (Exhibit No. 7).

III. Analysis

Staff and the Office of the City Attorney have carefully reviewed the 2003 Facility Closure Agreement, and have jointly concluded that the same precludes the presentations of the Applications as a matter of law. In that Agreement, this Applicant accepted and agreed to the existing November 23, 2011, abatement date approved by this Planning Commission in its prior considerations of the deadline for abatement.

In addition, the Applicant affirmatively promised to "terminate the residential use" of the Don Dominguez Apartments "on or before the abatement date." Consistent with this Commission's Resolution No. 03-1953, the Agreement includes an affirmative covenant that this Applicant "***shall not apply to the City for [a] further extension of the abatement date*** for Don Dominguez Apartments."

In the view of staff and the City Attorney, the entire purpose and intent of the pending Applications is to provide a basis for "a further extension of the [current] abatement [deadline of November 23, 2011]." The City Attorney is of the further legal opinion that the prior determinations of the Planning Commission preclude staff from accepting or processing the Applications.

Moreover, the Los Angeles County Superior Court has agreed with staffs' and the City Attorney's interpretation of the obligations of this Applicant under the Agreement. Since the pending Applications have, as they purpose and intend, the extension of a deadline for abatement, in specific contravention of the Agreement, the interpretations of the Agreement by that court confirms the determination of the Planning Officer to deem both Applications legally incomplete and insufficient, within the meaning of Government Code Section 65943(b).

The Applicant contends that the Planning Commission has the legal right to "waive a contractual covenant." Both staff and the City Attorney do not recommend any changes to the 2003 Facility Closure Agreement. The property owner and other parties have relied upon this Agreement and are in the final stages of negotiation for a change of use and development of the subject property. Absent any direction from the Planning Commission to change the Agreement, the application to further extend the nonconforming privilege is clearly in conflict with the Facility Closure Agreement.

The applicant indicates that the Agreement is not binding since the City never signed the document. This statement is incorrect. The Agreement was executed by Mr. Azzizzi, President of San Miguel Apartments, Inc., and Mr. Joseph, the Applicant's legal counsel. The Applicant submitted the executed Agreement on or before August 23, 2003, as required by Planning Commission Resolution No. 03-1953.

The Applicant states that the application for the zone change and conditional use permit are not in conflict with the Facility Closure Agreement. Staff and the City Attorney disagree. Clearly, the only purpose for the Applicant to submit this application is to extend the operating date beyond the period agreed to in the Facility Closure Agreement. As such, this application is clearly in conflict with the Facility Closure Agreement. If the Planning Commission is willing to consider authorizing the existing apartment buildings as a permitted residential use, the Applicant would also need to file for a General Plan amendment since the zone change from Commercial General (CG) to Commercial General – Mixed Use Residential would require consistency with the General Plan land use designations. The General Plan currently designates the subject property as Mixed Use Business Park and specifically states that no residential uses would be allowed. The General Plan would need to designate the property as Mixed Use Residential prior to any consideration of a zone change to potentially allow a residential use.

Finally, the Planning Officer determined that both Applications are "incomplete and insufficient due to the failure to submit all required content and information as prescribed in . . . Section 9173.1 of the Carson Municipal Code."

Staff and the City Attorney recommend the Planning Commission uphold the determinations of the Planning Officer that both Applications are "incomplete and insufficient" due to the terms and conditions of the Agreement and for each and all of the reasons set forth in this public hearing and the determination letter of May 4, 2011 (Exhibit 1).

IV. Environmental Review

Pursuant to Section 15270 – Projects Which Are Disapproved of the California Environmental Quality Act (CEQA) does not apply to projects which a public agency rejects or disapproves.

V. Recommendation

That the Planning Commission:

- DENY the appeal and SUSTAIN the determination of the Planning Officer that both the application for "Extension of Nonconforming Privilege" and the application applies for a "Zone Change and Conditional Use Permit" are deemed legally incomplete and insufficient, within the meaning of Government Code section 65943(b).

- INSTRUCT staff and the City Attorney' Office to prepare the necessary resolution.

VI. Exhibits

1. Appeal from San Miguel Apartments, Inc dated May 16, 2011
2. May 4, 2011Letter from Planning Officer
3. Application for Extension of Nonconforming Privilege
4. Application for Zone Change and Conditional Use Permit
5. Facility Closure Agreement
6. Los Angeles County Superior Court Minute Order
7. Los Angeles County Superior Court Order Appointing Receiver
8. Excerpt from General Plan

Prepared by:

William W. Wynder

Sheri Repp Loadsman, Planning Officer

RECEIVED
CITY CLERK
11 MAY 16 PM 4:42
CITY OF CARSON

CITY OF CARSON
Development Application

Development Services Group
Planning Division
701 East Carson Street
Carson, CA 90745
(310) 952-1761
http://www.ci.carson.ca.us

I. Property Information

Address and/or APN: 19702-19822 S. MAIN STREET (APN# 7336009006)

Existing Use: MULTIFAMILY APARTMENTS Existing Zoning: CG

II. Proposed Project

Describe Project and Potential Use (Attach additional sheets if necessary): SEE ATTACHED, "APPEAL OF PLANNING DIRECTOR'S MAY 4, 2011 DETERMINATION OF INCOMPLETE AND INSUFFICIENT APPLICATIONS"

Is the Project in a Redevelopment Project Area? [X] Yes [ ] No If so, which? 1B

III. Applicant Information

Main Contact Person (Applicant/Representative)*: STEPHEN L. JOSEPH, ESQ.			
Address: 350 BAY STREET, SUITE 100-328			
City/State/Zip Code: SAN FRANCISCO, CA 94133			
Phone Number: (Day) (415) 577-6660	(Mobile)		
Fax Number:	(415) 869-5380	E-Mail Address:	SLJOSEPH.LAW@EARTHLINK.NET

City Staff Use Only

Received By: _____ Date: _____

Amount Paid: _____ Case Planner: _____

Case No(s): _____ Related Case No(s): _____

Counter Map: [ ] Database: [ ]

* Additional Contact/Representative: Kevin A. Sher, Esq.,
Greenberg Glusker Fields Claman & Machtinger LLP
1900 Avenue of the Stars, 21st Floor, Los Angeles, CA 90067
Phone: (310) 785-6834, Facsimile: (310) 201-4449
Email: KSher@greenbergglusker.com

EXHIBIT NO. 1

7

Ground Lessee: SAN MIGUEL APARTMENTS, INC.	
Address: 3660 WILSHIRE BOULEVARD, #530	
City/State/Zip Code: LOS ANGELES, CA 90010	
Phone Number: (Day)	(Mobile)
Fax Number:	E-Mail Address:
Architect/Contractor:	
Address:	
City/State/Zip Code:	
Phone Number: (Day)	(Mobile)
Fax Number:	E-Mail Address:
Engineer/Licensed Surveyor:	
Address:	
City/State/Zip Code:	
Phone Number: (Day)	(Mobile)
Fax Number:	E-Mail Address:

IV. Type of Application

(Check all boxes that apply)

- ☐ Certificate of Compliance
- ☐ Conditional Use Permit*
- ☐ Conditional Use Permit for Shared Parking
- ☐ Development Agreement
- ☐ Environmental Assessment
- ☐ EIR
- ☐ Extension of Nonconforming Privilege*
- ☐ Extension of Time
- ☐ General Plan Amendment
- ☐ Interpretation
- ☐ Landscape Permit (> 2500 SF)
- ☐ Lot Line Adjustment
- ☐ Modification of Permit
- ☐ Ordinance Amendment
- ☐ Parcel Merger
- ☐ Relocation Impact Report
- ☐ Relocation Review
- ☐ Sign Program*
- ☐ Site Plan and Design Review*
- ☐ Specific Plan
- ☐ Tentative Tract/Parcel Map*
- ☐ Zone Change*
- ☐ Zoning Ordinance Amendment
- ☐ Variance*
- ☐ Appeal of P.C. Decision
- ☒ Appeal of Staff Decision
- ☐ *Other:* _____

* Additional materials required

V. Ground Lessee Signatures and Certification

As the Ground Lessee, I grant my consent to have the Applicant, listed above, to take responsibility in processing the proposed project described above. This application and all the required materials are certified to be true and correct to the best of my knowledge and belief.

EBR Azria — 5/16/2011

Ground Lessee(s) Signature — Date

EBR Azria

Ground Lessee(s) (Please print)

APPEAL OF PLANNING DIRECTOR'S MAY 4, 2011 DETERMINATION OF INCOMPLETE AND INSUFFICIENT APPLICATIONS
(Don Dominguez Apartments at 19702-19822 S. Main Street, Carson, CA)

APPEAL

Pursuant to § 9173.4 of the Carson Municipal Code, SMA hereby appeals the May 4, 2011 Determination of the Planning Director to the full Planning Commission. SMA requests that the Planning Commission (a) reverse the Determination; (b) accept the Applications; (c) promptly schedule a public hearing before the Planning Commission on the merits of the Application; and (d) grant the Applications. SMA further requests and demands that the Planning Commission hold a hearing on this appeal within 60 days, in accordance with Carson Municipal Code §9173.4(D).

BACKGROUND

San Miguel Apartments, Inc. ("SMA") filed with the City of Carson land use applications for (i) Extension of Nonconforming Privilege under § 9172.25 of the Carson Municipal Code (the "Code") and (ii) Zone Change and Conditional Use Permit under §§ 9172.13 and 9172.21 of the Code (the "Applications"). The Applications are for land use approvals to permit the continued operation of the apartment complex at 19702-19822 South Main Street known as the Don Dominguez Apartments (the "Property"). The apartments are a nonconforming use subject to abatement on November 23, 2011, pursuant to an unsigned Facility Closure Agreement between SMA and the City dated August 28, 2003 (the "Facility Closure Agreement").

On March 15, 2011, SMA delivered the Applications and the required fees. Planning Staff categorically refused the Applications. After SMA's legal counsel notified the Planning Director of Planning Staff's wrongful refusal to allow formal filings to occur on March 15, 2011, Planning Staff thereafter accepted the Applications on April 5, 2011 without comment or identification of any deficiencies.

Seven weeks after SMA's original delivery of the Applications, the Planning Director, by letter dated May 4, 2011 (the "Determination") deemed the Applications incomplete and insufficient. A copy of the Determination is attached hereto as Exhibit A. In connection with the Determination, the City Attorney, in a letter to SMA's counsel dated May 2, 2011 (the "City Attorney Letter"), claimed that the Applications are not eligible for submittal to the City because they are barred by the terms of the Facility Closure Agreement. A copy of the City Attorney Letter is attached hereto as Exhibit B.

The Planning Director returned the Applications to SMA's counsel on May 4, 2011 along with the application fee checks. As the applications and the checks have been rejected twice, they are not submitted again herewith as it would be a futile act. They are being held by SMA's counsel and will be resubmitted to the Planning Director when the Planning Director indicates that they will not be rejected.

ANALYSIS

The Planning Director's Determination alleges that the Applications are incomplete and insufficient because they (A) conflict with the terms of the Facility Closure Agreement, and (B) omit certain contents prescribed in the City development application as set forth in § 9173.1 of the Code.

The alleged conflict with the Facility Closure Agreement is not a bar to acceptance of the Applications because SMA is requesting in its Application for Extension of Nonconforming Privilege that the Planning Commission and City ***waive*** the covenant regarding further extension of the abatement period. The City is the beneficiary of that covenant and therefore the Planning Commission and the City have the full power to waive it. ***The Planning Director cannot make that decision on behalf of the Planning Commission. The Planning Commissioners themselves must make that decision.***

The alleged omission of "required content" in the Applications is unsubstantiated because Planning Staff has failed to identify in writing specific deficiencies as required under the Permit Streamlining Act. (Gov't Code § 65920 et seq.)

A. SMA Has The Absolute Legal Right To Ask The Planning Commission And The City To Waive A Contractual Covenant, And The Planning Director Has No Right To Prevent The Planning Commission From Considering Such A Request

The Determination and the City Attorney Letter claim that the Applications cannot be accepted by the City because they conflict with the following covenant in Section 3 of the Facility Closure Agreement (the "Covenant"): "SMA shall not apply to the City for further extension of the abatement date for Don Dominguez Apartments." However, the Covenant is not a permissible or proper justification for rejection of the Applications for the following reasons:

1. The City Never Signed The Facility Closure Agreement And Therefore It Is Not Binding On SMA

The City never signed the Facility Closure Agreement. Consequently, the agreement was never executed and is not binding on SMA. Nothing herein waives SMA's position that the unsigned agreement is not binding on SMA.

2. SMA Has The Legal Right To Have The Planning Commission Decide Whether To Waive The Covenant, Rather Than The Planning Director

Assuming that the Facility Closure Agreement is binding even though it was never signed by the City, a contracting party such as the City has the right to waive those provisions that are included solely for that party's benefit. (See Witkins, *Summary of California Law, 10th Ed. , Contracts Sec. 823*; *Sessions v. Southern Calif. Edison Co.*, 47

Further, as more particularly set forth in the Application for Extension of Nonconforming Privilege, SMA's investment has not yet been fully amortized.

B. Because The Application For Zone Change And Conditional Use Permit Does Not Conflict With The Covenant, The Facility Closure Agreement Does Not Prohibit its Acceptance

The Application for Zone Change and Conditional Use Permit does ***not*** conflict with the Facility Closure Agreement. The Covenant (assuming that it is binding on SMA) only restricts SMA from applying to the City for "further extension of the abatement date." It does ***not*** prohibit applications for a zone change or conditional use permit.

If the City grants these land use approvals, then the Don Dominguez Apartments would be a conforming use under the Code. ***As a conforming use, there would be no need for an extension of the abatement date.*** Therefore, the City Attorney Letter is incorrect in his claim that the Application for Zone Change and Conditional Use Permit is merely an end-run around the Facility Closure Agreement.

The Los Angeles Superior Court distinguished an extension of the abatement period from a zone change for the Property in the January 28, 2003 Judgment After Court Trial in *Watson Partners, L.P. v. San Miguel Apartments et al.* (Case No. BC258975) stating that the abatement date would stand

> "unless the City of Carson makes a legislative, executive or administrative decision or determination that would result in the lengthening of the Abatement Period...or unless there is a change in zoning..." (Judgment ¶18)

The Superior Court recognizes that an extension of the abatement period is different from a zone change. Accordingly, the City Attorney Letter erroneously characterizes both Applications as a singular attempt to extend the abatement date. SMA purposefully filed the Applications in the alternative so that the City would have the option of either (1) waiving the Covenant in order to extend the abatement date, or (2) granting a zone change and conditional use permit to make the Don Dominguez Apartments a conforming use. Therefore, because it is not in conflict with the Facility Closure Agreement (assuming that the agreement is binding on SMA), SMA's Application for Zone Change and Conditional Use Permit is not prohibited and should be promptly accepted by the Planning Director and reviewed by the Planning Commission at a public hearing on the merits.

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C. **Because The Planning Director's Determination Fails To Substantiate That The Applications Are Incomplete, the Applications Should be Accepted**

1. **The Allegations That The Applications Are Incomplete Are Vague And Unsubstantiated**

Although the Applications have been before Planning Staff since March 15, 2011, to date no one at the City has identified any specific deficiencies in the Applications that render them incomplete. When Planning Staff wrongfully refused acceptance of the Applications on March 15, 2011, Planning Staff did not provide a written determination of incompleteness. Instead, Planning Staff wrongfully rejected the Applications without reasonable explanation. Now, almost two months after the original submittal, the Planning Director and the City Attorney make vague non-specific statements asserting that the Applications are incomplete and insufficient.

The City Attorney Letter claims that the Applications were submitted electronically on March 15, 2011 without tendering the required fees. This is incorrect. SMA delivered the Applications ***and application fees*** to Planning Staff on March 15, 2011, but Planning Staff wrongfully refused to accept them. Thereafter, SMA's counsel promptly sent the Planning Director copies of the Applications and checks via e-mail to establish that delivery had been attempted and wrongfully refused. If Planning Staff had acted in accordance with procedural requirements, then the application fees would have been accepted on March 15, 2011. SMA cannot be penalized for the Planning Staff's procedural errors. The City Attorney Letter also claims that when the Applications were resubmitted by SMA on April 5, 2011 they were only accompanied by only "some of the required fees." This assertion is vague and unsubstantiated. No one at the City has specified any additional fees required. In fact, the full fees were submitted by SMA.

The Planning Director's Determination provides no further clarification on the alleged incompleteness of the Applications. Because the Property has not changed in any way since Planning Staff's thorough review in connection with SMA's 2003 applications, Planning Staff already has all pertinent information in its files (in addition to that provided with the Applications). In fact, the Determination recognizes that Planning Staff has such information in its possession, stating that staff members "have taken appropriate care to provide a full evaluation, including review of the prior requests during the General Plan Update in 2003...and the submittal of applications in 2003 for an appeal of the abatement date privilege and extension of the nonconforming privilege." Planning Staff's possession and recent review of these pertinent documents is inconsistent with the claims of incompleteness of the Applications. The laundry list of items in the City's Development Application is irrelevant and inapplicable to land use applications such as the Applications, where there are no physical changes to the property and all that is sought is preservation of the *status quo*.

SMA requests that the ***Planning Commission*** justify why the Applications require any further information, documentation or fees other than what already provided to the Planning Staff and wrongfully rejected.

2. **Vague Assertions of the Applications' Incompleteness Violate the Permit Streamlining Act**

The California Legislature passed the Permit Streamlining Act (the "Act") (Cal. Gov't. Code § 65920 et seq.) in order to "ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such project." (Gov't Code § 65921.) Within 30 calendar days of receiving an application, the City must inform the applicant in writing whether the application is complete and accepted for filing. (Gov't. Code § 65943.) If the City finds that the application is incomplete, then the City must identify in detail how the application is deficient and specify the additional information needed. (Gov't Code § 65943.)

By refusing to accept SMA's delivery of the Applications on March 15, 2011, and thereafter failing to provide anything more than vague assertions of incompleteness, Planning Staff has violated the Act and delayed SMA's lawful attempts to have a prompt hearing before the Planning Commission on the merits of the Applications.

The City Attorney Letter claims that Planning Staff fulfilled its obligations under the Act by delivering the Determination to SMA on May 4, 2011. ***However, the 30 days in which the Planning Commission must respond under Gov. Code Sec. 65943 expired on April 14, 2011.*** Even if the City Attorney Letter and the Determination were timely provided in accordance with the Act, their contents clearly violated the specificity requirements for a finding of incompleteness. Vague assertions of additional documents and fees without specificity provide no guidance to SMA and serve merely to obstruct rather than facilitate a decision on the merits of the Applications. By creating unreasonable obstacles to a "clear understanding" of what is required to file the Applications, Planning Staff has violated the Act. (Gov. Code § 65921.)

3. **The Wrongful Rejection of the Applications and the Vague Assertions of Incompleteness Violate SMA's Due Process Rights.**

Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. (E.g., North Georgia Finishing, Inc. v. Di-Chem, Inc. (1975) 419 U.S. 601, 605-606 [42 L.Ed.2d 751, 756, 95 S.Ct. 719]; Goss v. Lopez (1975) 419 U.S. 565, 572-576 [42 L.Ed.2d 725, 733-736, 95 S.Ct. 729]; Board of Regents v. Roth (1972) 408 U.S. 564, 576-577 [33 L.Ed.2d 548, 560-561, 92 S.Ct. 2701]; Boddie v. Connecticut (1971) 401 U.S. 371, 379 [28 L.Ed.2d 113, 119-120, 91 S.Ct. 780]; Sniadach v. Family Finance Corp. (1969) 395 U.S. 337, 339 [23 L.Ed.2d 349, 352, 89 S.Ct. 1820]; Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, 206-207 [124 Cal. Rptr. 14, 539 P.2d 774]; Beaudreau v. Superior Court (1975) 14 Cal.3d 448, 458 [121 Cal. Rptr. 585, 535 P.2d 713]; Randone v. Appellate Department (1971) 5 Cal.3d 536, 541 [96 Cal. Rptr. 709, 488 P.2d 13].)

By wrongfully rejecting the Applications on March 15, 2011 without providing a written determination and by making vague non-specific statements asserting that the Applications are incomplete and insufficient in the Determination and the City Attorney Letter, the City has violated SMA's procedural due process rights under federal and state law. Before the Don Dominguez Apartments are abated and its 200 residents lose their homes and access to affordable housing in the City, the ***Planning Commission*** must have the opportunity to review the situation regarding the project for the site and decide for itself how to proceed. ***SMA is entitled to a opportunity to be heard on the merits of its Applications.***

CONCLUSION.

For the foregoing reasons, SMA requests and demands that the Planning Commission (a) reverse the Determination; (b) accept the Applications; (c) promptly schedule a public hearing before the Planning Commission on the merits of the Application; and (d) grant the Applications. SMA further requests and demands that the Planning Commission hold a hearing on this appeal within 60 days, in accordance with Carson Municipal Code §9173.4(D).

Without immediate intervention by the Planning Commission, the Don Dominguez Apartments will be subject to abatement in less than seven months and its approximately 200 low to middle-income residents will be evicted for no good reason.

List of Exhibits:

A. Determination of the Planning Director in a Letter dated May 4, 2011

B. Letter dated May 2, 2011 from the City Attorney

EXHIBIT A

MAY 4, 2011 DETERMINATION OF INCOMPLETE AND INSUFFICIENT APPLICATIONS

[See Attached]

CITY OF CARSON

May 4, 2011

Mr. Stephen L. Joseph
350 Bay Street, Suite 100-328
San Francisco, CA 94133

Subject: Determination of Incomplete and Insufficient Applications

Dear Mr. Joseph,

Please find enclosed the applications and checks that were submitted on April 5, 2011, requesting the continued operation of the Don Dominguez Apartments located at 19702-19822 S. Main Street. As explained in the letter from City Attorney Wynder dated May 2, 2011, the applications are deemed incomplete and insufficient due to conflict with the 2003 Facility Closure Agreement. The applications are further deemed to be incomplete and insufficient due to the failure to submit all required content and information as prescribed in the city development application as set forth in Section 9173.1 of the Carson Municipal Code.

We recognize the importance of your request and have taken appropriate care to provide a full evaluation, including review of the prior requests during the General Plan Update in 2003 for consideration of a Mixed Use – Residential General Plan designation and the submittal of applications in 2003 for an appeal of the abatement date determination and an extension of nonconforming privilege. On August 12, 2003, the Planning Commission adopted Resolution No. 03-1953 which denied the appeal and conditionally granted the application for extension of nonconforming privilege. The Planning Commission did not concur with the request to allow continued operation of the apartments until the end of the lease on May 31, 2019 and determined San Miguel Apartments, Inc., would reasonably amortize its fixed investment by July 31, 2008. The Planning Commission generously provided an extended operating period to November 23, 2011, in recognition of the provision of affordable housing.

Based upon our analysis, there has been significant effort on behalf of the city to provide for the interests of all parties. Since there was no appeal of the Planning Commission decision, we believed that there was concurrence that the abatement provisions within the Facility Closure Agreement were acceptable to you and your client.

EXHIBIT NO. 2 -

The applications are hereby returned in their entirety. An appeal of this determination may be filed within 15 days as set forth in Section 9173.4 of the Carson Municipal Code.

Sincerely,

Sheri Repp Loadsman
Planning Officer

Attachments:

1. Letter from W. Wynder to K. Sher dated May 2, 2011
2. Carson Municipal Code Section 9173.4
3. Application for Extension of Nonconforming Privilege
4. Application for Zone Change and Conditional Use Permit
5. Don Dominguez Apartments Check Nos. 6602, 6603 and 6604

cc: Mr. Clifford Graves,
Interim City Manager
Mr. William Wynder,
City Attorney
Mr. Kevin Sher,
Greenberg Glusker

9173.4 Appeals.

A. Appellate Authority. Any decision made by the Director pursuant to this Chapter may be appealed to the Commission. Any decision made by the Commission pursuant to this Chapter may be appealed to the Council.

B. Filing of Appeal.

1. An appeal may be filed by any person, including any member of the City Council or the City Administrator.

2. An appeal shall be filed in writing within fifteen (15) days of the date of the Commission action, or in the case of an action by the Director, within fifteen (15) days of the date of the notice of decision.

3. The form and content of an appeal shall include:

a. The street address, if there is one, otherwise the legal description and location of the premises included in the action.
b. The administrative file number (case number) identifying the matter which is being appealed.
c. The specific matter being appealed.
d. A statement of the grounds for appeal or how there is error in the decision of the matter being appealed.

4. Unless otherwise provided, all appeals shall be filed with the City Clerk.

5. If the appeal is found to be deficient, the City Clerk shall deliver or mail to the appellant, by certified mail, a notice specifying the particulars in which the appeal is deficient. If such deficiency has not been corrected by the appellant within seven (7) days after such mailing of such a notice of deficiency by filing with the City Clerk a sufficient amendment to the appeal, the appeal shall be deemed to be withdrawn and the appeal fee shall be returned to the appellant.

C. Consideration and Decision.

1. Upon acceptance of the filing of an appeal, the City Clerk shall set the matter for public hearing before the appellate body, in the same manner as required for a Commission hearing of such matter. The City Clerk shall notify the Director who shall transmit to the appellate body a summary of the factual data and the record of action taken on the case.

2. Except as otherwise provided in this Chapter, in acting on an appeal the appellate body may:

a. Affirm the decision; or
b. Modify the decision; or
c. Refer the matter back to the body from which the appeal originated, with instructions; or
d. Reverse the decision.

3. Unless referred back to the body from which the appeal originated, the appellate decision shall be supported by written findings. (Ord. 78-458, § 1; Ord. 83-668, § 1; Ord. 84-701, § 1)

D. Failure to Act. The appellate body shall, within sixty (60) days of the filing of an appeal, act to either affirm, reverse, modify, continue or refer matter back.

ALESHIRE & WYNDER, LLP
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Sacramento
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Sacramento, CA 95814
P 916.449.9600 • F 916.449.9689

May 2, 2011

Kevin A. Sher
Greenberg Glusker
1900 Avenue of the Stars,
21st Floor
Los Angeles, California 90067

Re: San Miguel Apartments, Inc.

Dear Mr. Sher:

We are City Attorney for the City of Carson. Your letter dated April 28, 2011 has been forwarded to us for a response. Ms. Repp was on vacation in Utah when your letter arrived and so we first became aware of its contents yesterday. For the reasons that will follow, we are advising Ms. Repp to return the two development applications erroneously submitted by Mr. Stephen L. Joseph on behalf of San Miguel Apartments, Inc.

First, your letter is incorrect regarding our client's failure to timely consider the completeness of these applications. Mr. Joseph attempted to submit the applications on March 15, 2011 at the planning counter in city hall. The applications were rejected as incomplete as set forth in Section 9173.1 of the Carson Municipal Code and as not eligible for submittal due to the Facility Closure Agreement.

Mr. Joseph next attempted to submit the applications electronically, without tendering the required fees, on March 15, 2011. He was promptly notified by City staff on March 22, 2011 of the obligations of the Facility Closure Agreement, the inability of the city to accept electronic filings, and that the applications would not be accepted unaccompanied by a negotiable instrument for the payment of required fees.

With the concurrence of Ms. Repp, Mr. Joseph then submitted the applications, complete with the payment of the ***some*** of the required fees, on April 5, 2011. Accordingly, the thirty (30) day review period mentioned in your letter did not commence to run until on and after April 5, 2011. Excluding the date of proper applications submittal, and counting thirty (30) days thereafter, City staff have until May 5, 2011 to determine the completeness of these applications. Hence, contrary to your allegations, no violation of the Permit Streamlining Act has occurred.

Having said the foregoing, it is our legal opinion that both applications are prohibited by the express terms of the Facility Closure Agreement which is attached as Exhibit "A" to both applications. As you certainly know, Section 3 of that agreement provides: "SMA ***shall not apply to City for further extension of the abatement date*** for Don Dominguez

Apartments." Both of these applications are simply transparent efforts to avoid the requirements of this agreement and we feel confident that, if necessary, a Court will so find.

Accordingly, by May 5, 2011, City staff will be returning to Mr. Joseph ***both*** applications, and all checks for fees. Both applications are hereby deemed to be legally incomplete and insufficient, within the meaning of Government Code § 65943(b), because neither applications contains information that would constitute grounds for an exception to the affirmative covenant, signed in writing, by representative of SMA, that your client "***shall not apply to*** [the] ***City for*** [a] ***further extension*** of the abatement date."

Accordingly, the applicant shall be entitled to appeal this determination, as authorized in Government Code § 65943(c), and as set forth in Section 9173.4 of the Carson Municipal Code.

Very truly yours,

William W. Wynder

William W. Wynder
of ALESHIRE & WYNDER, LLP

cc: Mr. Clifford Graves,
Interim City Manager
Ms. Sheri Repp-Loadsman,
Planning Officer

CITY OF CARSON
Development Application

Development Services Group
Planning Division
701 East Carson Street
Carson, CA 90745
(310) 952-1761
http://www.ci.carson.ca.us

I. Property Information

Address and/or APN: 19702-19822 S. MAIN STREET (APN# 7336009006)

Existing Use: MULTIFAMILY APARTMENTS Existing Zoning: CG

II. Proposed Project

Describe Project and Potential Use (Attach additional sheets if necessary): SEE ATTACHED, "APPLICATION FOR EXTENSION OF NONCONFORMING PRIVILEGE UNDER SECTIONS 9172.25 OF THE CARSON MUNICIPAL CODE"

Is the Project in a Redevelopment Project Area? ☒ Yes ☐ No If so, which? IB

III. Applicant Information

Main Contact Person (Applicant/Representative)*:	STEPHEN L. JOSEPH, ESQ.		
Address:	350 BAY STREET, SUITE 100-328		
City/State/Zip Code:	SAN FRANCISCO, CA 94133		
Phone Number: (Day)	(415) 577-6660	(Mobile)	
Fax Number:	(415) 869-5380	E-Mail Address:	SLJOSEPH.LAW@EARTHLINK.NET

City Staff Use Only

Received By: _____ Date: 4/5/11

Amount Paid: _____ Case Planner: _____

Case No(s): OTHER 8-11 Related Case No(s): DAP 801-11, ZCC 165-11

Counter Map: ☐ Database: ☐

* Additional Contact/Representative: Kevin A. Sher, Esq.,
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Phone: (310) 785-6834, Facsimile: (310) 201-4449
Email: KSher@greenbergglusker.com

EXHIBIT NO. 3 -

Ground Lessee: SAN MIGUEL APARTMENTS, INC.	
Address: 3660 WILSHIRE BOULEVARD, #530	
City/State/Zip Code: LOS ANGELES, CA 90010	
Phone Number: (Day)	(Mobile)
Fax Number:	E-Mail Address:
Architect/Contractor:	
Address:	
City/State/Zip Code:	
Phone Number: (Day)	(Mobile)
Fax Number:	E-Mail Address:
Engineer/Licensed Surveyor:	
Address:	
City/State/Zip Code:	
Phone Number: (Day)	(Mobile)
Fax Number:	E-Mail Address:

IV. Type of Application

(Check all boxes that apply)

- ☐ Certificate of Compliance
- ☐ Conditional Use Permit*
- ☐ Conditional Use Permit for Shared Parking
- ☐ Development Agreement
- ☐ Environmental Assessment
- ☐ EIR
- ☒ Extension of Nonconforming Privilege*
- ☐ Extension of Time
- ☐ General Plan Amendment
- ☐ Interpretation
- ☐ Landscape Permit (> 2500 SF)
- ☐ Lot Line Adjustment
- ☐ Modification of Permit
- ☐ Ordinance Amendment
- ☐ Parcel Merger
- ☐ Relocation Impact Report
- ☐ Relocation Review
- ☐ Sign Program*
- ☐ Site Plan and Design Review*
- ☐ Specific Plan
- ☐ Tentative Tract/Parcel Map*
- ☐ Zone Change*
- ☐ Zoning Ordinance Amendment
- ☐ Variance*
- ☐ Appeal of P.C. Decision
- ☐ Appeal of Staff Decision
- ☐ *Other:* _____

* Additional materials required

V. Ground Lessee Signatures and Certification

As the Ground Lessee, I grant my consent to have the Applicant, listed above, to take responsibility in processing the proposed project described above. This application and all the required materials are certified to be true and correct to the best of my knowledge and belief.

Ground Lessee(s) Signature — Date: 3-14-11

Ground Lessee(s) (Please print)

22

APPLICATION FOR EXTENSION OF NONCONFORMING PRIVILEGE UNDER SECTION 9172.25 OF THE CARSON MUNICIPAL CODE

San Miguel Apartments, Inc. ("SMA") hereby applies for an extension of nonconforming privilege under Section 9172.25 of the Carson Municipal Code (the "Code") for the real property located at 19702-19822 South Main Street (the "Property") in the City of Carson (the "City"), commonly known as the "Don Dominguez Apartments." The Property is improved with a multifamily apartment complex with 68 units, housing approximately 200 City residents of low to moderate income. The Property is a legal nonconforming use within the Commercial General Zone and is subject to abatement on November 23, 2011. Without immediate action by the Planning Commission, the apartment complex will be demolished in fewer than 8 months, and these 200 residents will lose their homes and be unable to find affordable housing in the City as no such alternative housing exists for their income group. SMA therefore respectfully requests that the Planning Commission extend the Property's nonconforming privilege to such time as the City determines that construction of a conforming nonresidential use on the Property will commence pursuant to a building permit, but in no event later than May 31, 2019 when the Ground Lease (as defined below) for the Property expires.

Background

SMA is the ground lessee, and Watson Partners, L.P. ("Watson") is the ground lessor, under a ground lease of the Property that commenced in 1964 and expires on May 31, 2019 (the "Ground Lease"). Under the Ground Lease, SMA is prohibited from any use of the Property other than an apartment complex. The Don Dominguez Apartments have been located on the Property, and have provided much-needed affordable housing for the City's residents, for over 40 years. SMA purchased the Don Dominguez Apartments in 1998 and has expended significant amounts of money for its acquisition and extensive renovations and maintenance.

In 1964 when the Ground Lease was executed, the Property was located in a residential zone in unincorporated Los Angeles County where multifamily apartment uses like the Don Dominguez Apartments were permitted uses. In 1968, the City incorporated, and the Property became part of the City. In 1982, the City rezoned the Property to the CR Zone (Commercial, Regional Center), rending the use of the Property for a residential apartment building a nonconforming use under the Code. The City later rezoned the Property to the CG Zone (Commercial, General), which it remains today, leaving the use of the Property as a nonconforming residential use in a commercial zone.

On April 3, 2003, the City's Development Services General Manager (the "Manager") determined that the legal nonconforming status of the Property had terminated and had been subject to abatement since April 15, 2002. SMA appealed the Manager's determination and argued that the abatement date under the Code should be November 23, 2011. SMA also applied for an extension of the nonconforming privilege to May 31, 2019, when the Ground Lease terminates. In its August 12, 2003 Staff Report (the "Report"), the City's Planning Staff recommended that the Planning Commission allow the Don Dominguez Apartments to continue operation to ensure that SMA achieves a reasonable amortization of its fixed investment in the Property. The Planning Commission conditionally granted SMA's application for extension of

the nonconforming privilege by adopting Planning Commission Resolution No. 03-1953 (the "Resolution"). The Resolution provided that abatement of the apartment use would occur between July 31, 2008 and November 23, 2011, based on whether it was likely that construction for a conforming nonresidential use of the Property would commence pursuant to a building permit within a six-month period following the abatement. The Resolution required the parties to sign a Facility Closure Agreement dated effective as of August 28, 2003 (the "Agreement"). *The City never delivered a signed copy of the Agreement to SMA.* The (unsigned) Agreement provides in part that "SMA shall not apply to the City for further extension of the abatement date for Don Dominguez Apartments." (*Agreement, Paragraph 3.*) For your reference, copies of the Report, Resolution and (unsigned) Agreement are attached to this Application.

The City never delivered an Abatement Notification Letter under the (unsigned) Agreement because there was no planned conforming nonresidential use for the Property. Instead, acting in accordance with the (unsigned) Agreement, on or before November 23, 2010, SMA issued to its tenants a Facility Closure Notification Letter providing for a November 23, 2011 abatement date.

Although the Planning Commission stated in the Report (*Resolution, Paragraph 3. H.*) that SMA's investment in the Don Dominguez Apartments would be sufficiently amortized by July 31, 2008, this has not been the case. As a result of the nationwide economic downturn and its impact on rents, SMA has not been able to fully amortize its investment in the Don Dominguez Apartments.

The tenants have signed an "Emergency Petition to the City of Carson by the Residents of the Don Dominguez Apartments" requesting that the City Council and Planning Commission hold emergency hearings as soon as possible to prevent the abatement. A copy of the petition is attached.

The abatement date is now less than 8 months away. The Property's approximately 200 residents are in imminent danger of losing their homes. These residents are primarily of low to middle income who will have no affordable housing options in the City once the Don Dominguez Apartments are demolished. As of the date of this Application, there is still no replacement project for the Property in the foreseeable future. Moreover, as a result of the pervasive economic recession from 2007 to present, SMA has been unable to achieve a reasonable amortization of its investment in the Property. Demolishing an affordable apartment complex when there is no replacement project for a conforming use benefits no one. Continuing the long-standing apartment use at the Property until a conforming project is imminent or until the Ground Lease expires, would allow the Don Dominguez Apartments to continue to meet the housing needs of its tenants and the City.

Analysis

I. Pursuant To Section 9172.25 Of The Code, The Planning Commission Should Extend The Property's Nonconforming Privilege.

Because the balancing of interests weigh in favor of preserving the apartment use and since no conforming nonresidential construction project for the Property is imminent, SMA requests that the abatement period for the Property's nonconforming privilege be extended to May 31, 2019, when the Ground Lease for the Property expires, subject to the City's determination prior to such date that construction for a conforming use of the Property would commence pursuant to a building permit. An extension of the outside date for abatement of the Property would be best accomplished by an amendment to the (unsigned) Agreement to provide for the adjusted outside date.

A. Application To Full Planning Commission For Waiver Of Prohibition On Applying For Extension Of Abatement Date

Because the Planning Commission has the right to waive a contractual condition in its favor, SMA's covenant in the (unsigned) Agreement not to "apply to the City for further extension of the abatement date for Don Dominguez Apartments" is not a bar to this Application. (*See (unsigned) Agreement, Paragraph 3.*) A contractual condition may be waived by the benefitting party. See, *Witkins, Summary of California Law, 10th Ed., Contracts Sec. 823; Sessions v. Southern Calif. Edison Co., 47 Cal. App. 2d 611 (1941)*. The Planning Commission has the contractual right and moral obligation to waive this covenant. A waiver of this prohibition on applying for an extension is in keeping with the (unsigned) Agreement, which preserved a viable nonconforming use until there was (i) sufficient amortization of SMA's investment in the Property, and (ii) a conforming construction project for the Property in position to replace the Don Dominguez Apartments. The Planning Commission recognized in 2003 when it passed the Resolution, and should recognize now, that there is no benefit in vacant land.

B. SMA Has Not Achieved A Reasonable Amortization of its Investment in the Property

Because SMA has yet to achieve a reasonable amortization of its fixed investment in the Property, the Planning Commission must extend the termination of the nonconforming privilege for the Property. Under Section 9172.25 of the Code, after a hearing, the Planning Commission must approve SMA's request for extension if the Planning Commission finds that the abatement period "is insufficient for the reasonable amortization of the fixed investment in such nonconformity." The Resolution states that SMA spent in excess of $1,000,000 on the acquisition and renovation of the Don Dominguez Apartments. (*Resolution, Paragraph 3. H.*) The City previously determined that this investment could be reasonably amortized by July 31, 2008. (*Id.*) However, when the Planning Commission determined the amortization period for the Property in 2003, neither the City nor anyone else could have anticipated the nationwide economic recession and its impact on rents. As a result, SMA requires further time to sufficiently amortize its investment in the Don Dominguez Apartments.

C. The Narrow Test For Reasonable Amortization Under The Code Violates Due Process Under California Law.

Section 9172.25(D) of the Code *unlawfully* restricts the Planning Commission's discretion in approving an extension of the Property's nonconforming privilege. Requiring the Planning Commission to disapprove an extension based on the sole criteria of whether the abatement period is sufficient for the "reasonable amortization of the fixed investment" does not meet the requirements of due process. Under California law, due process requires a fact-specific balancing of interests to determine the constitutionality of terminating a legal nonconforming use. (See, e.g., *City of Salinas v. Ryan Outdoor Advertising, Inc.*, 189 Cal. App. 3d 416, 424 (1987): "the reasonableness of the amortization period depends on the interplay of many factors, including the depreciated value of the structures to be removed, their remaining useful life, and the harm to the public if they are left standing.") Similarly, whether the termination of the nonconformity is an unconstitutional taking "depends upon the relative importance to be given the public gain and the private loss." (*City of Los Angeles v. Gage*, 127 Cal. App. 2d 442, 460 (1954).)

In balancing these considerations, the Planning Commission must weigh the harms versus the benefits of continuing or demolishing the Don Dominguez Apartments. (*Id.*) If the Don Dominguez Apartments remain in operation until a conforming project is permit-ready, or the Ground Lease expires, there would not be any harm to the City or its residents. If the Don Dominguez Apartments are prematurely demolished, the City would derive no public benefit from the resulting vacant lot. However, the real harm would be needlessly destroying the homes of 200 low to middle income residents who have no other options for affordable housing in the City. If the Don Dominguez Apartments are demolished on November 23, 2011 without a conforming nonresidential project ready to replace it, the resulting vacant parcel will be a blight on the community, will leave many of the residents homeless, and will not produce any revenue. Because these harms vastly outweigh any public gain from the destruction of the Don Dominguez Apartments, a decision not to extend the nonconforming privilege would be an unconstitutional taking in violation of SMA's due process rights.

D. Requiring Destruction Of The Apartments Violates The City's Housing Element And California Law.

The California Legislature has acknowledged that the "lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California." (*Gov't Code Section 65589.5.*) To ensure housing for all income levels, the City is required to adopt an adequate housing element as part of its general plan and comply with the housing element in all the City's actions. (*Gov't Code Sections 65302 and 65587.*) The purpose of the housing element is to plan and make adequate provision for the housing needs of all income levels. (*Gov't Code Section 65583.*) By "adequate provision" the statute means the housing element must make adequate plans for low and very-low income households as well as middle and upper income households. The core of the housing element obligation is the requirement to identify "adequate sites." It means that the local government must zone land at sufficient densities and served by adequate infrastructure to facilitate the development of housing to meet

even the lowest income levels. To preserve and identify these "adequate sites," the fundamental goals of the City's housing element include:

Goal 1:	Improvement and maintenance of existing housing stock while preserving affordability
Goal 3:	The City shall seek to provide an adequate supply of housing for all economic segments of the City
Goal 4:	Protection of the existing supply of affordable housing.

According to the City's housing element, these goals shall "serve as a guide to the City officials in daily decision making." (*Housing Element Update, p. 75.*) If a court determines that an action taken by the City does not comply with its housing element, the City must bring its action into compliance within sixty days unless it can make a showing of undue hardship. (*Gov't Code Section 65587(c).*)

By requiring the demolition of the Don Dominguez Apartments, the City is acting in violation of the Government Code in that it is removing the last remaining affordable housing in the City for the income group represented by the tenants of the Don Dominguez Apartments. We have thoroughly researched the availability of alternative apartments for these tenants. We have determined that there are none in the City. If the continuation of the Don Dominquez Apartments is not permitted in compliance with City's housing element, SMA and/or its tenants will have not choice but to litigate.

E. Construction Of An Alternative Nonresidential Use Of The Property is Not Imminent

To SMA's knowledge, no permit applications, site plans, or other documents have been filed with the City that would allow a conforming nonresidential project to commence construction on the Property in the foreseeable future. Under the (unsigned) Agreement, if the City had determined that a nonresidential construction project for the Property was permit-ready before November 23, 2010, the City could have issued an Abatement Notification Letter. (*See (unsigned) Agreement, Paragraph 1.A.*) Because the City never issued an Abatement Notification Letter, the abatement date became November 23, 2011 by default. (*See unsigned Agreement, Paragraph 1.D.*) If the Don Dominquez Apartments is demolished on November 23, 2011, there will not be a nonresidential project ready to replace it. It will take years for land use, environmental approvals and building permits to be issued before construction of a replacement project could commence. Accordingly, the abatement period for the Property's nonconforming privilege should be extended until the City determines that a conforming project is ready for construction on the Property, but not beyond the May 31, 2019 expiration of the Ground Lease.

F. Extending The Termination Of The Nonconforming Privilege Is Not Subject To Environmental Review Under The California Environmental Quality Act ("CEQA").

Because extending the termination of the nonconforming privilege does not require any changes to the Property but merely preserves the long-standing existing use, the project is categorically exempt from CEQA review under 14 CCR Sec. 15301(e) and 15303. There are no significant environmental impacts as a result of extending the termination of the Don Dominquez Apartments.

Request And Demand For Expedited Hearing

Because the fate of the Don Dominguez Apartments' 200 residents is at stake and time is of the essence, SMA requests and demands that the Planning Commission schedule a public hearing on this matter as soon as possible. The Planning Commission is required to hold a public hearing for SMA's extension of nonconforming privilege applications under Section 9172.25(B) of the Code. Planning Staff is entirely familiar with the Property and the Don Dominguez Apartments. Since there will be no changes in the existing apartment use or any physical changes to the Property in connection with this application, no further documentation other than that provided should be reasonably required. Any unreasonable requests, conditions or delays in holding a public hearing will violate SMA's due process rights.

Conclusion

For all of the reasons set forth above, SMA respectfully requests that the Planning Commission extend the Property's nonconforming privilege to such time as the City determines that construction of a conforming project on the Property will commence pursuant to a building permit, but in no event later than May 31, 2019 when the Ground Lease for the Property expires.

PLEASE NOTE THAT THIS APPLICATION FOR EXTENSION OF ABATEMENT PERIOD IS FILED CONCURRENTLY WITH A SEPARATE APPLICATION FOR ZONE CHANGE AND CONDITIONAL USE PERMIT FOR THE PROPERTY. THE APPLICATIONS ARE FILED IN THE ALTERNATIVE TO PROVIDE THE PLANNING COMMISSION WITH SEPARATE OPTIONS FOR ENABLING THE CONTINUATION OF THE DON DOMINGUEZ APARTMENTS.

CITY OF CARSON
Development Application

Development Services Group
Planning Division
701 East Carson Street
Carson, CA 90745
(310) 952-1761
http://www.ci.carson.ca.us

I. Property Information

Address and/or APN: 19702-19822 S. MAIN STREET (APN# 7336009006)

Existing Use: MULTIFAMILY APARTMENTS Existing Zoning: CG

II. Proposed Project

Describe Project and Potential Use (Attach additional sheets if necessary): SEE ATTACHED, "APPLICATION FOR ZONE CHANGE AND CONDITIONAL USE PERMIT UNDER SECTIONS 9172.13 AND 9172.21 OF THE CARSON MUNICIPAL CODE"

Is the Project in a Redevelopment Project Area? [X] Yes [ ] No If so, which? 1B

III. Applicant Information

Main Contact Person (Applicant/Representative)*:	STEPHEN L. JOSEPH, ESQ.		
Address:	350 BAY STREET, SUITE 100-328		
City/State/Zip Code:	SAN FRANCISCO, CA 94133		
Phone Number: (Day)	(415) 577-6660	(Mobile)	
Fax Number:	(415) 869-5380	E-Mail Address:	SLJOSEPH.LAW@EARTHLINK.NET

City Staff Use Only

Received By: _____ **Date:** _____

Amount Paid: _____ **Case Planner:** _____

Case No(s): _____ **Related Case No(s):** _____

Counter Map: ☐ **Database:** ☐

* Additional Contact/Representative: Kevin A. Sher, Esq.,
Greenberg Glusker Fields Claman & Machtinger LLP
1900 Avenue of the Stars, 21st Floor, Los Angeles, CA 90067
Phone: (310) 785-6834, Facsimile: (310) 201-4449
Email: KSher@greenbergglusker.com

EXHIBIT NO. 4 -

Ground Lessee: SAN MIGUEL APARTMENTS, INC.	
Address: 3660 WILSHIRE BOULEVARD, #530	
City/State/Zip Code: LOS ANGELES, CA 90010	
Phone Number: (Day)	(Mobile)
Fax Number:	E-Mail Address:
Architect/Contractor:	
Address:	
City/State/Zip Code:	
Phone Number: (Day)	(Mobile)
Fax Number:	E-Mail Address:
Engineer/Licensed Surveyor:	
Address:	
City/State/Zip Code:	
Phone Number: (Day)	(Mobile)
Fax Number:	E-Mail Address:

IV. Type of Application

(Check all boxes that apply)

- ☐ Certificate of Compliance
- ☒ Conditional Use Permit*
- ☐ Conditional Use Permit for Shared Parking
- ☐ Development Agreement
- ☐ Environmental Assessment
- ☐ EIR
- ☐ Extension of Nonconforming Privilege*
- ☐ Extension of Time
- ☐ General Plan Amendment
- ☐ Interpretation
- ☐ Landscape Permit (> 2500 SF)
- ☐ Lot Line Adjustment
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- ☐ Relocation Impact Report
- ☐ Relocation Review
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- ☒ Zone Change*
- ☐ Zoning Ordinance Amendment
- ☐ Variance*
- ☐ Appeal of P.C. Decision
- ☐ Appeal of Staff Decision
- ☐ *Other:* _____

* Additional materials required

V. Ground Lessee Signatures and Certification

As the Ground Lessee, I grant my consent to have the Applicant, listed above, to take responsibility in processing the proposed project described above. This application and all the required materials are certified to be true and correct to the best of my knowledge and belief.

SEE ATTACHED

Ground Lessee(s) Signature

3-14-11

Date

GH. AZIZ (President)

Ground Lessee(s) (Please print)

30

APPLICATION FOR ZONE CHANGE AND CONDITIONAL USE PERMIT UNDER SECTIONS 9172.13 AND 9172.21 OF THE CARSON MUNICIPAL CODE

San Miguel Apartments, Inc. ("SMA") hereby applies for a zone change and a conditional use permit pursuant to Sections 9172.13 and 9172.21 of the Carson Municipal Code (the "Code") for the real property located at 19702-19822 South Main Street (the "Property") in the City of Carson (the "City"), commonly known as the "Don Dominguez Apartments." The Property is improved with a multifamily apartment complex with 68 units, housing approximately 200 City residents of low to moderate income. The Property is a legal nonconforming use within the Commercial General Zone and is subject to abatement on November 23, 2011. Without immediate action by the Planning Commission, the apartment complex will be demolished in fewer than 8 months, and these 200 residents will lose their homes and be unable to find affordable housing in the City as no such alternative housing exists for their income group. SMA therefore respectfully requests that the Planning Commission permit the continuation of the apartment complex use at the Property until the expiration of the Ground Lease (as defined below) on May 31, 2019, by:

(1) Adding the Property to the Mixed-Use Residential ("MUR") Overlay District through a zone change under Section 9172.13 of the Code; and

(2) Issuing a Conditional Use Permit ("CUP") for the multifamily apartment use of the Property under Section 9172.21 of the Code.

Background

SMA is the ground lessee, and Watson Partners, L.P. ("Watson") is the ground lessor, under a ground lease of the Property that commenced in 1964 and expires on May 31, 2019 (the "Ground Lease"). The Don Dominguez Apartments have been located on the Property, and have provided much-needed housing for the City's residents, for over 40 years. Under the Ground Lease, SMA is prohibited from any use of the Property other than an apartment house.

The Don Dominguez Apartments consist of approximately 47,580 square feet with 68 apartments units located on Main Street close to the 405 Freeway. The Don Dominquez Apartments are surrounded by multiple and varied uses. To the north and east are the Dominguez Golf Course and Practice Center and the Victoria Golf Course. To the southwest is the development site for the Boulevards at South Bay, which is governed by the Carson Marketplace Specific Plan. The Boulevards at South Bay will be a 168-acre mixed-use retail, commercial and residential development that will include the largest shopping center in Los Angeles County, a 16-screen cinema and over 1,500 for-sale and for-rent residential units. (*See Carson Marketplace Specific Plan dated February 8, 2006; and* www.boulevardsatsouthbay.com.) To the west are light industrial uses along Main Street. There are other residential uses to the south of the Property. The Land Use Element of the Updated General Plan for the City of Carson anticipates that the Property and surrounding areas will be rezoned Mixed-Use Business Park which is "intended to provide harmonious transition to residential development and neighborhoods." (General Plan, LU-11.)

In 1964 when the Ground Lease was executed, the Property was located in a residential zone in unincorporated Los Angeles County where multifamily apartment uses like the Don Dominguez Apartments were permitted uses. In 1968, the City incorporated, and the Property became part of the City. In 1982, the City rezoned the Property to the CR Zone (Commercial, Regional Center), rending the use of the Property for a residential apartment building a nonconforming use under the Code. The City later rezoned the Property to the CG Zone (Commercial, General), which it remains today, leaving the use of the Property as a nonconforming residential use in a commercial zone.

On April 3, 2003, the City's Development Services General Manager (the "Manager") determined that the legal nonconforming status of the Property had terminated and had been subject to abatement since April 15, 2002. SMA appealed the Manager's determination and argued that the abatement date under the Code should be November 23, 2011. SMA also applied for an extension of the nonconforming privilege to May 31, 2019, when the Ground Lease terminates. In its August 12, 2003 Staff Report (the "Report"), the City's Planning Staff recommended that the Planning Commission allow the Don Dominguez Apartments to continue operation to ensure that SMA achieves a reasonable amortization of its fixed investment in the Property. The Planning Commission conditionally granted SMA's application for extension of the nonconforming privilege by adopting Planning Commission Resolution No. 03-1953 (the "Resolution"). The Resolution provided that abatement would occur between July 31, 2008 and November 23, 2011, based on whether it was likely that construction for a conforming nonresidential use of the Property would commence pursuant to a building permit within a six-month period. The Resolution required the parties to sign a Facility Closure Agreement dated effective as of August 28, 2003 (the "Agreement"). *The City never delivered a signed copy of the Agreement to SMA.* For your reference, copies of the Report, Resolution and (unsigned) Agreement are attached to this Application.

The City never delivered an Abatement Notification Letter under the (unsigned) Agreement because there was no planned conforming nonresidential use for the Property. Instead, acting in accordance with the (unsigned) Agreement, on or before November 23, 2010, SMA issued to its tenants a Facility Closure Notification Letter providing for a November 23, 2011 abatement date.

The tenants have signed an "Emergency Petition to the City of Carson by the Residents of the Don Dominguez Apartments" requesting that the City Council and Planning Commission hold emergency hearings as soon as possible to prevent the abatement. A copy of the petition is attached.

The abatement date is now less than 8 months away. The Property's approximately 200 residents are in imminent danger of losing their homes. These residents are primarily of low to middle income who will have no affordable housing options in the City once the Don Dominguez Apartments are demolished. As of the date of this Application, there is still no replacement project for the Property in the foreseeable future. Demolishing an affordable apartment complex when there is no replacement project for a conforming use benefits no one. Alternatively, continuing the long-standing apartment use at the Property until a replacement project is imminent or until the Ground Lease expires, would allow the

Don Dominguez Apartments to continue to meet the housing needs of its tenants and the City.

Analysis

I. Pursuant To Sections 9172.13 And 9172.21 Of The Code, The Planning Commission Should Allow The Continued Operation Of The Don Dominquez Apartments On The Property By Granting SMA's Application For Zone Change And Conditional Use Permit.

As residential apartments situated in the Commercial General Zone, the Don Dominguez Apartments are nonconforming and subject to abatement on November 23, 2011, as more particularly described in the terms of the Resolution and the (unsigned) Agreement. Multifamily residential uses are neither permitted nor conditionally permitted uses in the Commercial General Zone. (*See Section 9131.1 of the Code.*) However, within a MUR Overlay District, multifamily residential uses are conditionally permitted in the Commercial General Zone. (*Id.*) Accordingly, in order to continue the existing multifamily apartment use on the Property and provide continued housing for its low to middle income tenants, SMA requests that the Planning Commission grant a zone change to add the Property to the MUR Overlay District and a CUP for the continued multifamily residential use of the Property.

To preserve the interests of the landowner, SMA also requests that the CUP be conditioned on expiring no later than May 31, 2019 when the Ground Lease terminates, or earlier if the City's determines that construction for a conforming nonresidential use of the Property will commence pursuant to a building permit. By imposing this condition on the CUP, SMA is acting consistently with the Ground Lease, which requires SMA to operate an apartment house complex on the Property and prohibits any other use. Therefore, in enforcing this material term of the Ground Lease, SMA is acting within the scope of its authority in filing these land use applications.

A. Zone Change to Mixed-Used Residential ("MUR") Overlay District

SMA requests that the Property be added to the MUR Overlay District through the zone change process under Section 9172.13 of the Code. The Property's existing zoning is CG (Commercial General). The MUR Overlay District may be combined with any of the zoning districts in the Code. (See Section 9113.2 of the Code.)

1. The Property Location and Use are Suited for the MUR Overlay

The MUR Overlay District is uniquely suited to the Don Dominguez Apartments' high-density, affordable residential use. Section 9113.2 of the Code provides that the MUR Overlay District "is created to provide for pedestrian-oriented, mixed-use (commercial/residential) development and high density residential which may include market rate, affordable or senior housing, within designated areas in commercial zones." The approximately 200 residents of the Don Dominguez Apartments would contribute to a pedestrian-oriented environment, especially since the Property is in close proximity to the Carson Marketplace Specific Plan area where the Boulevards at South Bay will be developed. Other high-density residential will be located

nearby at the Boulevards at South Bay where it is anticipated that there will be over 1,500 for-sale and for-rent residential units. (*See Carson Marketplace Specific Plan dated February 8, 2006; and* www.boulevardsatsouthbay.com.) Therefore, continuation of the residential use of the Don Dominguez Apartments until May 31, 2019 is consistent with the proposed residential uses in the vicinity of the Property.

2. The Addition Of The Property To The MUR Overlay District Is Consistent With The General Plan

The General Plan repeatedly emphasizes the need for a diversity of housing types for all income levels. The Don Dominguez Apartments are uniquely situated to provide housing for an economic demographic of City residents who will not otherwise be able to afford housing within the City as no alternative housing exists for their income group. The General Plan also highlights the need for high-density residential uses close to commercial centers to encourage a pedestrian-oriented environment. The Don Dominguez Apartments will be located within walking distance to the Boulevards at South Bay which will offer entertainment, restaurants, retail and other commercial vendors. Because the addition of the Property to the MUR Overlay District will allow (in conjunction with the CUP discussed in Part B below) the continued operation of the Don Dominguez Apartments on the Property, this zone change will serve the goals of housing diversity, housing affordability and pedestrian-oriented environments articulated throughout the General Plan.

The following are a few examples of the goals, objectives and implementation measures articulated in the Land Use Element of the General Plan that require high-density, affordable residential uses like the Don Dominguez Apartments:

LU-6.2: Achieve a sustainable land use balance through provision of incentives for desired uses; coordination of land use and circulation patterns; and promotion of a variety of housing types and affordability (emphasis added).

LU-8.3: Locate higher density residential uses in proximity to commercial centers in order to encourage pedestrian traffic and provide a consumer base for commercial uses.

LU-15.1: Encourage the location of housing, jobs, shopping and services and other activities within easy walking distance of each other.

LU-15.2: Maintain a diversity of housing types to enable citizens from a wide range of economic levels and age groups to live in Carson (emphasis added).

LU-IM-6.4: Promote a variety of housing types and affordability to meets the development goals of the Housing Element and provided needed housing opportunities to support employment growth (also reiterated as LU-IM-15.2).

Rezoning the Property to the MUR Overlay District is consistent with the above goals and objectives in the General Plan including ensuring diversity of housing, affordability of housing, and the location of high-density residential in close proximity to commercial centers like the upcoming Boulevards at South Bay development. Because these goals and objectives are served by the rezoning, the addition of the Property to the MUR Overlay District is consistent with the General Plan.

B. All Required Findings Are Satisfied For Granting A Conditional Use Permit For Residential Multifamily Apartment Use On The Property

Within a MUR Overlay District, multifamily residential uses like the Don Dominguez Apartments are conditionally permitted in the Commercial General Zone. (See Section 9131.1 of the Code.) Accordingly, in conjunction with the Planning Commission's approval of the zone change to an MUR Overlay District (as described in Part A above), SMA requests that the Planning Commission grant the Don Dominguez Apartments a CUP to continue operation of the existing multifamily apartment use on the Property. Under Section 9172.21(D) of the Code, the Planning Commission should grant a CUP to the Don Dominguez Apartments because all the required findings are satisfied:

1. The Residential Apartment Use Of The Property Is Consistent With The General Plan

As set forth in Part A.2 above, the continued operation of the Don Dominguez Apartments on the Property is consistent with the goals and objectives repeatedly stated throughout the General Plan of ensuring a diversity of housing for all economic demographics and locating high-density residential use in close proximity to commercial centers like the upcoming Boulevards at South Bay development.

2. The Site Is Adequate In Size, Shape, Topography, Location and Utilities To Accommodate The Continuance Of The Apartment Complex Use

The Don Dominguez Apartments have been located at the Property for more than 40 years. SMA has no knowledge of there ever being an issue with the size, shape, topography, location or utilities in connection with its apartment use. The site is approximately 204,553 square feet, not irregularly-shaped, and relatively flat.

3. There Is, And There Will Be, Adequate Street Access And Traffic Capacity

The Property is in close proximity to major thoroughfares, such as the 405 Freeway and the 110 Freeway, and fronts on Main Street. The circulation and street parking on the adjacent public streets will not be adversely impacted since the existing apartment use at the site will not intensify. SMA has no knowledge of there ever being an issue with adequate street access or traffic capacity throughout the apartment's history. If there were such an issue, then the City would not have been able to approve the Carson Marketplace Specific Plan where the

Boulevards at South Bay will add more vehicle trips and traffic to the immediate vicinity of the Property.

4. The Proposed Use And Development Will Be Compatible With The Intended Character Of The Area

The Property is compatible with existing and anticipated development in the vicinity, including, without limitation the Boulevard at South Bay development, because the Don Dominguez Apartments are high-density residential uses in close proximity to commercial centers, fostering a pedestrian-oriented environment.

Based on the above finding required by Section 9172.21 of the Code, the Planning Commission should grant the CUP for the Property to permit the continued operation of the Don Dominguez Apartments within the MUR Overlay District and the Commercial General Zone. However, to preserve the interests of the landowner, the CUP should be subject to a condition that it shall expire no later than May 31, 2019 when the Ground Lease terminates, or earlier if the City's determines that construction for a conforming use of the Property will commence pursuant to a building permit.

C. Requiring Destruction Of The Apartments Violates The City's Housing Element And California Law

The California Legislature has acknowledged that the "lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California." (*Gov't Code Section 65589.5.*) To ensure housing for all income levels, the City is required to adopt an adequate housing element as part of its general plan and comply with the housing element in all the City's actions. (*Gov't Code Sections 65302 and 65587.*) The purpose of the housing element is to plan and make adequate provision for the housing needs of all income levels. (*Gov't Code Section 65583.*) By "adequate provision" the statute means the housing element must make adequate plans for low and very low-income households as well as middle and upper income households. The core of the housing element obligation is the requirement to identify "adequate sites." It means that the local government must zone land at sufficient densities and served by adequate infrastructure to facilitate the development of housing to meet even the lowest income levels. To preserve and identify these "adequate sites," the fundamental goals of the City's housing element include:

Goal 1: Improvement and maintenance of existing housing stock while preserving affordability

Goal 3: The City shall seek to provide an adequate supply of housing for all economic segments of the City

Goal 4: Protection of the existing supply of affordable housing.

According to the City's housing element, these goals shall "serve as a guide to the City officials in daily decision making." (*Housing Element Update* p. 75.) If a court determines that an action

taken by the City does not comply with its housing element, the City must bring its action into compliance within sixty days unless it can make a showing of undue hardship. (*Gov't Code Section 65587(c).*)

By requiring the demolition of the Don Dominguez Apartments, the City is acting in violation of the Government Code in that it is removing the last remaining affordable housing in the City for the income group represented by the tenants of the Don Dominguez Apartments. We have thoroughly researched the availability of alternative apartments for these tenants. We have determined that there are none in the City. If the continuation of the Don Dominquez Apartments is not permitted in compliance with City's housing element, SMA and/or its tenants will have not choice but to litigate.

D. Granting The Zone Change And CUP For The Property Is Not Subject to Environmental Review under the California Environmental Quality Act ("CEQA")

Because neither adding the Property to the MUR Overlay District nor issuing the CUP for the multifamily apartment use involves any changes to the Property, but instead merely preserves the long-standing existing use, the project is categorically exempt from CEQA review under 14 CCR Sec. 15301(e) and 15303. There are no significant environmental impacts as a result of adding the Property to the MUR Overlay District or issuing the CUP.

Request And Demand For Expedited Hearing

Because the fate of the Don Dominguez Apartments' 200 residents is at stake and time is of the essence, SMA requests and demands that the Planning Commission schedule a public hearing on this matter as soon as possible. The Planning Commission is required to hold a public hearing for the zone change and CUP applications under Sections 9172.13(B) and 9172.21(B), respectively. Planning Staff is entirely familiar with the Property and the Don Dominguez Apartments. Since there will be no change in the existing apartment use or physical changes to the Property in connection with these applications, no further documentation other than that provided should be reasonably required. Any unreasonable requests, conditions or delays in a public hearing will violate SMA's due process rights.

Conclusion

For all of the reasons set forth above, SMA respectfully requests that the Planning Commission grant the zone change and the conditional use permit for the Property to allow the continued operation of the Don Dominquez Apartments on the Property. The CUP should be subject to a condition that it expire no later than May 31, 2019 when the Ground Lease terminates, or earlier if the City's determines that construction for a conforming use of the Property will commence pursuant to a building permit.

PLEASE NOTE THAT THIS APPLICATION FOR ZONE CHANGE AND CONDITIONAL USE PERMIT IS FILED CONCURRENTLY WITH A SEPARATE APPLICATION FOR EXTENSION OF ABATEMENT PERIOD FOR THE PROPERTY. THE APPLICATIONS ARE FILED IN THE ALTERNATIVE TO PROVIDE THE PLANNING COMMISSION WITH SEPARATE OPTIONS FOR ENABLING THE CONTINUATION OF THE DON DOMINGUEZ APARTMENTS.

City of Carson Planning Commission Resolution No. 03-1953

CITY OF CARSON

PLANNING COMMISSION

RESOLUTION NO. 03-1953

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON DENYING AN APPEAL OF THE DEVELOPMENT SERVICES GENERAL MANAGER'S ABATEMENT DATE DETERMINATION FOR DON DOMINGUEZ APARTMENTS AND CONDITIONALLY GRANTING AN EXTENSION OF NONCONFORMING PRIVILEGE FOR SUCH FACILITY

THE PLANNING COMMISSION OF THE CITY OF CARSON, CALIFORNIA HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. San Miguel Apartments, Inc. ("SMA" herein) duly filed an administrative appeal to obtain review of the abatement date determination made by the Development Services General Manager ("General Manager" herein) for the 64-unit apartment complex ("Don Dominguez Apartments" herein) at the real property commonly known as 19702-19822 S. Main Street, Carson, California ("the subject property" herein). SMA also duly filed an application for extension of nonconforming privilege for Don Dominguez Apartments.

Section 2. The Planning Commission conducted a duly noticed public hearing on SMA's appeal and extension application on June 10 and August 12, 2003. During such hearing, the Planning Commission received and considered written and oral evidence.

Section 3. The Planning Commission makes the following findings based on evidence in the record:

A. SMA leases the subject property from Watson Land Company ("Watson Land" herein) and operates Don Dominguez Apartments thereon. The lease was executed in 1964 by predecessors in interest of Watson Land and SMA, and has a 55-year term ("the Watson Land/SMA Ground Lease" herein).

B. The subject property is zoned CR (Commercial, Regional Center) under the Zoning Ordinance. Don Dominguez Apartments was lawfully established on the subject property prior to the City's incorporation, and became a nonconforming use on April 15, 1982 when Ordinance No. 82-590 became effective.

C. Carson Municipal Code Section 9182.22 sets the termination date for lawfully established nonconforming uses. This provision mandates that the allowable life for a nonconforming use is determined based on either: (1) when the use

became nonconforming; or (2) when a main building or major facility was most recently constructed before the use became nonconforming.

D. On April 3, 2003, the General Manager issued SMA an abatement date determination letter. The letter indicated that a calculation based on Section 9182.22(A) results in an April 15, 2002 abatement date (20 years after the use became nonconforming) and that a calculation based on Section 9182.22(B) results in a March 2, 1996 abatement date (30 years from the date of the building permit for the most recently constructed main building or major facility). Pursuant to the requirement in Section 9182.22 that the later date controls, the letter determined that the abatement date for Don Dominguez Apartments is April 15, 2002. The letter superseded an erroneous 1995 representation to Watson Land that June 27, 2003 is the abatement date for Don Dominguez Apartments, and the letter also indicated that the facility would be allowed to continue operating until June 27, 2003.

E. SMA duly filed an administrative appeal to obtain review of the General Manager's abatement date determination for Don Dominguez Apartments. The appeal seeks to establish November 23, 2011 as the abatement date. SMA also duly filed an application for extension of nonconforming privilege for Don Dominguez Apartments. The application seeks to establish May 31, 2019 as the abatement date.

F. With respect to the appeal of the General Manager's abatement date determination, a carport is not a "major facility" and repair is not "construction" for purposes of Section 9182.22(B). The November 23, 1981 building permit issued by the City for carport repair at Don Dominguez Apartments therefore does not entitle the facility to continue operating until November 23, 2011 as contended by SMA.

G. With respect to the application for extension of nonconforming privilege, the circumstances warrant an extension of the abatement date for Don Dominguez Apartments to ensure that SMA achieves a reasonable amortization of its fixed investment. In its extension application, SMA represents that it has spent in excess of $1 million on the acquisition and renovation of Don Dominguez Apartments. SMA further represents that it purchased the facility in 1998 without knowledge of the June 27, 2003 abatement date reported to Watson Land, and that the renovation work was substantially complete by May 31, 1999. This justifies allowing Don Dominguez Apartments to continue operating until July 31, 2008 to ensure that SMA achieves a reasonable amortization of its fixed investment.

H. Don Dominguez Apartments provides affordable housing for many City residents. Therefore, as long as conversion of the subject property to a conforming use is not delayed, it is desirable that the facility continues operating for a period of time after SMA achieves a reasonable amortization of its fixed investment on July 31, 2008.

Section 4. Based on the aforementioned findings, the Planning Commission resolves and orders as follows:

A. SMA's appeal of the General Manager's abatement date determination is denied.

B. SMA's application for extension of nonconforming privilege is granted subject to the following condition: on or before August 28, 2003, SMA shall deliver to the General Manager an executed copy of the Facility Closure Agreement attached hereto as Exhibit A. If the condition is satisfied, then the abatement date for Don Dominguez Apartments shall be July 31, 2008 subject to the Facility Closure Agreement. In no event shall the abatement date be extended beyond November 23, 2011.

C. The day after satisfying the condition specified in paragraph (B) above, SMA shall issue a notice of this decision to its existing tenants at Don Dominguez Apartments. The notice shall be in the form attached hereto as Exhibit B ("Planning Commission Decision Notification Letter" herein). SMA shall provide the General Manager with a copy of each Planning Commission Decision Notification Letter that it issues.

D. At the time and in the form specified in the Facility Closure Agreement, SMA shall issue a notice of facility closure ("Facility Closure Notification Letter" herein) to its existing tenants at the facility. Prior to executing a rental agreement with any subsequent tenant, SMA shall issue a Facility Closure Notification Letter to the prospective tenant. SMA shall provide the General Manager with a copy of each Facility Closure Notification Letter that it issues.

E. The extension of nonconforming privilege pursuant to paragraph (B) above shall be null and void if the Facility Closure Agreement should be invalidated by a court of competent jurisdiction.

Section 5. Neither this Resolution nor the Facility Closure Agreement is intended to alter the terms of the Watson Land/SMA Ground Lease. Neither this Resolution nor the Facility Closure Agreement grants SMA rights to the subject property greater than those afforded by the Watson Land/SMA Ground Lease.

Section 6. The extension of the abatement date for Don Dominguez Apartments upon satisfaction of the condition specified in Section 4(B) of this Resolution shall constitute a legislative, executive or administrative decision of the City of Carson that results in a lengthening of the abatement period within the meaning of paragraph 18 of the January 23, 2003 Judgment after Court Trial in the case of *Watson Partners L.P. v. San Miguel Apartments, Inc.* (Case No. BC258975).

Section 7. The City Clerk shall certify to the adoption of this Resolution and shall transmit copies of the same to SMA and to Watson Land.

Section 8. This Resolution shall be effective 15 days after adoption unless within such time an appeal is filed with the City Clerk in accordance with the Zoning Ordinance.

PASSED, APPROVED and ADOPTED this 12th day of August, 2003.

CHAIRMAN

ATTEST:

SECRETARY

744552.1

Old: 742533.4 / New: 742533.6

Facility Closure Agreement (unsigned) dated August 28, 2003

EXHIBIT NO. 5 -

EXHIBIT A

FACILITY CLOSURE AGREEMENT
(City of Carson/San Miguel Apartments, Inc.)

This Facility Closure Agreement ("Agreement") is entered into effective August 28, 2003 by and between the City of Carson ("City") and San Miguel Apartments, Inc., a Nevada corporation ("SMA").

RECITALS

A. The real property commonly known as 19702-19822 S. Main Street, Carson, California ("the Subject Property") is zoned CR (Commercial, Regional Center) under City's zoning ordinance.

B. SMA leases the Subject Property from Watson Land Company ("Watson Land") and operates a 64-unit apartment complex ("Don Dominguez Apartments") thereon. Don Dominguez Apartments is a nonconforming use due to the Subject Property's CR zoning classification.

C. City, through an April 3, 2003 letter issued by its Development Services General Manager ("General Manager"), determined that the abatement date for Don Dominguez Apartments is April 15, 2002. The letter superseded a 1995 representation to Watson Land that June 27, 2003 is the abatement date for Don Dominguez Apartments.

D. SMA duly filed with City an administrative appeal to obtain review of the General Manager's abatement date determination for Don Dominguez Apartments. The application sought to establish November 23, 2011 as the abatement date. SMA also duly filed with City an application for extension of nonconforming privilege for Don Dominguez Apartments. The application sought to establish May 31, 2019 as the abatement date.

E. On August 12, 2003, City's Planning Commission adopted Resolution No. 03-1953, which denied SMA's appeal and conditionally granted SMA's application for extension of nonconforming privilege.

F. Execution of this Agreement and delivery to City on or before August 28, 2003 is a prerequisite for the effectiveness of the conditional grant of SMA's application for extension of nonconforming privilege.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, City and SMA agree as follows.

1. Abatement

A. On or after July 31, 2007, City may at any time issue SMA a notice to abate in the form attached hereto as Exhibit A ("Abatement Notification Letter"). The abatement date for Don Dominguez Apartments shall be one year after the date of the Abatement Notification Letter.

B. City shall issue an Abatement Notification Letter only if City makes a determination, in its absolute discretion, that it is likely that construction for a proposed nonresidential use of the Subject Property will commence pursuant to a building permit within the six month period after the abatement date for Don Dominguez Apartments. The term "construction" as used herein shall not include demolition of existing structures.

C. City may, in its absolute discretion, rescind an Abatement Notification Letter.

D. No later than three business days after receiving an Abatement Notification Letter, or on November 23, 2010, whichever first occurs, SMA shall issue its existing tenants at Don Dominguez Apartments a notice of facility closure in the form attached hereto as Exhibit B ("Facility Closure Notification Letter"). Prior to executing a rental agreement with any subsequent tenant at Don Dominguez Apartments, SMA shall issue a Facility Closure Notification Letter to the prospective tenant. SMA shall provide the General Manager with a copy of each Facility Closure Notification Letter that it issues.

E. SMA shall not challenge, in any administrative or court proceeding, a determination by City that it is likely that construction for a proposed nonresidential use of the Subject Property will commence pursuant to a building permit within the six month period after the abatement date for Don Dominguez Apartments.

2. Termination of Nonconforming Use

On or before the abatement date for Don Dominguez Apartments, SMA shall terminate the residential use of the Subject Property.

3. No Further Extension Requests

SMA shall not apply to City for further extension of the abatement date for Don Dominguez Apartments.

4. Compliance with Municipal Code

Until closure of the facility, SMA shall operate Don Dominguez Apartments in compliance with City's Municipal Code, including without limitation the zoning ordinance and the property maintenance ordinance. If SMA should fail to do so,

nothing in this Agreement shall preclude City from commencing a civil, criminal or administrative code enforcement action against SMA.

5. Release

SMA irrevocably and unconditionally releases and forever discharges City and its officers, employees and agents from any and all claims, demands, actions or causes of action (whether known or unknown, contingent or certain, past, present or future) that relate to the abatement date for, or the closure of, Don Dominguez Apartments. This release does not extend to any claim or action based on the failure of City to perform its obligations under this Agreement.

6. Waiver of Statutory Rights

SMA waives all rights and benefits that it may possess under California Civil Code Section 1542, which provides:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Notices

Notices required or desired to be served by either party upon the other party shall be deemed received on: (a) the day of delivery, if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the mail, if delivered by United States mail postage prepaid. Notices delivered by mail shall be sent to the address set forth below for the receiving party unless such party has previously given notice of a different address:

City of Carson
Attn: Development Services
General Manager
701 East Carson Street
Carson, CA 90745

San Miguel Apartments, Inc.
Attn: President
3670 Wilshire Boulevard #565
Los Angeles, CA 90010

with a copy to:

Stephen L. Joseph, Esq.
3701 Sacramento St. #500
San Francisco, CA 94118

8. General Provisions

A. This Agreement has been jointly negotiated and drafted by legal counsel for the parties. The language in this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against either party.

B. Documents attached hereto as exhibits are incorporated into this Agreement by reference. In the event of any material discrepancy between the provisions of this Agreement and the provision of any exhibit, the provisions of this Agreement shall prevail.

C. This Agreement shall be binding upon, and shall inure to the benefit of, each party hereto and each party's heirs, successors, assigns, agents and legal representatives.

D. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

E. In the event that either party shall commence any legal action or proceeding to enforce or interpret this Agreement, the venue for litigation shall be Los Angeles County, California. If City is the prevailing party, then it shall be entitled to recover its costs of suit, including reasonable attorney's fees.

F. Each party acknowledges that the contents of this Agreement, and the meaning of its various terms, have been explained to it by its legal counsel. Each party also acknowledges that it has voluntarily executed this Agreement with full knowledge of its significance.

G. This Agreement constitutes the entire contract between City and SMA, and it supersedes all prior oral or written negotiations, representations or contracts. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing that is signed by the parties and that expressly refers to this Agreement.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement by signing below.

"City"	"SMA"
City of Carson	San Miguel Apartments, Inc.
By:_____	By: Elsa Ayri
Mayor Pro Tem	President

Approved as to form:

By:_____
City Attorney

Approved as to form:

By:_____
Stephen L. Joseph, Esq.

Attest:

By:_____
City Clerk

EXHIBIT B
Planning Commission Decision Notification Letter

[San Miguel Apartments, Inc. Letterhead]

[name]
[address]

Re: Closure of Don Dominguez Apartments

Dear _____:

On August 12, 2003, the Carson Planning Commission conditionally approved our application for extension of nonconforming privilege for Don Dominguez Apartments. This decision allows Don Dominguez Apartments to operate until July 31, 2008, and potentially enables the facility to stay open after that date (but not beyond November 23, 2011) if construction is unlikely to commence for a nonresidential use of the property. We ask that you make a note of this letter, and we will send you a reminder notice approximately one year before Don Dominguez Apartments must close down.

Sincerely,

President

cc: Carson Development Services General Manager

CITY OF CARSON

EXHIBIT A
Abatement Notification Letter

San Miguel Apartments, Inc.
Attn: President
3670 Wilshire Boulevard #565
Los Angeles, CA 90010

Re: Closure of Don Dominguez Apartments

Dear _____:

This letter is sent pursuant to Section 1 of the August 28, 2003 Facility Closure Agreement ("Agreement") executed by the City of Carson and San Miguel Apartments, Inc. in connection with the real property commonly known as 19702-19822 S. Main Street, Carson, California ("the Subject Property").

The City has determined that it is likely that construction for a proposed nonresidential use of the Subject Property will commence within the six-month period after July 31, 2008. Accordingly, the nonconforming residential use of the Subject Property must terminate on or before such date. Please ensure that existing and subsequent tenants are issued the Facility Closure Notification Letter specified in the Agreement, and that the City receives a copy of each such letter.

Sincerely,

Development Services General Manager

August 12, 2003
Planning Staff Report

CITY OF CARSON

PLANNING COMMISSION STAFF REPORT

CONTINUED PUBLIC HEARING:	August 12, 2003
SUBJECT:	(1) Appeal of the Development Services General Manager's determination of April 15, 2002 as the abatement date for Dominguez Apartments; (2) Application for extension of the abatement date for Don Dominguez Apartments until May 31, 2019
APPLICANT:	San Miguel Apartments, Inc. 19702-19822 S. Main Street Carson, CA 90745
REQUEST:	Deny the appeal and conditionally grant an extension of the abatement date
PROPERTY INVOLVED:	Don Dominguez Apartments 19702-19822 Main Street Carson, CA 90745

COMMISSION ACTION

____ Concurred with staff

____ Did not concur with staff

____ Other

COMMISSIONERS' VOTE

AYE	NO		AYE	NO	
		Cannon –Chairman			Diaz
		Park –Vice-Chairman			Post
		Boggs			Pulido
		Brown			Verceles
		Cottrell			

Item No. 9A

I. Introduction

On April 3, 2003, per policy and authority, the Development Services General Manager determined that the legal non-conforming status of the Don Dominguez Apartments terminated and is subject to abatement as of April 15, 2002. The operator of the Don Dominguez Apartments, San Miguel Apartments, Inc., appealed this letter of determination. The appeal seeks to establish November 23, 2011 as the abatement date. San Miguel Apartments has also applied for an extension of nonconforming privilege. The extension application seeks to establish May 31, 2019 as the abatement date.

II. Background

Contained within the "Background" section of the June 10, 2003, Planning Commission Staff Report is a detailed account of the location, surrounding uses, zoning, and physical development of the subject site. Please refer to Exhibit 5 of this report for this information.

At the June 10, 2003 meeting, at the request of both the applicant and Planning Division staff, the Planning Commission opened the public hearing and continued it until August 12, 2003. The purpose of the continuance was to afford the applicant and City representatives the opportunity to negotiate a mutually acceptable abatement date, per City Council direction to the General Manager and City Attorney. The purpose of the negotiation was to reach a mutually acceptable consensus on an abatement period recommendation to the Planning Commission and City Council.

Analysis

Appeal

The Development Services General Manager had determined that April 15, 2002 was the abatement date for Don Dominguez Apartments. The issue with respect to the appeal is the proper interpretation of CMC Section 9182.22(B). Section 9182.22(B) sets the allowable life for a nonconforming use based upon when a main building or major facility was most recently constructed before the use became nonconforming.

The City issued a building permit on November 23, 1981 for carport repair at Don Dominguez Apartments. San Miguel Apartments asserts that the abatement date for Don Dominguez Apartments should be 30 years from the date of this permit (November 23, 2011). The Development Services General Manager's position is that a carport is not a "major facility" and repair is not "construction" for purposes of Section 9182.22(B).
abatement period recommendation to the Planning Commission and City Council.

Analysis

Appeal

The Development Services General Manager had determined that April 15, 2002 was the abatement date for Don Dominguez Apartments. The issue with respect to the

Extension Application

CMC Section 9172.25 authorizes the Planning Commission to grant an extension of nonconforming privilege. In order to grant an extension, the Commission must make a finding that the required time for termination of the nonconformity is insufficient for the reasonable amortization date of the fixed investment in the nonconformity.

San Miguel Apartments represents in its extension application that it has expended in excess of $1 million on the acquisition and renovation of Don Dominguez Apartments. San Miguel Apartments also represents that it purchased the facility in 1998 without knowledge of an erroneous abatement date that had been reported to the lessor of the subject property (Watson Land Company), and that the renovation work was substantially complete by May 31, 1999.

Another important factor in this case is that Don Dominguez Apartments provides affordable housing to City residents. Therefore, as long as conversion of the subject property to a conforming use is not delayed, it is desirable that the facility continues to operate for a period of time after San Miguel Apartments achieves a reasonable amortization of its fixed investment on July 31, 2008.

Staff recommends that the Planning Commission allow Don Dominguez Apartments to continue operation until July 31, 2008 to ensure that San Miguel Apartments achieves a reasonable amortization of its fixed investment. Also, if construction is unlikely to commence for a nonresidential use of the property, then the use may continue until such time as the City provides a notice to cease, but in no case beyond November 23, 2011.

Summary of Resolution and Facility Closure Agreement

If the Planning Commission concurs with staff's recommendations, then the attached resolution should be adopted. Essentially, the resolution does the following:

- Denies appeal of applicant;
- Conditionally grants San Miguel Apartments' application for extension of nonconforming privilege. The condition for the extension is that San Miguel Apartments execute the attached "Facility Closure Agreement" and return it to the City by the designated date. If the condition is satisfied, then the abatement date for Don Dominguez Apartments would be July 31, 2008 as stated in to the Facility Closure Agreement.

The Facility Closure Agreement implements the subject resolution. Essentially, the agreement does the following:

- Specifies the deadline for closure of Don Dominguez Apartments. This deadline may be as soon as July 31, 2008, or as late as November 23, 2011, depending upon when the City issues an "Abatement Notification Letter" to San Miguel Apartments.
- Requires San Miguel Apartments to provide a "Facility Closure Notification Letter" to its existing and prospective tenants once the City has issued the Abatement Notification Letter.

- Prohibits San Miguel Apartments from requesting any further extensions of the abatement date for Don Dominguez Apartments.
- Prohibits San Miguel Apartments from suing the City over the abatement date for, or closure of, Don Dominguez Apartments.

IV. Environmental Review

This type of project is not subject to the provisions of the California Environmental Quality Act and is therefore exempt.

V. Recommendation

That the Planning Commission:

- **WAIVE FURTHER READING AND ADOPT** Resolution No. _____, entitled "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON DENYING AN APPEAL OF THE DEVELOPMENT SERVICES GENERAL MANAGER'S ABATEMENT DATE DETERMINATION FOR DON DOMINGUEZ APARTMENTS AND CONDITIONALLY GRANTING AN EXTENSION OF NONCONFORMING PRIVILEGE FOR SUCH FACILITY"

VI. Exhibits

1. Planning Commission Resolution, with copy of Facility Closure Agreement (Exhibit A) and Planning Commission Decision Notification Letter (Exhibit B).
2. Facility Closure Agreement, with copy of Abatement Notification Letter (Exhibit A) and Facility Closure Notification Letter (Exhibit B).
3. Appeal Letter from applicant dated, April 17, 2003;
4. April 3, 2003 Notice of Determination, holding that the termination and abatement date for Don Dominguez Apartments is April 15, 2002;
5. June 10, 2003 Planning Commission Staff Report (without exhibits);
6. Aerial photo of the subject property; and
7. Copy of the Public Hearing Notice.

Prepared by: _____
Sean Scully, Senior Planner

Reviewed by: _____
Terrence Boga, Assistant City Attorney

Approved by: _____
Ann Marie Gallant, General Manager

Emergency Petition to the City of Carson by the Residents of the Don Dominguez Apartments

EMERGENCY PETITION
TO THE CITY OF CARSON
BY THE RESIDENTS OF THE
DON DOMINGUEZ APARTMENTS

(19702-19822 South Main Street, Carson)

We have been given formal notice that the City is forcing the closure of the Don Dominguez Apartments on November 23, 2011 and that the apartments will be torn down. We have also been told that the reason is the rezoning of the area and that no other project is planned for the land. Therefore, we will be thrown out of apartments for **no reason**. The land will lie vacant.

We are deeply worried about the situation.

We request that the City Council and the Planning Commission hold emergency hearings as soon as possible to address the situation.

PLEASE DON'T DEMOLISH OUR HOMES!

www.DontDemolishOurHomes.com

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
101		Samia Ibrahim Save	12/24/10
101		Aalaa Abdallah Our	
101		Sarah Abdallah Home!	
101	Ahmad Abdallah	AHMAD ABDALLAH	
102	Kimberly Montejo	This is a safe and	1/7/10
102		wonderful place to live! Please let us continue to live here!	
103	Pat Kelley	PAT Kelley I'M ON disability Soo ish security	12-31-2010
104	Steen Hansen	STEEN HANSEN	12/31/10
	Peter Hansen	PETER HANSEN SAVE OUR HOME	
105		ALWIN PONCO SAVE OUR	1/15/11
105		TEREM HALILI HOMES	1/15/11
106		I work near my job & my daughter's home please save our homes Close to my job Good location	12/31/10
106	Arthur Serrano		12/31/10
107		PLEASE SAVE OUR HOMES	1/4/11
108		Brandon Cardin	12-31-10
		Save our Homes	

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
204	Yvonne S. Fair Sylvester L. Fair	Please do not demolish and OR displace us. I have no problem living here	1/12/11
205	Veronica Mendoza	Veronica Mendoza	
205	Joanna Williams	Joanna Williams	1/20/11
205	Tirrel Williams	Tirrel Williams Please dont tear down the appartments these are our homes.	1/20/11
206	Carmen Godinez	Please Don't Demolish Our Apartments, It is our home for years. Where my kids grow. Another reason, we don't have money to move	
206	Leonardo Barcelata		
206	Leonardo Godinez Jr.		
207	Ben B. Napoi	· BEN B. NAPOI	
207	Joyce P. Oaks	Management are great!!	
207	J. B. Jumsay	Especially the manager.	
207	C.P. Victoriano	& hope you guys reconsider this City law.	
208	Mario Jimenez Jr. 01/01/2011	Please Don't Demolish Don Domingo Apt because it very close to my school and, I nice to live hir.	01/01/11

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
209		Willie Perkinson Please save our Homes! Thank you!	12/30/10
210	Mona Cole	Please save our Homes. My daughter attends school nearby. And the rent here is affordable! Thank you!	
301		Helen Batainah – I moved to this place for 2 reasons. I work in Carson so it is very convenient for me. I looked around for over a month for an apt that takes pets. They were the only one's who would let us all in. I shop, live & work in Carson. Don't take my home away from me.	1-10-11
301	Mohsen Azzam		
302		I've been here for a while because it is near the freeway	1-20-10
302	Raul Hermosillo		
303	F. Keller	Bill Keller	1/21/11
304	Marcos Cruz	Rent is good here close to my job & good community.	
304	Cynthia Cruz		
304	Lourdes Cruz		
305	Walter deJesus	Save our Homes please. It isn't right to just throw people on the street. These Apartments are a good place to live.	12/5/10
305	Mallyra E.		

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
306	Charles Primus		
306	Blanche Primus		
307	Claudia Roberts	Claudia Roberts & Katie FitzGerald we have lived here for 9 yrs. It's our home.	
307	Katie FitzGerald		
308	Ms Allison	Ms Allison It is a fine place to live	
309	[signature]	I Like living here. I get to keep my pet. ☺	
310	Kenneth Said	Kenneth F Said	1-5-11
	James Leece	James Leece	1-5-11
310	Nancy Said	[signature]	1-5-11
311	Michael Mosley	Michael R Mosley 9 yrs Have very happy can walk TO work NO major problems open spaces Lots of nice People here go Leave rt.	1-19-11

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
109	AS	Ahmed Sadek	01/14/11
110	J. Alon	JENNIFER ALON	1-15-11
111	[signature]	Abbas Smadi	1-3-2011
112	~~Cecillia Mai~~ [signature]	Cecillia Maiava. Saving this place would mean everything to us as it's where I grew up since I was 12yrs old and its close to my job & schools. It's what's affordable compared to other places esp. in this economy	
112	[signature]	Roy Saleapaga	
112	[signature]	Roche Maiava-Saleapaga. It is such a nice place! Why demolish it ??	
201	Jerry W Byrum	JERRY W. BYRUM	12 JAN 11
202	[signature]	Pele P. Faletogo. These are good housing for these big families. If they are evicted, there will probably be big families living on the streets of Korea.	
202	Faapulou Faletogo	Faapulou Faletog	
203	J. McKinney	LAWRENCE MCKINNEY	
203	Janet Valdez	Janet Valdez	

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
312		Kael Lalonde Close to School and Job	
312	Earlesha Mabel	Earlesha Mabel - This provides housing that we desperately need. Please save our homes.	1/28/11
401			
401			
401			
401			
402	Denesse Segura	Denesse Segura Please do not demolish the homes of so many	1/14/11
403	Elisa Ryles	Elisa Ryles Please Save Our homes WORK & School near by homes.	1/14/11
404	James M Negley	James M Negley	1/12/12
404	Neil J. Negley	Neil J. Negley Dont take my Home	
405		Debra Ross & Jeremiah Cleitt my son had three heart surgi	With your forcings to move we will be homeless Due to medical Bills 1-5-11
406	Jeannette Brown	JEANNETTE BROWN	Please LIVE & WORK NEAR BY. SAVE OUR HOMES
406	Jule Brown	JULE BROWN	

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
407	[signature]	Johnathon Paura Please don't take my home, ITS All I have and enjoy living here. Please	1-11-11
407	[signature]		1-11-11
409	[signature]	Awesome stay, don't destroy this property. PB.	1-20-11
410	[signature] KAVEH-DAD	Don't take away our home.	1-20-11

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
408	[signature]	Frances Foster, Sick one Home.	1/19/11
408	[signature]	Safe My Home this good place	1/19/11

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
501	Cecilia López	Cecilia López	01/10/11
501	Francisco Ramirez	Francisco Ramirez	
502	FRANCIS SAMALA		
502	LEA ANNJANE MONTERO SAMALA		
503		Robert De Simone	
504	Julian Aguirre	Pls. do'nt demolish, because very near to my present Job	
504	Julius Aguirre	me & my son aside, this Apt. is very clean	Dec 28/10
505	Demsebraun Bryan Russom	This is our home - our family home basc. please dont take it away from us.	1/2/10
506	Lin zhi Bao	Lin zhi Bao	1/4/11
506	chen song	chen song	1/4/11
506	chen uen hai	chen uen hai	1/4/11
	Chen ~~uen~~ hai	chen	
		We love it here!	

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
507	Maria Maria	Convenient VENANCIA STA. MARIA	1-4-11
507	Agda Maria	Near to JOHN ALVIN work	1-5-11
507	Jolf	Evelyn Alejandro	1-5-11
507	Ma Maria	near the freeway ALEXANDER STA. MARIA	1-15-11
508		This Apartment is close	01.10.11
508		To Everything, Grocery stores, mall and the freeway, It would be a shame to move	01.10.11
509	Janet Brown	These apartments are close to our jobs. we can't afford to commute from them	01-11-11
509	Sylvia Brown		
509	Jamaar Brown	We are close to work and School and don't want to move	01-11-11
509	Jeremy Brown		01-11-11
510	Patrick M. Rubens	Patrick M. Rubens Please Save Our Homes 1/4/11	
510	Max R Rubens	Max R Rubens	

PLEASE DON'T DEMOLISH OUR HOME THANK YOU

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
601 601	Rosalyn Collier R[illegible] Collier Leonard Collier	Please don't make us [illegible] replace [illegible] like where we [illegible] Because it going [illegible] we feel safe	
601 601	Leonard Collier Tasha Collier		
602 602	[signature] [signature]	MARIAN GACAYAN : We really love living here. Please do not demolish it ALVIN MERZA: Please do not demolish our home.	01-12-11 01-12-11
603 603	[signature] Rosie Zendejo	LUIS Martinez Let's save our home. Would like to stay in our cozy home	01-20-11 01-20-11
604 604	[signature] Teofilo Laauli Teofilo	LUPITA TEOFILO LAAULI TEOFILO. SAVE OUR HOME	
604 604	Kristina Teofilo Joe Teofilo	KRISTINA TEOFILO JOE TEOFILO Please do not demolish our	
604	John Teofilo	JOHN TEOFILO. home.	
605	Walter Webb	WALTER WEBB	

APT #	SIGNATURE OF ONE TENANT	NAMES OF RESIDENTS & COMMENTS	DATE
606 606		I love this apartment complex and would intend to stay and live here as long as we could. I knew that this place was being demolished before I moved in, but still I did because I love the place. I'll appreciate the effort to keep this Apt. complex open.	1-20-11
607			
608	A. Hawkins	LONNIE HAWKINS	1-19-11
609 609	RONALDO ALEO DALISAY ALEO		
609 609	ELLY SHARAH ALEO JOANNA ALEO	WE WANT TO STAY IN THIS APARTMENT.	
609	NECITAS CAINGILIT		
610 610	June Ireenia Saini Maiava	We've been here over 15 yrs we'd like to stay here. This is our home	1/15/2011
610	Stamone Ufi	Our kids / grandkids grew up here.	

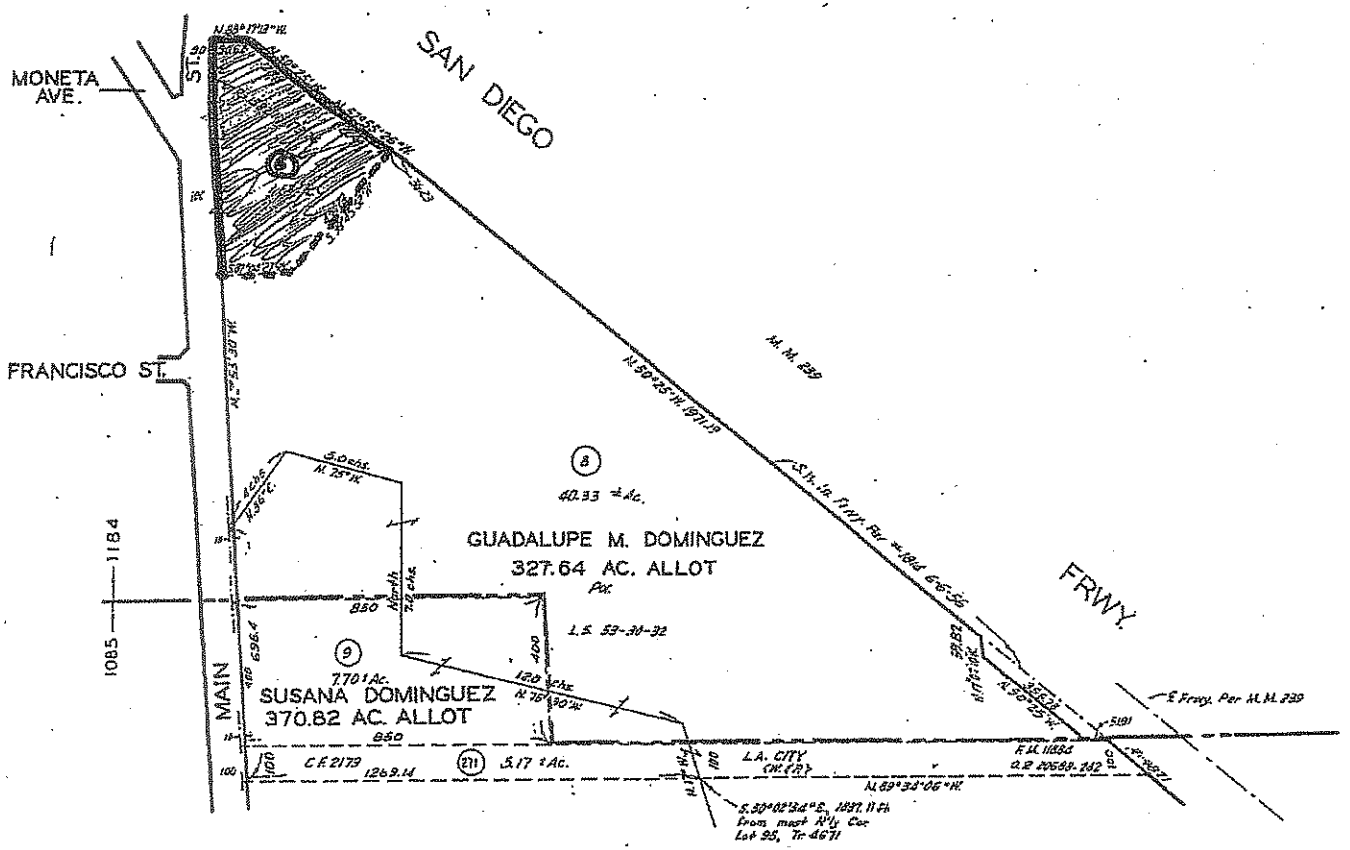
Parcel Map and Legal Description of Property

7336	9

SCALE 1" = 300'

REVISED

620220
640905
650115
651118
670605100
680315013
680526
700225
720301
7405090607
751130505
810112 609
841029-85



PART OF THE RANCHO SAN PEDRO
WHICH WAS ALLOTTED TO MANUEL DOMINGUEZ
S.C.C. 3284
C. F. 145

CODE
1184
1085

FOR PREV. ASSM'T. SEE: 1384-26
7336-10

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

Legal Description

Order No. 309837 - A

EXHIBIT "ONE"

A leasehold as created by that certain lease dated July 14, 1964, executed by Dominguez Estate Company, a Corporation, as lessor, and Don Dominguez, a Limited Partnership, as lessee, and recorded July 15, 1965 as Instrument No. 1924 in Book M-1918, Page 215 of Official Records, for its term, upon and subject to all of the provisions contained therein.

That portion of the Rancho San Pedro, in the City of Carson, County of Los Angeles, State of California, as per map filed in Case No. 3284, Superior Court of the State of California for the County of Los Angeles, described as follows:

Beginning at the Southerly terminus of that curve in the Easterly line of Main Street, 80 feet wide, being concave Easterly, having a radius of 1382.11 feet and an arc length of 912.22 feet as shown on a Record of Survey filed in Book 53, Page 35 of Record of Surveys, in the office of the County Recorder of said county; thence along a radial line of said curve, North 87° 04' 27" East 10.00 feet to a point in a curve concentric with the above mentioned curve; thence Northerly along said concentric curve through a central angle of 7° 10' 57" an arc distance of 173.26 feet; thence South 88° 17' 13" East 90.62 feet to the Easterly terminus of that course in the boundary of the land described in the deed to the State of California recorded on June 6, 1956 as Instrument No. 1814 in Book 51375, Page 52 of Official Records, in the office of the County Recorder of said county, having a bearing and length of South 83° 56' 48" East 100.56 feet; thence along said boundary as follows:

South 50° 25' 54" East 285.00 feet; thence South 57° 56' 20" East 224.00 feet; thence leaving said boundary South 39° 45' 52" West 434.73 feet; thence South 87° 04' 27" West to the Easterly line of Main Street, 80 feet wide; thence Northerly along the Easterly line of said Main Street North 2° 55' 33" West to the point of beginning.

Assessor's Parcel No: 7336-009-006

98 1829248

73

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/09/11 DEPT. 85

HONORABLE JAMES C. CHALFANT JUDGE | A. FAJARDO DEPUTY CLERK

HONORABLE #1 JUDGE PRO TEM | ELECTRONIC RECORDING MONITOR

J. DE LUNA, C.A. Deputy Sheriff | H. GUTIERREZ, CSR #12714 Reporter

9:30 am BC258975

WATSON PARTNERS LP

VS

SAN MIGUEL APARTMENTS INC ET AL

Plaintiff Counsel: DAVID C. WHEELER [X]

Defendant Counsel: BRENDAN F. MACAULAY [X]
STEPHEN L. JOSEPH [X]

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF, WATSON PARTNERS LP, FOR APPOINTMENT OF POST JUDGMENT RECEIVER

The Motion is called for hearing.

Counsel read the Court's Tentative Decision.

After argument of Counsel, the Court rules in accordance with his Tentative which is adopted and filed as the final ruling of the Court.

The Motion for Appointment of Post Judgment Receiver is granted.

A Receiver's Bond in the amount of $70,000.00 is to be posted forthwith.

The Receiver is to be paid by both Parties evenly. The Plaintiffs portion is to be paid directly to the Receiver and the Defendants portion is to be taken from the rent.

Notice is waived.

MINUTES ENTERED
06/09/11
COUNTY CLERK

EXHIBIT NO. 6 -

74

Watson Partners, L.P. v. San Miguel Apartments, Inc., et al.
BC 258975

Tentative decision on motion for post-judgment receiver: granted

Plaintiff Watson Partners, L.P. ("Watson") applies for appointment of a post-judgment receiver. The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Plaintiff Watson owns fee simple title to property in Carson, Ca., on which an apartment building is located. Defendant San Miguel Apartments, Inc. ("SMA") holds a lease on the property as assignee. The lease was entered into in 1964 by predecessors of both Watson and SMA. It restricts the lessee's use of the land to apartment rental only, and also provides that the lessee must comply with all governmental restrictions, including zoning regulations. The lease expires in 2019.

In 1982, the City of Carson (the "City") changed the zoning of the area to prohibit any residential use or occupancy of the property. Under the Carson Municipal Code, the existing apartment building became a legal nonconforming use, and therefore was allowed to exist for the longer of (a) 20 years after the zoning change, or (b) 30 years after the last major modification was made to the main structure.

In 1995, Watson requested that the City clarify when the legal nonconforming status would terminate. The City responded in a letter, stating that the 20 years expired on April 15, 2002, and the 30 years expired on June 27, 2003. The City also stated that the latter of those two dates applied, and therefore the legal nonconforming status terminated on June 27, 2003.

In 1998, SMA became the Lessee of the property. Watson filed the instant action for declaratory relief and quiet title, seeking to establish the rights and relations between the parties.

The first cause of action in the Second Amended Complaint ("SAC") seeks declaratory relief that Watson will be entitled to possession of the property after June 27, 2003 because: (1) under the Lease, the property may not be used for anything other than an apartment building; (2) the pertinent zoning prevents such use after June 27, 2003; and (3) consequently, the Lease will terminate and Plaintiff Watson will be entitled to possession. The SAC's third cause of action is for quiet title on the property after June 27, 2003, based on the same allegations as the first cause of action.[1]

On September 25, 2002, the court granted summary adjudication in favor of Watson on issues that it is entitled to terminate the Lease upon the end of the abatement period. Watson demonstrated that the Lease will terminate, and SMA has the duty to vacate the property, at the end of the abatement period unless prior to that time (a) the abatement period is extended or changed, (b) there is a change in zoning, or (c) there is a court order preventing the City from enforcing an end to the abatement period. The court denied summary adjudication on the issues

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[1] The second cause of action sought declaratory relief that Watson has no obligation under the Lease to support SMA's effort to obtain an extension of the abatement period under the Lease. However, on June 14, 2002, the court sustained SMA's demurrer to that claim without leave to amend.

that SMA has a duty to demolish the structures on the property before the abatement period ends, or has the duty to allow Watson to demolish them, or has a duty to apply for an extension within certain time frames identified by Watson.

After trial by declaration, the court agreed with Watson that the apartments must be removed or made conforming before the abatement period ends, but that SMA could choose either course of action. The court also ruled that SMA must pay for the demolition or conformance measures.

The court entered judgment on January 23, 2003, and later awarded Watson $155,000 in attorneys' fees. The material terms of the judgment are as follows: (a) the Ground Lease will terminate on the abatement date established by the City of Carson, and (b) on or before the abatement date, San Miguel Apartments must not only vacate all the apartment buildings, but must also either demolish the apartment buildings or permit Watson Partners to access the Property and demolish the apartment buildings.

B. Applicable Law

CCP section 564(b) provides that the court has authority to appoint a receiver: (3) after judgment, to carry the judgment into effect and (9) in all other cases where necessary to preserve the property or rights of any party

The appointment of a receiver is a drastic remedy to be utilized only in "exceptional cases." As such, a receiver should not be appointed unless absolutely essential and because no other remedy will serve its purpose. City & County of San Francisco v. Daley, (1993) 16 Cal.App.4th 734, 744. A plaintiff who seeks appointment of a receiver of certain property, under CCP section 564(b)(1), has the burden to establish by a preponderance of the evidence that plaintiff has a joint interest with defendant in the property, that the property is in danger of being lost, removed or materially injured and that plaintiff's right to possession is probable. Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp., (1953) 116 Cal.App.2d 869, 873. California courts have followed the longstanding tradition to appoint receivers over partnership property in cases of partner fraud and misconduct. *See* Galich v. Brkich, (1951) 103 Cal.App.2d 187; Neider v. Dardi, (1955) 130 Cal.App.2d 646; Moore v. Oberg, (1943) 61 Cal.App.2d 216.

C. Analysis

The Judgment requires SMA, on or before the abatement date, to vacate all the apartment buildings and either demolish them or permit Watson Partners to do so.

After the Judgment was entered, Resolution No. 03-1953 of the City's Planning Commission established November 23, 2011 as the latest abatement date by which all residential use of the property must cease. The Planning Commission found and decided that "in no event shall the abatement date be extended beyond November 23, 2011." The Planning Commission, which was aware of the Judgment in this case, provided that: "The extension of the abatement date for Don Dominguez Apartments . . .shall constitute a legislate, executive or administrative decision of the City of Carson that results in a lengthening of the abatement period within the meaning of paragraph 18 of the January 23 2003 Judgment after Court Trial in the case of Watson Partners, L.P. v. San Miguel Apartments Inc., (Case No. BC258975)."

In 2003, SMA signed a "Facility Closure Agreement" with the City. In paragraph 2, SMA promised that "On or before the termination date for Don Dominguez Apartments, SMA shall terminate the residential use of the Subject Property." In paragraph 3, San Miguel promised that it "shall not apply to the City for further extension of the abatement date for Don Dominguez Apartments." Thus, SMA agreed that it would vacate the property by November 23, 2011, at the latest, and would not seek a further extension of the abatement date. The City and its City Attorney have advised SMA that it is bound by the terms of the Facility Closure Agreement.

In 2004, SMA and Watson entered into a Settlement Agreement to resolve issues remaining after the judgment. In the Settlement Agreement, the parties agreed that "the Judgment shall remain in full force and effect." SMA agreed to dismiss its appeal from the Judgement, and Watson waived its right to attorney's fees awarded in the Judgment. The Settlement Agreement contains an arbitration clause which requires that any and all disputes arising out of or related to the Settlement Agreement must be resolved by arbitration. SMA Ex. 5, ¶6,8.

On September 20, 2010, SMA's president wrote Watson. He acknowledged that the abatement period would expire on November 23, 2011, but asked that Watson agree to extend the abatement period. Watson responded that the City had set the November 23rd date, that the City had provided that it could not be changed, and that SMA had agreed to be bound by the November 23rd date. Watson requested that SMA give notices to tenants and also requested that SMA confirm that it "will vacate the Property and remove the apartment buildings and structures on or before November 23, 2011."

On March 14, 2011, San Miguel filed three applications with the City: (a) an application to extend the abatement date; (b) an application to change the zoning of the Property; and (c) an application for a conditional use permit.

Before the apartment buildings can be demolished, they must be vacated. Watson's counsel consulted with the firm of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP, about the amount of time it will take to vacate the apartment buildings on the Property. Peter Garrell, a partner in the Liner firm experienced in unlawful detainer and related matters, estimates that, given the number of apartment units and tenants involved, it will take approximately five months to review leases, decide what statutory notices must be given, serve the required statutory notices, negotiate with tenants to provide relocation assistance as an incentive for them to vacate voluntarily, and, where necessary, file unlawful detainer actions, obtain judgments, and obtain possession.

After the apartments are vacated, it will take a little more than two months to demolish

them. The demolition process will be done in two phases: first, asbestos and lead paint abatement, which will be done by a specialist and will take about two weeks, and then general demolition work, which will be done by a general contractor and will take about six weeks.

Watson Partners requests that a receiver be appointed to perform the duties under the Judgment which San Miguel refuses to perform and that the receiver be empowered to take whatever steps appear in his or her discretion reasonably necessary to comply with the terms of the Judgment including but not limited to entering into agreements with tenants, providing them with relocation benefits if they voluntarily vacate the property, giving statutory notices to tenants, filing and prosecuting unlawful detainer actions, arranging for service of judgments and orders, collecting rents and using them to finance such activities, and contracting to provide for demolition.

In opposition, SMA makes two arguments. First, SMA relies on the arbitration provision in the Settlement Agreement to conclude that Watson must arbitrate the enforcement of judgment proceedings. Second, SMA argues that the City's Resolution and form letters require only that SMA's tenants leave on or before the November 23, 2011 abatement date. Unlawful detainer enforcement and subsequent demolition cannot begin until that last day for tenancy ends. There is no current reason to believe that tenants will stay after the November 23 date, and SMA has signed a contract for an asbestos survey, which is the first step in the demolition process. When the survey is completed, SMA will proceed expeditiously to the next stage of the process.

Addressing the arbitration issue, the parties dispute whether SMA must vacate and demolish the apartments before November 23, or simply begin the unlawful detainer enforcement and subsequently the demolition process on that date. The Judgment clearly requires the former, while SMA's agreement with the City and the City's Resolution appear to require the latter. In this post-judgment proceeding, ~~the court is~~ concerned only with enforcement of the Judgment. It is not concerned with enforcing the City's agreement with SMA. In enforcing the Judgment, the court can appoint a receiver to carry it into effect. CCP §564(b)(3).

It is true that the parties entered into a Settlement Agreement which contained an arbitration provision for all disputes between them, including those arising from the Agreement. However, the Settlement Agreement acknowledges that the Judgment remains in full force and effect. Enforcement of the Judgment is not a "dispute" which must be arbitrated. Just as Watson could collect on a money judgment without arbitrating a "dispute" that SMA had failed to pay it, Watson is entitled to enforce the Judgment requiring SMA to vacate and demolish the apartments by the November 23 abatement date without arbitrating its provisions.[2]

Watson has made just such a showing. In opposition, SMA suggests that it intends to

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[2] Arbitrators do not have authority to enforce judgments. CCP §1287.4; *see* Loeb v. Record, (2008) 162 Cal.App.4th 431, 450. Nor can they appoint receivers. Marsch v. Williams, (1994) 23 Cal. App.4th 238. It is worth noting that Watson could seek appointment of a receiver even if the matter were subject to arbitration. Under CCP section 2382.8, a party to an arbitration agreement may request appointment of a receiver as a provisional remedy pending arbitration if arbitration would be ineffectual to protect that party's rights. Watson could easily meet this test because an arbitration award would never result in vacation of the apartments, enforcement against remaining tenants, and demolition by November 23.

comply with the Judgment, but it is clear that SMA is casting about for additional extensions from the City and has no intention of evicting tenants before November 23. Indeed, SMA has sought tenant support in its effort with the City through the posting of signs stating: "Please *Don't* Demolish Our Homes."

SMA's purported efforts to actually comply with the Judgment are minimal. It obtained a proposal for demolition on November 9, 2010, but never signed it. SMA Ex. 1. In response to Watson's motion, filed and served on April 21, 2011, SMA obtained an updated proposal on May 6, 2011. Again, it is unsigned. SMA Ex.2. Also in response to Watson's motion, SMA entered into a $2,510 contract for an asbestos/lead paint survey. SMA Ex.3. These facts demonstrate that SMA is giving only lip service to complying with the Judgment and has no intention of demolishing the apartment buildings by the November 23 date.[3]

The motion for appointment of a receiver is granted. Watson Partners requests that Edythe Bronston be appointed as the Receiver. The court finds that Ms. Bronston is well qualified to serve as the Receiver for purposes of enforcing the Judgment and ensuring that there is compliance with the November 23, 2011 abatement date.

Watson Partners also requests that the Receiver be empowered, at her discretion, to retain the firm of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP to file and prosecute unlawful detainer actions. Watson has discussed this matter with the Liner firm and has arranged for a potential agreement to represent the Receiver.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WATSON PARTNERS, L.P., a Delaware limited partnership, Plaintiff, vs. SAN MIGUEL APARTMENTS, INC., a Nevada corporation; NORTH AMERICAN TITLE COMPANY, a California corporation; ROYAL L.L.C., a California limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No. BC258975 Hon. James C. Chalfant Dept. 85 ~~[PROPOSED]~~ ORDER APPOINTING RECEIVER (JUDGMENT ENTERED JANUARY 23, 2003)

Plaintiff Watson Partners, L.P.'s Application for Appointment of a Receiver came on regularly for hearing on June 9, 2011 in Department 85 of this Court, the Hon. James C. Chalfant presiding. David C. Wheeler appeared for Plaintiff. Stephen L. Joseph and Brendan Macaulay appeared for Defendant San Miguel Apartments, Inc.

After full consideration of the application, opposition, reply, and the evidence and authorities submitted by the parties and argument of counsel, it appears and the Court finds that the application should be granted, and **THE COURT HEREBY ORDERS** as follows:

1. Appointment of Receiver. Edythe L. Bronston (the "Receiver") is appointed receiver to take possession of the real property commonly known as 19702-19822 South Main Street in the City of Carson, Los Angeles County, (the "Property") and having the following legal description:

"That portion of the Rancho San Pedro, in the County of Los Angeles, state of California, as per map filed in Case No. 3284 of Superior Court of said county, described as follows:

Beginning at the southerly terminus of that curve in the easterly line of Main Street, 80 feet wide, being concave easterly, having a radius of 1392.11 feet and an arc length of 912.22 feet as shown on Record of Survey Map filed in Book 53 page 30 of Record of Surveys, in the office of the County Recorder of said county; thence along a radial line of said curve, North 87° 04' 27" east 10.00 feet to a point in a curve concentric with the above mentioned curve; thence northerly along said concentric curve through a central angle of 7° 10' 57" an arc distance of 173.26 feet; thence south 88° 17' 13" east 90.62 feet to the easterly terminus of that course in the boundary of the land described in Deed to the State of California, recorded on June 6, 1956 as Instrument No. 1814 in Book 51375 Page 52 of Official Records in said office of the County Recorder having a bearing and length of south 83° 56' 48" east 100.56 feet; thence along said boundary as follows:

South 50° 25' 54" east 285.00 feet; thence south 57° 56' 20" east 224.00 feet; thence, leaving said boundary, south 39° 45' 52" west 434.73 feet; thence south 87° 04' 27" west to the easterly line of Main Street, 80 feet wide; thence northerly along the easterly line of said Main Street north 2° 55' 33" west 475.00 feet to the point of beginning."

2. Transfer of Property. Defendant shall promptly transfer possession of the Property to the Receiver including keys and any access codes for entry into all parts of the Property to which Defendant has access.

3. Responsibilities and Powers of Receiver. The Receiver shall have the responsibility and all necessary powers to (i) manage the Property; (ii) terminate the leases of all of the tenants and if necessary take legal action to evict the tenants; and (iii) demolish the

buildings and structures on the Property by November 23, 2011. The Receiver is authorized to assert and exercise all claims, rights, causes of action, and choses in action against the tenants necessary to effectuate said purposes. The particular purposes of this Receivership are to ensure that, by November 23, 2011, all apartment units on the Property have been vacated and the buildings and structures on the Property have been demolished. Accordingly, the Receiver is empowered to give statutory eviction notices to tenants and to file and prosecute unlawful detainer actions, without further order of this Court, against any tenants or occupants of the Property, and enforce judgments resulting from such unlawful detainer actions; retain counsel to take such actions as are necessary to accomplish the foregoing, on the terms set forth herein; and contract for and supervise the demolition of the apartment buildings and other structures on the Property and otherwise ensure that the Property does not constitute a non-conforming use under the Carson Municipal Code after November 23, 2011.

4. Transfer of Rents and Security Deposits. Defendant shall promptly transfer all collected rent and security deposits that were in any of Defendant's bank accounts on June 9, 2011, except for legitimate expenses of the apartments expended since that time, to a segregated account ("Special Account") to be created by Receiver for the purpose of implementing this order. Defendant has advised Plaintiff and the Receiver that all rents have been deposited in Account No 0347307904 at Bank of America (which is identified as an account for Don Dominguez Apartments), provided that Defendant does not represent that the rents collected in the past are still in the account, and further provided that there were no security deposits in any bank accounts for the Property as of June 9, 2011. Defendant shall provide evidence of the bank balance(s) as of June 9, 2011. The Receiver shall have no right to inquire or obtain information about any finances of or money transfers by Defendant prior to June 9, 2011. Defendant shall promptly provide to the Receiver evidence of the legitimate nature of expenses paid from its bank account(s) on or after June 9, 2011.

5. Relocation Benefits. The Receiver shall not pay from the Special Account and Defendant shall not be responsible or liable for relocation benefits in excess of $500 per apartment unit unless Defendant approves such payment.

6. Transfer of Lease Documents. Defendant shall promptly transfer to the Receiver copies of all active leases regarding the Property.

7. Transfer of Insurance Documents. Defendant shall promptly transfer to the Receiver copies of all insurance policies regarding the Property and shall immediately name the Receiver as an additional insured on each insurance policy on the Property. Defendant shall not cancel, reduce, or modify the insurance coverage.

8. Transfer of Other Necessary Documents. Defendant shall promptly transfer to the Receiver the originals or copies of all other documents in its possession that are reasonably necessary for the purposes of (i) managing the Property, including but not limited to unpaid bills, invoices and rent rolls regarding the Property; (ii) terminating the leases of tenants or evicting tenants; and (iii) demolishing the buildings and other structures on the Property.

9. General Duties and Powers of the Receiver. The Receiver:

(a) shall take possession of and manage the Property,

(b) shall collect the rents and income from the Property and deposit them in the Special Account;

(c) shall care for the Property and may incur the expenses necessary for that care, including employing agents, employees, clerks, accountants, and property managers to administer the Property at the usual and ordinary rates for same, and purchasing materials, supplies, and services reasonably necessary to administer the Property, to be paid from the Special Account;

(d) shall pay all unpaid bills and invoices regarding the Property from the Special Account;

(e) to the extent necessary to fulfilling her duties, the Receiver may change the locks on the Property; and

(f) shall do all other things necessary to discharge the responsibilities in paragraph 3 above.

10. Insurance. The Receiver:

(a) shall determine whether there is sufficient insurance coverage.

(b) shall notify the insurer(s) that the Receiver is to be named as an additional insured on each insurance policy on the Property.

(c) If the Receiver determines that the Property does not have sufficient insurance coverage, the Receiver shall immediately notify the parties and shall procure sufficient all-risk and liability insurance on the Property (excluding earthquake and flood insurance).

(d) If the Receiver does not have sufficient funds to obtain insurance, the Receiver shall seek instructions from the court on whether to obtain insurance and how it is to be paid for.

11. Security Deposits. Unless a security deposit has been turned over or paid to the Receiver, the Receiver shall not refund a security deposit to a tenant. However, Tenants shall be released from the obligation to pay rent to the extent that they have paid a security deposit. Defendant shall provide the Receiver with a list, as well as supporting evidence, of all security deposits paid by existing tenants.

12. Demolition Contracts. The Receiver shall contract for the demolition of the apartment buildings and structures on the Property and otherwise ensure that the Property does not constitute a non-conforming use under the Carson Municipal Code after November 23, 2011. No contract shall be concluded unless and until the proposed contract has been provided to Defendant and Defendant has been given a opportunity to procure an offer or quotation of a less costly contract from the same or another contractor; provided that Defendant shall have five (5) business days to provide the proposed less-costly offer or quotation to the Receiver.

13. Inventory. Within 30 days after qualifying, the Receiver shall file an inventory of all property possessed under this order.

14. Expenditures. The Receiver shall expend money coming into her possession only for the purposes authorized in this order. Unless the Court orders otherwise, the

Receiver shall to the extent practical hold the balance in an interest-bearing account in accordance with Code of Civil Procedure Section 569.

15. Taxpayer ID Numbers. The Receiver may use any federal taxpayer identification numbers relating to the Property for any lawful purpose.

16. Restraints. The Court orders Defendant to refrain from:

(a) committing or permitting any waste on the Property or any act on the Property in violation of law or removing, encumbering, or otherwise disposing of any of the fixtures on the Property.

(b) demanding or collecting any of the rents from the Property; and

(c) interfering in any manner with the discharge of the Receiver's duties under this order.

17. Plaintiff's and Defendant's Rights to Information. The Receiver shall promptly provide all information which may be reasonably requested by Plaintiff or Defendant or their counsel regarding implementation of this order, including but not limited to:

(a) The amounts of any and all deposits into and expenditures from the Special Account, the reasons for such deposits or expenditures, and copies of all bank statements for such account.

(b) Progress regarding termination of leases and eviction of tenants and the status of any and all notices or eviction proceedings regarding such tenants.

(c) All contracts or agreement entered into regarding the Property and the discharge of Receiver's responsibilities under this order.

18. Prohibited Agreements. The Receiver shall not enter into an agreement with any party to this action about the administration of the receivership or about any post-receivership matter.

19. Independence of Receiver. The Receiver is court-appointed, operates independently of all parties and parties-in-interest, and in accordance with the direction and orders of this court.

85

20. Receiver's Fees. The Receiver may charge for the Receiver's services no more than $395.00 per hour for the Receiver and $135.00 per hour for her Receivership Administration and Field Representatives. No general office administration expenses or overhead will be included.

21. Monthly Accounting of Receiver's Income, Expenses and Fees. The Receiver shall prepare and serve on Plaintiff and Defendant and their counsel by e-mail monthly statements reflecting her fees and her administrative expenses, including fees and costs of accountants and attorneys and other professionals authorized by the Court, incurred for each monthly period for the purpose of discharging her responsibilities herein. Upon service of each statement, unless an objection is received within 10 days, the Receiver may disburse from the Special Account the amount of each such statement. Notwithstanding periodic payment of fees and expenses, all fees and expenses shall be submitted to the Court for its approval and confirmation, in the form of either a properly noticed interim request for fees, a stipulation of Plaintiff and Defendant, or in the Receiver's Final Account and Report. Any objection to an interim account and report must be made within 10 days of notice of same, must be specific, and must be delivered to the Receiver and Plaintiff's counsel and Defendant's counsel.

22. Receiver's Oath and Bond. The Receiver shall immediately, and before performing any duties or exercising any powers:

(a) execute and file a receiver's oath, and

(b) file the bond required by Code of Civil Procedure section 567(b) in the amount of seventy five thousand dollars ($75,000).

23. Payment of Fees. All fees charged by the Receiver, her agents, employees, attorneys, accountants and other entities or individuals hired by the Receiver to assist her in the performance of her duties under this order shall be paid and borne half by Plaintiff and half by Defendant with Defendant's half being paid from the Special Account.

24. Payment of Non-Fee Costs and Expenses. All non-Fee costs and expenses incurred by the Receiver in discharging her duties under this Order, such as the cost of demolition, shall be paid from the Special Account. To the extent that the Special Account has insufficient funds to cover such other non-Fee costs and expenses, Plaintiff may pay or advance

such amounts to the Receiver or the Receivership Estate, and may later make application to this Court to have such payments or advances allocated between Plaintiff and Defendant as the Court may deem equitable; provided that, in deciding the allocation, the Court will take it account its ruling that the parties are each to pay 50% of the fees as stated in the preceding paragraph, the requirement in the Judgment that San Miguel pay all of the costs of demolition, and any less costly proposals or quotations for the demolition work that Defendant provides to Receiver and which Receiver rejects.

25. Receiver's Final Report & Account and Discharge.

(a) Discharge of the Receiver shall require a Court order upon noticed motion for approval of the Receiver's final report and account and exoneration of the Receiver's bond.

(b) Not later than 60 days after the receivership terminates, the Receiver shall file, serve, and obtain a hearing date on a motion for discharge and approval of the final report and account.

(c) The Receiver shall give notice to all persons of whom the Receiver is aware who have potential claims against the Receivership Estate or the receivership property.

(d) The motion to approve the final report and account and for discharge of the Receiver shall contain the following:

(1) A declaration or declarations: (i) stating what was done during the Receivership, (ii) certifying the accuracy of the final accounting, (iii) stating the basis for the termination of the Receivership, and (iv) stating the basis for an order for the distribution of any surplus or payment of any deficit.

(2) A summary of the Receivership accounting, which shall include (i) the total revenues received, (ii) the total expenditures identified and enumerated by major categories, (iii) the net amount of any surplus or deficit, and (iv) evidence of necessary supporting facts.

26. Bankruptcy – Plaintiff's Duty to Give Notice. If Defendant files a bankruptcy case during the receivership, Plaintiff shall give notice of the bankruptcy case to this Court, to all parties, and to the Receiver by the closing of the next business day after the day on which the Plaintiff receives notice of the bankruptcy filing.

27. Bankruptcy – Receiver's Duties. If the Receiver receives notice that a bankruptcy has been filed and part of the bankruptcy estate includes property that is the subject of this order, the Receiver shall have the following duties:

(a) *Turn over property if no relief from stay will be sought.* The Receiver shall immediately contact the Plaintiff and determine whether the Plaintiff intends to move in the bankruptcy court for an order for (1) relief from the automatic stay, and (2) relief from the Receiver's obligation to turn over the property of the entity that filed for bankruptcy (11 U.S.C. § 543). If the Plaintiff has no intention to make such a motion, within ten court days, the Receiver shall immediately turn over the property of the entity that filed for bankruptcy to the appropriate entity – either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession, and otherwise comply with 11 United States Code section 543.

(b) *Remain in possession pending resolution.* If the Plaintiff intends to seek relief within ten court days from both the automatic stay and the Receiver's obligation to turn over the property of the entity that filed for bankruptcy, the Receiver may remain in possession and preserve the property of that entity pending the ruling on those motions (11 U.S.C. § 543(a)). The Receiver's authority to preserve the property of the entity that filed for bankruptcy shall be limited as follows:

(1) The Receiver may continue to collect rents and other income;

(2) The Receiver may make only those disbursements necessary to preserve and protect the property of the entity that filed for bankruptcy;

(3) The Receiver shall not execute any new leases or other long-term contracts; and

(4) The Receiver shall do nothing that would effect a material change in the circumstances of the property of the entity that filed for bankruptcy.

(c) *Turn over property if no motion for relief is filed within 10 court days after notice of the bankruptcy.* If the Plaintiff fails to file a motion within (10) court days after its receipt of notice of the bankruptcy filing, the Receiver shall immediately turn over the property of the entity that filed for bankruptcy to the appropriate entity — either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession — and otherwise comply with 11 United States Code Section 543.

(d) *Retain Bankruptcy Counsel.* The Receiver may petition the Court to retain legal counsel to assist the Receiver with issues arising out of the bankruptcy proceedings that affect the receivership.

28. Failure to Turn Over Property. If the Receiver fails to turn over the property in accordance with this order, the Receiver shall not be paid for time and expenses after the date the Receiver should have turned over such property.

29. Defendant's Reservation of Rights. This Court instructed counsel to meet and confer. Compliance with the Court's meet and confer order and submission of a proposed order to the Court does not constitute a waiver of Defendant's objections to or right to appeal or otherwise legally challenge this Order.

30. Court Instructions. The Receiver and the Plaintiff and Defendant may at any time apply *ex parte* to this Court for further instructions and orders and for additional powers necessary to enable the Receiver to perform the Receiver's duties properly.

31. Reservation of Jurisdiction. The Court shall retain jurisdiction over the parties and of this matter for all purposes.

Dated: JUL - 1 2010

/s/ C. Chaffee

Judge of the Superior Court

JAMES C. CHAFFEE

Jointly submitted by

LAW OFFICE OF

STEPHEN L. JOSEPH

/s/

Stephen L. Joseph
Attorney for Defendant San Miguel Apartments, Inc.

WHEELER & SHEEHAN

David C. Wheeler
Attorneys for Plaintiff

OTHER LAND USES

Mixed Use (MU)

The "Mixed Use" designation provides opportunities for mixtures of commercial, office, business park/limited industrial and/or residential uses in the same building, on the same parcel, or within the same area. There would be two MU categories—MU-R would allow for commercial and residential uses but not business park/limited industrial and MU-BP would allow for commercial and business park/limited industrial uses but not residential.

The densities and intensities will vary within this land use designation based on actual uses proposed. In general, it is envisioned that the maximum allowable FAR will be 0.5 for the non-residential components of any mixed use project. The residential densities will also vary, but are expected to be in the Medium to High Density ranges, but may not exceed 33 du/ac. Below is a description of expected square footage and number of dwelling units for each of the Mixed Use areas:

- The Carson Street Mixed Use Corridor, is designated to be MU-R, with a combination of residential and general commercial uses, as identified in the adopted Zoning Overlay for the area. It is anticipated that there will be an additional 528 dwelling units and 39,600 square feet of commercial and office uses developed over the next 20 years along this corridor. No business park/limited industrial uses would be allowed.

- All areas southwest of I-405 and north of Torrance Boulevard, and the Torrance Lateral Channel are designated MU-BP, with a combination of regional commercial and business park/limited industrial uses. It is anticipated that there will be 2.7 million square feet of regional commercial and office uses developed at this site as well as a 300,000 square foot hotel. No residential uses would be allowed.

- South Bay Pavilion site is designated MU-R, with a combination of regional commercial and residential uses. It is anticipated that it would be compatible with the existing commercial uses to add some high density residential to the eastern and southern portions of the site in place of some of the commercial floor area. No business park/limited industrial uses would be allowed.

- The area located south of Sepulveda Boulevard, generally between Marbella Avenue and Avalon Boulevard, is designated MU-R with a combination of residential and general commercial uses.

- The area at the northeast corner of Central Avenue and Victoria Street, part of the Dominguez Hills Village Specific Plan, is designated MU-R for a combination of residential and general commercial uses.

EXHIBIT NO. 8 -

A new zoning overlay will be created for each of the Mixed Use areas. These zoning overlays could be patterned after the existing Carson Street Mixed Use Overlay Zone.

Industrial/Commercial Uses Buffer (*)

The Industrial/Commercial Uses Buffer symbol has been added to the Land Use Plan to indicate those areas of industrial or commercial property, generally a 100-foot strip abutting the property line, which requires structures and uses to be set back and/or walls and landscaping to be provided in order to buffer or protect the residential uses from the impacts of the industrial or commercial uses.

Public Facilities (PF)

This land use designation includes a broad range of civic, governmental, institutional, and utility related uses in Carson. Within this category are schools, public buildings and associated grounds, and California State University at Dominguez Hills.

It is intended that a new zoning category be created to implement the Public Facilities land use designation.

4.4 LAND USE PLAN

The land use plan adopted in this Land Use Element, shown in Exhibit LU-2, *Land Use Plan (As Adopted October 11, 2004)*, and as amended in Exhibit LU-3, *Land Use Plan (As Amended December 2006)*, is the product of a study of the alternatives prepared. This land use plan, derived from that study, as revised, is that which the City has determined best reflects the goals and Guiding Principles of the Carson Vision.

LAND USE SUMMARY

Table LU-2, *Land Use Summary*, shows the amount of acreage in each land use category under the Land Use Plan. Because the City is largely built out, the Plan reflects the fact that most of the land in the City is already devoted to industrial and low density residential uses. However, two new categories of Mixed Use have been added to provide for the new mixed use projects described earlier in this Element.

The square footage associated with all commercial uses is expected to increase by almost 3.7 million square feet over the next 20 years. It should be noted that the General and Regional Commercial land use categories are projected to decrease in square footage and commercial in Mixed Use is anticipated to increase. Sites such as the Dominguez Golf Course and the Cal Compact site are located in prime areas for commercial development.

Under the Land Use Plan there will be a net increase of almost 11.25 million square feet of industrial land uses in the City over the next 20 years.