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January 14, 2020

VIA E-MAIL

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Steven Buckley
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City of Berkeley
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**Re: 2211 Harold Way Project; Urgent Request for Confirmation of Exercise of Use Permit
Our File No. 35350.1**

Dear Mr. Burroughs and Mr. Buckley:

As you know, this firm represents HSR Berkeley Investments, LLC, in connection with the approved 2211 Harold Way project (the "Project"). The Project - *which includes 300+ downtown transit-oriented residential units immediately adjacent to BART* - was approved in December 2015 after more than 35 public hearings and countless hours of Project team and City staff work. After the Project was approved, two separate lawsuits were filed, both of which took many months to resolve. We know this Project is important to the community and the Project team is committed to its success. The Project team has heard from numerous community leaders about the importance of the Project's potentially significant contribution to the creation of new housing in a City and region facing an unprecedented housing crisis.

For the past several years, the Project team has been working to prepare the necessary construction documents and secure the financing necessary for construction of the Project. Unfortunately, the overwhelming and extraordinary costs of the Project have significantly limited the project's financing options. In particular, the mandated replacement of the existing subterranean theaters is a multi-million dollar expense that no theater company is interested in incurring, and no lender is interested in financing. In addition to the requirement that the Project replace and sustain multiple theaters at the site in perpetuity, the Project is also required to provide the following "benefits" to the City:

- \$5.5 million as an "extraordinary community benefits" cash payment;

- \$6 million in affordable housing in-lieu fees;
- More than \$7 million in planning and building plan check fees;
- Additional millions of dollars in SOSIP, school fees, property taxes, and other community payments (including \$250,000 directly to Habitat);
- A complete project labor agreement with all affiliates of the Building and Construction Trades Council of Alameda County.

Even in the face of these financial headwinds, the Project team has been working diligently to bring the Project to fruition. In the past year alone, more than \$2,000,000 in fees have been paid to professionals including architects, engineers, planners, and contractors in a good faith effort to submit an application for and obtain a building permit and begin construction pursuant to the Project conditions of approval (see Use Permit Condition of Approval No. 8, and Structural Alteration Permit Condition of Approval No. 4). As evidence of this substantial work, in December 2019 a full plan check application including the first phase of construction drawings was submitted to the City. This submittal followed many months of meetings and discussions between various members of the Project team and City staff regarding the Project. The costs incurred can be confirmed by the City through JRDV Architects, who coordinated the past 18 months of effort on behalf of the Project ownership.

Given the substantial good faith effort and the significant expense incurred by the Project in furtherance of the Project, we request the City of Berkeley's formal concurrence that the use permit for the Project has been exercised and that the Project has advanced to such a point that the City will not seek to make a determination that the permit may be declared lapsed. For reference, Use Permit Condition of Approval No. 8 provides:

8. Exercise and Lapse of Permits (Section 23B.56.100)

A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.

B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.

C. A permit may be declared lapsed and of no further force and effect if it is not exercised within two years of its issuance, **except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.**

The language in **bold** is the relevant language guiding our request, and similar language exists in the approved Structural Alteration Permit. The Project team is confident this standard has been satisfied.

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In the event the City is not prepared to issue a formal concurrence regarding the above by January 20, 2020, please be advised that in order for the Project to retain the opportunity to move forward to the construction phase, at a minimum the Project requires an additional 18 month extension of the Project entitlements to ensure there is sufficient time to complete the necessary financing and to prepare and process all necessary submittals. We therefore also request that the deadlines imposed by Condition 10 of Use Permit #13-10000010 and Condition 4 of Structural Alteration Permit #13-40000002 be extended by an additional 18 months – to June 30, 2021.

Please let us know if you require any additional information in order for the City to process our requests. As you know, time is of the essence for this important housing project, and the Project team will make itself available today and throughout the week to answer any questions you may have.

Very truly yours,



Kristina D. Lawson

KDL

cc: Joseph Penner
Mark Rhoades
Farimah Brown, City Attorney
Shannon Allen, Principal Planner