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June 25, 2018

VIA E-MAIL AND U.S. MAIL

Timothy Burroughs
Director, Department of Planning &
Development
City of Berkeley Planning Department
1947 Center Street, 2nd Floor
Berkeley, CA 94704
E-Mail: tburroughs@cityofberkeley.info

Re: 2211 Harold Way; Request for Extension of Time

Dear Mr. Burroughs:

We are in receipt of your letter dated June 13, 2018 responding to our request for a one-year extension of the deadline imposed by Condition 10 of Use Permit #13-10000010 and Condition 4 of Structural Alteration Permit #13-40000002, to January 10, 2020. We understand this would be a third extension of this deadline and appreciate the opportunity to provide more detail regarding the reasons and necessity for our request.

As you know, a project of this scope has not been built in Downtown Berkeley in nearly 50 years. Among other things, the project team has encountered a number of unanticipated hurdles in connection with the significant community benefits package the project will provide, including the financing options necessary to fund those extraordinary community benefits. Our client has continued to diligently pursue available options to overcome these unanticipated hurdles and has very recently identified a potential capital partner. We are confident that an additional extension of time will allow the project to proceed and achieve the goals and vision outlined in the Downtown Area Plan.

1. Changes in Actual Costs and Circumstances

The financial burden of the project's significant community benefits package and increased construction costs have presented a significant challenge to the financing of the project. The project is carrying an extraordinary community benefits load, the actual cost of which far exceeds the \$17,000,000 in value assigned to it by the City Council when the project was approved in December of 2015 (reflecting \$6,000,000 credit for the project labor agreement, \$5,500,000 credit for the movie theater complex, and \$5,500,000 cash payment plus any unearned credits from the PLA and movie theater complex). Current costs exceed each of the City-assigned values. In addition the project approval mandates direct cash payments to the City in excess of \$13 million, including the in-lieu affordable housing mitigation fee, as well as funding for arts, public transit and other fees and costs added by the City.

The approval process, including resolution of the meritless CEQA lawsuit, stretched to a period in excess of four years and in addition to the increased costs for providing the community benefits, construction costs associated with the project have also increased over that period of time. At the same time, as rents have begun to stabilize in Berkeley - reflecting the housing supply pipeline for the City - the rent escalation is not commensurate with construction price increases. As we attempted to communicate to the City during the 36 public hearings preceding the approval of the Project, the financial burdens placed upon the Project have rendered it only marginally profitable.

The City-required movie theater complex has proven to be particularly challenging, as the theater industry is not a growth industry with the exception of megaplexes, which are not desirable in the City of Berkeley and which a project of this scale could not deliver. As you may know, the original design for the project included a large public plaza that physically separated the Shattuck Hotel and the retail below it from the new residential building. The City rejected the public plaza proposal, instead requiring the replacement of the theaters, which presents a large financial burden for the project over time as the theater costs cannot be justified or recovered by the revenue from a lease (in other words, the theaters require an ongoing project subsidy the cost of which was not included in the City's value of the significant community benefits package). The project's construction is further complicated due to the nature of the location of the project, the preservation of the historic resource to the east/north, the BART tunnel to the east, and the Strawberry Creek culvert to the north.

Due to the difficulties in securing financing, the project team has pursued a number of options including selling the project and/or entering into a joint venture partnership to build the project. A number of potential partnership due diligence efforts have included conversations about how the entitlements might be changed to respond to an evolving housing market or to request modifications to the project's significant community benefits package. Ultimately, the project team chose not to seek the City's review and approval of modifications to any element of the project.

One positive change in the market has occurred with the enactment of the federal Tax Cuts and Jobs Act passed in December 2017, which has made investments in multifamily real estate projects such as the project more attractive. In part, this new law created the concept of "Opportunity Zone" investing, and the Project currently is within an Opportunity Zone. These changes, and the project team's continued diligence, have enabled the project team to identify a likely capital partner.

2. Status of Building Permit Application and Estimated Timeframe for Construction Drawings

The project team expects to submit an application for permits to authorize project demolition and foundation work by January of 2019. The project team has expended a significant amount of time and expense developing a detailed construction cost package through various construction estimate processes and value engineering efforts. Last month, the project team held an "all hands" construction drawing/permitting meeting with its architects, contractor, engineers and other consultants in order to put together a timeline and cost estimate for the Project. This ongoing effort involves a large group of people working to ensure that the engineering for the project and its connection to the Shattuck Hotel is safely executed. The process to prepare the required building permit application drawings with the level of detail

needed to submit for the demolition/foundation work will cost in excess of \$5,000,000 and will require at least six to eight months to complete.

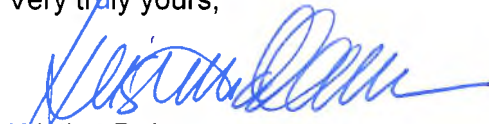
While the detailed work and permit application we plan to file will fully and timely satisfy the current "application for a building permit" requirement of Condition 10 of Use Permit #13-10000010 and Condition 4 of Structural Alteration Permit #13-40000002, an extension of time is necessary in order to give the project's capital partner the necessary assurances to support a project expenditure of in excess of \$5,000,000. The extension will provide the project's capital partner confidence in the City's process and cooperative approach to this project.

We expect the project's potential capital partner will reach out to you and your staff in the very near future to arrange a meeting to discuss next steps for the project. We respectfully request that the extension be granted as soon as possible so the meeting can focus on construction and project logistics, the project team can continue to proceed with the project financing process, and future uncertainty regarding the timing of the building permit application can be avoided.

We are pleased to have moved the project forward, and require this extension to proceed with confidence. We would be happy to answer any additional questions you have, and we are available to discuss the project with you at your convenience.

We appreciate your consideration and look forward to your response.

Very truly yours,



Kristina D. Lawson

cc (via Email): Farimah Brown, City Attorney
Joseph Penner
Mark Rhoades
Robia Crisp