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December 29, 2014

John Rahaim
Director
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: Academy of Art University

Dear John:

The November 1st deadline that the Planning Department (the "Department") set for completing the environmental impact report (EIR) to address the multiple zoning violations by the Academy of Art University ("AAU") has come and gone, and with hardly any acknowledgment of a problem by the Department. I write with dismay to follow-up my previous communications to you and the Planning Commission to express concerns with the Department's treatment of the AAU. The Department has given the AAU unprecedented extensions and accommodations, despite the AAU's long-outstanding violations of law. And to date, the AAU continues to occupy buildings and use properties violating the Planning Code. The Department's treatment of the AAU undermines and jeopardizes the City and County of San Francisco's (the "City") enforcement efforts and suggests that AAU is above the law. The Department needs to move more quickly and make completing the EIR and enforcing the code violations the highest priority to try to restore the public's confidence in the efficacy and fairness of the Department's land use enforcement.

As I have previously made clear to you and the Planning Commission, I have been frustrated and disappointed that the Department has declined to take any significant enforcement action against the AAU and have urged you to take "immediate steps to protect the City's interests by issuing Notices of Violations and Penalties ("NOVPs") against all of the AAU's properties that are out of compliance with the Planning Code."

On January 17, 2013, the Department issued Notices of Violation and Penalty (NOVPs) for 22 properties owned and/or operated by the AAU, stemming from Enforcement Notifications that the Department issued almost two years earlier in November 2011. The Department notified the AAU that it was issuing the NOVPs but staying their enforcement as long as AAU complied with a number of stated conditions. Those conditions included the following:

1. By January 31, 2013, AAU must approve the required scopes of work for the EIR cultural resources work and for the expanded technical memorandum covering the remaining properties that need discretionary permits from the City as described in the Planning Departments letter of November 20, 2012.

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3. AAU must meet its contractual obligations with Atkins Global to produce the EIR and adhere to the Department's "Academy of Art EIR Schedule" (last updated January 2013) to ensure prompt delivery of work product and forward progress on the EIR. The Department's Environmental Review Officer must approve any changes to the EIR schedule in advance and in writing.
 4. AAU must work diligently and in good faith with the Department to timely complete the EIR and must take no actions that would require a change in the EIR scope of work or baseline including, but not limited to, acquiring and occupying or using any Additional Properties. For purposes of this document, "Additional Properties" mean any and all buildings or other real property not used or occupied by or on the behalf of AAU (including any of its affiliates) as of July 5, 2012.
- ...
13. AAU must respond to any and all Planning Department correspondence, electronic mail, or phone calls within 7 calendar days from the date of this document or such other longer period as the Department may in its sole discretion provide.

We understood that the Department's purpose in issuing and immediately staying the NOVPs was to balance protecting the City's interests while incentivizing the AAU to cooperate to complete the environmental review process as promptly as possible. The stay outlined consequences that would befall the AAU if it failed to comply with the terms and schedule outlined in the January 17, 2013 letter.

Yet despite the AAU's delays after the Department issued that letter, the Department has taken no serious action to hold the AAU accountable and failed to dedicate sufficient resources to complete the Draft EIR in a timely manner. Consequently, the Department has permitted the AAU to continue using the following properties in violation of the law: 601 Brannan Street, 1080 Bush Street, 1153 Bush Street, 58-60 Federal Street, 631 Howard Street, 2225 Jerrold Avenue, 2801 Leavenworth Street, 1727 Lombard Street, 1916 Octavia Street, 1055 Pine Street, 1069-1077 Pine Street, 491 Post Street, 2340 Stockton Street, 620 Sutter Street, 817 Sutter Street, 860 Sutter Street, 740 Taylor Street, 466 Townsend Street, 1849 Van Ness Avenue, 2151 Van Ness Avenue, 2209 Van Ness Avenue, and 2211 Van Ness Avenue.

Further, in March 2014 environmental review stalled. The AAU's consultant had not made progress on the Draft Environmental Impact Report ("Draft EIR") in four months; the Department had been unable to transmit comments to the AAU related to the Transportation Study required in the Draft EIR; and the AAU's consultant had stopped work because the AAU had failed to pay them. This resulted in months of delay. Even though the AAU's actions violated the terms of the January 17, 2013 stay, the Department declined to remove the stay on the NOVPs and take decisive action, seeking instead to try to work with the AAU to complete the Draft EIR by November 1, but that did not happen.

Also, more recently I understand that the Department caused a delay by failing to prioritize work necessary to complete the Draft EIR by the November 1 deadline. That failure is inexcusable.

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More than three years have passed since the Department first sent Enforcement Notifications notifying the AAU that its uses of properties across the City violated municipal law. Almost two years have passed since the Department issued and stayed NOVPs against 22 AAU properties. And at this point, we understand that a Draft EIR is not likely to be completed and published until early 2015.

The delays in the AAU's legalization process have been largely unwarranted and the Department's treatment of the AAU compromises the City's land use and enforcement efforts. For these reasons, I expect that you will do everything in your power to ensure that the Draft EIR is among the Department's highest priorities and is completed as soon as possible and that the AAU takes all necessary steps to come into compliance with the Planning Code. Should the AAU fail to complete the Draft EIR within 60 days of the date of this letter, I will request a hearing at the Board of Supervisors to discuss this untenable situation.

My office remains ready and willing to assist the Department.

Very truly yours,



DENNIS J. HERRERA
City Attorney

Cc: Mayor Edwin Lee
Members of the Board of Supervisors
Members of the Planning Commission