



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Legitimization

August 5, 2010

Steven Vettel
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, CA 94104

RE: 255-269 Potrero Avenue
Block: 3932 Lot: 006

Dear Mr. Vettel:

This letter is in response to your request for a letter of legitimization per Planning Code Section 179.1 regarding the property at 255-269 Potrero Avenue. This parcel is located in the PDR-1-G (Production Distribution and Repair - General) Zoning District with a 40/58-X height and bulk limitation. The request is to legitimize 24,928 gross square feet of existing office on the first and second floors of the subject building.

Procedural Background

The Department received the request for legitimization of office space at 255-269 Potrero Ave on March 15, 2010. Staff reviewed the request and associated materials and the Zoning Administrator issued a 30-day public notice of the intent to issue the Letter of Legitimization on August 3, 2010. The public notice also included a draft letter for review, and was sent to 1) all owners of property within 300 feet of the subject property, 2) all current tenants of the subject property, and 3) all individuals and neighborhood associations that had requested to receive such notice. Additionally, notice was posted on the site during the notification period. The notification period expired on August 2, 2010.

Eligibility

The land use proposed for legitimization is deemed eligible if it meets the following criteria:

- i. The land use existed as of the date of the application;

The following documentation indicates the office use existed as of March 15, 2010:

- o *A lease agreement for "all the commercial space to be constructed" in the subject building between the Forderer (Lessor) and Listen.com. (Lessee) on October 4, 1999;*
- o *A modification to the original lease, dated June 18, 2003;*
- o *Building Permit No. 9916213 issued on November 15, 1999, to change the occupancy of the building from manufacturing to office.*

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- ii. The land use would have been principally permitted or permitted with conditional use authorization under provisions of the Planning Code that were effective on April 17, 2008;

Prior to the Eastern Neighborhoods rezoning, the subject property was located in the M-1 Zoning District, which principally permitted office uses.

- iii. The land use would not be permitted under current provisions of the Planning Code;

The subject property is located in the PDR-1-G Zoning District, which does not permit office use.

- iv. The land use either has been (1) regularly operating for functioning on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1, or (2) functioning in the space since at least April 17, 2008, and is associated with an organization, entity or enterprise which has been located in this space on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1;

The following documentation indicates the office use has been regularly operating for no less than 2 years prior to January 19, 2009:

- o *A lease agreement for "all the commercial space to be constructed" in the subject building between the Forderer (Lessor) and Listen.com. (Lessee) on October 4, 1999;*
- o *A modification to the original lease, dated June 18, 2003;*
- o *Building Permit No. 9916213 issued on November 15, 1999, to change the occupancy of the building from manufacturing to office.*

- v. The land use is not accessory to any other use;

The subject office use occupies two separate units within the subject building and is the principal use within those units.

- vi. The land use is not discontinued and abandoned pursuant to the provisions of Planning Code Section 183 that would otherwise apply to nonconforming uses.

The documentation and site inspection indicate the office use is currently in operation, and has been regularly operating since initial occupancy of the building as office in 1999.

Determination

It is my determination that the request for legitimization of the existing 24,928 gross square feet of office use on the first and second floors of the subject building (not including any basement level areas), per the attached plans, meets all the required criteria of Planning Code Section 179.1. Therefore, the subject gross floor area is deemed legitimate office space as defined in Planning Code 870.90. A Notice of Special Restrictions shall be filed on the subject property documenting the specific building area legitimized as

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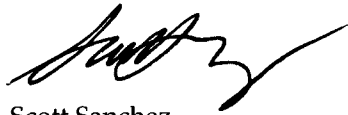
August 5, 2010
Land Use Legitimization Letter
255-269 Potrero Ave

office space as listed in this letter and documented on the proposed plans, attached as Exhibit A, prior to the approval of a site or building permit establishing such office space. This determination is not a project approval, or in any way a substitute for a Building Permit Application for the change of use to office space.

Please note that before a Building Permit Application may be approved to legally convert the subject gross floor area to office, this project must pay the applicable legitimization fee of \$2 per gross square foot.

If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of the Letter of Legitimization. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,

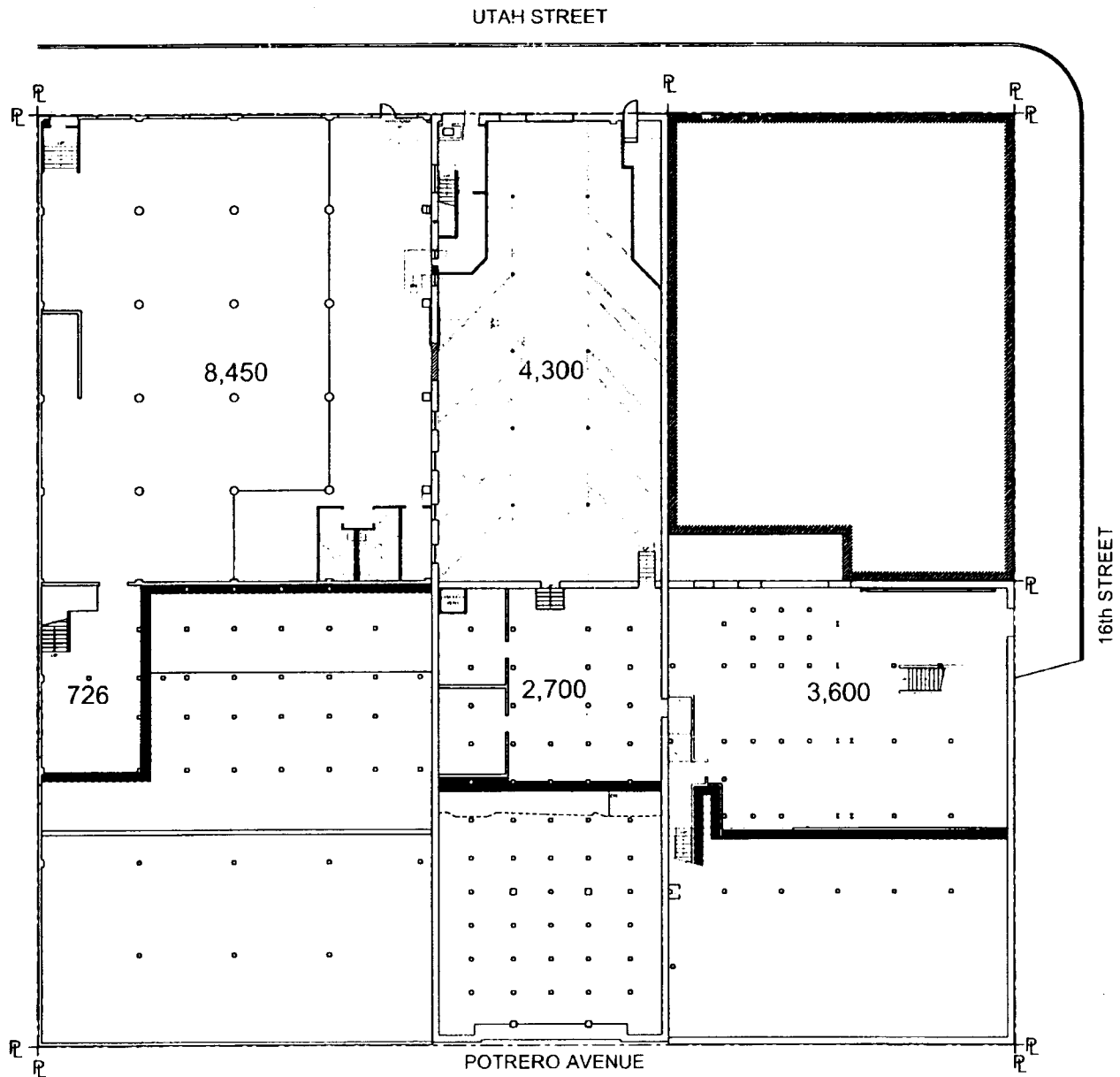


Scott Sanchez
Acting Zoning Administrator

cc: Corey Teague, Planner
Steve Wertheim, Planner
Planning Commissioners
Forderer Cornice Works (Property Owner)
All Parties on the Notification Request List

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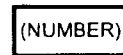
EXHIBIT A



AREA TO BE LEGALIZED ON THIS FLOOR:

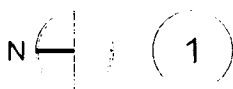
0 S.F.

LEGEND



AREA TO BE LEGALIZED FOR OFFICE USE

(NUMBER) OTHER AREA



BASEMENT FLOOR PLAN

SCALE: 1/32" = 1'-0"



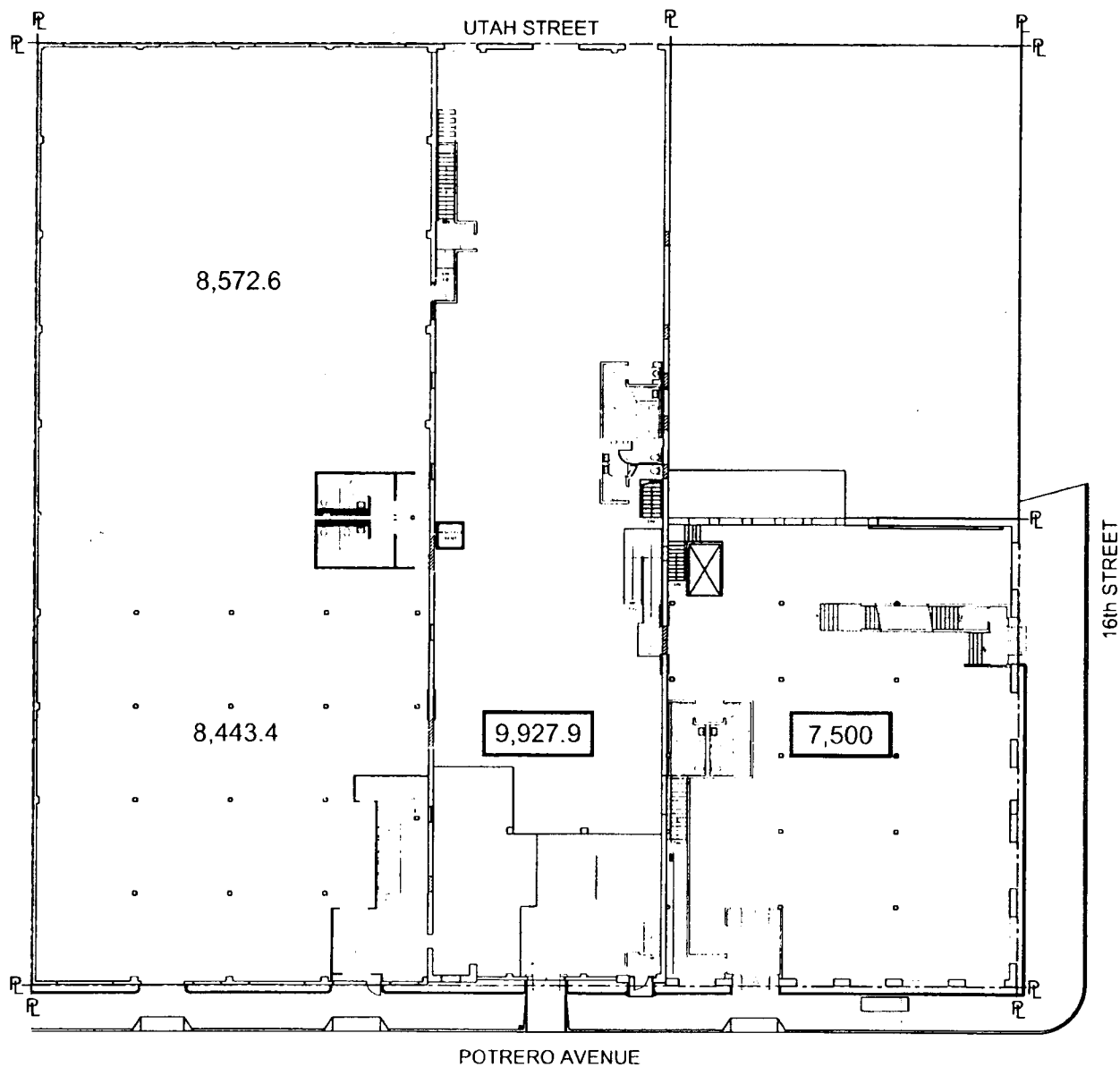
Harvey Hacker
Architects
528 Bryant Street
San Francisco, CA 94107
Telephone: 415 957 0579



FORDERER BUILDING
269 POTRERO AVE
SAN FRANCISCO

PROJECT 9760.10
8 MARCH 10
DRAWING 1 of 3

EXHIBIT A



AREA TO BE LEGALIZED ON THIS FLOOR:

17,427.9 S.F.

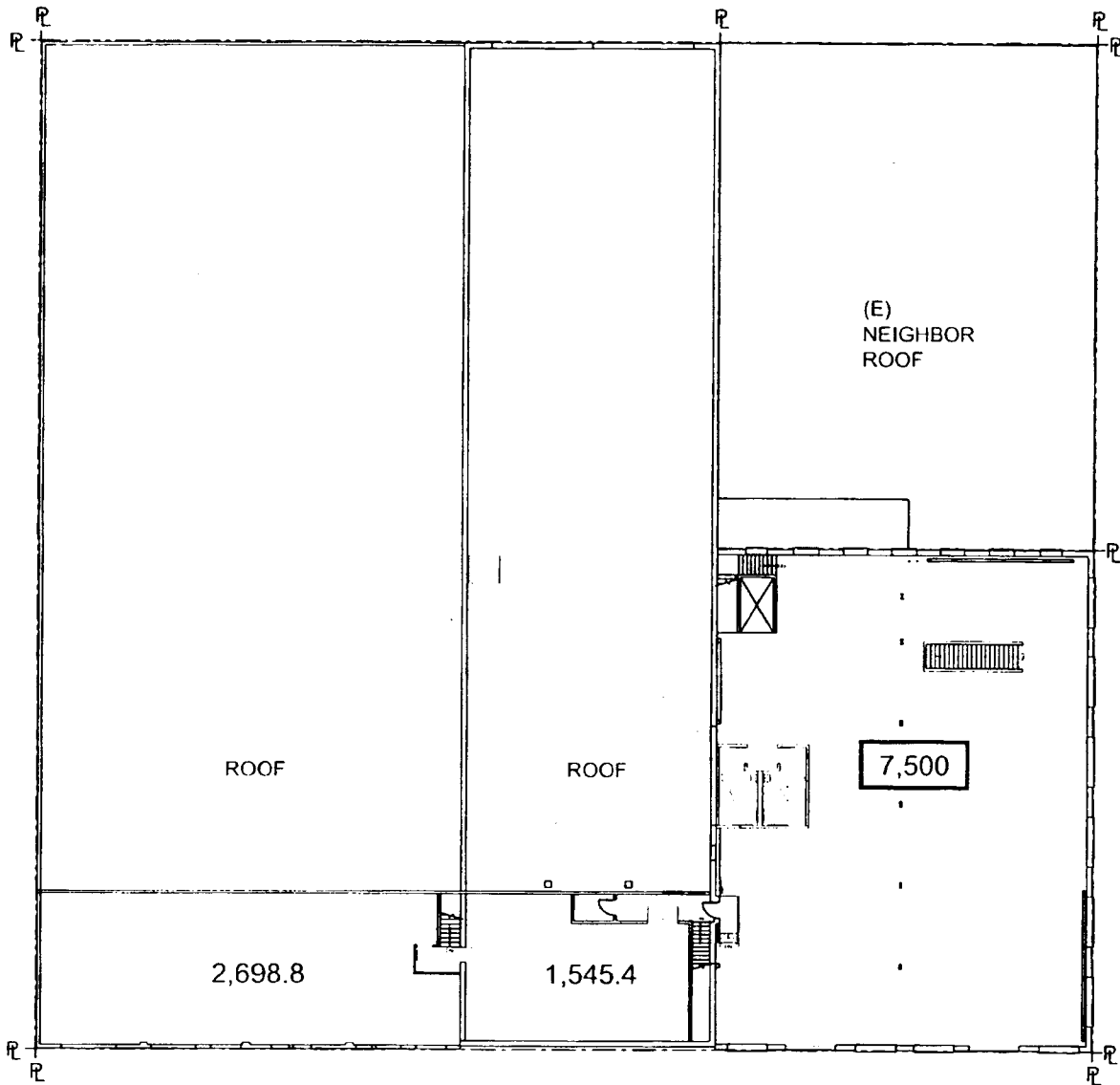
LEGEND

(NUMBER) AREA TO BE LEGALIZED FOR OFFICE USE

(NUMBER) OTHER AREA

N — (1) FIRST FLOOR PLAN
SCALE: 1/32" = 1'-0"

EXHIBIT A



AREA TO BE LEGALIZED ON THIS FLOOR:

7,500 S.F.

LEGEND

(NUMBER) AREA TO BE LEGALIZED FOR OFFICE USE

(NUMBER) OTHER AREA

 (1) **SECOND FLOOR PLAN**
SCALE: 1/32" = 1'-0"





Attorneys At Law

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w/ supporting documents

STEVEN L. VETTEL
svettel@fbm.com
D 415.954.4902

March 11, 2010

Via Hand Delivery

Lawrence Badiner
Zoning Administrator
San Francisco Planning Department
1650 Mission St., 4th Floor
San Francisco, CA 94103

Re: 255-269 Potrero Avenue
Request for Finding of Section 179.1 Legitimization of Use

Dear Mr. Badiner:

I write on behalf of Forderer Cornice Works (“Forderer”), the owner of 255 - 269 Potrero Avenue, Assessor’s Block 3932, Lot 6 (the “Property”). We request that you make a determination pursuant to Planning Code section 179.1 that legitimizes the existing office use (the “Office Use”) at the Property.

The Property consists of four buildings (approximately 65,964 sq.-ft. total) built in phases between the 1890s and the 1950s located in the block bounded by Potrero Avenue, 16th Street, Utah Street and 15th Street. Until late 1999, when space was leased to its current tenants, the Property was in continuous use as a manufacturing facility by Forderer. In 1999, Forderer Cornice Works relocated to an industrial park in Hayward and various spaces in the Property have been leased since then to various tenants for, respectively, furniture and antique retail store (approximately 17,000 sq.-ft. and 8,500 sq.-ft. respectively) and a multimedia office (approximately 24,928 sq.-ft.) use. This legitimization request concerns the latter multimedia office use (“Office Use”). The Property was formerly in an M-1, Light Industrial, Use District which permitted the Office Use as a matter of right, and is now in a PDR-1-G, Production Distribution and Repair – General, Use District, which does not permit the Office Use.

The Property owner’s request for legitimization of the Office Use is consistent with the required Zoning Administrator findings specified in Section 179.1(b)(2) of the Planning Code as follows:



Eligibility. Any use that is the subject of an application under this Section shall be one that is determined by the Zoning Administrator as one which:

(A) exists as of the date of the application;

The office space on the Property was originally leased to Listen.com in late 1999. An option on that lease was later exercised when Listen.com was acquired by RealNetworks, a digital media service provider. (The business of RealNetworks can be reviewed on its website: <http://realnetworks.com>.) Thus, through the continuous business operations of both Listen.com and RealNetworks, the Office Use exists as of the date of this application and has been continuously and regularly operating on the Property since December 1, 1999. See Exhibit A (Lease Agreement between Forderer (as lessor) and Listen.com (as lessee), dated October 4, 1999, with Amendments); Exhibit B (Letter re: Option to Lease Agreement, dated June 18, 2003).

(B) would have been principally permitted or permitted with conditional use authorization under provisions of the Planning Code that were effective on April 17, 2008;

The Office Use was permitted as of right on the Property (formerly in a M-1, Light Industrial, Use District) under provisions of the Planning Code that were effective on April 17, 2008 (see Planning Code §§ 219, 890.70). See also Exhibit C (Zoning Administrator Written Determination re: “Business Service”, dated Sept. 7, 2000).

(C) would not be permitted under current provisions of this Code;

The Office Use would not be permitted under current provisions of the Planning Code which have zoned the Property in the PDR-1-G, Production Distribution and Repair – General, Use District pursuant to the Eastern Neighborhoods Plan and its Zoning Controls (see Zoning Map, ZN08; Planning Code §§ 219, 890.70). Section 890.70 includes within the definition of Office “multimedia, software development, web design, electronic commerce, and information technology,” all uses which in 2000 were considered Business Services.

(D) is a land use that either:

(1) has been regularly operating or functioning on a continuous basis for no less than 2 years prior to the effective date of this Section; or

(2) has been functioning in the space since at least April 17, 2008, and is associated with an organization, entity or enterprise which has been located in this space on a continuous basis for no less than 2 years prior to the effective date of this Section;

The Office Use has been regularly operating or functioning on a continuous basis at the Property for over 10 years, since December 1, 1999 (see Exhibits A, B, & C).

(E) is not accessory to any other use; and

The Office Use is not a related minor use which is either (a) necessary to the operation or



enjoyment of a lawful principal use or conditional use, or (b) appropriate, incidental and subordinate to any such use and is, thus, not an accessory to any other use (*see* Planning Code § 204). The other spaces in the Property are occupied by a furniture wholesaler unaffiliated with RealNetworks.

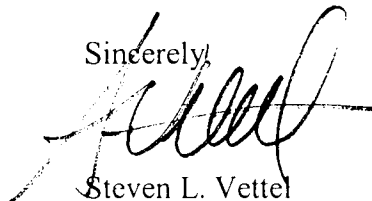
(F) is not discontinued and abandoned pursuant to the provisions of Section 183 that would otherwise apply to nonconforming uses.

The Office Use has been regularly operating or functioning on a continuous basis for over 10 years, since December 1, 1999 (*see* Exhibits A & B); thus, the Office Use has not been discontinued or abandoned (*see* Planning Code § 183).

Pursuant to Section 179.1(d) of the Planning Code, the following materials accompany this application:

- Floor plans for the entire building along with specific demarcation of the space (24,927.9 sq.-ft.) proposed for legitimization (Exhibit D);
- Evidence supporting the findings required under Planning Code § 179.1(b)(2), above. (Exhibits A, B, & C); and
- Notification materials, including a list of all property owners within 300 feet of the subject property, as set forth in Planning Code § 306.3(a)(2) (Exhibit E) and, a complete list of all current occupants of the subject property (Exhibit F).

Thank you for considering this request. Please contact me or my colleague David Ismay (415-954-4962; dismay@fbm.com) if we can provide any other information or to arrange a tour of the Property. Also enclosed is the determination fee in the amount of \$549.50.

Sincerely,

Steven L. Vettel

SLV:avd

Enclosures

cc: Curt Forderer
Harvey Hacker
David Ismay