



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Legitimization

December 24, 2013

John Kevlin
Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104

Site Address:	290 Division Street
Assessor's Block/Lot:	3526/016
Zoning District:	PDR-1-G
Staff Contact:	Corey Teague, (415) 575-9081 or corey.teague@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

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415.558.6377

Dear Mr. Kevlin:

This letter is in response to your request for a Letter of Legitimization per Planning Section 179.1 regarding the property at 290 Division Street. This parcel is located in the PDR-1-G Zoning District and a 40-X Height and Bulk District. The request is to legitimize 20,981 gross square feet of office space within the existing 34,942 square foot building.

Procedural Background

The Department received the request for legitimization of office space at 290 Division Street on January 17, 2012. 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 November 18, 2013. 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 December 17, 2013.

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;

Lease documentation, rent rolls, and marketing materials indicate that office use existed in each unit listed in the general timeline table attached to this letter as Exhibit A, as of January 17, 2012, except for Units 300 and 405.

- 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 property containing the subject building is located in the PDR-1-G Zoning District, which prohibits office uses.

- 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;

Lease documentation, rent rolls, marketing materials, and internet research indicate the office uses operated continuously in each unit listed in the general timeline table attached to this letter as Exhibit A, for no less than 2 years prior to January 19, 2009, except for Units 300 and 405.

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

The subject office uses are divided into small, individual office units that do not serve as an accessory use to any other use in the building.

- 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.

Lease documentation, rent rolls, marketing materials, and internet research indicate that the office units listed in the general timeline table attached to this letter as Exhibit A have remained occupied during the required period, except for Units 300 and 405.

Determination

It is my determination that the request for legitimization of the existing 20,981 rentable square feet of office use on a portion of the third floor, and the entire fourth floor of the subject building as shown on the attached plans, meets all the required criteria of Planning Code Section 179.1, except for Units 300 and 405. Considering the reduction of these ineligible units, a total of approximately 18,900 square feet of rentable floor area – along with associated circulation and wall space that falls under the definition of gross floor area per Planning Code Section 102.9 – 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 office space as listed in this letter and documented on the

John Kevlin
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One Bush Street, Suite 600
San Francisco, CA 94104


December 24, 2013
Land Use Legitimization Letter
290 Division Street

proposed plans, attached as Exhibit B, 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 a Building Permit Application must be approved to legally convert the subject gross floor area to office. Additionally, the relevant impact fees outlined in Section 179.1(g), and elsewhere in the Municipal Code, shall be assessed as part of the Building Permit Application.

APPEAL: 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,



Corey A. Teague
Acting Zoning Administrator

Enclosure: Exhibit A – 290 Division Street Tenant List and Timeline
Exhibit B – 290 Division Street Floor Plans

cc: Property Owner
Planning Commissioners
All Parties on the Notification Request List

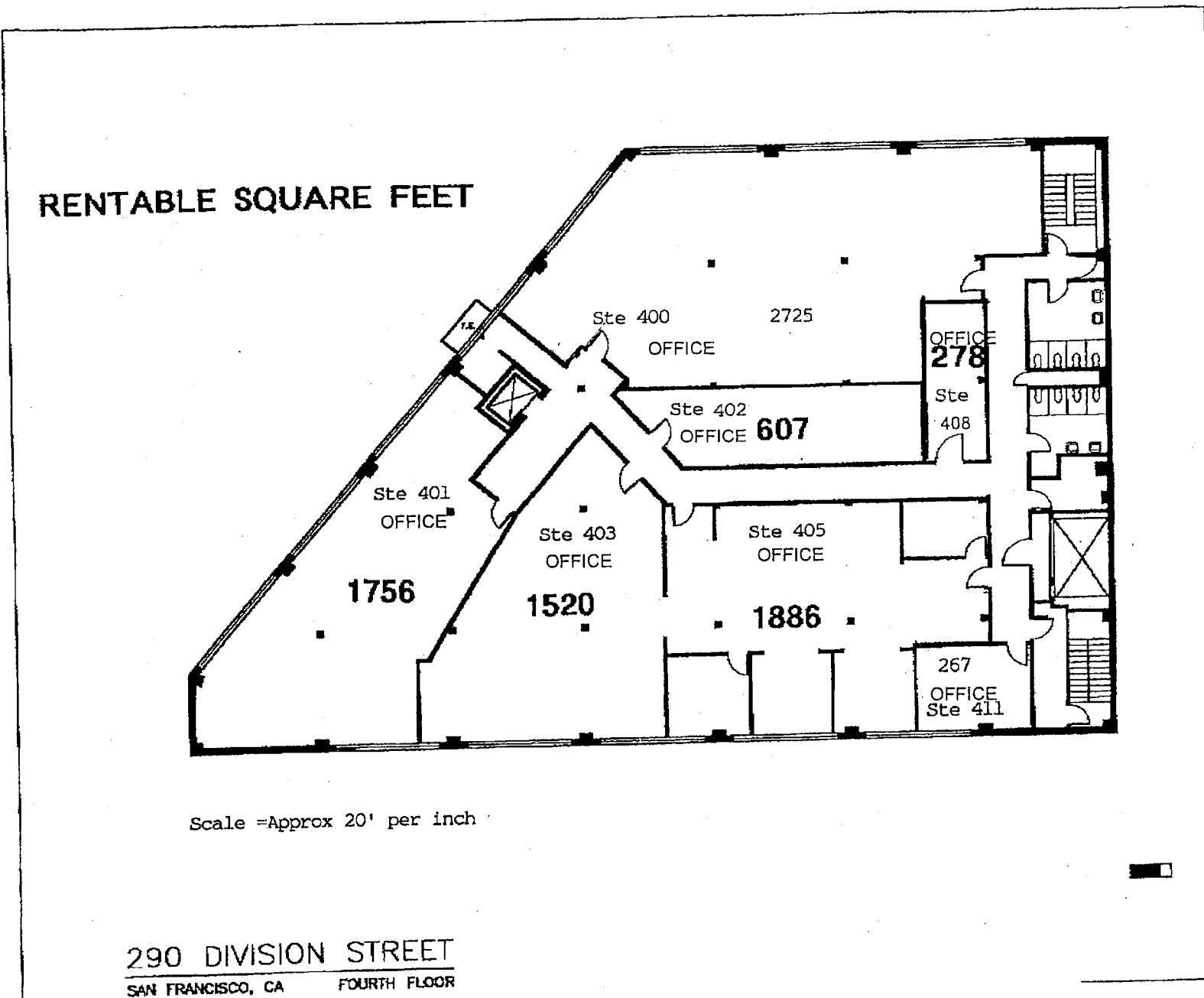
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Exhibit A – Tenant List and Timeline

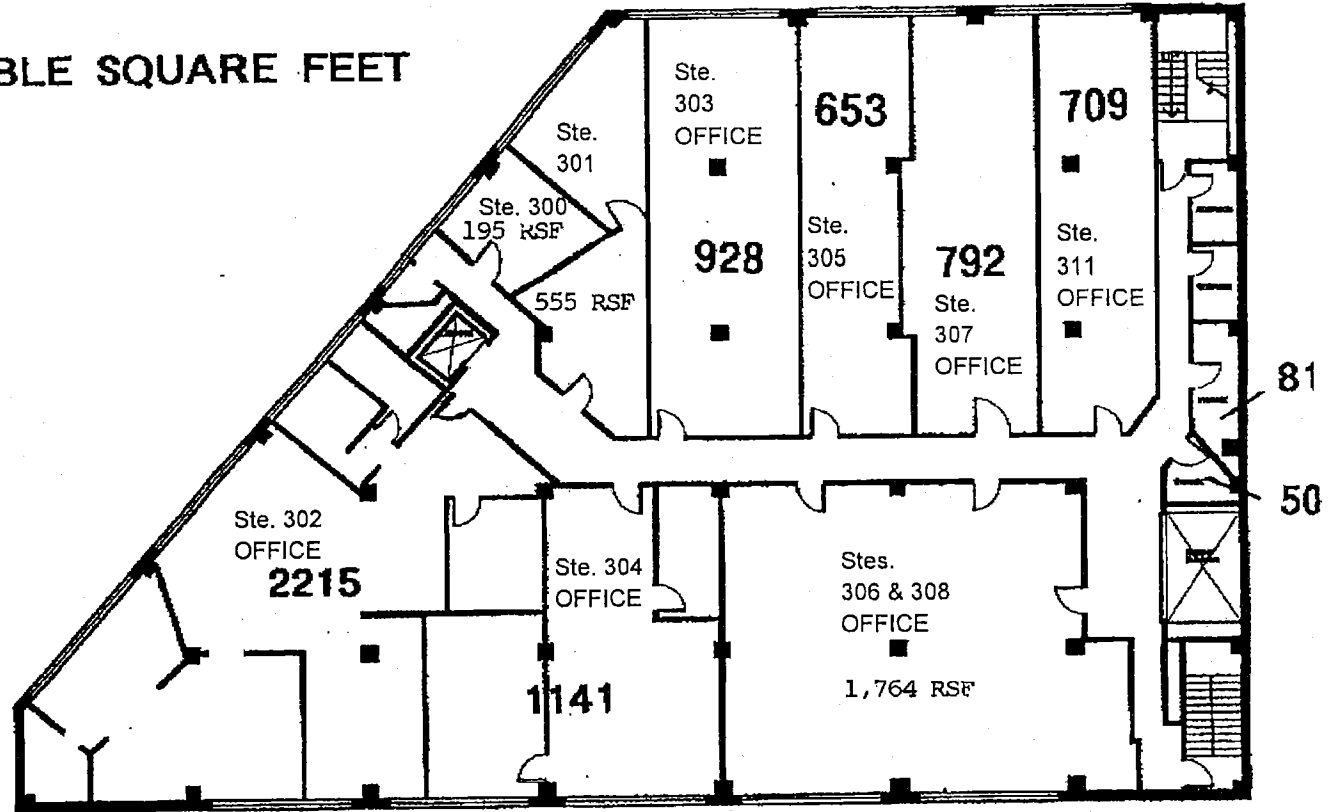
290 Division Street

Unit	Rentable Sq. Ft.	2013	2012	2011	2010	2009	2008	2007
402	607	Guitar District	Guitar District	Vacant	Vacant	Earthwhile Endeavors, Inc.	Earthwhile Endeavors, Inc.	REM Design, Inc.
403	1,520	Vacant	Motionloft	Motionloft	Motionloft	Earthwhile Endeavors, Inc.	Earthwhile Endeavors, Inc.	Earthwhile Endeavors, Inc.
405	1,886	Vacant	Motionloft	Motionloft	Vacant	Vacant	Vacant	Center for Sex & Culture
408	278	Vacant	REM Design, Inc.	REM Design, Inc.	REM Design, Inc.	REM Design, Inc.	REM Design, Inc.	REM Design, Inc.
411	267	Chatango, LLC	Chatango, LLC	Earthwhile Endeavors, Inc.	Earthwhile Endeavors, Inc.	Earthwhile Endeavors, Inc.	Earthwhile Endeavors, Inc.	Earthwhile Endeavors, Inc.
	20,981	TOTAL RENTABLE SQUARE FEET						

**See lease documents and other materials for more specific dates of tenancy.*

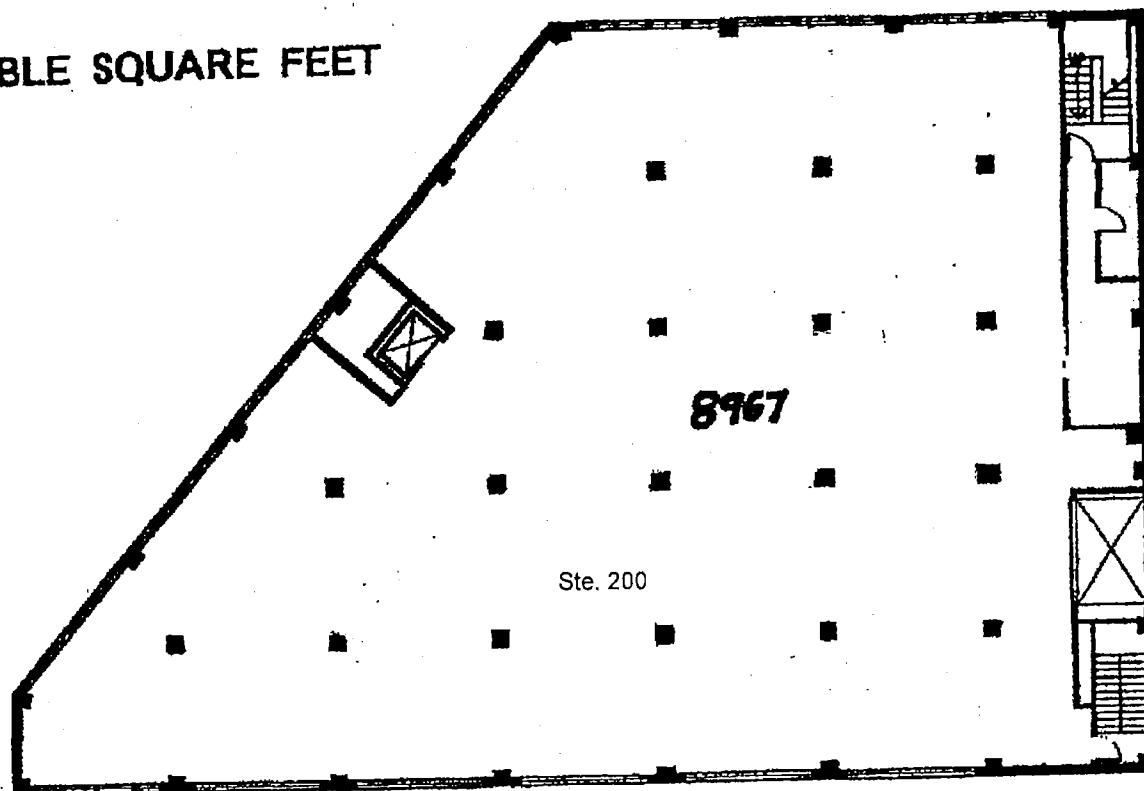


RENTABLE SQUARE FEET

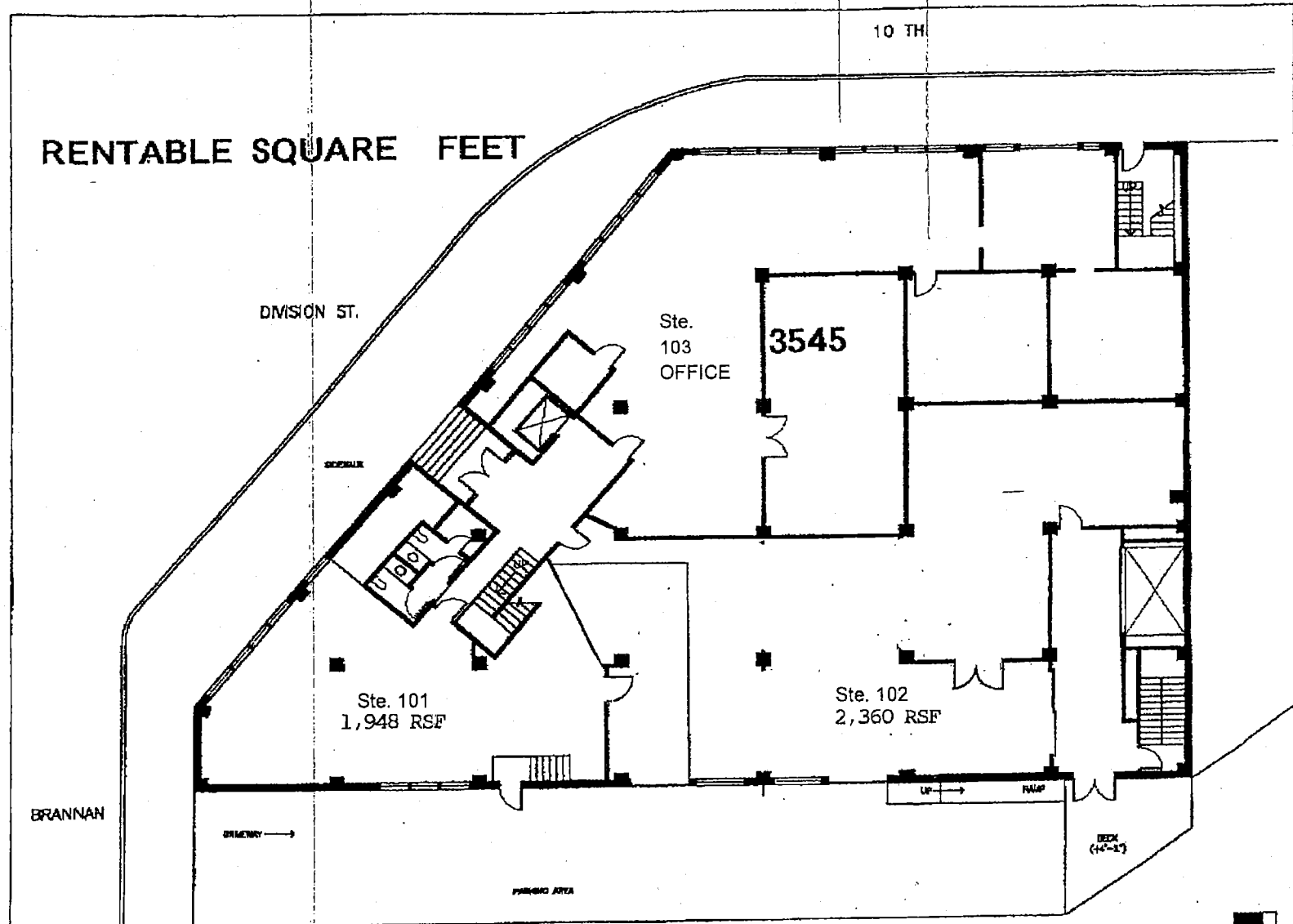


290 DIVISION STREET
SAN FRANCISCO, CA THIRD FLOOR

RENTABLE SQUARE FEET



290 DIVISION STREET
SAN FRANCISCO, CA SECOND FLOOR



RENTABLE SQUARE FEET

290 DIVISION STREET

SAN FRANCISCO, CA GROUND FLOOR

REUBEN & JUNIUS_{LLP}

EN LEGITIMIZATION APPLICATION §179.1

January 17, 2012

VIA MESSENGER

Mr. Scott Sanchez
Zoning Administrator
1650 Mission Street, 4th floor
San Francisco, CA 94103

ID# 10165 SE J BAVALES
OK# 109655 \$ 588. -

RECEIVED

Re: EN Legitimization Application
290 Division Street (Block 3526, Lot 016)
Our File No.: 6990.01

JAN 19 2012
CITY & COUNTY OF S.F.
PLANNING DEPARTMENT

Dear Mr. Sanchez:

Our office represents Sierra Industries West, L.P. ("Owner"), the owner of the property located at 290 Division Street, San Francisco (the "Property"). The Property consists approximately 34,942 square feet of floor area with 21 commercial suites located on four floors. By this letter, we are seeking a determination that 20,981 square feet of space at the Property is eligible for legitimization under Planning Code Section 179.1 as office space. Enclosed with this letter are materials that support the legitimization determination, as is explained in detail below.

A. Background

The Property is an irregular-shaped lot located at the northern corner of Division, 10th and Brannan Streets, in between elevated highways where U.S. 101 connects with Interstate 80. The Property is currently improved with a four-story office/commercial building. The building is surrounded by streets on three sides and is a lot line development. The building was originally constructed in 1924.

The Property was rezoned from M-1 to PDR-1-G pursuant to the Eastern Neighborhoods Area Plan rezoning. This letter of determination of legitimization eligibility request is being made for 17 office suites only, for a total of 20,981 square feet of legitimized office space.

Photos of the existing building are attached in Exhibit A.

B. Use History and Floor Plans

The Property has been occupied by a variety of office uses in recent years. A spreadsheet with a suite-by-suite analysis of the use history for the Property is attached as **Exhibit B**. The occupancy history of Suites 103, 300, 302, 303, 304, 305, 306, 307, 308, 311, 400, 401, 402, 403, 405, 408 and 411 make them eligible for legitimization. Rent rolls from December 27, 2006 and December 1, 2011 are attached as **Exhibit C**. Leases for the legitimizable suites during the period of January 2007 through today are attached as **Exhibit D**. Floor plans for the four floors at the Property, with legitimizable areas highlighted are attached as **Exhibit E**.

C. Legitimization Analysis

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

- Suite 103: Cutting Edge occupied Suite 103 from March 1, 1998 and continues to occupy the Suite (lease, 12/2006 rent roll, 12/2011 rent roll). Cutting Edge is a digital media consulting firm, an office use (cuttingedge-sf.com).
- Suite 300: The Property's management office has occupied Suite 300 since before January 2007 through today (12/2006 rent roll, 12/2011 rent roll).
- Suite 302: Youth Speaks, Inc. occupied Suite 302 from July 15, 2006 through July 14, 2009 (lease, 12/2006 rent roll). Youth Speaks is a non-profit and used the space as office (lease sec. 1.8).

Y Studios began its occupancy of Suite 302 on July 19, 2010 and continues to occupy the space (lease, 12/2011 rent roll). Y Studios is a design, research and consulting firm and uses the space as office (lease sec. 1.8, www.ystudios.com).

- Suite 303: At-Six Architecture first occupied Suite 311 from July 1, 2005 to September 20, 2005, when it moved to Suite 303. At-Six occupied Suite 303 from September 20, 2005 through today (lease, www.at-six.com). At-Six Architecture uses the space as its architecture office (lease sec. 1.8).
- Suite 304: Intelligent Design occupied Suite 304 from November 1, 2002 through October 1, 2009 (lease, 12/2006 rent roll, return of deposit letter). Intelligent Design used the suite as a design office (lease sec. 1.8).

Sustainable Global Sourcing has occupied Suite 304 from February 15, 2011 through today (lease, 12/2011 rent roll). It uses the space as its office (lease sec. 1.8).

- Suite 305: GHA Travel occupied Suite 305 from January 15, 1999 through July 31, 2010 (lease, 12/2006 rent roll) and used the space as a travel agency office (lease sec. 1.8).

LHW Courier, Inc. has occupied Suite 305 from August 8, 2011 through today (lease, 12/2011 rent roll) and uses the space as an administrative office for its courier services (lease sec. 1.8).

- Suite 306: Remain.com has occupied Suite 306 from July 15, 2001 through today (lease, 12/2006 rent roll, 12/2011 rent roll) and uses the space as a tech support office (lease, www.remaincom.net).
- Suite 307: Environmental and Construction Solutions has occupied Suite 307 from November 15, 2002 through today (lease, 12/2006 rent roll, 12/2011 rent roll) and is a consulting firm that operates the space as its office (lease, www.ecsconsultants.com).
- Suite 308: Suite 308 was vacant from prior to January 2007 to May 31, 2007. During that time, the Owner actively marketed the space for an office tenant (Attached emails).

Remain.com has occupied Suite 308 from June 1, 2007 through today (lease, 12/2011 rent roll) and uses the space as a tech support office (lease, www.remaincom.net).

- Suite 311: Jackson Liles Architecture occupied Suite 311 from April 5, 2006 through August 30, 2011 (lease, 12/2006 rent roll) and used the space as office for its architecture firm (lease sec. 1.8).

Suite 311 has been vacant since September 1, 2011 but has been actively marketed by the Owner for an office tenant (GVA Kidder Matthews listing agreement). The Owner has been marketing the suite since the GVA Kidder Matthews agreement ended in July of 2011.

- Suite 400: Potrero Chiropractors has occupied Suite 400 from January 1, 2005 through today (lease, 12/2006 rent roll, 12/2011 rent roll) and uses the space as a chiropractor's office. A chiropractor's office is a "medical service" under the Planning Code, which is a type of office use (Planning Code Sections 790.114; 890.114).
- Suite 401: REM Design, Inc. has occupied Suite 401 from June 20, 1998 through today (lease, 12/2006 rent roll, 12/2011 rent roll) and uses the space as office as an engineering development firm (remdesign.com).

- Suite 402: REM Design, Inc. occupied Suite 402 (then identified as Suite 404) from July 10, 2000 through March 1, 2008 (lease, rent roll 12/2006) and used the space as office for its engineering development firm (remdesign.com).

Earthwhile Endeavors, Inc. occupied Suite 402 (then identified as Suite 404) from March 1, 2008 through June 30, 2009 (lease) and used the space as a sales and distribution office for its pet supply business (lease sec. 1.8).

Suite 402 has been vacant since July 1, 2009 but has been actively marketed by the Owner for an office tenant (Commercial Partners listing agreement, GVA Kidder Matthews listing agreement). The Owner has been marketing the suite since the GVA Kidder Matthews agreement ended in July of 2011.

- Suite 403: Earthwhile Endeavors, Inc. occupied Suite 403 (then identified as Suite 402) from March 1, 2003 through June 30, 2009 (lease, 12/2006 rent roll) and used the space as a sales and distribution office for its pet supply business (lease sec. 1.8).

Motionloft has occupied Suite 403 from August 15, 2010 through today (lease, 12/2011 rent roll) and uses the space as its office (lease sec. 1.8).

- Suite 405: The Center for Sex and Culture occupied Suite 405 from January 1, 2007 through December 31, 2007 (lease, 12/2006 rent roll) and used the space as its research, education and outreach office (www.sexandculture.org).

During the time Suite 405 was vacant, it was actively marketed for office tenants (Attached Letter of Intent).

Motionloft has occupied Suite 405 from March 15, 2011 through today (lease, 12/2011 rent roll) and uses the space as its office (lease sec. 1.8).

- Suite 408: REM Design, Inc. has occupied Suite 408 (then identified as Suite 411) from July 10, 2000 through today (lease, 12/2006 rent roll, 12/2011 rent roll) and uses the space as office as an engineering development firm (remdesign.com).
- Suite 411: Earthwhile Endeavors, Inc. occupied Suite 411 from February 11, 2005 through June 30, 2011 (lease, 12/2006 rent roll) and used the space as a sales and distribution office for its pet supply business (lease sec. 1.8).

Chatango, LLC has occupied Suite 411 from July 1, 2011 through today (lease, 12/2011 rent roll) and uses the space as a web design and hosting office (lease sec. 1.8, chatango.com).

Documentation evidencing the marketing of suites 308, 311, 402 and 405 for office tenants is attached as **Exhibit F**.

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 EN rezoning, the Property was located in the M-1 (Light Industrial) Zoning District. This district principally permitted office use.

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

The EN Area Plan rezoned the Property to PDR-1-G, which does not permit office use.

iv. The land use either has been (1) regularly operating or 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;

All office suites eligible for legitimization were either occupied throughout this time or had no more than one year of vacancy and were actively marketed for an office tenant during that time. See Section *i* for more detail.

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

All office uses located in suites eligible for legitimization were the principal use, and not accessory to any other use.

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.

During all relevant times, no period of non-use of the office space has occurred in eligible suites for three or more years and no non-office use has been established in those suites. As a result, the office uses in these suites have not been discontinued or abandoned.

D. Notification Materials

Mailing labels, a 300-foot radius map and a list of owners within 300-foot radius are also enclosed in this legitimization application.

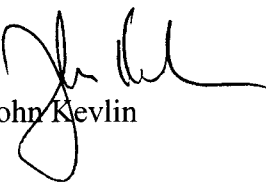
Mr. Sanchez
January 17, 2012
Page 6

E. Conclusion

In addition to the evidence and other documents identified above, I have also enclosed a check for \$588 for the letter of determination fee. Please contact me if there is anything else you need from me or have any questions.

Very truly yours,

REUBEN & JUNIUS, LLP


John Kevlin

Encls.: Exhibit A – Photos of the Property
Exhibit B – Spreadsheet with suite-by-suite use history analysis
Exhibit C – Rent rolls for the Property, dated 12/27/2006 and 12/1/2011
Exhibit D – Leases for all suites proposed for office legitimization
Exhibit E – Floor plans
Exhibit F – Marketing materials for suites 308, 311, 402 and 405

Separately enclosed:
Notification materials
Check for \$588 for the request fee

cc: Robert Capps, Sierra Industries West, L.P.