### **Letter of Determination**

May 27, 2016

Ilene Dick Farella Braun and Martel LLP 235 Montgomery Street San Francisco CA 94104

**Site Address:** 

425 Brannan Street

Assessor's Block/Lot:

3787/033

**Zoning District:** 

SLI (Service/Light Industrial)

**Staff Contact:** 

Laura Lynch, (415) 575-9045 or laura.lynch@sfgov.org

1650 Mission St.

Suite 400 San Francisco, CA 94103-2479

Reception: **415.558.6378** 

415.558.6409

Fay:

Planning Information: 415.558.6377

Record No.:

2016-004496ZAD

Dear Ms. Dick:

This letter is in response to your request for a Letter of Determination regarding the property at 425 Brannan Street. The property is located within the SLI (Service/Light Industrial) Zoning District and 65-X Height and Bulk District. The property is also located in an area subject to Interim Moratorium prohibiting the conversion of industrial uses to non-industrial uses. The request is to determine whether the second floor was legally converted to office space prior to the property being subject to the current SLI Zoning District controls which prohibit general office use. It should be noted that the first floor of the property was recently converted to retail sales per Building Permit Application No. 201508285513 (which was reviewed and approved by the Planning Department).

#### **BACKGROUND**

The subject building is approximately 19,500 square feet and was constructed in 1924 for light manufacturing/warehouse uses. The Office of the Assessor and Recorder lists the property as an industrial building and building permit records indicate the historic use as warehouse. At the time of construction, the property was located in the Heavy Industrial Zoning District. On May 2, 1960, the subject property was rezoned from Heavy Industrial to M-2 (Heavy Industrial).

In the mid-1980's, the property was rezoned from M-2 to SSO (Service/Secondary Office) under interim zoning controls during the development of the South of Market (SOMA) Area Plan. On April 6, 1990, the subject property was rezoned from M-1/SSO to SLI (Service – Light Industrial) as part of the SOMA Area Plan. Under the SLI Zoning District, Office Uses¹ as defined in Planning Code Section 890.70 are

<sup>&</sup>lt;sup>1</sup> Planning Code Section 890.70(a): "Office use" shall mean space within a structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location services including, but not limited to, the following: Professional; banking; insurance; management; consulting; technical; sales; and design; and the non-accessory office functions of manufacturing and warehousing businesses; all uses encompassed within the definition of "office" in Section 219 of this Code; multimedia, software development, web design, electronic commerce, and information technology; all uses encompassed within the definition of "administrative services" in Section 890.106 of this Code; and all "professional services" as proscribed in Section 890.108 of this Code excepting only those uses which are limited to the Chinatown Mixed Use District.

Ilene Dick Farella Braun and Martel LLP 235 Montgomery Street San Francisco CA 94104 May 27, 2016 Letter of Determination 425 Brannan Street

generally prohibited with the exception of office uses in Landmark Buildings or contributory buildings in historic districts (per Planning Code Section 803.9(a)) and work space of design professionals (per Planning Code Section 803.9(g)).

On September 30, 2014, the Board of Supervisors adopted interim zoning moratorium to prohibit the conversion or replacement of Production, Distribution, and Repair uses in the proposed Central South of Market (SOMA) Plan Area. On December 19, 2014, the Board of Supervisors extended the interim zoning moratorium, which will now expire on October 9, 2016.

In your request, it is argued that there was legal office use on the second floor prior to the 1990 adoption of the SLI Zoning District and that office use has been maintained on the property since that time as a non-conforming use. Your request included the building permit history for the property and information from reverse directories regarding previous tenants to support your argument, including the following:

The submittal included a 1983 building permit (8312507) where the existing use is listed as "Printing Plant" and the proposed use is listed as "Printing Plant and Publishing Business." The scope of work stated the following: "New portioning and electrical for office and warehouse space on second floor." Based upon a review of the plans, the office portion of the second floor appears to be accessory to the warehouse space. Based upon your submittal and the permit, the tenant was E.R. Reports (a publishing company) and they occupied the second floor from 1983-1987 with various other publishing companies. It should also be noted that while this permit was not reviewed by the Planning Department, the proposed "Printing Plant and Publishing Business" use would have been considered to be a Home and Business Service and/or Manufacturing and Processing use under the M-2 zoning in effect at that time.

The submittal included a 1987 building permit (8718113) where both the existing and proposed uses were listed as "office space." The scope of work stated the following: "Interior partition wall (non-bearing); relocate electrical outlets and switches (all construction one hour rated) carpeting." Based upon a review of the plans, proposed interior tenant improvements are limited to a portion of the second floor (not the entire floor). Based upon your submittal and the permit, the tenant was Quinby's Inc. (a children's toy and game company) and they occupied the second floor from 1987-1990. This permit does not state a change of use and was not routed to the Planning Department for review.

The submittal also references a 1987 letter from the Public Utilities Commission noting that the Transportation Impact Development Fee (TIDF) was not required for the 1987 building permit. TIDF was not assessed for this permit because the permit application was not represented as a change of use to office.

The submittal included a 1995 building permit (9502803) where both the existing and proposed uses were listed as "office." The scope of work stated the following: "Demolish old walls & construct new walls at reception area & classified area. Modify reception door & street entrance door to comply with CAC T-24 accessibility." Based upon a review of the plans, the scope of the permit included the entire second story. Based upon your submittal and the permit, the tenant was SF Weekly (a newspaper) and they occupied the entire second floor from 1990-1997. While this permit does not state a change of use and was not routed to the Planning Department for review, occupancy by SF Weekly would have been considered to

Ilene Dick Farella Braun and Martel LLP 235 Montgomery Street San Francisco CA 94104 May 27, 2016 Letter of Determination 425 Brannan Street

be a Business Service<sup>2</sup> use per Planning Code Section 890.111 (which is principally permitted under the SLI Zoning District). It should also be noted that a Business Service use is considered to be a Production, Distribution and Repair use per Planning Code Section 102<sup>3</sup>.

The submittal included a 1999 building permit (9926836) and a 2000 building permit (20000104165) which, together, authorized conversion of the ground floor from warehouse to telecommunication facility. Given that these permits were limited to the ground floor, they do not (nor could they have) authorized either a new or continuing general office use on the second floor.

All other permits approved at the property were related to upgrades to the front façade or change of use at the first floor. The permit history does not include any permits which authorize conversion of the second story to general office use.

#### **DETERMINATION**

Based upon available records, including Assessor's records and building permit history, the last authorized use of the second floor is warehouse. While the Planning Department does not find that the 1983 or 1987 building permits authorized either a new or continuing general office use on the second floor of the property, any such general office use would have been considered to be a non-conforming use with the 1990 adoption of the SLI Zoning District (which prohibits general office use). Non-conforming uses are subject to the requirements of Planning Code Sections 180-183. Per Section 183 (Non-conforming Uses: Discontinuance and Abandonment), wherever a non-conforming use has been changed to conforming use, such use shall not after being so changed be re-established and the use of the property thereafter shall be in conformity with the use limitation of the Planning Code. Given that the second floor was occupied from 1990-1997 by a principally permitted Business Service use (SF Weekly), any prior non-conforming general office use would have been abandoned and could not thereafter be re-established.

In light of these facts, it is my determination that the second floor of the subject property was not legally converted to office space prior to the property being subject to the current SLI Zoning District controls which prohibit general office use. Further, had general office use been legally established prior to the current SLI Zoning District controls, any such non-conforming use would have been abandoned through the conversion of the second story to a conforming Business Service use (SF Weekly).

<sup>&</sup>lt;sup>2</sup> Planning Code Section 890.111: A use which provides the following kinds of services to businesses and/or to the general public and does not fall under the definition of "office" pursuant to Section 890.70: radio and television stations; newspaper bureaus; magazine and trade publication publishing; microfilm recording; slide duplicating; bulk mail services; parcel shipping services; parcel labeling and packaging services; messenger delivery/courier services; sign painting and lettering services; building maintenance services.

<sup>&</sup>lt;sup>3</sup> Planning Code Section 102: *Production, Distribution, and Repair (PDR) Use.* A grouping of uses that includes, but is not limited, to all Industrial and Agricultural Uses, Ambulance Services, Animal Hospital, Automotive Service Station, Automotive Repair, Automotive Wash, Arts Activities, Business Services, Cat Boarding, Catering Service, Commercial Storage, Kennel, Motor Vehicle Tow Service, Livery Stable, Parcel Delivery Service, Public Utilities Yard, Storage Yard, Trade Office, Trade Shop, Wholesale Sales, and Wholesale Storage.

Ilene Dick Farella Braun and Martel LLP 235 Montgomery Street San Francisco CA 94104 May 27, 2016 Letter of Determination 425 Brannan Street

**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 this letter. 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 F. Sanchez
Zoning Administrator

cc: Laura Lynch, Planner

**Property Owner** 

Neighborhood Groups

My FARELLA

Me BRAUN+MARTELITE

ILENE DICK idick@fbm.com D 415.954.4958

March 31, 2016

R#2016-004496ZAD CK#2940 &649.-LAURA LYXICH - COST EXIS

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CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
RECEPTION DESK

Via Hand Delivery

Scott Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, 4<sup>th</sup> Floor
San Francisco, CA 94103

Re:

425 Brannan (Block 3787/Lot 33)

Request for Letter of Determination: Case No. 2015-012090ENF

Dear Mr. Sanchez:

We represent First California Investments, Inc., the owner of the above referenced building ("Property"). We are requesting a Letter of Determination ("LOD") that office use of the second floor of the Property is permitted under the Planning Code because it was lawfully established when the Property was zoned M-1. A check for \$645 is attached.

First, we will show that there was legal office use on the second floor prior to the 1990 adoption of the SLI zoning. Second, work has been completed under approved permits, including Planning sign-off, for office use on the second floor after the adoption of SLI zoning. Such office uses are vested and non-conforming. Third, in 1987, the City determined that no Transit Impact Development Fee ("TIDF") was required to be paid upon issuance of a building permit for office space on the second floor because there was pre-existing office. Fourth, the second floor office use has not been accessory to any ground floor PDR uses since prior to 1990. Finally, there are no justifiable policy reasons for the Planning Department to now require the second floor office space to remain vacant because the draft Central SOMA Plan proposes rezoning the Property MUO (Mixed Use Office), a district where second floor offices are proposed to be principally permitted. For these reasons, which are explained in greater detail below, we respectfully request that an LOD be issued finding that office use is permitted and that the tenant improvement building permit applications for the current office tenant, Capgemini, be approved.



### A. OFFICE USE HAS LAWFULLY BEEN AT THIS LOCATION SINCE BEFORE 1990.

When the current owner, First California Investments, Inc., bought this two-story building at the corner of Brannan and Ritch Streets in 1978, the Property was zoned M-1, a district in which office use was principally permitted. At that time, there were existing office uses in the second floor. Although originally built for Alhambra Water Company in 1923 as "light manufacturing and warehouse," the City's permit records at that time contained approved and completed building permits for office use at this site, permits on which the owner relied.

Attached as Exhibit B is a rent roll prepared by First California Investments identifying the different tenants that have occupied the first and second floors since 1978 and their use category. Office tenants occupying the second floor have included the San Francisco District Attorney's Office, the regional administrative offices of the Kaplan Educational Learning Center, sales offices and others.

The following describes the building permits establishing the existence of these office uses at the second floor beginning in 1983.

### 1. The Building Permit History Contains Evidence Of Office Use On The Second Floor Of 425 Brannan.

A. Building permits were issued for office use on the second floor prior to the adoption of SLI zoning in 1990.

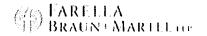
The administrative offices of numerous, primarily medical-oriented publications occupied the second floor, beginning in 1983 under Building Permit Application 08312507 ("BPA 08312507")<sup>2</sup> and vacated the Property in 1987.<sup>3</sup> This permit was issued for "new partitioning and Electrical for office and warehouse space *on the second floor*." (Emphasis added). The permit showed a change of use from "Printing Plant" to "Printing Plant and Publishing Business".<sup>4</sup> Like many permit applications that show changes between existing and proposed uses, both of which were principally permitted in the M-1 district, this application should have been routed to Planning by DBI, but was not. Nonetheless, there was approved office space on the second floor in 1983.

<sup>&</sup>lt;sup>1</sup> See Exhibit A.

<sup>&</sup>lt;sup>2</sup> See  $\frac{\overline{Exhibit} C}{\overline{Exhibit}}$ .

<sup>&</sup>lt;sup>3</sup> See Exhibit B.

<sup>&</sup>lt;sup>4</sup> According to the owners, the printing plant for these publications was never located at the Property.



B. Building permits were issued for office use on the second floor after the May, 1990 effective date of SLI zoning.

SF Weekly's editorial and administrative offices occupied the entire second floor of the Property from 1990 to 1997. Building Permit Application 9502803 ("BPA 9502803") was issued for office use, with SF Weekly listed as the lessee of the Property. No change of use was proposed with this Application because the office use was authorized in 1983 under BPA 08312507. Based on the scope of work completed under BPA 08312507 and the issuance of BPA 9502803, there is clear evidence that SF Weekly's editorial and administrative office functions were permitted on the second floor after the effective date of the SLI zoning.

In 1999, the Planning Department signed off on Building Permit Application 9926836 ("BPA 9926836"), confirming the existence of legal office use at the Property. <sup>6</sup> Under BPA 9926836, the existing use was listed as "Warehouse/Offices". The proposed use listed was "no change Office" after crossing out "Telecommunications Equip" as the proposed use. In signing off on BPA 9926836, Planner Tammy Chan emphasized that "there was no change of use" from office use in the Property both in handwriting and by stamp. <sup>7</sup> These sign-offs clearly indicate that the Planning Department considered the office use to be a legal, non-conforming use.

BPA 9926836 was signed off by Planning staff nine years after the site was rezoned to SLI in April, 1990. The work under BPA 9926836 was deemed complete by DBI on February 1, 2001. In 2000, the Planning Department also signed off on BPA 20000104165. That application sought a change of use from warehouse to telecommunications equipment of "9,323 sf *at main floor only*". (Emphasis added). This permit was for the scope of work that was initially contemplated by BPA 9926836, which deleted the proposed telecommunications use on the first floor. Under these permits, the change in use to telecommunications was sought and approved for the first floor. Thus, under both permits, the second floor remained existing office use.

The only way that office use would have been approved as part of a building permit after May, 1990 (the effective date of SLI zoning) was if the office use was legally pre-existing and thus is now vested and non-conforming. Planning staff's sign-off on the 1995 and 1999 building permits that included office use shows that there was pre-existing office use that was grandfathered before the SLI zoning restrictions on office use were instituted in May 1990.

<sup>&</sup>lt;sup>5</sup> See Exhibit D.

<sup>&</sup>lt;sup>6</sup> See  $\frac{\text{Exhibit E}}{\text{Exhibit E}}$ .

<sup>&</sup>lt;sup>7</sup> *Id*.

<sup>&</sup>lt;sup>8</sup> See Exhibit F.



2. The City Determined That No TIDF Payment Was Due On A 1987 Building Permit For Office Space In The Second Floor Of The Property. In Doing So, The City Concluded That The Office Space For Which The Permit Was Sought Was Pre-Existing.

In 1987, Quinby's, Inc., a children's toy and games company that housed its sales offices at the second floor of the Property, submitted Building Permit Application 08718113 ("BPA 08718113") to DBI for minor changes to existing office space on the second floor. As part of the permit documents, the San Francisco Public Utilities Commission ("PUC"), the agency overseeing the TIDF at the time, sent a memorandum to DBI regarding payment of the TIDF by certain permit applicants. In the one sentence memorandum, the PUC stated that the "[ten] applications listed below are not subject to the Transit Impact Development Fee and you are authorized to issue the building permits on them." 425 Brannan was on the list. Handwritten next to it was "no space change." Others on the list include the office buildings at 50 Fremont Street and 2 Embarcadero Center.

The list and the qualification of "no space change" indicated that the PUC did not consider the office space for which the pending permit at the Property was sought to be "new office space." The TIDF had been imposed on building permit applications for new office space only since 1981, requiring payment upon issuance of the certificate of final completion and occupancy. DBI issued BPA 08718113 for tenant improvements of the existing office space without charging the TIDF.

The purpose of the memorandum was to inform DBI that TIDF was not required to be collected for the addresses listed. The handwritten notation of "no space change" was to provide a rationale why the TIDF was not to be collected from these properties. There are only two possible reasons why the TIDF was not collected for the Property: (1) the existing office space had paid TIDF fees when it was built, which would apply only to office uses built after 1981; or (2) the existing office space was considered legal, non-conforming and was not expanding. We believe that the latter reason is why no TIDF was required for the 1987 building permit given the building permits indicating the existence of office space on the second floor prior to 1981.

3. The Second Floor Offices Are Not Accessory To Any Non-Office Uses In The Building.

According to the Property owner's rent roll, since their purchase, the first and second floor spaces have always been occupied by different tenants. The rent roll for both floors, attached as Exhibit B, shows the range of uses located on each floor and their length of tenancy, confirming that fact. Thus, no tenants ever rented space on both the first and second floor at

<sup>&</sup>lt;sup>9</sup> The permit for the work was issued but expired. The owner reviewed plans for this permit at DBI. The plans showed that the proposed work was on the second floor.

<sup>&</sup>lt;sup>10</sup> See Exhibit G.

<sup>11</sup> See Exhibit A.



the same time. Accordingly, since at least the 1970's, all the office uses on the second floor were principal uses and were not accessory office space to non-offices uses on the first floor of the building. 12

#### **CONCLUSION**

We have provided tenant history and building permits that specifically show the existence of office use at the second floor of the Property prior to 1990, when the M-1 zoning principally permitted office use. Some of those building permits were approved by the Planning Department for office use after the effective date of the SLI zoning went into effect. The reason for those approvals is that the Planner determined that the existing office use preceded the SLI rezoning, rendering those office uses legal non-conforming uses. Permits and the rent roll show that the editorial and administrative office functions of medical-oriented publications (from 1983 to 1987), the SF Weekly (from 1990-1997), and the San Francisco District Attorney's office (from 1997 to 1998) existed on the second floor. The rent roll is thus consistent with the limited permit records and fills in the large gaps in those records. Lastly, the 1987 PUC memorandum regarding TIDF payments and the San Francisco Department of Real Estate's leasing of the second floor for the District Attorney's office, shows that other City agencies concluded that there was pre-existing legal office use at the Property. None of these office uses were accessory to non-office ground floor uses.

For the above reasons, we request that an LOD finding that office use on the second floor is legal, non-conforming and vested be issued. We would appreciate that the requested LOD be issued at your earliest convenience so that pending Notice of Enforcement can be withdrawn and the Property's records be updated to indicate that no violations exist. Doing so will enable the pending Cappemini tenant improvement permits to be issued. Thank you in advance for your prompt attention to this matter and your continuing professional courtesy.

Sincerely, MM

Hene Dick

ID Attachments

<sup>&</sup>lt;sup>12</sup> The International Exchange Press Printing Plant, located on the first floor from 1984-1999, was not owned or operated by any of the publications whose offices were located on the second floor from 1983-1987 or by the SF Weekly, whose editorial and administrative offices occupied the second floor from 1990 to 1997.



cc:

(Via Email) Steven Ganz Marc Wolfe Bob Wolfe Larry Badiner

Steven Vettel

Laura Lynch, Planning Department

# **EXHIBIT A**

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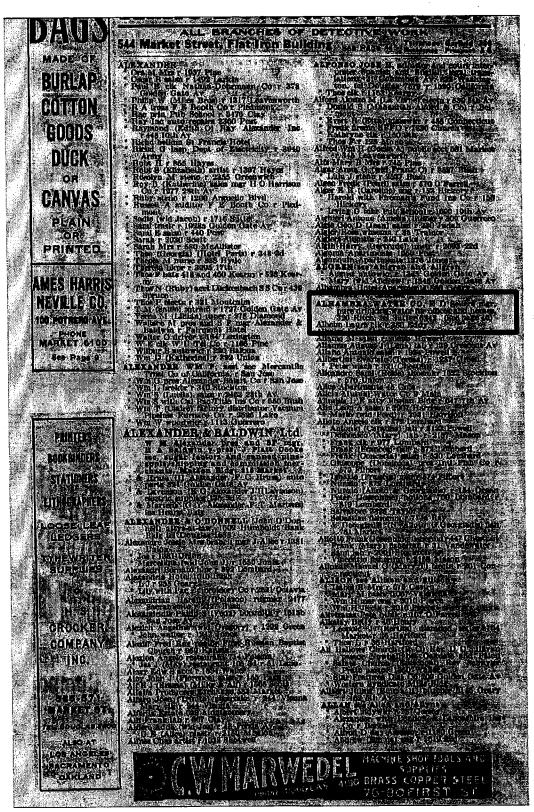
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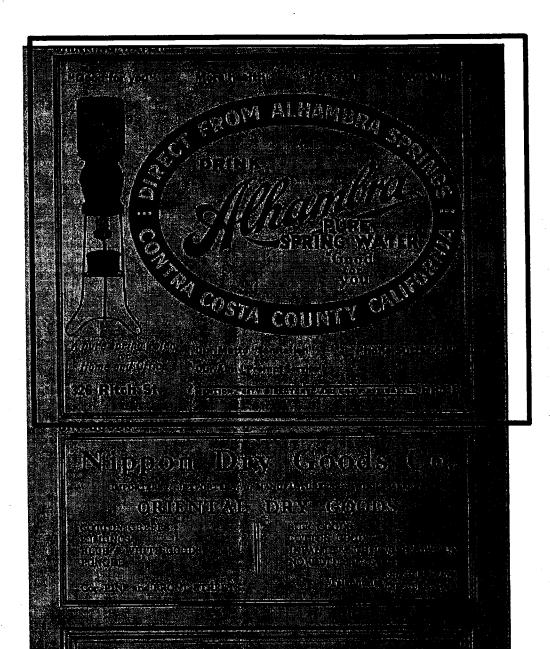
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will in all things strictly comply with the conditions of this permit.

Address Buselike & Brown Address Lie Man Jan and Address Archiver Arthur S. Bugler Address 26 Montgomery St.
By as Bugher

(NOTE). The owner's name must be signed by himself, or by his Architect or authorized Agent !





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## **EXHIBIT B**

#### 425 Brannan Street - 2nd Floor Tenant Roster and Rent Roll

Dates of Occupancy	Tenant	Type of Business	Year	Rent	Related use of ground floor by tenant
1978-1983	K Jim Import Export	Import-Export Sales Offices			No
1983-1987	American Medical Report CME Bulletin ER Reports	Various Publishing Offices			No
·	Emergency Medicine Report Family Medicine Report Litigation Research				
	Sedlock Tonia Graphics Beach Street Financial				
1987-1990	Quinby's	Children Toys and Games Sales Offices	9/15/1987 10/15/1990	6,500 7,100	No
1990-1997	San Francisco Weekly	Newspaper Editorial Offices			No
1997-1998	San Francisco District Attorney	Government Offices	10/1/1997	9,250	No
	Kaplan Education Learning Center	Educational Learning Center Regional	·		
1998-2003	•	Offices	4/1/1998	14,700	No
			4/1/1999	15,050	
		•	4/1/2000	18,070	
		•	4/1/2001	18,420	
			10/1/2001	20,545	
2004-2007	Xoom	Financial Transaction Company Offices	3/1/2004	7,500	No
			4/1/2005	11,000	
*			4/1/2006	13,500	
2007-2008	Batiq	Online Learning Offices	5/1/2007	22,867	No
2007 2000	Doug		5/1/2008	23,756	
2008-2015	12Fold Media	Internet Advertising Sales Offices	8/8/2008	23,756	No
,		· ·	5/1/2009	19,511	
	•		7/1/2010	23,500	
			5/1/2011	22,000	
			5/1/2012	24,650	
			2/1/2013	27,850	-
. •			5/1/2014	29,500	
2015	Capgemini	Business Consulting	2/28/2015	-	Yes

#### 425 Brannan Street - 1st Floor **Tenant Roster and Rent Roll**

Dates of Occupancy

Tenant

**Type of Business** 

**Full Ground Floor Usage** 

1984-1999

**International Exchange Press** 

**Printing** 

Ground Floor Demised at the end 1999

Back Space (approx 8,100 sq ft)

1999-2015

Frontier/Global Crossing/Level 3 Internet Services

Front Space (approx 1,500 sq ft)

2000-2005

Lisa Violetto

**Clothing Sales** 

2005-2008

SF Sofas

**Furniture Sales** 

2009-2014

Infinite Bodyworks

**Exercise Studio** 

2015

Capgemini

**Retail Sales** 

# EXHIBIT C

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## EXHIBIT D

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[ ] CONTRACTOR [ ] ATTORNEY IN FACT

APPLICANT'S CERTIFICATION
I HEREBY CERTIFY AND AGREE THAT IT A PERMIT IS ISSUED FOR THE CONSTRUCTION
DESCRIBED IN THIS APPLICATION, ALL THE PROVISIONS OF THE PERMIT AND ALL
LAWS ARD ORGANANCES THERETO MILL BE COMPUTED WITH.

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Most the appearate sethed of complaints below:

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# **EXHIBIT E**

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# **EXHIBIT** F

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## EXHIBIT G

### City and County of San Francisco ..

### Public Utilities Commission



RE:

DATE: December 31, 1987

Anita Lee, Central Permit Bureau Laonard Tom, Administrator Leonard Tom. TIDY Applications as follows TO: PM:

The eleven applications listed below are not subject to the Transit Impact. Development Pen and you are authorized to issue building permits on them.

#### City and County of San Francisco

DEPARTMENT OF PUBLIC WORKS Central Permit Bureau



8718115

DEC 3 0 1387

#### MEMORANDUM

TO: LEONARD TOM (FINANCE BUREAU)
PROM: ANITA LEE (CPB)

DATE: DECEMBER 29, 1987 SUBJ: TIDE APPLICATIONS COPIES

I send you herewith the following copied of applications:

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350 Bay Brown office USE This one was issued by mistake This is the second copy requested by Wil.

425 Hason Btreet, 250 Floor

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APPLICANT'S CERTIFICATION

I HEMENY CERTIFY AND AGREE THAT IS A PELMIT IS ISSUED FOR THE CONSTRUCTION:
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LAWS AND ORDINANCES THERETO WILL BE COMPUTED WITH.

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