## Letter of Determination

September 25, 2008

James A. Reuben Reuben & Junius, LLP One Bush Street, Suite 600 San Francisco, CA 94104

RE:

1035 - 1043 Market Street

Block 3703, Lots 058, 068 and 070

(your) File No. 1413.02

Dear Mr. Reuben:

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

Reception: 415.558.6378

Fax. 415.558.6409

Planning Information: 415.558.6377

This Letter of Determination is in response to your request for removal of a Notice of Special Restrictions ("NSR") at the above-referenced address. I have elected to respond to your request using this format in that there are certain historical facts that accrue to this matter that I would like to air publically before I address your initial request.

In 1985, the Planning Commission ("Commission") adopted the Downtown Plan. Pursuant thereto was a provision allowing a maximum of 50,000 square feet of office use per property. This project was approved in 1985 and staff required an NSR limiting the office square footage to less than 50,000 square feet. In the following year, 1986, amendments to the original language were adopted having the effect of allowing what we know today as the "Small Cap" and the "Large Cap". That is to say that office uses up to 25,000 square feet were (and are) generally allowed, buildings containing between 25,000 and 49,999 square feet of office use ("49'ers") are subject to the "Small Cap" and buildings with in excess of 50,000 square feet of office use per property are subject to the "Large Cap".

This brings us to the issue of "serial permitting". As such, if a property is the subject of successive Building Permit Applications pushing the total square footage of office use above the thresholds set forth above, it is subject to whatever review is required for such a cumulative amount of office square footage. As of the late 1980's it was realized by the Planning Commission that a period of time had to exist after which a successive addition was no longer tied to the original (or earlier) permit application. Accordingly, for a number of years, the Commission added language in its standard conditions saying that the period of time that was so-applicable was ten years. Subsequently, this condition was no longer included as a standard condition, but the ten years remains a standard for serial additions under the Annual Limit.

In that the NSR in question involves both a situation that changed due to later legislation and an event that occurred some 23 years ago, it would appear that the nexus for requiring the NSR no longer exists. James A. Reuben, Attorney at Law Reuben and Junius, LLP One Bush Street, Suite 600 San Francisco CA 94104

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Therefore, the Department will release the NSR in question and return the use of the subject property to whatever would be otherwise allowed by the Planning Code.

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 Permit Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Permit Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely

Lawrence B. Badiner Zoning Administrator

cc:

Sue. C. Hestor, Attorney at Law

Justin Shapiro, Seligman Western Enterprises, Ltd.

Tuija Catalano, Attorney at Law

Jim Miller, Planner

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