



# SAN FRANCISCO PLANNING DEPARTMENT

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**DATE:** September 9, 2010  
**TO:** Historic Preservation Commission  
**FROM:** Tim Frye, (415) 575-6822  
**RE:** Draft Conservation Easement for the San Francisco Opera House

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

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In accordance with City Charter Section 4.135 the Historic Preservation Commission (HPC) has the authority to review and provide comment on ordinances and resolutions before the Board of Supervisors concerning historic preservation issues and historic resources. The Planning Department (Department) requests that you review the proposed Conservation Easement contract and recommend to the Board of Supervisors approval of the proposal.

Attached for your review is the draft Conservation Easement contract and a list of the protected features to be included in the donation from the City and County of San Francisco to San Francisco Architectural Heritage. The City Attorney's Office anticipates that the final contract will be ready for review at HPC at the September 15, 2010 hearing.

Also attached is a letter from Mike Buhler, Executive Director of San Francisco Architectural Heritage, to the National Park Service that confirms that the easement donation is in process, the Article 10 designation report and ordinance, and a resolution from the Arts Commission in support of the easement donation.



# SAN FRANCISCO PLANNING DEPARTMENT

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## Historic Preservation Commission Draft Resolution

HEARING DATE SEPTEMBER 15, 2010

ADOPTION OF FINDINGS RECOMMENDING THAT THE BOARD OF SUPERVISORS GRANT A CONSERVATION EASEMENT FROM THE CITY TO SAN FRANCISCO ARCHITECTURAL HERITAGE TO MEET A CONDITION REQUIRED BY THE SAVE AMERICA'S TREASURES GRANT PROGRAM.

1. WHEREAS, the subject building is City Landmark No. 8, historically known as the San Francisco Opera House, a historically significant architectural and cultural resource within the City of San Francisco.
2. WHEREAS, the Building is currently leased by Bayview Opera House, Inc., and the National Park Service provided a \$197,535 grant under the Save America's Treasures Grant Program to the tenant under Grant Agreement No. 06-04-ML-0099.
3. WHEREAS, the National Park Service Grant funded certain building improvement work performed by Tenant and, as a condition of the NPS Grant, NPS is requiring that the City grant a 50-year Conservation Easement of certain protected features to San Francisco Architectural Heritage.
4. WHEREAS, the Historic Preservation Commission, at its regularly scheduled hearing of September 15, 2010, has reviewed the conditions of the agreement, including the list of protected features, and supports the Conservation Easement.

NOW THEREFORE BE IT RESOLVED that the Commission hereby RECOMMENDS to the Board of Supervisors to grant the Conservation Easement for Landmark No. 8, the San Francisco Opera House to San Francisco Architectural Heritage:

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 15, 2010

Linda D. Avery  
Commission Secretary

AYES:  
NOES:  
ABSENT:  
ADOPTED:

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**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

**San Francisco Architectural Heritage  
2007 Franklin Street  
San Francisco, California 94109**

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**CONSERVATION EASEMENT**

THIS CONSERVATION EASEMENT, dated for reference purposes only as of October 1, 2010 (the "**Effective Date**"), is by and between the City and County of San Francisco, a municipal corporation ("**City**"), and San Francisco Architectural Heritage, a California nonprofit corporation ("**Grantee**").

**RECITALS**

- A. City is the record owner of certain real property located at 4705 Third Street, in the City and County of San Francisco, State of California, and more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference (the "**Land**"). The Land is currently improved with a multistory building known as the Bayview Opera House (the "**Building**").
- B. The Building is of architectural, historical significance containing the features (the "**Features**") described and depicted on Exhibit B, which is attached hereto and incorporated herein by this reference.
- C. The Building is currently leased by Bayview Opera House, Inc., a California non-profit corporation ("**Tenant**"), pursuant to a Lease dated for reference purposes only as of July 1, 2009, and the National Park Service ("**NPS**") provided a \$197,535 grant to Tenant under Grant Agreement No. 06-04-ML-0099 (the "**NPS Grant**").
- D. The NPS Grant funded certain Building improvement work performed by Tenant and, as a condition of the NPS Grant, NPS is requiring that the City grant a fifty (50) year conservation easement in and to the Features to Grantee.
- E. Grantee is a nonprofit corporation, as described in Section 501(c)(3) of the Internal Revenue Code and Section 23701d of the California Revenue and Taxation Code, authorized and qualified to accept charitable gifts or easements for the purpose of preserving buildings, structures, or sites of historical, architectural or cultural significance.
- F. City desires to grant to Grantee, and Grantee desires to accept from City, a conservation easement in and to the Features, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, incorporating herein the foregoing recitals and in consideration of the mutual covenants and restrictions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easement; Term. In consideration of the NPS Grant and for the purpose of preserving the Features, City hereby irrevocably grants and conveys to Grantee the conservation

easement described herein in and to the Features (the "**Conservation Easement**"). City furthermore subordinates any interest it has in the Land or the Building to the Conservation Easement, which City has granted and conveyed to Grantee in this instrument. The term of this Conservation Easement ("**Term**") shall commence on the date this Conservation Easement is recorded in the Official Records of San Francisco County (the "**Effective Date**"), and shall automatically terminate on the fiftieth (50<sup>th</sup>) anniversary of the Effective Date.

2. Easement Required for NPS Grant. This conservation easement is granted as a condition of the NPS Grant made to the Tenant, which was granted under the Historic Preservation Fund for the Save America's Treasures Grant Program. Tenant used the NPS Grant funds to perform certain improvements to the Building.

3. Limitation on City's Actions without the Approval of Grantee. In furtherance of the conservation easement herein granted, except for the Existing Projects (as defined in Section 5 below), City hereby covenants and agrees that City shall have no right to do any of the following without the prior written consent of Grantee, which consent shall not be unreasonably withheld, delayed or conditioned:

A. except to the extent otherwise permitted under Section 5 below, make any change to the Features as they exist on the Effective Date, including, without limitation, any alteration, partial removal, construction, remodeling, physical or structural change, demolition, sandblasting or other forms of abrasive cleaning, or change in color (**To be discussed**) or surfacing to the Features;

B. expand the Building either vertically or horizontally, except as provided in Section 4 below;

C. construct or place any new object or new structures on the Land that materially obstructs the ability or opportunity of the public to view the Building from public roads, streets or sidewalks that abut the Land, including, without limitation, the installation of new fences or gates that materially prevents the Building from being viewed from an abutting public road, street or sidewalk;

D. dump any ashes, sawdust, trash, or rubbish on the Land to the extent that same are visible from public roads or streets, provided that City shall have the right to store any such items in properly maintained trash receptacles on the Land; and

E. except to the extent otherwise permitted in Section 10 below, make any repairs to or reconstruct the Features in the event of any casualty or damage to the Building, other than temporary emergency work to prevent further damage to the Building or to protect public safety.

4. City's Request for Grantee's Approval.

A. City's Request. In order to obtain Grantee's approval for any of the actions set forth in Section 3 above, City shall send a written notice to Grantee ("**City's Notice**") specifying in reasonable detail (i) the proposed action or actions which City desires to take (including the plans and specifications, if any, which City intends to utilize for the action(s) proposed by City), and (ii) the expected commencement date thereof. City's Notice shall be sent to Grantee at least sixty (60) days before the date specified for commencement of the proposed action(s).

B. Grantee's Reply. Within thirty (30) days after receipt of City's Notice, Grantee shall send a written reply to City ("**Grantee's Reply**") in which Grantee shall approve or disapprove of the actions proposed in City's Notice. If Grantee does not send Grantee's Reply to City within said thirty (30) day period, Grantee shall be deemed to have approved the actions

specified in City's Notice. If Grantee approves of the actions proposed in City's Notice, Grantee may require that City deliver copies of the final plans and specifications for the work and all change orders thereto. Grantee may also impose other reasonable conditions on City's actions in undertaking an approved action, as Grantee deems necessary or desirable to ensure the action will meet the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (the "**Standards**").

C. Standards for Grantee's Review. Grantee's review and decisions relating to a City's Notice shall be guided by the Standards. Grantee shall not withhold approval to an action proposed in a City's Notice if the action would not materially affect the Features or adversely affect the Building's exterior construction materials, architectural details, form, fenestration, scale, and mass. If an action proposed in a City's Notice would affect the Building's structural soundness or setting, Grantee shall not withhold approval if such proposed action would meet the Standards.

D. No Representation by Grantee. City agrees that Grantee's review and approval of the proposed actions in City's Notice shall solely be for Grantee's benefit. In approving the actions proposed in City's Notice, Grantee shall not be deemed to have made a representation or warranty to City regarding whether such actions comply with any applicable law, ordinance, or governmental regulation or with respect to the safety or adequacy of City's proposed actions.

5. Rights Retained by City.

A. Actions Without Grantee Consent. City shall have the right to take the following actions (collectively, the "**Existing Projects**") without Grantee's consent:

(i) perform the work described in Certificate of Appropriateness No. 2009.09.03A, issued by the San Francisco Historical Preservation Commission on January 6, 2010, provided such work complies with all applicable regulatory approvals;

(ii) perform the plaza renovations depicted on the attached Exhibit C, as such renovations may be modified to conform to any regulatory approvals required therefor (including any approvals required of City acting in its regulatory capacity), provided such renovations comply with all applicable regulatory approvals;

(iii) alter, repair, replace, and remove any Building improvement that is not a Feature, provided that such action will not vertically or horizontally expand the Building or adversely affect, obscure or materially alter the Features, and

(iv) perform any maintenance, repair or replacement work on all or any portion of a Feature, provided such work is performed with like-kind materials and complies with the Standards and City provides City with prior written notice of such work.

B. Actions With Grantee Consent. After complying with the procedures described in Section 4 above, City further retains the right to make alterations to the Building, so long as (i) Grantee reasonably determines that the alterations will meet the Standards and (ii) the alterations will not adversely affect or materially alter the Features.

6. City's Obligations for Repair and Maintenance. City, at its sole cost and expense, shall perform such repair and maintenance as reasonably needed so as to preserve the appearance and structural soundness of the Building and to otherwise maintain the Features in good condition and repair. Grantee shall not be liable for, and shall have no obligation to contribute any money or services to, the repair or maintenance of the Features or the Building.

7. Signs on the Building. No billboards shall be placed on or about the Building. City shall not display or place on or about the Building, or permit to be displayed or placed, signs or advertisements without the express written consent of the Grantee, which consent will not be unreasonably withheld. Notwithstanding the foregoing, the following signs may be placed on the Building without Grantee's written consent: (i) plaques or other markers as are appropriate for commemorating the historic importance of the Building, (ii) signs or markers as are necessary to direct and restrict the passage of persons or the parking of vehicles upon the Land or Building, (iii) a sign or signs stating the address of the Building, (iv) signs as are necessary to identify the tenants or occupants of the Building, and (v) signs, banners or markers advertising public events at the Building or on the Land that are not in place for more than forty-five (45) consecutive days. Seasonal decorations (including, but not limited to, holiday wreaths, lights and bunting) shall not be deemed to be signs for the purposes of this Section.

8. Grantee's Rights of Inspection. Grantee, and its representatives, inspectors, and consultants, shall be permitted to enter and inspect the Building at a mutually agreeable time during regular business hours. Grantee shall provide no less than two (2) business days' prior written notice to City of a proposed inspection to determine whether the terms of this Conservation Easement are being complied with and to enforce the same. If Grantee needs to inspect the Building due to an emergency that makes such prior written notice impracticable, Grantee shall contact City to arrange for such inspection. City shall provide such cooperation as Grantee may reasonably request in connection with its inspection of the Building, and Grantee shall perform such inspections in a manner that does not disrupt any activities at the Building. City shall have the right to have a representative accompany Grantee in any such inspections. Grantee shall perform, and shall cause each of its employees, agents, representatives, inspectors, and consultants to perform, such inspections with due care and in a commercially reasonable manner.

9. Insurance. Grantee acknowledges City is a municipal corporation that self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Building, the Land or otherwise; provided, however, that City shall require that each non-governmental party occupying the Building pursuant to a lease or license (each, a "**Lease**") with City (including Tenant) carry the following policies of insurance during the term of such lease or license (the "**Lessee Insurance Policies**"):

A. Property insurance on an all-risk form, excluding earthquake, in the amount of at least ninety percent (90%) of the then current replacement value of the Building and the Features, insuring Grantee's interest in this Conservation Easement and naming Grantee as additional insured on such policy only to the extent of Grantee's interest in the Building based on this Conservation Easement; and

B. Commercial general liability insurance with limits not less than Five Hundred Thousand Dollars (\$500,000) each occurrence combined single limit for bodily injury and property damage combined, including personal injury and medical payments coverage and broad-form property damage, naming Grantee as additional insured on such policy and insuring the indemnity obligations of such Lessee under Section 11 below.

The Lessee Insurance Policies shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide, be endorsed to provide thirty (30) days' advance written notice to Grantee of any cancellation or intended non-renewal (or ten (10) days' advance written notice in case of nonpayment of premium), mailed to the address for Grantee set forth in Section 22 below, and be endorsed to provide that such policies are primary insurance to any other insurance available to the additional

insureds with respect to any Claims and apply separately to each insured against whom Claim is made.

City may waive a Lessee's obligation to carry the Lessee Insurance Policies or modify the Lessee Insurance Policies if Grantee provides prior written notice to such waiver or modification. Each Lessee shall deliver certificates of insurance from insurers of the Lessee Insurance Policies to Grantee in a form reasonably satisfactory to Grantee within ten (10) business days' following Grantee's request therefor, evidencing the coverage required hereunder, together with complete copies of the policies.

10. Damage or Destruction of the Building.

A. Report of Damage or Destruction. If the Building or any part thereof is damaged or destroyed by any casualty, City shall give written notice of the damage or destruction to Grantee within fourteen (14) calendar days. Such notice shall describe emergency work that has already been completed and any additional emergency or repair work then contemplated by City (the "**Proposed Repair Work**"). Except for temporary emergency work reasonably necessary to prevent further damage to the Building or to protect public safety, City shall not perform any of the Proposed Repair Work without Grantee's prior written approval that the Proposed Repair Work will meet the Standards. Grantee shall give its written approval of any Proposed Repair Work within sixty (60) days of receiving the request from the City.

B. Removal From National Registry. If, after reviewing the condition of the Building, the Grantee determines that the features, materials, appearance, workmanship, and environment (or setting) that made the Property eligible for listing in the National Register of Historic Places have been lost or so damaged that its continued National Register listing is in question, Grantee will notify the Keeper of the National Register and the California State Historic Preservation Office in writing of the loss. The Keeper of the National Register will evaluate the findings and notify Grantee and City in writing of any decision to remove the Building from the National Register. If the Building is removed, this Conservation Easement shall automatically terminate on such removal.

11. Indemnification; Release. To the fullest extent permitted by law, City shall indemnify, protect, defend and hold harmless Grantee and its officers and directors (collectively "**Indemnitees**") from and against all claims, demands, liabilities, losses, legal or administrative proceedings, penalties, liens, judgments, liability, fines, damage, costs, and expense, of any kind or nature (including, without limitation, actual attorneys' fees and costs, whether or not suit is brought) (collectively, "**Claims**") arising out of (i) real property taxes and general or special assessments assessed and levied against the Building and/or the Land, (ii) governmental laws, orders, codes, and regulations, relating to the condition, use, or occupancy of the Building, including but not limited to the Americans with Disabilities Act and Title 24 of the California Code of Regulations, or (iii) the use, occupancy or condition of the Building and/or Land. Notwithstanding anything to the contrary in the foregoing sentence, City's indemnity obligation under this Section shall not include any Claim arising out of the gross negligence or willful misconduct of any of the Indemnitees or any employees, agents or representatives ("**Agents**") of Grantor or out of any matter waived and released by Grantor in this Section. City shall defend the Indemnitees in any action or proceeding arising from any Claim for which City is obligated to indemnify hereunder by counsel reasonably satisfactory to the applicable Indemnitee.

Neither City nor any of its commissions, departments, boards, officers, directors, or Agents (collectively, the "**City Parties**") shall be liable for, and Grantee hereby assumes the risk of, and waives and releases the City Parties from, any damage to the property of any of the Indemnitees or Grantee's Agents or any bodily injury or death to any of the Indemnitees or Grantee's Agent resulting or arising from the condition of the Building and/or Land; provided,

however, that City shall not be relieved from liability caused solely and directly by the gross negligence or willful misconduct of any of the City Parties but shall not be liable under any circumstances for any consequential, incidental or punitive damages.

In connection with the foregoing release, Grantee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Grantee acknowledges that the release contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Grantee realizes and acknowledges that it has agreed upon this release in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The release contained herein shall survive the expiration or termination of this Conservation Easement.

12. Remedies of Grantee. In the event of a violation or breach by City of any provision of this Conservation Easement, Grantee, in addition to any remedies now or hereafter provided by law or in equity, shall have all the remedies set forth in Section 815.7 of the California Civil Code, as it may be amended from time to time, or any successor statute thereto. If City fails to do any act in the manner provided herein, Grantee may, without obligation to do so, upon ten (10) days' prior written notice to City, enter upon the Land, correct any violation of this Conservation Easement and to such extent as Grantee deems necessary. Grantee shall perform, and shall cause each of its employees, agents, representatives, inspectors, and consultants to perform, such entry and correction with due care and in a commercially reasonable manner. In such event of entry and correction, City shall, immediately upon demand by Grantee, pay to Grantee an amount equal to the costs and expenses incurred by Grantee in connection with the exercise of the foregoing rights, including, without limitation, attorneys' fees and costs (whether or not any action or proceeding is brought to enforce the provisions hereof), together with interest thereon at the maximum rate permitted by law until paid.

13. Enforcement, Attorneys' Fees and Costs.

A. In any action brought to enforce or interpret this Conservation Easement, whether based upon contract, tort, or for declaratory relief, the prevailing party shall be entitled to recover all of its costs and expenses, including its actual attorneys' fees, in such action or proceeding.

B. The Grantee and the City shall have the right to prevent and correct violations of the terms of this Conservation Easement. If the Grantee, upon inspection of the Land and Building, finds what appears to be a violation, it will promptly notify City. If such violation is caused by a tenant's default under a Lease (a "**Tenant Default**"), City shall have the right to cause such tenant to cure the Tenant Default. Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical and/or architectural importance of the Features, the Grantee shall give the City written notice of the violation and allow thirty (30) calendar days to correct the violation before taking any formal action, including, but not limited to, legal action. If a court having jurisdiction determines that a Tenant Default exists or has occurred, City, as lessor under such Lease, may pursue its rights under such Lease to cause the tenant under such Lease to cure such Tenant Default. If a violation arises from an alteration to any Feature without Grantee's consent, a court may also issue a mandatory injunction requiring the City to restore the altered Feature to the condition it was in before such alteration or, if such alteration prevents such restoration, to a condition that would be consistent with preservation



purposes of the grant from the National Park Service. In any case where a court finds that a violation has occurred, the City shall reimburse the Grantee for all the Grantee's expenses incurred in stopping, preventing, and/or correcting the violation, including, but not limited, to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time. City acknowledges and agrees that any and all future tenants of the Land and Building will have an enforcement provision in their leases acknowledging the Conservation Easement and the Rights of City and Grantee thereunder and requiring that the tenants comply with City's obligations hereunder.

14. Waiver. Except as expressly provided to the contrary herein, Grantee's failure or delay in the exercise of any power, right or privilege hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. The waiver of any power, right or privilege in a particular instance shall not be construed as a waiver thereof in other instances.

15. Statutory Authority. This instrument is made pursuant to Section 815 *et seq.* of the California Civil Code, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this instrument according to its terms. It is the intent of the parties that this instrument shall constitute an equitable servitude, an easement in gross and/or a restrictive covenant during the Term.

16. Compliance with Applicable Laws or Ordinances. Nothing contained herein shall be interpreted to authorize or permit City to violate any laws or ordinances applicable to the Land and Building, including, without limitation, any building materials, construction methods, fire safety, emergency or energy related requirements. In the event of any conflict between any law or ordinance and the terms hereof, the law or ordinance shall prevail. However, City promptly shall notify Grantee of any such conflict and shall cooperate with Grantee to accommodate the purposes of both this instrument and such law or ordinance. If any term or provision of this Conservation Easement shall be determined to be illegal or unenforceable, all of the other terms, provisions and sections hereof shall nevertheless remain effective and be in force to the fullest extent permitted by law.

17. Liens. City acknowledges that the subject matter of this conveyance is a perpetual donation to charity which can no longer be transferred, hypothecated or subjected to liens or encumbrances by City; and any attempt to do so shall be null and void and of no force and effect.

18. Public Access. The City agrees to provide public access to view the grant assisted work or Features no less than 12 days a year on an equitably spaced basis. The dates and times when the Land and Building will be open to the public must be annually published and provided to the Grantee. At the option of the City, the relevant portions of the Land and Building may also be open at other times in addition to the scheduled 12 days a year. Nothing in this Conservation Easement will prohibit a reasonably nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.

19. Anti discrimination. The City agrees to comply with Title VI of the Civil Rights act of 1964 (42 U.S.C. 2000d), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability.

20. Easement Runs with the Land. The obligations imposed by this Conservation Easement shall be deemed to run as a binding servitude with the Land during the Term. This instrument shall extend to and be deemed binding upon City, its successors and assigns and all persons

hereafter claiming under or through City; and the word "City" when used herein shall include all such persons.

21. Assignment. Except in the case that Grantee shall hereafter cease to exist, Grantee shall be prohibited from assigning or transferring this Conservation Easement to any other party. This Conservation Easement shall survive any termination of Grantee's existence and shall run for the benefit of, and may be enforced by, Grantee's successors and assigns, or by its designees duly authorized in a deed of appointment. Any successor or assign shall be a "qualified organization" described in Section 170(h)(3) of the Internal Revenue Code and must be approved by NPS in writing.

22. Notices. Any notice or demand by either party to the other in connection with this Conservation Easement shall be in writing and shall either be personally served on the party or sent by registered or certified mail, postage prepaid, return receipt requested, to the address of the party shown below or such other address which the party may specify in compliance with this Section. Such notice or demand, if sent by mail, shall be deemed given three (3) days after deposit in the United States mail and, if personally served on the party, shall be deemed given when delivered.

If to City: San Francisco Arts Commission  
25 Van Ness Avenue, Suite 240  
San Francisco, CA 94102  
Attn: Director of Cultural Affairs

and City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

If to Grantee: San Francisco Architectural Heritage  
Attn: Executive Director  
2007 Franklin Street  
San Francisco, California 94109

23. Governing Law. This Conservation Easement shall be governed by and construed in accordance with the laws of the State of California.

24. Further Assurances. City hereby covenants and agrees to execute and deliver to Grantee from time to time, promptly after any request therefore by Grantee, any and all instruments, agreements and documents which Grantee may require, and to perform such other acts as may be necessary or desirable, to carry out the purposes of this Conservation Easement.

25. MacBride Principles – Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Grantee acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

26. Tropical Hardwood and Virgin Redwood Ban. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

27. Controller's Certification of Funds. The terms of this Conservation Easement shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Conservation Easement, there shall be no obligation for the payment or expenditure of money by City under this Conservation Easement unless the City's Controller first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

IN WITNESS WHEREOF, the undersigned has executed this Grant of a Conservation Easement effective as of \_\_\_\_\_, 2010.

GRANTOR: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Luis R. Cancel  
Director of Cultural Affairs

By: \_\_\_\_\_  
Amy L. Brown  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

GRANTEE: SAN FRANCISCO ARCHITECTURAL HERITAGE, a  
California nonprofit corporation

By: \_\_\_\_\_  
Mike Buhler  
Executive Director

Date of Acceptance: \_\_\_\_\_, 2010

**EXHIBIT A**

**Property Legal Description**

## **EXHIBIT B**

### **Features**

**EXHIBIT C**

**Schematic of Plaza Renovation**

## **EXHIBIT B – LIST OF PROTECTED FEATURES**

Based on South San Francisco Opera House National Register Nomination, prepared by Architectural Resources Group, August 31, 2010. The complete National Register nomination is incorporated by reference into the baseline documentation to fully describe the building.

### **EXTERIOR**

- Elaborate parapet, two sets of paired wood windows, and a central entrance.
- Corner boards with pilasters at ground level.
- Triangular projection emblazoned with an applied sunburst ornament on parapet.
- The building is set back from the street and surrounded by open space on the south and west elevations, with unobstructed views from the sidewalk on all four sides.

#### **Parapet:**

- Enriched molding supported by decorative brackets comprised of block modillions supported by curved vertical members.
- Closed, arched balustrade between brackets just below the cornice and an enriched molding.
- Band of trim clad in stucco beneath molding.
- Wood strips from the bases of the thinner brackets, corresponding to the lines of the window frames below.
- Wider strips framing the façade's entrance; incised decorative carving on wider strips and the corner boards.

#### **Windows:**

- Two sets of paired windows on either side of the ground-level entrance, with decorative surrounds on the upper portion.
- Wood, double-hung sash, with rounded tops of the upper sashes.
- Top portion of window surrounds consist of paired dentil courses beneath a projecting molding with a triangular peak occupied by foliate decoration incised above each window.
- Three pilasters atop a projecting sill.
- Rectangular panels with ornamental pellets beneath the sill set amidst a horizontal course extending across the façade and clad in vertical wood siding.

#### **Main Entrance:**

- Paired, wood-paneled doors flanked by paired pilasters with Corinthian capitals beneath an elaborate pediment.
- Batten-style doors including vertical, horizontal and diagonal boards.
- The words "South San Francisco Opera House" carved in low relief on an arched panel of the central portion of the pediment.
- Dentil course between the pendants beneath the pediment's raking cornices.
- Carved wooden finials atop the midpoint and either end of the pediment.
- Bracket with a harp-shaped appliqué flanked by curvilinear moldings below the central pineapple motif finial.

- Rectangular panel containing the numbers “1888” beneath sunburst-themed decoration and a curved pediment on the upper central portion of the façade, buttressed by carved wood boards with incised ornamentation, atop a slightly projecting molding with decorative pendants.
- Original decorative pellets (currently painted gold) punctuating several portions of the façade, including: at the base of the stucco trim, the corner boards and vertical strips above the outer edges of the entrance; the corners of the rectangular 1888 panel; the rectangular panels beneath the windows; the central portion of the pediment above the entrance; and the ends of the parapet’s sunburst flares.

#### **East Wall:**

- Horizontal, drop wood siding.
- Two entrances and a loading dock on the ground level and three windows at the upper level.
- Wood, double-hung windows with divided sash (four-over-four), narrowly proportioned with simple surrounds and slightly projecting sills.
- Southern entrance connects to the platform behind the stage, consisting of a single door.

#### **South Wall:**

- Windowless south wall clad in stucco.

#### **INTERIOR**

- Narrow entry lobby with bathrooms on either side.
- Central auditorium with stage and proscenium arch at south end; a mezzanine at the north end; a perimeter balcony; and a partial basement.
- Main assembly area floor consisting of wood framing over unreinforced masonry piers.
- Ceiling approximately 25 feet above the main floor.
- Projecting stage rising approximately 4 feet above the main auditorium floor.
- Proscenium arch decorated with foliage-themed painted and stenciled design.
- Wainscoting consisting of vertical boards between a baseboard and cap molding along auditorium’s east, west and north walls.
- Doors to the exterior (including two along the west wall, one along the east wall, and the main entrance on the north wall) with decorative wood frames.
- U-shaped perimeter balcony approximately four feet wide hung from the roof trusses via one-inch steel rods.
- Balcony lined with a closed, arched balustrade approximately two feet high.
- Three windows along the east wall of the building with decorative wood surrounds, similar in design to the door frames below.
- Cove molding along the tops of the east and west walls.
- Interior stairway with hand-painted risers from the west side of the main entrance to the mezzanine.
- Mezzanine (partially in-filled with non-historic projection room and office) at the north end of the balcony.
- Partial basement consisting of two dressing rooms (including toilet facilities) and a storage room beneath the auditorium stage.



- Large, rectangular mass of exposed bedrock in crawl space that extends beneath the auditorium's floor.
- Building foundation of wood framing over brick masonry piers.



SAN FRANCISCO  
ARCHITECTURAL  
HERITAGE

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*Executive Director*

September 1, 2010

**Delivered by email**

Megan J. Brown  
Certified Local Government Program Coordinator  
Historic Preservation Grants Division  
National Park Service  
1201 Eye Street N.W. (2256)  
Washington DC 20005

Dear Megan:

On behalf of San Francisco Architectural Heritage, I am writing to confirm that we expect to receive an easement donation from the City and County of San Francisco for the Bayview Opera House, which has recently been nominated for listing in the National Register of Historic Places.

Over the past several months, Heritage has been meeting with representatives of the City and County of San Francisco and its nonprofit tenant to negotiate the terms of the anticipated easement donation, which we understand is required as a condition to receiving federal Save America's Treasures grant funding. The parties are currently finalizing the list of protected features based on the National Register nomination.

Attached hereto is a copy of the invoice submitted to the Bayview Opera House for the \$15,000 easement fee, which will assist Heritage in meeting its monitoring and enforcement obligations during the 50-year easement term.

We expect to complete and record the easement donation by the end of September 2010. Please do not hesitate to contact me if you need any additional information.

Sincerely,

Mike Buhler  
Executive Director

Attachment

cc: Carol Wong, Esq., Office of the City Attorney  
Judy Nemzoff, Community Arts & Education Program Director  
Barbara Ockel, Interim Managing Director, Bayview Opera House  
Charles Olson, Esq., President, San Francisco Architectural Heritage

*File Copy*

LM 68, 15 SOUTH SAN FRANCISCO OPERA HOUSE

Official

RECORDED AT REQUEST OF  
CITY & COUNTY OF SAN FRANCISCO  
1968 DEC 12 AM 10:36

SAN FRANCISCO, CALIF.  
MARTIN MONGAN  
RECORDER

R31713

NOTICE OF DESIGNATION OF LANDMARK

Notice is hereby given to all persons, pursuant to Section 1004.6 of the City Planning Code, Chapter II, Part II of the San Francisco Municipal Code, that the property described below, of which the current owner is Arthur Viargues

has been designated as a Landmark by Ordinance No. 309-68 of the Board of Supervisors of the City and County of San Francisco, effective December 8, 1968. A copy of this Ordinance is on file with the Clerk of the said Board of Supervisors. The effect of this designation is to impose certain controls and standards on the said property and on the improvements thereon, as set forth in Article 10 of the City Planning Code and in the designating Ordinance.

The subject property is legally described and known as follows:

Beginning at the point of intersection of the southerly line of Newcomb Avenue with the westerly line of Mendell Street; running thence southerly along said line of Mendell Street 100 feet; thence at a right angle westerly 50 feet; thence at a right angle northerly 100 feet to the said line of Newcomb Avenue; thence at a right angle easterly along said line of Newcomb Avenue 50 feet to the point of beginning; being a portion of Lot 1, Assessor's Block 5311.

Department of City Planning  
By:

Dated: Dec 12, 1968

*[Signature]*  
Zoning Administrator of the  
City and County of San Francisco

State of California )  
City and County of San Francisco )<sup>ss</sup>

On DEC 12 1968, before me, [Signature],  
County Recorder, in and for said City and County and State, personally appeared R. Spencer Steele known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office, the day and year last above written.



County Recorder in and for the City and County of San Francisco,  
State of California.

By Roberta L. Meyer, Deputy County Recorder.

*File Copy*

**FILE NO. 494-88      ORD. NO. —  
DESIGNATING THE SOUTH SAN  
FRANCISCO OPERA HOUSE AS A  
LANDMARK.**

Be It Ordained by the People of the City and County of San Francisco:

Section 1. The Board of Supervisors hereby finds that the South San Francisco Opera House has a special character and special historical, architectural and aesthetic interest and value and that its designation as a Landmark will be in furtherance of and in conformance with the purposes of Article 10 of the City Planning Code and the standards set forth therein.

(a) **Designation.** Pursuant to Section 1004 of the City Planning Code, Chapter 11, Part II of the San Francisco Municipal Code, the South San Francisco Opera House is hereby designated as a Landmark, this designation having been duly approved by resolution of the City Planning Commission.

(b) **Location and Boundaries.** Pursuant to Section 1004 of the City Planning Code, Chapter 11, Part II of the San Francisco Municipal Code, a landmark site is hereby designated for the said Landmark, located and bounded as follows:

Beginning at the point of Intersection of the northerly line of Newcomb Avenue, with the westerly line of Mendell Street running thence southerly along said line of Mendell Street 100 feet; thence at a right angle westerly 50 feet; thence at a right angle northerly 100 feet to the said line of Newcomb Avenue; thence at a right angle easterly 50 feet along said line of Newcomb Avenue to the point of beginning; being a portion of Lot 1, Assessor's Block 5311.

(c) **Justification.** The special character and special historical, architectural and aesthetic interest and value of the said Landmark justifying its designation are as follows:

Built in 1888 as a theatre, the building has seen the acting of such famous players as David Belasco and the medicine shows of men like Pawnee Bill. Center of the neighborhood social, dramatic, and fraternal life for half a century. This opera house is the sole surviving theatre of pre-fire San Francisco.

(d) **Features.** The said Landmark should be preserved generally in all of its particular exterior features as existing on the date hereof and as described and depicted in the photographs, case report and other material on file in the Department of City Planning in Docket No. LM 68.18; the summary description being as follows:

The building is wood frame, two stories in height. Interesting surface decorations, all of wood, include pilasters, wide entrance doors, wooden panelling on doors, pediments over entrance doors, tall narrow windows, with small triangular pediments, supported by brackets at second floor level. The Mendell Street facade of the Opera House has a central pediment forming part of the parapet wall above the roof line.

I hereby certify that the foregoing ordinance was passed for second reading by the Board of Supervisors of the City and County of San Francisco at its meeting of Oct. 21, 1968.

ROBERT J. DOLAN, Clerk  
Oct. 26, 1968—11

**NOTICE OF FINAL PASSAGE  
FILE NO. 494-88      ORD. NO. 309-88  
DESIGNATING THE SOUTH SAN  
FRANCISCO OPERA HOUSE AS A  
LANDMARK.**

I hereby certify that the foregoing ordinance was read for the second time and finally passed by the Board of Supervisors of the City and County of San Francisco at its meeting of Oct. 28, 1968.

ROBERT J. DOLAN, Clerk  
Approved: Nov. 8, 1968  
JOSEPH L. ALIOTO, Mayor  
Nov. 13, 1968—11

LANDMARKS PRESERVATION ADVISORY BOARD  
Preliminary Report for Hearing of December 6, 1967-SOUTH SAN FRANCISCO OPERA HOUSE

LOCATION AND SIZE  
OF SITE

1601 Newcomb Ave., the northern half of the block bounded by Third Street, Mendell Street, Oakdale Street and Newcomb Ave. (Lot 1 in Assessor's Block 5311.)

NATURE AND HISTORY

The South San Francisco Opera House and the abutting Masonic Hall which fronts on Third Street were built in 1888 by the Masonic Lodge. The term Opera House is now somewhat misleading in that many theatres in America of the latter part of the nineteenth century used this imposing term even though, as in this case, no opera was performed there. Many famous actors played the Opera House, including David Belasco, whose name is written in the dressing rooms below the stage, and Pawnee Bill, a medicine showman of the kind made more famous by Buffalo Bill. The curtains and drops on the stage came from well known uptown theatres in San Francisco, such as the old California Theatre that stood on Bush Street, where the Pacific Telephone Company building now stands between Grant and Kearny.

The Masonic Lodge, which with other fraternal organizations, used the lodge halls for its meeting place from about 1890 to 1930. The two buildings served as a chief social, dance, and drama center for the neighborhood. After the vogue of theatrical performances passed, the Opera House was successively used as a dance hall, saddlery, recreation center, and most recently, for an Economic Opportunity Council office. The adjoining hall has not been used for several years. The buildings have common openings and intercommunicating doorways. They are substantially inseparable, although no doubt they can be separated if necessity arose. The old curtain remaining in the opera house has the old advertisements for popular attractions; still visible and intact and a real landmark in itself. Forty of the old seats have been removed from the theatre and used in Macy's shoe department in their Sacramento store. The theatre is said to be the only one still surviving from before the Fire of 1906. In connection with this hall and theatre, the buildings on opposite corners are noteworthy. One is a residence and the other a brewery which served the patrons of the theatre and provided liquid refreshment in its beer garden. The AIA publication on the Buildings of the Bay Area labels this structure "one of the city's neglected curiosities". The present owner, Arthur Viargues, a life-long resident of the neighborhood, is quite interested in its preservation and return to useful life.

STRUCTURAL  
DESCRIPTION

The Opera House and Masonic Lodge, which because of common entrances and intercommunicating doorways are substantially inseparable, are wood frame structures, are basically two story in height except for a three story corner tower. Interesting surface decorations, all of wood, include pilasters, wide entrance doors, wooden panelling on doors, pediments over entrance doors, tall narrow windows, with small triangular pediments, supported by brackets at second floor level. The corner tower has a small conical roof; the remainder of the building has a flat roof with a cornice. The Mendell Street facade of the Opera House has a central pediment forming part of the parapet wall above the roof line. There are carved wooden urns midway and at each end of the pediment over the main entrance, which is flanked by double flat pilasters. The name of the building is carved in low relief over the entrance to the Opera House.

LANDMARKS PRESERVATION ADVISORY BOARD  
Preliminary Report for Hearing of December 6, 1967-SOUTH SAN FRANCISCO OPERA HOUSE

SURROUNDING LAND  
USE AND ZONING

A community center, gymnasium and school are to the east; dwellings and a church are to the north; stores are to the southeast; an auto service station is to the northwest; shops are to the west; and a garage is immediately to the south. Zoning is C-2, as is the whole Third Street frontage. The block to the east, owned by the city, is zoned R-1.

CITY PLANNING COMMISSION

RESOLUTION NO6246

WHEREAS, A proposal to designate the South San Francisco Opera House as a Landmark pursuant to the provisions of Article 10 of the City Planning Code was initiated by the Landmarks Preservation Advisory Board on July 10, 1968 and said Advisory Board, after due consideration, has recommended approval of this proposal;

WHEREAS, The City Planning Commission, after due notice given, held a public hearing on August 8, 1968 to consider the proposed designation and the report of said Advisory Board; and

WHEREAS, The Commission believes that the proposed Landmark has a special character and special historical, architectural and aesthetic interest and value; and that the proposed designation would be in furtherance of and in conformance with the purposes and standards of the said Article 10;

NOW THEREFORE BE IT RESOLVED, First, That the proposal to designate the South San Francisco Opera House as a Landmark pursuant to Article 10 of the City Planning Code is hereby APPROVED, the location and boundaries of the landmark site being as follows:

Beginning at the point of intersection of the northerly line of Newcomb Avenue, with the westerly line of Mendell Street running thence southerly along said line of Mendell Street 100 feet; thence at a right angle westerly 50 feet; thence at a right angle northerly 100 feet to the said line of Newcomb Avenue; thence at a right angle easterly 50 feet along said line of Newcomb Avenue to the point of beginning; being a portion of Lot 1, Assessor's Block 5311.

Second, That the special character and special historical, architectural and aesthetic interest and value of the said Landmark justifying its designation are as follows:

Built in 1888 as a theatre, the building has seen the acting of such famous players as David Belasco and the medicine shows of men like Pawnee Bill. Center of the neighborhood social, dramatic, and fraternal life for half a century. This opera house is the sole surviving theater of pre-fire San Francisco.

Third, That the said Landmark should be preserved generally in all of its particular exterior features as existing on the date hereof and as described and depicted in the photographs, case report and other material on file in the Department of City Planning in Docket No. L468.18; the summary description being as follows:

The building is wood frame, two stories in height. Interesting surface decorations, all of wood, include pilasters, wide entrance doors, wooden panelling on doors, pediments over entrance doors, tall narrow windows, with small triangular pediments, supported by brackets at second floor level. The Mendell Street facade of the Opera House has a central pediment forming part of the parapet wall above the roof line.

AND BE IT FURTHER RESOLVED, That the Commission hereby directs its Secretary to transmit the proposal for designation, with a copy of this Resolution, to the Board of Supervisors for appropriate action.

I hereby certify that the foregoing Resolution was adopted by the City Planning Commission at its regular meeting of August 8, 1968.

Lynn L. Pio  
Secretary

AYES: Commissioners Elliott, Fleishmacker, Kearney, Newman, Porter  
NOES: None  
ABSENT: Commissioners Brinton, Carr  
PASSED: August 8, 1968



**Resolution authorizing the San Francisco Arts Commission to grant a temporary preservation easement affecting the Bayview Opera House to the San Francisco Architectural Heritage.**

WHEREAS, The City and County of San Francisco (the "City") owns the real property located at 4705 Third Street in San Francisco, California, which is under the jurisdiction of the City's Arts Commission; and

WHEREAS, The City, acting by and through the Arts Commission, leases the building located on such property and commonly known as the Bayview Opera House (the "Building") to Bayview Opera House, Inc., a California nonprofit corporation ("Tenant"), pursuant to a Lease dated for reference purposes only as of July 1, 2009; and

WHEREAS, Tenant has received a \$197,535 grant from the National Park Service ("NPS") pursuant to Grant Agreement No. 06-04-ML-0099 (the "NPS Grant"), and Tenant has used the NPS Grant funds to perform certain Building improvement work; and

WHEREAS, The NPS Grant requires that a 50-year preservation easement protecting the historical building features of the Building (the "Easement") be granted to the San Francisco Architectural Heritage, a California nonprofit corporation ("SFAH"), which is authorized and qualified to accept charitable gifts or easements for the purpose of preserving buildings, structures, or sites of historical, architectural or cultural significance; and

WHEREAS, The NPS Grant requires that the Building be nominated to be placed on the National Register of Historic Places and Tenant submitted an application for such nomination to the California State Office of Historic Preservation on August 31, 2010; and

WHEREAS, Tenant will use NPS Grant funds to pay the \$15,000 preservation easement fee that SFAH requires to accept the Easement and Tenant has requested that City grant the Easement to the SFAH; and

WHEREAS, On August 2, 2010, the Arts Commission adopted a motion directing the Director of Cultural Affairs to submit the Easement terms to the Arts Commission if the Director of Cultural Affairs approved the Easement terms negotiated by Arts Commission staff and SFAH; and

WHEREAS, The Director of Cultural Affairs approves the negotiated terms for the Easement in the form of a Conservation Easement, which is on file with the Secretary of the Arts Commission and is incorporated herein by reference (the "Agreement"); now, therefore, be it

RESOLVED, That the Arts Commission hereby approves the Agreement and authorizes the Executive Director of the Arts Commission to request approval of the Agreement by the City's Historic Preservation Commission, and the City's Board of Supervisors; and be it

FURTHER RESOLVED, That if the City's Historic Preservation Commission and the City's Board of Supervisors approve the Agreement and the City's Board of Supervisors authorizes the Director of Cultural Affairs to execute and deliver the Agreement and take any and all actions which the Director of Cultural Affairs, in consultation with the City Attorney and any other person specified by the City's Board of Supervisors, determines are in the best interest of the City, do not materially increase the obligations of the City or materially decrease the benefits to the City, are necessary or advisable to consummate the performance of the purposes and intent of this Resolution, and comply with all applicable laws, including the City's Charter, including any modifications or amendments to the Agreement.