

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Historic Landmarks
Commission

SUBJECT: SEE BELOW

DATE: November 12, 2019

COUNCIL DISTRICT: 3

**SUBJECT: HISTORICAL PROPERTY CONTRACT (FILE NO. MA19-005) FOR THE
“BANK OF ITALY” BUILDING AT 12 SOUTH FIRST STREET**

RECOMMENDATION

The Historic Landmarks Commission voted unanimously to recommend that the City Council:
Adopt a resolution to approve the Historical Property Contract (California Mills Act Contract) between the City of San José and property owner, 12 South First Street LLC, for the “Bank of Italy” located at 12 South First Street (APN: 467-22-097), on a 0.4-gross acre site.

OUTCOME

Adoption of the Mills Act Contract would result in a reduced property tax rate for the property owner over a ten-year period, provided that the property owner uses the property tax savings for the preservation, restoration, and rehabilitation of the City Landmark property.

BACKGROUND

On October 9, 2019, the property owner, 12 South First Street LLC, applied to enter into a Mills Act Contract. The subject structure is a City Landmark (HS84-27 designated under Resolution No. 58136) and is listed as a Contributing Structure to the Downtown Commercial National Register Historic District.

On November 6, 2019, the Historic Landmarks Commission held a Public Hearing on the requested Historical Property Contract for the “Bank of Italy” building located at 12 South First Street. Planning staff recommended that the Historic Landmarks Commission recommend approval of the Historical Property Contract to City Council.

Staff provided a brief history and stated that the approval of the Historical Property Contract (California Mills Act Contract), would help preserve the integrity and prominence of the 14-story Bank of Italy building, which is a City Landmark-designated commercial building. It is

recognized for its historic value and recommending approval of the Mills Act Contract would ensure the preservation of a unique Renaissance Revival architectural style in Downtown San José. The Bank of Italy building, built in 1926, was designed by Henry A. Minton for Amadeo P. Giannini, who originally established the first branch (built in 1904) in San Francisco, and later the bank was known as the “Bank of America.”

Public Testimony

The applicant gave a brief presentation on the importance of preservation of this City Landmark building and the continuous expense that was required for the maintenance and restoration of the exterior finishes and interior spaces, including the interior front lobby area. The applicant stated they would continue to preserve the interior spaces to the extent feasible.

Staff and Historic Landmarks Commission Discussion

The Commissioners agreed that the building needs ongoing special maintenance and care to preserve this special Landmark structure known for its prominent height and was a good example of Renaissance Revival architectural style. The Bank of Italy is one of the oldest Tower building in San José and there was a need to preserve the 94-year-old building. The Commissioners unanimously recommended that the City Council approve the Mills Act Contract with the recommendation to also maintain the interior banking lobby space and front lobby area, to the extent feasible.

The Ten-Year Mills Act Contract Plan is as follows:

- Year 1:** Main base building construction-interior upgrades, electrical and mechanical upgrades and energy performance infrastructure and elevator system upgrades. Installation of a historic plaque/marker and historic information.
- Year 2:** Main base building construction. Exterior restoration of historic windows and decorative surrounds, repair plaster cracks and granite base restoration. New signage compatible with historic features and enhanced signage program). Waterproofing of basement.
- Year 3:** Main roofing maintenance, repairs, and upgrades, as needed and historic lighting plan.
- Year 4** Ongoing HVAC maintenance.
- Year 5:** Ongoing electrical maintenance for all floors.
- Year 6:** Ongoing plumbing maintenance for all floors.
- Year 7:** Interior painting, repair plaster cracks. Maintain historic lobby features including decorative ceiling and original banking space, as applicable and feasible.
- Year 8:** Ongoing exterior maintenance and preservation of architectural significant features.
- Year 9:** Storefront and Fountain Alley windows- restoration and maintenance.
- Year 10:** Building systems improvements for general and technological upgrades.

ANALYSIS

A complete analysis, including the General Plan and the Historic Preservation Ordinance conformance, is contained in the attached Historic Landmarks Commission staff report.

CONCLUSION

With the approval of the Mills Act Contract, the owners would receive a potential tax relief, which will enable them to reinvest those savings into maintenance and preservation of the commercial building.

EVALUATION AND FOLLOW UP

If the proposal is approved, the subject site will enter a Mills Act contract with the City of San José and the County Assessor will determine the tax reduction which the property owner would reinvest in the Landmark building, pursuant to the Historical Property Agreement. All work on the exterior of the building, including first floor interior lobby and banking hall space, would continue to require a Historic Preservation Permit/Adjustment and will need to conform to all applicable standards and guidelines.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum for File No. MA19-005 will have no negative effect on the Climate Smart San José energy, water, or mobility goals.

POLICY ALTERNATIVES

The City Council could opt to disapprove the recommended Mills Act Contract for the existing City Landmark. If the Mills Act Contract is not approved, the project would continue to require a Historic Preservation Permit/Adjustment due to the building's City Landmark Status.

PUBLIC OUTREACH

Staff followed the public notification requirements of Section 13.48.110 of the San José Municipal Code. A public hearing notice for the project was published in a local newspaper and posted at the site. Information about the proposed Mills Act Contract and the associated public hearings have been made available through the Planning Division website, and staff has been available to answer questions.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

CEQA

The environmental impacts of the project will not have an unacceptable negative effect on the property or adjacent properties in that the project has been determined exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15331. The project is limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

/s/
ROSALYNN HUGHEY, Secretary
Historic Landmarks Commission

For questions please contact Juliet Arroyo, Principal Planner, at 408-535-7847.

Attachments:

1. November 6, 2019 Historic Landmarks Commission Staff Report with Attachments
2. MA19-005 CC Resolution and Legal Description



HISTORIC LANDMARKS COMMISSION STAFF REPORT

File Nos.	MA19-005
Application Type	Historical Property Contract
Applicant	Thomas T. Dubel Jr. CPA
Location	12 South First Street
APN	467-22-097
Zoning	DC Downtown Primary Commercial
Council District	3
Historic Area	Downtown Commercial National Register District
Historic Classification	City Landmark Site (HS84-27, Resolution 58136)
Annexation Date	March 27, 1850
CEQA	Exempt per CEQA Guidelines Section 15331 for Historical Resource Restoration/Rehabilitation

APPLICATION SUMMARY:

Historical Property Contract (California Mills Act Contract) between the City of San José and the property owners of a City Landmark Structure, Bank of Italy, located on the subject 0.4-gross acre site.

RECOMMENDATION:

Planning staff recommends that the Historic Landmarks Commission recommend that the City Council approve the proposed Historical Property Contract (Exhibit “B” of Attachment B) and the draft Resolution (Attachment B).

PROJECT DATA

GENERAL PLAN CONSISTENCY			
General Plan Designation		Residential Neighborhood <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
Consistent Policies		LU13, LU-13.1, LU-13.13, LU-13-14	
Inconsistent Policies		None	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Downtown	DC Downtown Primary Commercial	Commercial Office
South	Downtown	DC Downtown Primary Commercial	Commercial Retail

East	Downtown	DC Downtown Primary Commercial	Commercial Retail
West	Downtown	DC Downtown Primary Commercial	Commercial Office

RELATED APPROVALS	
Date	Action
3/27/1850	Subject property was annexed into the City of San José (Original City)
5/26/1984	HS84-27: City Landmark Designation with Resolution No. 58136
6/10/2005	HP05-001: Historic Preservation Permit to allow exterior modifications and repairs for a future condominium office use in an existing office building office use, with a Historic Resources Inventory Number 46722097
6/10/2005	T05-056: Tentative Map to allow condominium/office uses in an existing office building
8/8/2006	Permit Adjustment File No. AD06-883 for building façade and signage improvements
9/18/2008	Permit Adjustment File No. AD08-1127 for building façade and signage improvements

PROJECT DESCRIPTION

On October 9, 2019, the property owner, 12 South First street LLC, of the property located at 12 South First Street (Bank of Italy) applied to enter into a Historical Property Contract (California Mills Act Contract) to restore, rehabilitate and maintain the property over a ten-year period in consideration for a reduced property tax rate.

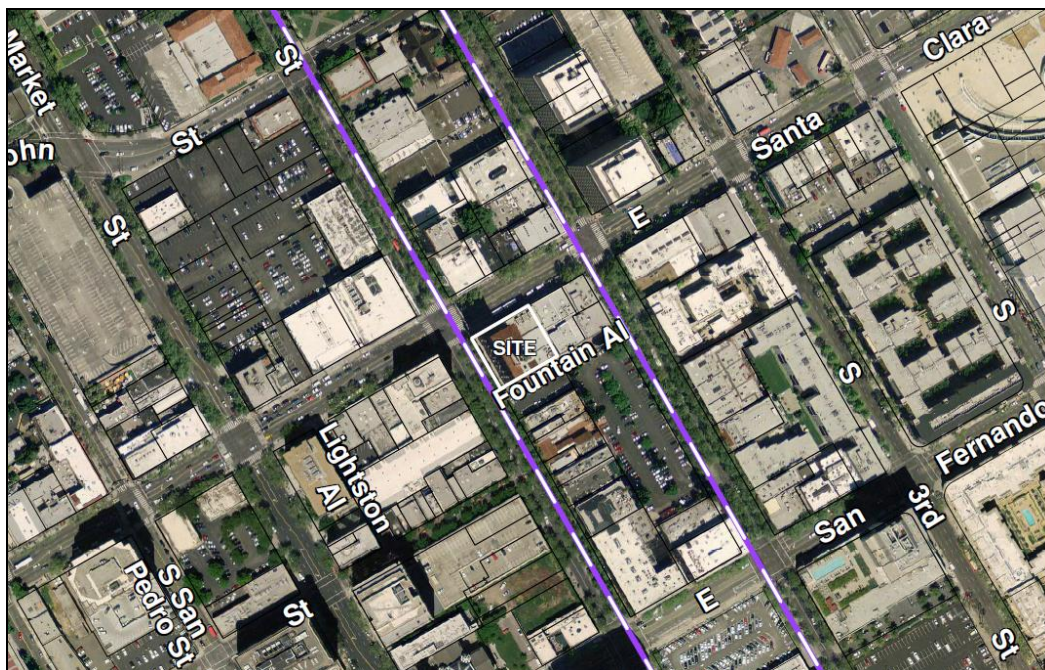


Figure 1: Location Map

Site Location and Description

The subject site is bounded by East Santa Clara Street to the north, South 1st Street to the west and Fountain Alley to the south. Adjacent uses to the east include ground floor commercial, office

space and a public parking lot adjacent to Fountain Alley. The VTA Light rail also runs northbound along South 1st Street. The subject site is surrounded by commercial retail and office uses on all sides.

Historic Resource Description

The historic 1926 Bank of Italy Building, located at 12 South First Street, was listed on the National Register of Historic Places as a part of the San José Downtown Commercial District on May 26, 1983. It was also listed as the Bank of America Building, and was noted as a 1926 12-story building with Renaissance Revival detailing designed by H.A. Minton, Architect.

The subject structure is a City Landmark (HS84-27 designated under Resolution No. 58136) and is listed as a Contributing Structure to the Downtown Commercial National Register Historic District. An addition to the base of the structure along Fountain Alley was considered in the listing to be a noncontributing part of the building.

The primary character-defining details of this building include but are not limited to:

- Four-part vertical composition with expanded base with two-part office block, tower with punched window openings, and two-part cornice at the top with Spanish tile roofing
- Renaissance Revival ornament and detailing in terra cotta with brick surfacing in non-ornate fields
- Base with rhythm of monolithic columns and pilasters, two-story fluted composite columns on individual octagonal pedestals along South First Street.

The building exterior needs continuous repair, maintenance and restoration and hence the applicant is seeking a Mills Act Contract.

The Historical Property Contract (Mills Act Contract) reduces property taxes for property owners of designated historical landmarks in exchange for a commitment to spend the property tax savings annually over a ten-year period on maintenance, restoration, and rehabilitation of the property.

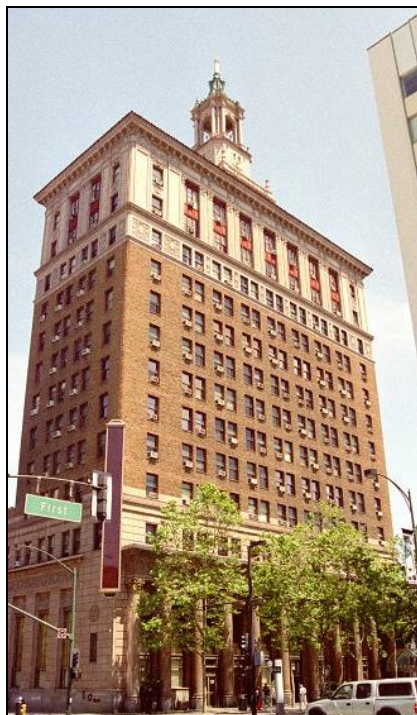


Figure 2: Front Façade

ANALYSIS

The proposed Historical Property Contract was analyzed with conformance to: 1) the Envision San José 2040 General Plan; and 2) the Historic Preservation Ordinance.

Envision San José 2040 General Plan Conformance

The proposed project is consistent with the site's General Plan Land Use/Transportation Diagram designation of Downtown in that this designation includes office uses. Additionally, the rehabilitation is consistent with the General Plan Historic, Archaeological and Cultural Resources Goal of the preservation of historically significant structures and districts in order to promote a greater sense of awareness and community identity and to enhance the quality of urban living.

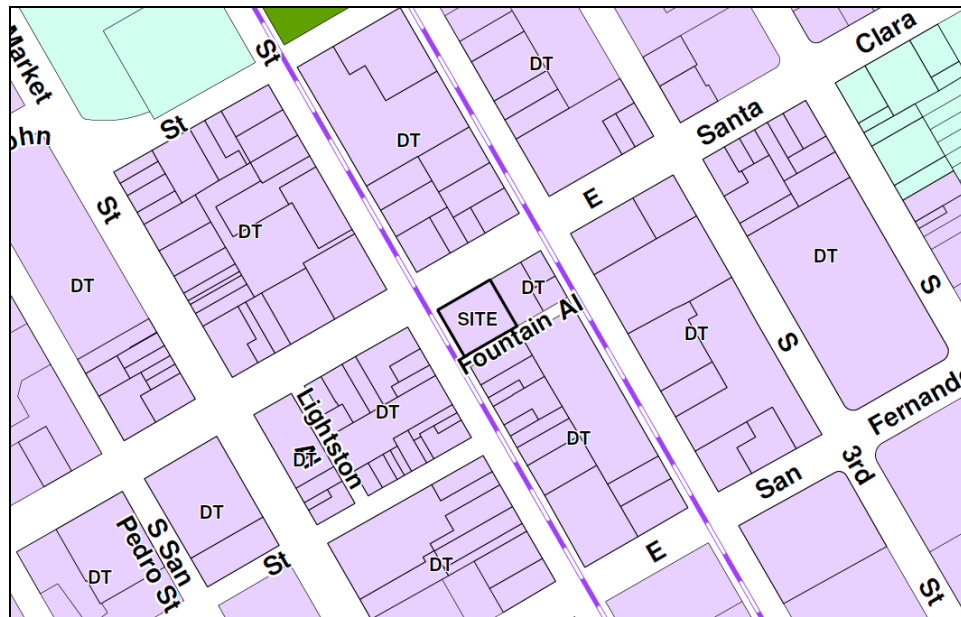


Figure 3: General Plan Map

Additionally, the proposed project promotes the following goal and policies of the General Plan with respect to historic preservation:

Historic Preservation Goal LU-13 – Landmarks and Districts: Preserve and enhance historic landmarks and districts in order to promote a greater sense of historic awareness and community identity and contribute toward a sense of place.

Historic Preservation Policy LU-13.1: Preserve the integrity and fabric of candidate or designated Historic Districts.

Historic Preservation Policy LU -13.13: Foster the rehabilitation of buildings, structures, areas, places, and districts of historic significance. Utilize incentives permitting flexibility as to their uses; transfer of development rights; tax relief for designated landmarks and districts; easements; alternative building code provisions for the reuse of historic structures; and financial incentives.

Analysis: The subject Bank of Italy Building is a Historic Landmark Structure on the City of San José's Historic Resources Inventory. It is also a contributing structure to the Downtown Commercial National Register District. In order to help carry out the goals and policies of the City's General Plan, inventory of potentially historical and/or architecturally significant structures is maintained. The approval of the Historical Contract (California Mills Act

Contract), will preserve the integrity of this City Landmark-designated commercial building and recognize its historic value, as well as ensure the preservation of a unique architectural style (Renaissance Revival). The structure is within the Downtown Commercial National Register District, adjacent to many such properties listed in the City's Historic Resources Inventory.

Historic Preservation Policy LU -13.14: Advocate for the continuation and appropriate expansion of Federal and State tax and/or other incentives for the rehabilitation and/or restoration of historically or architecturally significant buildings, structures, areas, and/or places.

Analysis: By encouraging the preservation of this building through the Historical Contract (Mills Act Contract), the City is preserving and fostering the architectural history of this structure and area of San José. The Historical Property Contract is an incentive for ownership and rehabilitation of Historic Landmarks. It is a contract between the City of San José and the owner of a designated Historic Landmark, which allows the owner to enjoy a reduced property tax rate from the County Assessor in exchange for the preservation and, in some cases, restoration and rehabilitation, of the owner's historic property. The contract will allow the property owner to reinvest the potential tax savings into the restoration and rehabilitation of a designated Historic Landmark Building (Bank of Italy).

The rehabilitation of the building shall be compatible with the Secretary of the Interior's Standards for Treatment of Historic Properties.

Historic Preservation Ordinance Conformance

The Historical Property Contract, as discussed above, is an incentive for ownership and rehabilitation of Historic Landmarks. It is a contract between the City of San José and the owner of a designated Historic Landmark, which allows the owner to enjoy a reduced property tax rate from the County Assessor in exchange for the preservation and, in some cases, restoration and rehabilitation, of the owner's historic property. The purpose of a Historical Property Contract under the California Mills Act is to provide greater protection for a Historic Landmark property than is otherwise provided by the historic preservation regulations in the City's Municipal Code. The County Assessor sets the property tax rate based on an appraisal of the market value of the land and improvements, but a property under contract will receive a property tax reduction based on an appraisal of the rental value of the land and improvements, determined by the County.

The Preservation Plan focuses on restoring and rehabilitating the property by cleaning, repairing and replacing missing materials, window repairs and exterior repairs of the building. Preservation of some interior features as feasible. The Historical Property Contract (Exhibit "B" of Attachment B) proposed for this property includes the Preservation Plan.

Year 1: Main base building construction-interior upgrades, electrical and mechanical upgrades and energy performance infrastructure and elevator system upgrades. Installation of a historic plaque/marker with historic information.

Year 2: Main base building construction. Exterior restoration of historic windows and decorative surrounds, repair plaster cracks and granite base restoration. New signage compatible with historic features enhanced signage program). Waterproofing of basement

Year 3: Main roofing upgrades and historic lighting plan.

Year 4 Ongoing HVAC maintenance.

Year 5: Ongoing electrical maintenance for all floors.

Year 6: Ongoing plumbing maintenance for all floors.

Year 7: Interior painting, repair plaster cracks. Maintain historic lobby features including decorative ceiling.

Year 8: Ongoing exterior maintenance and preservation of architectural significant features.

Year 9: Storefront and Fountain Alley windows- restoration and maintenance.

Year 10: Building systems for general and technological upgrades.

After the 10th Anniversary date of the Effective Date of this Agreement, the property owner shall expend a minimum of ten percent of the tax savings annually attributed to this Agreement for the continued preservation and maintenance of the Historic Landmark. The property owner specifically shall perform and complete, without limitation, the following tasks each year: maintenance, painting, and repairs of the landmark building's finished materials, such as walls, roofs, doors and windows, and historic and character defining elements noted to be preserved.

Required Findings of Historical Property Contract

In accordance with the City's Historic Preservation Ordinance (Title 13 of the San José Municipal Code), the City Council may approve a Historic Property Contract pursuant to making certain findings. Planning staff recommends that the Historical Landmarks Commission recommend that the City Council make the following findings and approve the proposed Historical Property Contract:

1. The proposed contract is consistent with the General Plan.

Analysis: As discussed above, preservation of Bank of Italy Building, a designated Historic Landmark, is consistent with Historic Preservation Goal LU-13 and Policies LU-13.1, LU-13-13 and LU-13.14 of the Envision San José 2040 General Plan. The proposed contract provides a financial incentive to foster the restoration and rehabilitation of a building of historical significance.

2. The proposed contract would provide greater protection for the landmark property than is otherwise provided by the provisions of Municipal Code Chapter 13.48.

Analysis: The proposed contract will reduce property taxes on the subject historic building in exchange for a commitment from the property owner to spend property tax savings annually over a ten-year period on maintenance, restoration, and rehabilitation of the property. In this way, the contract provides greater protection for the landmark property in that it will allow the owner, in partnership with the City, to use property tax relief to rehabilitate and maintain the property in accordance with a specific preservation plan.

3. The proposed contract complies with the required provisions of Historical Property Contracts listed above.

Analysis: The proposed contract incorporates the required provisions for Historical Property Contract listed in Section 13.48.520 of the San José Municipal Code. The property owner shall enter into contract with the City and agree to expend tax savings attributed towards preservation and maintenance of the subject income property. The property owner will also be required to allow periodic examination of the interior and exterior of the property to determine compliance with the contract and conformance to the rules and regulations of the City and the Office of Historic Preservation of the California Department of Parks and Recreation.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15331, Historical Resource Restoration/Rehabilitation. The project is limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

PUBLIC HEARING NOTIFICATION

Staff followed the public notification requirements of Section 13.48.110 of the San José Municipal Code. A notice of this hearing appeared in a newspaper of general record at least 10 days prior to the hearing, a mailing of the notice to the property owner and occupants and posting the notification of the hearing along the frontage of the site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Rina Shah, Project Manager

Approved by:  Division Manager for Rosalynn Hughey Planning Director

Date:

10/30/19

Attachments:

- A. Historic Evaluation by Archives and Architecture, dated revised February 8, 2018
- B. Draft Resolution for MA19-005 and Draft Historical Property Contract for MA19-005 (Exhibit "B")

Owner:	Applicant:
12 South First Street LLC 260 Homer Avenue, Ste. 201 Palo Alto, CA 94301	Thomas T. Dubel Jr. CPA 20 Wight Avenue, Suite 200 Hunt Valley, Maryland 21030



September 5, 2017 (revised February 8, 2018)

Sharp Development Company, Inc.

Attn: Kevin Bates

20 Prado Court

Portola Valley, CA 94028

RE: Bank of Italy Building (12 South First St., San Jose)

Dear Kevin:

Per your request, this letter and attached documents constitute our review of a proposed project to rehabilitate windows at 12 South First St. in Downtown San Jose known as the 1926 Bank of Italy Building, as well as plans to install solar panels on the roof of the east wing and make other minor changes to the building.

The purpose of the review is to consider changes to the exterior of the building that are being proposed, and to analyze those changes according to the *Downtown San José Historic District Design Guidelines*, and more specifically the *Secretary of the Interior's Standards for Rehabilitation* published by the National Park Service.

We understand that this third-party evaluation will be necessary in order to obtain permit entitlements with the City of San José under a proposed Historic Preservation Permit Amendment. As the project is subject to the City's discretionary review under their Historic Preservation Ordinance, the final determination of consistency with the Standards is within their purview and authority. They have the option of relying upon an outside party such as ourselves, or to solicit an alternative opinion from other qualified consultants of their choosing.

The scope of our review has included:

- Review proposed window replacement units at the generally deteriorated double-hung fenestration on the four elevations of the building above the mezzanine level, and other significant change to the building envelope such as the addition of solar panels on the east wing and egress doors,
- Conduct a site visit to observe the in-place windows units from a typical interior,
- Consider the applicability of the 2003 Downtown San Jose Historic District Design Guidelines for the project and more specifically apply the *Secretary of the Interior's Standards for Rehabilitation* for review by the City of San José Department of Planning, Building and Code Enforcement.

The following pages constitute this analysis and review.

PROJECT PROPOSAL

The proposed project is as presented in the Historic Preservation Permit Package for Bank of Italy Building, by RMW Architecture and Interiors, dated October 5, 2017. The project intent is to rehabilitate the building (both exterior and interior) and incorporate changes to most of the upper-level fenestration as well as adding solar panels to increase the energy efficiency of the building and reduce its carbon footprint. New egress doors will be added on the East Santa Clara Street and Fountain Alley frontages. This work will amend a previous Historic Preservation Permit (and Adjustments) granted to the property owner during the 2000s. The proposed changes to the exterior of the building are further elaborated within this report.

HISTORICAL STATUS

The historic 1926 Bank of Italy Building at 12 South First St. was listed on the National Register of Historic Places as a part of the San Jose Downtown Commercial District on May 26, 1983. Listed as the Bank of America Building, it was noted as a 1926 12-story building with Renaissance detailing designed by H.A. Minton, Architect. The addition (along Fountain Alley) was considered in the listing to be a noncontributing part of the building.

The following year, the structure was nominated a San Jose City Landmark (HS84-27) and was designated under City Council Resolution #58136 in 1984 with a theme of Commerce/Interwar Period.

As a part of the preparation by the City of San Jose of the 2002 Draft Environmental Impact Report for the Mixed-Use Project and Century Center Plan Amendment, the building was formally reevaluated by Dill Design Group and recorded as an individual property on DPR523 recording forms (attached) with findings of California Register eligibility under Criteria (1), (2), and (3) with a period of significance of 1926-1970. The recording noted that the portion of the building along Fountain Alley to the rear of the tower had been remodeled in the recent past with the application of a stucco-clad wall and storefront entry, and that this addition was architecturally inconsistent with the character of the tower and primary base extension along East Santa Clara Street. Other storefront modifications along South First Street had been done within the period of significance and are considered contributing elements of the building as it exists today.

Later in 2002, JRP Historical Consulting Services revisited the National Register nomination as a part of the Historical Resources Evaluation Report for the SVRTC EIS/EIR Alternatives and found no changes that might warrant a change in its National Register listing.

In 2005, a Historic Preservation Permit was issued by the City of San Jose under HP05-001 to allow exterior modifications and repairs in anticipation of a condominium office use, which was extended twice through 2008 per permit adjustments AD06-883 and AD08-1127. That rehabilitation project, with Existing Conditions Report and plans with notations was prepared by MBA Architects in April 2005 (with later updates), and entitled under Tentative Map T05-056, remains active at present and has not been completed.

DOCUMENTS REVIEWED

- Original window details from the 1925 plan set by H. A. Minton Architect.
- National Register of Historic Places Inventory – Nomination Form for San Jose Downtown Commercial District, by Bonnie Bamburg, 1981.
- DPR523 forms prepared by Dill Design Group, Jan. 10, 2002.
- Report by MBA Architects, Bank of Italy Existing Conditions Report with Historical Notations, 14 April, 2005.
- Permits: HP05-001 (with Adjustments AD06-883 and AD08-1127), and T05-056
- Proposed renovation details by RMW architecture & interiors, 2017.

SITE VISIT

Conducted by John Tabuena-Frolli, AIA, Historic Architect, and Franklin Maggi, Architectural Historian, on April 5, 2017.

DOWNTOWN SAN JOSÉ HISTORIC DISTRICT DESIGN GUIDELINES

The *Downtown San José Historic District Design Guidelines* (Guidelines)¹ adopted by the San Jose City Council on November 4, 2003 provide relevant criteria for addressing the revitalization of buildings, public spaces, businesses, entertainment and residential use with the Downtown San Jose Historic District (i.e. Downtown Commercial National Register Historic District). The relevant section of the Guidelines applicable to this project is that pertaining to rehabilitation and adaptive use of existing historic structures. The basis of the Guidelines is *The Secretary of the Interior's Standards for the Treatment of Historic properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*.² Those Standards are explicitly discussed in the subsequent section of this report under the applicable rehabilitation standards that apply to this project.

The Guidelines discusses the importance of understanding character-defining features and character-defining and character-enhancing settings of historic buildings in the district.

The following evaluation of the project is broken into three sections.

- **Character-Defining Features** helps provide a basis for understanding the historic fabric of the building that must be preserved.
- **Project Review under the Historic District Design Guidelines** provides a generalized analysis according to the Rehabilitation and Adaptive Use section of the Guidelines.
- **Secretary of the Interior's Standards Review** provides a detailed evaluation of the project according to the Standards for Rehabilitation.

¹ <http://www.sanjoseca.gov/DocumentCenter/Home/View/429>

² <https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>

CHARACTER-DEFINING FEATURES

Excepted from DPR523 forms / Dill Design Group Jan 10, 2002:

This thirteen-story commercial building (twelve-story with mezzanine) embodies the traditional form, materials, and detailing of early skyscraper design. It is located on the southeast corner of South First and East Santa Clara Streets, and the southern property line borders Fountain Alley, currently a pedestrian way. The east wall abuts two- and three-story commercial structures.

The site is roughly square in plan, and the base of the building fills the entire site. The upper floors of the building are rectangular in plan and massed along the width of the South First Street façade. A slight projection in plan, that encloses the stairs, is centered on the rear (east) of the upper floors above the base. A portion of the low base along Fountain Alley appears to have been added sometime shortly after the construction of the building.

The building is clad in Renaissance Revival ornament and detailing. It includes a three-story classical base, a simplified central block of office space, and top floors ornamented as a building cornice. The classical tower at the center of the roof is also a characteristic feature typical of the style.

The base of the building is distinctive with a bold rhythm of monolithic columns and pilasters. Facing South First Street are thirteen two-story fluted Composite columns set on individual octagonal pedestals. The front windows are inset between the columns. The columns support a classical entablature highly decorated in the Roman way with acanthus leaves and shields. Facing East Santa Clara Street is a rusticated wall with a pattern of flat, rusticated pilasters that frame deeply inset windows. The wall is set on a continuous, tall granite base. The rustication continues behind the columns along the front façade and wraps onto the Fountain Alley side of the building. The windows in the base consist of large fixed window panels with decorative mullions and headers topped by large 16-lite and 20-lite metal transoms. Above the windows are round shields alternating reliefs of sailing ships and bears. The second-story is designed as a classical attic for the base. It is surrounded by the ashlar veneer and finished off with Greek key and rope patterns.

The central floors feature "punched" windows in a field of simple brown brick veneer. The placement of the windows adds a rhythm and proportion to the otherwise plain walls. The windows have wood, one-over-one, double-hung sash with ears. They have no decorative headers or sills on these floors.

Horizontal banding, and a change in cladding, set apart the top three floors, and the fenestration is grouped with decorative spandrel panels that accentuate the vertical rhythm. A deeply overhanging classical entablature, with modillions, rosettes, and dentils, tops the building and visually supports the Spanish tile roof. The outermost windows on each side are grouped vertically with plaster spandrel panels decorated with swags. They have wood one-over-one sash similar to the rest of the building. Two-story flat pilasters and decorative flat capitals frame these

windows. The triple central windows are grouped vertically with three raised panels at the floor level tied together with continuous mullions. These windows are inset between paired flat pilasters. The rear of the upper stories includes some brick pilasters as well as plaster.

The tower rises at the center of the roof from a rusticated base and low brick pedestal with a balustrade. Classical columns and pilasters support open arches and the dome. Acting as a lantern for the building, the tower is topped by a small lantern as well: this lighted feature is a significant part of this landmark building, originally activated in 1929, and referred to as the building's beacon.

The building has a high level of integrity to its original design. The initial construction, or a remodeling shortly after constructed, compromised the original concept. The bases of the columns were truncated at the first level when Roos Bros retail clothing store was incorporated in the storefront south of the banking room and foyer on South First Street. The incomplete columns remained for twenty years, until Roos Bros moved to their new building at the northeast corner of North First and East Santa Clara Streets in 1947. In the late 1940s, this storefront was removed, and the composite columns and bases installed matching the details on the façade in front of the banking room. Small retail uses have been located in this area since the change, better adapted to the smaller storefront spaces between the column bases.

The primary character-defining details of this building include but are not limited to:

- Podium and tower massing
- Four-part vertical composition with expanded base with two-part office block, tower with punched window openings, and two-part cornice at the top with Spanish tile roofing
- Renaissance Revival ornament and detailing in terra cotta with brick surfacing in non-ornate fields
- Base with rhythm of monolithic columns and pilasters, two-story fluted composite columns on individual octagonal pedestals along South First Street

PROJECT REVIEW UNDER THE HISTORIC DISTRICT DESIGN GUIDELINES

The general approach to rehabilitation in the Downtown Commercial Historic District should be based on the following statements:

Owners and developers of rehabilitation and adaptive use projects can work with qualified professionals to identify the character-defining features of an historic property, rank such features in terms of their significance, and make decisions about appropriate actions for specific features. Based on the Secretary of the Interior's Standards for the Treatment of Historic Properties, the main idea is to preserve as much of the building and by extension the neighborhood's character as possible, while accommodating owner's needs.

Improvement plans should involve the least degree of intervention. Proposed plans should retain the character defining features of the historic building. Where it is

necessary to repair features, patching and then replacing individual pieces rather than entire features should take place. Where documentation of missing features exists, reconstruction can be considered. Where documentation does not exist, projects can replace historic features with compatible, slightly differentiated designs in order to maintain the integrity of the original fabric. "Historicizing" a building with the use of new elements or features that appear to be part of the original historic building or the imitation of a historic style in new construction is inappropriate treatments. Where new architectural elements are necessary, they can be added, using materials and craftsmanship that are compatible with the existing historic character-defining features, differentiated from the historic building fabric. Construction impacts should in the least possible loss of historic materials, so that the character defining features are not obscured, damaged or destroyed.

ANALYSIS

This general analysis of the project according to the Historic District Design Guidelines includes review of three exterior elements proposed for change, modification, or addition; the replacement of the double-hung wood windows, the addition of roof-top solar panels over the addition, and the insertion of two ground-level egress doors. As analyzed in the following paragraphs, the proposed Bank of Italy Building rehabilitation project is generally compatible with the Guidelines.

RECESSES AND OPENINGS

One of the primary rehabilitation efforts for this project is the replacement of the moderately deteriorated historic windows with more energy-efficient units. The Downtown San José Historic District Guidelines specifically mention that the recommended approach is: Retain the historic fabric, Repair if necessary, and Replace entire windows that are too deteriorated to repair. The Guidelines refers to National Park Service (NPS) Preservation Briefs No. 9 and 13; however, the most pertinent NPS reference is their website "Applying the Rehabilitation Standards"³, which asks "How accurate does the match need to be?" Their suggestion is that windows on the primary street levels should be preserved or match the historic design. The recommendations continue:

Replacement windows on secondary elevations that have limited visibility must match the historic windows in size, configuration and general characteristics, though finer details may not need to be duplicated and substitute materials may be considered

The windows at the Bank of Italy Building are proposed to be reproduced in alternative materials that match the historic windows in size (they will fit into the historic original openings), configuration (they will have a deep horizontal element approximating the shadow line of the historic double-hung windows, and general characteristics (such as size of the trim surrounding the sash). The replacement windows are all above the entablature of the main façade cornices. The

³ <https://www.nps.gov/tps/standards/applying-rehabilitation/successful-rehab/windows-replacement.htm>

window alteration appears to be consistent with this Guideline. See additional analysis in the following Standards review.

In addition to proposed modifications to the window openings, two egress doors are proposed; one at the northeast corner base along East Santa Clara Street, and the other on the south elevation along Fountain Alley. The egress doors are proposed to provide life and safety access to the interior. These door details should be reviewed at the final drawings stage to insure they are inserted into the base of the building in a way that is compatible and muted to not draw attention to themselves.

ROOFTOP SOLAR

Solar panels are being proposed on top of the lower roofs, but the supports and panels are designed to be differentiated by material, openness, and form, and will not be mistaken for new roof elements.

It can be considered that the solar panels should be reviewed as “Hardware and Light fixtures:”

While historic buildings are adaptively used for a variety of purposes, additions to historic buildings should be contemplated only after determining that the new use cannot be accommodated in the existing historic building. If it is determined that the new use cannot be accommodated in the existing historic building, then an exterior addition may be explored. In order to maintain the character defining features of the building, the design of the new addition should avoid changes that eliminate, damage or obscure these features. When considering the design for an exterior addition, it is critical to take into account the size, scale, proportion, color and materials of the historic building as well as its Downtown Core setting.

As analyzed in the following Standards review, the solar panels are differentiated from the original building, yet compatible in size and form. As previously stated, they are designed to appear separate, including their raised structure and its non-masonry materials. They have compatible scale of materials, being subordinate to the form and set back from the significant character-defining elements of the building. The new installation has been designed to be hidden from view along the primary streetscape of East Santa Clara Street, and have smaller, repetitive structural features that are consistent with the scale of a building with brick siding and patterns of repetitive windows. The solar panels are held back from the rear windows, allowing them to remain operable and clear of obstruction. The solar panel structure is set inside the parapet walls, indicating its subordination to the primary structural system. The placement and design also allow the panels to be reversible in the future.

SECRETARY OF THE INTERIOR'S STANDARDS REVIEW

The Secretary of the Interior's Standards for Rehabilitation (Standards), originally published in 1977 and revised in 1990, include ten standards that present a recommended approach to repair of historic structures, while preserving those portions or features that convey a resource's historical, cultural, or architectural values. Accordingly, the Standards state that, “Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations,

and additions while preserving those portions or features which convey its historical, cultural, or architectural values.”

The National Park Service has accompanied these Standards with a series of guidelines, including *Guidelines for the Treatment of Historic Properties*, *Guidelines for Rehabilitating Historic Buildings*, and *Guidelines on Sustainability*, which are applicable to this project.

The subsequent Standards review applies these guidelines to consideration of three (3) changes to the exterior of the building; the replacement of the generally deteriorated double-hung wood windows (floors 2-12) with aluminum framed sash, some fixed and others with centrally operated automatic-openable upper sash with Solarban 70XL and View Dynamic Glass electrochromic glazing, installation of solar panels on the flat roof of the east wing, and incorporation of new egress doors at the East Santa Clara Street and Fountain Alley facades.

Proposed window details and solar panel layouts are presented within the RMW plan set which is being provided separately as a part of the Amendment application. Also included in this report is an attachment with an excerpt from the NPS guidelines for Evaluating Historic Windows for Repair or Replacement and Replace Windows that Meet the Standards.

The following review enumerates the list of the Standards and associated analysis for this project and its potential impact on the historic resource known as the 1926 Bank of Italy Building in Downtown San Jose:

STANDARD 1

“A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.”

Analysis: The primary underlying use (offices), is not being changed. Uses at the ground floor have changed over time, and potential future uses are not defined yet within the project scope.

The project at present is compatible with Standard 1.

STANDARD 2

“The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.”

Analysis: The exterior spatial relationships and spaces embodied in the historic design are not impacted by the project. The historic landmark building fills the existing site completely with access presently on South First Street and Fountain Alley, with an exterior door proposed to be added to the East Santa Clara Street elevation to meet egress requirements. Alteration of the interior spaces of the building is not a part of this review. The egress door includes the removal of a narrow portion of the character-defining marble base material. The wall segment will not represent a preponderance of the character-defining “composition” represented by the historic original base configuration. This detail must be clarified in the final drawings, but the door addition can be expected to be compatible with this standard.

Not proposed for preservation in the project are the double-hung wood windows. While the location, punched design and style of the windows will be retained, the removal of the windows

constitutes a removal of historic materials. Because they are generally deteriorated, this change is more fully elaborated in the discussion under Standard 6.

The proposed project can be understood to be consistent with the intent of Standard 2.

STANDARD 3

"Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other historic properties, will not be undertaken."

Analysis: There are no changes proposed that might be mistaken for original features. Replacement units for the double-hung windows are designed to be consistent with the original profile, and will be a modern characterization of those forms while retaining the form and profile of the originals. The solar panels on the East Wing are differentiated from the original building, yet compatible in size and form. The egress door on East Santa Clara Street is yet to be detailed, but while it will be painted to match the adjacent marble walls, should be designed to be compatible but not create a false sense of historical development.

With final details conditioned to be reviewed—that ensure that the new door on East Santa Clara Street is compatible but will not create a sense of false history and that ensure that the final details of the solar panel installation are reviewed and any comments appropriately addressed—the project is expected to be consistent with this Standard.

STANDARD 4

"Changes to a property that have acquired historic significance in their own right will be retained and preserved."

Analysis: As well as can be determined, construction along South First Street undertaken by Bank of America in the 1940s restored the original concept for this portion of the façade, and the alterations occurred within the period of significance. No changes to the South First Street façade are proposed with this project. Work along Fountain Alley in the 1970s resulted in the modification of the original façade of the east wing along Fountain Alley. This change, although nearing 50 years in age, has not acquired historic significance in its own right. Because the east wing façade at Fountain Alley is not a modification undertaken during the period of significance, it is not a character-defining feature of the historic design. There are only minor changes proposed for the elevation along Fountain Alley at the east wing, including the addition of an egress door. The installation of solar panels above the east wing will be visible from Fountain Alley, but because this façade is not historically significant, preserving the view of this portion of the building is not required.

The project is consistent with this Standard.

STANDARD 5

"Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved."

Analysis: The primary features, finishes, and construction techniques or examples of craftsmanship that characterize the building façades are generally shown to be preserved in this proposal except

for the replacement of the windows. The existing window units are part of the original fabric of the building, but in themselves are not a distinctive feature in terms of their material or construction technique.

The project is generally consistent with this standard, with the window discussion further elaborated in Standard 6.

STANDARD 6

"Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence."

Analysis: The primary project goal in the replacement of the wood double-hung windows, along with the repair/replacement of the moderately deteriorated sash, is to increase the energy efficiency of the building and reduce its carbon footprint, making feasible installation of a new cooling system to replace the currently- found window air conditioner units that have been randomly installed throughout the building facades. Besides the use of replacement glass, sash, and frames, the project also proposes to use motor-driven automatically-activated upper sash in a select number of windows to facilitate natural cooling based on time of day and ambient outside temperatures. The energy savings will result from the use of Low-E glass that allows for transparent vision without use of tinted glass. The project will eliminate the non-historic window units.

The energy-driven program of window replacement has two issues that will be resolved with the project. The first has to do with wood deterioration within the window frames over the last 90-plus years, which has been substantial. Wood surface erosion of the window channels and sills on the rain exposed elevations might not be easily remedied with wood repair techniques recommended within the NPS Guidelines, so replacement is the approach. Additionally, recent changes to the IBC have increased minimum interior window sill heights from 24" to 36" for windows over 72" above ground. While intended primarily as a safety precaution for children in residential buildings, the current 27" sill height in the Bank of Italy building is noticeably low. A code exception is allowed for windows that do not open more than 4 inches (below the first 36") or that are equipped with compliant window guards or window opening control devices. Other requirements may apply, such as safety glazing for large areas (> 9 sq. ft.), although the quality of the existing glazing is not known. Any window replacements must comply with current code requirements, although potential for use of the state Historic Building Code is yet to be determined.

The recommended approach as stated in the NPS Technical Preservation Services guidelines indicate that "when historic windows exist, they should be repaired when possible," and when they are too deteriorated to repair, selection of the replacement windows must be guided by Standard 6." They continue with "Design, visual qualities, and materials are specific criteria provided by the Standard that are pertinent to evaluating the match of a replacement window. Evaluating the adequacy of the match of the replacement window involves the consideration of multiple issues."

Windows that are distinctive features or exemplify fine craftsmanship are more critical to retain and repair than those that play a lesser supporting role in the

design of the building or are simple manufactured units. The more important the elevation, feature or space of which the windows are a part, the more important it is to retain the historic windows.

While factors including occupant operation, presence of hazardous materials, code requirements, or energy performance, if taken individually, are not reasons to replace windows, they may be issues to consider in conjunction with deterioration in establishing a need for window replacement. In many cases these requirements can be met without losing the historic windows.

In the discussion of what constitutes an adequate match in a replacement window:

The evaluation of the match of a replacement window depends primarily on its visual qualities. Dimensions, profiles, finish, and placement are all perceived in relative terms. For example, an eighth of an inch variation in the size of an element that measures a few inches across may be imperceptible, yet it could be more noticeable on the appearance of an element that is only half an inch in size. The depth of a muntin or the relative complexity of a brick mold profile are more often made visually apparent through the shadows they create...

The way a historic window operates is an important factor in its design and appearance. A replacement window, however, need not operate in the same manner as the historic window or need not operate at all as long as the change in operation does not change the form and appearance of the window to the point that it does not match the historic window or otherwise impair the appearance and character of the building.

The Guidelines refers to National Park Service (NPS) Preservation Briefs No. 9 and 13; however, the most pertinent NPS reference is their website “Applying the Rehabilitation Standards”⁴, which asks “How accurate does the match need to be?” For primary elevations, the guidelines clarify:

- *Replacement windows on the primary, street-facing or any highly visible elevations that are part of the base of high-rise buildings must match the historic windows in all their details and in material (wood for wood and metal for metal). The base may vary in the number of stories, but is generally defined by massing or architectural detailing.*
- *Replacement windows on the primary, street-facing or highly visible elevations of tall buildings above a distinct base must match the historic windows in size, design and all details that can be perceived from ground level. Substitute materials can be considered to the extent that they do not compromise other important visual qualities.*

The windows at the Bank of Italy Building are proposed to be in alternative materials that match the historic windows in size (they will fit into the historic original openings), configuration (they

⁴ <https://www.nps.gov/tps/standards/applying-rehabilitation/successful-rehab/windows-replacement.htm>

will have a deep horizontal element approximating the shadow line of the historic double-hung windows, and general characteristics (such as size of the trim surrounding the sash). The replacement windows are all above the entablature of the main façade cornices.

One row of windows, however, might be considered within the base. This row (2nd floor) above the entablature currently contains wood double-hung windows that are proposed to be replaced along with the upper-floor wood windows. A strict interpretation of the guidelines might indicate that these window sash should be repaired rather than replaced, as they are within a perceived architectural base of the building defined by the terracotta blocks and horizontal molding and running fret at its top.

The definition of “base” varies however among other tall buildings in the downtown. For instance, both the De Anza Hotel and Vintage Towers have distinct bases with windows/storefronts that are differentiated within the base from those in the tower. The Commercial Building on North First Street is similar to the Bank of Italy building in that the double-hung windows drop down below the molding and running fret, but the wall surfacing is more related to the walls in the upper tower than that of the architectural base. Other moderately high buildings such as the Sainte Claire Hotel, the Sainte Claire Building, the Twohy Building, and the Montgomery Hotel are detailed to clearly differentiate between the base and the double-hung window planes above. In all these related examples, the double-hung windows are more related to the upper wall planes, but are associated with floor levels at the second and third level.

The guidelines established by the National Park Service are not prescriptive, and are written to allow for a variety of situations involving historic buildings and properties. It would appear that in this case allowing for the retrofit of the second-level windows would maintain consistency in the architectural texture of the facades, as the new windows above might read as more perceptively different when juxtaposed with a single row of original wood windows.

The window alteration as defined in the project scope appears to be consistent with this Standard.

STANDARD 7

“Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.”

Analysis: All proposed preservation treatments (e.g., surface cleaning, repair, and replacement techniques), are being identified and reviewed for compliance with preservation principles separately as a part of a Preservation Plan prepared by John Tabuena-Frolli, Historic Architect, of Strata Design Studio.

The project, as defined by the RMW drawings inclusive of preservation program requirements identified by Tabuena-Frolli appears to be in compliance with Standard 7 at this phase.

STANDARD 8

“Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.”

Analysis: No ground disturbance activities are being proposed as a part of the project.

STANDARD 9

"New additions, exterior alterations or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment."

Analysis: The National Park Service provides guidance in assessing the impacts of solar panels in their Technical Preservation Services website "Solar Panels on Historic Properties."⁵ The solar panels, which constitute an exterior alteration, are differentiated from the original building, yet compatible in size and form. They are designed to appear separate, including their raised structure and its non-masonry materials. They have compatible scale of materials, being subordinate to the form and set back from the significant character-defining elements of the building. The new installation has been designed to be hidden from view along the primary streetscape of East Santa Clara Street, and have smaller, repetitive structural features that are consistent with the scale of a building with brick siding and patterns of repetitive windows. The solar panels are held back from the rear windows of the main tower, allowing them to remain operable and clear of obstruction. The solar panel structure is set inside the parapet walls, indicating its subordination to the primary structural system. The placement and design also allows the panels to be reversible in the future.

The proposed project is consistent with this Standard.

STANDARD 10

"New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired."

Analysis: The essential form and functional integrity of the landmark building will be maintained in this project. The replacement windows are set into the building in such a way that they could be replaced once again/restored with alternative materials without impairment to the surrounding character-defining walls. The inclusion of solar panels on the roof the east wing is also reversible. The reversal of this solar installation in the future, as Standard 10 hypothesizes, would leave no noticeable alterations following installation of a new roofing membrane.

The proposed project is in keeping with Standard 10.

CONCLUSIONS

The project is generally consistent with the *Downtown San José Historic District Design Guidelines* and with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. It is recommended that the design of the proposed Santa Clara Street egress door be conditioned for review prior to issuance of the building permit.

⁵ <https://www.nps.gov/tps/sustainability/new-technology/solar-on-historic.htm>

QUALIFICATIONS

The authors of this third-party review were Franklin Maggi, Architectural Historian, and Leslie A.G. Dill, Historic Architect of the firm of Archives & Architecture, LLC.

Franklin Maggi is a preservation planner who consults in the field of historic architecture and urban development and has a professional degree in architecture with an area of concentration in architectural history from the University of California, Berkeley.

Leslie A.G. Dill is a California licensed architect and has a Master of Architecture with a Historic Preservation Program Certificate from the University of Virginia, Charlottesville.

Both Franklin Maggi and Leslie A.G. Dill meet the Secretary of the Interior's qualifications to perform identification, evaluation, registration, and treatment activities within the field of Architectural History in compliance with state and federal environmental laws, and Leslie Dill is also a qualified Historic Architect. Both have been listed by the California Historical Resources Information System (CHRIS) operated under the auspices of the Office of Historic Preservation. CHRIS utilizes the criteria of the National Park Service outlined in 36 CFR Part 61.

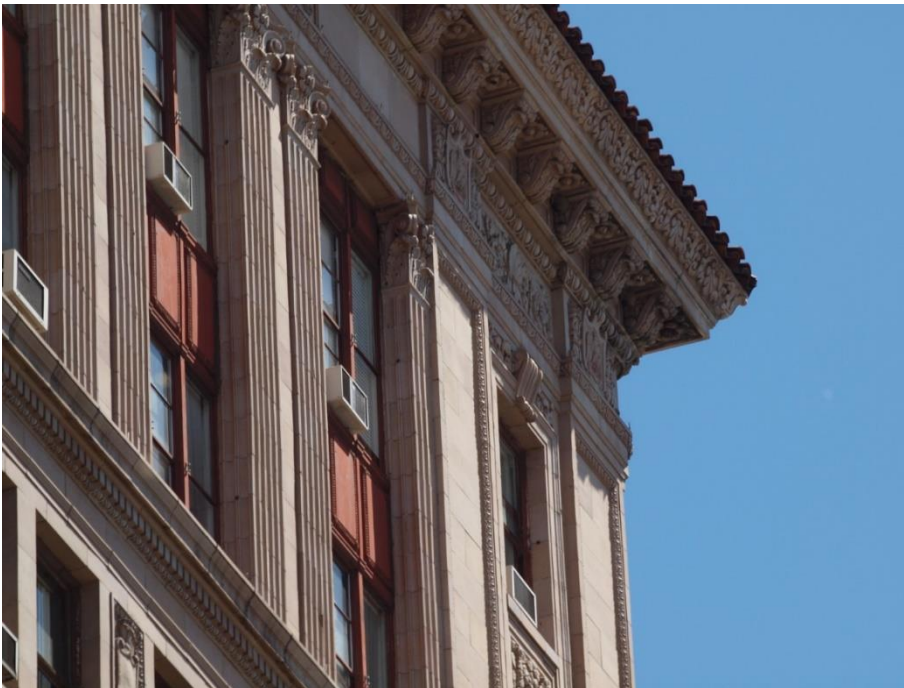
PHOTOGRAPHS



Architectural Base at corner of East Santa Clara and South First Streets



South elevation at tower



Entablature at upper tower



Detail view of storefront windows at base to remain



Typical deteriorated double-hung window sill and side channels



Interior sill height

RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ
APPROVING A HISTORICAL PROPERTY CONTRACT WITH 12
SOUTH FIRST STREET LLC FOR THE BANK OF ITALY BUILDING
LOCATED AT 12 SOUTH FIRST STREET (APN: 467-22-097)**

MA19-005

WHEREAS, California Government Code Section 50280, et seq. and Chapter 13.48 of Title 13 of the San José Municipal Code authorize the City of San José to enter into agreements with the owner of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance; and

WHEREAS, 12 South First Street LLC possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address 12 South First Street, (hereinafter referred to as the “Historic Landmark”) and

WHEREAS, the City of San José and 12 South First Street LLC for their mutual benefit, now desire to enter into an agreement both to protect and preserve the characteristics of historical significance of the Historic Landmark and to qualify the Historic Landmark for an assessment of valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Historic Landmarks Commission did, on November 6, 2019, at 6:30 p.m., conduct a public hearing on a Historical Property Contract for the Historical Landmark attached hereto as Exhibit “B” (hereinafter “Agreement”); and the Historic Landmarks Commission recommended to approve the agreement; and

WHEREAS, a copy of the Agreement upon which such recommendation was made is on file in the Office of the City Clerk of the City of San José; and

WHEREAS, the subject property upon which the Historic Landmark is situated is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Council did give notice that on December 3, 2019 at 1:30 p.m., or as soon thereafter as said matter could be heard, this Council would, in the City Hall of the City of San José, 200 East Santa Clara Street, San José, California, hold a public hearing on said Agreement at which hearing any and all persons interested in said Agreement could appear and avail themselves of an opportunity to be heard and to present their views with respect to said proposed Agreement; and

WHEREAS, at the aforesaid time and place set for hearing, or to which the hearing was continued, this Council duly met, convened, and gave all persons full opportunity to be heard to present their views with respect to said proposed Agreement.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ THAT:

SECTION 1. In accordance with the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, this Council does hereby approve the Historical Property Contract with 12 South First Street LLC, owner of the Bank of Italy Building located at 12 South First Street and makes the following findings:

- a. The Agreement is consistent with the General Plan, in that preservation of specific structures or special areas is a part of the Envision San José 2040 General Plan Historic Preservation Policies LU-13.1, LU-13.13 and LU-13.14 to foster the rehabilitation of buildings, structures, areas, places, and districts of historic significance; utilize incentives permitting flexibility as to their uses; transfer of development rights; tax relief for designated landmarks and districts; easements; alternative building code provisions for the reuse of historic structures; and financial incentives; and
- b. The Agreement would provide greater protection for the Historic Landmark property than is otherwise provided by the provisions of San José Municipal Code Chapter 13.48 in that the owner, in partnership with the City, may use

property tax relief to rehabilitate and maintain the property in accordance with the preservation plan, Exhibit “C” of the Agreement; and

- c. The Agreement complies with the requirements of Section 13.48.520 of Chapter 13.48 of Title 13 of the San José Municipal Code Contracts incorporate the Municipal Code’s required provisions for Historical Property Contracts, including the following: A description of the Landmark Property subject to the Agreement, a provision that the term of the Agreement is a minimum period of ten years, specific conditions requiring preservation of the Landmark, provision for the periodic examination of property, and a requirement that the property owner annually expend an amount equal to the annual tax savings resulting from the Contract, and a provision that the Agreement is binding upon—and shall inure to the benefit of—all successors in interest of the owner in the property.

SECTION 2. Pursuant to the San José Municipal Code, Chapter 13.48, the City Clerk is hereby directed to notify the owner of the Historic Landmark subject to the Agreement and directed to record the Agreement in the Office of the Recorder of the County of Santa Clara.

ADOPTED this _____ day of _____ 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI TABER, CMC
City Clerk

DRAFT

EXHIBIT "A"

LEGAL DESCRIPTION FOR BANK OF ITALY BUILDING 12 SOUTH FIRST STREET APN: 467-22-097

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California and being that Parcel of Land described in that certain Grant Deed recorded September 29, 1997 as Document Number 13879884, Santa Clara County Records and being more particularly described as follows;

Beginning at the northeasterly line of South First Street and the southeasterly line of Santa Clara Street;

Thence along said southeasterly line North $60^{\circ}06'02''$ East, 137.93 feet to the northeasterly line of Lot 2, Block 1, Range 2 North, Base Line of City of San Jose Lands;

Thence along said northeasterly line South $29^{\circ}54'05''$ East, 125.34 feet to the southeasterly line of said Lot 2;

Thence along said southeasterly line South $60^{\circ}06'02''$ West, 137.99 feet to the northeasterly line of said South First Street;

Thence along said northeasterly line North $29^{\circ}52'24''$ West, 125.34 feet to the Point of Beginning.



EXHIBIT “B”

HISTORICAL PROPERTY CONTRACT FOR BANK OF ITALY BUILDING 12 SOUTH FIRST STREET MA19-005

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2019, by and between the City of San Jose, a municipal corporation (hereinafter referred to as the “CITY”) and 12 South First Street LLC (hereinafter referred to as the “OWNER”).

R E C I T A L S

WHEREAS, California Government Code Section 50280, *et seq.* and Chapter 13.48 of the San Jose Municipal Code authorize CITY to enter into contracts with the owner of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance; and

WHEREAS, OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, known as the Bank of Italy Building located at 12 South First Street (hereinafter such property and structures shall be referred to as the “Historic Landmark” or the “Historical Landmark Property”), and a legal description of the Historical Landmark Property is attached hereto as Exhibit “A” and incorporated herein by this reference; and

WHEREAS, CITY and OWNER for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historical Landmark and to qualify the Historic Landmark for an assessment of valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

AGREEMENT

NOW, THEREFORE, CITY and OWNER, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on _____ (the "Effective Date") and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the Effective Date, such initial term will automatically be extended as provided in Section 2 below, subject to cancellation as provided in Section 6 below.

2. Renewal. Each year on the anniversary of the Effective Date of this Agreement (hereinafter referred to as the "Renewal Date"), a year shall automatically be added to the initial term of this Agreement unless notice of nonrenewal is mailed as provided herein. If OWNER desires in any year to not renew the Agreement, OWNER shall serve written notice of nonrenewal of this Agreement on CITY in advance of the annual Renewal Date of this Agreement. Unless such notice is served by OWNER to CITY at least ninety (90) days prior to the annual Renewal Date, one (1) year shall automatically be added to the term of the Agreement as provided herein. If OWNER serve notice to CITY of nonrenewal in any year, the Agreement shall remain in effect, and the Historical Landmark Property shall remain enforceably restricted, for the balance of the term then remaining, either from its original execution or from the past renewal of the Agreement, whichever may apply. The Director of Planning, Building and Code Enforcement shall record the Notice of Nonrenewal and file a copy with the Assessor of Santa Clara County. Nonrenewal shall not be deemed a cancellation pursuant to Section 6 of this Agreement.

3. Standards for Historical Property. During the term of this Agreement, the Historical Landmark shall be subject to the following conditions, requirements and restrictions:

a. OWNER shall preserve and maintain the characteristics of historical significance of the Historical Landmark in no less than equal to the condition of

the Historical Landmark Property as of _____. OWNER of the Historical Landmark Property shall allow CITY to inspect the interior and exterior of the Historical Landmark Property to determine with OWNER the specific conditions of the Historical Landmark Property requiring preservation, restoration and/or rehabilitation to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation, the California State Historical Building Code, and the requirements of CITY as of the Effective Date. Attached hereto as Exhibit "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historical Landmark, which shall apply to such Historical Landmark Property and with which OWNER shall comply fully throughout the term of this Agreement.

b. OWNER shall, where necessary or required, restore and rehabilitate the Historical Landmark Property in full accordance with the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation, the California State Historical Building Code, and the requirements of CITY, including any permits or approvals granted pursuant to Chapter 13.48 of the San Jose Municipal Code. Without limiting the forgoing, OWNER shall perform all of the restoration and rehabilitation activities of the Historical Landmark Property set forth on Exhibit "C," attached hereto and incorporated herein by this reference, within any timelines that may be set forth in said Exhibit C.

c. OWNER shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historical Landmark Property by CITY and the County of Santa Clara as may be necessary to determine OWNER's compliance with this Agreement, which periodic examinations shall occur at least five (5) years after the Effective Date of this original Agreement and then at least every five (5) years thereafter.

d. OWNER shall annually expend an amount equal to a minimum of ten percent (10%) of the tax savings attributed to this Agreement to the preservation and maintenance of the Historical Landmark Property and make this documentation

available to the CITY at the time of the respective periodic examination described above.

4. Force Majeure. OWNER shall not be held responsible for repair or replacement of the Historical Landmark if damaged or destroyed through “Acts of God,” such as flood, tornado, lightning, earthquake or fire or other cause resulting therefrom; CITY shall, however, have the right to cancel this Agreement pursuant to terms of Section 6, Cancellation.

5. Provisions of Information of Compliance. OWNER hereby agree to furnish CITY with any and all information requested by CITY that may be necessary or advisable to determine compliance with the terms and provisions of this Agreement. OWNER shall retain, store and preserve during the term of this Agreement all records that are related to or that evidence the eligibility of the Historical Landmark or OWNER’S compliance with the terms and provisions of this Agreement.

6. Cancellation. CITY, following a duly noticed public hearing, may cancel this Agreement or bring any action in court necessary to enforce this Agreement (including without limitation an action to enforce this Agreement by specific performance or injunction) if it has been determined by enforcement staff with CITY’s Planning, Building and Code Enforcement Department that OWNER have breached any of the provisions or conditions of this Agreement, has allowed the Historical Landmark Property to deteriorate to the point that it no longer meets the standards for a qualified historical property, or has otherwise failed to restore or rehabilitate the Historical Landmark Property or Historical Landmark in the manner specified in this Agreement. In the event of cancellation pursuant to this Section 6, OWNER may be subject to payment of those cancellation fees set forth in the California Government Code. Prior to any procedures set forth in this Section, CITY shall give notice of breach to OWNER, and OWNER shall have one hundred and twenty (120) days to cure such breach to the reasonable satisfaction of CITY.

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8. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

CITY: City Clerk
City of San José
200 East Santa Clara Street
San José, CA 95113

OWNER: 12 South First Street LLC
260 Homer Avenue, Ste. 201
Palo Alto, CA 94301

9. General Provisions.

a. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

b. OWNER agree to and shall hold CITY and its elected officials, officers, agents and employees harmless from liability from damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct use or operations of OWNER or those of OWNER's contractor, subcontractor, agent, employee or other person acting on OWNER'S behalf which relate to the use, operation and maintenance of the Historical Landmark. OWNER hereby agree to and shall defend the CITY and its elected officials, officers, agents and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of OWNER'S activities in connection with the Historical Landmark. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the CITY prepared, supplied or approved the plans, specifications or other documents for the Historic Landmark.

c. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent

preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

DRAFT

APPROVED AS TO FORM:

ROSA TSONGTAATARRII
Senior Deputy City Attorney

“CITY”

CITY OF SAN JOSE, a municipal
corporation

By _____
TONI TABER, CMC
City Clerk

“OWNER”

By _____
12 SOUTH FIRST STREET LLC
Property Owner

DRAFT

EXHIBIT "A"

LEGAL DESCRIPTION

12 SOUTH FIRST STREET
APN: 467-22-097



All that certain real property situate in the City of San Jose, County of Santa Clara, State of California and being that Parcel of Land described in that certain Grant Deed recorded September 29, 1997 as Document Number 13879884, Santa Clara County Records and being more particularly described as follows;

Beginning at the northeasterly line of South First Street and the southeasterly line of Santa Clara Street;

Thence along said southeasterly line North 60°06'02" East, 137.93 feet to the northeasterly line of Lot 2, Block 1, Range 2 North, Base Line of City of San Jose Lands;

Thence along said northeasterly line South 29°54'05" East, 125.34 feet to the southeasterly line of said Lot 2;

Thence along said southeasterly line South 60°06'02" West, 137.99 feet to the northeasterly line of said South First Street;

Thence along said northeasterly line North 29°52'24" West, 125.34 feet to the Point of Beginning.



EXHIBIT "B"

OWNER shall, where necessary, restore and rehabilitate the Historical Landmark and shall do so only in full accordance and compliance with the rules and regulations of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, as the same may be amended from time to time.

A summary of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (the "Standards") is provided below for convenient reference. OWNER shall comply with the Standards in effect when OWNER commence any rehabilitation or restoration work on the Historical Landmark.

The Standards (Department of the Interior Regulations, 36 CFR 67) pertain to historic buildings of all materials, construction, types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

- 1) A property shall be used for its historic purposes or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- 2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- 3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural element from other buildings, shall not be undertaken.
- 4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- 5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- 6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.

- 7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials, shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- 8) Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- 9) New additions, exterior alterations or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- 10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

DRAFT

EXHIBIT "C"
PRESERVATION PLAN
FOR
BANK OF ITALY BUILDING
MA19-005
APN: 467-22-097

OWNER shall annually expend tax savings attributed to this Agreement for the preservation and maintenance of the Historical Landmark. The rehabilitation of the Historical Landmark shall be completed on or before the 10th anniversary of the Effective Date of this Agreement, and such rehabilitation shall include all the following tasks:

Scope of Work

Year	Description
1	Main base building construction-interior upgrades, electrical and mechanical upgrades and energy performance infrastructure and elevator system upgrades. Installation of a historic plaque/marker with historic information
2	Main base building construction. Exterior restoration of historic windows and decorative surrounds, repair plaster cracks and granite base restoration. New sig compatible with historic features enhanced signage program). Waterproofing of basement
3	Main roofing upgrades and historic lighting plan
4	Ongoing HVAC maintenance
5	Ongoing electrical maintenance for all floors
6	Ongoing plumbing maintenance for all floors
7	Interior painting, repair plaster cracks. Maintain historic lobby features including decorative ceiling
8	Ongoing exterior maintenance and preservation of architectural significant features
9	Storefront & Fountain Alley windows- restoration and maintenance
10	Building systems for general & technological upgrades

All work shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties and "Downtown Historic District Guidelines."

After the 10th Anniversary date of the Effective Date of this Agreement, the property owner shall expend tax savings attributed to this Agreement for the continued preservation and maintenance of the Historic Landmark. More specifically, the property owner shall perform and complete, without limitation, the following tasks each year: Maintenance, Painting, and Repairs.

RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ
APPROVING A HISTORICAL PROPERTY CONTRACT WITH 12
SOUTH FIRST STREET LLC FOR THE BANK OF ITALY BUILDING
LOCATED AT 12 SOUTH FIRST STREET (APN: 467-22-097)**

MA19-005

WHEREAS, California Government Code Section 50280, et seq. and Chapter 13.48 of Title 13 of the San José Municipal Code authorize the City of San José to enter into agreements with the owner of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance; and

WHEREAS, 12 South First Street LLC possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address 12 South First Street, (hereinafter referred to as the “Historic Landmark”) and

WHEREAS, the City of San José and 12 South First Street LLC for their mutual benefit, now desire to enter into an agreement both to protect and preserve the characteristics of historical significance of the Historic Landmark and to qualify the Historic Landmark for an assessment of valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Historic Landmarks Commission did, on November 6, 2019, at 6:30 p.m., conduct a public hearing on a Historical Property Contract for the Historical Landmark attached hereto as Exhibit “B” (hereinafter “Agreement”); and the Historic Landmarks Commission recommended to approve the agreement; and

WHEREAS, a copy of the Agreement upon which such recommendation was made is on file in the Office of the City Clerk of the City of San José; and

WHEREAS, the subject property upon which the Historic Landmark is situated is all that real property described in Exhibit “A,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Council did give notice that on December 3, 2019 at 1:30 p.m., or as soon thereafter as said matter could be heard, this Council would, in the City Hall of the City of San José, 200 East Santa Clara Street, San José, California, hold a public hearing on said Agreement at which hearing any and all persons interested in said Agreement could appear and avail themselves of an opportunity to be heard and to present their views with respect to said proposed Agreement; and

WHEREAS, at the aforesaid time and place set for hearing, or to which the hearing was continued, this Council duly met, convened, and gave all persons full opportunity to be heard to present their views with respect to said proposed Agreement.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ THAT:

SECTION 1. In accordance with the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, this Council does hereby approve the Historical Property Contract with 12 South First Street LLC, owner of the Bank of Italy Building located at 12 South First Street and makes the following findings:

- a. The Agreement is consistent with the General Plan, in that preservation of specific structures or special areas is a part of the Envision San José 2040 General Plan Historic Preservation Policies LU-13.1, LU-13.13 and LU-13.14 to foster the rehabilitation of buildings, structures, areas, places, and districts of historic significance; utilize incentives permitting flexibility as to their uses; transfer of development rights; tax relief for designated landmarks and districts; easements; alternative building code provisions for the reuse of historic structures; and financial incentives; and
- b. The Agreement would provide greater protection for the Historic Landmark property than is otherwise provided by the provisions of San José Municipal Code Chapter 13.48 in that the owner, in partnership with the City, may use property tax relief to rehabilitate and maintain the property in accordance with the preservation plan, Exhibit “C” of the Agreement; and

- c. The Agreement complies with the requirements of Section 13.48.520 of Chapter 13.48 of Title 13 of the San José Municipal Code. Contracts incorporate the Municipal Code's required provisions for Historical Property Contracts, including the following: A description of the Landmark Property subject to the Agreement, a provision that the term of the Agreement is a minimum period of ten years, specific conditions requiring preservation of the Landmark, provision for the periodic examination of property, and a requirement that the property owner annually expend an amount equal to the annual tax savings resulting from the Contract, and a provision that the Agreement is binding upon—and shall inure to the benefit of—all successors in interest of the owner in the property.

SECTION 2. Pursuant to the San José Municipal Code, Chapter 13.48, the City Clerk is hereby directed to notify the owner of the Historic Landmark subject to the Agreement and directed to record the Agreement in the Office of the Recorder of the County of Santa Clara.

ADOPTED this _____ day of _____ 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

ATTEST:

SAM LICCARDO
Mayor

TONI TABER, CMC
City Clerk

EXHIBIT "A"

**LEGAL DESCRIPTION
FOR
BANK OF ITALY BUILDING
12 SOUTH FIRST STREET
APN: 467-22-097**

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California and being that Parcel of Land described in that certain Grant Deed recorded September 29, 1997 as Document Number 13879884, Santa Clara County Records and being more particularly described as follows;

Beginning at the northeasterly line of South First Street and the southeasterly line of Santa Clara Street;

Thence along said southeasterly line North 60°06'02" East, 137.93 feet to the northeasterly line of Lot 2, Block 1, Range 2 North, Base Line of City of San Jose Lands;

Thence along said northeasterly line South 29°54'05" East, 125.34 feet to the southeasterly line of said Lot 2;

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Thence along said northeasterly line North 29°52'24" West, 125.34 feet to the Point of Beginning.

EXHIBIT "B"

**HISTORICAL PROPERTY CONTRACT
FOR
BANK OF ITALY BUILDING
12 SOUTH FIRST STREET
MA19-005**

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2019, by and between the City of San Jose, a municipal corporation (hereinafter referred to as the "CITY") and 12 South First Street LLC (hereinafter referred to as the "OWNER").

R E C I T A L S

WHEREAS, California Government Code Section 50280, *et seq.* and Chapter 13.48 of the San Jose Municipal Code authorize CITY to enter into contracts with the owner of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance; and

WHEREAS, OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, known as the Bank of Italy Building located at 12 South First Street (hereinafter such property and structures shall be referred to as the "Historic Landmark" or the "Historical Landmark Property"), and a legal description of the Historical Landmark Property is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, CITY and OWNER for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historical Landmark and to qualify the Historic Landmark for an assessment of valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

AGREEMENT

NOW, THEREFORE, CITY and OWNER, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on _____ (the "Effective Date") and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the Effective Date, such initial term will automatically be extended as provided in Section 2 below, subject to cancellation as provided in Section 6 below.

2. Renewal. Each year on the anniversary of the Effective Date of this Agreement (hereinafter referred to as the "Renewal Date"), a year shall automatically be added to the initial term of this Agreement unless notice of nonrenewal is mailed as provided herein. If OWNER desires in any year to not renew the Agreement, OWNER shall serve written notice of nonrenewal of this Agreement on CITY in advance of the annual Renewal Date of this Agreement. Unless such notice is served by OWNER to CITY at least ninety (90) days prior to the annual Renewal Date, one (1) year shall automatically be added to the term of the Agreement as provided herein. If OWNER serve notice to CITY of nonrenewal in any year, the Agreement shall remain in effect, and the Historical Landmark Property shall remain enforceably restricted, for the balance of the term then remaining, either from its original execution or from the past renewal of the Agreement, whichever may apply. The Director of Planning, Building and Code Enforcement shall record the Notice of Nonrenewal and file a copy with the Assessor of Santa Clara County. Nonrenewal shall not be deemed a cancellation pursuant to Section 6 of this Agreement.

3. Standards for Historical Property. During the term of this Agreement, the Historical Landmark shall be subject to the following conditions, requirements and restrictions:

a. OWNER shall preserve and maintain the characteristics of historical significance of the Historical Landmark in no less than equal to the condition of the Historical Landmark Property as of _____. OWNER of the Historical

Landmark Property shall allow CITY to inspect the interior and exterior of the Historical Landmark Property to determine with OWNER the specific conditions of the Historical Landmark Property requiring preservation, restoration and/or rehabilitation to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation, the California State Historical Building Code, and the requirements of CITY as of the Effective Date. Attached hereto as Exhibit "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historical Landmark, which shall apply to such Historical Landmark Property and with which OWNER shall comply fully throughout the term of this Agreement.

b. OWNER shall, where necessary or required, restore and rehabilitate the Historical Landmark Property in full accordance with the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation, the California State Historical Building Code, and the requirements of CITY, including any permits or approvals granted pursuant to Chapter 13.48 of the San Jose Municipal Code. Without limiting the forgoing, OWNER shall perform all of the restoration and rehabilitation activities of the Historical Landmark Property set forth on Exhibit "C," attached hereto and incorporated herein by this reference, within any timelines that may be set forth in said Exhibit C.

c. OWNER shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historical Landmark Property by CITY and the County of Santa Clara as may be necessary to determine OWNER's compliance with this Agreement, which periodic examinations shall occur at least five (5) years after the Effective Date of this original Agreement and then at least every five (5) years thereafter.

d. OWNER shall annually expend an amount equal to a minimum of ten percent (10%) of the tax savings attributed to this Agreement to the preservation and maintenance of the Historical Landmark Property and make this documentation available to the CITY at the time of the respective periodic examination described above.

4. Force Majeure. OWNER shall not be held responsible for repair or replacement of the Historical Landmark if damaged or destroyed through “Acts of God,” such as flood, tornado, lightning, earthquake or fire or other cause resulting therefrom; CITY shall, however, have the right to cancel this Agreement pursuant to terms of Section 6, Cancellation.

5. Provisions of Information of Compliance. OWNER hereby agree to furnish CITY with any and all information requested by CITY that may be necessary or advisable to determine compliance with the terms and provisions of this Agreement. OWNER shall retain, store and preserve during the term of this Agreement all records that are related to or that evidence the eligibility of the Historical Landmark or OWNER’S compliance with the terms and provisions of this Agreement.

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APPROVED AS TO FORM:

ROSA TSONGTAATARRII
Senior Deputy City Attorney

“CITY”

CITY OF SAN JOSE, a municipal
corporation

By _____
TONI TABER, CMC
City Clerk

“OWNER”

By _____
12 SOUTH FIRST STREET LLC
Property Owner

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12 SOUTH FIRST STREET

APN: 467-22-097

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EXHIBIT "C"
PRESERVATION PLAN
FOR
BANK OF ITALY BUILDING
MA19-005
APN: 467-22-097

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