



# AGENDA REPORT

OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO  
THE SAN CLEMENTE REDEVELOPMENT AGENCY

Meeting Date: April 30, 2014

Agenda Item	7-B
Approvals:	<i>[Signature]</i>
City Manager	<i>[Signature]</i>
Dept. Head	ES
Attorney	AT
Finance	<i>[Signature]</i>

**Department:** Finance and Administrative Services  
**Prepared By:** Jake Rahn, Financial Services Officer

**Subject:** *REVISED LONG RANGE PROPERTY MANAGEMENT PLAN*

**Fiscal Impact:** None.

**Summary:** The Long Range Property Management Plan (LRPMP) provides background information on former Redevelopment Agency (RDA) properties and addresses the disposition and use of these properties in the future. The LRPMP was reviewed by the Department of Finance (DOF) and revisions were recommended.

**Background:** The LRPMP's purpose is to address the disposition and use of the non-housing real properties of the former San Clemente RDA. The LRPMP includes background information on the Pier Bowl Grass Area and the Casa Romantica, which are held in the Redevelopment Property Trust Fund. Based on Health and Safety Code Section (HSC) 34191.5, the report was required to be filed within 6 months of the Finding of Completion (by December 20, 2013).

The Finding of Completion was received on June 20, 2013. The LRPMP was submitted to the Oversight Board for approval on September 25, 2013. At that meeting the Oversight Board approved the submission of the LRPMP to the Department of Finance (DOF), and it was submitted on September 26, 2013. The LRPMP was reviewed by a DOF analyst and minor changes to the report were communicated to City staff on February 24, 2014. The LRPMP was revised based on the analyst input.

**Discussion:** The DOF analyst stated that there must be a numerical value to both of the properties in the LRPMP, however an appraisal is not required.

The Casa Romantica, based on zoning, can only be used for cultural facilities, museums, ancillary retail and gardens. The operating agreement is financially adverse, with the lessor to pay for certain maintenance costs with no rental income produced to offset these costs. As stated in the original LRPMP, the property will continue to be used for governmental related purposes. These factors resulted in the determination that the property has no value based on the current operation.

The Pier Bowl Grass Area, based on current zoning, is available for open space. The City currently pays for the maintenance of this grass area. This area is unavailable for development and will continue to incur maintenance costs on an ongoing basis. As stated in the original LRPMP, the property will continue to be used for governmental

related purposes. These factors resulted in the determination that the property has no value based on the current operation.

Staff reviewed both of the properties which are restrictive as to use, require negative cash flow, and have maintenance cost implications. Based on this review of the properties, there is no value (and actually a cash outflow is required). The revised LRPMP reflects this valuation. The revised LRPMP is subject to approval by the Oversight Board, which oversees the dissolution of the former Redevelopment Agency's operations.

Once the revised LRPMP is approved by the Oversight Board, it will be submitted to the DOF for approval. Upon approval by the DOF, the transfer of the properties to the City will be complete.

**Recommended**

**Action:**

STAFF RECOMMENDS THAT the Oversight Board:

- 1) Adopt Resolution No. \_\_\_\_ entitled "A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE SAN CLEMENTE REDEVELOPMENT AGENCY APPROVING THE LONG RANGE PROPERTY MANAGEMENT PLAN FOR SUCCESSOR AGENCY PROPERTIES"

**Attachments:**

Attachment 1 – Proposed Resolution

Attachment 2 – Long Range Property Management Plan, dated September 12, 2013 (revised March 2014)

**Notification:**

State of California Department of Finance  
State of California Controllers Office

## RESOLUTION NO.

### A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE SAN CLEMENTE REDEVELOPMENT AGENCY APPROVING A LONG RANGE PROPERTY MANAGEMENT PLAN FOR SUCCESSOR AGENCY PROPERTIES

**WHEREAS**, the San Clemente Redevelopment Agency (“Redevelopment Agency”) was a redevelopment agency in the City of San Clemente (“City”), duly created pursuant to the California Community Redevelopment Law and Health and Safety Code Section 33000, et. seq.; and

**WHEREAS**, the City Council of the City of San Clemente (“City”) adopted a redevelopment plan for San Clemente’s redevelopment project area; and

**WHEREAS**, Assembly Bill x1 26 chaptered and effective on June 27, 2011 added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code (“HSC”), which caused the dissolution of all redevelopment agencies and winding down of the affairs of former agencies, including as such laws were amended by Assembly Bill 1484 chaptered and effective on June 27, 2012 (together, the “Dissolution Act”); and

**WHEREAS**, as of February 1, 2012, the Agency was dissolved pursuant to the Dissolution Act and as a separate legal entity the City Council of the City adopted Resolution No 12-04 on January 17, 2012, pursuant to Part 1.85 of the Dissolution Act, electing for the City to serve as the successor agency to the San Clemente Redevelopment Agency under the Dissolution Act (“Successor Agency”); and

**WHEREAS**, on June 27, 2012 Assembly Bill 1484 amended the Dissolution Act and added requirements in Health and Safety Code Section 34191.5 that requires the Successor Agency to submit a Long Range Property Management Plan for the disposition of property within six months of the issuance of the Finding of Completion to the Oversight Board and California Department of Finance, and

**WHEREAS**, the Department of Finance issued a Finding of Completion on June 20, 2013 for the Successor Agency to the San Clemente Redevelopment Agency; and

**WHEREAS**, the Successor Agency has prepared a Long Range Property Management Plan in compliance with the provisions of Health and Safety Code Section 34191.5 and the guidelines posted on the Department of Finance web page; and

**WHEREAS**, the Long Range Property Management Plan determined the Pier Bowl Grass Area as a “public use” asset and recommends the transfer of the asset to the City of San Clemente to be retained for governmental use pursuant to Health and Safety Code Section 34191.5 (H)(2); and

**WHEREAS**, the Long Range Property Management Plan determined the Casa Romantica as a “public use” asset and recommends the transfer of the asset to the City of

San Clemente to be retained for governmental use pursuant to Health and Safety Code Section 34191.5 (H)(2);

NOW, THEREFORE, the Oversight Board of the Successor Agency of the San Clemente Redevelopment Agency does hereby resolve as follows:

Section 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Pursuant to Health and Safety Code Section 34191.4 of the Dissolution Act, the Oversight Board hereby approves the Long Range Property Management Plan dated September 12, 2013 (revised March 2014) transferring the governmental use assets to the City of San Clemente.

Section 3. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable.

Section 4. The actions taken by the Oversight Board shall take effect upon the date of its adoption.

Section 5. The Secretary of the Successor shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
SECRETARY, OVERSIGHT BOARD

\_\_\_\_\_  
CHAIR, OVERSIGHT BOARD

STATE OF CALIFORNIA     )  
 COUNTY OF ORANGE        ) §  
 CITY OF SAN CLEMENTE    )

I, JOANNE BAADE, Secretary to the Oversight Board of the Successor Agency to the San Clemente Redevelopment Agency, hereby certify that the foregoing resolution was duly adopted at a special meeting of the Oversight Board held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
 SECRETARY, OVERSIGHT BOARD

# LONG RANGE PROPERTY MANAGEMENT PLAN

## SUCCESSOR AGENCY TO THE FORMER SAN CLEMENTE REDEVELOPMENT AGENCY



100 AVENIDA PRESIDIO  
SAN CLEMENTE, CA 92672

September 12, 2013 (revised March 2014)

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**Long Range Property Management Plan  
Successor Agency to the former San Clemente Redevelopment Agency**

**Introduction**

On June 27, 2012, Governor Brown signed into law Assembly Bill 1484 (AB 1484), a budget trailer bill that made substantial changes to the redevelopment agency dissolution process implemented by Assembly Bill 1X 26. One of the key components of AB 1484 is the requirement that all successor agencies develop a long-range property management plan that governs the disposition and use of the former redevelopment agency property. This document is the Long Range Property Management Plan for the Successor Agency to the former San Clemente Redevelopment Agency (City of San Clemente).

**Executive Summary**

During its life, the San Clemente Redevelopment Agency purchased properties and provided funding for improvements (including improvements to City-owned assets) to redevelop and revitalize the project area. These project area improvements were in the Pier Bowl area and included the beach trail, a park, pier improvements, sidewalk improvements, landscape improvements and streetscape enhancements. At the time of dissolution, the Redevelopment Agency owned and controlled two redeveloped properties that included land, buildings and improvements.

These two properties were acquired to revitalize the City of San Clemente through recreation and cultural purposes. The following table lists property assets owned by the Agency (upon dissolution) and the planned disposition or use of the assets in the future.

Property	Description	Planned disposition or use
Pier Bowl Grass Area	Address: 625 Avenida Del Mar. Other: Public park land totals 28,933 sq. ft. located between Avenida Victoria and the railroad tracks	Public use <sup>1</sup> – park area
Casa Romantica Cultural Arts and Education Center (Casa Romantica)	Address: 415 Avenida Granada Other: This parcel of land (2.39 acres) is the homesite of the City's founder, Ole Hanson, and is a landmark on the National Register of Historic Places.	Public use <sup>1</sup> – cultural center and satellite for library

<sup>1</sup> Based on Health and Safety Code Section 34181(a) these are categorized as public use properties.

In summary, the Pier Bowl Grass Area is currently maintained by the City as a park and the Casa Romantica is operated under a long-term agreement with a non-profit benefit corporation to operate it as a cultural, historical, and education center for the benefit and enjoyment of the community. The Casa Romantica, under Section 3.1 (Exhibit B) of the lease, provides programs and activities including art exhibits, housing of historic materials, as a satellite location to the Library, a resource for the Capistrano Unified School District and Saddleback Community College District, performing and visual art events, and other collaborative events. In addition, under Section 3.3 of the lease, the City can use the facility for uses consistent with the operation for up to 9 days per year. The two properties are described in more detail within this plan. The detailed information includes a history of the properties, followed by information on the individual properties, and the current planned disposition or use.

The transfer of these governmental use properties to the City were previously approved by the Oversight Board. However, the State Department of Finance requires the filing of a Long Range Property Management Plan as required by Health and Safety Code (HSC) Section 34191.5 to address the disposition.

Note: This report does not address the Avenida Serra Workforce Housing, which based on HSC Section 34176 was transferred to the RDA housing successor and approved by the Department of Finance (see Exhibit 2).



## **History of Development Proposals and Activities**

The following section provides a brief history on the two properties.

### *Pier Bowl Grass Area*

Both parcels, listed as the Pier Bowl Grass Area, were deeded to the San Clemente Redevelopment Agency by final order of condemnation on January 12, 1977 for community redevelopment uses, including recreational parks and open space. In 1977, the condemned Resort Motel was removed and the area was cleaned up for community redevelopment uses. This removal served to eliminate blight in the area near the pier bowl and the park area is now designated as "public" in the City General Plan. The land provides a park atmosphere to the Pier Bowl area.

### *Casa Romantica Cultural Arts and Education Center*

On December 20, 1988, the Redevelopment Agency of the City of San Clemente purchased 2.39 acres of real property, located in the project area, from the Welsh Family. This location, known as Casa Romantica, was the home of the City's founder, Ole Hanson, which is a designated landmark on the National Register of Historic Places. The Casa Romantica parcels were acquired to preserve and revitalize a portion of San Clemente's historical culture.

On March 24, 1999, City Council authorized staff to develop, in partnership with the Orange County Community Foundation, a Master Plan Study for the Casa Romantica to examine its potential as a Cultural/Arts/Education/Historic Center. In FY 2001, a non-profit corporation "Casa Romantica Cultural Center and Gardens" (CRCC) was formed to operate and maintain the programs and activities for the benefit of the community. On June 19, 2002, Council authorized a contract to construct improvements to the Casa Romantica Cultural Arts and Education Center. The scope of work involved grading, landscaping, additions and alterations to the building, installation of fire sprinkler system, new electrical, plumbing, mechanical systems and the construction of new parking lot and outdoor amphitheater. This historic site provides an array of art and cultural activities for the community year-round.

## **Inventory**

Section 34191.5(c)(1) of the Health and Safety Code, which was added as part of AB 1484, requires that the Long Range Property Management Plan include an inventory of all properties held in the Community Redevelopment Property Trust Fund. As per this statute, the information in the inventory section addresses the Pier Bowl Grass Area and the Casa Romantica Cultural Arts and Education Center.

The following information is provided for each of the two properties.

- Date of acquisition and its value at the time, and an estimate of current value (if available).
- Purpose for which the property was acquired.
- Parcel data for each property, including address, lot size and current zoning.
- Estimate of the current value of the parcel, including any appraisal information, if available.
- Estimate of any lease, rental, or other revenue generated by the property and a description of the contractual requirements for disposition of those revenues.
- History of environmental contamination or remediation efforts.
- Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.
- Brief history of previous development proposals and activities, including the rental or lease of property.

**Pier Bowl Grass Area**  
**Assessor Parcel Numbers 692-031-01 and 692-014-01**  
**625 Avenida Del Mar/601 Avenida Victoria Property**

**Date of Acquisition and its value at the time, and an estimate of current value (if available).**

Two parcels were deeded to the San Clemente Redevelopment Agency by final order of condemnation on January 12, 1977. The Redevelopment Agency demolished and removed from the area an existing 29 year old 16 room oceanfront motel and 2 commercial stores to create 28,931 square feet of permanent open space adjacent to the beach. The historic cost of this property was \$304,047 in March of 1977. No recently conducted appraisal is available for the property, however, given that the property is restricted to passive public open space uses and the City pays the property's ongoing maintenance, the property is estimated to have a \$0 value based on its use. The City currently pays maintenance costs of the park area.

**Purpose for which the property was acquired.**

These assets were acquired for redevelopment and revitalization purposes. The land is designated "public" in the City General Plan and is not for development. The land is for public use and provides a park atmosphere for the City Pier Bowl area, which was not there previously.

**Parcel data for each property, including address, lot size and current zoning.**

This property is 28,931 square feet in size and located at 625 Avenida Del Mar between Avenida Victoria and the railroad tracks above a sandy beach area. The assessor parcel numbers are 692-031-01 and 692-014-01. These properties are designated "public" in the General Plan and zoned for "Beach and Parks – Open Space" in the Pier Bowl Specific Plan.

**Estimate of the current value of the parcel, including any appraisal information, if available.**

While no current appraisal is available on the property, given that the property is devoted exclusively to passive public open space uses and the City is required to pay for the property's ongoing maintenance, the property is estimated to have a \$0 value.

**Estimate of any lease, rental, or other revenue generated by the property and a description of the contractual requirements for disposition of those revenues.**

This property has been designed as a public park area for the pier bowl area and does not generate revenue. In fact, the maintenance costs of the park are paid by the City of San Clemente.

**History of environmental contamination or remediation efforts.**

These two parcels contained condemned property that was deeded to the City in fee simple absolute in January of 1977, and the structures were demolished. This site has no known environmental issues.

**Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**

These two grassy area parcels are not for development and used for pedestrian traffic, providing a walkway between public parking and the Amtrak station and pier area. Pursuant to a judgment entered in a lawsuit between the City and the lessee of the Fisherman's Restaurant, the City is prohibited from allowing any food or beverage operations to be conducted on this property. The parcels are of public benefit and provide a park area in the Pier Bowl area.

**Brief history of previous development proposals and activities, including the rental or lease of property.**

These two land parcels were received by judicial decree in January of 1977 and the Redevelopment Agency disposed of three condemned buildings that were on the site in March of 1977. This property was then revitalized to a park amenity for the benefit of the public and designated as park land area. Currently, this area provides a calm and relaxing park atmosphere for the public to enjoy. There are no development plans or activities associated with this asset.

**Casa Romantica Cultural Arts and Education Center  
(Casa Romantica)  
Assessor Parcel Numbers 692-012-38 and 692-012-39  
415 Avenida Granada**

**Date of Acquisition and its value at the time, and an estimate of current value (if available).**

These two parcels, which include land and real property, were purchased on December 20, 1989 under an agreement for \$2.5 million (\$500,000 cash and a \$2,000,000 promissory note) by the San Clemente Redevelopment Agency, using property tax Increment revenue. This property includes a historical site that was the home of the founder of San Clemente, Ole Hanson, and is known as the Casa Romantica Cultural Center. While no recently conducted appraisal is available for the property, given that the property generates no rent, the use is exclusively for public non-profit cultural, historical, and educational purposes, the facility operates at a substantial deficit (with operating losses having to be offset with other contributions) with much of the maintenance and repair costs of the historical facility being a responsibility of the Redevelopment Agency (now, Successor Agency - see the First Amendment to the Lease and Operating Agreement, Par. 5 and Exhibit "C" attached thereto). The estimated maintenance and repair costs are \$30,000 annually, with higher costs in any one year based on the maintenance requirements. Therefore, the property is estimated to have a \$0 value. This property's operations are currently subsidized.

**Purpose for which the property was acquired.**

This property (Casa Romantica) was acquired since it was the home of the City of San Clemente's founder, Ole Hanson. Casa Romantica was acquired to preserve, restore and redevelop a historic landmark. The property is a designated landmark on the National Register of Historic Places and operated by a California nonprofit benefit corporation as a cultural center and gardens for the benefit of the entire community.

**Parcel data for each property, including address, lot size and current zoning.**

The property address is 415 Avenida Granada and the APN's are 692-12-38 and 692-012-39. This property is approximately 2.39 acres of land within the former Redevelopment Agency project area and includes land, building and improvements. Based on General Plan and Pier Bowl Specific Plans are considered MU 4.3 for cultural facilities, museums, and ancillary retail and gardens. Height requirements are restricted to 1.0, with no ocean view blockage.

**Estimate of the current value of the parcel, including any appraisal information, if available.**

While no recently conducted appraisal is available for the property, given that the use is exclusively for public non-profit cultural, historical, and educational purposes, and the facility operates at a substantial deficit (with operating losses having to be offset with other contributions) with much of the maintenance and repair costs of the historical facility being a responsibility of the Redevelopment Agency (now, Successor Agency - see the First Amendment to the Lease and Operating Agreement, Par. 5 and Exhibit "C" attached thereto). The property is estimated to have a \$0 value.

**Estimate of any lease, rental, or other revenue generated by the property and a description of the contractual requirements for disposition of those revenues.**

This property is currently being leased on a long-term basis for no rent to be operated as a cultural center and gardens for the benefit of the community by Casa Romantica Cultural Center (CRCC), a California nonprofit benefit corporation. Due to the financial obligations of maintaining the historic property, the Successor Agency contributes approximately \$30,000 annually for the detailed maintenance obligations under the First Amendment to the Lease and Operating Agreement.

**History of environmental contamination or remediation efforts.**

There is no history of environmental contamination on this site.

**Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**

There is no potential for transit-oriented development for this property. The property is already leased to the CRCC to provide educational activities at the Casa Romantica for all segments of the local community, including commemoration of local history, designing of programs that will attract and include culturally and ethnically diverse audiences and participants, scheduling of cultural and enrichment activities and events appealing to families and youth, and providing on-site curriculum-driven programs for school groups. The Casa Romantica attracts visitors from local and regional communities and beyond by developing appealing programs and exhibits.

**Brief history of previous development proposals and activities, including the rental or lease of property.**

These two parcels include land and real property purchased in January of 1989 by the San Clemente Redevelopment Agency for \$2.5 million (\$500,000 cash and a \$2,000,000 promissory note) from the Welsh Family. Other costs incurred brought the total historical capitalized value to \$2.8 million. At the time the RDA purchased the Casa Romantica property, it was used for residential purposes and was located in a zone that permitted high density residential use, the owner threatened to demolish the Casa Romantica and build a high-density condo project. The Agency completed the purchase to preserve the historic property. Subsequently, the property was down zoned.

In 1990, the development of the Casa Romantica was postponed by Council until various studies for the Pier Bowl area were completed. The Casa Romantica was operated as an event facility by the occupant while studies and development options were considered.

Starting in 1993, various development proposals were sought and received related to the development and restoration of the facility. These development proposals were unsuccessful for various reasons until March 24, 1999, when City Council authorized staff to develop, in partnership with the Orange County Community Foundation, a Master Plan Study for the Casa Romantica to examine its potential as a Cultural/Arts/Education/Historic Center.

In June 2001 the San Clemente Redevelopment Agency entered into a lease agreement with CRCC, a nonprofit benefit corporation, to operate the Casa Romantica as a cultural center and gardens for the benefit of the public at no cost. This lease was made for an initial period of ten (10) years with ten (10) automatic three (3) year extensions for a total of forty (40) years. The lease commenced on October 9, 2003, which was when the temporary certificate of occupancy was dated.

The Casa Romantica, under Section 3.1 (Exhibit B) of the lease, provides programs and activities including art exhibits, housing of historic materials, acts as a satellite location to the Library, a resource for the Capistrano Unified School District and Saddleback Community College District, performing and visual art events, and other collaborative events. In addition, under Section 3.3 of the lease, the City can use the facility for uses consistent with the operation for up to 9 days per year. The two properties are described in more detail within this plan. The detailed information includes a history of the properties, followed by information on the individual properties, and the current planned disposition or use. This lease also incorporates the following stipulations to continue the public use of the asset: Serve 15,000 visitors per year for the purpose of operating a cultural, historical and educational center open to the public and be open for a minimum of 40 hours per week.

During Fiscal Years 2002 to 2004 additions and improvements were made to the Casa Romantica to include an Arts and Education center, a garden, and other improvements in coordination with the CRCC. The total cost of the improvements exceeded \$2.2 million and was partially funded through an Orange County Community Foundation grant and a one-time contribution of \$1.0 million negotiated under a developer agreement on a development project unrelated to the Casa Romantica. Subsequently, additional improvements were also contributed from the CRCC over the years, as the CRCC was able to raise a

significant amount of donations for capital improvements. The capital improvements done by CRCC benefited the City and the Redevelopment Agency by improving the value of the Casa Romantica location and enhancing the project area with minimal taxpayer assistance.

Due to the substantial ongoing costs to maintain the facility, in July 2008 the Redevelopment Agency entered into an amendment relating to the Operating Agreement of the Casa Romantica lease. In that amendment, the RDA became obligated to pay for specific maintenance costs relating to the property. This operating assistance under the operating agreement is an Enforceable Obligation of the Agency with significant costs to be incurred for the exterior painting and related roof tile replacements currently due.

Uses and activities of the Casa Romantica under the operating agreement with CRCC include the following: provides programs and activities including art exhibits, housing of historic materials, acts as a satellite location to the Library, a resource for the Capistrano Unified School District and Saddleback Community College District, performing and visual art events, and other collaborative events. The City plans to continue these activities into the future, as this is not only a substantial benefit to the culture of the San Clemente community, but also showcases the City's diverse history.

**Grass Area and Casa Romantica  
Use or Disposition of Properties Determination**

Section 34191.5(c)(2) of the Health and Safety Code requires that Successor Agencies address the use or disposition of all properties in the Community Redevelopment Trust Fund. The properties can be retained for government use, retained for future development, sold, or used to fulfill an enforceable obligation. The legislation goes on to state the following:

- The plan should separately identify and list properties dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation.

As can be determined based on the length of time the properties have been owned, San Clemente would continue to dedicate the two properties for governmental uses and purposes. The development of both properties were allowable redevelopment activities under HSC Section 33021 and are considered governmental uses allowed under HSC Section 34181 (a) and based on Public Resources Code Sections 5120-5132 and 5135-5138 and Government Code Sections 2531, 37361, and 37540 public museums, art galleries, cultural facilities, and historical sites are an established governmental use of property. A brief summary of each property follows:

The Pier Bowl Grass Area is dedicated as "public" use property for the benefit of the public. These park parcels fulfill the removal of blight in the community and provides for the recreational purposes within the project area.

The Casa Romantica is an historic structure used for the purpose of cultural enrichment of the community. As described in the previous sections, the former Redevelopment Agency, in agreement with the Casa Romantica Cultural Center and Gardens (CRCC), provides services not only to the community of San Clemente, but to thousands of visitors per year with the operation of a cultural, historical and educational center.

In conclusion, based on HSC Section 34181 (a), both properties will be transferred to the City of San Clemente pursuant to any existing agreements or use described above.

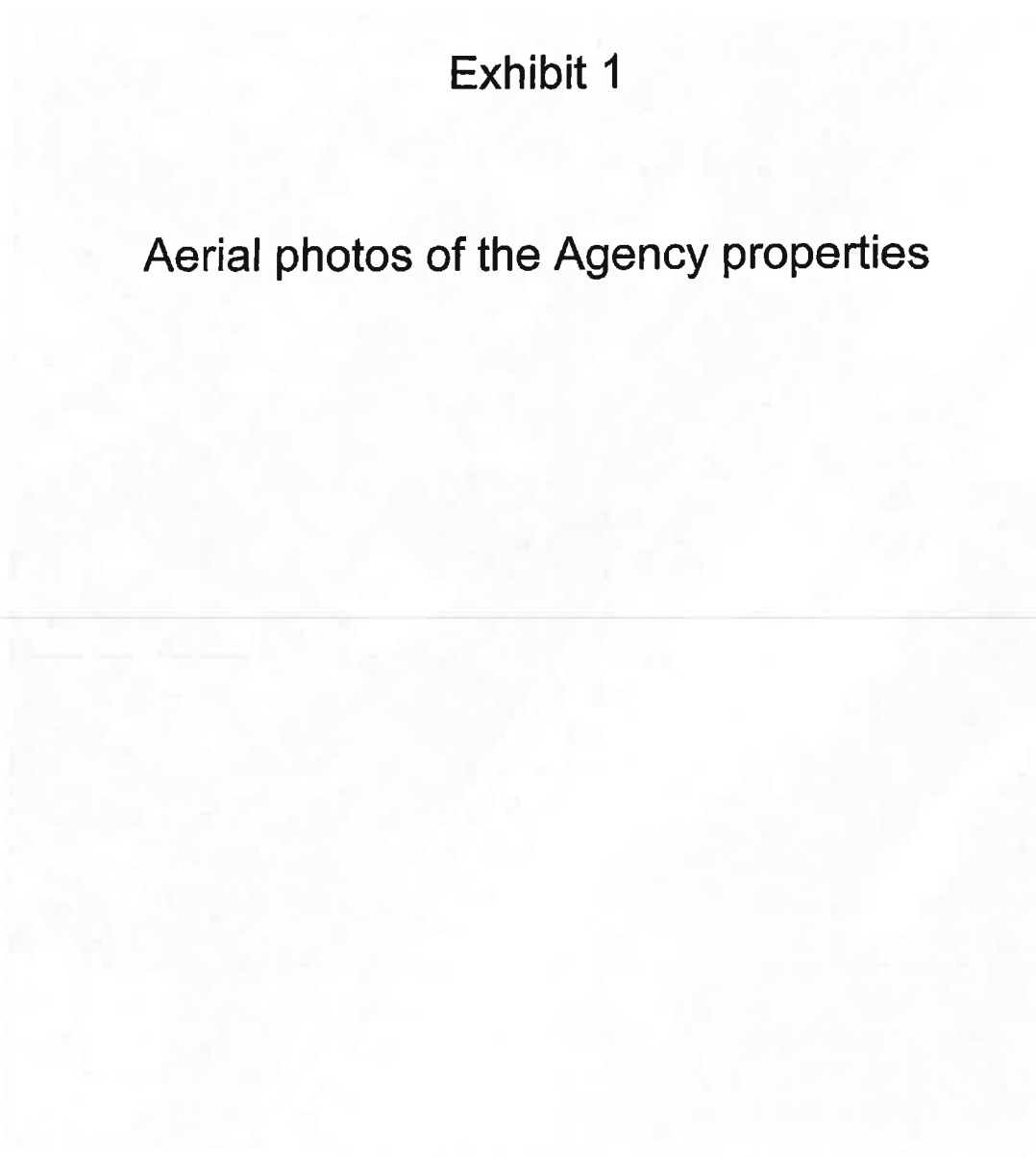
Attached to this long range property management plan are:

- Exhibit 1 – Aerial photos of the Agency properties
- Exhibit 2 – Department of Finance Housing Assets Transfer Approval Letter (Avenida Serra Affordable Housing property)
- Exhibit 3 – Lease and Operating Agreement with Casa Romantica Cultural Center and Gardens (CRCC) and the First Amendment

# Long Range Property Management Plan

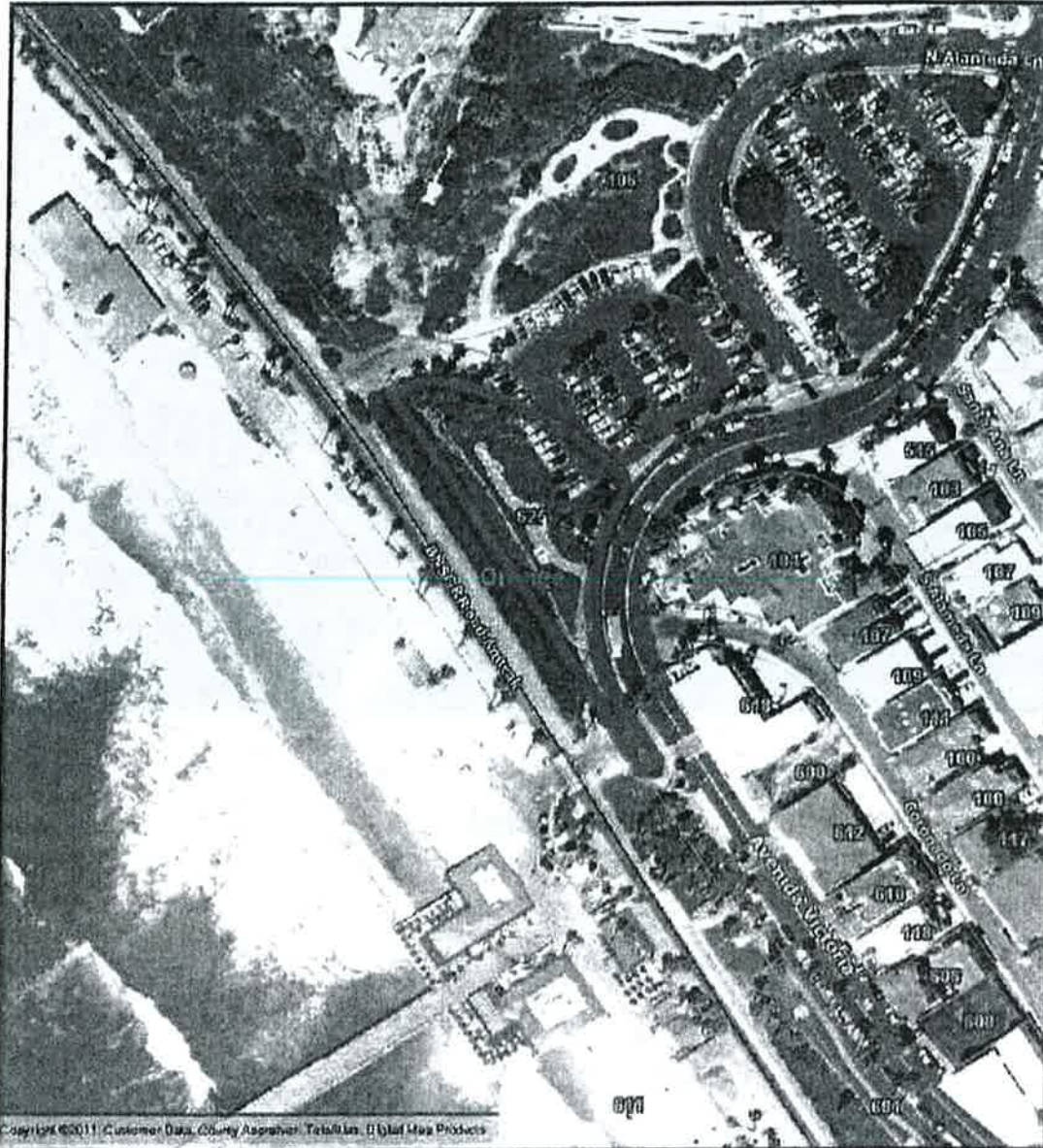
## Exhibit 1

Aerial photos of the Agency properties









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Exhibit 1 - Casa Romantica Location



**Casa Romantica**

# Long Range Property Management Plan

## Exhibit 2

### Department of Finance Housing Assets Transfer Approval Letter (Avenida Serra Affordable Housing property)



Exhibit 2 - DOF Housing Assets Transfer Approval Letter

DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 31, 2012

Mr. Jeff Hook, Principal Planner  
City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672

Dear Mr Hook:

Subject: Housing Assets Transfer Form

Pursuant to Health and Safety Code (HSC) section 34176 (a) (2), the City of San Clemente submitted a Housing Assets Transfer Form (Form) to the California Department of Finance (Finance) on August 1, 2012 for the period February 1, 2012 through August 1, 2012.

Finance has completed its review of your Form, which may have included obtaining clarification for various items. Based on a sample of line items reviewed and the application of law, Finance is not objecting to any assets or transfers of assets identified on your Form.

Please direct inquiries to Robert Scott, Supervisor or Derk Symons, Lead Analyst at (916) 445-1546.

Sincerely,

  
STEVE SZALAY  
Local Government Consultant

cc: Mr. Frank Davies, Administrative Manager, Orange County  
California State Controller's Office

# Long Range Property Management Plan

## Exhibit 3

### Lease and Operating Agreement with Casa Romantica Cultural Center and Gardens (CRCC) and the First Amendment



AGENDA REPORT  
SAN CLEMENTE CITY  
SAN CLEMENTE REDEVELOPMENT AGENCY  
Meeting Date: June 6, 2001

Agenda Item RDA  
Approvals: 6-7  
City Manager \_\_\_\_\_  
Dept. Head \_\_\_\_\_  
Attorney \_\_\_\_\_  
Accounting \_\_\_\_\_  
Other \_\_\_\_\_

**Department:** Community Development  
**Prepared By:** James S. Holloway, Community Development Director

**Subject:** CASA ROMANTICA CULTURAL CENTER LEASE AGREEMENT

**Summary:** The Casa Romantica Cultural Center (CRCC) Non-Profit Corporation has been formed to operate and maintain the programs and activities to be held at the Casa Romantica. Restoration of the building and grounds of the Casa Romantica will be completed in the October of 2002. At that time, CRCC will take possession of the Casa Romantica and will begin operating its programs. In order for CRCC to take possession, a lease between the RDA and CRCC is necessary. Completing the lease negotiations now will aid in fund raising activities. The attached lease has the following key points:

- CRCC will take possession of the Casa Romantica grounds and building at time of issuance of a Certificate of Occupancy from the City.
- The term of the lease will be 10 years for the initial term, with 10 three-year options following.
- Performance standards must be met by CRCC in order to maintain control of the Casa Romantica.
- Performance measures will commence and be measured from the fourth full year of operation of the Casa Romantica by the CRCC. The performance standards are as follows:
  - \$400,000 per year operation and maintenance budget will be required.
  - 15,000 visitors per year will be required.
  - The Casa Romantica will be open to the general public a minimum of 40 hours per week.
- There will be no rent charged to the CRCC by the City, but the City will have use of the facilities, upon reservation and availability, for 9-days per year.
- Uses and activities are generally described as exhibits for history and art; educational programs, as well as small-scale performing and visual arts events will be conducted; the tenant may operate a small gift shop on the property; the tenant may operate a catering kitchen on the property for food service that are limited to non-alcoholic beverages, desserts, and light snacks; and programs making the cultural center available for a wide range of small weddings, corporate meetings, and social events may also be allowed, including catered meals with alcoholic beverages which must be provided by the caterer. More details concerning uses and activities are provided in Exhibit B of the lease.

***Recommended***

***Action:*** STAFF RECOMMENDS THAT the Redevelopment Agency Board authorize the Chairman to sign the Lease and Operating Agreement for the Casa Romantica between the San Clemente Redevelopment Agency and the Casa Romantica Cultural Center Non-Profit Corporation.

***Fiscal Impact:*** The City has committed to funding approximately \$170,000 for the next fiscal year and \$41,000 for the following fiscal year for interim operating costs and initial operating cost shortfalls. After that time there will be no impact to the City General Fund or Redevelopment Agency as the CRCC operation is expected to be self-sustaining and self-funding.

***Attachments:*** Casa Romantica Lease and Operating Agreement

## LEASE AND OPERATING AGREEMENT

This LEASE AND OPERATING AGREEMENT ("Agreement") is made and entered into as of this 6<sup>TH</sup> day of June, 2001, by and between the SAN CLEMENTE REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), and CASA ROMANTICA CULTURAL CENTER, a California nonprofit public benefit corporation ("Tenant").

### RECITALS

A. Agency is the owner in fee of that certain property consisting of approximately 105,302 acres of land area located in the City of San Clemente, County of Orange, State of California, which property is more particularly described in the legal description attached hereto as Exhibit "A" (the "Property").

B. An approximately 7,755 square foot Spanish Colonial Revival building commonly known as "Casa Romantica" is located on the Property. Casa Romantica was built in 1928 by Ole Hanson, the founder of the City of San Clemente ("City"), and is listed in the National Register of Historic Places. The parties contemplate that Casa Romantica and other improvements existing on the Property from time to time will be operated as a cultural, historical, and educational center for the benefit and enjoyment of the community.

C. Agency and Tenant desire to enter into this Agreement to provide for the following: (i) Agency to lease to Tenant, and Tenant to lease from Agency, the Property; (ii) Tenant to use the Property for the purpose of operating a cultural, historical, and educational center; and (iii) the rights and obligations of Agency and Tenant with respect to such matters, all as more particularly described herein.

### COVENANTS

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, Agency and Tenant hereby agree as follows:

1. Lease of Property. Commencing on the Commencement Date (as defined in Section 2.1), Agency hereby leases to Tenant, and Tenant hereby leases from Agency, the real property comprising the Property and all landscaping, improvements, and structures located thereon as of the Commencement Date, for the Term (as defined in Section 2.1), and upon the terms and conditions set forth in this Agreement. Agency shall deliver possession of the Property to Tenant on the Commencement Date.

2. Term.

2.1 Term. Subject to the possibility of earlier termination as provided for herein, the term of this Agreement (the "Term") shall be for a period of ten (10) Lease Years, with ten (10) automatic three (3) year extensions, commencing on the date that Agency notifies Tenant in writing that the City has issued a Certificate of Occupancy for Casa Romantica (the



"Commencement Date"). The Term shall be automatically extended under the same terms and conditions unless, no less than ninety (90) prior to the end of the current Term, either party provides the other party written notice that it does not intend to extend the Term of this Agreement. In the event either party provides such notice, this Agreement shall terminate on the last day of the then current Term. A "Lease Year" is a period of twelve (12) consecutive calendar months commencing on the first day of the first full calendar month during the Term of this Agreement; provided that the first Lease Year shall also include any partial calendar month during which the Commencement Date occurs.

2.2 Condition Precedent. The lease of the Property to Tenant and the performance of the parties under this Agreement shall be contingent and conditional upon City having issued the Certificate of Occupancy for Casa Romantica on or before January 1, 2003 (the "Condition Precedent"). The issuance of the Certificate of Occupancy by City will occur after completion of the rehabilitation, restoration, modification, and improvement of the Property as Agency determines is necessary or desirable for the operation of the Property as a cultural, historical, and educational center, which may include the razing of the three (3) outbuildings on the Property (the "Rehabilitation Work"). Tenant acknowledges and understands that as of the date of this Agreement Agency does not have sufficient funds for the Rehabilitation Work and Agency does not warrant or represent to Tenant that the Condition Precedent will be satisfied or satisfied by a specific date. In connection therewith, Agency shall not be deemed to be in default hereunder in the event that, for any reason, the Condition Precedent is not satisfied. If the Condition Precedent is not satisfied on or before January 1, 2003, or such later deadline as may be mutually approved in a writing by Agency and Tenant, either Agency or Tenant may terminate this Agreement by delivery of written notice of termination to the other party. Notwithstanding the foregoing, Agency and Tenant shall cooperate and exercise good faith efforts to cause the Condition Precedent to be satisfied.

2.3 Termination In the Event Performance Standards Not Satisfied. Notwithstanding any other provision set forth in this Agreement to the contrary, commencing on the fourth (4<sup>th</sup>) Lease Year and each Lease Year thereafter, Agency shall have the right to terminate this Agreement in the event that, for whatever reason, and notwithstanding Tenant's efforts, the following conditions are not satisfied each such Lease Year : (i) Tenant's Income is equal to or greater than the Minimum Amount (as defined in the following paragraph); (ii) Tenant's Expenditures are equal to or greater than the Minimum Amount; and (iii) fifteen thousand (15,000) Visitors visit the Cultural Center.

The term "Income" shall mean all income and revenue actually received by Tenant. The term "Expenditures" shall mean all expenses actually and reasonably incurred and expended by Tenant in operating and maintaining the Property, including without limitation insurance premiums, cost of the upkeep and preservation of the Property, and salaries paid to personnel to operate the Cultural Center. The term "Expenditures" shall not include any expenses incurred by Tenant for capital improvements. The Minimum Amount for the fourth (4<sup>th</sup>) Lease Year shall be the sum of Four Hundred Thousand Dollars (\$400,000.00). Commencing with the first day of the fifth (5<sup>th</sup>) Lease Year and continuing each one (1) year anniversary thereafter, the Minimum Amount shall be adjusted by an amount equal to ninety percent (90%) of any percentage increase in the Consumer Price Index, All Urban Consumer issued by the United States Department of Labor, Bureau of Labor Statistics for the Los Angeles-

Anaheim-Riverside CSMA (1982-4=100) (the "Index"). The percentage increase in the Index shall be determined by dividing the Index published most immediately preceding the last day of each Lease Year by the Index published twelve (12) months prior. Commencing with the fourth (4<sup>th</sup>) Lease Year, within sixty (60) days following the end of each Lease Year, Tenant shall provide a full accounting to Agency of the amount of Income and Expenditures for the preceding Lease Year. Tenant shall keep and maintain full, complete, and accurate and auditable books, records, and accounts of each separate Income and Expenditure.

With regard to the condition set forth in clause (iii) of the first paragraph of this Section 2.3, the term "Visitor" shall mean a member of the general public visiting the Cultural Center. The term "Visitor" shall not include Tenant's trustees, officers, directors, staff, contractors, employees, volunteers, consultants, or members of Friends of the Casa. Tenant shall document the number of Visitors in a manner acceptable to Agency.

### 3. Use of Property.

3.1 Type of Use. Tenant shall use the Property for the purpose of operating a cultural, historical, and educational center open to the public offering programs, activities, and assemblies for the community, including without limitation the programs listed in Exhibit "B" attached hereto (the "Cultural Center"), and for no other purpose, except as Agency and Tenant may mutually agree in writing, in the sole and absolute discretion of each of them.

3.2 Covenant to Operate. Subject to temporary interruptions for casualty losses, repairs, and the like, Tenant covenants and agrees to continuously operate on the Property the Cultural Center for a minimum of forty (40) hours per week (which operation shall include the programs and activities described in Exhibit "B").

3.3 Agency's Use of Cultural Center. Tenant shall permit the Agency to use the Cultural Center, at no charge to Agency, nine (9) days per Lease Year, for uses consistent with the operation of a Cultural Center as provided in this Lease, provided that such use does not conflict with any scheduled Tenant activity.

3.4 Compliance with Laws; Conduct of Operations. Tenant shall, at its sole cost and expense, comply with all federal, state and local statutes, laws, rules, regulations and ordinances applicable to the Property and Tenant's use, operation and occupancy of the Property. Tenant shall not conduct or permit to be conducted on the Property any public or private nuisance or commit or permit to be committed any waste upon the Property. Tenant shall prepare and obtain at its sole cost and expense all licenses, permits, consents, and authorizations as may be necessary or required by law for the operation of the Cultural Center. Subject to Section 6, Tenant shall make any alteration or improvement to the Property as is necessary or required to comply with any applicable law and to cause the Property to comply with any applicable law with respect to Tenant's use, operation and occupancy of the Property. Tenant shall conduct its operations on the Property in a competent manner, and will at all times retain qualified, competent and experienced personnel to operate the Cultural Center. Tenant shall be solely responsible for monitoring the conduct and ensuring the safety of its employees, agents, and invitees on the Property.

3.5 Compliance with Environmental Laws. Tenant shall not engage in any activity on or about the Property that violates any "Environmental Law" (as defined below) and shall promptly, at Tenant's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any "Hazardous Material" (as defined below) created or caused directly or indirectly by or under Tenant. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601 *et seq.*; (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 *et seq.*; (iii) California Health and Safety Code Sections 25100 *et seq.*; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et seq.*; (v) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317 *et seq.*; (vi) California Water Code Section 1300 *et seq.*; and (vii) California Civil Code Section 3479 *et seq.*, as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste," extremely hazardous waste," "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et seq.* Tenant shall provide prompt written notice to Agency of the existence of Hazardous Substances on the Property and all notices of violation of the Environmental Laws received by Tenant.

4. As-Is Condition; Inspections. Prior to Agency's delivery of possession of the Property to Tenant, Tenant shall have the opportunity to inspect the Property and to conduct such reviews and investigations as it deems necessary to satisfy itself regarding all aspects of the Property, including without limitation the presence of Hazardous Materials and the physical condition of the Property. Tenant shall repair any and all damage to the Property caused by such investigations and inspections in a timely manner and shall indemnify and defend Agency from and against any liability arising from Tenant's inspections. Tenant shall not unreasonably object to any physical condition of the Property. In the event Tenant does object to the physical condition of the Property and such objection is reasonable, either party shall have the right to terminate this Agreement. Agency shall have no obligation to change any condition of the Property. Upon taking possession of the Property, Tenant waives any and all objections to all characteristics and conditions of the Property, and the Property shall be leased to Tenant and Tenant shall be deemed to have accepted the Property in an AS-IS condition without any representations or warranties of any nature or kind whatsoever from Agency.

5. Maintenance and Repairs. Tenant, at its sole cost and expense, shall keep and maintain the Property and all structures and improvements, fixtures, equipment, and personal property located within or appurtenant to the Property, including without limitation landscaping, the roof, exterior walls, building structure, landscaping, parking lot improvements and, all doors,

door frames, signage, utilities, lighting fixtures, walls floors, and ceilings, in good order and first class condition, quality, and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies having jurisdiction. As used herein, the term "repair" shall include replacements, repair of damage, and restorations, when necessary, and all such repairs made by Tenant shall be at least equal in quality and class to the original work.

Tenant shall employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services set forth herein. Tenant covenants that all personnel engaged in such work shall have valid licenses, if required by law, and shall be fully qualified, authorized, and permitted under applicable laws, ordinances, and regulations to perform such tasks and services. In performing its services hereunder, Tenant shall cooperate and consult with Agency's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review Tenant's performance hereunder. In the event Tenant fails to maintain the Property, Agency shall have the right but not the obligation to enter upon the Property to correct or cure the problem and any cost to Agency, plus a 15% administrative charge, shall be billed to Tenant and shall be paid by Tenant within thirty (30) days after receipt of such invoice; provided, however, that the foregoing right of Agency to enter upon the Property to correct or cure a maintenance problem shall not be exercised unless and until Agency has provided written notice to Tenant specifying the problem and the action needed to correct or cure it, and the expiration of a period of twenty (20) days given to Tenant to correct or cure problems pertaining to building improvements, or two (2) days pertaining to dirt, graffiti, trash, and similar problems.

6. Alterations and Improvements. Tenant shall make no alteration or improvement to the Property without the prior written consent of Agency. Any improvements constructed or placed upon the Property by Tenant, other than Tenant's trade fixtures, equipment and personal property, shall remain on the Property and become the property of Agency without any cost to Agency at the end of the Term of this Agreement unless Agency delivers notice to Tenant on or before the date which is thirty (30) days after the end of the Term of this Agreement or the date Tenant vacates the Property and delivers possession thereof to Agency, whichever is later, to remove such improvements, in which case the removal shall be at Tenant's sole cost and expense and Tenant shall repair any damage to the Property occasioned by the removal. Tenant shall have the right to remove its trade fixtures, removable Tenant improvements, equipment, and personal property on or before expiration of the Term or earlier termination of this Agreement, provided that Tenant repairs any damage occasioned by such removal. Tenant shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use on the Property, which claims are or may be secured by any mechanic's or materialmen's lien against the Property or any interest therein. Tenant shall give Agency not less than twenty (20) days prior written notice before the commencement of any work on the Property which could give rise to a mechanic's or materialmen's lien against the Property, and Agency shall have the right to post notices of nonresponsibility as provided by law. If Tenant shall, in good faith, contest the validity of any lien, claim or demand, then Tenant shall, at its sole expense defend itself and Agency against the same and shall pay and satisfy any adverse judgment that may be rendered thereon prior to the enforcement thereof against Agency or the Property; provided that if Agency shall require, Tenant shall furnish to Agency a surety bond in

the amount required by applicable statute to remove the lien from record. Tenant agrees to indemnify, defend and hold Agency harmless from and against any lien or claim of lien filed against the Property.

7. Surrender. At the expiration or earlier termination of this Agreement, Tenant shall deliver the Property to Agency in the same condition as when received, ordinary wear and tear excepted. If, at the expiration of the Term or the earlier termination of this Agreement, Tenant has left any merchandise, furniture or fixtures in or about the Property, Agency may give Tenant written notice to remove said property. In the event said property is not removed within ten (10) days of the sending of said notice, Agency may dispose of the property in any manner whatsoever at Tenant's cost, and Tenant hereby waives any claim or right to said property or any proceeds derived from the sale thereof.

8. Entry and Inspection. Tenant shall permit Agency and Agency's employees and agents to enter the Property at all reasonable times for the purpose of inspecting the same or for the purpose of making any repairs or improvements which Agency may deem necessary or proper for the preservation of the Property and other improvements on the Property if Tenant defaults in its obligation to do so hereunder; provided that nothing contained herein shall be construed as obligating Agency to make any such repairs or improvements.

9. Utilities. Tenant shall pay or cause to be paid, as and when they become due and payable, all charges for gas, water, sewer, electricity, telephone, and other utility and communication services rendered or used on or in the Property. If any such charges are not paid when due, Agency may, but shall not be required to, pay the same, and any amount so paid by Agency shall become immediately due to Agency by Tenant. If any utility is not separately metered, Tenant shall reimburse Agency for the cost of said service as Agency shall reasonably determine to be Tenant's share thereof. Agency shall not be liable to Tenant or any third party for any failure or interruption of any utility service.

10. Possessory Interest and Personal Property Taxes. Tenant shall pay prior to delinquency, the possessory interest taxes, if any, that are levied on the Property during the Term of this Agreement. Tenant shall pay prior to delinquency all personal property taxes for any and all equipment, furnishings and all other personal property utilized by Tenant in the operation of the Property.

11. Net Lease. It is the intention of Agency and Tenant that all costs, expenses and obligations of every kind relating to the Property or the use, operation or occupancy thereof which may arise or become due during the Term of this Agreement shall be paid by Tenant.

12. Eminent Domain. In the event that the Property or any portion thereof is taken under the power of eminent domain, or is sold under the threat of the exercise of such power (hereinafter referred to as "Condemnation"), this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. In the event that so much of the Property is taken by Condemnation that the continued operation of the Cultural Center becomes impractical, then the entirety of this Agreement shall terminate as of the date that the condemning authority takes title or possession, whichever occurs first. Any award for the taking of all or any portion of the Property by Condemnation and/or any payment

made under threat of the exercise of Condemnation shall be the sole property of Agency, whether such award is made as compensation for diminution in the value of the leasehold or for the taking of the fee, or severance damages; provided, however, that Tenant shall be entitled to any award for the loss of or damage to Tenant's personal property, if any. Agency shall have no obligation to repair or replace any damage to any portion of the Property caused by any such Condemnation.

13. Damage and Destruction. In the event that the Property is destroyed or damaged such that the continued operation of the Cultural Center becomes impractical as a result of a sudden catastrophic event or casualty not caused or permitted by Tenant (provided that Tenant has used customary and reasonable methods for avoiding or reducing the effect of such event or casualty), Agency may elect to repair the damages and continue this Agreement. In the event Agency elects to not repair the damage, this Agreement shall terminate without further liability or obligation by either Agency or Tenant.

14. Assignment and Subletting. Tenant shall not assign, sublet, transfer, alienate, encumber or otherwise convey any interest in this Agreement, the Property or any portion thereof, or any right or privilege appurtenant thereto, or permit any party to occupy any part of the Property, without the express prior written consent of Agency first being had and obtained, which consent may be withheld in Agency's sole, absolute, and arbitrary discretion. Tenant shall not encumber the Property or its interest in this Agreement nor shall Tenant cause or permit any lien or other charge to exist upon the Property or Tenant's interest in this Agreement.

15. Defaults and Remedies. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Tenant: (i) the vacating or abandonment of the Property by Tenant; (ii) the failure by Tenant to make payment when due of any charges payable hereunder and such failure continues for a period of three (3) days after written notice from Agency to Tenant; (iii) the failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Tenant, other than described in paragraph (ii) above, where such failure shall continue for a period of fifteen (15) days (unless a different time period is expressly provided for herein) after written notice thereof from Agency to Tenant; (iv) the making by Tenant of any general assignment for the benefit of creditors; (v) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Agreement; (vi) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Agreement, where such seizure is not discharged within thirty (30) days; or (viii) the filing by Tenant of a voluntary or involuntary petition in bankruptcy.

In the event of any such default or breach by Tenant, Agency may at any time thereafter, without limiting Agency in the exercise of any right or remedy which Agency may have by reason of such default or breach: (i) immediately terminate this Agreement and Tenant's right to possession of the Property; (ii) continue this Agreement in effect without terminating Tenant's right to possession even though Tenant has breached this Agreement and abandoned the Property and to enforce all of Agency's rights and remedies under this Agreement; provided, however, that Agency may at any time thereafter elect to terminate this Agreement for such previous breach by notifying Tenant in writing that Tenant's right to possession of the Property has been

terminated; and (iii) pursue any other remedy now or hereafter available to Agency under applicable law.

16. Insurance and Indemnity.

16.1 Insurance. Tenant shall procure and maintain, at all times during the Term of this Agreement, in a form and content satisfactory to Agency, the following policies of insurance:

(a) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limits. During the Term of this Agreement, Agency shall have the right to from time to time increase the amount of comprehensive general liability insurance required to be maintained by Tenant.

(b) All Risk Insurance. A policy of "all-risk" insurance including fire and extended coverage, vandalism, theft, and malicious mischief, and sprinkler damage, in an amount sufficient to cover the full cost of replacement of all improvements on the Property and all Tenant's fixtures and personal property.

(c) Workers' Compensation Insurance. Workers' compensation insurance as required by law.

The policies of insurance required by this Agreement (i) shall be issued by companies qualified to do business in California and rated "A:VII" or better in the most recent edition of Best's Insurance Guide, (ii) shall be primary insurance and not contributory with any other insurance which Agency may have, (iii) shall name Agency and its officials and employees as additional insureds, (iv) shall contain no limitation on the scope of protection afforded to Agency, (v) shall be "occurrence" and not "claims made" insurance, (vi) shall provide that the insurer shall waive all rights of subrogation and contribution it may have against Agency and its insurers, and (vii) shall provide that the policy shall not be amended or cancelled without providing thirty (30) days' prior written notice to Agency. In the event any of said policies of insurance are cancelled, Tenant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 16.1.

None of the above-described policies shall require Tenant to meet a deductible or self-insured retention amount of more than Five Thousand Dollars (\$5,000) unless approved in writing by Agency's Board of Directors or such person(s) as may be designated by Agency's Board of Directors.

16.2 Indemnity. Tenant shall indemnify, defend, and hold harmless Agency and its elected and appointed boards, commissions, officers, agents, and employees from and against any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) arising out of or related to (i) any act or omission of Tenant or Tenant's agents, contractors, subcontractors, agents, employees or invitees, (ii) the condition, use, possession, conduct or operation of the Property, (iii) any work or thing whatsoever done on or about the Property during the Term of this Agreement, and

(iv) any breach or default on the part of Tenant of any provision of this Agreement. Agency shall provide Tenant with notice of the pendency of any such action and request that Tenant defend such action. If Tenant fails to do so, Agency may defend the action and Tenant shall pay the cost thereof. The provisions of this Section 16.2 shall not apply to the extent such damage, liability or claim is caused by the willful misconduct or sole active negligence of Agency, or Agency's officers, officials, agents, employees or representatives. The indemnity provisions set forth in this Agreement shall survive termination of this Agreement.

17. Quiet Enjoyment. Subject to all rights reserved by Agency under this Agreement, and upon Tenant performing all of the terms, covenants and conditions contained herein, Agency hereby warrants and represents that during the Term of this Agreement Tenant may quietly have, hold, occupy, and enjoy the Property without hindrance from Agency.

18. Dissolution of Tenant. This Agreement shall terminate automatically upon either the voluntary or involuntary dissolution of the Tenant.

19. Miscellaneous.

19.1 Binding on Heirs. This Agreement shall be binding upon the parties hereto and their respective representatives, transferees, successors, and assigns.

19.2 Litigation Expenses. If either party to this Agreement commences an action against the other party to this Agreement arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing party.

19.3 Notices. All notices required to be delivered under this Agreement to another party must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; or (iii) one (1) business day after deposit before the daily deadline time with a reputable overnight courier or service; in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To Agency: San Clemente Redevelopment Agency  
100 Avenida Presidio  
San Clemente, CA 92672  
Attn: Executive Director

Copy to: Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626  
Attn: Jeffrey M. Oderman, Esq.



To Tenant: Casa Romantica Cultural Center  
P.O. Box 191  
San Clemente, CA 92674  
Attn: President

19.4 Entire Agreement, Waivers, and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. A waiver of the breach of the covenants, conditions or obligations under this Agreement by either party shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or obligations of this Agreement. Any amendment or modification to this Agreement must be in writing and executed by the appropriate authorities of Agency and Tenant.

19.5 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by all of the parties hereto. This Agreement shall be construed in accordance with the internal laws of the State of California in effect at the time of the execution of this Agreement.

19.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

19.7 Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

"AGENCY"

SAN CLEMENTE REDEVELOPMENT AGENCY,  
a public body, corporate and politic

By: Scott Dill  
Chairman

ATTEST:

Meyna Erway  
Secretary

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

[Signature]  
Attorneys for the San Clemente  
Redevelopment Agency

"TENANT"

CASA ROMANTICA CULTURAL CENTER,  
a California nonprofit public benefit corporation

By: [Signature]  
Its: President

By: [Signature]  
Its: Secretary

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

That certain real property located in the City of San Clemente, County of Orange, State of California, more particularly described as follows:

PARCEL 1:

THAT PORTION OF LOT 27 IN BLOCK 3 OF TRACT NO. 784, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 23 PAGES 39 AND 40 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 27, THENCE SOUTH 39 DEGREES 53 MINUTES 05 SECONDS WEST 84 FEET; THENCE SOUTH 24 DEGREES 07 MINUTES 28 SECONDS WEST 215.94 FEET; THENCE SOUTH 67 DEGREES 21 MINUTES 40 SECONDS WEST 58 FEET; THENCE SOUTH 51 DEGREES 08 MINUTES 30 SECONDS WEST 139.05 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE FEET TO AN INTERSECTION WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD; THENCE SOUTHEASTERLY ALONG THE ABOVE-MENTIONED RIGHT OF WAY ALONG THE ARC OF A CURVE HAVING A RADIUS OF 4961.15 FEET, 266.25 FEET; THENCE NORTH 51 DEGREES 08 MINUTES 30 SECONDS EAST 102.00 FEET; THENCE NORTH 16 DEGREES 34 MINUTES 20 SECONDS EAST 151.28 FEET; THENCE NORTH 32 DEGREES 56 MINUTES 02 SECONDS EAST 204.72 FEET; THENCE NORTH 20 DEGREES 05 MINUTES EAST 127.76 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF AVENIDA GRANADA, SAID POINT OF BEING A POINT IN THE ARC OF A CURVE HAVING A RADIUS OF 280 FEET, THENCE NORTH A WESTERLY DIRECTION 161.45 FEET ALONG THE ARC OF THE ABOVE MENTIONED CURVE TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO VICTOR D. KLEIN, ET UX., IN DEED RECORDED APRIL 6, 1972 IN BOOK 10069 PAGE 748, OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF LOT 26 IN BLOCK 3 OF TRACT NO. 784, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 23 PAGES 39 AND 40 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER FOR SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF SAID LOT 26; THENCE SOUTH 39 DEGREES 53 MINUTES 05 SECONDS WEST 85 FEET; THENCE SOUTH 24 DEGREES 07 MINUTES 28 SECONDS WEST, ALONG THE EASTERLY LINE OF SAID LOT, 180.28 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EASTERLY LINE, SOUTH 24 DEGREES 07 MINUTES 28 SECONDS WEST 35.66 FEET; THENCE SOUTH 67 DEGREES 21 MINUTES 40 SECONDS WEST 58 FEET; THENCE NORTH 51 DEGREES 08 MINUTES 30 SECONDS EAST 87.46 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT "B"

**PROGRAMS AND ACTIVITIES**

- Permanent exhibitions shall be located on the Property with information about local and regional history, Ole Hanson, and Casa Romantica.
- The programs shall include an annual schedule of rotating exhibitions, which exhibitions shall include thematic and special interest displays produced by Tenant and exhibits on loan from local cultural and educational groups and other institutions.
- Tenant may house a satellite local history sub-collection of the San Clemente Branch County Library at the Cultural Center.
- Tenant may develop a series of docent-led and self-guided tours for individual visitors and tour groups.
- The Cultural Center may become a primary resource for the Capistrano Unified School District, Saddleback Community College, and other private and public educational institutions as a site for educational enrichment and curriculum-based learning.
- Tenant shall schedule a year round series of small-scale performing and visual arts events. The range of artistic expression should be culturally diverse and appeal to a broad mix of audiences.
- Tenant may operate a small gift shop on the Property.
- Tenant shall develop collaborative programs and events with local arts, humanities, and higher education institutions, as well as service organizations.
- Tenant may operate on a day to day ongoing basis a catering kitchen on the Property. Food service shall be limited to non-alcoholic beverages, desserts, and light snacks.
- Tenant may develop a diversified program making the Cultural Center available for a wide range of uses, including small weddings, corporate meetings, and social events. Catered meals with alcoholic beverages (which must be provided by the caterer) shall be permitted during these events.

C01-36

6. **NEW BUSINESS**

A. **First Amendment to the Casa Romantica Lease and Operating Agreement**

Report from the Executive Director concerning the First Amendment to the Casa Romantica Lease and Operating Agreement.

MOTION BY DIRECTOR DONCHAK, SECOND BY DIRECTOR KNOBLOCK, CARRIED 5-0, to approve, and authorize the RDA Chairperson to execute, the First Amendment to the Casa Romantica Lease and Operating Agreement, Contract No. C01-36.



AGENDA REPORT  
SAN CLEMENTE REDEVELOPMENT AGENCY  
MEETING

Meeting Date: July 1, 2008

Agenda Item RDA-6-A

Approvals:

City Manager [Signature]

Dept. Head \_\_\_\_\_

Attorney \_\_\_\_\_

Finance \_\_\_\_\_

**Department:** City Manager  
**Prepared By:** George Scarborough, City Manager/RDA Executive Director

**Subject:** FIRST AMENDMENT TO THE CASA ROMANTICA LEASE AND OPERATING AGREEMENT

**Summary:** In response to a written request from the Casa Romantica Cultural Center (Casa), the San Clemente Redevelopment Agency (RDA) directed its Executive Director to enter into negotiations with the Cultural Center to develop a more appropriate long-term arrangement for the sharing of Casa Romantica maintenance responsibilities between the RDA and the Cultural Center. The RDA also included \$25,000 in its current budget to address the annual cost of the RDA assuming a portion of the Casa Romantica maintenance responsibility.

To develop a thorough understanding of the current condition of the building and create an assessment of the short term and long term maintenance needs, RDA staff completed a very detailed analysis of the condition of the HVAC and Electrical System and a less detailed, but sufficient, analysis of the condition of the water and sewer system, exterior of the building and the surrounding grounds. In order to ensure the long term viability of the Casa Romantica building and grounds, the RDA staff, in consultation with the Cultural Center, has developed the following list of shared maintenance responsibilities:

- 1) *The RDA will maintain the Casa Romantica's domestic water system from the meter up to Casa's internal plumbing fixtures. Casa will maintain all internal plumbing fixtures.*
- 2) *The RDA will maintain the Casa Romantica's sewer system from the main line up to Casa's internal plumbing fixtures.*
- 3) *Electrical*
  - *RDA will assume labor and material cost for replacement of all facility main electrical panels, load centers/breakers, conduits, raceways and, wiring, etc., that can wear as they age.*
  - *Casa will assume labor and materials for light fixtures, outlets, switches, controls, internal and external lighting components and any landscape low voltage lighting services or components, service calls/repairs due to overloading of circuits or lack of maintenance, etc.*
- 4) *The RDA will maintain the roof.*
- 5) *HVAC*
  - *Casa will administer a quarterly HVAC system preventative maintenance (PM) program and will provide for necessary repairs or replacements as needed, not to exceed \$1,500*

annually (excluding PM program cost). RDA will approve the contractor the Casa will use for the PM program.

- The RDA will assume responsibility for any costs for repairs or replacements in excess of \$1,500 annually.

6) The RDA will maintain, including removal and replacement as necessary, of all trees over 20 feet tall. Casa will maintain in good condition all other landscaping on the property.

7) Casa will maintain in good repair exterior hardscape.

8) The RDA will maintain the exterior property boundary fence, spot treating and painting when necessary, and will be responsible for replacing the fence. The design and material of the replacement fence will be subject to RDA Board of Directors approval.

9) The RDA will paint the exterior of the building every 10 years. First re-painting will occur in four years from execution of the agreement.

10) The RDA will perform annual termite inspections, provide localized extermination treatments as found necessary with annual inspection or complete eradication treatment if required, and will perform any necessary repairs.

These shared responsibilities have been incorporated into the First Amendment to the Casa Romantica Lease and Operating Agreement.

In general, the RDA cost to absorb these additional responsibilities should not exceed \$25,000 in any year.

However, the obligation to remove and replace, if necessary, the trees over 20 feet might prove a significant financial burden. Based on our experience in replacing the palms on Los Mares, the cost to remove each palm is approximately \$3000 and the cost to replant is \$6,000. If the palms continue to deteriorate, over time, the cost to the RDA to remove and replace all the palms would be \$180,000. However, given the significance of these palms, it is in the public's interest for the RDA to assume responsibility for these large palms.

Additionally, the replacement of the exterior fence might prove quite expensive. The RDA installed the fence last year using grant funds. Given the proximity of the fence to the ocean and the corrosive nature of salt water, the fence is expected to deteriorate in five to ten years and will need to be replaced. Replacement in kind is estimated at \$75,000.

**Recommended Action:**

STAFF RECOMMENDS THAT the RDA approve the First Amendment to the Casa Romantica Lease and Operating Agreement.

**Fiscal Impact:**

Funds in the current budget are sufficient to meet the obligation.

**Attachments:**

First Amendment to the Casa Romantica Lease and Operation Agreement

**Notification:**

Casa Romantica Cultural Center

RDA 7-1-08  
RDA-6-A  
C01-36

MAY 1 2008

## FIRST AMENDMENT TO LEASE AND OPERATING AGREEMENT

This FIRST AMENDMENT TO LEASE AND OPERATING AGREEMENT (the "First Amendment") is made and entered into on this 1<sup>st</sup> day of JULY, 2008, by and between the SAN CLEMENTE REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), and CASA ROMANTICA CULTURAL CENTER, a California nonprofit public benefit corporation ("Tenant").

### RECITALS:

- A. Agency and Tenant entered into that certain Lease and Operating Agreement on or about June 6, 2001 (the "Lease").
- B. Agency and Tenant now desire to amend the Lease to shift certain maintenance responsibilities from Tenant to Agency, as specified herein.

### COVENANTS:

Based on the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, Agency and Tenant hereby agree as follows:

Section 1: The first paragraph of Section 5 of the Lease is hereby replaced, in its entirety, with the following:

5. Maintenance and Repairs. Except for the "Agency Maintenance and Reimbursement Obligations" listed in Exhibit "C", which is attached hereto and incorporated herein by this reference (the "Agency Obligations"), Tenant, at its sole cost and expense, shall keep and maintain the Property and all structures and improvements, fixtures, equipment, and personal property located within or appurtenant to the Property, including without limitation landscaping, the exterior walls, building structure, exterior hardscape, including parking lot improvements, internal plumbing fixtures, the HVAC system and all doors, door frames, signage, utilities, lighting fixtures, including, without limitation, outlets, switches, controls, internal and external lighting components and any landscape low voltage lighting services or components, walls, floors, and ceilings, in good order and first class condition, quality, and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies having jurisdiction. With respect to maintenance of the HVAC system, Tenant shall administer a quarterly HVAC system preventative maintenance program (the "PM Program") and shall provide for necessary repairs. Tenant shall obtain Agency's approval of the contractor selected to perform the PM Program. As used in this Agreement, the term "repair" shall include replacements, repair of damage, and restorations, when necessary, and all such repairs made by Tenant shall be at least



equal in quality and class to the original work. Tenant shall meet with a representative of Agency on a monthly basis to discuss the maintenance and repair requirements set forth herein and any planned or performed maintenance and/or repair activities.

Section 2: The following sentence shall be added, as a new paragraph, to the end of Section 5: "Agency shall be responsible to perform and fund only the Agency Obligations."

Section 3: Section 6 is hereby revised to add the following sentence immediately after the first sentence thereof:

Tenant shall submit in written form, any and all plans and/or requests for alterations and/or improvements to the Property to the Agency Executive Director or his or her designee, and shall obtain the Agency Executive Director's (or designee's) written approval prior to undertaking any such alterations and/or improvements.

Section 4: Section 8 is hereby replaced, in its entirety, with the following:

8. Entry and Inspection. Tenant shall permit Agency and Agency's employees and agents to enter the Property at all reasonable times for the purpose of inspecting the same, performing the Agency Obligations, or making any repairs or improvements which Agency may deem necessary or proper for the preservation of the Property and other improvements on the Property if Tenant defaults in its obligation to do so hereunder; provided that, other than the Agency Obligations, nothing contained herein shall be construed as obligating Agency to make any such repairs or improvements.

Section 5: Section 9 is hereby revised to add, to the beginning thereof, "Except for the Agency Obligations,".

Section 6: Section 17 is hereby replaced, in its entirety, with the following:

17. Quiet Enjoyment. Subject to (i) all rights reserved under this Agreement, and (ii) Agency's right to enter the Property to perform the Agency Obligations, and provided Tenant performs all of the terms, covenants and conditions contained herein, Agency hereby warrants and represents that during the Term of this Agreement Tenant may quietly have, hold, occupy, and enjoy the Property without hindrance from Agency.

Section 7: The Agency Maintenance and Reimbursement Obligations exhibit attached hereto and incorporated herein as Attachment No. 1 is hereby added to the Lease as Exhibit "C".

Section 8: Except as expressly amended by this First Amendment, the remaining portions of the Lease shall remain in full force and effect.

[End of text – Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first set forth above.

"Agency"

SAN CLEMENTE REDEVELOPMENT AGENCY,  
a public body, corporate and politic

By: \_\_\_\_\_  
Agency Chair

ATTEST:

\_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

\_\_\_\_\_  
Attorneys for the San Clemente  
Redevelopment Agency

"Tenant"

CASA ROMANTICA CULTURAL CENTER,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_

Its: PRESIDENT BO of TRUSTEES

By: S.J. Varricchio

Its: BOARD TRUSTEE

**ATTACHMENT NO. 1 TO FIRST AMENDMENT  
TO LEASE AND OPERATING AGREEMENT**

**AGENCY MAINTENANCE AND REIMBURSEMENT OBLIGATIONS**

[See following page]

EXHIBIT "C"

**AGENCY MAINTENANCE AND REIMBURSEMENT OBLIGATIONS**

1. The Agency shall be responsible only for the following maintenance activities and reimbursements:
2. Maintenance of Casa Romantica's domestic water system from the meter to the building's internal plumbing fixtures.
3. Maintenance of Casa Romantica's sewer system from the main line to the building's internal plumbing fixtures.
4. Reimbursement to Tenant for the cost of labor and materials for replacement of all of Casa Romantica's main electrical panels, load centers/breakers, conduits, raceways and wiring to the extent that such replacement is necessary as a result of aging from regular use.
5. Maintenance of the roof of the Casa Romantica building.
6. Maintenance, inspection, certification and monitoring of fire suppression /sprinkler system.
7. Reimbursement to Tenant for any portion of the cost of repairs and replacement to the HVAC system determined necessary by the PM that exceed One Thousand Five Hundred Dollars (\$1,500) per year. In determining the costs of repairs and replacement, the costs related to the PM Program shall not be included.
8. Maintenance, including removal and replacement as determined necessary by the Director of Beaches, Parks & Recreation, of all trees located on the Property that are over twenty (20) feet in height.
9. Maintenance of the exterior Property boundary fence, including, without limitation, spot treating and painting and, if determined necessary by the Director of Beaches, Parks & Recreation, replacement of said fence. The design and materials of any replacement fence shall be subject to the approval of the City Council.
10. Painting of the exterior of the Casa Romantica building every ten (10) years, with the first such painting to be completed by April 1, 2012, and each subsequent painting to be completed by the tenth (10<sup>th</sup>) anniversary of the immediately prior painting.
11. Performance of annual termite inspections, provision of localized extermination treatments or complete eradication treatments, as determined necessary by the Director of Beaches, Parks & Recreation as a result of said inspections, and performance of any repairs necessitated by termite damage.

12. All references herein to the Director of Beaches, Parks & Recreation shall be deemed to include his or her designee.