



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: January 15, 2019

Agenda Item 6R

Approvals:

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

Department: Beaches, Parks and Recreation
Prepared By: Samantha Thomas, Recreation Manager

Subject: *PROPERTY RENTAL AGREEMENT AND COPYRIGHT LICENSE AGREEMENT WITH SAN CLEMENTE HISTORICAL SOCIETY.*

Fiscal Impact: Yes, ongoing revenue of \$12 annually for rental of city property.

Summary: Staff recommends that Council approve a property rental agreement and copyright license agreement with the San Clemente Historical Society. The purpose of the property rental agreement is to provide the use of space at 100 Avenida Presidio for storage of historical documents and artifacts. The purpose of the copyright license agreement is to provide an agreement between both parties that will allow streamlined access to historical documents and artifacts related to the City of San Clemente.

Background: Founded in 1973, the San Clemente Historical Society (SCHS) has been a longstanding organization that has supported and advocated for the preservation of San Clemente's storied history. Over the years, SCHS has acquired hundreds of artifacts and thousands of photos related to the history of the City. For many years the SCHS has leased storage space from a local storage rental facility. In an effort to minimize costs and provide more funding towards initiatives and activities that promote the preservation of San Clemente's history, the SCHS is seeking storage space through the City at a low cost.

Discussion: The Property Rental Agreement (Attachment 1) grants SCHS two designated spaces at 100 Avenida Presidio for the storage of its materials related to the history of San Clemente. One space is designated in the former Human Resources conference room and the second space is designated in the old fire station.

The Copyright License Agreement (Attachment 2) formalizes an agreement between both agencies that gives certain permissions for the City to utilize the materials owned by the SCHS. Details of use are outlined in the Agreement. Coinciding with this, the City will also work to digitally image and scan all documents into electronic form. In doing so, both parties will have a sortable digital file that tags each document relative to its content.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute a Property Rental Agreement for the use of space at 100 Avenida Presidio and a Copyright license agreement with the San Clemente Historical Society.

Attachments: 1.) Property Rental Agreement
2.) Copyright License Agreement

Notification: San Clemente Historical Society



**PROPERTY RENTAL AGREEMENT FOR
SAN CLEMENTE HISTORICAL SOCIETY**

THIS RENTAL AGREEMENT (hereinafter "Agreement") is made and entered into this ____ day of January, 2019 (the "Effective Date") by and between the City of San Clemente, a municipal corporation, of 910 Calle Negocio, San Clemente, California 92673 (hereinafter "Landlord", and San Clemente Historical Society, a non-profit 501(c)3 corporation, of P.O. Box 283, San Clemente, California 92674 (hereinafter "Tenant").

R E C I T A L S:

WHEREAS, the Landlord is the owner of the real property located at 100 Avenida Presidio, San Clemente, California ("Property"); and

WHEREAS, the Landlord is willing to enter into an agreement for the Tenant to use a portion of the Property, specifically the former Human Resources Office conference room on the upper level ("HR Space") and a 12-foot-by-12-foot space in the old fire station on the lower level ("Fire Station Space") (together, the "Premises"), as shown in greater detail on Exhibit A that is attached hereto and incorporated by reference herein on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, the parties AGREE as follow:

C O V E N A N T S:

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 acknowledged by both parties, Landlord and Tenant hereby agree as follows:

1. PURPOSE

- (a) The purpose of this Agreement is to provide the Tenant with space at the Property for the locating, storage and display of Tenant's artifacts, materials, and belongings related to the history of San Clemente.
- (b) Access to Site: Tenant may only access the HR Space on the upper level through the entrance located on the southeast side of the building and only using a key fob. Tenant may only access the Fire Station Space on the lower facility through the entrance located on the northwest side of the property and only using a garage code.

2. TERM

The term of this Agreement shall be for an initial period of one (1) year, commencing on February 1, 2019, and terminating on January 31, 2020, and thereafter renewing on a month to month basis commencing on February 1, 2020, and will terminate within thirty days upon receipt by Tenant a thirty (30) day written Notice to Terminate from the Landlord.

3. RENT

Tenant agrees to pay to Landlord, as rent for the Premises, the sum of one dollar (\$1.00) on or before the first day of each month beginning on August 1, 2018 for the entire period of the Agreement. In addition, Tenant agrees to do and perform all other covenants and agreements in this Agreement contained.

4. ASSIGNMENT

Neither this Agreement nor any interest therein, whether legal or equitable, may be assigned, alienated, pledged, mortgaged, or hypothecated, voluntarily or by operation of law without prior written consent of the other party.

5. TERMINATION

After the completion of the initial first year of the term of this Agreement, either Landlord or Tenant may terminate this Agreement without cause, at any time, after providing written notice at least thirty (30) days in advance of the date of termination. This Agreement may also be terminated by the Landlord upon seven (7) days prior written notice to the Tenant, under the following limited conditions:

- (a) Failure by the Tenant to timely pay rent; and
- (b) Failure by the Tenant to comply with any material term or condition of this Agreement.

6. GENERAL PROVISIONS

- (a) No failure by either the Landlord or the Tenant to insist on the strict performance by the other of any covenant, term, or condition of this Agreement, or to exercise any right or remedy upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, and term shall continue in full force and effect with respect to any other then-existing or subsequent breach.
- (b) Time is of the essence in this Agreement, and in each provision of it.
- (c) If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- (d) Each and all of the covenants, terms, and conditions herein contained shall, in accordance with the context, inure to the benefit of the Landlord and apply to and bind the Tenant and the Tenant's respective heirs, legatees, devisees, executors, administrators, and successors. Nothing in this paragraph alters in any way the

provisions herein contained against assignment or hypothecation of this Agreement.

- (e) The captions of paragraphs of this Agreement are for convenience only and do not limit or amplify in any way the terms and conditions hereof.
- (f) This Agreement contains the entire agreement with respect to the matters covered herein and is not subject to modification except in writing.
- (g) Notices and Demands. All notices, demands, or requests from one party to another may be delivered personally (in the case of Landlord, to the City Clerk or City Manager and in the case of Tenant, to the President) or deposited with the United States Postal Service for mailing by certified or registered mail, postage prepaid, to the addresses stated in this section, and shall be deemed to have been given at the time of personal delivery or three (3) business days after the time of deposit for certified or registered mailing. The delivery methods contained herein shall constitute the sole means of providing notice as required under this Agreement.

- i. All notices, demands, and requests from Tenant to Landlord shall be mailed to Landlord at:

City of San Clemente

100 N. Calle Seville

San Clemente, CA 92672

Attn: Recreation Manager

- ii. All notices, demands, and requests from Landlord to Tenant shall be mailed to Tenant at:

San Clemente Historical Society

P.O. Box 283

San Clemente, CA 92674

Attn: President

- iii. Each party has the right to, from time to time, designate a different address by notice given in conformity with this section.
 - iv. No consent, agreement, or approval that is required hereunder may be unreasonably withheld except as otherwise noted.

7. UTILITIES

Landlord shall pay all utilities costs for the Premises.

8. INDEMNIFICATION

- (a) Tenant shall indemnify, defend, and hold free and harmless the Landlord and the Landlord's agents, officers, and employees, from and against any and all loss or liability for claims that may occur or arise out of the Tenant's use of the Premises.
- (b) Burden of Casualty Loss. It is understood and agreed that if fire, storm, or other casualty destroys or damages the Premises, any part thereof, or any tangible personal property placed therein, each party shall bear the burden of loss occasioned by destruction or injury to the property owned by that party and, to the extent of such interests, all property in which that party has interests. The Landlord is not responsible for any damage to the Tenant's personal property that is stored at the Premises regardless of the cause of damage, except to the extent that the Landlord's willful misconduct or gross negligence is proven to be the proximate cause of damage.

9. INSURANCE

Tenant agrees, at its sole expense, and at all times during the term of this Rental Agreement, to maintain in full force, or to cause to be maintained in full force, a policy or policies of Commercial General Liability Insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of California (or comparable self insurer) that names the Landlord, its officials, officers, employees, agents and volunteers as additional insureds. Such policies shall insure against liability for injury to persons and to property and for death of any person or persons that may occur as a result of or in connection with the existence of the Tenant's property in, on, or about the Landlord's Property and the Tenant's use of the Landlord's Property. Such insurance shall be in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate.

[End – signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE, a municipal organization, "Landlord"

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

By: _____
City Attorney

SAN CLEMENTE HISTORICAL SOCIETY, a not-for-profit organization, "Tenant"

By: _____

Its: _____

Dated: _____, 20__

APPROVED AS TO AVAILABILITY OF FUNDING

By: _____
Finance Authorization

EXHIBIT "A"

DESIGNATION OF PROPERTY

Designation of property rental at 100 Avenida Presidio, former Human Resources Office Conference Room and twelve foot by twelve foot (12'x12') space in Old Fire Station, rented to the San Clemente Historical Society.

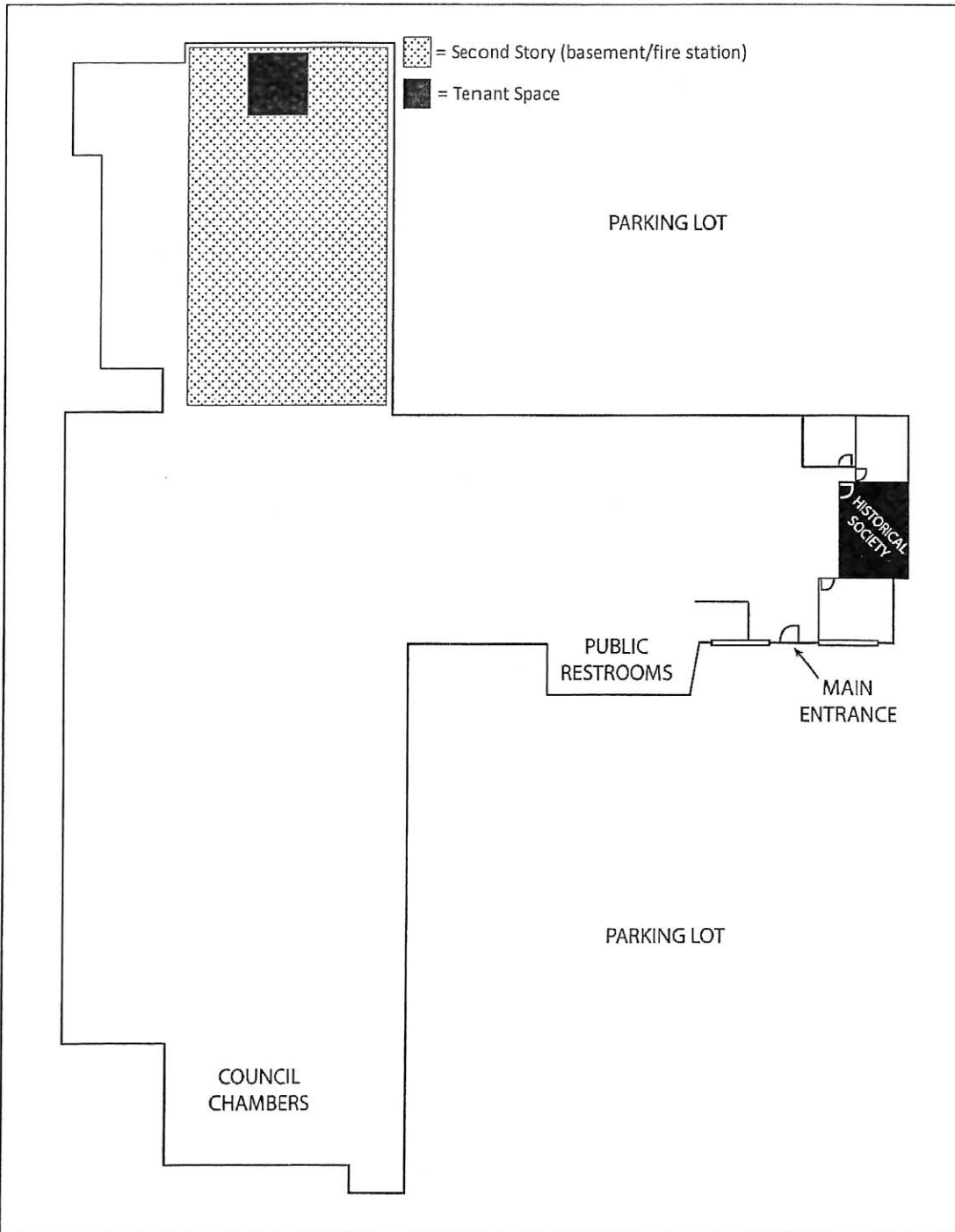


EXHIBIT "A"



COPYRIGHT LICENSE AGREEMENT

THIS COPYRIGHT LICENSE AGREEMENT (hereinafter "Agreement") is made and entered into this ____ day of January, 2019 (the "Effective Date") by and between the City of San Clemente, a municipal corporation, of 910 Calle Negocio, San Clemente, California 92673 (hereinafter "City", and San Clemente Historical Society, a non-profit 501(c)3 corporation, of P.O. Box 283, San Clemente, California 92674 (hereinafter "Society").

RECITALS:

WHEREAS the City is the municipal agency, incorporated on February 28, 1928, providing governance over the citizens, public funds, real properties, and assets; and

WHEREAS the Society is a non-profit 501(c)3 corporation operating since March 18, 1973 with the mission to preserve, collect, and share the history of San Clemente, including its historical landmarks, materials, and resources; and

WHEREAS the parties have reached certain understandings and agreement concerning the copyright and use of materials and resources related to the history of the San Clemente.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, the parties AGREE as follow:

COVENANTS:

1. LICENSE

Society hereby grants during the term of this Agreement to City a person, non-transferrable, limited, worldwide, non-exclusive, royalty-free, fully paid-up license to use, copy and distribute Images solely for the purpose of City promoting historical preservation in San Clemente. For purpose of this Agreement "Images" shall be defined to mean those images of historic San Clemente contained within the Society archives. City shall not utilize the Images without first securing Society's consent as to how City will use the Image and Society's confirmation that City's use complies with any Society quality standards that it may issue from time to time.

2. NO MODIFICATION

City shall not, without the prior written consent of Society, which may be withheld for any reason, (a) change, modify, or create any variation of the Images.

3. OWNERSHIP

- (a) City acknowledges and agrees that Society owns the Images and all materials in the Society archives and that all rights therein and goodwill pertaining thereto including, for clarity, all derivative works based thereon and City's use of the

Images and any and all goodwill generated thereby or associated therewith shall inure solely to Society's benefit.

4. STORAGE & RETENTION

(a) Digital Imaging. City shall contract with a professional imaging company or companies for the digital imaging and storage of materials and artifacts that constitute the Society archives. Each image and artifact shall be tagged in such a manner that is searchable by facility, asset, landmark, or action. Both parties shall receive copies of all work completed by the imaging company or companies.

(b) Storage. Society shall have access to storage space as designated by City and agreed upon through a separate Rental Agreement, executed concurrently with this Agreement. Should City require access to materials, Society shall assist in the acquisition of hard copies of said materials.

5. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

Society makes no representations or extends any warranties of any kind, express or implied, statutory or otherwise, including warranties of title, non-infringement, validity, enforceability, absence or scope of any encumbrances, merchantability, or fitness for a particular purpose and all such representations and warranties are hereby expressly disclaimed. Any information provided by society is made available on an "as is" basis without warranty with respect to completeness or any applicable law, or fitness for a particular purpose or any other kind of warranty whether express or implied.

6. LIMITATION OF LIABILITY

Notwithstanding any other provision of this agreement to the contrary, in no event will society be liable for any special, incidental, indirect, collateral, consequential or punitive damages suffered by city, however caused and on any theory of liability, in connection with any damages arising hereunder.

7. ENFORCEMENT

(a) City shall promptly notify Society in writing upon learning of (a) any conflicting uses of, or any applications of or registrations for any acts of infringement, unfair competition, unauthorized use or dilution involving the Images.

(b) Society will have the sole right and authority (but not the obligation) to control enforcement of the Images, including the right to initiate any opposition, cancellation or infringement proceedings.

8. TERM

This Agreement and the rights, obligations and privileges contained herein shall remain in full force and effect so long as that certain Rental Agreement, executed concurrently with this Agreement where City rents certain space to Society (as contemplated in

Section 4(b) herein), remains in effect. However, either party shall have the ability to terminate this Agreement without cause upon providing thirty (30) days' prior written notice to the other party. Upon termination or expiration of this Agreement, City shall immediately cease all use and remove all uses of the Images and return to Society the City's digital copies (per Section 4 herein) of the Society archive.

9. MISCELLANEOUS

- (a) Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings, or ancillary covenants, undertakings, or agreements that are not contained or expressly referred to herein. No testimony or evidence of any such representation, understanding, or covenant shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.
- (b) Severability. If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable, then this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.
- (c) Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.
- (d) Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- (e) Singular and Plural. As used herein, the singular of any word includes the plural.
- (f) Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
- (g) Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.
- (h) No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No

other person shall have any right of action based upon any provision of this Agreement.

- (i) Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control.
- (j) Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.
- ~~(k) Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or such other appropriate court in said county, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court. Service of process on City shall be made in accordance with California law. Service of process shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between the parties seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorney's fees.~~
- ~~(k)~~ Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of both parties.
- ~~(m)~~ (l) Corporate Authority. Each party represents and warrants that (i) it is duly organized and existing; (ii) each person that is executing this Agreement on behalf that party is duly authorized to execute and deliver this Agreement on behalf of said party; (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

10. NOTICES

All notices under this Agreement shall be effective upon personal delivery or three (3) business days after deposit in the United States mail, registered, certified, postage fully prepaid and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

If to City:	City of San Clemente 910 Calle Negocio San Clemente, CA 92673 Attention: City Manager
With a copy to:	Best, Best, and Krieger LLP 18101 Von Karman Ave, Suite 1000 Irvine, CA 92612 Attention: Scott Smith, City Attorney
If to Society:	San Clemente Historical Society P.O. Box 283 San Clemente, CA 92674-0283 Attention: President

11. INDEMNIFICATION

TO THE FULLEST EXTENT PERMITTED BY LAW (including, without limitation, California Civil Code Sections 2782 and 2782.6), Society shall defend (with legal counsel reasonably acceptable to City), indemnify, and hold free and harmless City and City agents, officers, and employees, (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of any Society participants, invitees officers, agents, employees, representatives, or subcontractors of Society [collectively, the "Society entities"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of any or all Society entities use of the City facilities, by any of the Society entities anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole and active negligence or willful misconduct of such Indemnitee.

[End – signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth of the date indicated above.

CITY OF SAN CLEMENTE, a municipal corporation ("City")

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

By: _____
City Attorney

SAN CLEMENTE HISTORICAL SOCIETY, a not-for-profit corporation ("Society")

By: _____

Its: _____

Dated: _____, 20__