COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL

(1) DEPARTMENT	(2) MEETING DATE	(3) CONTACT/PHONE
General Services	February 28, 2006	Duane P. Leib (805)781-5200 lvf

(4) SUBJECT
Request to approve a Lease Agreement between the County and the Friends of the San Luis Obispo Botanical Garden, a 501(C)(3) non-profit corporation, to lease approximately 150 acres of County-owned property at El Chorro Regional Park for a term of 99 years.

(5) SUMMARY OF REQUEST
Approval of the attached long-term Lease Agreement shall permit the Friends of the San Luis Obispo Botanical Garden to lease a portion of El Chorro Regional Park to be further developed in accordance with the Botanical Garden Master Plan.

(6) RECOMMENDED ACTION
The Department of General Services recommends your Board approve, by a four-fifths vote, the attached Lease Agreement and authorize the Chairperson to sign the document.

(7) FUNDING SOURCE(S)	(8) CURRENT YEAR COST	(9) ANNUAL COST	(10) BUDGETED?
n/a	n/a	n/a	☐ YES ☒ N/A ☐ NO

(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST):
County Counsel

(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? ☒ No ☐ Yes, How Many? _____
☐ Permanent _____ ☐ Limited Term ____ ☐ Contract _____ ☐ Temporary Help _____

(13) SUPERVISOR DISTRICT(S)	(14) LOCATION MAP
1st, 2nd, 3rd, 4th, 5th, All	☒ Attached ☐ N/A
(15) AGENDA PLACEMENT ☐ Consent ☐ Hearing (Time Est. _____) ☐ Presentation ☐ Board Business (Time Est. _____)	(16) EXECUTED DOCUMENTS ☐ Resolutions (Orig + 4 copies) ☒ Contracts (Orig + 4 copies) ☐ Ordinances (Orig + 4 copies) ☐ N/A
(17) NEED EXTRA EXECUTED COPIES? ☐ Number: _____ ☐ Attached ☒ N/A	(18) APPROPRIATION TRANSFER REQUIRED? ☐ Submitted ☐ 4/5th's Vote Required ☒ N/A

(19) ADMINISTRATIVE OFFICE REVIEW

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(2.27.06)

COUNTY OF SAN LUIS OBISPO
department of general services
COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5200
DUANE P. LEIB, DIRECTOR

TO: **BOARD OF SUPERVISORS**

FROM: for **DUANE P. LEIB, GENERAL SERVICES DIRECTOR**

DATE: **FEBRUARY 28, 2006**

SUBJECT: **REQUEST TO APPROVE A LEASE AGREEMENT BETWEEN THE COUNTY AND THE FRIENDS OF THE SAN LUIS OBISPO BOTANICAL GARDEN, A 501(C)(3) NON-PROFIT CORPORATION, TO LEASE APPROXIMATELY 150 ACRES OF COUNTY-OWNED PROPERTY AT EL CHORRO REGIONAL PARK FOR A TERM OF 99 YEARS.**

RECOMMENDATION

The Department of General Services recommends your Board approve, by a four-fifths vote, the attached Lease Agreement for a 99-year term and authorize the Chairperson of the Board to sign the document.

DISCUSSION

In 1994, the Board of Supervisors approved a Use Permit Agreement between the County and the Friends of the San Luis Obispo Botanical Garden (hereinafter referred to as "Friends") for a term of 40 years, with a mutual option to extend for an additional 40 years. The Friends is a 501(C)(3) non-profit corporation whose goal is to develop a botanical garden to educate the public in the flora of Mediterranean climates around the world and drought-tolerant plant species. The Use Permit allowed the Friends to develop approximately 150 acres of County-owned property located within El Chorro Regional Park into the San Luis Obispo Botanical Garden. Specific goals set out in the agreement were to be reached within the first ten years of the term, and all of those goals have been met.

County Parks recognizes the unique contribution of the Botanical Garden to the vitality of the area, promoting both tourism as well as education. The Friends have become an important partner to County Parks in offering recreational opportunities, since their goals are consistent with the mission of County Parks. The current Use Permit Agreement as well as the lease under consideration also require the Botanical Garden to maintain nursery stock as designated by the County to be used for County Parks projects.

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The Friends are now pursuing substantial grant opportunities to further develop the San Luis Obispo Botanical Garden as envisioned in their Master Plan. This vision includes a stable and prominent public exhibition of five Mediterranean climate regions and facilities that will be models of sustainability. A 99-year lease agreement will help to ensure the longevity of the Botanical Gardens and will provide the opportunity for the Botanical Gardens to qualify for a broader array of funding since the investment of capital will be seen as long-term.

Government Code Section 25536 allows the County to lease, by a four-fifths vote, County-owned real property to be used for park and recreation purposes upon the terms and conditions as determined by the Board. The agreement presented today leases to the Friends of the San Luis Obispo Botanical Garden the 150-acre premises as described in the current Use Permit Agreement for a term of 99 years from the date of signing, with other terms and conditions in substantial conformity with the current agreement.

The Lease Agreement also allows the Director of General Services to sign a future amendment, if mutually agreed upon between County and Friends, to alter the boundary of the Premises to exclude the current Eagle Peak Trail and property north of it and to make an even exchange of acreage so that the northeast section of the Premises is not bisected by the trail. The revised Premises would be required to be the same acreage as the current Premises and be contiguous to the current Premises.

OTHER AGENCY INVOLVEMENT

County Counsel has reviewed and approved the form and legal content of this agreement.

FINANCIAL CONSIDERATIONS

In lieu of monetary rent, the lessee is required to develop the 150-acre property in accordance with their Master Plan. The Lessee must also provide plant materials for use by County Parks. All costs of capital improvements and utilities will be paid by Lessee. Lessee may develop a gift shop and small on-site eating facility and may allow special events such as weddings, festivals, and concerts. Although admission fees are not currently charged, admission fees may be charged in the future by the Botanical Garden. All revenues from fees, sales, and events are retained by Lessee to fund and maintain future improvements. Admission fees charged by the Botanical Garden will be in addition to Admission Fees charged by County Parks for entrance to El Chorro Regional Park.

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RESULTS

Approval of the attached Lease Agreement shall permit the Friends of the San Luis Obispo Botanical Garden to lease approximately 150 acres of County-owned property located in El Chorro Regional Park for a term of 99 years. The location of the premises and the terms of the agreement are substantially the same as contained in the current Use Permit Agreement dated September 20, 1994.

F:\bos\022806\Botanical Gardens Lease

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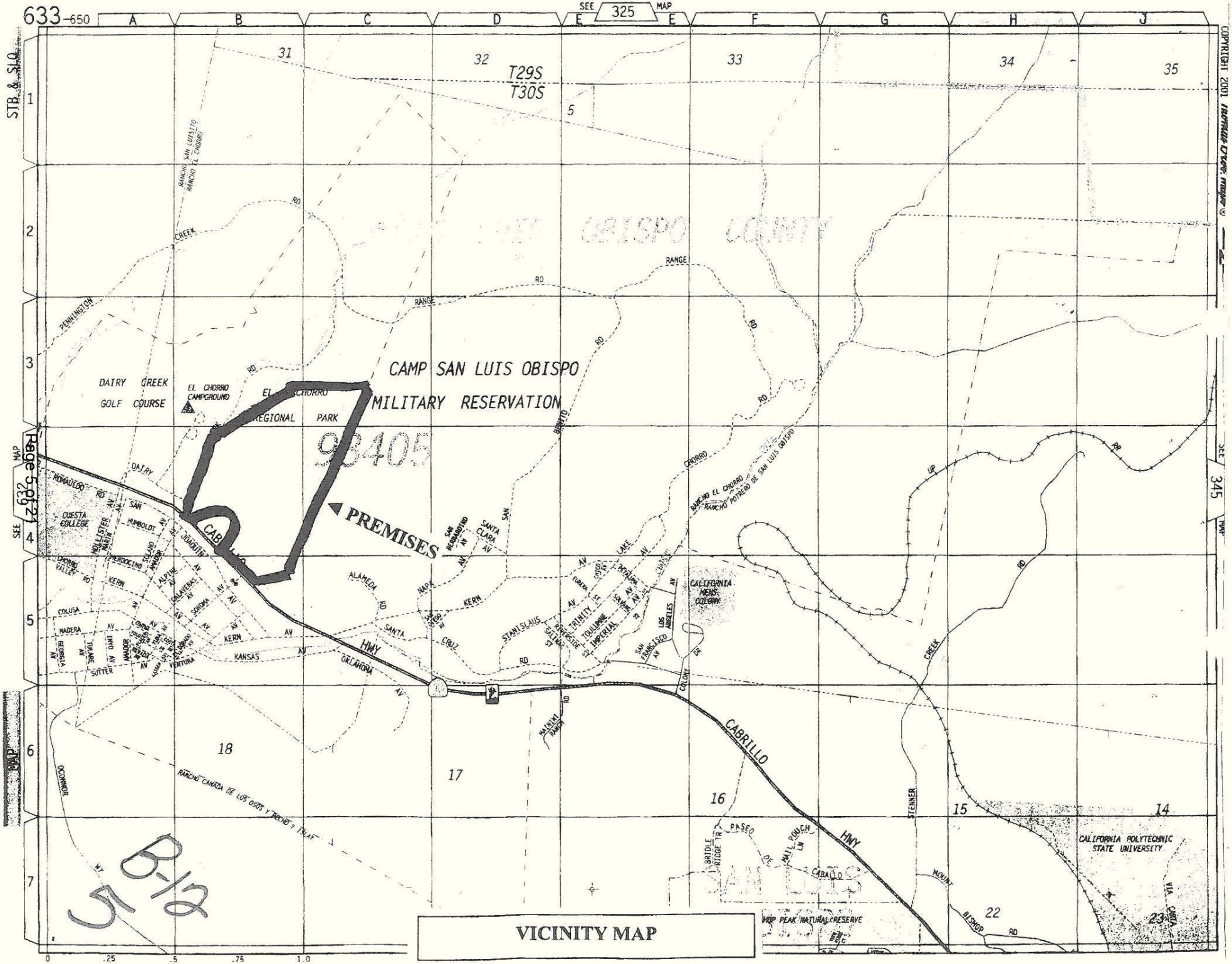
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CAMP SAN LUIS OBISPO
MILITARY RESERVATION
DAIRY CREEK
GOLF COURSE
EL CHORRO CAMPGROUND
EL CHORRO REGIONAL PARK
PREMISES
CUESTA COLLEGE
CALIFORNIA MENS COLONY
CALIFORNIA POLYTECHNIC STATE UNIVERSITY
CABRILLO HWY
RANCHO CANADA DE LOS OSOS Y PACHO Y ISLAY
RANCHO EL CHORRO
RANCHO POTRERO DE SAN LUIS OBISPO
RANCHO SAN LUISITO
RANCHO EL CHORRO
PENNINGTON CREEK
RANGE RD
DAIRY
ROMAULDO RD
SAN HUMBOLDT
JOAQUIN
MENDOCINO
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COLUSA
MADERA
SUTTER
VENTURA
KANSAS
OKLAHOMA
ALAMEDA RD
SANTA CRUZ RD
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SANTA CLARA AV
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SAN FRANCISCO AV
LOS ANGELES AV
COLONY DR
MAINIMI RANCH RD
OCONNOR
BRIDLE RIDGE TR
PASEO DE CABALLO
MAIL POUCH LN
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MOUNT BISHOP RD
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SAN LUIS OBISPO COUNTY
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VICINITY MAP
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LEASE AGREEMENT

WHEREAS, the County of San Luis Obispo (hereinafter referred to as "County") owns real property in the unincorporated area of San Luis Obispo known as the El Chorro Regional Park; and

WHEREAS, the Friends of the San Luis Obispo Botanical Garden (hereinafter referred to as "Lessee") is a 501(c)(3) non-profit corporation whose goal is to develop a botanical garden to educate the public in the flora of Mediterranean climates around the world and drought-tolerant plant species; and

WHEREAS, the location of El Chorro Regional Park on scenic Highway One with proximity to Cuesta College and Cal Poly is ideal for the promotion of recreation, tourism, and education; and

WHEREAS, the goals as stated in the Master Plan for the San Luis Obispo Botanical Garden which was presented to the County Board of Supervisors on November 16, 1999 (hereinafter referred to as "Master Plan") are consistent with the mission of County Parks; and

WHEREAS, the County, recognizing the unique contribution of the Botanical Garden to the vitality of the area, on September 20, 1994 signed a long-term Use Permit Agreement with Lessee to allow them to develop a botanical garden on approximately 150 acres of County-owned property within El Chorro Regional Park; and

WHEREAS, in lieu of monetary rent, said Use Permit Agreement required the Botanical Garden to make specific improvements to the property and to maintain nursery stock as designated by the County to be used for County Parks projects; and

WHEREAS, the Botanical Garden has fulfilled their obligations of the Use Permit Agreement during the first 12 years of the term and has become an important partner to County Parks in offering recreational opportunities; and

WHEREAS, further development of the Botanical Garden in accordance with their Master Plan into one of the premiere educational and scientific gardens in California will require substantial grant funding; and

WHEREAS, a stable lease agreement with a 99-year term will help to ensure the longevity of the Botanical Gardens and will provide the opportunity for the Botanical Gardens to qualify for a broader array of funding;

WHEREAS, this agreement is in the best interest of the public;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

THIS LEASE AGREEMENT is entered into between the County of San Luis Obispo, hereinafter referred to as "County" and Friends of the San Luis Obispo Botanical Garden, a non-profit corporation, hereinafter referred to as "Lessee," and will replace and supersede all previous agreements between County and Lessee with respect to the Premises hereinafter described.

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1. Premises: County hereby leases to Lessee, and Lessee hereby hires and takes from County, for the term and upon the conditions hereinafter set forth, those certain premises consisting of approximately 150 acres of unimproved property, hereinafter referred to as "Premises," and shown on Exhibit "A," attached hereto and incorporated herein by reference, located at El Chorro Regional Park, off of Highway 1 (a portion of Assessor's Parcel Number 073-221-020).

County and Lessee acknowledge that Eagle Peak Trail is a public trail that traverses the northeast section of the Premises. Lessee agrees and acknowledges that the public shall have access to the Eagle Peak Trail. County shall maintain the trail and accepts liability with regards to activities related to the trail. County shall defend, indemnify and hold harmless Lessee from any and all claims and demands, costs, expenses, judgments, or liabilities that may be asserted by any person or entity that arise out of or in connection with activities related to use or maintenance of the trail.

County and Lessee may mutually agree in writing to alter the boundary of the Premises so that the Eagle Peak Trail and property North of the trail is no longer included within the Premises. In this event, acreage shall be added to the Premises so that the acreage of the revised Premises shall be no less than the current acreage of the Premises. Lessee agrees to provide a revised legal description and drawing of the revised Premises to replace Exhibit "A" of this Lease Agreement. The Director of General Services is authorized to sign an amendment to this Lease Agreement to alter the description of the Premises, provided that the size of the Premises shall remain the same and be contiguous to the existing premises.

2. Quiet Possession: County shall place Lessee in quiet possession of the Premises on the commencement of the term hereof, and subject to Lessee performing and observing all applicable conditions and covenants, as contained in this lease agreement, County shall secure to Lessee the quiet possession of the Premises during the term hereof against all persons claiming the same.

3. Term: The term of this Lease Agreement shall be for a period of ninety-nine (99) years, unless earlier terminated pursuant to the provisions of this Lease Agreement. The term shall commence upon execution of this Lease Agreement by the San Luis Obispo County Board of Supervisors and shall terminate ninety-nine (99) years thereafter.

4. Consideration: As consideration for the use and occupancy of the Premises, Lessee shall maintain nursery stock of Mediterranean-zone plants as shall from time to time be designated by County for County Parks' use. Lessee and County shall work together in good faith to develop an appropriate list of plant species and a five-year growing plan.

In further consideration for the use and occupancy of the premises as identified in Paragraph 6 herein, the use of said premises shall be for the benefit of the public and shall serve the educational, recreational and research needs of the local residents and visitors.

5. Management: The Lessee and the County shall develop and execute a Memorandum of Understanding (MOU) that describes in greater detail the relationship of the two parties relative to the management of the facilities. The MOU will include specific arrangements for provision of plants to the County as partial fulfillment of the consideration requirements set forth above. Said MOU may be amended from time to time, upon mutual written agreement by both parties.

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6. Use of Premises: The Premises shall be used for the primary purpose of establishing, managing, operating and maintaining a regional botanical garden that will emphasize the flora of Mediterranean climates around the world, and will serve the educational, recreational and research needs of local residents and out-of-town visitors and guests. Lessee shall also have the right to conduct other related non-profit activities on an occasional basis such as festivals, workshops, educational outreach programs and special events (i.e., weddings, receptions, festivals, concerts, fund raisers, etc.), which are consistent with County policy. Activities beyond those listed are subject to the prior written approval of the County General Services Director ("Director") or his designee. Such request shall be reviewed in an expeditious manner by the Director and permission not unreasonably withheld. In the event that any activity or special event causes or creates a concern for life, health, safety or compatibility with the surrounding area, County shall have the right to terminate authorization for such activity or event.

A. As the botanical garden is developed, Lessee shall have the right to conduct related, incidental non-profit activities such as a gift shop/book store, plant sales, and on-site eating facilities, as are customarily associated with the operation of a botanical garden. Said activities are contingent upon fulfilling requirements as defined in this Lease Agreement. Such on-site eating facilities shall include a kitchen for the preparation and serving of food and shall be in the nature of a small tea house, sandwich shop or café serving sandwiches, salads, snacks, soft drinks and similar items for the convenience of guests, visitors, patrons, volunteers and employees of the botanical garden.

B. No alcoholic beverages shall be sold or consumed on the Premises without the express written consent of the Director, or his designee. Alcoholic beverages may only be served by Lessee, caterers or others in conjunction with special events (i.e., weddings, receptions, festivals, concerts, fund raisers, etc.) subject to all permits required by law first being obtained by Lessee.

C. Except as contemplated in this Lease Agreement, Lessee shall not have the right to utilize the Premises as a commercial business operation or for any purpose other than as designated herein or otherwise approved by the Director, or his designee.

D. Lessee shall not grow on the Premises those plant species identified as restricted on the Planting Policy for the County of San Luis Obispo.

E. Lessee shall obtain emergency medical care for any member of the public who is in need thereof because of illness or injury occurring on the Premises.

F. Lessee understands and acknowledges that County owns and operates a water tank, water main and related water facilities that traverse on and over the premises. Lessee agrees and acknowledges that said water facilities are the property and responsibility of County and Lessee shall not disturb or conduct any activity which would interfere or interrupt with said facilities. County or its agents shall, at all times, have access to said water facilities for inspection, repair, maintenance, or other necessary activities.

7. Admission Fees: Lessee shall have the right to charge admission or other fees for access to, and use of, the Premises except that the same shall be waived for County employees and other persons, as may from time to time be determined by Lessee, entering the Premises on business with the Lessee. Day use fees charged by County for entering El Chorro Regional Park, shall be waived for such persons having business confined solely with the Lessee, but shall not

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be waived for general visitors to the botanical garden. All admission fees charged by Lessee shall be retained by Lessee to offset operating and maintenance costs, or for such other purposes as may from time to time be designated by Lessee in the sole discretion of Lessee. Lessee shall provide to County on an annual basis a list of fees being charged on the premises.

8. Water Allotment: The County understands that in order to create a regional botanical garden on the Premises, a sufficient amount of water is needed. County agrees to furnish water to Lessee that is in excess to the needs of County at El Chorro Park but County cannot guarantee a specific quantity of water for the sole use of the Lessee. If the amount of water Lessee receives from the County is not adequate for the Lessee's needs to support the botanical garden, then Lessee shall have the right, at its option, to terminate this Lease Agreement upon a ninety (90) day written notice to County. The Lessee may make any other reasonable arrangements for the provision of water at its own expense.

9. Utilities: County shall not be required to furnish any service to the Premises, including but not limited to heat, water, 'electrical, natural gas and garbage disposal, and shall not be liable for any failure of water supply or of any service by any utility. Lessee shall be responsible for all costs relative to the installation and use of utility services. Lessee shall place all utilities in the name of Lessee, and Lessee agrees to promptly pay all charges for all utilities and services used or charges imposed in or about or supplied to the Premises, and shall indemnify the County against any and all liability on such account.

10. Maintenance: Lessee, at Lessee's sole cost and expense, shall maintain and keep the Premises and every structural portion thereof in a good state of repair during the term of this Lease Agreement and shall not, at any time, commit or suffer to be committed any waste, nuisance, or unlawful act thereon. County shall have the right to inspect the Premises at any reasonable time to protect the health, safety and welfare of individuals using the Premises. Lessee shall promptly repair or correct any problem identified in writing by the Director, or his designee. Should Lessee fail or neglect to make such repairs as necessary to;

a) protect the health, safety or welfare of individuals using the Premises; and/or
b) protect the financial value or worth or facilities and improvements on the premises

The Director, or his designee may, after thirty (30) days written notice to Lessee, make said repairs and charge Lessee for same and Lessee shall reimburse County for said costs upon demand.

11. Signs: Lessee, at its sole cost, shall have the right to place, construct and maintain a sign on the Premises, advertising its business on the Premises. However, no signage shall be placed without prior written consent of the Director or his designee. Any sign that Lessee has the right to place, construct, and maintain shall comply with all laws, and Lessee shall obtain any approval required by such laws. County makes no representation with respect to Lessee's ability to obtain such approval.

12. Construction on Premises: Any construction and/or capital improvements to be undertaken hereunder, other than those incident to the maintenance and care of the Botanical Garden premises, shall be administered as follows:

Lessee shall have the right on said Premises, at Lessee's sole cost and expense, to construct and/or improve said Premises subject to prior written approval by the Director or his designee.

Any contractor or subcontractor responsible to Lessee shall at all times be in compliance with the insurance requirements specified in Paragraph 15.

Lessee agrees to submit to the Director, for review and approval, all plans including specifications, working drawings, and other information required by the Director covering the projects to be accomplished by Lessee. Said plans shall be submitted to the Director for County approval at least thirty (30) days in advance of the initiation of any such projects. If the Director objects to all or any portion of such plans, Director shall state the objections specifically, and the Lessee shall make the changes specified and resubmit the plans as revised for the Directors approval as herein provided. No improvement or alteration shall be made to the Premises or any portion thereof without the submission to and prior written approval of the plans by the Director or 'his designee. In addition, the following shall apply to any construction or improvement to the Premises:

A. Nothing herein shall be construed to be a waiver of formal County building and land use review procedures and Lessee shall comply fully with same at Lessee's sole cost and expense.

B. Lessee shall install or otherwise provide for parking facilities and construct a roadway to such facilities to provide adequate parking for any proposed development.

C. Lessee shall be responsible for developing and maintaining landscaping on the Premises. All utilities to the Premises shall be extended at the sole cost and expense of Lessee. Said utilities shall include, but not be limited to, water, sewer, electricity, natural gas and telephone.

D. Lessee shall be responsible for any environmental determination. If an E.I.R. or C.E.Q.A. or other environmental review is needed, Lessee shall comply at Lessee's sole cost and expense.

E. County retains the right to make any improvements to the premises as necessary which improvements shall not be inconsistent with the Lessee's use of the premises. Nothing contained in this agreement shall be deemed or construed in any way to limit the County's authority to exercise any right or power concerning the utilization of the Premises. Lessee use of the Premises shall be subordinate to the County's use, however County shall notify Lessee of any intended use of the premises by the County and any such use shall not be inconsistent with nor interfere with Lessee's use of the premises.

13. Ownership of Improvements: Title to improvements on the Premises which have been constructed by Lessee at the commencement of this Lease Agreement shall remain in the Lessee. The ownership of all approved improvements constructed by the Lessee, if any, shall remain in Lessee until expiration of the term of this Lease Agreement .

At the expiration or earlier termination of this Lease Agreement, all alterations, modifications, or improvements upon the Premises, whether made by County or Lessee shall, absent any agreement between the County and Lessee to the contrary, or unless County otherwise elects, which election shall be made by giving a notice in writing not less than fifteen (15) working days prior to the expiration or other termination of this Lease Agreement, become the property of County and shall, without compensation to Lessee, become County property free and clear of all claims to or against the improvements by Lessee or any third person. Lessee shall defend and

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indemnify the County against all liability and loss arising from such claims or from the County's exercise of the rights conferred by this paragraph; in the event the County so elects, County shall be responsible for the removal of said improvements after the termination of the expiration of the tenancy.

Relative to Lessee owned improvements, at the termination of the tenancy, County shall notify Lessee to remove any or all of the alterations, additions, or improvements made by Lessee. Lessee shall do so, at Lessee's sole cost and expense, and shall promptly repair any damage caused by such removal in a first class manner. Removal is to be completed no later than sixty (60) days from the date of said notice or at such further time as County may agree to in writing. In the event Lessee fails to remove any or all of the alterations, additions, or improvements required by County, County may remove same and charge Lessee for the cost of such removals and Lessee hereby agrees to pay any and all such costs upon demand.

14. Protection on Premises: Lessee agrees to take all reasonable precautions to protect Premises from damage, theft, vandalism and other such hazards.

15. Insurance: Lessee shall obtain and maintain for the entire term of the Agreement and Lessee shall not perform any work under this Agreement until after he has obtained insurance complying with the provisions of this paragraph. Said policies shall be issued by companies authorized to do business in the State of California. Lessee shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

A. Commercial Liability Insurance: Lessee shall maintain in full force and effect for the period covered by this Agreement, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of Lessee's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage in the total amount of One Million Dollars ($1,000,000). The following endorsements must be attached to the policy:

(1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence."
(2) The policy must cover personal injury as well as bodily injury.
(3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

B. Workers' Compensation Insurance: In accordance with the provisions of sections 3700 *et seq.*, of the California Labor Code, if Lessee has any employees, Lessee is required to be insured against liability for workers' compensation or to undertake self insurance. Lessee agrees to comply with such provisions before commencing the performance of this Contract.

C. Additional Insureds to be Covered: The commercial general liability policies shall name "County of San Luis Obispo, its officers, employees, and agents" as additional insureds. The policy shall provide that the Lessee's insurance will operate as primary insurance and that no other insurance maintained by the County, or additional insureds will be called upon to contribute to a loss hereunder.

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D. Certification of Coverage: Prior to commencing work under this contract, Lessee shall furnish County with the following for each insurance policy required to be maintained by this Agreement:

(1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the County.
(2) A Workers' Compensation certificate of insurance must be provided.
(3) Upon written request by the County, the Lessee shall provide a copy of the complete insurance policy.
(4) Approval of Insurance by County shall not relieve or decrease the extent to which the Lessee may be held responsible for payment of damages resulting from Lessee's services or operations pursuant to this Agreement. Further, County's act of acceptance of an insurance policy does not waive or relieve Lessee's obligations to provide the insurance coverage required by the specific written provisions of this Agreement.

E. Effect of Failure or Refusal: If Lessee fails or refuses to procure or maintain the insurance required by this contract, or fails or refuses to furnish County with the certifications required by Subparagraph D. above, County shall have the right, at its option, to forthwith terminate the Agreement for cause.

16. Indemnification: Lessee shall defend, indemnify and hold harmless the County, its officers and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or in connection with the acts or omissions relating to the performance of any obligation or duty provided for or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises hereunder. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

The preceding paragraph applies to any theory of recovery relating to said act or omission by the Lessee, or its agents, employees or other independent contractors directly responsible to Lessee, including, but not limited to, the following:

A. Violation of statute, ordinance, or regulation.
B. Professional malpractice.
C. Willful, intentional or other wrongful acts, or failures to act.
D. Negligence or recklessness.
E. Furnishing of defective or dangerous products.
F. Premises liability.
G. Strict liability.
H. Inverse Condemnation.
I. Violation of civil rights.
J. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when the Lessee is not an independent contractor.

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It is the intent of the parties to provide the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this contract and the remaining language shall be given full force and effect.

17. Taxes: During the term of this Lease Agreement, Lessee hereby agrees to pay, prior to delinquency, all taxes and assessments, including both general and special, levied or assessed against the Premises and in connection with the Premises and Lessee's operation thereof, including without limitation, taxes on Lessee's possessory interest hereunder or in the Premises, and taxes or assessments on all structures, improvements, and fixtures now or hereinafter existing on the Premises, and on any personal property situated in, on, or about the Premises, or in, on or about any structures or improvements thereon. Lessee is hereby informed that a possessory interest subject to property taxation may be created by this Lease Agreement and that the party to whom the possessory interest is vested (Lessee) may be subject to the payment of property taxes levied on such interest. Lessee hereby agrees to pay such taxes prior to delinquency.

18. Inspection of Premises: The Director, or his designee, reserves the right of ingress and egress at any reasonable time to inspect, investigate and survey the Premises as deemed necessary by the Director, and the right to do any and all work of any nature for the preservation and maintenance of the Premises or improvements thereon without interfering with Lessee's use of the premises.

19. Assignment: Lessee shall neither transfer nor assign this Lease Agreement or any property on the Premises, nor sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Lease Agreement without the prior written consent of the County.

20. Environmental Matters/Covenants Regarding Hazardous Materials: Lessee and County shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under such laws, ordinances or regulations (collectively, "Hazardous Materials").

Lessee shall, except in the event of County's negligence, indemnify, defend, protect, and hold County and each of County's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

A. The presence in, on, under or about the Premises or discharge in or from the Premises of any Hazardous Materials or Lessee's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Premises, or

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B. Lessee's or County's failure to comply with any Hazardous Materials Law. Lessee's or County's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Lessee and County and shall survive the expiration or earlier termination of the term of this Lease Agreement. For purposes of the release and indemnity provisions hereof, any acts or omissions of Lessee, or by employees, agents, assignees, contractors or subcontractors of Lessee or others acting for or on behalf of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee.

21. Condemnation: If the whole of the Premises shall be taken or condemned by any competent authority under power of eminent domain for a public or a quasi-public use or purpose, then the leasehold estate hereby created shall cease and terminate as of the date actual physical possession of the Premises is taken by the condemnor. All compensation and damages awarded for such total taking shall belong to and be the sole property of County, provided, however, that Lessee shall be entitled to receive a sum attributable to the taking of damage to Lessee's equipment, fixtures, or any improvements to the Premises which Lessee would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Lease. Upon termination of the Lease by a total taking all rental and other charges payable by Lessee to or on behalf of County under the provisions of this Lease shall be paid up to the date on which actual physical possession of the leased Premises shall be taken by the condemnor, and the parties hereto shall thereafter be released from all further liability in relation thereto.

In the event that there shall be partial taking of the leased Premises during the lease term under the power of eminent domain, this Lease shall terminate as to the portion of the released premises so taken on the date when actual physical possession of said portion is taken by the condemnor. At Lessee's option, this Lease shall continue in force and effect as to the remainder of the leased Premises; provided, however, that the rental payable by Lessee for the balance of the term where Lessee elects to continue this Lease shall be abated in the ratio that the square footage of the leased Premises taken bears to the total square footage of the leased Premises at the time of such taking. In the event of such partial taking, all compensation and damages for such partial taking shall belong to and be the sole property of County, provided, however, that Lessee shall be entitled to receive any award made for the taking of, or damage to, Lessee's equipment, fixtures, and any improvements made by Lessee to the leased Premises which Lessee would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Lease. In the event that this Lease is retained as to the portion of the leased Premises not condemned, any award made for alteration, modifications or repairs which may be reasonably required in order to place the remaining portion of the leased Premises not taken in a suitable condition for the continuance of Lessee's tenancy shall belong to and be the sole property of County.

22. Destruction of Premises: Should any matter or condition beyond the control of the parties hereto, such as war, public emergency, or calamity, fire, earthquake, flood, act of God, strike, or any other labor disturbance, prevent performance of this Lease in accordance with the rights and privileges granted herein, this Lease shall immediately be terminated and the County shall be under no legal obligation to the Lessee by reason of said matter or condition.

Should any aforementioned matter or condition create eligibility for Federal, State, or any other governmental jurisdictional relief assistance and/or aid, both parties agree to take all

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reasonable steps necessary to procure such assistance and/or aid, in their respective capacities at the time of such application.

23. Law: This Lease Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Lease Agreement shall be determined and governed by the laws of the State of California.

24. Lessee's Responsibility for Compliance: Lessee shall at all times observe and comply with, and shall cause all his agents, employees and sub-contractors to observe and comply with all present and future laws, statutes, ordinances, regulations, rules, resolutions, or other binding enactments of any governmental authority, now or at any time during this Contract and any extensions thereof. If any future laws, rules, regulations or ordinances are passed by the County and said legislative enactment has any impact fiscal or otherwise on Lessee, and if Lessee does not make a timely objection to County during the course of legislative process, Lessee will be deemed to have waived any right to object at a later time and waives all damages flowing therefrom.

25. Venue: The duties and obligations of the parties created hereunder are performable in San Luis Obispo County, and such County shall be the venue for any action or proceeding that may be brought or arise out of or in connection with or by reason of this Lease.

26. Surrender: Lessee hereby acknowledges that upon expiration of the term of this Lease Agreement, County shall not be under any obligation to operate the botanical garden or provide any of the services mentioned in this Lease Agreement.

27. Employment Status: Neither Lessee nor any of Lessee's agents or contractors are or shall be considered to be employees or agents of County in connection with the performance of Lessee's right and obligations under this Lease Agreement.

28. Non-Discrimination: Lessee and County shall not discriminate against any person or class of persons in violation of the Civil Rights Act of 1964 as amended or any other applicable laws prohibiting discrimination in the use of the Premises.

29. Drug Free Workplace: Lessee and Lessee's employees shall comply with County's policy of a drug free workplace. Neither Lessee nor Lessee's employees shall unlawfully manufacture, distribute, dispense, possess, or use controlled substances, including but not limited to marijuana, heroin, cocaine, methamphetamine, or amphetamines at any of Lessee's facilities or County facilities or work sites. If any employee of Lessee is found to be under the influence of or in possession of any illegal substance at or on County's premises, that employee may not return to any of County's premises. If Lessee becomes aware that any of Lessee's employees, during the course of their employ with Lessee, are convicted or plead nolo contendere to a criminal substance abuse statute, Lessee shall be responsible for notifying the Director within seventy-two (72) hours of becoming aware of said conviction or plea. Violation of this notification provision shall constitute grounds for termination of this Contract.

30. Americans with Disabilities Act: The Lessee acknowledges the passage of the Americans With Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq., ("ADA"). Lessee, as required bylaw, hereby agrees and is required to install any and all equipment, perform any and all alterations, improvements or modifications to the Premises such that the Premises are in strict compliance with ADA requirements.

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31. Holding Over: In the event that Lessee shall hold over after expiration of the term of this Lease Agreement or any extension or renewal thereof, with the consent, express or implied, of County, such holding over shall be deemed merely a tenancy from month-to-month on the terms, covenants, and conditions, so far as applicable, and subject to the same exceptions and reservations, as herein contained, until such tenancy is terminated in a manner prescribed by law.

32. Notices: All notices to Lessee shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, or by certified or registered mail, return receipt requested, and addressed to Lessee at:

Friends of the San Luis Obispo Botanical Garden
P.O. Box 4957
San Luis Obispo, California, 93403,
Attention: President San Luis Obispo Botanical Garden.

All notices to County shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, or by certified or registered mail, return receipt requested, and addressed to:

Department of General Services
1087 Santa Rosa
San Luís Obispo, California, 93408
Attention: Parks Manager.

Either party can change address by notifying the other party in writing.

33. Breach: Notwithstanding any other provisions contained herein, Director may cancel and terminate this Lease Agreement if Lessee shall fail, neglect or refuse to perform and obey any term or condition set forth in this Lease Agreement, including failure to operate the premises as a botanical garden open to the public, after Director has given to Lessee written notice of thirty (30) days to do so, unless such failure, neglect or refusal by nature cannot be remedied within thirty (30) days of said notice and Lessee has within thirty (30) days of the notice commenced and does thereafter continue diligent efforts to remedy such failure, neglect or refusal. Any waiver by County of any failure by Lessee to comply with the terms and conditions of this Lease shall not be construed to be a waiver by County of any similar or other failure by Lessee to comply with any other term or condition hereof.

34. Waiver of Claim: Lessee hereby waives any claim against the County, its officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Lease, or any part thereof or by any judgment or award in any suit or proceeding declaring this Lease null, void or voidable, or delaying the same or any part thereof from being carried out.

35. Provisions Deemed Covenants and Conditions: The parties hereto agree that all the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions are used in each instance, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representative, successors and assigns.

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36. Severability: The invalidity of any provision of this Lease Agreement shall not affect the validity, enforceability of any other provision of this Lease Agreement.

37. Entire Agreement and Modifications: This Lease Agreement embodies the whole Lease between the parties hereto as it pertains to the subject real property and there are no promised terms, conditions, or obligations referring to the subject matter hereof, other than as contained herein. Any alterations, changes or modifications to this Lease Agreement must be in writing and executed by both Lessee and Count

//////////NOTHING FURTHER PAST THIS POINT//////////////////////////

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IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement this 28th day of February 2006.

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors this 28th day of February, 2006.

ATTEST:
JULIE L. RODEWALD
Clerk of the Board of Supervisors
By: C M Christensen
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel
By: _____
Deputy County Counsel

2/15/06
DATE

The undersigned Deputy Clerk of the Board of Supervisors certifies that, pursuant to Section 25103 of the Government Code, delivery of this document has been made on MAR 0 2 2006

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk
of the Board of Supervisors
By C M Christensen
Deputy Clerk

LESSEE: FRIENDS OF THE SAN LUIS OBISPO BOTANICAL GARDEN

I, Leslie Stone, certify that I am authorized to sign as **President of the Friends of the San Luis Obispo Botanical Garden** the within instrument in ~~my~~ stated capacity and that said ~~execution~~ of the same shall be binding.

By: _____
Leslie Stone
~~President~~, Board of Directors

Date: 02/13/2006

On 02/13/2006 before me, N. Marlene Weeks personally appeared **Leslie Stone,** personally known to me (or proved to me on the basis of satisfactory evidence) to be person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

N. Marlene Weeks
Signature
(Seal)
Date: 02/13/2006

SM01 N. MARLENE WEEKS SM01
COMM. #1620276
NOTARY PUBLIC-CALIFORNIA
SAN LUIS OBISPO COUNTY
My Comm. Expires December 7, 2009

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Botanical Garden Legal Description

Being a portion of all that real property situate shown as Lots 6 and 7 of Block C of El Chorro and San Luisito Ranchos, County of San Luis Obispo, State of California, as shown in Book 16, at Page 37, of Record of Surveys in the Office of County Recorder of said County, said portion being described as follows:

Beginning at a found 6"x 6" concrete monument common to Lot 7 of Block C, Lot 10 of Block D of El Chorro and San Luisito Ranchos and the northern right-of-way of California State Highway One as shown on said plat, said monument being the true point of beginning; thence leaving said right-of-way along the line common with said Lots 7 and 10, and continuing along the line common with Lot 6 of Block C of El Chorro and San Luisito Ranchos and said Lot 10, N 24° 39' 47" E, 3973.47 feet; thence leaving said common line with said Lots 6 and 10, N 70° 21' 25" W, 1237.98 feet; thence N 56° 31' 48" W, 94.17 feet; thence S 56° 13' 51" W, 512.18 feet, thence S 71° 57' 46" W, 646.44 feet to a point on the easterly edge of pavement of Dairy Creek Road as said edge of pavement existed on 17 February 1994; thence along said edge of pavement southwesterly along a non-tangent curve whose radial center bears N 85° 10' 03" W having a radius of 475.00 feet, through a central angle of 32° 52' 08" an arc distance of 272.49 feet; thence along a line tangent to said curve S 37° 42' 05" W, 354.52 feet; thence southeasterly along a tangent curve having a radius of 575.00 feet, through a central angle of 35° 00' 42" an arc distance of 351.37 feet; thence along a line tangent to said curve S 2° 41' 22" W, 570.25 feet; thence southwesterly along a tangent curve having a radius of 300.00 feet, through a central angle of 69° 26' 47" an arc distance of 363.62 feet; thence leaving said edge of pavement S 25° 41' 18" E, 61.01 feet to the most westerly fence angle point of the

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EXHIBIT "A"

northerly softball field as existed on 17 February 1994; thence leaving said angle point northeasterly along the outfield fence of said softball field along a non-tangent curve whose radial center bears S 25° 12' 57" E having a radius of 300.00 feet, through a central angle of 82° 45' 14" an arc distance of 433.30 feet to the most easterly fence angle point of said fence; thence leaving said angle point S 32° 27' 42" E, 12.00 feet; thence S 53° 11' 29" W, 107.46 feet; thence S 58° 38' 46" W, 394.19 feet to a point on the north right-of-way line of said State Highway One; thence southeasterly along said right-of-way on a non-tangent curve whose radial center bears S 46° 08' 13" W having a radius of 3080.00 feet, through a central angle of 3° 36' 04" an arc distance of 193.58 feet; thence S 42° 16' 23" E, 712.38 feet; thence S 39° 17' 53" E, 796.95 feet; thence S 49° 03' 35" E, 251.82 feet to the true point of beginning, said portion containing 150.46 acres. (See Exhibit A attached hereto and made apart of).

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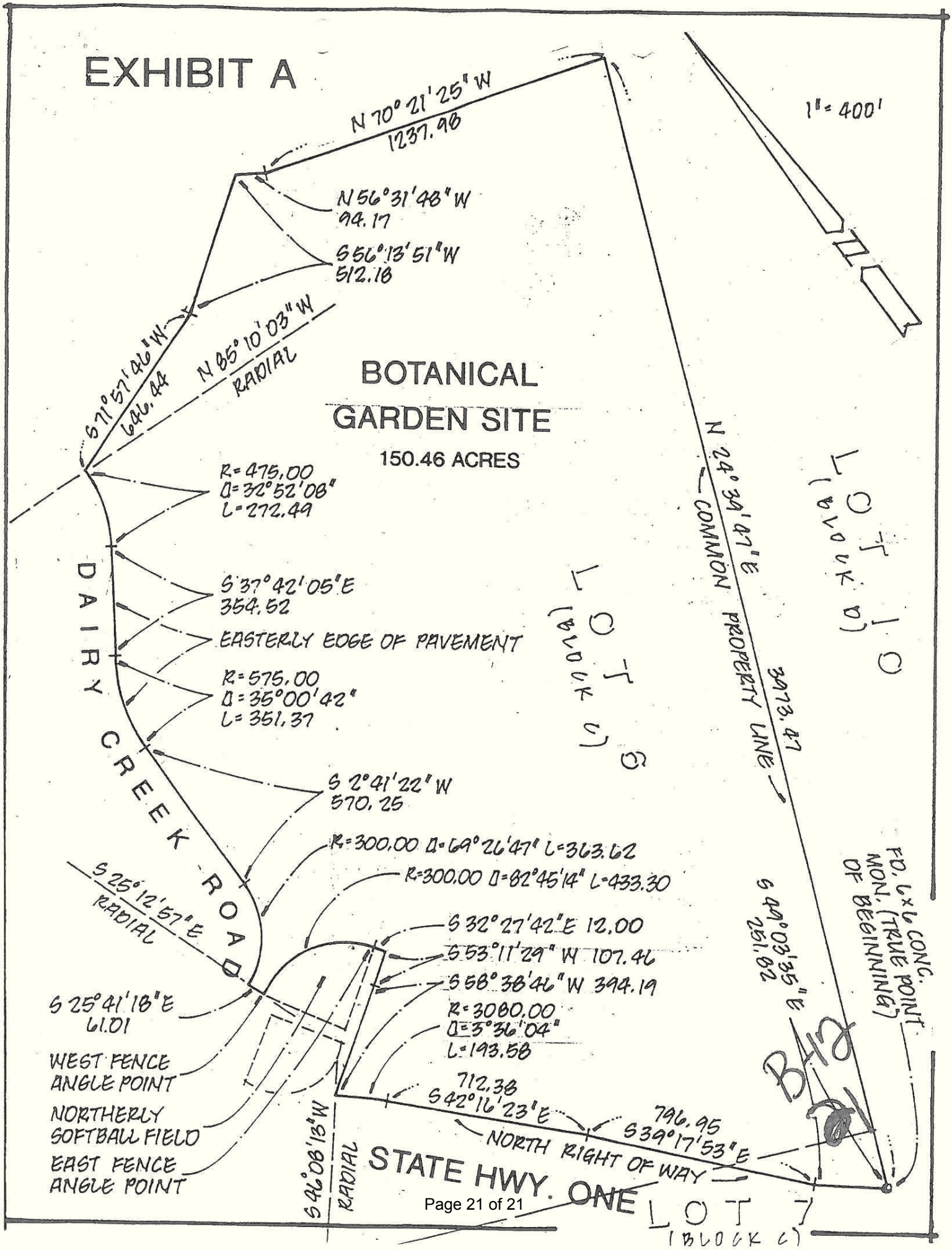
EXHIBIT A
1" = 400'
N 70° 21' 25" W
1237.98
N 56° 31' 48" W
94.17
S 56° 13' 51" W
512.18
S 71° 57' 46" W
646.44
N 85° 10' 03" W
RADIAL
BOTANICAL
GARDEN SITE
150.46 ACRES
R = 475.00
Δ = 32° 52' 08"
L = 272.49
S 37° 42' 05" E
354.52
EASTERLY EDGE OF PAVEMENT
R = 575.00
Δ = 35° 00' 42"
L = 351.37
S 2° 41' 22" W
570.25
R = 300.00 Δ = 69° 26' 47" L = 363.62
R = 300.00 Δ = 82° 45' 14" L = 433.30
S 32° 27' 42" E 12.00
S 53° 11' 29" W 107.46
S 58° 38' 46" W 394.19
R = 3080.00
Δ = 3° 36' 04"
L = 193.58
712.38
S 42° 16' 23" E
796.95
S 39° 17' 53" E
NORTH RIGHT OF WAY
S 46° 08' 13" W
RADIAL
STATE HWY. ONE
DAIRY CREEK ROAD
S 25° 12' 57" E
RADIAL
S 25° 41' 18" E
61.01
WEST FENCE
ANGLE POINT
NORTHERLY
SOFTBALL FIELD
EAST FENCE
ANGLE POINT
N 24° 39' 47" E
COMMON PROPERTY LINE
3973.47
S 49° 03' 35" E
251.82
FD. 6x6 CONC.
MON. (TRUE POINT
OF BEGINNING)
LOT 6
(BLOCK C)
LOT 10
(BLOCK D)
LOT 7
(BLOCK C)
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