

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

522



FROM: Economic Development Agency

SUBMITTAL DATE:
October 21, 2010

SUBJECT: Revenue Ground Lease Agreement – Southwest Botanical Garden, Temecula

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached New Revenue Ground Lease Agreement; and
2. Authorize the Chairman to execute the same on behalf of the County.

BACKGROUND:

In March 2010, the Economic Development Agency issued a Request for Proposal for qualified developers to develop a Botanical Garden on 15.29 acres of County owned land adjacent to the Glen Oaks Fire Station located at 37700 Glen Oaks Road, Temecula.

(Continued on Page 2)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA

| | | | |
|-------------------------------|---------|-------------------------|---------|
| Current F.Y. Total Cost: | (\$800) | In Current Year Budget: | No |
| Current F.Y. Net County Cost: | \$ | Budget Adjustment: | No |
| Annual Net County Cost: | \$ | For Fiscal Year: | 2010/11 |

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: Lease revenue from Southwest Botanical Garden, Temecula

| | |
|----------------------------------|--------------------------|
| Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
| Requires 4/5 Vote | <input type="checkbox"/> |

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Stone and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley
 Nays: None
 Absent: Tavaglione
 Date: November 2, 2010
 xc: EDA, Auditor

Kecia Harper-Ihem
 Clerk of the Board
 By: Deputy

Prev. Agn. Ref.:

District: 3

Agenda Number:

3.13

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FISCAL PROCEDURES APPROVED
 ROBERT E. BYRD, AUDITOR-CONTROLLER
 BY: SAMUEL WONG 10/19/10
 FORM APPROVED COUNTY COUNSEL
 BY: CYNTHIA M. GUNZEL 9-28-10
 DATE:

Policy
 Consent
 Policy
 Consent
 Dep't Recomm.:
 Per Exec. Ofc.:

BACKGROUND:

The objective of the County was to provide a Botanical Garden which complements the landscape of the Temecula Wine Country, creates an area of public interest, and brings horticulture educational value to the community. After review of the responses to the Request for Proposal, an award was made to the Southwest Botanical Garden, a non-profit corporation, for the construction and development of the Garden.

The Botanical Garden will be developed to the north of the existing Glen Oaks Temporary Fire station. The permanent Glen Oaks Fire Station, situated in close proximity to the Temporary Station and adjacent to Glen Oaks Road, is in planning at this time and when completed, will be staffed by fire personnel from the temporary station. The temporary station location will then be closed and vacated and thereafter be utilized by the Southwest Botanical Garden Group as an additional area to develop the Botanical Garden.

The terms of the Revenue Ground Lease between Southwest Botanical Garden and the County are as follows:

Leased Premises: 37700 Glen Oaks Road, Temecula
Lessor: County of Riverside
Lessee: Southwest Botanical Garden
Size: 15.29 Acres
Term: Thirty (30) Years
Rent: \$100.00 per month
Utilities: To be paid for by Lessee
Custodial: Provided by Lessee
Maintenance: Provided by Lessee
Improvements: Lessee shall be responsible for all cost relating to on and off-site improvements of the Southwest Botanical Garden
Completion: Thirty Six (36) Months from execution of Lease
Estimated Annual Revenue to County: \$1,200

FINANCIAL DATA:

This is a revenue ground lease agreement and there are no cost to the County.

GROUND LEASE

**Southwest Botanical Garden, a California Nonprofit Corporation
(Approximately 15.29 acres of vacant land, a portion of APN 924-260-006, located at 37700
Glen Oaks Road, Temecula)**

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| | |
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| Property Description..... | Exhibit "A" |
| Legal Description | Exhibit "B" |
| Site Plan | Exhibit "C" |
| Title Report..... | Exhibit "D" |

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GROUND LEASE
(Southwest Botanical Garden, a California Nonprofit Corporation
Approximately 15.29 acres of vacant land, a portion of APN 924-260-006, located at
37700 Glen Oaks Road, Temecula)

This Lease ("Lease") dated _____ ("The Effective Date") is hereby entered into by and between the **COUNTY OF RIVERSIDE** ("County," herein) and The Southwest Botanical Garden, A California Nonprofit Corporation ("Lessee," herein), (the "Parties") pertaining to the property described below upon the following terms:

1. **Description.** The real property leased consists of a portion of Assessor Parcel Number 924-260-006, located at 37700 Glen Oaks Road, Temecula, California (the "Property", herein), as set forth on Exhibit "A," consisting of approximately 15.29 acres, together with all roads, rights of way and easements and appurtenances, whether public or private, reasonably required for the use contemplated by the parties and as more particularly described in the legal description (Legal Description, herein) to be attached within one hundred twenty (120) days after commencement of this agreement as Exhibit "B" and by this reference made a part of this Lease. The Leased Premises excludes the temporary fire station location until such time as it is vacated, and temporary access to the leased premises shall be as shown on Exhibit "A".

2. **Use.**

(a) The Property is leased hereby for the purpose of constructing, maintaining and operating the Project which consists of a Botanical Garden situated on approximately 15.29 acres of vacant land, (all herein defined as the "Project").

(b) The Property shall not be used for any other purpose without first obtaining the written consent of County, which consent shall be at the absolute discretion of County as determined by its Board of Supervisors.

3. **Term.**

(a) The term of this Lease shall be for a period of thirty (30) years, commencing on the Effective Date of the lease and terminating thirty (30) years thereafter.

(b) Any holding over by Lessee after the expiration of the term of this Lease shall be on a day-to-day basis strictly, and continuing tenancy rights shall not accrue to Lessee. During any such hold over period, Lessee shall be bound by all terms and conditions of this Lease.

4. **Option to Extend.** Lessee shall have one (1) option to extend the term of this Lease for a five (5) year period, which shall be exercised by the Lessee giving the County notice of their election thereof, in writing, no later than one hundred eighty (180) days prior to the expiration of the initial term of the Lease. The rental during the extended term shall be \$100.00 per month.

5. **Rent.** The anniversary dates shall be deemed to fall on the first day of the first full month of each lease year following commencement of the Lease term. Commencing thirty-seven (37) months from the effective date, Lessee shall pay the sum of One Hundred Dollars (\$100.00) per month to Lessor as rent for the Leased Premises, payable, in advance, on the first day of the month, however, in the event rent for any period during the term hereof which is for less than one (1) full calendar month said rent shall be pro-rated based upon the actual number of days of said

1 month, except for the rental for the first thirty six (36) months of the lease shall be three dollars (\$3)
2 payable upon execution of the lease by the parties.

3 **6. Title/Permits.**

4 (a) Within thirty six (36) months of the Effective Date, Lessee shall have
5 obtained all final grading, building and other related permits, entitlements and approvals necessary
6 for lessee to proceed with the construction and development of the property and the Project as
7 shown on the site plan attached as Exhibit "C," and to utilize the Premises for the uses described in
8 Paragraph 2 hereof including, without limitation, all final permits, entitlements and approvals for (A)
9 construction of all buildings if any and other related improvements, (B) signs (in number, size,
10 configuration and location satisfactory to Lessee), (C) site use, and (D) vehicular and pedestrian
11 access to the premises (collectively, the "Permits"). In the event the Lessee has not obtained the
12 Permits within thirty six (36) months of the Effective Date, County in its sole and absolute discretion,
13 may at anytime thereafter, by giving thirty (30) days written notice to Lessee, terminate this Lease.
14 In the event the County elects to terminate this Lease, both Parties shall be relieved from any future
15 liabilities and/or obligations under this Lease, except for any indemnity obligations which shall
16 survive the termination of this Lease

17 (b) The County represents and warrants that the leasehold interest in the
18 Property shall be subject only to those exceptions as set forth in the preliminary title report
19 (Preliminary Title Report, herein) attached hereto as Exhibit "D" and by this reference made a part
20 of this Lease. Said leasehold interest shall be insured by a title insurance company acceptable to
21 County and Lessee.

22 (c) In the event County cannot deliver an insurable Leasehold interest as set
23 forth in Sub-paragraph 6(b) above, this Lease may be terminated at the option of either the Lessee
24 or County. Notification by either party to terminate this Lease shall be in writing.

25 **7. On-Site Improvements.**

(a) Lessee, at its expense, shall construct, or cause to be constructed, upon the
Property, the Project as herein defined, including landscaping, roadways, walkways, and utility
improvements. Subject to the provisions of Paragraphs 6 and 16 herein, construction of the
Project shall commence within a reasonable period of time, (a) at such time as Lessee has
obtained the required approvals from all governmental and regulatory agencies, including the
Permits, and (b) Lessee shall diligently pursue the completion of the construction of the Project
within a reasonable period following commencement of construction of the Project. No less than
ten (10) days before beginning construction of the Project, Lessee shall give County written notice
thereof so that County can post a Notice of Non-Responsibility.

(b) All Project site plans, landscape plans, building elevations, building materials
and colors, sign plans and all other plans and specifications related to the construction of the
Project shall be submitted to the County prior to commencement of any construction activities for
approval, which approval by the County shall be in writing.

(c) Within thirty (30) days following the completion of the Project and any other
improvements, Lessee shall submit to County: (1) (an) itemized statement(s) showing the entire
cost of the Project and related improvements; and (2) copies of lien waivers from all contractors,
subcontractors, suppliers and materialmen involved in construction of the Project.

1 (d) The Project and related improvements constructed by Lessee and any other
2 improvements, alterations and fixtures (including, but not limited to, "trade fixtures" as that term is
3 used in Section 1019 of the Civil Code) on the Property shall be and remain the property of Lessee,
4 except that in the event any portion of the Property is not transferred to Lessee or its assignee on
5 expiration or earlier termination of the Lease, then the Project, related improvements constructed
6 by Lessee or any other improvements, alterations and fixtures of Lessee located on such portions
7 of the Property not transferred to Lessee or its assignee shall become the property of the County or
8 its assignee. At or prior to expiration or termination of this Lease, Lessee may remove such trade
9 fixtures; provided, however, that such removal does not cause injury or damage to the Property, or
10 in the event it does, Lessee shall restore the Property as nearly as practicable. If Lessee fails to
11 make such repairs prior to the expiration or termination of this Lease, County may, but shall not be
12 obligated to, make said repairs and Lessee shall reimburse County for all costs so incurred within
13 thirty (30) days of Lessee's receipt of billing therefore in the event such trade fixtures are not
14 removed from any portion of the Property transferred to Lessee or its assignee on expiration or
15 earlier termination of the Lease, then the County may, at its election, either: (1) remove and store
16 such fixtures and restore the Property for the account of the Lessee, and in such event, Lessee
17 shall within thirty (30) days after billing and accounting therefore reimburse County for the costs so
18 incurred, or (2) take and hold such fixtures as its sole property. In the event that Lessee fails to
19 timely pay to County any reimbursement due to County under this paragraph, then said unpaid
20 reimbursement shall bear interest at the maximum legal rate, calculated from the due date thereof
21 until paid in full.

22 **8. Off-Site Improvements.**

23 (a) It is understood by the parties hereto that water, telephone, gas and
24 electrical utilities are available nearby the Property, but they do not reach the Property. Therefore,
25 in order for the on-site improvements required in Paragraph 7 herein to be fully usable and
operational, Lessee, at its expense, shall extend and/or connect or cause to be extended and/or
connected, to such on-site improvements such utility service facilities that may be required or
desired by Lessee in the use, operation and maintenance of such on-site improvements. After
such extensions and/or connections have been made, Lessee shall be responsible for payment for
the use of such utility services.

(b) The off-site improvements referred to in Sub-Paragraph 8(a) above shall be
completed prior to or at the same time the on-site improvements are completed as provided in
Paragraph 6 herein.

(c) All Off-Site Improvements shall be completed by Lessee and County shall
have no obligation to construct Off-Site Improvements nor be responsible for any costs directly or
indirectly related to same.

21 **9. Cooperation.**

22 (a) County shall cooperate with Lessee and otherwise exercise its best efforts to
23 assist Lessee in expediting the processing of on-site and off-site improvements to be constructed
24 upon, within or in connection with the Property. Notwithstanding anything to the contrary contained
25 herein, nothing in this Lease shall be deemed to constitute a waiver by County of its police powers.
Lessee acknowledges and agrees that it must comply with all government laws and regulations
affecting development to the Property.

1 (b) Any easements required by third parties for utilities to serve the Property
2 shall be submitted to County, in writing, for its approval, which approval shall not be unreasonably
3 withheld. Any and all costs associated with the preparation and recordation of any such easements
4 required by third parties shall be borne solely by Lessee.

5 **10. County's Reserved Rights.** The Property is accepted by Lessee subject to those
6 existing easements or other encumbrances or other matters of record described in the Preliminary
7 Title Report, and County shall have the right to enter upon the Property and to install, lay, construct,
8 maintain, repair and operate such waste systems, drains, storm water sewers, pipelines, manholes,
9 connections, water, oil and gas pipelines, and telephone and telegraph power lines and such other
10 facilities and appurtenances necessary or convenient to use in connection therewith, over, in, upon,
11 through, across and along the Property or any part thereof. County also reserves the right to grant
12 franchises, easements, rights of way and permits in, over and upon, along or across any and all
13 portions of said Property as County may elect; provided, however, that no right of the County
14 provided for in this Paragraph shall be so executed as to interfere unreasonably with Lessee's
15 rights and use hereunder. County shall cause the surface of the Property to be restored to its
16 original condition (as they existed prior to any such entry) upon the completion of any
17 construction by County or its agents. Any right of County set forth in this Paragraph 9 shall not be
18 exercised unless a prior written notice of thirty (30) days is given to Lessee; provided, however, in
19 the event such right must be exercised by reason of emergency, then County shall give Lessee
20 such notice in writing as is reasonable under the existing circumstances. Notwithstanding anything
21 to the contrary contained herein, County agrees that all waste systems, storm drains, pipelines,
22 manholes, water and gas mains, electric power lines, transformers and conduits, cabling, telephone
23 lines and other communications equipment and facilities utilized in connection with utility services
24 (collectively "Utility Lines") to be located at or on the Property shall be placed underground and in a
25 manner which does not interfere with the Project or its use. Any easement, license, right-of-way,
permit or other agreement entered into by the County pursuant to this Paragraph 10, including but
not limited to the installation, operation, maintenance, repair and replacement of Utility Lines, shall
require the easement holder to maintain the easement and equipment located therein at its sole
cost. County agrees to use best efforts to minimize any interference to Lessee's Project caused by
County's exercise of its rights hereunder.

17 **11. Maintenance.**

18 (a) Lessee shall maintain the Property, the Project and the related
19 improvements to be constructed on the Property, including the landscaping and grounds, in a neat,
20 safe, orderly and attractive condition during the term of this Lease, and Lessee shall provide for the
21 sanitary handling and disposal of all refuse accumulated as a result of Lessee's use of the Property
(including any waste and hazardous waste) and the improvements thereon. In addition, the exterior
and the interior of the improvements on the Property shall be maintained by Lessee in good
working condition and repair during the term of this Lease.

22 (b) In the event of damage or destruction of all or any part of the improvements
23 to be constructed upon the Property rendering said Property unusable, for the purposes set forth in
24 Paragraph 2 herein, in whole or in part, Lessee shall repair such damage or destruction with due
25 diligence in accordance with Paragraph 7, but only to the extent of the insurance coverage required
by this Lease.

1 **12. Utilities.**

2 (a) Lessee warrants and represents to County that during the term of this
3 Lease and any extension thereof that sufficient utility services to provide water,
4 telecommunications, electric power, natural gas and septic system necessary to meet Lessee's
5 requirements exists or are available for use by Lessee within the Premises.

6 (b) Lessee shall pay for all utility services used in connection with the Leased
7 Premises, including, but not limited to, telephone, electric, water, natural gas, refuse collection and
8 sewer services, as may be required in the maintenance, operation and use of the Leased
9 Premises.

10 **13. Inspection of Property.** County, through its duly authorized agents, shall have, at
11 any time during normal business hours, the right to enter the Property for the purpose of
12 inspecting, monitoring and evaluating the obligations of Lessee hereunder and for the purpose of
13 doing any and all things which it is obligated and has a right to do under this Lease.

14 **14. Quiet Enjoyment.** Lessee shall have, hold and quietly enjoy the use of the Property
15 so long as it shall fully and faithfully perform the terms and conditions that it is required to do under
16 this Lease.

17 **15. Compliance With Government Regulations.** Lessee shall, at Lessee's sole cost
18 and expense, comply with the requirements of all local, state and federal statutes, regulations,
19 rules, ordinances and orders now in force or which may be hereafter in force, pertaining to the
20 Property.

21 **16. Termination by County.** County shall have the right to terminate this Lease
22 forthwith:

23 (a) In the event Lessee commences any voluntary proceeding under the
24 Bankruptcy laws of the United States, or Lessee fails to terminate any involuntary proceeding under
25 said bankruptcy laws within ninety (90) days from the commencement thereof.

 (b) In the event that Lessee makes a general assignment, or Lessee's interest
hereunder is assigned involuntarily or by operation of law, for the benefit of creditors.

 (c) In the event Lessee fails or refuses to perform, keep or observe any of
Lessee's duties or obligations hereunder except its rental obligations; provided, however, that
Lessee shall have thirty (30) days in which to cure Lessee's breach or default after written notice
thereof has been served on Lessee by County unless the nature of default or breach is such that
more than thirty (30) days are required.

 (d) In the event Lessee fails to utilize the Property for the "use" as defined in
Paragraph 2, County shall have the right to terminate this lease by written notification to Lessee
with thirty (30) days advanced notice.

 (e) In the event Lessee abandons the property or fails to continue to operate
and maintain the Botanical Garden and related improvements, This shall be defined as a default
pursuant to the provision of paragraph 16 (c) of this section. In the event Lessee abandons or fails
to continue to operate and maintain the Botanical Garden and related improvements, and fails to

1 cure the default pursuant to paragraph 16 (c) of this section, the property and related improvements
2 shall automatically revert to the County and the lease shall terminate pursuant to this section..

3 (f) In the event during the first thirty-six (36) months of the lease term, Lessee is
4 unable to proceed with the improvements due to Lessee's inability to obtain project funding.

5 **17. Termination by Lessee.** In addition to its rights to terminate elsewhere in this
6 Lease, Lessee shall have the right to terminate this Lease in the event County fails to perform,
7 keep or observe any of its duties or obligations hereunder; provided, however, that County shall
8 have thirty (30) days in which to correct its breach or default after written notice thereof has been
9 served on it by Lessee; provided, however, if the breach or default is of a nature that requires more
10 than thirty (30) days to correct, such efforts as are necessary to make such corrections shall begin
11 within said thirty (30) day period and shall be diligently prosecuted to completion thereafter;
12 provided further, however, that if after thirty (30) days County fails to correct or commence to
13 correct such breach, Lessee shall have the option to correct the default and deduct the cost of such
14 remedy from rent. If any breach or default is not corrected after the time set forth herein, Lessee
15 may elect to terminate this Lease in its entirety or as to any portion of the Property affected thereby.

16 **18. Eminent Domain.** If any portion of the Property shall be taken by eminent domain
17 and a portion thereof remains which is usable by Lessee for any of the purposes set forth in
18 Paragraph 2 herein, this Lease shall, as to the part taken, terminate as of the date title shall vest in
19 the condemnor, or that date prejudgment possession is obtained through a court of competent
20 jurisdiction, whichever is earlier, and the rent payable hereunder shall abate pro rata as to the part
21 taken; provided, however, in such event County reserves the right to terminate this Lease as of the
22 date when title to the part taken vests in the condemnor or as of such date of prejudgment
23 possession. If all of the Property is taken by eminent domain or such part be taken so that the
24 remaining Property or any portion thereof are rendered unusable for the purposes set forth in
25 Paragraph 2 herein, then at the election of Lessee this Lease, or that portion of the remaining
Property rendered unusable, shall terminate. If a part or all of the Property be so taken, the
compensation awarded upon such taking shall be paid to the parties hereto in accordance with the
values attributable to their respective interests in such eminent domain proceedings.

17 **19. Insurance.** Lessee shall, during the term of this Lease:

18 (a) **Workers' Compensation:** Procure and maintain Workers' Compensation
19 Insurance, in full compliance with the Workers' Compensation and Occupational Disease Laws of
20 all authorities having jurisdiction over the Property. Such policy shall include Employer's Liability
21 and Occupational Disease coverage, with limits not less than One Million Dollars (\$1,000,000) per
22 occurrence. Policy shall be endorsed to provide a "Borrowed Servant Endorsement, Alternate
23 Employer Endorsement, or Additional Insured Endorsement" naming the County of Riverside as an
24 additional insured. Policy shall provide a Waiver of Subrogation in favor of the County. The Parties
25 agree that this section shall not apply to Lessee in the event Lessee has no employees.

22 (b) **Commercial General Liability Insurance:** Procure and maintain
23 comprehensive general liability insurance coverage that shall protect Lessee from claims for
24 damages for personal injury, including, but not limited to, accidental and wrongful death, as well as
25 from claims for property damage, which may arise from Lessee's use of the Property or the
performance of its obligations hereunder, whether such use or performance be by Lessee, by any
subcontractor, or by anyone employed directly or indirectly by either of them. Such insurance shall
name County as an additional insured with respect to this Lease and the obligations of Lessee

1 hereunder. Such insurance shall provide for limits of not less than Two Million Dollars (\$2,000,000)
2 per occurrence.

3 (c) Cause its insurance carrier(s) to furnish County by direct mail Certificate(s) of
4 Insurance showing that such insurance is in full force and effect, and County is named as an
5 additional insured with respect to this Lease and the obligations of Lessee hereunder. Further,
6 said Certificate(s) shall contain the covenant of the insurance carrier(s) that thirty (30) days written
7 notice shall be given to County prior to modification, cancellation or reduction in coverage of such
8 insurance. In the event of any cancellation in coverage or any reduction or modification in
9 coverage such that such insurance coverage fails to comply in all material respects with this
10 Paragraph 19, then Lessee shall be deemed in default under this Lease, unless the County
11 receives prior to the effective date of such cancellation, modification or reduction in coverage
12 another certificate from another insurance carrier of Lessee's choice evidencing that the insurance
13 required herein is in full force and effect. Lessee shall not take possession or otherwise use the
14 Property until County has been furnished Certificate(s) of Insurance as otherwise required in this
15 Paragraph 19.

16 **20. County's Reserved Rights -- Insurance.** County reserves the right to require that
17 Lessee adjust the monetary limits of insurance coverage as required in Paragraph 19 herein every
18 fifth (5th) year during the term of this Lease or any extension thereof, subject to ninety (90) days
19 written notice to Lessee of such adjustment, in the event that County reasonably determines that
20 the then existing monetary limits of insurance coverage are no longer consistent with those
21 monetary limits of insurance coverage generally prevailing in the southwestern Riverside County
22 area for Projects comparable to the Property; provided, however, that any adjustment shall not
23 increase the monetary limits of insurance coverage for the preceding five (5) years in excess of fifty
24 percent (50%) thereof.

25 **21. Hold Harmless.**

(a) Except as otherwise provided herein, Lessee represents that it has inspected
the Property, accepts the condition thereof in its "AS-IS" condition and fully assumes any and all
risks incidental to the use thereof. County shall not be liable to Lessee, its agents, employees,
subcontractors or independent contractors for any personal injury or property damage suffered by
them which may result from hidden, latent or other dangerous conditions in, on, upon or within the
Property unknown to the County, its officers, agents or employees.

(b) Lessee shall indemnify and hold County, its officers, agents, employees and
independent contractors free and harmless from any liability whatsoever, based or asserted upon
any act or omission of Lessee, its officers, agents, employees, subcontractors and independent
contractors for property damage, bodily injury, or death (Lessee's employees included) or any other
element of damage of any kind or nature, relating to or in any way connected with or arising from its
use, occupancy or operation of the Property, and Lessee shall defend, at its expense, including
attorney fees, County, its officers, agents, employees and independent contractors in any legal
action based upon such alleged acts or omissions.

(c) The specified insurance limits required in Paragraph 19 herein shall in no
way limit or circumscribe Lessee's obligations to indemnify and hold County free and harmless
herein.

1 **22. Free From Liens.** Lessee shall pay, when due, all sums of money that may
2 become due for any labor, services, material, supplies, or equipment, alleged to have been
3 furnished or to be furnished to Lessee, in, upon, or about the Property, and which may be secured
4 by a mechanics', materialmen's or other lien against the Property of County's interest therein, and
5 will cause each such lien to be fully discharged and released at the time the performance of any
6 obligation secured by such lien matures or becomes due; provided, however, that if Lessee desires
7 to contest any such lien, it may do so, but notwithstanding any such contest, if such lien shall be
8 reduced to final judgment, and such judgment or such process as may be issued for the
9 enforcement thereof is not promptly stayed, or if so stayed, and said stay thereafter expires, then
10 and in such event, Lessee shall forthwith pay and discharge said judgment.

6 **23. Estoppel Certificates.**

7 (a) Lessee and County, at any time and from time to time during the term of this
8 Lease, and any extension thereof, and within thirty (30) days after request, in writing, have been
9 given by the other party, shall execute, acknowledge and deliver to the requesting party a
10 statement in writing certifying that this Lease is unmodified and in full force and effect (or if there
11 have been any modifications, that the same is in full force and effect as modified and stating the
12 modifications). The statement shall also include the dates to which the rent and any other charges
13 have been paid in advance, that there are no defaults existing or that defaults exist and the nature
14 of such defaults. It is intended that such statement as provided in this Paragraph 23 may be relied
15 upon by any prospective encumbrancer as assignee of the Property or improvements thereon or
16 both or all or any portion or portions of Lessee's interest under this Paragraph 23.

13 (b) A party's failure to execute, acknowledge and deliver on request of such
14 statement described in Sub-Paragraph 23(a) above within the required time shall constitute
15 acknowledgment by such party to all persons entitled to rely on such statement that this Lease is
16 unmodified and in full force and effect and that the rent and other charges have been duly and fully
17 paid to and including the respective due dates immediately preceding the date of the notice or
18 request and shall constitute a waiver, with respect to all persons entitled to rely on such statement
19 of any defaults that may exist before the date of such notice.

17 **24. Binding on Successors.** The parties hereto, their assigns and successors in
18 interest, shall be bound by all the terms and conditions contained in this Lease, and all of the
19 parties hereto shall be jointly and severally liable hereunder.

19 **25. Waiver of Performance.** No waiver by County at any time of any of the terms and
20 conditions of this Lease shall be deemed or construed as a waiver at any time thereafter of the
21 same or of any other terms or conditions contained herein or of the strict and timely performance of
22 such terms and conditions.

21 **26. Severability.** The invalidity of any provision in this Lease as determined by a court
22 of competent jurisdiction shall in no way affect the validity of any other provision hereof.

23 **27. Venue.** Any action at law or in equity brought by either of the parties hereto for the
24 purpose of enforcing a right or rights provided for by this Lease shall be tried in a court of
25 competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive
all provisions of law providing for a change of venue in such proceedings to any other county.

1 **28. Attorneys' Fees.** In the event of any litigation, mediation or arbitration between
2 Lessee and County, including, without limitation, such an action brought pursuant to Lessee's
3 bankruptcy, to enforce any of the provisions of this Lease or any right of either party hereto, the
4 unsuccessful party to such litigation, mediation or arbitration agrees to pay to the successful party
all costs and expenses, including reasonable attorneys' fees, incurred therein by the successful
party, all of which shall be included in and as a part of the judgment or ruling rendered in such
litigation, mediation or arbitration.

5 **29. Notices.** Any notices required or desired to be served by either party upon the other
shall be addressed to the respective parties as set forth below:

| <u>COUNTY</u> | <u>LESSEE</u> |
|--|--|
| County of Riverside Economic Development Agency Real Estate Division 3403 10 th Street, Suite 500 Riverside, CA 92501 | Southwest Botanical Garden Felicia Hogan 27740 Jefferson Avenue, Suite 100 Temecula, CA 92590 |

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10 or to such other addresses as from time to time shall be designated by the respective parties.
11 Notices must be in writing and will be deemed to have been given when personally delivered, sent
12 by facsimile with receipt acknowledged, deposited with any nationally recognized overnight carrier
13 that routinely issues receipts, or deposited in any depository regularly maintained by the United
States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to the
party for whom it is intended at its address set forth above.

14 **30. Permits, Licenses and Taxes.** Lessee shall secure, at its expense, the Permits,
and Lessee shall pay prior to delinquency all fees, taxes and penalties levied against the Property
15 or required by any authorized public entity. Failure to pay such sums in a timely manner shall be a
material default hereunder.

16 **31. Paragraph Headings.** The Paragraph headings herein are for the convenience of
17 the parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope,
meaning or intent of the provisions or language of this Lease.

18 **32. County's Representative.** County hereby appoints the Assistant County Executive
19 Officer, Economic Development Agency, County of Riverside as its authorized representative to
administer this Lease.

20 **33. Acknowledgment of Memorandum of Lease.** Upon execution of this Lease by the
21 parties hereto, a memorandum of this Lease in a form acceptable to County and Lessee shall be
acknowledged by County and Lessee in such a manner that it will be acceptable by the County
22 Recorder for recordation purposes, and thereafter, Lessee shall cause such memorandum of this
Lease to be recorded in the Office of the County Recorder of Riverside County forthwith and furnish
23 County with a conformed copy thereof.

24 **34. Agent for Service of Process.** It is expressly understood and agreed that in the
25 event Lessee is not a resident of the State of California or it is an association or partnership without
a member or partner resident of the State of California, or it is a foreign corporation, then in any
such event, Lessee shall file with Assistant County Executive Officer, Economic Development

1 Agency, County of Riverside, upon its execution hereof, a designation of a natural person residing
2 in the State of California, giving his or her name, residence and business addresses, as its agent
3 for the purpose of service of process in any court action arising out of or based upon this Lease,
4 and the delivery to such agent of a copy of any process in any such action shall constitute valid
5 service upon Lessee. It is further expressly understood and agreed that if for any reason service of
6 such process upon such agent is not feasible, then in such event Lessee may be personally served
7 with such process out of this County and that such service shall constitute valid service upon
8 Lessee. It is further expressly understood and agreed that Lessee is amenable to the process so
9 served, submits to the jurisdiction of the Court so obtained and waives any and all objections and
10 protests thereto.

11 **35. Notification of Taxability of Possessory Interest.** The Property herein granted by
12 County to Lessee may create a possessory interest, subject to property taxation. In the event
13 Lessee's interest in the Property, including the Project and related improvements, become subject
14 to the payment of property taxes levied on such interest, Lessee shall not be responsible for the
15 payment of such property taxes.

16 **36. Toxic Materials.**

17 (a) The County warrants that to the best of its knowledge there are no
18 hazardous substances located on or within the Property.

19 (b) **Restrictions on Lessee; Hazardous Substances:** Lessee shall not cause or
20 permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the
21 Property by Lessee, Lessee's agents, employees, contractors or invitees, without first obtaining
22 County's written consent, which consent may not be unreasonably withheld. Materials considered
23 hazardous that are used in the ordinary course of business may be used as regulated by law. If
24 Hazardous Substances are used, stored, generated, or disposed of on or in the Property, or if the
25 Property becomes contaminated in any manner during the term hereof, Lessee shall indemnify,
defend, and hold harmless the County from any and all claims, damages, fines, judgments,
penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the
Property or the Project, and any and all sums paid for settlement of claims, attorneys', consultants',
and experts' fees) arising during or after the term of this Lease and arising as a result of such
contamination by Lessee. This indemnification includes, without limitation, any and all costs
incurred because of any investigation of the site or any cleanup, removal, or restoration mandated
by a federal, state, or local agency or political subdivision. In addition, if Lessee causes or permits
the presence of any Hazardous Substance on the Property and this results in contamination,
Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Property
to the condition existing before the presence of any such Hazardous Substance on the Property,
provided, however, that Lessee shall first obtain County's approval for any such remedial action.

(c) As used herein, "Hazardous Substance" shall include, but not be limited to,
substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the
Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended,
42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section
1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and
those substances defined as "hazardous wastes" in Section 25117 of the California Health and
Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety
Code; and in the regulations adopted in publications promulgated pursuant to said laws.

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37. Exhibits Incorporated By Reference. All Exhibits attached hereto are incorporated into and made a part of this Lease by reference to them herein.

38. Entire Lease. This Lease is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous leases, agreements and understandings, oral or written, in connection therewith. This Lease may be changed or modified only upon the written consent of the parties hereto.

39. Execution by Lessee. Prior to execution of this Lease by Lessee, Lessee shall provide to County a Certificate of Good Standing issued by the Secretary of the State of California, a certified copy of Lessee's Articles of Incorporation and a certified resolution authorizing Lessee to enter into this Lease and designating the individuals authorized to sign on behalf of Lessee.

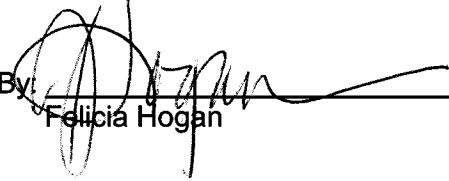
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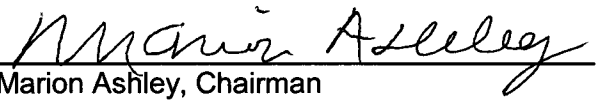
40. Execution by County. This Lease shall not be binding or consummated until its approval and execution by the County's Board of Supervisors.

Dated: _____

**SOUTHWEST BOTANICAL GARDEN, A
CALIFORNIA NONPROFIT CORPORATION**

By:  _____
Felicia Hogan

COUNTY OF RIVERSIDE

By:  _____
Marion Ashley, Chairman
Board of Supervisors

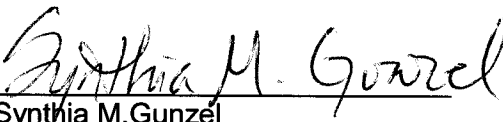
ATTEST:

Kecia Harper-Ihem
Clerk of the Board

By:  _____
Deputy

APPROVED AS TO FORM:

Pamela J. Walls
County Counsel

By:  _____
Cynthia M. Gunzel
Deputy County Counsel

CE:ra
09/01/10
TM032
13.281

EXHIBIT "A"

PROPERTY DESCRIPTION



Approx. 15.29 Net Acres

Not a Part

Temporary
Fire Station
Site

CONT.

GLENDALE RD

GLENOAKS RD

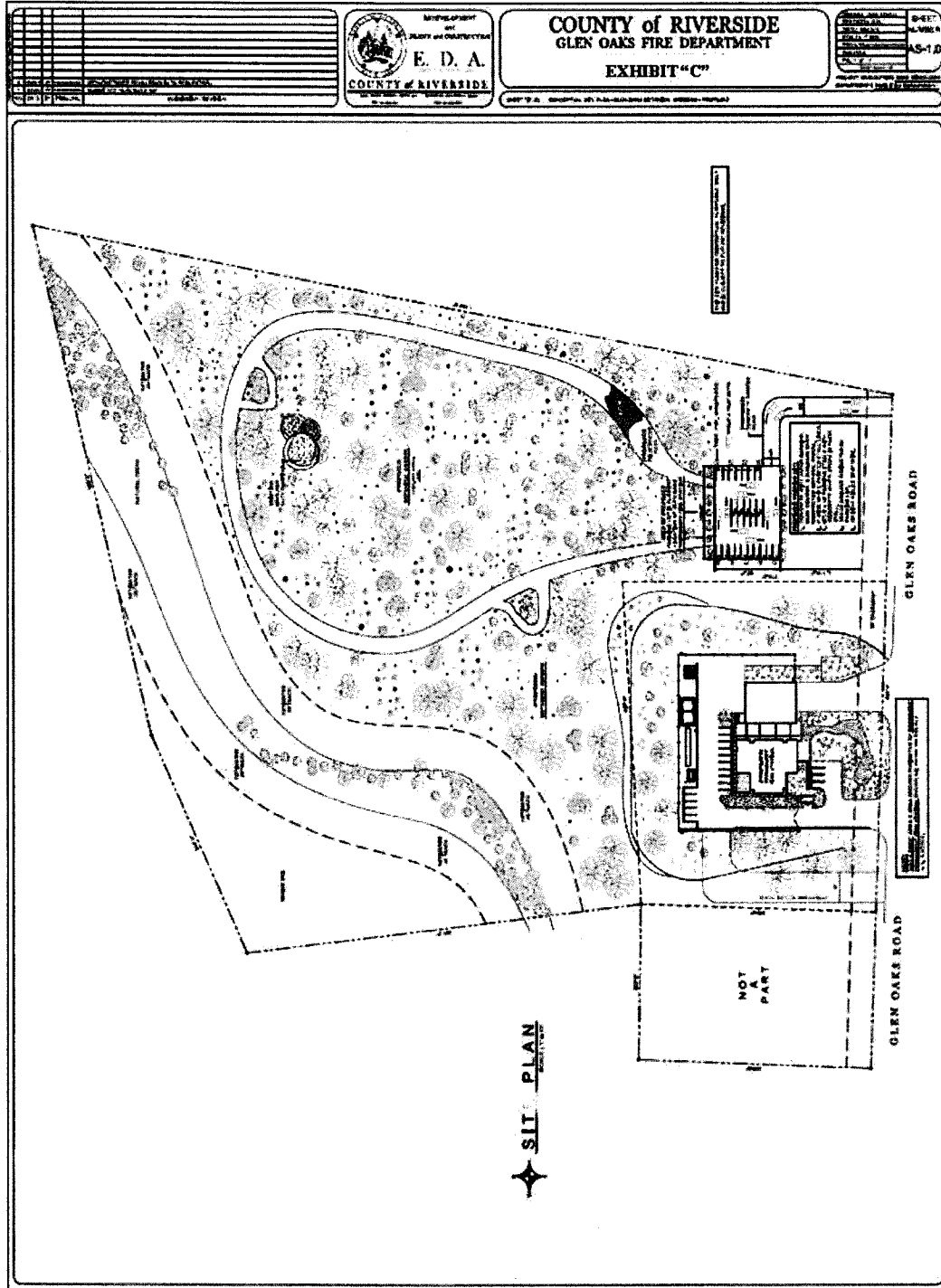
Permanent Fire Station (To be
Constructed)

Leased Premise Access

EXHIBIT "B"
LEGAL DESCRIPTION (to be inserted at later date)

EXHIBIT "C"

SITE PLAN



ATTACHMENTS FILED
WITH
THE CLERK OF THE BOARD