AGREEMENT AND SITE LEASE

THIS AGREEMENT made and entered into this 5th day of October, 1977, by and between the State of California through its duly qualified Chancellor of the California State University and Colleges, hereinafter referred to as "Trustees," and the Fullerton Arboretum Authority, a joint powers agency created by Trustees and the Redevelopment Agency of the City of Fullerton, hereinafter referred to as "Authority."

WITNESSETH:

WHEREAS, the State of California owns the properties hereinafter described and referred to as the "Fullerton Arboretum Site," which are part of the California State University and Colleges and in particular the California State University, Fullerton, which campus is hereinafter referred to as "University"; and,

WHEREAS, the Authority was established to assist in the development and administration of the Fullerton Arboretum; and the Arboretum is planned as a facility for the benefit of the University, the City of Fullerton, and the public; and,
WHEREAS, the Authority is permitted and authorized under the laws of the State of California to lease or otherwise acquire real property necessary for the use of the Authority, for botanical gardens and related facilities, and to improve, preserve, take care of, and manage the same; and

WHEREAS, the Trustees and the Authority are permitted and authorized under the laws of the State of California to contract for the care, maintenance, and control of such real property; and

WHEREAS, it is the opinion of the Trustees that a more advantageous use, care, maintenance, and control of the real property hereinafter described, for the purposes of the University, will be had and obtained if said property is operated and developed for an arboretum and botanical garden, and to that end the use, care, maintenance, and control of said property be placed under the jurisdiction of the Authority; and

WHEREAS, the Authority is willing to assume, upon the terms herein contained, the care, maintenance, and control of said real property, for arboretum and educational purposes and of maintaining and developing the same for said purposes as an educational facility and botanical garden.

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FINDINGS

The Chancellor of the California State University and Colleges finds that:

(1) The purposes for which the property described herein is to be used under this lease are related to the activities of the University, or to the activities or organizations of students or activities or organizations of members of the faculty thereof.

(2) Administration by the Authority of the functions and activities described herein, instead of administration by the Trustees, will allow for improvements to be made on University land for the benefit of the University and the Authority.

NOW, THEREFORE, in consideration of the promises, made herein, the Trustees and Authority agree as follows:

1. That following the execution and delivery of this agreement in five executed copies, an original to each of the parties hereto and upon the date of the award of the first construction contract to develop the Fullerton Arboretum and in no event later than March 31, 1978, the Authority shall have, approximately 43 years from and after the date hereof, until ///

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December 3, 2020 the care, maintenance, and control of the University properties described in Attachment A, pages 1 and 2 to this agreement, which description is incorporated by reference, and which land is referred to herein as the "Arboretum Site," for the purposes of establishing an arboretum, and during said period of years the Authority shall have use of the Arboretum Site for the purposes of developing, maintaining, using, and operating the same for an arboretum.

2. That while the Authority develops, maintains, operates, controls, and uses the Arboretum Site for an arboretum pursuant to the Fullerton Arboretum Authority Agreement the same shall be accessible for the educational use of such properties by University subject to the use of the properties for Arboretum purposes. Operations of the Authority shall be coordinated with the Trustees' operations and shall be under the general supervision of Trustees' officials.

3. Should the Authority fail or neglect to continue to maintain, operate, and use the Arboretum Site as an arboretum, the right of the Authority to continue to develop, maintain, control, use, or operate said property shall cease and Trustees shall have the right to re-enter said real property and be restored to full and unqualified rights of use, possession, and ownership.

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4. The Authority covenants and agrees that neither said property nor any part thereof shall be used for any purpose except for an arboretum, park, botanical garden, amphitheatre, educational or historical facility, or related use; and that all such uses shall be consistent with the systemwide guidelines and policies which have been or may hereafter be adopted by the Trustees or the Chancellor.

5. It is understood and agreed by and between the parties hereto, however, that the Authority may enter into an operational lease with a nonprofit university auxiliary organization to carry out the purposes of this agreement, and any such lease to such nonprofit corporation shall not be construed to be in violation of this agreement provided that any such lease must first be approved in writing by the Trustees before becoming effective.

6. The Authority agrees that during the term of this agreement it will not enter into or make any concession agreements with any person, firm, corporation, or association whatsoever for use of the Arboretum property without the approval of the Trustees.

7. This lease and agreement is not assignable by the Authority either in whole or in part, nor shall the Authority sublet the leased premises or any part thereof without written ///

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approval of the Trustees. The Authority may, subject to the approval of Trustees, grant concessions on the Arboretum Site consistent with the use thereof for arboretum and educational purposes. Any such concessions are to be primarily for the benefit and enjoyment of the public using the Arboretum and not primarily for profit purposes to the Authority.

8. It is understood and agreed between the parties hereto that any charges, fees, or collections made by the Authority or its lessee for services, benefits, or accommodations to the general public in connection with the operation and management of said Arboretum shall be limited as far as practicable to the actual needs for maintenance, capital improvement, safety, sanitation, and bodily comfort, and that unnecessary commercialization for profit shall not be engaged in or permitted.

9. Capital Improvements. It is further agreed that any or all capital development, construction, or improvement shall be subject to the approval of the Trustees.

The leased premises shall not be altered or changed in any manner or respect without the written consent of the President of the University, and changes that may be authorized shall be made under the direction of the President of the
University and at the expense of the Authority. Permanent capital alterations shall have prior approval of the Chancellor of the California State University and Colleges.

10. Exhibit "A" describes the Arboretum Site properties referred to in this agreement. The use conveyed herein is subject to all easements, liens, encumbrances, or encroachments of record; further, Trustees reserve the right to grant such further easements, encroachments, or other developments as may be required to aid the University and which will not substantially interfere with Arboretum project, and in instances of a University need for the Arboretum Site, or parts thereof, for University facilities to meet the demands of the educational objectives and programs of the University; and subject to the use of the property for civil defense purposes in the event of a state or national emergency.

11. This agreement may be terminated and the provisions of this agreement may be altered, changed, or amended by mutual consent in writing of all the parties hereto.

12. After construction and prior to operation of the Arboretum facility by the Authority, the Authority shall provide either directly or through an operating contractor adequate insurance coverage, including as a minimum:

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(a) The Authority shall maintain in force during the term of this lease and all extensions thereof public liability and property damage insurance and products liability insurance in the sum of One Hundred Thousand Dollars ($100,000.00) for injury to or death of any one person for each occurrence, in the sum of Three Hundred Thousand Dollars ($300,000.00) for injury to or death of more than one person for each occurrence, and in the sum of Fifty Thousand Dollars ($50,000.00) for damage to property and products damage for each occurrence. Fire and extended coverage insurance coverage shall be supplied in the sum of $30,000.00. These policies of liability insurance shall contain the following special endorsement:

"The State of California, the California State University and Colleges, Board of Trustees, and all of its other departments, boards, and commissions and its officers, employees, and agents are hereby declared to be additional insureds under the terms of this policy as to the activities of the Authority."

"This insurance policy will not be cancelled without thirty (30) days' prior written notice to said California State University and Colleges, Board of Trustees. The State of California is not liable for the payment of premiums or assessments on this policy."
No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Authority to furnish insurance during the term of this agreement and lease. Said policy or policies shall be underwritten to the satisfaction of Trustees. A complete and signed certified copy of the policy shall be submitted to the Trustees concurrently with the execution of the agreement and lease. At least thirty (30) days prior to the expiration of any policy, a signed certified copy of the policy showing that such insurance coverage has been renewed or extended shall be filed with the Trustees.

(b) The Authority agrees to indemnify and save harmless the Trustees, its officers, agents, and employees from any and all loss, damage, or liability that may be suffered or incurred by the Trustees, its officers, agents, and employees caused by, arising out of, or in any way connected with the use of the leased premises herein described by the Authority.

13. It is understood and agreed that at any time the Trustees and its agents shall have the right to enter the leased premises or any part thereof for the purpose of examination or supervision.

14. The Authority shall reimburse the State for expenditures incurred by the State as result of activities of the Authority under the terms of this agreement. This reimburse-
ment shall include, but not be limited to, utility costs, custodial services, maintenance costs, and supplies, where such services and activities are not provided as part of University's contribution pursuant to Sections 9(B) and 9(D) of the Fullerton Arboretum Authority Agreement. Said reimbursement shall be computed on a simple but equitable basis, pursuant to the provisions of the State Administrative Manual, Section 8755. The University Business Manager with the approval of the University President shall determine and specify such costs and the amount thereof and reimbursement shall be made by Authority within thirty (30) days of receipt of a notice of such determination.

15. The Authority agrees that it will keep and maintain the leased property in a clean and orderly condition and shall at its own expense, at reasonably frequent intervals, and in a lawful manner dispose of all waste from the leased property.
IN WITNESS WHEREOF, the parties thereto have caused the execution of this instrument by their duly authorized representatives, the day and year first above written.

Department of General Services

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND COLLEGES

By

[TITLE: Assistant Vice Chancellor Physical Planning and Development]

ATTEST:

[TITLE: Legal Administrative Aide]

ATTEST:

Arboretum Authority

By

Secretary, Arboretum Authority

President

APPROVED

NOV 1 1977

Chief Land Agent
LEGAL DESCRIPTION

The lands herein described are in the City of Fullerton, County of Orange, State of California, and being a portion of Fractional Section 25, Township 3 South, Range 10 West, in the Rancho San Juan de Santa Ana, as shown on a map recorded in Book 51, Page 7 of Miscellaneous Maps, records of Orange County, California, described as follows:

Commencing at a point in the north line of said Section, said north line being also the center line of Yorba Linda Boulevard, 100 feet wide, as shown on Record of Survey recorded in Book 93, Pages 3 and 4 of Record of Surveys of said County, said point being South 89° 52' 34" East 197.26 feet from the centerline intersection of said Boulevard with Associated Road, 80 feet wide, as shown on said Record of Survey; thence South 0° 07' 26" West 184.32 feet to the True Point of Beginning of this description. Thence continuing South 0° 07' 26" West 165.73 feet; thence South 38° 11' 05" East 119.54 feet; thence South 9° 02' 34" East 210.04 feet; thence South 17° 42' 53" East 576.09 feet; thence South 0° 00' 07" East 698.92 feet; thence North 89° 59' 53" East 15.02 feet; thence South 0° 00' 07" East 1.5 feet to the beginning of a curve concave southwesterly, having a radius of 113.50 feet, a radial line from said beginning having a bearing of South 0° 00' 07" East; thence easterly and southerly along the arc of said curve, through a central angle of 90° 00' 00" an arc distance of 178.29 feet; thence along the tangent of said curve South 0° 00' 07" East, 63.40 feet to the beginning of a tangent curve, concave northeasterly, having a radius of 61.50 feet; thence southerly and easterly along said curve through a central angle of 90° 00' 55" an arc distance of 96.52 feet to a tangent line; thence North 89° 58' 58" East along said tangent line, a distance of 111.04 feet; thence North 0° 01' 02" West 436.28 feet; thence North 59° 34' 22" East, 15.71 feet; thence North 14° 40' 02" West 36.69 feet to the beginning of a tangent curve concave southeasterly, having a radius of 49.50 feet; thence northerly and easterly along the arc of said curve, through a central angle of 89° 39' 42"; a distance of 77.46 feet to a tangent line; thence North 74° 59' 40" East along said tangent line 12.27 feet; thence North 15° 00' 17" West 71.67 feet to the beginning of a tangent curve concave easterly, having a radius of 525.00 feet; thence northerly along the arc of said curve through a central angle of 45° 37' 04"; a distance of 417.99 feet to a tangent line; thence North 30° 36' 47" East along said tangent line 809.42 feet to an intersection with a non-tangent curve, concave southwesterly, having a radius of 398.79 feet, said intersection having a radial bearing of South 59° 09' 43" West; thence westerly along the arc of said curve, through a central angle of 40° 43' 03" a distance of 283.40 feet to a tangent line; thence North 71° 33' 20" West along said tangent line 537.90 feet to the beginning of a tangent curve concave southeasterly, having a radius of 301.50 feet; thence southwesterly along said curve, through a central angle of 59° 07' 21" an arc distance of 311.11 feet to a tangent line; thence South 49° 19' 19" West along said tangent line 24.85 feet to the beginning of a tangent curve, concave northwesterly, having a radius of 172.50 feet; thence westerly along said curve, through a central angle of 17° 53' 18" an arc distance of 53.86 feet to the point of beginning.
AGREEMENT AND SITE LEASE
AMENDMENT NO. 1:

The October 4, 1971 Agreement and Site Lease between the State of California and the Fullerton Arboretum Authority is amended as follows:

1. The property description of the Arboretum site is changed by substitution of a new Attachment A (September 17, 1985) for the original Attachment A. The original Attachment A is hereby deleted. The new Attachment A (September 17, 1985), attached hereto is hereby adopted.

2. Annex No. 1 to Attachment A as adopted by Amendment No. 2 to the Fullerton Arboretum Agreement (March 28, 1979) is also added to the Site Lease to provide a description of the Arboretum parking lot.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to the Fullerton Arboretum Agreement and Site Lease to be executed and attested by their proper officers thereunto duly authorized effective on the last date of execution of this amendment.

Executed in Long Beach, California this ___ day of ____________, 1987.

TRUSTEES OF THE CALIFORNIA
STATE UNIVERSITY

By__________________________
Name
Title

Attest:________________________

Executed in Fullerton, California on this 15th day of September, 1987.

FULLERTON ARBORETUM AUTHORITY

By__________________________
Name (William Wylie)
Title (President)

Attest:________________________

APPROVED:

CALIFORNIA DEPARTMENT OF GENERAL SERVICES

By:__________________________
Name
Title

Date:__________________________
PERIMETER RECONFIGURATION OF FULLERTON ARBORETUM
AT CALIFORNIA STATE UNIVERSITY FULLERTON

NOTES
1. Scale of Drawing
2. Property Boundaries
3. Property Lines
4. Area Measurements

September 17, 1985
State of California

Memorandum

To:       Members of the Fullerton Arboretum Commission

Date: September 14, 1987

From:      William G. Knight
           Assistant General Counsel
           Office of General Counsel

Subject:  Site Lease Amendment

In reviewing Amendment No. 4 to the Fullerton Arboretum Agreement, the Department of General Services recommended that the Agreement and Site Lease for the Arboretum be similarly amended.

Attached is such an amendment. It also adds to the Site Lease the legal description of the Arboretum parking lot. A resolution in support of this amendment would be:

RESOLVED by the Fullerton Arboretum Commission, that Amendment No. 1 to the Agreement and Site Lease as presented to the Commission, is approved and the President of the Commission is hereby authorized to execute the amendment on behalf of the Commission.

Be advised that the amendment is between the Commission and the California State University. Pursuant to the provisions of the Fullerton Arboretum Authority Agreement, our office serves as counsel for both of the signing parties.

WGK:lr:7814a

Attachment
AGREEMENT AND SITE LEASE
AMENDMENT NO. 1:

The October 4, 1971 Agreement and Site Lease between the State of California and the Fullerton Arboretum Authority is amended as follows:

1. The property description of the Arboretum site is changed by substitution of a new Attachment A (September 17, 1985) for the original Attachment A. The original Attachment A is hereby deleted. The new Attachment A (September 17, 1985), attached hereto is hereby adopted.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to the Fullerton Arboretum Agreement and Site Lease to be executed and attested by their proper officers thereunto duly authorized effective on the last date of execution of this amendment.

Executed in Long Beach, California this ___ day of __________, 1987.

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

By _______________________
Name _______________________
Title _______________________

Attest: _______________________

Executed in Fullerton, California on this 15th day of September, 1987.

FULLERTON ARBORETUM AUTHORITY

By William A. Miller
Name _______________________
Title _______________________

Attest: _______________________

APPROVED:

CALIFORNIA DEPARTMENT OF GENERAL SERVICES

By: _______________________
Name _______________________
Title _______________________

Date: _______________________