

175C



**SUBMITTAL TO THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: Redevelopment Agency

SUBMITTAL DATE:
August 25, 2009

SUBJECT: Adopt RDA Resolution No. 2009-024, Authorization to Lease Real Property from the Agency to Cocopah Nurseries, Inc., APNs 751-160-007, 009, 012, and 014 – 4th District - Thermal

RECOMMENDED MOTION: That the Board of Directors:

1. Conduct a joint public hearing with the Board of Supervisors per Health and Safety Code 33431 and 33433; and
2. Adopt RDA Resolution No. 2009-024, Authorization to Lease Real Property known as 85851 Middleton Road from the Agency to Cocopah Nurseries, Inc.; and
3. Approve and Authorize the Chairman of the Board to execute the attached Lease; and

(continued)

Robert Field
Executive Director

FINANCIAL DATA

Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
Annual Net County Cost:	\$ 0	For Fiscal Year:	2009-2010

COMPANION ITEM ON BOARD OF SUPERVISORS AGENDA: Yes

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30

Requires 4/5 Vote

C.E.O. RECOMMENDATION: APPROVE

BY: Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: MICHELLE CLACK
DATE: 7/1/09
Departmental Concurrence

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

Prev. Agn. Ref.: 12/12/06, 4.1

District: 4

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

4-4
RP-ED/001a-08M11.00
Form 11 (Rev 06/2003)

RECOMMENDED MOTION: (continued)

4. Authorize the Executive Director of the Redevelopment Agency or designee to take all necessary steps to administer the Lease including executing subsequent annual renewal agreements and related documents, once approved by County Counsel, to complete the transaction.

BACKGROUND:

The Agency owns unimproved real property consisting of approximately 23.87 acres located at 85851 Middleton Road, in the community of Thermal, known as Assessor's Parcel Numbers 751-160-007, 009, 012, and 014, as depicted on Exhibit "A" attached hereto and incorporated herein by reference. Agency acquired the property from Cocopah Nurseries, Inc. ("Cocopah") and Agency agreed to lease back the property for a two-year period. Since the property is not developed at this time, Agency would like to continue the lease with Cocopah in order to eliminate the need to maintain the property. Given that the lease is for an existing agricultural business, it is exempt from CEQA pursuant to CEQA Guidelines Section 15301, Existing Facilities.

Proper notice has been given for the public hearing allowing Cocopah to lease the property which allows them to maintain and farm existing date trees located on the property. The term of the lease may be extended by mutual agreement between the Executive Director of the Agency and Cocopah, and shall be incorporated by a written amendment executed by both parties. Cocopah shall pay \$1.00 per year to the Agency for the term of the lease which shall constitute rent under this lease.

EXHIBIT "A" LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Riverside, State of California, described as follows:

PARCEL 1: (751-160-007)

THE SOUTHWESTERLY 10 ACRES OF LOT 10 OF SUBDIVISION OF A PORTION OF SECTION 17, TOWNSHIP 7 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS SHOWN BY MAP OF FILE IN BOOK 10 PAGE 23, OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPT THE SOUTHWESTERLY 10 FEET OF SAID SOUTHEASTERLY 350 FEET.

PARCEL 2: (751-160-009)

LOT 10 OF THE SUBDIVISION OF A PORTION OF SECTION 17, TOWNSHIP 7 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS SHOWN BY MAP ON FILE IN BOOK 10 PAGE 23, OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPT THE SOUTHWESTERLY 10 ACRES, THE NORTHEASTERLY LINE OF SAID 10 ACRES BEING PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOT 10;

ALSO EXCEPT THAT PARDON OF SAID PROPERTY CONVEYED TO HERNRY J. DIETRICH AND GEORGIA LEE DIETRICH, HUSBAND AND WIFE, BY DEED RECORDED JULY 14, 1949 AS INSTRUMENT NO. 1550 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHEAST CORNER OF LOT 10;

THENCE SOUTH 45° 35' WEST 308.6 FEET;

THENCE IN A NORTHWESTERLY DIRECTION, 216 FEET, TO A GIVEN POINT 378 FEET WEST OF THE POINT OF BEGINNING;

THENCE EAST 378 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPT ONE-HALF INTEREST IN AND TO ALL OIL, OTHER HYDROCARBONS, GAS AND OTHER ASSOCIATED SUBSTANCES AND OTHER MINERALS AND KINDRED SUBSTANCES IN AND/OR LYING UNDER SAID LAND, AS RESERVED IN DEED FROM OLLA J. GRANT AND ELSIE M. GRANT, HUSBAND AND WIFE, RECORDED JUNE 22, 1954 IN BOOK 1600 PAGE 50 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 3: (751-160-012 AND 750-160-014)

LOT 1 OF THE SUBDIVISION OF A PORTION OF SECTION 17, TOWNSHIP 7 SOUTH, RANGE 8 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS SHOWN BY MAP ON FILE IN BOOK 10 PAGE 23, OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPT THE NORTHEASTERLY ONE-HALF ACRE OF THE SOUTHWESTERLY THREE-QUARTERS ACRE OF SAID LOT 1, THE NORTHEASTERLY AND SOUTHEASTERLY LINES OF SAID ONE-HALF ACRE BEING PARALLEL WITH THE NORTHEASTERLY AND SOUTHWESTERLY LINES OF SAID LOT.

1 **BOARD OF DIRECTORS**

REDEVELOPMENT AGENCY

2 **RESOLUTION NO. 2009-024**
3 **AUTHORIZATION TO LEASE REAL PROPERTY TO**
4 **COCOPAH NURSERIES, INC.**

5 **(Fourth District - Thermal)**

6 **WHEREAS**, the Redevelopment Agency for the County of Riverside (the
7 "Agency") is a redevelopment agency duly created, established and authorized to
8 transact business and exercise its powers, all under and pursuant to the provisions of
9 the Community Redevelopment Law which is Part 1 of Division 24 of the California
10 Health and Safety Code (commencing with Section 33000 et seq.); and

11 **WHEREAS**, the Riverside County Board of Supervisors adopted redevelopment
12 plans for Redevelopment Project Area Nos. 1-1986, Jurupa Valley, Mid-County, Desert
13 Communities and the I-215 Corridor, as amended, (the "Project Areas"); and

14 **WHEREAS**, pursuant to Section 33670 of the Health and Safety Code, the
15 Agency began receiving tax increment from the Project Areas in January 1988, and
16 continues to receive annual tax increment revenue; and

17 **WHEREAS**, pursuant to Section 33430 of the Health and Safety Code, the
18 Agency may within the survey area or for purposes of redevelopment sell, lease,
19 exchange, subdivide, transfer, assign, pledge or otherwise dispose of any real or
20 personal property or any interest in property; and

21 **WHEREAS**, the Agency owns real property located at 85851 Middleton Road, in
22 the unincorporated area of the County of Riverside in the community of Thermal,
23 California, within the Desert Communities Project Area ("Property"); and

24 **WHEREAS**, a tree nursery is located on the Property; and

25 **WHEREAS**, the Agency wishes to lease the Property to Cocopah Nurseries, Inc.
26 ("Cocopah") who will continue to use the Property for agricultural purposes; and

27 **WHEREAS**, the consideration is not less than the fair reuse value at the use and
28 with the covenants and conditions and development costs authorized by the lease; and

WHEREAS, the Agency would like to continue the lease with Cocopah

FORM APPROVED COUNTY COUNSEL
BY: MICHELLE CLACK
DATE: 9/11/09

1 Nurseries, Inc. ("Cocopah") in order to eliminate the need to maintain the property; and

2 **WHEREAS**, the leasing of the Property will assist in the elimination of blight and
3 is consistent with the implementation plan adopted pursuant to Health and Safety Code
4 Section 33490 by providing an agricultural site for continued cultivation to the Project
5 Area and surrounding communities within the County of Riverside; and

6 **WHEREAS**, the lease will continue until the Agency develops the proposed
7 Middleton Street Affordable Housing Project ("Project"); and

8 **WHEREAS**, the lease to Cocopah to use the Property for existing agricultural
9 purposes is exempt from the California Environmental Quality Act ("CEQA") pursuant to
10 Section 15301, existing facilities, of the CEQA Guidelines.

11 **NOW THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED** by the
12 Board of Directors of the Redevelopment Agency for the County of Riverside, State of
13 California, in regular session assembled on September 15, 2009 as follows:

14 1. That the Board of Directors hereby finds and declares that the above
15 recitals are true and correct.

16 2. That the Redevelopment Agency for the County of Riverside is authorized
17 to lease real property located at 85851 Middleton Road, Thermal, located in the
18 unincorporated area of Riverside County to Cocopah.

19 3. That the lease price of the subject property is one dollar (\$1.00) per year.

20 4. The fair reuse value of the property has been determined to be one dollar
21 (\$1.00) after conditions, covenants, and criteria have been imposed by lease.

22 4. That the lease between the Agency and Cocopah Nurseries, Inc. is hereby
23 approved and the Chairman of the Board of Directors is authorized to execute the lease
24 agreement, which is attached and incorporated herein by reference.

25 5. That the Executive Director of the Redevelopment Agency or designee is
26 hereby authorized to take necessary steps to complete this transaction including
27 executing subsequent renewal agreements and any other subsequent, relevant and
28 necessary documents.

1 AGRICULTURAL LEASE

2 This Agricultural Lease (the "Lease") is entered into as of the 9th day of June, 2009,
3 between THE REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE, herein
4 called "Agency," and COCOPAH NURSERIES, INC., A CALIFORNIA CORPORATION,
5 herein called "Tenant," collectively referred to herein as the "Parties." This Lease is made with
6 reference to the following facts:

7 **RECITALS**

8 A. Agency is the owner of certain real property in the Thermal area of Rivers
9 County, California, consisting of 23.87 acres of agricultural property, located at 85
10 Middleton Road, Thermal, California and also known as APNs: 751-160-007, 009, 012,
11 751-160-014, which is more particularly described in Exhibit "A", attached hereto
12 incorporated herein by this reference (the "Premises.")

13 B. The Premises has historically been used for agricultural purposes.

14 C. There are no existing structures or buildings on the Premises.

15 D. Tenant desires to lease Premises for agricultural purposes. Agency is willing to
16 lease the Property to Tenant, in accordance with the terms and provisions described in this
17 Lease.

18 The Parties therefore agree as follows:

19 1. Premises. Agency hereby leases and lets the Premises to Tenant and Tenant
20 rents the Premises from Agency.

21 2. Term The term of this Lease shall commence as of June 9th, 2009 and shall
22 continue for two (2) years. Agency shall have the right terminate this Lease prior to the
23 expiration of the two (2) years, by providing Tenant with a 90 day written notice of
24 termination.

25 3. Rent Annual Base Rent will be One Dollar (\$1.00), payable in advance,
26 commencing June 9th, 2009 and annually thereafter. Tenant will also be responsible for
27 payment of "Additional Rent" expenses relating to the Premises, including (without limitation)
28 all real property tax increases (as described in Section 8 below), personal property taxes and

1 assessments, premiums on all insurance coverage for which Tenant is responsible, as
2 described herein, the cost of all utility services, maintenance and cultivation costs and all
3 other costs and expenses payable with respect to the use and possession of the Premises.
4 ("Base Rent" and "Additional Rent" are hereafter collectively referred to as "Rent.") Except as
5 stated in this Lease, it is the Parties' intention that Agency incur no expense or liability
6 whatsoever with respect to the Premises.

7 4. Agency Title. Tenant acknowledges that Agency intends to develop the
8 Premises as a residential development. Therefore, Tenant shall not have the exclusive right to
9 occupy the Premises during the term of the Lease. During the Lease, Agency and its agents,
10 employees and independent contractors shall have the unrestricted right to enter onto the
11 Premises for conducting such test, surveys, inspections and studies as are reasonably
12 required by Agency, in its sole discretion, to process its applications with appropriate
13 governmental agencies for all entitlements and approvals required for its intended
14 development of the Premises. In this regard, however, Agency's use of the Premises for this
15 purpose shall not unreasonably interfere with Tenant's occupancy under the Lease and the
16 operation of Tenant's business. Agency agrees that it shall compensate Tenant for any and all
17 damage Agency may cause to Tenant's crop during the Lease that is a direct result of
18 Agency's entry onto the Property as provided for under this paragraph. Agency further agrees
19 to indemnify and hold harmless Tenant from any and all claims and/or damages, including
20 attorney fees, that may be incurred as a direct result of Agency's accessing the Property as
21 set forth under the terms of this paragraph.

22 5. Use of Premises. Tenant will use the Premises solely for agricultural purposes,
23 including the cultivation and harvesting of trees and uses reasonably associated therewith. No
24 other use will be permitted without Agency's prior written consent, which Agency may grant or
25 withhold in its sole discretion. In the course of Tenant's business, Tenant may dig and remove
26 the palm trees as well as farms the palms for the date fruit. In the course of removing the palm
27 trees, soil is removed from the site, but not all of the root system is removed from the
28 remaining soil. Agency accepts these facts as a normal part of Tenant's farming operation.

1 Agency also accepts that roots and other organic and deleterious material will remain in the
2 soil after the termination of the Lease for which Tenant will have no responsibility for. In its
3 tree farming operations, Tenant may remove rocks and excavate soil as necessary for
4 agricultural purposes.

5 (a) Tenant shall not construct any structures or buildings on the Premises
6 without prior written approval from Agency, which the Agency may grant or withhold in its sole
7 discretion.

8 6. Utility Charges. Tenant will pay all charges for electricity, gas, heat, water,
9 telephone and other utility services which are separately metered or are used on the
10 Premises.

11 7. Taxes. Tenant shall be responsible for payment of any personal property taxes,
12 possessory interest taxes, permit fees, business license fees associated with the tenancy and
13 any and all fees and charges of any nature levied against the Premises and the operations of
14 Tenant at any time during the term of the Lease. Tenant shall also be responsible for any
15 increases in real property taxes whether or not such increases are the result of Tenant's
16 activity on the Premises. Any increases in property taxes, shall be the sole responsibility of
17 Tenant. Agency will notify Tenant in writing within a reasonable time following receipt of any
18 tax bill or statement, evidencing an increase in property taxes, for which Tenant is liable
19 hereunder. Tenant will assure that the amount of such increase is paid to and received by
20 Agency not later than December 1st and April 1st (with respect to the semi-annual installments)
21 or ten days prior to any other due date (with respect to supplemental or special assessments).
22 Any such increased tax amount for which Tenant is liable hereunder will be prorated as to any
23 period following the expiration or sooner termination of this Lease. Provided that Tenant pays
24 the taxes as referenced in this paragraph, Tenant's responsibility for any and all Rent,
25 including by not limited to taxes referenced in this paragraph, shall end at the termination of
26 the Lease.

27 8. Insurance. Without limiting or diminishing the Tenant's obligation to indemnify or
28 hold the Agency harmless, Tenant shall procure and maintain or cause to be maintained, at is

1 sole cost and expense, the following insurance coverage's during the term of this Lease:

2 (a) Commercial General Liability: Commercial General Liability insurance
3 coverage, including but not limited to, premises liability, contractual liability, products and
4 completed operations liability, personal and advertising injury, and cross liability coverage,
5 covering claims which may arise from or out of Tenant's performance of its obligations
6 hereunder. Policy shall name the Agency, the County of Riverside, all the Agencies, Districts,
7 Special Districts, and Departments of the County of Riverside and their respective directors,
8 officers, Board of Supervisors, employees, elected or appointed officials, agents or
9 representatives as Additional Insureds. Policy's limit of liability shall not be less than
10 \$2,000,000 per occurrence combined single limit. If such insurance contains a general
11 aggregate limit, it shall apply separately to this Lease or be no less than two (2) times the
12 occurrence limit.

13 (b) Vehicle Liability: If vehicles or mobile equipment are used in the
14 performance of the obligations under this Lease, then Tenant shall maintain liability insurance
15 for all owned, non-owned or hired vehicles so used in an amount not less than \$2,000,000 per
16 occurrence combined single limit. If such insurance contains a general aggregate limit, it shall
17 apply separately to this Lease or be no less than two (2) times the occurrence limit. Policy
18 shall name the Agency, the County of Riverside, all the Agencies, Districts, Special Districts,
19 and Departments of the County of Riverside, and their respective directors, officers, Board of
20 Supervisors, employees, elected or appointed officials, agents or representatives as
21 Additional Insureds.

22 (c) General Insurance Provisions - All lines:

23 (i) Any insurance carrier providing insurance coverage hereunder
24 shall be admitted to the State of California and have an A M BEST rating of not less than A:
25 VIII (A:8) unless such requirements are waived, in writing, by the Agency Risk Manager. If the
26 Agency's Risk Manager waives a requirement for a particular insurer such waiver is only valid
27 for that specific insurer and only for one policy term.

28 (ii) Tenant's insurance carrier(s) must declare its insurance self-

1 insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such
2 retentions shall have the prior written consent of the Agency Risk Manager before the
3 commencement of operations under this Lease. Upon notification of self insured retention
4 unacceptable to the Agency, and at the election of the Agency's Risk Manager, Tenant's
5 carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Lease
6 with the Agency, or 2) procure a bond which guarantees payment of losses and related
7 investigations, claims administration, and defense costs and expenses.

8 (iii) Tenant shall cause Tenant's insurance carrier(s) to furnish the
9 Agency with either 1) a properly executed original Certificate(s) of Insurance and certified
10 original copies of Endorsements effecting coverage as required herein, and 2) if requested to
11 do so orally or in writing by the Agency Risk Manager, provide original Certified copies of
12 policies including all Endorsements and all attachments thereto, showing such insurance is in
13 full force and effect. Further, said Certificate(s) and policies of insurance shall contain the
14 covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the
15 Agency prior to any material modification, cancellation, expiration or reduction in coverage of
16 such insurance. In the event of a material modification, cancellation, expiration, or reduction
17 in coverage, this Lease shall terminate forthwith, unless the Agency receives, prior to such
18 effective date, another properly executed original Certificate of Insurance and original copies
19 of endorsements or certified original policies, including all endorsements and attachments
20 thereto evidencing coverage's set forth herein and the insurance required herein is in full force
21 and effect. Tenant shall not commence operations until the Agency has been furnished
22 original Certificate (s) of Insurance and certified original copies of endorsements and if
23 requested, certified original policies of insurance including all endorsements and any and all
24 other attachments as required in this Section. An individual authorized by the insurance
25 carrier to do so on its behalf shall sign the original endorsements for each policy and the
26 Certificate of Insurance.

27 (iv) It is understood and agreed to by the parties hereto that the
28 Tenant's insurance shall be construed as primary insurance, and the Agency's insurance

1 and/or deductibles and/or self-insured retention's or self-insured programs shall not be
2 construed as contributory.

3 (v) If, during the term of this Lease or any extension thereof, there is a
4 material change in the Lease or, the term of this Lease, including any extensions thereof,
5 exceeds five (5) years, the Agency reserves the right to adjust the types of insurance required
6 under this Lease and the monetary limits of liability for the insurance coverage's currently
7 required herein, if; in the Agency Risk Manager's reasonable judgment, the amount or type of
8 insurance carried by Tenant has become inadequate.

9 (vi) Tenant shall pass down the insurance obligations contained herein
10 to all tenants occupying the Premises.

11 (vii) The insurance requirements contained in this Lease may be met
12 with a program(s) of self-insurance acceptable to the Agency.

13 (viii) Tenant agrees to notify Agency of any claim by a third party or any
14 incident or event that may give rise to a claim arising from the performance of this Lease.

15 (d) Worker's Compensation. If Tenant has employees as defined by the
16 State of California, Tenant shall maintain statutory Workers' Compensation Insurance
17 (Coverage A) as prescribed by the laws of the State of California. Policy shall include
18 Employer's Liability (Coverage B) including Occupational Disease with limits not less than
19 \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in
20 favor of the Agency, and if applicable, to provide a Borrowed Servant/Alternate Employer
21 Endorsement.

22 9. Hold Harmless/Indemnification.

23 (a) Tenant shall indemnify and hold harmless the Agency, the County of
24 Riverside, all the Agencies, Districts, Special Districts and Departments of the County of
25 Riverside and their respective directors, officers, Board of Supervisors, elected and appointed
26 officials, employees, agents and representatives from any liability whatsoever, based or
27 asserted upon any services of Tenant, its officers, employees, subcontractors, agents or
28 representatives arising out of or in any way relating to this Lease, including but not limited to

1 property damage, bodily injury, or death or any other element of any kind or nature
2 whatsoever arising from the performance of Tenant, its officers, agents, employees,
3 subcontractors, agents or representatives from this Lease. Tenant shall defend, at its sole
4 expense, all costs and fees including, but not limited, to attorney fees, cost of investigation,
5 defense and settlements or awards, the Agency, the County of Riverside, all the Agencies,
6 Districts, Special Districts and Departments of the County of Riverside and their respective
7 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents
8 and representatives in any claim or action based upon such alleged acts or omissions.

9 With respect to any action or claim subject to indemnification herein by Tenant, Tenant
10 shall, at their sole cost, have the right to use counsel of their own choice and shall have the
11 right to adjust, settle, or compromise any such action or claim without the prior consent of
12 Agency; provided, however, that any such adjustment, settlement or compromise in no
13 manner whatsoever limits or circumscribes Tenant's indemnification to Agency as set forth
14 herein.

15 Tenant's obligation hereunder shall be satisfied when Tenant has provided to Agency
16 the appropriate form of dismissal relieving Agency from any liability for the action or claim
17 involved.

18 The specified insurance limits required in this Lease shall in no way limit or
19 circumscribe Tenant's obligations to indemnify and hold harmless the Agency herein from
20 third party claims.

21 (b) Environmental Indemnification. Tenant shall indemnify, protect, defend
22 and hold Agency, the County of Riverside, all the Agencies, Districts, Special Districts and
23 Departments of the County of Riverside and their respective directors, officers, Board of
24 Supervisors, elected and appointed officials, employees, agents and representatives as well
25 as their collective successors and assigns, and the Premises, harmless from and against any
26 and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of
27 permits and attorneys' and consultants' fees arising out of or involving any hazardous
28 substances or materials ("Hazardous Materials") brought onto the Premises by or for the

1 Tenants or by anyone under Tenant's control. Tenant's obligations under this Paragraph shall
2 include, but not be limited to, the effects of any contamination or injury to person, property or
3 the environment created or suffered by Tenant, and the cost of investigation (including
4 consultants' and attorneys' fees and testing), removal, remediation, restoration and/or
5 abatement thereof, or of any contamination therein involved and shall survive the expiration or
6 earlier termination of the Lease. No termination, cancellation or release agreement entered
7 into by Agency and Tenant shall release Tenant from its obligations under the Lease with
8 respect to Hazardous Materials, unless specifically so agreed by Agency in writing at the time
9 of such agreement.

10 10. Waiver of Rights in Connection With Damage or Destruction. Agency and
11 Tenant hereby waive any rights against each other which they might have on account of any
12 loss or damage suffered by Agency, Tenant, the Premises or their personal property arising
13 from any risk generally covered by fire and extended coverage insurance.

14 11. Estoppel Certificate. Either party may at any time and from time to time, upon
15 not less than twenty (20) days prior notice, request the other party to execute, acknowledge
16 and deliver to the party making such a request a statement in writing certifying that this Lease
17 is unmodified and in full force and effect (or if there have been modification, that the same is
18 in full force and effect as modified and stating the modifications), the dates to which the
19 rentals and other charges have been paid, and that the party requesting the certification has
20 performed all of its obligations and is not in default under this Lease (or if there are any
21 defaults under this Lease stating such defaults with particularity). The failure by either party to
22 provide such a statement shall constitute an Event of Default pursuant to paragraph 13 of this
23 Lease.

24 12. Assignment and Subletting. Tenant may not assign its rights under this Lease
25 or sublet the Premises or any portion thereof without Agency's prior written consent, which
26 Agency may grant or withhold in its sole discretion. Notwithstanding the preceding sentence,
27 Agency will not unreasonably withhold its consent to an assignment by Tenant to an entity in
28 which Tenant has an equity interest of not less than fifty percent (50%) as confirmed by

1 documentation reasonably satisfactory to Agency.

2 13. Events of Default; Remedies; Non-Disturbance.

3 (a) Events of Default. Any one or more of the following events shall constitute
4 an event of default (an "Event of Default") hereunder:

5 (i) Tenant shall fail to pay any Rent or other consideration to Agency
6 when the same is due, and such failure continues for ten (10) days after Landlord has given
7 Tenant written notice specifying the amount due;

8 (ii) Tenant shall fail to take any other action or perform any other
9 obligation to performed by Tenant under this Lease not involving the payment of money, and
10 such failure continues for thirty (30) days after Agency has given Tenant written notice
11 specifying the nature of such default; provided, however, that if the nature of such default is
12 such that it may not be cured within such thirty (30) day period, Tenant shall not be in default
13 if it commences to cure such default within such thirty (30) day period and diligently pursues
14 curing such default thereafter;

15 (iii) Tenant shall file a voluntary petition in bankruptcy or a petition or
16 answer seeking a reorganization, arrangement, composition, readjustment, liquidation,
17 dissolution or other relief of the same or different kind under any provisions of the bankruptcy
18 laws or Tenant shall make an assignment for the benefit of creditors;

19 (iv) An involuntary petition in bankruptcy against Tenant or petition or
20 answer made by a person other than Tenant seeking a reorganization, arrangement,
21 composition, readjustment, liquidation, dissolution, or other relief against Tenant of the same
22 or different kind under any provision of the bankruptcy laws is filed or if a receiver is appointed
23 having jurisdiction of the business property or assets of Tenant on the Premises, and, in any
24 of such events, if Tenant shall not promptly commence and expeditiously pursue action to
25 dismiss any such involuntary petition or answer or to vacate such receivership;

26 (v) Then, and in any of such events, except as herein below provided
27 and except as may be provided in the bankruptcy laws of the United States then in effect,
28 Agency, at its option, shall have the immediate right to reenter the Premises and expel Tenant

1 or any person or persons occupying the same, with or without legal process, and in any such
2 event, Tenant agrees to peacefully and quietly yield up and surrender the Premises to
3 Agency.

4 (b) Remedies. If an Event of Default shall have happened and be continuing,
5 Agency shall have the following rights:

6 (i) Agency shall have the right to give Tenant written notice of
7 Landlord's intention to terminate the term of this Lease on a date specified in such notice,
8 provided, however, that such date of termination shall be at least ninety (90) days after the
9 date such notice was given. Upon the giving of such notice, the term of this Lease and the
10 estate hereby granted shall expire and terminate on such date of termination as fully and
11 completely and with the same effect as if such date were the date herein fixed for the
12 expiration of the term of this Lease, and all rights of Tenant hereunder shall expire and
13 terminate, but Tenant shall remain liable as hereinafter provided.

14 (ii) Agency shall have the immediate right, whether or not the term of
15 this Lease shall have been terminated pursuant to subparagraph (b) above, to reenter and
16 repossess the Premises by summary proceedings, ejectment or by any other legal action
17 Agency determines to be necessary or desirable and the right to remove all persons and
18 property there from. No such reentry or taking of possession of the Premises by Agency shall
19 be constructed as an election by Agency to terminate the term of this Lease unless a notice of
20 such intention is given to Tenant pursuant to subparagraph (b) above, or unless such
21 termination be decreed by a court or other governmental entity of competent jurisdiction.

22 (iii) Upon the reentry or repossession of the Premises pursuant to
23 subparagraph (ii) above, whether or not the term of this Lease shall have been terminated
24 pursuant to subparagraph (i) above, Agency shall re-let the Premises for the account of
25 Tenant, for such term or terms and on such conditions and for such uses as Agency may
26 determine, and Agency may collect and receive any rents payable by reason of such re-
27 letting; provided that Agency shall use its best efforts to obtain the best rent and terms
28 available thereon.

1 (iv) No expiration or termination of this Lease pursuant to
2 subparagraph (i) above, by operation of law or otherwise, and no reentry or repossession of
3 the Premises pursuant to subparagraph (ii) above or otherwise, and no re-letting of the
4 Premises pursuant to subparagraph (iii) above shall relieve Tenant of his liabilities and
5 obligations hereunder, all of which shall survive such expiration, termination, reentry,
6 repossession, or re-letting.

7 (v) In the event of any expiration or termination of the term of this
8 Lease or reentry or repossession of the Premises by reason of the occurrence of an Event of
9 Default, Tenant will pay to Agency all Rent and other sums required to be paid by Tenant to
10 and including the date of such expiration, termination, reentry or repossession; thereafter,
11 Tenant shall, until the end of what would have been the term of this Lease in the absence of
12 such expiration, termination, reentry or repossession, be liable to Agency for, and shall pay to
13 Agency, as liquidated and agreed current damages: (a) all Rent and other sums which would
14 be payable under this Lease by Tenant in the absence of such expiration, termination, reentry
15 or repossession, less (b) the proceeds of any re-letting affected for the account of Tenant
16 pursuant to subparagraph (iii) above, after deducting from such proceeds all Agency's
17 reasonable expenses in connection with such re-letting. Tenant will pay such current
18 damages on the days on which Rent would be payable under this Lease in the absence of
19 such expiration, termination, reentry or repossession, and Agency shall be entitled to recover
20 the same from Tenant on each such day.

21 (vi) At any time after any such expiration or termination of this Lease
22 or reentry or repossession of the Premises by reason of the occurrence of an Event of
23 Default, whether or not Agency shall have collected any current damages pursuant to
24 subparagraph (v) above, Agency shall be entitled to recover from Tenant, and Tenant will pay
25 to Agency on demand, as and for liquidated and agreed final damages for Tenant's default
26 and in lieu of all current damages beyond the date of such demand (it being agreed that it
27 would be impracticable or extremely difficult to fix the actual damages), an amount equal to
28 the "worth" at the time of the award of the excess of the Rent and other sums owing under this

1 Lease for the balance of the unexpired term over the then fair market rental value for the
2 Premises over the remainder of the term. In calculating "worth" pursuant to this subparagraph,
3 a discount rate of one percent (1%) above the discount rate of the Federal Reserve Bank of
4 San Francisco at the date of calculation shall be used.

5 14. Hazardous Waste. In the event of hazardous substances or materials are
6 discovered on the Premises and were present thereon prior to the commencement of the term
7 of this Lease, Agency may elect to terminate this Lease. In the event of such termination, the
8 provisions of Section 16 below shall be operative with respect to the reimbursement to Tenant
9 of the unamortized value of any building improvements constructed on the Premises by
10 Tenant.

11 15. Good Nursery Practices. Tenant agrees that he will adhere to good nursery
12 practices with respect to the agricultural use of the Premises, including irrigation (appropriate
13 to the tree farming), cultivation and harvesting. Tenant will continue to farm per typical
14 Coachella Valley farming practices throughout the terms of the Lease. Tenant will adhere to
15 all ordinances in regard to trash generated by its farming operations. If Agency at any time
16 during the term of this Lease is notified of any violation, Agency will so notify Tenant in writing,
17 setting forth in detail the nature of the alleged violation. Tenant will thereafter take all steps
18 reasonably necessary and prudent in order to remedy such violation.

19 16. Expiration of Lease Period. Agency agrees that during the Lease Term Tenant
20 may keep its trees, plant material and personal property on the Premises at no additional cost
21 to the Tenant. At the expiration of the term of the Lease, Tenant shall remove all trees, plant
22 material and personal property from the Premises that it wishes to keep. Anything left on the
23 Premises after the Lease Term expires shall become the property of the Agency.

24 (a) In the event Agency terminates the Lease in accordance with Section 2
25 herein, Tenant shall remove all trees, plant material and personal property from the Premises
26 that it wishes to keep within that 90 day notice period. Anything left on the Premises after the
27 90 day notice period shall become the property of the Agency.

28 17. Third Party Security Interest. During the term of the Lease, a third party lender

1 ("Bank") may have a security interest in any and all trees, plant material and or personal
2 property ("Collateral") on the Premises owned by Tenant. However, the Tenant may not file or
3 cause to be filed or permit the filing of any liens against the Premises. The Bank shall have a
4 first position on the Collateral during the term of the Lease, which shall expire at the end of the
5 Lease. After the Lease term has expired, any and all Collateral left on the Premises may
6 become the property of Agency as set forth above.

7 18. Well Maintenance: Water Use. Throughout the term of this Lease, Tenant will
8 be solely responsible for the proper maintenance and operation of any well(s) located upon
9 the Premises. Water taken from wells located upon the Premises may be used only at the
10 Premises and may not be sold or otherwise removed for off-site use. Agency makes no
11 guarantee regarding the potability of well water from the Premises or its suitability for
12 domestic uses.

13 19. Costs and Attorney's Fees. In the event that any party hereto commences a
14 legal proceeding to enforce any of the terms of this Lease, the prevailing party in such action
15 shall have the right to recover reasonable attorneys' fees and costs from the other party, as
16 fixed by the court in the same action.

17 20. Notices. Any notice required or permitted by or in connection with this
18 Agreement shall be in writing and shall be made by facsimile, by hand delivery, by Federal
19 Express or other similar overnight delivery service (designated for overnight delivery), or by
20 certified mail, first class postage prepaid, return receipt requested, addressed to the
21 respective parties at the appropriate address set forth below or such other address as may be
22 hereafter specified by written notice by the respective parties given in accordance herewith.
23 Notice shall be considered given (i) as of the date of facsimile transmission (provided it is sent
24 prior to 5:00 P.M. local time to the recipient on a Business Day or if not sent by such time,
25 then it shall be deemed given on the next Business Day) and the sender receives written
26 confirmation of transmission, or (ii) the date of hand delivery, or (iii) upon receipt if sent by
27 certified mail, or (iv) one (1) Business Day after delivery to Federal Express or similar
28 overnight delivery service, independent of the date of actual delivery, provided the giver of

1 such notice can establish the fact that notice was given as provided herein. If notice is
2 tendered pursuant to the provisions of this paragraph and is refused by the intended recipient
3 thereof, the notice, nevertheless, shall be considered to have been given and shall be
4 effective as of the date herein provided.

TENANT:	COCOPAH NURSERIES, INC Attn: Duane Young 81-880 Arus Ave. Indio, CA 92201 Facsimile: 760.342.6188
AGENCY:	THE REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE Attn: Janet Parks 1325 Spruce Street, Ste 400 Riverside, CA 92507 Facsimile: 951.955.6686

14 21. Miscellaneous Provisions. This Lease is subject to the following general terms
15 and provisions:

16 (a) Relationship of Parties. Nothing herein contained shall be deemed or
17 construed by the Parties hereto or by any third party as creating the relationship of principal
18 and agent or of partnership or of joint venture between the Parties, it being understood and
19 agreed that neither the method or computation of Rent nor any other provision contained
20 herein, nor any acts of the Parties hereto, shall be deemed to create any relationship between
21 the Parties other than the relationship of Agency and Tenant.

22 (b) Cumulative Rights/Remedies. The various rights and remedies herein
23 contained and reserved to each of the Parties, except as herein otherwise expressly provided,
24 shall not be considered as exclusive of any other right or remedy of such party, but shall be
25 construed as cumulative and shall be in addition to every other remedy now or hereafter
26 existing at law, in equity or by statute. No delay or omission of the right to exercise any power
27 or remedy by either party shall impair any such right, power or remedy or be construed as a
28 waiver of any default of non-performance or an acquiescence therein.

1 (c) Construction of Lease. This Lease shall be interpreted and construed
2 only by the contents hereof and there shall be no presumption or standard of construction in
3 favor of or against either Agency or Tenant. When required by context, the singular shall
4 include the plural, and the neuter gender shall include a person, corporation, firm or
5 association.

6 (d) Headings. The Headings of the articles contained herein are for
7 convenience only and do not define, limit or construe the contents of such articles.

8 (e) Partial Invalidity. If any provision of this Lease is declared invalid in a
9 court proceeding between the Parties, such invalidity shall not invalidate this Lease, and this
10 Lease shall be construed as if the invalid part were not contained herein, and the rights and
11 obligations of the Parties shall be construed and enforced accordingly.

12 (f) Amendment. This Lease may not be amended or modified by any act or
13 conduct of the Parties or by oral agreement, unless reduced to writing and properly executed.

14 (g) Recording of Lease. The parties agree that a memorandum of this Lease
15 may be recorded with the Riverside County Recorder's Office upon request of either party.
16 Both parties agree to execute any additional documents necessary to effectuate this provision
17 in the future.

18 22. Effective Date. The effective date of this Lease is the date the parties
19 sign the Lease. If the parties sign the Lease on more than one date, then the last date the
20 Lease is signed by a party shall be the effective date.

21 23. Compliance with Laws. Tenant shall comply with all applicable laws,
22 rules and regulations during the term of this Lease.

23 24. Counterparts. This Lease may be executed in any number of
24 counterparts, each of which shall constitute one original and all of which shall be one and the
25 same instrument.

26 //

27 //

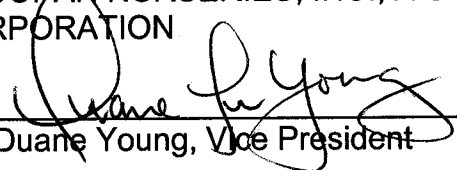
28 //

1 IN WITNESS WHEREOF, this Lease has been executed as of the date and year
2 shown below.

3 **TENANT:**

4 COCOPAH NURSERIES, INC., A CALIFORNIA
5 CORPORATION

6 Dated: 6-9-09

7 By: 
8 Duane Young, Vice President

9 **AGENCY:**

10 THE REDEVELOPMENT AGENCY FOR THE
11 COUNTY OF RIVERSIDE


12 Dated: _____

13 By: _____
14 Jeff Stone, Chairman

15 **RECOMMENDED FOR APPROVAL:**

16 By: 
17 Hector Casillas
18 Development Specialist I

19 Approved as to Form:
20 Pamela J. Walls
21 Agency Counsel

22 By:  9/1/09
23 Michelle Clack
24 Deputy

25 **ATTEST:**
26 Kecia Harper-Ihem
27 Clerk of the Board

28 By: _____
Deputy

JP:hc
6-9-09

Exhibit “A”

(Legal Description)

APNs: 751-160-007, 751-160-009,
751-160-012, & 751-160-014

