

**SUBMITTAL TO THE BOARD OF COMMISSIONERS
HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

209
A



FROM: Housing Authority

SUBMITTAL DATE:

January 23, 2014

SUBJECT: Adoption of Agricultural Lease with Cocopah Nurseries, Inc.– 3 year lease, 4th District – Thermal [\$0], CEQA Exempt

RECOMMENDED MOTION: That the Board of Commissioners:

1. Adopt Resolution No. 2014-003 Agricultural Lease with Cocopah Nurseries, Inc.;
2. Approve the Agricultural Lease by and between the Housing Authority of the County of Riverside and Cocopah Nurseries, Inc. for property known as 85851 Middleton Road, Thermal;
3. Authorize the Chairman of the Board to execute the attached lease;

(Continued)

Robert Field
Executive Director

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: N/A				Budget Adjustment: No	
				For Fiscal Year: 2013/14	

C.E.O. RECOMMENDATION:

APPROVE

BY:
Rohini Dasika

County Executive Office Signature

MINUTES OF THE HOUSING AUTHORITY BOARD OF COMMISSIONERS

Departmental Concurrence

DATE

FORM APPROVED COUNTY COUNSEL
BY:
ANITA C. WILLIS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: 4.4 & 9.11 of 9/15/09

District: 4/4

Agenda Number:

10-2

SUBMITTAL TO THE BOARD OF COMMISSIONERS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Housing Authority

FORM 11: Adoption of Agricultural Lease with Cocopah Nurseries, Inc. – 3 year lease, 4th District – Thermal [\$0], CEQA Exempt

DATE: January 23, 2013

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RECOMMENDED MOTION: (Continued)

4. Authorize the Assistant County Executive Officer/EDA 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.
5. Find the activity to be categorically exempt from CEQA pursuant to CEQA Guideline Section 15301 Existing Facilities involving negligible or no expansion of existing use, Section 15304 Minor Alterations to Land, and General Rule Exemption Section 15061; and
6. Direct the Clerk of the Board to file the Notice of Exemption with the County Clerk.

BACKGROUND:

Summary

Pursuant to Assembly Bill X1 26, the redevelopment dissolution bill, the Riverside County Board of Supervisors adopted Resolution No. 2012-035 on January 10, 2012, which designated the Housing Authority of the County of Riverside as the successor agency for the redevelopment housing function. On the same date, the Housing Authority of the County of Riverside Board of Commissioners accepted, via adoption of Resolution No. 2012-001, the responsibility for performing all activities as the successor to the redevelopment housing function. On February 1, 2012, all California redevelopment agencies were eliminated and the Housing Authority of the County of Riverside assumed the redevelopment housing functions of the successor agency.

The Board of Supervisors, in its capacity as the Successor Agency, by Resolution No. 2012-006 adopted on July 3, 2012, transferred to the Housing Authority the housing assets of the Agency, specifically including the certain real property in unincorporated Thermal in Riverside County, consisting of 22.3 acres of agricultural property, located at 85851 Middleton Road, Thermal, California and also known as Assessor Parcel Numbers 751-160-007, and 009 (The Premises).

The subject property was acquired by the Redevelopment Agency for the County of Riverside from Cocopah Nurseries in 2007. The site was acquired for development as affordable housing.

The dissolution of the Redevelopment Agency negatively impacted the feasibility of the housing project. This site will be held until a feasible affordable housing project can be developed.

Prior to acquisition and since acquisition, the site is actively farmed by Cocopah with date palms as its primary crop. Upon acquisition a lease was executed which allowed Cocopah to continue to farm this site and for this crop. An extension of the lease was authorized by the Board of Supervisors by Resolution No. 2009-196 and Board of Directors by Resolution No.2009-024 on September 15, 2009 and it has since expired by its own terms.

After termination of the original lease, Cocopah continued its tenancy on a month to month basis. The Authority was not able to immediately enter into a new lease as Cocopah was a party to a Chapter Bankruptcy proceeding. That proceeding (Chapter 11 Case No. 0:12-bk-15292-EWH) was concluded by the United States Bankruptcy Court, District of Arizona, by Court Order effective October 15, 2013. The current proposed lease will allow Cocopah to continue to farm this site.

(Continued)

SUBMITTAL TO THE BOARD OF COMMISSIONERS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Housing Authority

FORM 11: Adoption of Agricultural Lease with Cocopah Nurseries, Inc. – 3 year lease, 4th District – Thermal [\$0], CEQA Exempt

DATE: January 23, 2013

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The premises have historically been used for agricultural purposes and there are no existing structures or buildings. The tenant desires to continue to lease the premises for agricultural purposes; Housing Authority is willing to lease to tenant. The tenant will maintain the site thereby eliminating the maintenance expense for the Housing Authority.

The Health and Safety Code Statutes 33430, 33431, 33433 were carefully reviewed. These statutes do not apply to the proposed lease as the lease is not for development pursuant to the redevelopment plan.

This activity is not subject to CEQA because this activity will not result in a direct or reasonably foreseeable indirect physical change in the environment [CEQA Guidelines 15061(b)(3)]. This activity is categorically exempt from CEQA because it involves negligible or no expansion of an existing use [CEQA Guidelines 15301] and because it consists of minor alterations to land [CEQA Guidelines 15304].

Impact on Residents and Businesses

The lease will benefit the community by allowing for continued agricultural use of the premises.

SUPPLEMENTAL:

Additional Fiscal Information

Annual base rent will be \$2,230 beginning January 1, 2014 and continuing for three years.

ATTACHMENTS:

- CEQA Notice of Exemption
- Resolution No. 2014-003
- Agricultural Lease by and between the Housing Authority of the County of Riverside and Cocopah Nurseries, Inc.

3
4 **RESOLUTION NO. 2014-003**

5 **APPROVAL OF AGRICULTURAL LEASE**

6 **BY AND BETWEEN**

7 **THE HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE**

8 **AND COCOPAH NURSERIES, INC.**

9 **(Fourth Supervisorial District)**

10
11 **WHEREAS**, pursuant to Assembly Bill x1 26, the Redevelopment Dissolution Bill, the
12 Riverside County Board of Supervisors adopted Resolution No. 2012-035 On January 10,
13 2012, which designated the Housing Authority of the County of Riverside (Agency) as the
14 successor agency for the redevelopment housing function. On the same date, the Housing
15 Authority of the County of Riverside Board of Commissioners accepted, via adoption of
16 Resolution No. 2012-001, the responsibility for performing all activities as the successor to the
17 redevelopment housing function. On February 01, 2012, all California redevelopment agencies
18 were eliminated and the Housing Authority of the County of Riverside assumed the
19 redevelopment housing functions of the successor agency;

20 **WHEREAS**, the Board of Supervisors, in its capacity as the Successor Agency, by
21 Resolution No. 2012-006 adopted on July 3, 2012, transferred to the Housing Authority the
22 housing assets of the Agency, specifically including the certain real property in unincorporated
23 Thermal in Riverside County, consisting of 22.3 acres of agricultural property, located at 85851
24 Middleton Road, Thermal, California and also known as Assessor Parcel Numbers 751-160-
25 007, and 009 (The Premises).

26 **WHEREAS**, the subject property, further described in Attachment A, was acquired by
27 the Agency for development as an affordable housing project.

28 **///**

1 **WHEREAS**, the Agency is holding this site until a feasible affordable housing project is
2 identified;

3 **WHEREAS**, the Agency endeavors to preserve, protect, improve and increase the
4 affordable housing stock and eliminate blight in the Project Area;

5 **WHEREAS**, the lease of the site will assist Agency in preventing blighted conditions by
6 allowing for its continued and historical agricultural use;

7 **WHEREAS**, the Cocopah Nurseries, Inc., (Cocopah) wishes to lease from the Agency
8 parcels located at 85851 Middleton Road in unincorporated Thermal and more specifically
9 known as Assessor Parcel Numbers 751-160-007 and 751-160-009; and

10 **WHEREAS**, Cocopah will continue its agricultural activities on the site during the lease
11 term;

12 **WHEREAS**, the consideration is not less than the fair reuse value at the use and with
13 the covenants and conditions and development costs authorized by the sale or lease.

14 **WHEREAS**, the proposed lease is not for development pursuant to the redevelopment
15 plan and therefore not subject to Health and Safety Code Section 33430 or 33431; and

16 **NOW THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED** by the
17 Board of Commissioners of the County of Riverside, State of California, in regular session
18 assembled January 14, 2014, as follows:

19 1. That the Board of Commissioners hereby finds and declares that the above
20 recitals are true and correct.

21 2. That the Board of Commissioners approves the Agricultural Lease with Cocopah
22 and authorizes its execution.

23 ///

24 /// FORM APPROVED COUNTY COUNSEL

25 /// BY: Anita C. Willis 1-13-14
ANITA C. WILLIS DATE

26 ///

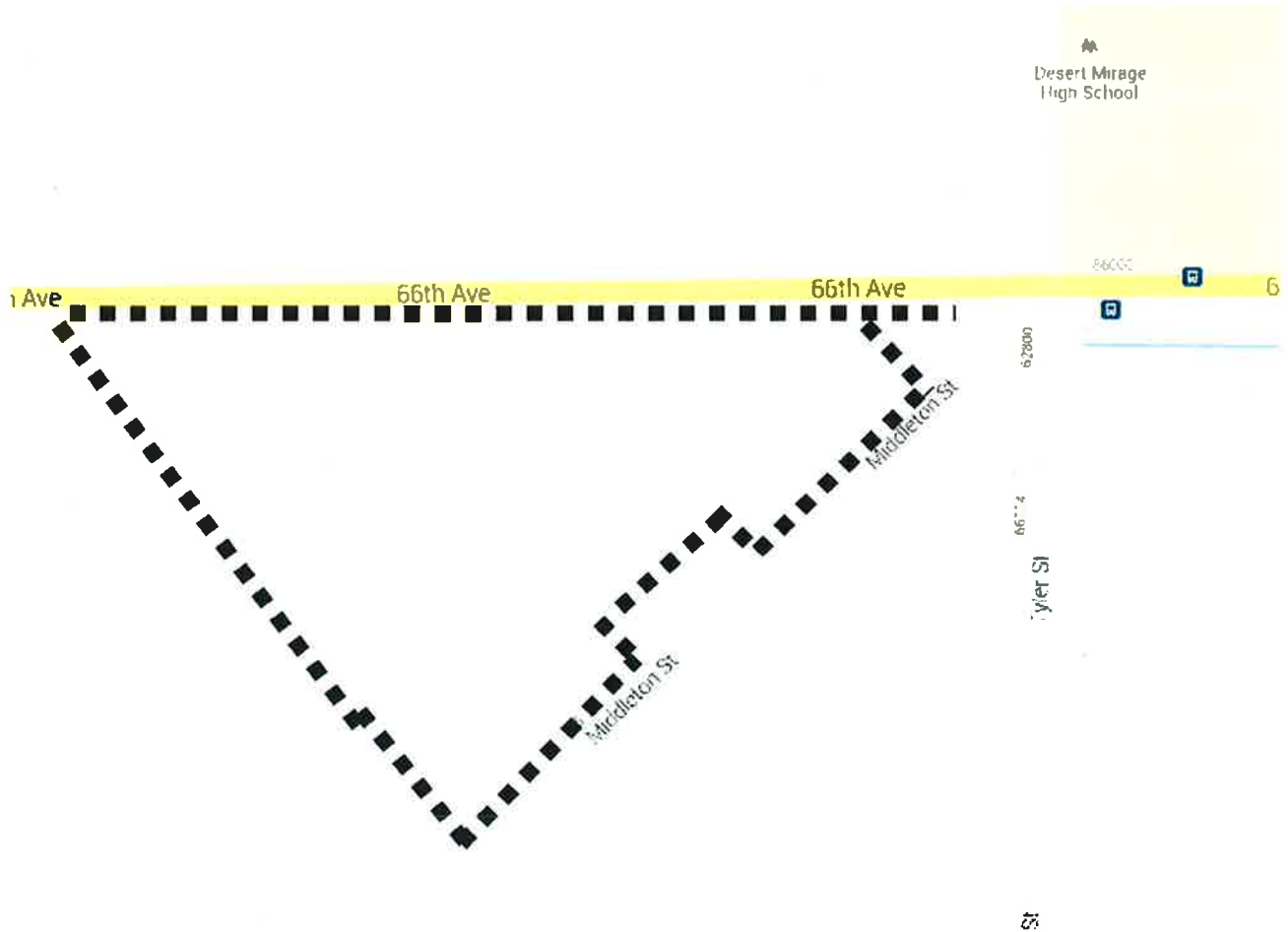
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Exhibit "A"

*APNs: 751-160-007 and 009
85851 Middleton Road, Thermal, CA 92274*

*Apn 751-160-007 approximately 9.206 acres
Apn 751-160-009 approximately 13.094 acres
Combined for approximate total of 22.3 acres*



1 **AGRICULTURAL LEASE BY AND BETWEEN**
2 **THE HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE AND**
3 **COCOPAH NURSERIES, INC.**

4 This Agricultural Lease (the "Lease") is made and entered into as of _____, 2014
5 ("Effective Date"), by and between **THE HOUSING AUTHORITY OF THE COUNTY OF**
6 **RIVERSIDE** ("Housing Authority"), a public entity, corporate and politic, in its capacity as housing
7 successor to the former Redevelopment Agency for the County of Riverside ("Agency"), and
8 **COCOPAH NURSERIES, INC.** ("Tenant"), a California Corporation, collectively referred to herein
9 as the "Parties." This Lease is made with reference to the following facts:

10 **RECITALS**

11 **WHEREAS**, Housing Authority is a California housing authority acting under the California
12 Housing Authorities Law, Part 2 of Division 24 of the Health and Safety Code (the "Housing
13 Authorities Law"); and

14 **WHEREAS**, Assembly Bill X1 26 ("AB x1 26"), which provides for the dissolution of all
15 California redevelopment agencies, was adopted and enacted into law on June 29, 2011, and was
16 upheld by the California Supreme Court on December 29, 2011 in *California Redevelopment*
17 *Association v. Matosantos*; and

18 **WHEREAS**, the Agency was dissolved by operation of law as of February 1, 2012. The
19 Board of Supervisors of the County of Riverside (the "County") accepted the designation as the
20 "Successor Agency" to the Agency through Resolution 2012-034, adopted on January 10, 2012, and
21 directed the Economic Development Agency to carry out the enforceable obligations and administer
22 the wind down of the Agency. The Board of Supervisors of the County, by Resolution No. 2012-035
23 adopted on January 10, 2012, transferred to the Housing Authority the responsibilities for performing
24 all housing functions previously performed by the Agency. As part of the foregoing transfer, the
25 Housing Authority has assumed the Agency's right, title and interest under this Lease; and

26 **WHEREAS**, the Board of Supervisors, acting in its capacity as the Successor Agency, by
27 Resolution No. 2012-006 adopted on July 3, 2012, transferred to the Housing Authority the housing
28 assets of the Agency ("Transfer of Assets"), specifically including the certain real property in
unincorporated area of Thermal in Riverside County, consisting of 22.3 acres of agricultural property,

1 located at 85851 Middleton Road, Thermal, California and also known as Assessor Parcel Numbers:
2 751-160-007 and 009, which is more particularly described in **Exhibit "A"**, attached hereto and
3 incorporated herein by this reference (the "Premises"); and

4 **WHEREAS**, the Premises has historically been used for agricultural purposes; and

5 **WHEREAS**, there are no existing structures or buildings on the Premises; and

6 **WHEREAS**, the Parties entered into that certain Lease dated June 9, 2009 and terminated, by
7 its terms as of May 30, 2011; and

8 **WHEREAS**, Tenant desires to continue to lease the Premises for agricultural purposes.
9 Housing Authority is willing to lease the Property to Tenant, in accordance with the terms and
10 provisions described in this Lease.

11 **NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the Parties
12 hereto do hereby agree as follows:

13 1. Premises. Housing Authority hereby leases and lets the Premises to Tenant and Tenant
14 rents the Premises from Housing Authority.

15 2. Term. The term of this Lease shall commence as of January __, 2014 and shall
16 continue for three (3) years. Housing Authority shall have the right terminate this Lease at any time
17 prior to the expiration of the three (3) years, by providing Tenant with a 90 day written notice of
18 termination.

19 3. Rent. Annual Base Rent will be Two Thousand, Two Hundred Thirty and 00/100
20 Dollars (\$2,230.00), payable in advance, commencing January 1st, 2014 and annually thereafter.
21 Tenant will also be responsible for payment of "Additional Rent" expenses relating to the Premises,
22 including (without limitation) all real property tax increases (as described in **Section 8** below),
23 personal property taxes and assessments, premiums on all insurance coverage for which Tenant is
24 responsible, as described herein, the cost of all utility services, maintenance (i.e., weed abatement,
25 clearance of debris and illegal dumping whenever applicable, throughout the Premises and within
26 right-of-way adjacent to Premises), cultivation costs and all other costs and expenses payable with
27 respect to the use and possession of the Premises. ("Base Rent" and "Additional Rent" are hereafter

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1 collectively referred to as "Rent.") Except as stated in this Lease, it is the Parties' intention that
2 Housing Authority incur no expense or liability whatsoever with respect to the Premises.

3 Tenant will be responsible for payment of rent due for period of time wherein the
4 previous lease for this site expired as of May 30, 2011 and through December 31, 2013. Payment will
5 be made in lump sum of Five Thousand, Seven Hundred Sixty dollars and eighty one cents
6 (\$5,760.81)

7 In addition to above and throughout the Term of this Lease, Tenant, at its expense, shall
8 maintain, or cause to be maintained, the Premises so that it is in clean, safe, orderly and attractive state
9 and in compliance with all applicable statutes, ordinances, rules, regulations, order and requirements
10 of federal, state, county, municipal and other governmental entities having jurisdiction over the
11 Premises.

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

27 5. Use of Premises. Tenant will use the Premises solely for agricultural purposes,
28 including the cultivation and harvesting of trees and uses reasonably associated therewith. No other

1 use will be permitted without Housing Authority's prior written consent, which Housing Authority
2 may grant or withhold in its sole discretion. In the course of Tenant's business, Tenant may dig and
3 remove the palm trees as well as farms the palms for the date fruit. In the course of removing the palm
4 trees, soil is removed from the site, but not all of the root system is removed from the remaining soil.
5 Housing accepts these facts as a normal part of Tenant's farming operation. Housing also accepts that
6 roots and other organic and deleterious material will remain in the soil after the termination of the
7 Lease for which Tenant will have no responsibility. In its tree farming operations, Tenant may remove
8 rocks and excavate soil as necessary for agricultural purposes.

9 (a) Tenant shall not construct any structures or buildings on the Premises without prior
10 written approval from Housing Authority, which the Housing Authority may grant or withhold in its
11 sole discretion.

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

14 7. Taxes. Tenant shall be responsible for payment of any personal property taxes,
15 possessory interest taxes, permit fees, business license fees associated with the tenancy and any and all
16 fees and charges of any nature levied against the Premises and the operations of Tenant at any time
17 during the term of the Lease. Any such increased tax amount for which Tenant is liable hereunder will
18 be prorated as to any period following the expiration or sooner termination of this Lease. Provided that
19 Tenant pays the taxes as referenced in this paragraph, Tenant's responsibility for any and all Rent,
20 including by not limited to taxes referenced in this paragraph, shall end at the termination of the Lease.

21 8. Insurance. Without limiting or diminishing the Tenant's obligation to indemnify or
22 hold the Housing Authority harmless, Tenant shall procure and maintain or cause to be maintained, at
23 its sole cost and expense, the following insurance coverage's during the term of this Lease:

24 (a) Commercial General Liability: Commercial General Liability insurance
25 coverage, including but not limited to, premises liability, contractual liability, products and completed
26 operations liability, personal and advertising injury, and cross liability coverage, covering claims
27 which may arise from or out of Tenant's performance of its obligations hereunder. Policy shall name
28 the Housing Authority, the County of Riverside, all the Agencies, Districts, Special Districts, and

1 Departments of the County of Riverside and their respective directors, officers, Board of Supervisors,
2 Board of Commissioners, employees, elected or appointed officials, agents or representatives as
3 Additional Insureds. Policy's limit of liability shall not be less than \$2,000,000 per occurrence
4 combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to
5 this Lease or be no less than two (2) times the occurrence limit.

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

14 (c) General Insurance Provisions - All lines:

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

20 (ii) Tenant's insurance carrier(s) must declare its insurance self-insured
21 retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have
22 the prior written consent of the Housing Authority's Risk Manager before the commencement of
23 operations under this Lease. Upon notification of self insured retention unacceptable to the Housing
24 Authority, and at the election of the Housing Authority's Risk Manager, Tenant's carriers shall either;
25 1) reduce or eliminate such self-insured retention as respects this Lease with the Housing Authority, or
26 2) procure a bond which guarantees payment of losses and related investigations, claims
27 administration, and defense costs and expenses.

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

19 (iv) It is understood and agreed to by the parties hereto that the Tenant's
20 insurance shall be construed as primary insurance, and the Housing Authority's insurance and/or
21 deductibles and/or self-insured retention's or self-insured programs shall not be construed as
22 contributory.

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

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

3 (vii) The insurance requirements contained in this Lease may be met with a
4 program(s) of self-insurance acceptable to the Housing Authority.

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

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

13 9. Hold Harmless/Indemnification.

14 (a) Tenant shall indemnify and hold harmless the Housing Authority, the County of
15 Riverside, all the Agencies, Districts, Special Districts and Departments of the County of Riverside
16 and their respective directors, officers, Board of Supervisors, Board of Commissioners, elected and
17 appointed officials, employees, agents and representatives from any liability whatsoever, based or
18 asserted upon any services of Tenant, its officers, employees, subcontractors, agents or representatives
19 arising out of or in any way relating to this Lease, including but not limited to property damage, bodily
20 injury, or death or any other element of any kind or nature whatsoever arising from the performance of
21 Tenant, its officers, agents, employees, subcontractors, agents or representatives from this Lease.
22 Tenant shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees,
23 cost of investigation, defense and settlements or awards, the Housing Authority, the County of
24 Riverside, all the Agencies, Districts, Special Districts and Departments of the County of Riverside
25 and their respective directors, officers, Board of Supervisors, Board of Commissioners, elected and
26 appointed officials, employees, agents and representatives in any claim or action based upon such
27 alleged acts or omissions.
28

1 With respect to any action or claim subject to indemnification herein by Tenant, Tenant shall,
2 at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust,
3 settle, or compromise any such action or claim without the prior consent of Housing Authority;
4 provided, however, that any such adjustment, settlement or compromise in no manner whatsoever
5 limits or circumscribes Tenant's indemnification to Housing Authority as set forth herein.

6 Tenant's obligation hereunder shall be satisfied when Tenant has provided to Housing
7 Authority the appropriate form of dismissal relieving Housing Authority from any liability for the
8 action or claim involved.

9 The specified insurance limits required in this Lease shall in no way limit or circumscribe
10 Tenant's obligations to indemnify and hold harmless the Housing Authority herein from third party
11 claims.

12 (b) Environmental Indemnification. Tenant shall indemnify, protect, defend and
13 hold Housing Authority, the County of Riverside, all the Agencies, Districts, Special Districts and
14 Departments of the County of Riverside and their respective directors, officers, Board of Supervisors,
15 Board of Commissioners, elected and appointed officials, employees, agents and representatives as
16 well as their collective successors and assigns, and the Premises, harmless from and against any and
17 all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and
18 attorneys' and consultants' fees arising out of or involving any hazardous substances or materials
19 ("Hazardous Materials") brought onto the Premises by or for the Tenants or by anyone under Tenant's
20 control. Tenant's obligations under this Paragraph shall include, but not be limited to, the effects of
21 any contamination or injury to person, property or the environment created or suffered by Tenant, and
22 the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation,
23 restoration and/or abatement thereof, or of any contamination therein involved and shall survive the
24 expiration or earlier termination of the Lease. No termination, cancellation or release agreement
25 entered into by Housing Authority and Tenant shall release Tenant from its obligations under the
26 Lease with respect to Hazardous Materials, unless specifically so agreed by Housing Authority in
27 writing at the time of such agreement.

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

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

14 12. Assignment and Subletting. Tenant may not assign its rights under this Lease or sublet
15 the Premises or any portion thereof without Housing Authority's prior written consent, which Housing
16 Authority may grant or withhold in its sole discretion. Notwithstanding the preceding sentence,
17 Housing Authority will not unreasonably withhold its consent to an assignment by Tenant to an entity
18 in which Tenant has an equity interest of not less than fifty percent (50%) as confirmed by
19 documentation reasonably satisfactory to Housing Authority.

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

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

23 (i) Tenant shall fail to pay any Rent or other consideration to Housing
24 Authority when the same is due, and such failure continues for ten (10) days after Housing Authority
25 has given Tenant written notice specifying the amount due;

26 (ii) Tenant shall fail to take any other action or perform any other obligation
27 to performed by Tenant under this Lease not involving the payment of money, and such failure
28 continues for thirty (30) days after Housing Authority has given Tenant written notice specifying the

1 nature of such default; provided, however, that if the nature of such default is such that it may not be
2 cured within such thirty (30) day period, Tenant shall not be in default if it commences to cure such
3 default within such thirty (30) day period and diligently pursues curing such default thereafter;

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

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

15 (v) Then, and in any of such events, except as herein below provided and
16 except as may be provided in the bankruptcy laws of the United States then in effect, Housing
17 Authority, at its option, shall have the immediate right to reenter the Premises and expel Tenant or any
18 person or persons occupying the same, with or without legal process, and in any such event, Tenant
19 agrees to peacefully and quietly yield up and surrender the Premises to Housing Authority.

20 (b) Remedies. If an Event of Default shall have happened and be continuing,
21 Housing Authority shall have the following rights:

22 (i) Housing Authority shall have the right to give Tenant written notice of
23 Housing Authority's intention to terminate the term of this Lease on a date specified in such notice,
24 provided, however, that such date of termination shall be at least ninety (90) days after the date such
25 notice was given. Upon the giving of such notice, the term of this Lease and the estate hereby granted
26 shall expire and terminate on such date of termination as fully and completely and with the same effect
27 as if such date were the date herein fixed for the expiration of the term of this Lease, and all rights of
28 Tenant hereunder shall expire and terminate, but Tenant shall remain liable as hereinafter provided.

1 (ii) Housing Authority shall have the immediate right, whether or not the
2 term of this Lease shall have been terminated pursuant to subparagraph (b) above, to reenter and
3 repossess the Premises by summary proceedings, ejectment or by any other legal action Housing
4 Authority determines to be necessary or desirable and the right to remove all persons and property
5 there from. No such reentry or taking of possession of the Premises by Housing Authority shall be
6 constructed as an election by Housing Authority to terminate the term of this Lease unless a notice of
7 such intention is given to Tenant pursuant to subparagraph (b) above, or unless such termination be
8 decreed by a court or other governmental entity of competent jurisdiction.

9 (iii) Upon the reentry or repossession of the Premises pursuant to
10 subparagraph (ii) above, whether or not the term of this Lease shall have been terminated pursuant to
11 subparagraph (i) above, Housing Authority shall re-let the Premises for the account of Tenant, for such
12 term or terms and on such conditions and for such uses as Housing Authority may determine, and
13 Housing Authority may collect and receive any rents payable by reason of such re-letting; provided
14 that Housing Authority shall use its best efforts to obtain the best rent and terms available thereon.

15 (iv) No expiration or termination of this Lease pursuant to subparagraph (i)
16 above, by operation of law or otherwise, and no reentry or repossession of the Premises pursuant to
17 subparagraph (ii) above or otherwise, and no re-letting of the Premises pursuant to subparagraph (iii)
18 above shall relieve Tenant of his liabilities and obligations hereunder, all of which shall survive such
19 expiration, termination, reentry, repossession, or re-letting.

20 (v) In the event of any expiration or termination of the term of this Lease or
21 reentry or repossession of the Premises by reason of the occurrence of an Event of Default, Tenant will
22 pay to Housing Authority all Rent and other sums required to be paid by Tenant to and including the
23 date of such expiration, termination, reentry or repossession; thereafter, Tenant shall, until the end of
24 what would have been the term of this Lease in the absence of such expiration, termination, reentry or
25 repossession, be liable to Housing Authority for, and shall pay to Housing Authority, as liquidated and
26 agreed current damages: (a) all Rent and other sums which would be payable under this Lease by
27 Tenant in the absence of such expiration, termination, reentry or repossession, less (b) the proceeds of
28 any re-letting affected for the account of Tenant pursuant to subparagraph (iii) above, after deducting

1 from such proceeds all Housing Authority's reasonable expenses in connection with such re-letting.
2 Tenant will pay such current damages on the days on which Rent would be payable under this Lease in
3 the absence of such expiration, termination, reentry or repossession, and Housing Authority shall be
4 entitled to recover the same from Tenant on each such day.

5 (vi) At any time after any such expiration or termination of this Lease or
6 reentry or repossession of the Premises by reason of the occurrence of an Event of Default, whether or
7 not Housing Authority shall have collected any current damages pursuant to subparagraph (v) above,
8 Housing Authority shall be entitled to recover from Tenant, and Tenant will pay to Housing Authority
9 on demand, as and for liquidated and agreed final damages for Tenant's default and in lieu of all
10 current damages beyond the date of such demand (it being agreed that it would be impracticable or
11 extremely difficult to fix the actual damages), an amount equal to the "worth" at the time of the award
12 of the excess of the Rent and other sums owing under this Lease for the balance of the unexpired term
13 over the then fair market rental value for the Premises over the remainder of the term. In calculating
14 "worth" pursuant to this subparagraph, a discount rate of one percent (1%) above the discount rate of
15 the Federal Reserve Bank of San Francisco at the date of calculation shall be used.

16 14. Hazardous Waste. In the event of hazardous substances or materials are discovered on
17 the Premises and were present thereon prior to the commencement of the term of this Lease, Housing
18 Authority may elect to terminate this Lease. In the event of such termination, the provisions of **Section**
19 **16** below shall be operative with respect to the reimbursement to Tenant of the unamortized value of
20 any building improvements constructed on the Premises by Tenant.

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

1 16. Expiration of Lease Period. Housing Authority agrees that during the Lease Term
2 Tenant may keep its trees, plant material and personal property on the Premises at no additional cost to
3 the Tenant. At the expiration of the term of the Lease, Tenant shall remove all trees, plant material and
4 personal property from the Premises. Anything left on the Premises after the Lease Term expires shall
5 become the property of the Housing Authority.

6 (a) In the event Housing Authority terminates the Lease in accordance with **Section 2**
7 herein, Tenant shall remove all trees, plant material and personal property from the Premises within
8 that 90 day notice period. Anything left on the Premises after the 90 day notice period shall become
9 the property of the Housing Authority.

10 (b) Upon expiration of the Lease Period, Tenant shall be responsible to clear and disc
11 the Premises so that grading may occur immediately following Tenant leaving the Premises.

12 17. Third Party Security Interest. During the term of the Lease, a third party lender
13 (“Bank”) may have a security interest in any and all trees, plant material and or personal property
14 (“Collateral”) on the Premises owned by Tenant. However, the Tenant may not file or cause to be filed
15 or permit the filing of any liens against the Premises. The Bank shall have a first position on the
16 Collateral during the term of the Lease, which shall expire at the end of the Lease. After the Lease
17 term has expired, any and all Collateral left on the Premises shall become the property of Housing
18 Authority as set forth above.

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

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

28 20. Notices. Any notice required or permitted by or in connection with this Lease shall be

1 in writing and shall be made by facsimile, by hand delivery, by Federal Express or other similar
2 overnight delivery service (designated for overnight delivery), or by certified mail, first class postage
3 prepaid, return receipt requested, addressed to the respective parties at the appropriate address set forth
4 below or such other address as may be hereafter specified by written notice by the respective parties
5 given in accordance herewith. Notice shall be considered given (i) as of the date of facsimile
6 transmission (provided it is sent prior to 5:00 P.M. local time to the recipient on a Business Day or if
7 not sent by such time, then it shall be deemed given on the next Business Day) and the sender receives
8 written confirmation of transmission, or (ii) the date of hand delivery, or (iii) upon receipt if sent by
9 certified mail, or (iv) one (1) Business Day after delivery to Federal Express or similar overnight
10 delivery service, independent of the date of actual delivery, provided the giver of such notice can
11 establish the fact that notice was given as provided herein. If notice is tendered pursuant to the
12 provisions of this paragraph and is refused by the intended recipient thereof, the notice, nevertheless,
13 shall be considered to have been given and shall be effective as of the date herein provided.

TENANT:	COCOPAH NURSERIES, INC Attn: Duane Young 81-880 Arus Avenue Indio, CA 92201 Facsimile: 760.342.6188
HOUSING AUTHORITY:	HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE Attn: Heidi Marshall 5555 Arlington Avenue Riverside, CA 92504 Facsimile: 951.343.5409

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

25 (a) Relationship of Parties. Nothing herein contained shall be deemed or construed
26 by the Parties hereto or by any third party as creating the relationship of principal and agent or of
27 partnership or of joint venture between the Parties, it being understood and agreed that neither the
28 method or computation of Rent nor any other provision contained herein, nor any acts of the Parties

1 hereto, shall be deemed to create any relationship between the Parties other than the relationship of
2 Housing Authority and Tenant.

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

10 (c) Construction of Lease. This Lease shall be interpreted and construed only by the
11 contents hereof and there shall be no presumption or standard of construction in favor of or against
12 either Housing Authority or Tenant. When required by context, the singular shall include the plural,
13 and the neuter gender shall include a person, corporation, firm or association.

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

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

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

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

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

28 23. Compliance with Laws. Tenant shall comply with all applicable laws, rules and

1 regulations during the term of this Lease.

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

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1 IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to
2 execute this Agreement this ____ day of _____,

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4 **TENANT:**

5 COCOPAH NURSERIES, INC.,
6 A CALIFORNIA CORPORATION

7 By: 
8 Duane Young, Vice President

9 **HOUSING AUTHORITY:**

10
11 HOUSING AUTHORITY OF THE
12 COUNTY OF RIVERSIDE

13 By: _____
14 Jeff Stone, Chairman

15
16 **ATTEST:**

17 Kecia Harper-Ihem
18 Clerk of the Board

19 By: _____
20 Deputy

21
22 **APPROVED AS TO FORM:**

23 Pamela J. Walls, County Counsel

24
25 By: 
26 Anita C. Willis, Assistant County Counsel

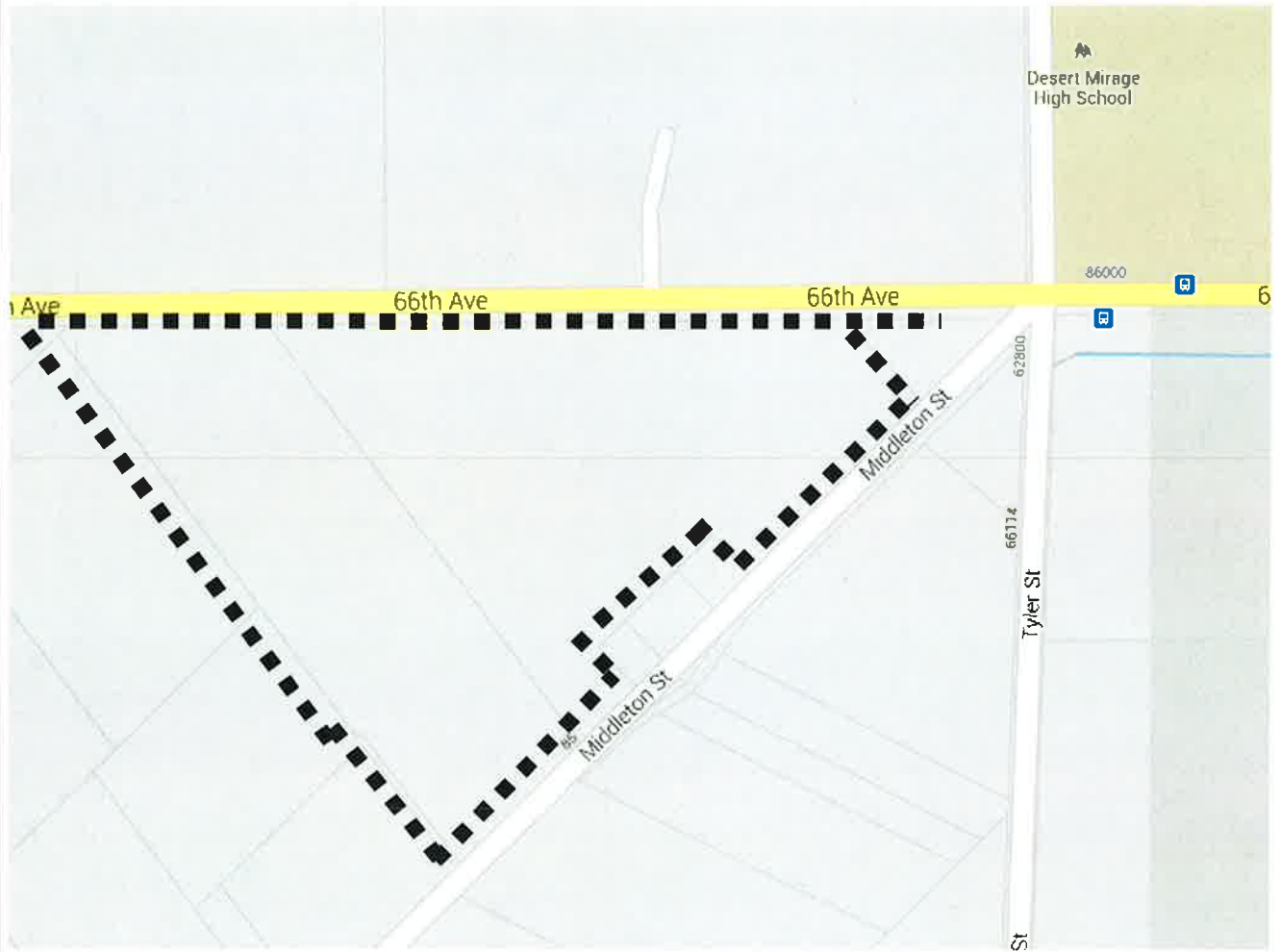
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Exhibit "A"

APNs: 751-160-007 and 009
85851 Middleton Road, Thermal, CA 92274

Apn 751-160-007 approximately 9.206 acres
Apn 751-160-009 approximately 13.094 acres
Combined for approximate total of 22.3 acres



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