

RESOLUTION NO.: 2004- 19

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PAHOKEE, FLORIDA AUTHORIZING THE EXECUTION OF AN AMENDMENT TO LAND LEASE AGREEMENT BETWEEN THE CITY OF PAHOKEE AND THOMAS KOENIG; PROVIDING AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of Pahokee and Thomas Koenig have previously executed a Land Lease Agreement for certain land located in the City of Port Mayaca in the County of Martin, in the State of Florida; and

WHEREAS, the parties desirous to amend the land lease agreement to provide that Tenant may form a partnership with others for the utilization of the Leased Premises; and

WHEREAS, the Land Lease Agreement requires all amendments to be in writing.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PAHOKEE, THAT:

Section 1: The Mayor of the City of Pahokee is authorized to execute the amendment to the land lease agreement between the City of Pahokee and Thomas Koenig.

Section 2: This Resolution shall take effect immediately.

PASSED AND ADOPTED, this 13th day of April, 2004.


MAYOR

ATTESTED: Jamett K. Whipple
CITY CLERK

MAYOR SASSER	<u>yes</u>
VICE MAYOR CRAWFORD	<u>yes</u>
COMMISSIONER BABB	<u>yes</u>
COMMISSIONER BIGGS	<u>yes</u>
COMMISSIONER MCENTIRE	<u>yes</u>

APPROVED AS TO LEGAL SUFFICIENCY


V. LYNN WHITFIELD, CITY ATTORNEY

TREE FARM
AT
CEMETERY

2004-19

City of Pahokee

CITY HALL 171 NORTH LAKE AVENUE PAHOKEE, FLORIDA 33476 PHONE (561) 924-5534 FAX (561) 924-7301



April 1, 2004

J. P. Sasser
Mayor

Henry Crawford, Jr.
Vice Mayor

Allie H. Biggs
Commissioner

Keith Babb
Commissioner

Gary McEntire
Commissioner

Lillie Latimore
City Manager

Janet Whipple
City Clerk

V. Lynn Whitfield
City Attorney

Timothy R Mechling
Finance Director

Rafael Duran
Acting Police Chief

Gary C. Burroughs
Fire Chief

V. Lynn Whitfield, Esq.
City Attorney, City of Pahokee
Walton, Lantaff Schroeder & Carson LLP
1700 Palm Beach Lakes Boulevard, 7th Floor
West Palm Beach, Florida 33401

Dear Ms. Whitfield:

The land lease agreement with Thomas Koenig, approved by the City Commission and executed by Mayor J.P. Sasser has been returned with a request for change.

The change has been noted on the attached copy. I am requesting that you direct an appropriate action. If there is a need to resubmit this item to the City Commission, I would like to include it in the April 13, 2004 Agenda.

Please advise.

Sincerely,

Lillie J. Latimore
City Manager

Enclosure

Cc: Janet Whipple, City Clerk
V. Lynn Whitfield, City Attorney

AMENDMENT TO LAND LEASE AGREEMENT

The parties City of Pahokee, hereinafter referred to as Landlord and Thomas Koenig, hereinafter referred to as Tenant on this 20 day of April, 2004 entered into this amendment to the Land Lease Agreement previously executed by the parties and set forth the following amendment to the land lease agreement:

The Right to Sublease provision under the TERM section of the Land Lease shall be amended to read:

Right to Sublease- The Tenant shall not have the right to lease or sublet any part of the Leased Premises or to assign the lease to any person or persons whomever. Nothing in this section shall prevent the Tenant from contracting with other parties and/or from entering into partnership agreements for the purpose of utilization of the Leased Premises.

All other sections of the Land Lease Agreement shall remain in full effect and force.

Landlord: 

By: _____

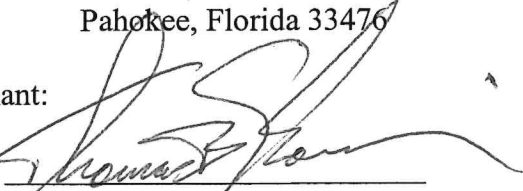
Title: Mayor

Address: City of Pahokee

171 North Lake Avenue

Pahokee, Florida 33476

Tenant:

By: 

Title: _____

Address: P.O. Box 57

Lox, FL 33470

APPROVED AS TO LEGAL SUFFICIENCY



V. Lynn Whitfield, Esq.

City Attorney for City of Pahokee

5-17

LAND LEASE AGREEMENT

THIS INDENTURE made the _____ day of February, 2004.

BETWEEN:

City of Pahokee, Landlord and

_____, Tenant.

IN CONSIDERATION of the rents, covenants and agreements hereinafter contained and reserved on the part of the Tenant, the Landlord hereby leases to the Tenant the Leased Premises, as defined below, to occupy and use for agricultural and related purposes specifically including, but not limited to, a tree farm and plant nursery, the following described property.

PROPERTY DESCRIPTION.

ALL and SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Port Mayaca, in the County of Martin, in the State of Florida, consisting of twelve (12) acres, more or less (the "Leased Premises"). The legal description of the Leased Premises is attached hereto as Exhibit "A" and incorporated herein by this reference.

TERM.

The provisions of this lease agreement shall be in effect for ten (10) years commencing on _____ day of _____, 2004 (the "Initial Term"). Tenant shall have a one time option of extending this Lease for an additional five (5) years under the same terms and conditions (except as set forth below), provided that, prior to expiration of the initial ten (10) year term of this Lease Tenant gives Landlord written notice of election to exercise the option to extend the Lease (the "Extension Term").

Amendments and Alterations-Amendments and alterations to this Lease shall be in writing and shall be signed by both the Landlord and Tenant.

No Partnership Intended- It is particularly understood and agreed that this Lease shall not be deemed to be nor intended to give rise to a partnership relation between the Landlord and Tenant.

If the Landlord should sell or otherwise transfer title to the Leased Premises, he will do so subject to the provisions of this Lease. Parties agree that a Memorandum of Lease will be prepared and filed with the official records of the Clerk of Court which memorializes the Land Lease Agreement.

Right of Entry- The Landlord reserves the right for himself, his agents, his employees or his assigns to enter the Leased Premises at any reasonable time to: a) consult with the Tenant; and b) make inspections.

Right to Sublease- The Tenant shall not have the right to lease or sublet any part of the Leased Premises or to assign the lease to any person or persons whomsoever.

The Tenant shall have the right to use all water on, under or currently passing through the Leased Premises.

ANNUAL LEASED PAYMENTS.

Tenant shall pay to Landlord, during the Initial Term, the sum of Four thousand three hundred and twenty dollars (\$4320.00) (the "Annual Lease Payment") which shall be paid in quarterly installments of One thousand and eighty dollars (\$1080.00).

Tenant shall pay an initial security deposit of Two thousand one hundred and sixty dollars (\$2160.00) prior to taking possession of the land which is subject of this land lease agreement. The deposit shall be returned to the Tenant at the expiration of the Lease if all terms of the lease have been satisfied.

Tenant shall pay to the Landlord, during the Extension Term, should the Tenant exercise the option to extend the Lease, the sum of Four thousand five hundred and thirty-six dollars (\$4536.00) annually which shall be paid in quarterly installments of One thousand one hundred and thirty-four dollars (\$1134.00).

TENANT AGREES:

1. To pay Annual Lease Payment to Landlord.
2. Not to remove, alter or change the style or position of any fence on the Leased Premises without the consent of the Landlord in writing.
3. To control soil erosion as completely as practicable; keep in good repair open ditches, inlets and outlets of tile drains; preserve all established watercourses or ditches including grassed waterways.
4. To provide general liability insurance with the Landlord named as an additional insured. Tenant further agrees to hold harmless the Landlord for any damages, injuries and/or liabilities which arise under this agreement which are the result of the negligence and/or intentional actions of the Tenant or any person acting under the authority of the Tenant.

THE LANDLORD AGREES:

1. To give quiet possession of the Leased Premises.
2. To give to the Tenant a right-of-way over lands owned by the Landlord which abut the Leased Premises for the purpose of allowing the Tenant to utilize the Leased Premises if such a right-of-way is necessary and such right-of-way shall cease upon the termination of this Lease.

LANDLORD AND TENANT BOTH AGREE:

1. Not to obligate the other party. Neither party hereto shall pledge the credit of the other party hereto for any purpose whatsoever without the consent of the other party. Neither party shall be responsible for debts or liabilities incurred, or for damages caused by the other party.
2. Nothing in this Lease shall confer upon the Tenant any right to minerals underlying said land, but same are hereby reserved by the Landlord.
3. It is further agreed that wherever the singular and masculine are used in this indenture they shall be construed as if the plural or the neuter or feminine had been used, where the context or the party or parties hereto so require, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

REMOVAL OR IMPROVEMENTS.

Prior to the termination of this Lease, for whatever reason, Tenant shall have the obligation to remove all plantings and crops placed on the Leased Premises by Tenant.

ARBITRATION DIFFERENCES.

All matters in difference in relation to this agreement and to the affairs of the Leased Premises shall be referred to the arbitration of a single arbitrator, if the parties hereto agree upon one; otherwise to three arbitrators, one to be appointed by each party and a third to be chosen by the first two named before they enter upon the business of arbitration. The award and determination of such arbitrator shall be binding upon the parties hereto and their respective heirs, executors, administrators and assigns.

MISCELLANEOUS.

Default. Should Landlord or Tenant be in default under the terms of this Agreement, Landlord or Tenant shall have reasonable and adequate time in which to cure the same after written notice to either party to the other, specifying the nature of such default. In the event the Tenant becomes delinquent in payment of the Annual Lease amount for a period which exceeds sixty (60) days, the Landlord has the option to terminate this Land Lease Agreement and required removal of any plantings and/or within thirty (30) days. Upon exercise of this option, Tenant's failure to remove any and all plantings or crops shall result in the Landlord taking full possession of the property and contents.

Applicable Law. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Florida.

Parties Bound. This Agreement shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

Severability. In the event that any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Prior Agreements Superseded. This Agreement constitutes the entire agreement of Tenant and Landlord relative to the subject matter hereof and supersedes any prior understandings and any written or oral agreements between Tenant and Landlord respecting this Agreement.

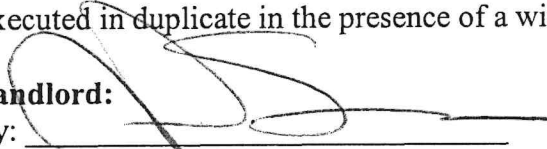
Attorney's Fees. If any action at law or inequity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Notice. Any notice, tender, or delivery to be given hereunto must be writing and delivered by personal delivery or by registered or certified mail, postage prepaid, returned receipt requested, addressed to the respective addresses of the parties hereto set forth below, and all said notices shall be effective when delivered or when delivery is refused.

Executed in duplicate in the presence of a witness on the day and year first above written.

Landlord:

By: 

J.P. Sasser

Title: Mayor

Address: City of Pahokee

171 North Lake Avenue

Pahokee, Florida 33476

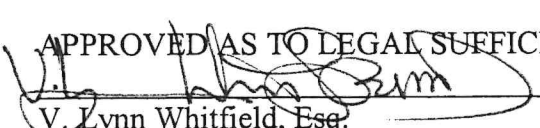
Tenant:

By: _____

Title: _____

Address: _____

APPROVED AS TO LEGAL SUFFICIENCY


V. Lynn Whitfield, Esq.

City Attorney- City of Pahokee

LAND LEASE AGREEMENT

THIS INDENTURE made the _____ day of March, 2004.

BETWEEN:

City of Pahokee, Landlord and

Thomas Koenig, Tenant.

IN CONSIDERATION of the rents, covenants and agreements hereinafter contained and reserved on the part of the Tenant, the Landlord hereby leases to the Tenant the Leased Premises, as defined below, to occupy and use for agricultural and related purposes specifically including, but not limited to, a tree farm and plant nursery, the following described property.

PROPERTY DESCRIPTION.

ALL and SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Port Mayaca, in the County of Martin, in the State of Florida, consisting of twelve (12) acres, more or less (the "Leased Premises"). The legal description of the Leased Premises is attached hereto as Exhibit "A" and incorporated herein by this reference.

TERM.

The provisions of this lease agreement shall be in effect for ten (10) years commencing on _____ day of _____, 2004 (the "Initial Term"). Tenant shall have a one time option of extending this Lease for an additional five (5) years under the same terms and conditions (except as set forth below), provided that, prior to expiration of the initial ten (10) year term of this Lease Tenant gives Landlord written notice of election to exercise the option to extend the Lease (the "Extension Term").

Amendments and Alterations-Amendments and alterations to this Lease shall be in writing and shall be signed by both the Landlord and Tenant.

No Partnership Intended- It is particularly understood and agreed that this Lease shall not be deemed to be nor intended to give rise to a partnership relation between the Landlord and Tenant.

If the Landlord should sell or otherwise transfer title to the Leased Premises, he will do so subject to the provisions of this Lease. Parties agree that a Memorandum of Lease will be prepared and filed with the official records of the Clerk of Court which memorializes the Land Lease Agreement.

Right of Entry- The Landlord reserves the right for himself, his agents, his employees or his assigns to enter the Leased Premises at any reasonable time to: a) consult with the Tenant; and b) make inspections.

Right to Sublease- The Tenant shall not have the right to lease or sublet any part of the Leased Premises or to assign the lease to any person or persons whomsoever. Nothing in this section shall prevent the Tenant from contracting with other parties and/or from entering into partnership agreements for the purpose of utilization of the Leased Premises.

The Tenant shall have the right to use all water on, under or currently passing through the Leased Premises.

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3. To control soil erosion as completely as practicable; keep in good repair open ditches, inlets and outlets of tile drains; preserve all established watercourses or ditches including grassed waterways.
4. To provide general liability insurance with the Landlord named as an additional insured. Tenant further agrees to hold harmless the Landlord for any damages, injuries and/or liabilities which arise under this agreement which are the result of the negligence and/or intentional actions of the Tenant or any person acting under the authority of the Tenant.

THE LANDLORD AGREES:

1. To give quiet possession of the Leased Premises.
2. To give to the Tenant a right-of-way over lands owned by the Landlord which abut the Leased Premises for the purpose of allowing the Tenant to utilize the Leased Premises if such a right-of-way is necessary and such right-of-way shall cease upon the termination of this Lease.

LANDLORD AND TENANT BOTH AGREE;

1. Not to obligate the other party. Neither party hereto shall pledge the credit of the other party hereto for any purpose whatsoever without the consent of the other party. Neither party shall be responsible for debts or liabilities incurred, or for damages caused by the other party.

2. Nothing in this Lease shall confer upon the Tenant any right to minerals underlying said land, but same are hereby reserved by the Landlord.

3. It is further agreed that wherever the singular and masculine are used in this indenture they shall be construed as if the plural or the neuter or feminine had been used, where the context or the party or parties hereto so require, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

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ARBITRATION DIFFERENCES.

All matters in difference in relation to this agreement and to the affairs of the Leased Premises shall be referred to the arbitration of a single arbitrator, if the parties hereto agree upon one; otherwise to three arbitrators, one to be appointed by each party and a third to be chosen by the first two named before they enter upon the business of arbitration. The award and determination of such arbitrator shall be binding upon the parties hereto and their respective heirs, executors, administrators and assigns.

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Default. Should Landlord or Tenant be in default under the terms of this Agreement, Landlord or Tenant shall have reasonable and adequate time in which to cure the same after written notice to either party by the other, specifying the nature of such default. In the event the Tenant becomes delinquent in payment of the Annual Lease amount for a period which exceeds sixty (60) days after Landlord has given Tenant notice thereof, the Landlord has the option to terminate this Land Lease Agreement and required removal of any plantings and/or within thirty (30) days.

Upon exercise of this option, Tenant's failure to remove any and all plantings or crops shall result in the Landlord taking full possession of the property and contents.

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Severability. In the event that any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Prior Agreements Superseded. This Agreement constitutes the entire agreement of Tenant and Landlord relative to the subject matter hereof and supersedes any prior understandings and any written or oral agreements between Tenant and Landlord respecting this Agreement.

Attorney's Fees. If any action at law or inequity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Notice. Any notice, tender, or delivery to be given hereunto must be writing and delivered by personal delivery or by registered or certified mail, postage prepaid, returned receipt requested, addressed to the respective addresses of the parties hereto set forth below, and all said notices shall be effective when delivered or when delivery is refused.

Executed in duplicate in the presence of a witness on the day and year first above written.

Landlord;

By: _____

Title: Mayor

Address: City of Pahokee
171 North Lake Avenue
Pahokee, Florida 33476

Tenant:

By: _____

Title: _____

Address: _____

APPROVED AS TO LEGAL SUFFICIENCY

V. Lynn Whitfield, Esq.
City Attorney- City of Pahokee
