



LEASE # DOC1109_LANDLEASE

AGRICULTURAL LANDS
AT
JAMES T. VAUGHN CORRECTIONAL CENTER

THIS LEASE, made and entered into this 1st day of January, 2012, by and between the State of Delaware, Department of Correction, Party of the First Part, hereinafter referred to as “DEPARTMENT,”

AND

Richard Wilson, Party of the Second Part, hereinafter referred to as “TENANT.”

WITNESSETH, for and in consideration of the covenants and promises hereinafter contained and the payment of rentals as herein set forth, DEPARTMENT leases and rents to TENANT and TENANT leases and rents from DEPARTMENT, all that certain cleared tracts of land situate in and around James T. Vaughn Correction Center, Smyrna, Delaware 19977 and more specifically located on the attached map, hereinafter referred to as “leased land”.

1. **PARTIES.** The name and address of the Parties are:

DEPARTMENT: Department of Correction
245 McKee Road
Dover, DE 19904
(302) 857-5262

TENANT: Richard Wilson
51 Bergold Lane
Dover, DE 19901
(302) 678-9866

2. **TERM OF LEASE.** The term of this Lease shall be for five (5) years beginning on January 1, 2012 and terminating on December 31, 2016, without notice of such termination.

3. **RENTAL FEE.** TENANT shall pay DEPARTMENT an annual rental fee of \$27,749.37 Dollars. The annual rental fee is based on \$181.25 per acre charge for approximately 153.1 acres. DEPARTMENT does not guarantee the exact total acreage of leased land. Rental fees shall be paid to DEPARTMENT on or before February 1 for that lease year.
4. **SECURITY INTEREST.** TENANT hereby grants to DEPARTMENT a security interest in the agricultural commodities grown by TENANT on the leased land during the term of this Lease, whether such crops are standing, grown, in storage or in transit, and in any proceeds from the sale, exchange, transfer or other disposition of the collateral or proceeds, to ensure the performance by TENANT under all agreements with DEPARTMENT, as well as payment of any and all sums now, heretofore and hereafter owing to DEPARTMENT by TENANT as a result of TENANT entering into this Lease with DEPARTMENT.
5. **USE OF LEASED LAND.** The leased land may be used for producing agricultural commodities including, but not limited to, grain, vegetable, and forage crops. TENANT agrees to follow good farm management practices and to farm the land in a good and reasonable manner to avoid degradation of the environment and further agrees to the following:
 - a) TENANT shall enter into a Conservation Plan for the leased land with the National Resources Conservation Service. The Plan shall contain instructions for management of soil fertility, nutrients, erosion control, agricultural chemicals, integrated pest management, and wildlife concerns. TENANT shall enter into a Nutrient Management Plan for the leased land with the Delaware Department of Agriculture. The plan shall follow all appropriate state regulations. Both plans shall be submitted to the DEPARTMENT prior to the end of the first year of the lease term.
 - b) TENANT shall use all reasonable precautions to avoid the establishment of any noxious weeds, including Johnson grass, Canada thistle, bur cucumber, giant ragweed, and any additional noxious weeds as specified under Delaware State Law. If TENANT fails to control said vegetation, then DEPARTMENT may terminate this Lease and may contract with an independent vendor to apply appropriate control measures to eradicate said noxious weeds and the cost of such measures shall be the responsibility of the TENANT.
 - c) TENANT shall submit to DEPARTMENT, upon request, a list of all agricultural pesticides, herbicides and other chemical sprays to be used on the leased land. All such products shall meet Federal and State standards and, if required, be applied by certified applicators in the appropriate manner and rate as per label instructions. Violation of Federal, State pesticide, herbicide or other chemical spray laws, rules and regulations shall be a condition to cancel the Lease. DEPARTMENT reserves the right to prohibit the use of certain agricultural chemicals on the leased land.

- d) Dumping, depositing, abandoning, discharging, releasing, or storing of any gaseous, liquid or solid hazardous wastes, substances, materials, or debris of whatever nature on, in, over, or under the ground or into surface or ground water is prohibited, except as permitted by law.
- e) Farm machinery capable of self-propulsion may not be left unattended on the property.
- f) No TENANT, a member of his family, or his employees is to have any type of contact with any inmate confined to the James T. Vaughn Correctional Center without the express written permission of the Commissioner of the Department of Correction.
- g) No crops are to be planted by the TENANT within two hundred (200) feet of any security fence. The Department reserves the right to restrict planting in any areas upon written notice to the TENANT at least sixty (60) days before normal planting time of the proposed crop.
- h) Hunting rights and trapping will not be allowed on the leased land.
- i) TENANT is to maintain all hedgerows and ditches around the planted fields.
- j) TENANT must maintain the proper Ph and mineral content of the leased acreage in accordance with Delaware Department of Agriculture standards.
- k) The use of herbicides for good weed control in all fields must be followed.
- l) When the period of the lease is complete, all land must be left in a condition so that it will be tillable next season.
- m) All fertilizer applied and all other cultural treatment to be accomplished as not to impair or diminish the crop producing ability or quality of any of the leased Land.
- n) Careful maintenance of profile of land and pattern of cultivation to conform to and preserve all land drainage systems presently in operation on any field.
- o) Tillage to create no ridges which will interfere with performance of land drainage.
- p) TENANT shall submit to DEPARTMENT, upon request, an annual harvest report indicating type and amount of agricultural commodity harvested from the leased land.
- q) TENANT may be permitted to participate in Farm Service Agency or similar agricultural assistance programs. Participation in these programs is subject to the approval of DEPARTMENT.

- r) Excavation, digging, removing, or selling of loam, peat, gravel, soil, rock, sand, or any similar material by the TENANT is prohibited.
 - s) TENANT shall not construct or install any permanent structures on the leased land.
 - t) TENANT shall not sublease any part of the leased land.
 - u) DEPARTMENT is not responsible for wildlife or apprehension efforts resulting in damages to agricultural commodities on the leased land.
6. **RESERVED RIGHTS.** DEPARTMENT reserves the following rights related to the leased land:
- a) DEPARTMENT reserves the right to grant easements and rights of way across or upon the leased land. Annual rental fee shall be reduced to reflect any leased land acreage taken out of production.
 - b) DEPARTMENT reserves the right to create pathways, buffer strips, and hedgerows or to divert land for other Department uses. Annual rental fee shall be reduced to reflect any leased land acreage taken out of production.
 - c) DEPARTMENT reserves the right of ingress and egress onto and over the leased land for inspection purposes, for enforcement of all laws, rules and regulations of DEPARTMENT and for any other lawful purpose.
7. **HOLD HARMLESS.** Tenant will hold harmless, indemnify and defend the DEPARTMENT, the State of Delaware and their agents, employees, or officers of the State of Delaware from any and all suits, actions, losses, liability, damages (including punitive damages), expenses, reasonable attorney fees (including salaries of attorneys regularly employed by the State of Delaware), judgments, or settlements arising out of the operation of this lease or TENANT'S use of the leased premises which may be incurred by the DEPARTMENT, the State of Delaware or their agents, employees, or officers, its employees, or subcontractors under this lease, including direct or indirect negligence or intentional acts of omission or commission, and professional malpractice regardless of any negligence or any intentional act or omission by employees or officials of the DEPARTMENT. The legal duties and responsibilities set forth in this paragraph include the duty to cooperate with the DEPARTMENT, its employees, and attorneys in the defense of any legal action against the State, its agents, employees, or officers arising out of the operations of the TENANT, which involve claims related to medical care, or which require information or testimony from TENANT, its employees or contractors.
8. **DAMAGES TO PROPERTY.** TENANT agrees to be solely responsible for any and all injury, loss or damage to TENANT'S person, crops, equipment, and property or to equipment and property of others which may be placed on the leased land at TENANT'S request, and TENANT waives and releases any and all claims or rights against DEPARTMENT with respect thereto.

9. **INSURANCE.** TENANT shall be insured against liability resulting from any agricultural practice or presence upon the leased land.
10. **ASSIGNMENT, INSOLVENCY OR BANKRUPTCY.** Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of TENANT or (b) a general assignment by TENANT for the benefit of creditors or (c) any action taken or suffered by TENANT under any insolvency or bankruptcy act shall constitute a breach of this Lease by TENANT and cause this Lease to terminate immediately.
11. **TERMINATION OF LEASE.** TENANT agrees that if it fails to observe or perform any of the conditions or covenants on its part to be observed or performed, or if TENANT knowingly permits any unlawful acts to be carried out upon the leased land, then DEPARTMENT shall have the right to terminate the Lease and to re-enter and repossess the leased land in the manner provided for by the laws of the State of Delaware. If DEPARTMENT terminates this Lease while TENANT has crops growing in the fields, the DEPARTMENT agrees not to take possession of the leased land until after TENANT has harvested the crop during the normal harvest period or, at DEPARTMENT'S option, DEPARTMENT will reimburse TENANT at the fair market value for crops destroyed. TENANT may terminate this Lease by giving DEPARTMENT ninety (90) days notice in writing. TENANT shall yield peaceable possession of the leased land at the termination of the Lease.
12. **TERMINATION FOR CAUSE.** If, for any reasons, or through any cause, the TENANT fails to fulfill and properly manner his obligations, or if the TENANT violates any of the agreements, or stipulations of this lease, the DEPARTMENT shall have the right to terminate by giving written notice to the TENANT of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination.
13. **TERMINATION FOR CONVENIENCE.** The DEPARTMENT may terminate this lease at any time by giving written notice of such termination and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. If the lease is terminated by the DEPARTMENT for convenience, the TENANT will be paid an amount which bears the same ratio to the total annual current year lease less payments for previous and current month's payments. The TENANT shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the TENANT during the current period which are directly attributable to planting and agricultural land preparations for the current lease year.
14. **NOTICES.** Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid and addressed as per Paragraph 1. Upon written notice from a Party, or a successor in interest, to the other Party hereto, any such notice, demand or other written communication shall be given to that Party or successor at the address indicated in such notice.
15. **WAIVER OF BREACH.** The waiver or acceptance by DEPARTMENT of any breach of any term, covenant or condition herein contained shall not be deemed to

be a waiver of such term, covenant or condition or any continuing or subsequent breach of the same or any other term, covenant or condition herein contained. All waivers or acceptances must be in writing. The subsequent acceptance of rent hereunder by DEPARTMENT shall not be deemed to be a waiver or acceptance of any preceding breach by TENANT of any term, covenant or condition of this Lease, other than the failure of TENANT to pay the particular rental fee so accepted, regardless of DEPARTMENT'S knowledge of such preceding breach at the time of acceptance of such rental fee.

16. **LEGAL COSTS AND EXPENSES.** TENANT shall pay and discharge all costs, attorneys' fees and expenses arising from enforcing any covenant or forfeiture hereof.
17. **RULES AND REGULATIONS.** The rules and regulations contained in this Lease, as well as such reasonable rules and regulations as may be hereafter adopted by DEPARTMENT for the safety, care and protection of its leased lands and the preservation of good order thereon, are hereby expressly made a part hereof, and TENANT agrees to adhere to all such rules and regulations, after notice of same.
18. **REMEDIES.** It is understood and agreed that the remedies herein given to DEPARTMENT shall be cumulative, and the exercise of any one remedy by DEPARTMENT shall not be to the exclusion of any other remedy.
19. **BINDING AGREEMENT.** The covenants and conditions herein contained shall apply to and bind the heirs, executors, administrators, successors, and assigns of all of the Parties hereto; and all of the Parties hereto shall be jointly and severally liable hereunder. This Lease shall not be interpreted as a waiver of the sovereign immunity of DEPARTMENT.
20. **TIME.** Time is of the essence of this Lease.
21. **LAW.** This Lease shall be construed and interpreted in accordance with the laws of the State of Delaware. The parties agree that venue within the State of Delaware shall be appropriate for any dispute arising out of the interpretation or obligations created by this Lease.
22. **ENTIRE CONTRACT.** This instrument contains the entire agreement of the Parties and supersedes, cancels, and revokes any and all other agreements between the Parties relating to the subject matter of this Lease. There are no representations or warranties, either oral or written, except those contained in this Lease. This Lease may be modified only by an amendment in writing signed by both Parties.
23. **SEVERABILITY.** If any portion of this Lease shall be held invalid or unenforceable, the validity of the remaining portion shall be unaffected and this Lease shall remain in full force and effect as if it had been executed with the invalid portion omitted.

IN WITNESS WHEREOF, this Lease has been executed by the Parties hereto as of the day and year above written.

By: _____
Mike Deloy
Bureau Chief, Prisons
Department of Correction

By: _____
Kimberly Wheatley
Bureau Chief, Management Services
Department of Correction

By: _____
Paul Giery
Purchasing Services Administrator
Department of Correction

STATE OF DELAWARE)
) SS.
COUNTY OF KENT)

BE IT REMEMBERED, That on this _____ day of _____, 2011, personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, Mike Deloy, Kimberly Wheatley and Paul Giery, Parties of the First Part, and Richard Wilson, Party of the Second Part known personally to be such, and acknowledged this Agreement to be their act and deed and the act and deed of said DEPARTMENT and TENANT.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

My commission expires on _____.

NOTARY PUBLIC

By: _____
Tenant Signature

