



LEASE # DOC17045-LANDLEASE_SCI

AGRICULTURAL LANDS
AT
SUSSEX CORRECTIONAL INSTITUTION

THIS LEASE, made and entered into this 11th day of January 2017, by and between the State of Delaware, Department of Correction Party of the First Part, hereinafter referred to as “DEPARTMENT,”

AND

Kruger Farms, Inc., of 24306 DuPont Blvd., 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 TENANT and TENANT leases and rents from DEPARTMENT, all that certain cleared tracts of land situate in and around Sussex Correctional Institution, Georgetown, DE 19947 and more specifically located on the map below, hereinafter referred to as “leased land”.

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

DEPARTMENT: Department of Correction
245 McKee Road
Dover, Delaware 19904

TENANT: Kruger Farms, Inc.
24306 DuPont Blvd.
Georgetown, DE 19947

2) TERM OF LEASE. The term of this Lease shall be for three (3) years beginning on February 1, 2017 and terminating on January 31, 2020, without notice of such termination. The Lease may be renewed for two (2) one (1) year periods through negotiation between Lessee and Lessor. Negotiation may be initiated no later than thirty (30) days prior to the termination of the current Lease.

- 3) **RENTAL FEE.** TENANT shall pay DEPARTMENT an annual rental fee of \$7,929.48 Dollars (\$). The annual rental fee is based on \$101.66 Dollars (\$) per acre charge for approximately 78 acres. DEPARTMENT does not guarantee the exact total acreage of leased land. Rental fees shall be paid to DEPARTMENT on or before May 1st 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 Sussex Correctional Institution.
 - g) Hunting rights and trapping will not be allowed on the leased land.
 - h) TENANT is to maintain all hedgerows and ditches around the planted fields.
 - i) TENANT must maintain the proper Ph and mineral content of the leased acreage in accordance with Department of Agriculture standards.
 - j) The use of herbicides for good weed control in all fields must be followed.
 - k) When the period of the lease is complete, all land must be left in a condition so that it will be tillable next season.
 - l) 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.
 - m) 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.
 - n) Tillage to create no ridges which will interfere with performance of land drainage.
 - o) Use of products and/or services that are provided by Agricultural Businesses which are certified for Best Management Practices(BMP), Good Food Handling Practices(GHP) and Good Agricultural Practices (GAP) through the Delaware Department of Agriculture or surrounding State's equivalent program.
 - 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. An irrigation system may be installed with the prior approval of DEPARTMENT.
 - 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 agrees to exercise the rights herein granted at its own risk fees, arising from or in any way connected with injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the leased land, regardless of cause, unless due to the gross negligence or willful misconduct of any of the Indemnified Parties.
- 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. In the event the termination date set forth in such termination notice extends into a new lease term, TENANT must, as a condition precedent to the termination, remit to DEPARTMENT with such notice payment for carry-over rent equaling a pro-rated portion of the annual rental fee due under the Lease. TENANT shall yield peaceable possession of the leased land at the termination of the Lease.
- 12) 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 Section A, item D. 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.

- 13) 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.
- 14) LEGAL COSTS AND EXPENSES.** TENANT shall pay and discharge all costs, attorneys' fees and expenses arising from enforcing any covenant or forfeiture hereof.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) TIME.** Time is of the essence of this Lease.
- 19) LAW.** This Lease shall be construed and interpreted in accordance with the laws of the State of Delaware.
- 20) 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.
- 21) 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.

Sussex Correctional Institution Leased Land Map



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

ORIGINAL SIGNED ON FILE

STATE OF DELAWARE
Department of Correction

Witness

By: _____

Perry Phelps
Commissioner
Delaware Department of Correction

Witness

By: _____

Christopher M. Klein
Bureau Chief of Prisons
Delaware Department of Correction

Witness

By: _____

Janet L. Durkee
Bureau Chief, Administrative Services
Delaware Department of Correction

Witness

By: _____

Craig Fetzer
Purchasing Services Administrator
Delaware Department of Correction

Witness

By: _____

Frank Kruger
Kruger Farms, Inc.