

13

AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Discussion and possible action to authorize Legal Counsel to coordinate closing on the lease/purchase of approximately 10.00 acres more or less, owned by Hays County and to be conveyed to New Canaan Farms, Inc.; to authorize the County Judge to execute a deed for that purpose; and authorize Legal Counsel to execute any and all documents incidental to closing.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
ACTION-MISCELLANEOUS	April 16, 2013	

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A AUDITOR REVIEW: N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
Mark Kennedy	WHISENANT	N/A

SUMMARY
The lot is out of the K-Bar-Mac recorded subdivision in Hays Count, Texas, more explicitly described in Volume 5, Page 345, in the Hays County Plat Records.

FILED: 04 16 13
HAYS COUNTY COMMISSIONERS' COURT
Resolution # 28951 VOL V PG 139

THOMAS M. VANDIVIER
ATTORNEY AT LAW

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Suite 105
Austin, Texas 78737
tmvandivier@gmail.com

Telephone: (512) 288-1195

Fax: (512) 615-3544

March 11, 2013

Honorable Bert Cobb
Hays County Judge
Attn: Mr. Lon Shell
Hays County Courthouse
111 E. San Antonio Street, Ste. 300
San Marcos, Texas 78666

CERTIFIED MAIL NO. 7007 2680 0001 5036 6700
RETURN RECEIPT REQUESTED

Re: Lease Purchase Agreement; Hays County, Texas, Lessor; New Canaan Farms, Inc., Lessee


Dear sirs:

I represent Cindy Figer, owner of New Canaan Farms, Inc., Lessee under the above-referenced Lease Purchase Agreement (the "Agreement"). In accordance with Article 18 of the Agreement, my client hereby gives the required thirty (30) day advance notice of her intent to exercise the option to purchase granted by the Agreement. A copy of the Agreement is attached hereto as required.

We would like to schedule a closing of this transaction as soon as possible. My client shows an outstanding principal balance due of \$ 19,780.41, and will tender full payment of the current balance due at closing. Please note that the Agreement requires Hays County as Lessor to "convey to lessee good and marketable title to the premises as evidenced by a title policy chosen by lessor, in the full amount of the purchase price." I regularly work with Independence Title in Dripping Springs if that would be satisfactory. If you prefer a different title company please so advise me.

Please let me know if you have any questions or if I can be of any assistance in this matter. We look forward to working with you in completing this transaction.

Sincerely,


Thomas M. Vandivier
Attorney at Law

TMV/ad

Enclosure: Lease Purchase Agreement

cc: New Canaan Farms, Inc., attn: Cindy Figer

[R13-15-13D]

EDDY ETHEREDGE

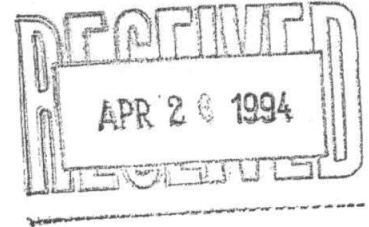
County Judge

512/392-2521

COMMISSIONERS' COURT

9:00 A.M. EACH MONDAY

April 21, 1994



David Long
Economic Development Specialist
Texas Department of Housing and Community Affairs
811 Barton Springs Drive, Suite 740
P.O. Box 13941
Austin, Texas 78704-3941

Re: Revisions of Lease Purchase Agreement
TCDP Contract No # 701142
New Canaan Farms, Inc., Hays County, Texas

Dear Mr. Long;

Enclosed please find a signed copy of the revised Lease Purchase Agreement between Hays County and New Canaan Farms, Inc. Changes were made to bring the Lease Purchase Agreement up to date with current data. The first payment of \$1,321.69 has been received and is being processed for submittal to the Texas Department of Housing & Community Affairs.

Revisions to the agreement are underlined and include: start/ending date, total amount, construction completion date, monthly amount, payment due date, and the addition of this statement on page nineteen: "contractors landlord lien upon all property found within the leased premises for all rentals and other amounts due and unpaid by lessee."

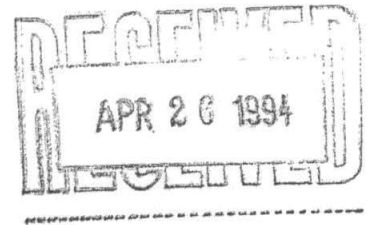
If you have any questions feel free to call Richard Salmon or LaMarr Petersen at 521-392-8011.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eddy Etheredge".

Eddy Etheredge
Hays County Judge

cc: Tim Tingle, New Canaan Farms, Inc.
Richard Salmon, Hays County Grants Coordinator
LaMarr Petersen, Hays County Grants Monitor



LEASE PURCHASE AGREEMENT

The Lease is made and entered into by and between the County of HAYS, referred to in this lease as Lessor, and NEW CANAAN FARMS, INC., A TEXAS CORPORATION, referred to in this lease as Lessee.

In consideration of the mutual covenants and agreements set forth in this lease, and other good and valuable consideration, Lesser demises and leases to Lessee, and Lessee leases from Lessor, the premises situated on U.S. HIGHWAY 290 WEST in HAYS County, Texas, and more particularly described in Exhibit A attached to this lease, and incorporated for all purposes. The property described in Exhibit "A" is referred to in this document as the "Property".

ARTICLE 1. TERM

Term of Lease

1.01. The term of this lease shall be TWENTY (20) YEARS commencing on APRIL 15, 1994, and ending on APRIL 15, 2014, unless sooner terminated as provided in this lease, provided that Lessor completes construction of the building by MARCH 15, 1994, specified in Article 2 of this agreement.

Commencement of Term

1.02. Should lessor not complete construction of the building specified in Article 2 of this agreement by MARCH 15, 1994 the term of this lease shall commence on the date Lessor completes construction of the building specified in Article 2, except that if construction is not completed by MARCH 15, 1994, this lease shall become null and void, Lessor and Lessee shall each make all reasonable efforts within their powers to ensure that construction is completed prior to MARCH 15, 1994. However, the March 15, 1994 deadline may be extended by the Texas

Department of Housing and Community Affairs. Should such an extension occur, Rental payments shall commence on the completion of the building specified in Article 2 of this lease/purchase agreement. Construction will be deemed completed on the earliest of the following dates:

- a. The date on which Lessee acknowledges completion either in writing or by occupying and beginning operation of Lessee's business on the premises, provided that Lessee's exercise of this right of access to the building pursuant to S 2 of this article shall not be deemed an acknowledgment of completion of construction.
- b. The date on which the architect or contractor performing the construction certifies in writing that the construction has been substantially completed in conformity with the plans and specifications referred to in Article 2.01.
- c. The date on which the Texas Department of Housing and Community Affairs, Hays County Health Department, County Engineer, and Fire Department certify that the building is fit for occupancy and use as a gourmet foods factory and gift shop.

1.03. During the period between the execution of this lease and the commencement of the lease term, Lessee and its officers, employees, and agents will have access to the leased premises for the purpose of installing trade fixtures and reviewing whether building meets specification.

1.04. Notwithstanding any other provision of this lease, if the construction described in Article 2 is not completed by March 15, 1994, either party may terminate this lease by written notice to the other party. This termination shall not prevent either party from pursuing whatever remedies it has against the other party under the provisions of this lease or by law, other than the right to specific performance of this lease, for unreasonable delay in completing construction pursuant in Article 2.

ARTICLE 2. CONSTRUCTION OF BUILDING

Construction Required of Lessor

2.01. Lessor agrees to construct the following building on the leased premises: 1 story building with approximately 6000 square feet, water and wastewater facilities, driveways, and parking lots. All costs connected to this construction, including but not limited to the cost of plans and specifications for the construction, labor materials, and clean-up costs, are to be born by Lessor. The construction shall be in accordance with the plans and specifications attached to and incorporated into this lease as Exhibit B. Lessor shall not be obligated to spend more than \$317,206.00 UNDER this lease/purchase agreement on the real estate and improvements.

2.02. Except as provided in Paragraph 2.03 of this article, the construction called for in this article shall begin no later than 30 days after the plans and specifications have been approved by both parties and construction bids have been awarded and shall proceed with all due diligence and skill until it is completed. Except as provided in Paragraph 2.03 of this article, construction must be completed no later than six months after the date on which construction commenced.

2.03. If the time of commencement or completion of construction is delayed because of material shortages, labor disruptions, war, insurrection, governmental restrictions, fire, flood, storm, or any other cause not reasonably within control of Lessor, the time for commencement and completion shall be extended for as many days as construction is delayed by one of the factors listed in this paragraph.

2.04. If the construction called for in this article is not completed by March 15, 1994, Lessee may give Lessor written notice of its intention to terminate the lease. If construction is not completed within thirty (30) days of Lessor's receipt of this notice, the lease shall terminate as of that date. Nothing in Paragraph 1.03 of this article shall be construed to limit Lessee's right to terminate the lease as provided in this paragraph.

2.05. Construction will be deemed completed on the earliest of the following dates:

- a. The date on which Lessee acknowledges completion in writing or by occupying and using the newly constructed building and parking, drive with water and sewage facilities provided by Lessor.
- b. The date on which the architect or contractor performing the construction certifies in writing that the construction has been substantially completed in conformity with the plans and specifications referred to in Paragraph 2.01.
- c. The date on which the Texas Department of Housing and Community Affairs, County Engineer, Hays County Health Department, and Fire Department certify that the building and improvements are fit for occupancy and use as a gourmet food factory and gift shop.

2.06. All approvals required of either party under this article must be in writing and may not be unreasonably withheld or delayed. Both parties must perform their obligations under this article with reasonable skill and diligence and may not intentionally interfere with or prevent the other party's performance of its obligations under this article. Lessor and Lessee shall each make all reasonable efforts within their powers to ensure that construction is completed prior to MARCH 15, 1994.

Wheelchair Access

2.07. Lessor will, as part of the construction project according to plans and specifications, install and maintain ramps, handrails, restroom fixtures and elevator controls that can be used by wheelchair bound persons, and any other equipment, fixtures, or improvements necessary to make the leased premises and the common areas of the building in which the leased premises are located, including, but not limited to entrance ways and exits, restrooms, elevators, and parking areas, reasonably accessible to and reasonably safe for use by wheelchair bound persons. In addition, throughout the term of this lease and any extensions or renewals of this lease, Lessor will designate three (3) spaces in the parking area for the exclusive use of handicapped persons.

ARTICLE 3. RENT

Fixed Rent

3.01. In consideration for leasing said premises, Lessee agrees to pay to Lessor the sum of ONE THOUSAND THREE HUNDRED TWENTY-ONE AND 69/100 DOLLARS (\$1,321.69) per month on or before the first day of each month as a fixed rent for the succeeding month. The rental for each month shall be due and payable beginning on the FIFTEENTH (15th) day of APRIL, 1994, and continuing regularly thereafter on the FIFTEENTH (15th) day of each month during the term of this lease. The rent shall be abated should the Lessor not have the building completed on the FIFTEENTH(15th) day of MARCH, 1994, and Lessee shall begin paying the fixed rent on the fifteenth (15th) day of the first (1st) month after construction of the building specified in Article 2 is completed. Rent for any fractional month at the beginning or end of the lease term shall be prorated on a per diem basis. Lessee agrees to pay this fixed rent to Lessor at Lessor's office, located at HAYS COUNTY TREASURERS OFFICE, COURTHOUSE ANNEX, 102 NORTH L.B.J., SAN MARCOS, TEXAS 78666, or at such other location or locations as Lessor shall from time to time designate by written notice to Lessee.

Taxes and Assessments as Additional Rent

3.02a. In addition to the fixed rent specified in S 3.01, Lessee shall pay the full amount of all real property taxes, special assessments, and governmental charges of every character imposed on the leased premises, provided that Lessor has completed construction of the proposed building site on the "Property". This additional rent shall be payable directly to the entity imposing the tax, assessment, or charge at least 10 days prior to the date on which the payment is due. Lessee shall provide Lessor with a receipt or other evidence of payment for each such tax, assessment, or charge paid as soon as a receipt or other evidence is available to Lessee.

3.02b. Lessee may, at its own expense, contest any tax or assessment for which Lessee is responsible under S 3.02a. Except as provided in S 3.02c, Lessee need not pay the tax, assessment, or charge during the pendency of the contest.

3.02c. The provisions of S 3.02b notwithstanding, Lessor may pay, or require Lessee to pay, any tax, assessment, or charge for which Lessee is responsible under S 3.02a, pending resolution of Lessee's contest of the tax, assessment, or charge, if payment is demanded by a holder of a mortgage on the leased premises or if failure to pay will subject all or part of the leased premises to forfeiture or loss.

ARTICLE 4. USE OF PREMISES

Permitted Use

4.01. Lessee may use the premises to operate and conduct a gourmet food factory and gift shop business. Lessee may not use the premises for any other purpose without the written consent of Lessor, and such consent shall not be unreasonably withheld.

Waste, Nuisance, or Illegal Uses

4.02. Lessee shall not use, or permit the use of, the premises in any manner that results in waste of the premises or constitutes a nuisance or violates any statute, ordinance, rule, or regulation applicable to the premises or for any illegal purpose.

ARTICLE 5. REPAIRS AND MAINTENANCE

Repairs and Maintenance by Lessee

5.01. Lessee shall, throughout the term of this lease and any extensions of that term, at its own expense and risk, maintain the leased premises and all improvements on the leased premises in good order and condition, including but not limited to making all repairs and replacements

necessary to keep the premises and improvements in such condition. All maintenance, repairs, and replacements required by this section must be performed promptly when required and in a manner that will not cause depreciation in the value of the premises.

Lessee's Failure to Repair or Maintain

5.02. In the event Lessee fails to perform its obligation to repair, replace, or maintain, as set forth in 5.01 above, after notice from Lessor of the need for such repair, replacement, or maintenance and after the passage of 30 days after such notice, Lessor may enter the premises and make such repairs or replacements, or perform such maintenance or cause such repairs or replacements to be made or maintenance to be performed, at its own expense. Upon Lessor's notice to Lessee of the performance and cost of any maintenance, repairs, or replacements pursuant to this section, Lessee must immediately reimburse Lessor for any reasonable costs incurred by Lessor pursuant to this section, together with interest on any such sum at an 8% rate per annum., from the date of the notice until the date paid by Lessee to Lessor.

ARTICLE 6. UTILITIES AND GARBAGE REMOVAL

Utility Charges

6.01. Lessee shall pay all utility charges for water, electricity, heat, gas, and telephone service used in and about the leased premises during the term of the lease, all such charges to be paid by Lessee directly to the utility company or municipality furnishing the same, before the same shall become delinquent.

Garbage Removal

6.02 Lessee shall pay for the removal of all garbage and rubbish from the time the Lessee takes possession of the premises. Possession of the premises is based on Lessors completion of improvements and buildings specified in Article 2.01 of this lease/purchase agreement on the "Property".

ARTICLE 7. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

Consent of Lessor

7.01 Lessee shall not make major alterations, additions, or improvements to the leased premises without the prior written consent of Lessor. Consent for nonstructural alterations shall not be withheld by Lessor.

Property of Lessor

7.02 All alterations, additions, or improvements made by Lessee shall become the property of Lessor if this lease is terminated other than by the closing of the sale under this lease/purchase agreement. Lessor may, however, require that Lessee remove any or all alterations, additions, and improvements installed or made by Lessee, and any other property placed on the premises by Lessee, upon termination of the lease, other than by closing of the sale under this lease/purchase agreement. In the event that Lessor requires Lessee to remove such alterations, additions, or improvements, lessee shall repair any damage to the premises caused by such removal.

CONSTRUCTION BY LESSEE

General Conditions

7.03 Lessee shall have the right at any time and from time to time during the term of this lease, after lessee takes possession of the property and improvements as specified in Article 2 of this lease/purchase agreement, to erect, maintain, alter, remodel, reconstruct, rebuild, replace, and remove buildings and other improvements on the leased premises, subject to the following general conditions:

- a. The cost of any such work shall be borne and paid for by Lessee.
- b. The leased premises shall at all times be kept free of mechanics' and materialmen's liens.

- c. Lessor shall be notified of the time of commencement and the general nature of any such work, other than routine maintenance of existing buildings or improvements, at the time of commencement.
- d. The provisions of S 7.05 concerning Lessor's approval of plans shall be followed.
- e. Lessee shall be responsible for construction insurance during the new construction period.

Easements, Dedications, Zoning, and Restrictions

7.04. Lessor shall cooperate with Lessee concerning easements, dedications, zoning, and restrictions of the leased premises as follows:

- a. **Easements and Dedications.** In order to provide for the more orderly development of the leased premises, it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power lines, and other easements and dedications and similar rights be granted or dedicated over or within portions of the leased premises. Lessor shall, on request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the term of this lease, as may be appropriate, necessary, or required by the several governmental agencies, public utilities, and companies for the purpose of granting such easements and dedications.
- b. **Zoning.** In the event that Lessee deems it necessary or appropriate to obtain use, zoning, or subdivision and precise plan approval and permits for the leased premises, or any part of them, Lessor agrees to execute such documents, petitions, applications, and authorizations as are appropriate or required to submit the leased premises, or any part of them, for the purposes of obtaining conditional use permits, zoning and rezoning, tentative and final tract approval, precise plan approval, and further, for the purposes of annexation to or the creation of districts and governmental subdivisions. Lessor shall execute these documents from time to time as requested by Lessee.
- c. **Restrictions.** At the request of Lessee, Lessor shall, from time to time, execute and deliver or join in the execution and delivery of such documents as are appropriate, necessary, or required to impose on the leased premises covenants, conditions, and restrictions providing for the granting of exclusive uses of the leased premises, or any part of them, the establishment of common and parking areas, the establishment of party walls, and provisions for the enlargement of the common and parking areas by the establishment of mutual and reciprocal parking rights and the rights of ingress and egress, and other like matters, all of which are for the purpose of the orderly development of the leased premises as a commercial unit.

- d. Expenses. The cost and expense of any action required of Lessor under subsections (a) through (c) above shall be borne solely by Lessee.

Lessor's Approval of Plans

7.05. Lessor's approval of construction, additions, and buildings or other improvements on the leased premises shall be governed by the following provisions:

- a. **Written Approval Required.** No building or other improvement shall be constructed on the leased premises, unless the plans, specifications and proposed location of the building or other improvement has received the written approval of Lessor and the building or other improvement complies with the approved plans, specifications, and proposed location. No material addition to or alteration of any building or structure erected on the leased premises shall be commenced until plans and specifications covering the exterior of the proposed addition or alteration shall have been first submitted to and approved by Lessor.
- b. **Submission of Plans.** Lessor shall engage a licensed architect or engineer to prepare plans and specifications for the construction of a gourmet food factory and gift shop. Lessee shall engage a licensed architect or engineer for the construction of any other buildings, or improvements, additions, or alternations to any buildings, or improvements which required Lessor's approval under Subsection (a) above. Lessee shall submit two (2) copies of detailed working drawings, plans, and specifications for the construction of a gourmet food factory and gift shop and any other additions to Lessor for approval within 90 days after execution of this lease. If Lessee wishes to construct any other buildings or improvements or make any additions or alternations to buildings or improvements for which the approval of Lessor is required under Subsection (a) above, Lessee must submit two (2) copies of detailed working drawings, plans, and specifications for any such projects for Lessor's approval prior to commencement of the project.
- c. **Approval by Lessor.** Lessor will promptly review and approve all plans submitted pursuant to Subsection (b) above or note in writing any required changes or corrections which must be made to the plans. Any required changes or corrections must be made and the plans resubmitted to Lessor within 45 days after the corrections or changes have been noted. Failure of Lessor to object to such resubmitted plans and specifications within 45 days shall constitute Lessor's approval of the changes. Minor changes in work or materials, not affecting the general character of the building project may be made at any time without the approval of Lessor, but a copy of the altered plans and specifications shall be furnished to Lessor.
- d. **Exception to Lessor's Approval.** The following items do not require submission to, and approval by, Lessor:

- ii. Such minor repairs and alterations as may be necessary to maintain existing structures and improvements in a useful state of repair and operation.
 - ii. Such changes and alterations as are required by an authorized public official having authority or jurisdiction over such buildings or improvements in order to comply with legal requirements.
- e. **Effect of Approval** The approval by lessor of any plans and specifications applies only to the conformity of such plans and specifications to the general architectural plan for the leased premises and such approval shall not be withheld unreasonably. Lessor's approval does not constitute approval of the architectural or engineering design, and Lessor, by approving such plans and specifications, assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications.

Ownership of Buildings, Improvements, and Fixtures

7.06. Any and all buildings, improvements, additions, alterations, fixtures, except furniture and trade fixtures, constructed, placed, or maintained on any part of the leased premises during the lease term shall be considered part of the real property of the premises and shall remain on the premises and become the property of Lessor on termination of this lease, if the lease is terminated other than by closing of the sale under this lease/purchase agreement.

Right to Remove Improvements

7.07. Lessee shall have the right at any time during Lessee's occupancy of the leased premises, or within a reasonable time thereafter, to remove any and all furniture, machinery, equipment, or other trade fixtures, owned or placed by Lessee, its sub-lessee or licensees, in, under, or on the leased premises, or acquired by Lessee, whether before or during the lease term, but prior to the termination of the lease with 30 days written notice. Lessee must repair any damage to any buildings or improvements on the premises resulting from their removal. Any such items which are not removed by the termination date of the lease shall become the property of Lessor as of that date; other than by closing sale of the Property under this lease purchase agreement.

ARTICLE 8. TRADE FIXTURES AND SIGNS

Trade Fixtures

8.01. Lessee has the right at all times to erect or install shelves, bins, machinery, equipment, or other trade fixtures, in, on, or about the leased premises, provided that Lessee complies with all applicable governmental laws, ordinances, and regulations regarding such fixtures. Lessee has the right to remove all trade fixtures at the termination of this lease, provided Lessee is not in default under the lease and that the fixtures can be removed without structural damage to the building. Lessee must repair any damage to the leased premises caused by removal of trade fixtures, and all such repairs must be completed prior to the termination of the lease. In the event any trade fixture installed by Lessee is abandoned at the termination of the lease, other than by closing of the sale under this lease purchase agreement, the trade fixture shall become a part of Lessor's Property.

Signs

8.02. Lessee shall have the right to erect signs on any portion of the leased premises, including but not limited to, the exterior walls of the premises, subject to applicable laws, ordinances, and regulations. Lessee must remove all signs at the termination of this lease and repair any damage resulting from the erection or removal he signs

ARTICLE 9. MECHANIC'S LIEN

9.01. Lessee will not permit any mechanic's lien or liens to be placed upon the leased premises or improvements on the premises.

ARTICLE 10. INSURANCE AND INDEMNITY

Property Insurance

10.01. Lessee shall, at its own expense, during the term of this lease, and after Lessor completes construction of the building specified in Article 2.01 of this agreement, keep all buildings and improvements on the leased premises insured against loss or damage by fire or theft, with extended coverage, if obtainable, at a amount not to exceed eighty (80) percent of the fair market value of the property to be insured, to include direct loss by windstorm, hail, explosion, riot, or riot attending a strike, civil commotion, aircraft, vehicles, and smoke. The insurance is to be carried by one or more insurance companies licensed to do business in Texas and approved by Lessor. Such policy or policies of insurance shall name both Lessor and Lessee as named insured. The policies shall provide that any proceeds for loss or damage to buildings or to improvements shall be payable jointly to Lessor and Lessee, which sum Lessor shall use solely for repair and restoration purposes of the building and improvements on the "Property".

Liability Insurance

10.02. Lessee, at its own expense, shall provide and maintain in force during the term of this lease, liability insurance in the aggregate amount of one million dollars (\$1,000,000.00), covering Lessor as well as Lessee, for any liability for property damage or personal injury arising as a result of Lessee's occupation or Lessor's ownership of the leased premises. This insurance is to be carried by one or more insurance companies authorized to transact business in Texas and approved by Lessor. The insurance provided pursuant to this section shall be in the amount of not less than five hundred thousand dollars (\$500,000.00) an occurrence for property damage and not less than five hundred thousands dollars (\$500 000.00) an occurrence and not more than one million dollars (\$1,000,000.00) in aggregate for one accident for personal injury. This insurance shall protect Lessor and Lessee against liability to any employees or servants of Lessee and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the leased premises.

Construction Liability Insurance

10.03. Lessor agrees to obtain and maintain (to the extent reasonably procurable) construction liability insurance at all times when demolition, excavation, or construction work is in progress on the premises. This insurance shall be carried by insurance companies authorized to transact business in the State of Texas, selected and approved by Lessor, and shall be paid for by Lessor. The insurance shall have limits of not less than one million dollars (\$1,000,000.00) for property damage and three hundred thousand dollars (\$300,000.00) for one person and one million dollars (\$1,000,000.00) for one accident for personal injury and shall protect Lessor and Lessee, as well as any other person or persons Lessee may designate, against all liability for injury or damage to any person or property in any way arising out of demolition, excavation, or construction work on the premises. Lessor's responsibility of providing construction liability insurance shall be limited to the initial construction and all subsequent construction liability insurance will be paid by lessee, provided less accepts specification and approves.

Remedy for Failure to Provide Insurance

10.04. Lessee shall furnish Lessor with certificate of all insurance required by this article. If Lessee does not provide such certificates to lessor within thirty (30) days of obtaining possession, or if Lessee allows any insurance required under this article to lapse Lessor may, at its option, take out and pay the premiums on the necessary insurance to comply with Lessee's obligations under the provisions of this article. Lessor is entitled to reimbursement from Lessee for all amount spent by it to procure and maintain such insurance, with interest at the rate of eight (8) percent per annum from the date of receipt of lessor's notice of payment until reimbursement by Lessee. Lessor shall furnish Lessee with certificate of all insurance required by this article

Certificates of Insurance

10.05. Lessee shall furnish Lessor with certificates of all insurance required by this article. Lessee agrees that if it does not keep this insurance in full force and effect, Lesser may notify

Lessee of this failure, and ,if Lessee does not deliver to Lessor certificates showing all such insurance to be in full force and effect within 30 (thirty) days after this notice, Lessor may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Lessee's obligations under the provisions of this article. Upon demand from Lessor, Lessee shall reimburse Lessor the full amount of any insurance premiums paid by Lessor pursuant to this section, with interest at the rate of 8% percent per annum from the date of Lessor's demand until reimbursement by Lessee. Lessor shall furnish Lessee with certificate of all insurance required on construction liability insurance in this article.

Hold-Harmless Clause

10.06. Lessee agrees to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs, and expenses, including reasonable attorney's fees for the defense of such claims and demands, arising from the conduct or management of Lessee's business on the leased premises, or its use of the leased premises or from any breach on the part of Lessee of any conditions of this lease, or from any act of negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the leased premises. In case of any action or proceeding brought against Lessor by reason or any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.

ARTICLE 11. DAMAGE OR DESTRUCTION OF PREMISES

Notice to Lessor

11.01. If the leased premises, or any structures or improvements on the leased premises, should be damaged or destroyed by fire, tornado, or other casualty, Lessee shall give immediate written notice of the damage or destruction to lessor, including a description of the damage and, as far as known to Lessee, the cause of the damage.

Total Destruction

11.02 If the building on the leased premises should be totally destroyed by fire, tornado, or other casualty not the fault of Lessee or any person in or about the leased premises with the express or implied consent of Lessee, or if it should be so damaged by such a cause that rebuilding or repairs cannot reasonably be completed to restore the building to its condition prior to the casualty within 180 working days, this lease shall terminate, and rent shall be abated for the unexpired portion of this lease, effective as of the date of written notification as provided in S 11.01.

Partial Destruction

11.03. If the building or other improvements on the leased premises should be damaged by fire, tornado, or other casualty not the fault of Lessee or any person in or about the leased premises with the express or implied consent of Lessee, but not to such an extent that rebuilding or repairs cannot reasonably be completed within 180 working days to restore the building to its condition prior to the casualty, this lease shall not terminate except as provided in subsection (a) of this section. Lessee shall turn over insurance proceeds to Lessor and Lessor shall use those funds solely to rebuild the buildings and improvements.

- a. If the partial destruction of the leased premises occurs during the lease term, Lessor shall, use proceeds from Lessee's insurance, to proceed immediately to rebuild or repair the damaged buildings and improvements to substantially the condition in which they existed prior to such damage. If the leased premises are untenable in whole or in part following such damage, the rent payable during the period in which they are untenable shall be adjusted equitably. In the event that lessor should fail to complete such rebuilding or repairs within 180 working days from the date of written notification by Lessee to Lessor of the occurrence of the damage, Lessee may terminate this lease by written notification to Lessor. Upon such notification, all rights and obligations under this lease shall cease.

ARTICLE 12. CONDEMNATION

Total Condemnation

12.01. If during the term of this lease or any extension or renewal of it, all of the leased premises should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this lease shall terminate, and the rent shall be abated during the unexpired portion of this lease, effective as of the date of the taking of the premises by the condemning authority.

Partial Condemnation

12.02. If less than all, but more than 33% percent of the leased premises is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, Lessee may terminate the lease by giving written notice to Lessor within thirty (30), days after possession of the condemned portion is taken by the entity exercising the power of condemnation.

If the leased premises ARE partially condemned and Lessee fails to exercise the option to terminate the lease under this section, or if less than 33% percent of the leased premises are condemned, this lease shall not terminate, but Lessee sole may, at its sole expense restore and reconstruct the building and other improvements situated on the building and other improvements situated on the leased premises to make them reasonably tenantable and suitable for the uses for which the premises are leased. The fixed rent payable under S 3.01 of this lease shall be adjusted equitably during the unexpired portion of this lease.

Condemnation Award

12.03. Lessor and Lessee shall each be entitled to receive and retain such separate awards, and portions of lump sum awards, as may be allocated to their respective interests in any

condemnation proceedings. The termination of this lease shall not affect the right of the respective parties to such awards.

ARTICLE 13. DEFAULT

Default by Lessee

13.01. If Lessee shall allow the rent to be in arrears more than 30 days after written notice of such delinquency, or shall remain in default under any other condition of this lease for a period of 30 days after written notice from Lessor, Lessor may at its option, without notice to Lessee, terminate this lease or, in the alternative, Lessor may reenter and take possession of the premises and remove all persons and property without being deemed guilty of any manner of trespass and relet the premises, or any part of the premises, for all or any part of the remainder of the lease term, to a party satisfactory to Lessor and at such monthly rental as Lessor may with reasonable diligence be able to secure. Should lessor be unable to relet after reasonable efforts to do so, or should such monthly rental be less than the rental Lessee was obligated to pay under this lease, or any renewal of this lease, plus the expense of reletting, then lessee shall pay the amount of such deficiency to Lessor.

Lessor's Lien

13.02. It is expressly agreed that, in the event of default by Lesser in the payment of rent or any other sum due from Lessee to Lessor under the terms of this lease, Lessor shall have a lien upon all fixtures, chattels, or other property of any description belonging to Lessee that are placed in, or become a part of, the leased premises as security for rent due and to become due for the remainder of the current lease term and any other sum due from Lessee to Lessor, This lien shall not be in lieu of, or in any way affect, the statutory lessor's lien given by law but shall be in addition to that lien, and Lessee grants to Lessor a security leased premises for purposes of this contractual lien. Subject only to such limitation as may be imposed by the proceeding provisions of this paragraph, LESSOR SHALL HAVE A CONTRACTUAL LANDLORD'S LIEN UPON

ALL PROPERTY OF LESSEE FOUND WITHIN THE LEASED PREMISES, FOR ALL RENTALS AND OTHER AMOUNTS DUE AND UNPAID BY LESSEE under the provisions of this agreement, except that property specifically exempt by V.T.C.A Property Code S 54.042. In the event of termination of this lease/purchase agreement because of the default of Lessee, any and all improvements made to the leased premises by Lessee shall be and become the property of Lessor, and Lessee shall leave and surrender the premises in as good a state and condition as they were in at the commencement of the lease term, reasonable wear and tear, only, excepted. The filing of bankruptcy proceedings by or against Lessee, or assignment for the benefit of the creditors made by Lessee shall also constitute default of this agreement. This shall not prevent the sale by Lessee of any merchandise in the ordinary course of business free of such lien to Lessor. In the event Lessor exercises the option to terminate the leasehold, reenter, and relet the premises as provided in the preceding paragraph, then lessor, after giving reasonable notice to Lessee of the intent to take possession and giving an opportunity for a hearing on the matter, may take possession of all of Lessee's property on the premises and sell it at public or private sale after giving Lessee reasonable notice of the time and place of any public sale or of the time after that any private sale is to be made for cash or on credit, for such prices and terms as Lessor deems best, with or without having the property present at the sale. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing,, and selling such property, then to the payment of any rent due or to become due under this lease, with the balance, if any, to be paid to lessee. Lessor's landlord lien shall be subordinate to all prior lien pursuant to Texas Uniform Commercial Code.

Default of Lessor

13.03. If Lessor defaults in the performance of any term, covenant, or condition required to be performed by it under this agreement, Lessee may elect to do either one of the following:

- a. After not less than 30 (thirty) days' notice to Lesser lessee may remedy such default by any necessary action and, in connection with such remedy, may pay expenses and employ counsel. All sums expended, or obligations incurred, by

Lessee in connection with remedying Lessor's default shall be paid by Lessor to Lessee on demand and, on failure of such reimbursement, Lessee may, in addition to any other right or remedy that Lessee may have, deduct these costs and expenses from rent subsequently becoming due under this lease.

- b. Lessee may terminate this lease on giving at least 30(thirty) days notice to lessor of such intention. In the event Lessee elects this option, the lease will be terminated on the date designated in Lessee's notice, unless Lessor has cured the default prior to expiration of the 30 (thirty) day period.
- c. Should lessor, during the lease term or any extension or renewal of the lease, attempt to sell all or any portion of the leased premises, lessee shall have the right of first refusal. Should lessee wish to exercise his first right of refusal, lessee shall be credited for all past rental payments and such credit shall be a part of lessee's offer.

Cumulative Remedies

13.04. All rights and remedies of Lessor and Lessee under this Article shall be cumulative, and none shall exclude any other right or remedy provided by law or by any other provision of this lease. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

Waiver of Breach

13.05. A waiver by either Lessor or Lessee of a breach of this lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach of the lease.

ARTICLE 14. INSPECTION BY LESSOR

14.01. Lessee shall permit Lessor and Lessor's agents, representative, and employees to enter into and on the leased premises at all reasonable times for the purpose of inspection or any other purpose necessary to protect Lessor's interest in the leased premises or to perform Lessor's duties under this lease.

ARTICLE 15. ASSIGNMENT AND SUBLEASE

Assignment and Subletting by Lessee

15.01. Lessee may not sublet, assign, encumber, or otherwise transfer this lease, or any right or interest in this lease or in the leased premises or the improvements on the leased premises, without the written consent of Lessor. If Lessee sublets, assigns, encumbers, or otherwise transfers its right or interests in this lease or in the leased premises or the improvements on the leased premises without the written consent of Lessor, Lessor may, at its option, declare this lease terminated. In the event Lessor consents in writing to an assignment, sublease, or other transfer of all or any of Lessee's rights under this lease, the assignee or subleases must assume all of Lessee's obligations under this lease, and Lessee shall remain liable for every obligation under the lease. Lessor's consent under this section will not be arbitrarily or unreasonably withheld.

Assignment by Lessor

15.02. Lessor may assign or transfer any or all of its interests under the terms of this lease, if such transfer is approved by the Texas Department of Housing and Community Affairs and/or such transfer is not void pursuant to present legislation.

Arbitration Agreement

15.03. Any controversy or claim between the parties to this lease arising out of or relating to this lease, any provision of this lease, or any breach or alleged breach of this lease controversies less than \$5,000.00 shall be submitted to arbitration on the written request of either party served on all other parties. Any arbitration conducted pursuant to this section will comply with and be governed by the provisions of the Texas General Arbitration Act.

ARTICLE 16. MISCELLANEOUS

Notices and Addresses

16.01. All notices required under this lease must be given by certified mail or registered mail, addressed to the proper party, the following addresses:

Lessor Eddy A. Etheredge
Eddy A. Etheredge, County Judge
Courthouse Annex, Hays County
102 North LBJ, Ste 301
San Marcos, Texas 78666

Lessee Tim Tingle
Tim Tingle, President
New Canaan Farms, Inc.
P.O. Box 386
Dripping Springs, Texas 78620

Either party may change the address to which notices are to be sent it by giving the other party notice of the new address in the manner provided in this section.

Parties Bound

16.02. This agreement shall be binding upon, and inure to the benefit of, the parties to the lease and their respective heirs, executors, administrators, successors, and assigns when permitted by this agreement.

Texas Law to Apply

16.03. This agreement shall be construed under, and in accordance with the laws of the State of Texas and ,all obligations of the parties created by this lease are performable in HAYS County, Texas.

Legal Construction

16.04. In case any one or more of the provisions contained in this agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the agreement, and this agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the agreement.

Prior Agreements Superseded

16.05. This agreement constitutes the sole and only agreement of the parties to the agreement and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this agreement

Amendment

16.06. No amendment, modification, or alteration of the terms of this agreement shall be binding unless it is in writing, dated subsequent to the date of this agreement, and duly executed by the parties to this agreement.

Rights and Remedies Cumulative

16.07. The rights and remedies provided by this lease agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. The rights and remedies provided in this lease are in addition to any other rights the parties may have by statute, ordinance, or otherwise.

Attorney's Fees and Costs

16.08. If, as a result of a breach of this agreement by either party the either party employs an attorney or attorneys to enforce its rights under this lease, then the breaching or defaulting party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce the lease.

Force Majeure

16.09. Neither Lessor nor Lessee shall be required to perform any term, condition or covenant in this lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material, or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

Indemnification of Lessor

16.10. Lessor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the leased premises, or any part of the leased premises, or caused by any defect in any building, structure, improvement, equipment, or facility on the leased premises or caused by or arising from any act or omission of Lessee, or of any of its agents, employees, licensees, or invitees, or by or from any accident, fire, or other casualty on the land, or occasioned by the failure of Lessee to maintain the premises in safe condition. Lessee waives all claims and demands on its behalf against Lessor for any such loss damage or injury and agrees to indemnify and hold Lessor entirely free and harmless from all liability for any such loss, damage,

or injury of other persons, and from all costs and expenses arising from any claims or demands of other persons concerning any such loss, damage, or injury,

ARTICLE 17. LESSORS WARRANTIES AND COVENANTS

Warranty of Title

17.01. Lessor hereby represents and warrants that it is the owner in fee simple absolute of the leased premises, subject only to the following covenants, conditions, restrictions, easements, and other matter of record as noted in the Hays County Deed Records.

Warranty of Quiet Enjoyment

17.02. Lessor covenants and agrees that as long as Lessee pays the rent and other charges as provided in this lease and observes and keeps the covenants, conditions, and terms of this lease, Lessee shall lawfully and quietly hold, occupy, and enjoy the leased premises during the term of this lease without hindrance or molestation by Lessor or any person claiming under Lessor, except such portion of the leased premises, if any, as shall be taken under the power of eminent domain.

ARTICLE 18. LEASE/PURCHASE

18.01. Lessor hereby grants to Lessee until MAY 6, 2013, an exclusive option to purchase the premises on the following terms and conditions:

- (a) Lessee may exercise this option at any time 5 years after the term of this lease commences.
- (b) The full purchase price for the "Property" and all improvements shall be the sum of \$317,206 payable as follows:
 - (1) The balance of \$317,206 shall be payable to lessor in Two-Hundred Forty (240) monthly rental installments of One Thousand Three Hundred Twenty-One and 69/100 (\$1,321.69). The monthly rental installments shall commence on the date the lessor completes the building described in Exhibit B of this lease purchase agreement, and lessee has taken possession of the premises. Said monthly rental installments shall be credited to the original purchase price.
- (c) Lessee may exercise this option only by sending notice to Lessor at the Hays County Courthouse, County Judge's office by registered mail postage prepaid,

- along with a copy of this lease at least 30 days prior to the date lessee intends to exercise the option to purchase.
- (d) When Lessee exercises his option to purchase with all documents required by this option lessor shall convey to lessee good and marketable title to the premises as evidenced by a title insurance policy chosen by lessor, in the full amount of the purchase price.
 - (e) On exercise of this option all real property taxes levied or assessed against the premises as shown by the latest available tax bill shall be pro-rated between Lessee and Lessor on the basis of 30-day months as of 12:00 midnight on the date of closing.

ARTICLE 19. PARTIES INTENT

Intent of the Parties

19.01 Lessor and Lessee have entered into this lease/purchase agreement with the intention of complying with Article III S 52(a) of the Texas Constitution. Both parties have entered into this lease/purchase agreement for the development and diversification of the Texas economy, the reduction of unemployment and the promotion of transportation and commerce in Texas, by complying with the requirements set out by Texas Department of Housing and Community Affairs which uses federal funding transferred through The Texas Capitol Fund Real Estate Development Program for the purchase and development of rural properties.

Validity of Lease/Purchase Agreements

19.02. Lessee and Lessor agree that this lease/purchase agreement shall be submitted to the attorney general for his examination as to the validity of this lease/purchase agreement as affected by Article III S 52(a) of the Texas Constitution, the Public Policy Finance Act and the Requirements of Competitive bidding requests in S 263.00, et seq. and S 277.00, et seq. of the Texas Government Code. Should lease be determined invalid lessee shall have the exclusive right to re-negotiate lease prior to any other grantee under the Texas Department of Housing and Community Affairs guidelines.

Time of Essence

19.03. Time is of the essence of this agreement.

The undersigned Lessor and Lessee execute this agreement on
April 8, 19 at San Marcos, Hays County Texas.

Lessor Eddy A. Etheredge
Eddy A. Etheredge, County Judge
Courthouse Annex, Hays County
102 North LBJ, Ste 301
San Marcos, Texas 78666

Lessee Tim Tingle
Tim Tingle, President
New Canaan Farms, Inc.
P.O. Box 386
Dripping Springs, Texas 78620

Exhibit "A"

Property Description:

Lot Number 1, which consists of 10.00 acres more or less, out of the K-Bar-Mac recorded subdivision in Hays County, Texas, more explicitly described in Volume 5, Page 345, in the Hays County Plat Records. A certified copy of the recorded plat is attached to this document for all purposes.