

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: April 15, 2008 [X] Consent [] Regular
[] Ordinance [] Public Hearing
Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) adopt a Resolution authorizing the lease of certain real property to Theodore W. Winsberg and Gertrude K. Winsberg; and
- B) approve a Fourth Amendment to Lease Agreement (R99-842D) with Theodore W. Winsberg and Gertrude K. Winsberg for the continued use of property located on Hagen Ranch Road, Boynton Beach.

Summary: In 1996, the Board approved the purchase of 175 acres from the Winsbergs which was to be acquired in phases and was completed in 2000. The property is located off Hagen Ranch Road between Boynton Beach Boulevard and Atlantic Boulevard and was purchased for development of WUD's Green Cay Wetlands Water Reclamation project. The Real Estate Purchase and Sale Contract (R96-1547D) granted the Winsbergs the right to lease back the property for \$1/yr for farming until such time as WUD has improved or is prepared to improve 60% of the property. The County entered into a Lease with the Winsbergs in 1999, which has been extended three (3) times and will expire on May 1, 2008. WUD has completed Phase I of the Green Cay project encompassing roughly 62% of the property, but the construction of Phase II has been delayed indefinitely. In light of the delay, the Winsbergs requested an additional extension for \$1/yr. WUD believes that the intent of the Contract was that the Winsbergs would lease the property rent free until such time that the County was prepared to commence construction of Phase II. The County is generally required to bid leases of County-owned property. However, existing deed restrictions effectively preclude the County from leasing the property to others. This Fourth Amendment will extend the term for two (2) years, from April 30, 2008 through May 1, 2010, with an option to renew the term of the Lease Agreement for ten (10) successive periods of one (1) year each. The County will continue to have the right to terminate this Lease upon 120 days notice. The annual rental rate for this Fourth Amendment will continue to be \$1/yr. All other terms of the Lease Agreement remain in full force and effect. (PREM) District 5 (HJF)

Background and Justification: On October 1, 1996, the Board approved the Real Estate Purchase and Sale Contract wherein the County agreed, as part of the consideration for the land purchase, to lease the property back to the Winsbergs until the WUD was prepared to develop the property. The purchase price was calculated at \$15,000/acre and was significantly less than appraised value of \$47,000/acre. The Board approved the original Lease Agreement on May 8, 1999 (R99-842D); the First Amendment on June 19, 2001 (R2001-0937); the Second Amendment on April 13, 2004 (R2004-0649); and the Third Amendment on April 18, 2006 (R2006-0666). This Fourth Amendment modifies the term of the Agreement allowing the Winsbergs to continue their agricultural operations since WUD has not yet begun development of Phase II of the Wetlands Water Reclamation project and there is no definite date by which the project will proceed. Restrictions contained in the deed by which the Winsbergs conveyed the property to the County effectively preclude the County from leasing the property to others for farming or using the property for any purpose other than for constructing a wetland treatment and/or groundwater recharge facility.

Continued on Page 3

Attachments:

- 1. Location Map
- 2. Aerial Map
- 3. Resolution
- 4. Fourth Amendment to Lease Agreement

Recommended By: ECT Amy Wolf 4/9/08
Department Director Date
Approved By: [Signature] 4/10/08
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(S1)	(S1)	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(S1)</u>	<u>(S1)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No X
 Budget Account No: Fund 4000 Dept 720 Unit 4200 RSRC 6999
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No Fiscal Impact.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 OFMB *MD* *CW*
4/3/08 *4/11/08*

 Contract Development and Control
E. J. Jara 4/13/08

B. Legal Sufficiency:

 Assistant County Attorney
4/10/08

This amendment complies with our review requirements.

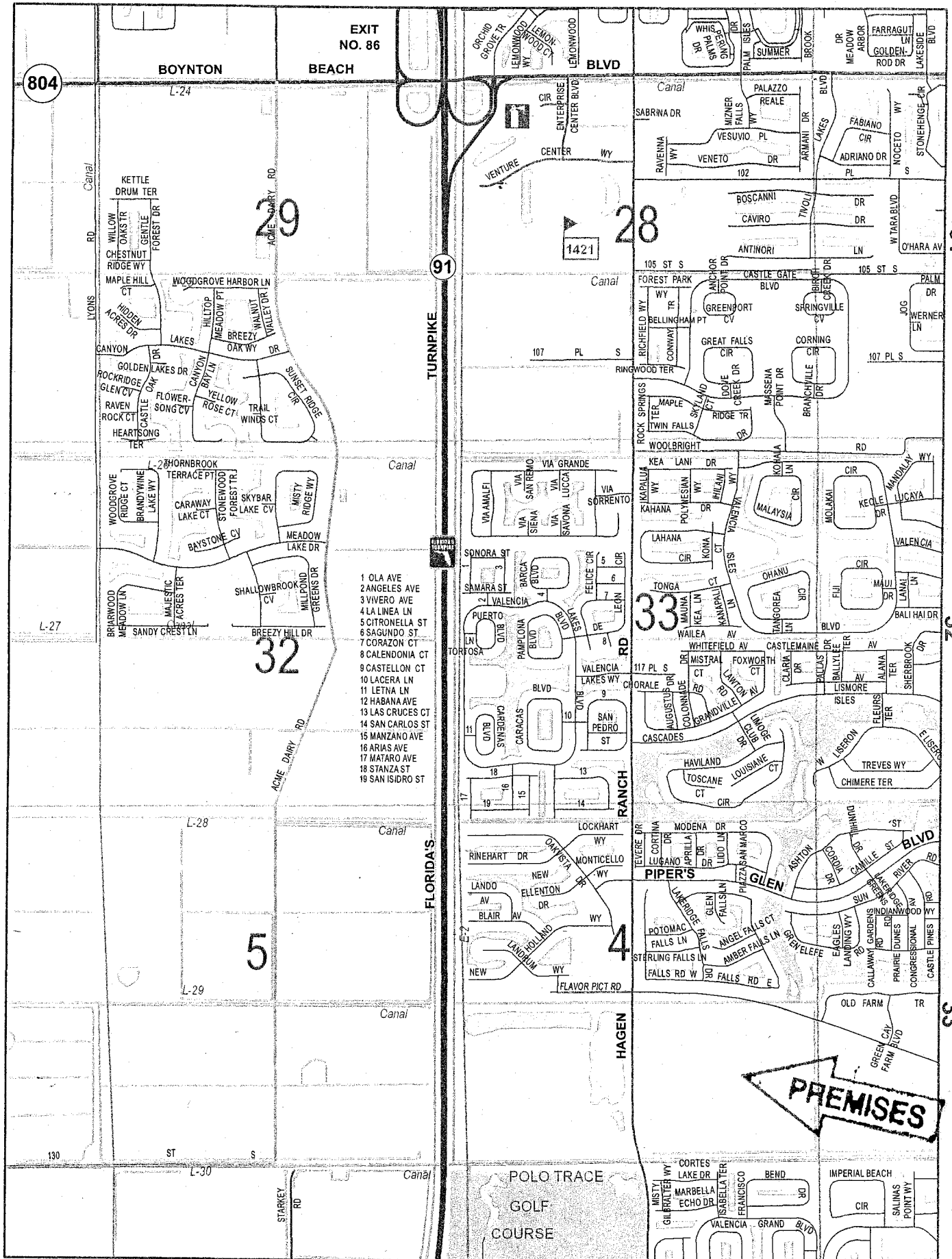
C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

Background and Justification, continued

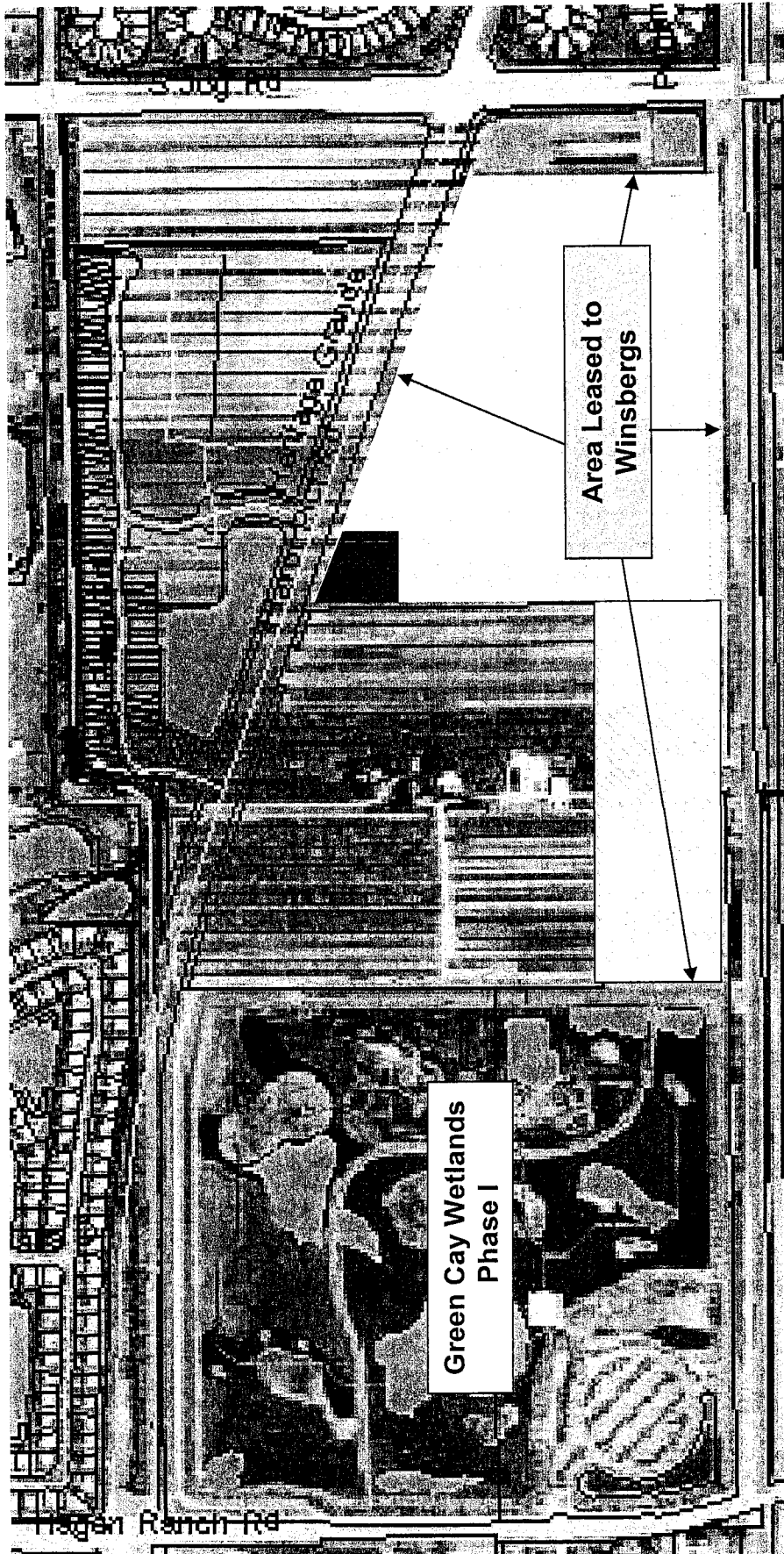
The Winsbergs have been very cooperative in all phases of WUD's Green Cay Project. They sold the property for substantially less than appraised value and modified the restrictive covenants to allow construction of a Fire Station. By leasing the property, the County enhances agriculture and avoids maintenance and security costs. The only issue in extending the Lease is whether after nine (9) years of rent free use, the Winsbergs should be required to pay rent. WUD believes that it was the intent of the parties that the Winsbergs could lease the property rent free until such time that WUD is prepared to commence construction of Phase II of the project. Unfortunately, the purchase contract used 60% as the threshold, and Phase I occupied roughly 62% of the property. Staff believes it is not in the County's interest to contest this matter in light of questions as to the intent of the parties and the cooperation received from the Winsbergs. If the County does not lease this property to the Winsbergs, WUD will incur maintenance costs of approximately \$25,000/yr.



LOCATION MAP
ATTACHMENT # 1



AERIAL MAP
ATTACHMENT NO. 2



RESOLUTION NO. 2008-_____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING A TWO YEAR EXTENSION OF A LEASE OF CERTAIN REAL PROPERTY TO THEODORE W. AND GERTRUDE K. WINSBERG; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Theodore W. and Gertrude K. Winsberg, husband and wife ("Tenant"), have made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County extend the lease of certain real property owned by Palm Beach County to Tenant for use by Tenant for agricultural and farming purposes (R 99-842D Dated May 18, 1999);

WHEREAS, Tenant was the original owner of the Property that was sold to the County in 1996 under a Real Estate Purchase and Sales Contract (R96-1547D);

WHEREAS, a portion of the consideration given by County to Tenant was that Tenant would be permitted to lease back the Property for farming purposes for the sum of \$1.00 per year until the occurrence of certain events;

WHEREAS, deed restrictions contained in the conveyance of the Property preclude the County from leasing the Property to others for farming or other purposes other than for constructing of a wetland treatment and/or groundwater discharge facility;

WHEREAS, by virtue of its presence on the Property, Tenant has provided site security, repairs, maintenance and performed other obligations which have benefited the County and which the County would have otherwise been obligated to provide at its expense;

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that such real property will not be needed for County purposes during the term of the Lease extension and the extension of the Lease is in the best interests of the County.

ATTACHMENT # 3

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Authorization to Lease Real Property

The Board of County Commissioners of Palm Beach County shall lease to Theodore W. and Gertrude K. Winsberg, pursuant to the Fourth Amendment to the Lease attached hereto and incorporated herein by reference, for an additional term of two (2) years, together with the right to renew for ten (10) periods of one (1) year each, at an annual rental rate of One Dollar (\$1.00), the real property identified in such Lease for the use identified above.

Section 3. Conflict with Federal or State Law or County Charter

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

Section 4. Effective Date

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing resolution was offered by Commissioner _____ who moved its adoption. The Motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

COMMISSIONER ADDIE L. GREENE, CHAIRPERSON
COMMISSIONER JOHN F. KOONS, VICE CHAIR
COMMISSIONER KAREN T. MARCUS
COMMISSIONER ROBERT J. KANJIAN
COMMISSIONER MARY MCCARTY
COMMISSIONER BURT AARONSON
COMMISSIONER JESS R. SANTAMARIA

The Chairperson thereupon declared the resolution duly passed and adopted
this _____ day of _____, 2008.

PALM BEACH COUNTY, a
political subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: Richard Anthony Wolf
Department Director

FOURTH AMENDMENT TO LEASE AGREEMENT BETWEEN PALM BEACH COUNTY AND THEODORE W. WINSBERG AND GERTRUDE K. WINSBERG

THIS FOURTH AMENDMENT is made and entered into _____ by and between Palm Beach County, a political subdivision of the State of Florida ("County") and Theodore W. Winsberg and Gertrude K. Winsberg ("Tenant").

WITNESSETH:

WHEREAS, County and Tenant entered into a Real Estate Purchase and Sales Contract ("Agreement") dated October 1, 1996 (Resolution No. R96-1547D), as amended, wherein Tenant agreed to sell and County agreed to purchase property described in Exhibit "A" to the Contract; and

WHEREAS, County and Tenant agreed in the Agreement that a portion of the consideration to be given by County to Tenant for such sale and purchase would be that Tenant would be permitted to lease back the Premises for farming purposes for the sum of One Dollar (\$1.00) per year until the occurrence of certain events; and

WHEREAS, deed restrictions contained in the conveyance of the property preclude County from leasing the property to others for farming or any other purpose than for constructing a wetland treatment and/or groundwater discharge facility; and

WHEREAS, in addition to Tenant providing covered storage for County materials, and performing other functions which have benefited County and which are beyond the obligations of Tenant, Tenant has relieved County of having to provide security for the Premises by virtue of Tenant's presence on the site; and

WHEREAS, the design and construction of the wetlands restoration project have not yet been completed; and

WHEREAS, the Board of County Commissioners of Palm Beach County has determined that an extension of the Lease is in the best interest of the County; and

WHEREAS, County and Tenant entered into a Lease Agreement dated May 18, 1999 (Resolution No. R99-842D), as amended by the First Amendment To Lease Agreement dated June 19, 2001 (Resolution No. R2001-0937), the Second Amendment To Lease Agreement dated April 13, 2004 (Resolution No. R2004-0649), and the Third Amendment To Lease Agreement dated April 18, 2006 (Resolution No. R2006-0666) (the "Lease"); and

NOW, THEREFORE, in consideration of premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Lease.
2. Article I, Section 1.02 of the Lease is deleted in its entirety and replaced with the following:

The term of this Lease shall commence on the Effective Date, as hereinafter defined ("Commencement Date"), and shall expire on May 1, 2010 ("Term"), unless terminated earlier in accordance with the provisions of this Lease.

3. The Lease is modified to add Article I, Section 1.03, as follows:

Section 1.03 Option to Renew.

County hereby grants to Tenant, so long as Tenant shall not be in default of any term, covenant, condition or payment of Rent under this Lease, the right and option to renew

ATTACHMENT # 4

the Term of this Lease for ten (10) successive periods of one (1) year each under the same terms and conditions of this Lease, commencing upon the expiration of the Term of this Lease or any renewal thereof. Tenant shall exercise its option to renew, if at all, by written notice to the County received by the County on or before 60 days prior to the expiration of the Term of this Lease or any renewal thereof. Failure of Tenant to duly and timely exercise its option to renew the Term of this Lease shall be deemed a waiver of Tenant's right to said option and all further options.

4. The Lease is modified to add Article I, Section 1.04 as follows:

Section 1.04 Termination Rights.

County shall be entitled to terminate Tenant's leasehold interest during the Term or any renewal thereof, in County's sole discretion, with or without cause, upon one hundred twenty (120) days prior written notice. Provided that Tenant is not then in default, Tenant may terminate this Lease during the Term or any renewal thereof by providing County with ten (10) days prior written notice of Tenant's election to terminate this Lease.

5. Except as set forth herein, the Lease remains unmodified and in full force and effect, and County and Tenant hereby ratify, confirm, and adopt the Lease as amended hereby.

6. This Fourth Amendment is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

IN WITNESS WHEREOF, the parties have duly executed this Fourth Amendment as of the day and year first written above.

Signed in the presence of:

Michael L. Jameson
Witness (as to both)

Michael L. Jameson
Print Witness Name
[Signature]
Witness (as to Both)

NICOLAUS AMBIBE, JR.
Print Witness Name

TENANT:

Theodore W. Winsberg
Theodore W. Winsberg

Gertrude K. Winsberg
Gertrude K. Winsberg

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Assistant County Attorney

COUNTY:

PALM BEACH COUNTY, a
political subdivision of the State
of Florida

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO TERMS
AND CONDITIONS

Audrey Wolf
Audrey Wolf, Director
Facilities Development & Operations



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/15/2008

PRODUCER
TOM BISHOP
PALM BEACH COUNTY FARM BUREAU
13121 MILITARY TRAIL
DELRAY BEACH, FL 33484

INSURED
GREEN CAY FARMS, INC
12750 HAGEN RANCH ROAD
BOYNTON BEACH, FL 33437

THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: FFVA MUTUAL INSURANCE CO	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/POP AGG \$								
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$								
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	WC840-0001816-2008A	01/01/2008	01/01/2009	<table border="1"> <thead> <tr> <th>WC STATU-TORY LIMITS</th> <th>OTH-ER</th> </tr> </thead> <tbody> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$ 500,000</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$ 500,000</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$ 500,000</td> </tr> </tbody> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$ 500,000	E.L. DISEASE - EA EMPLOYEE	\$ 500,000	E.L. DISEASE - POLICY LIMIT	\$ 500,000
WC STATU-TORY LIMITS	OTH-ER												
E.L. EACH ACCIDENT	\$ 500,000												
E.L. DISEASE - EA EMPLOYEE	\$ 500,000												
E.L. DISEASE - POLICY LIMIT	\$ 500,000												

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

PALM BEACH COUNTY BOCC
PROPERTY AND REAL ESTATE MANAGEMENT
ATTN: DIRECTOR
2633 VISTA PARKWAY
WEST PALM BEACH, FL 33411

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
TOM BISHOP

CERTIFICATE OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER.
THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED BELOW.

FLORIDA FARM BUREAU INSURANCE COMPANIES P.O. BOX 147030 GAINESVILLE, FLORIDA 32614-7030	COMPANIES AFFORDING COVERAGES: Company Letter A: Florida Farm Bureau General Ins. Co. Company Letter B: Florida Farm Bureau Casualty Ins. Co.
NAME AND ADDRESS OF INSURED: GREEN CAY FARMS INC 12750 HAGEN RANCH RD BOYNTON BEACH, FL 33437	

The policies of insurance listed below have been issued to the insured named above and are in force at this time. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

CO. LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS	
					General Aggregate	\$
A	General Liability: <input checked="" type="checkbox"/> Commercial General Liability (Occurrence Form) <input type="checkbox"/> Owner's & Contractor's Protective <input type="checkbox"/> Farmer's Personal Liability	CPP 9507106	02/04/2008	02/04/2009	Products-completed operations aggregate	\$ 1,000
					Personal & Advertising Injury	\$ 500
					Each Occurrence	\$ 500
					Fire Damage (Any one fire)	\$ 50
					Medical Expense (Any one person)	\$ 5
	Automobile Liability: <input type="checkbox"/> Any auto <input type="checkbox"/> All owned autos <input type="checkbox"/> Scheduled autos <input type="checkbox"/> Hired autos <input type="checkbox"/> Non-owned autos				Combined Single Unit	\$
					Bodily Injury (Per Person)	\$
					Bodily Injury (Per Accident)	\$
					Property Damage	\$
A	Excess Liability: <input checked="" type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than Umbrella form	UMC 9610053	02/04/2008	02/04/2009	Each Occurrence \$ 1,000	Aggregate \$ 1,000
	Employers Liability: <input type="checkbox"/> Farm Employer's Liability <input type="checkbox"/> Farm Employee's Medical				\$ (Each Occurrence)	\$ (Each Employee)
	Other:					\$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES:

SEE FORM CG 20 11 11 85

CANCELLATION: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

NAME AND ADDRESS OF CERTIFICATE HOLDER: PALM BEACH COUNTY BOCC PROPERTY AND REAL ESTATE MANAGEMENT ATTN: DIRECTOR 2633 VISTA PARKWAY, WEST PALM BEACH, FL 33411
--

COUNTY CODE 50 DATE ISSUED 02/15/08
 Served by PALM BEACH County Farm Bureau
TOM BISHOP
 AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED — MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

1. Designation of Premises (Part Leased to You): E/S HAGEN RANCH RD
2. Name of Person or Organization (Additional Insured): PALM BEACH COUNTY BOCC
PROPERTY & REAL ESTATE MANAGEMENT
3. Additional Premium: \$ 21

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the Schedule.