

16241

RESOLUTION NO. 1977-78-2

WHEREAS, the PORT OF HOOD RIVER is the owner and operator of the Hood River Airport, and

WHEREAS, it is necessary for the safe and effective operation of the airport that there be adequate open air space free of obstructions in or about the airport for the free and clear approach of aircraft and the operation thereof, and these clearances must be obtained in order to continue the operation of the airport and

WHEREAS, Glenn W. Marsh, and V. Pauline Marsh, also known as Pauline Marsh, husband and wife, are the owners of certain real property in the County of Hood River, State of Oregon, which lies adjacent to the East boundary line of the airport and is within the approach area to the airport from the East and may be an obstruction to the safe operation of aircraft along the approach to the airport in the event the current runway is lengthened to the East, the Marsh's property being described as the South one-half of the Southeast one-quarter of the Northeast one-quarter of Section 11, Township 2 North, Range 10, East of the Willamette Meridian and

WHEREAS, it is necessary for the operation of the airport that the Marsh property be acquired and

WHEREAS, the property can be acquired for the sum of \$120,000.00 and other consideration and that that price is a reasonable and proper price to pay for the property and the rights instant thereto, and

WHEREAS, the PORT OF HOOD RIVER after acquiring the property wishes to lease it and retain it as an orchard and

WHEREAS, Glenn W. Marsh and V. Pauline Marsh have experience in operating said orchard, and

WHEREAS, the Marsh's have indicated a desire to

lease said orchard and have made the lease of the orchard by them from the PORT OF HOOD RIVER a part of the negotiations and consideration given and received in connection with the sale of the property, now therefore,

BE IT RESOLVED for the reasons stated above that the PORT OF HOOD RIVER purchase the above described real property from Glenn W. Marsh and V. Pauline Marsh, aka Pauline Marsh, husband and wife, for the sum of \$120,000.00 and enter into a lease of the described property with the Marshs'.

BE IT FURTHER RESOLVED that the staff is hereby directed to prepare a check payable to Glenn W. Marsh and V. Pauline Marsh, husband and wife and ANNALA, LOCKWOOD, CAREY & HULL, their attorneys, and obtain the appropriate signatures on said check and transfer the check to ANNALA, LOCKWOOD, CAREY & HULL in payment of said property, and ,

BE IT FURTHER RESOLVED that the PORT OF HOOD RIVER enter into a lease with the Marshs' in accordance with the terms of the lease attached hereto as Exhibit "A" and incorporated herein as though fully set forth and the President of the Board of Commissioners is hereby authorized to sign the lease on behalf of the PORT OF HOOD RIVER and the Secretary is authorized and directed to attest to said lease on behalf of the PORT OF HOOD RIVER.

The Resolution was moved by Percy Jensen and seconded by Dr. James B. Wade and duly adopted on a roll call vote as follows:

Wells Absent , Walton Aye , Wade Aye , Jensen Aye , Weber Aye .

DATED this 1st day of February , 1978.

ATTEST:

James B. Wade
Secretary

PORT OF HOOD RIVER

By: John Weber
president

"EXHIBIT A"

16241

ORCHARD LEASE AND AGREEMENT

THIS AGREEMENT dated the 1st day of February,
1978 between GLENN W. MARSH and PAULINE MARSH, of _____
_____, husband and wife, hereinafter
known as MARSH, and the PORT OF HOOD RIVER, of Port Marina Park,
Hood River, Oregon 97031, hereinafter known as PORT.

WITNESSETH: Whereas the PORT is the owner of certain
real property in Hood River County, described as the South
one-half of the Southeast one quarter of the Northeast one-quarter
of Section 11, Township 2 Range 10 East of the Willamette Meridian
and whereas MARSH wishes to lease the land and improvements
located thereon, said land being improved by a residence and a
small tenant house and certain out buildings together with
an orchard, and whereas the PORT desires to lease the property,
now therefore, the parties agree as follows:

1. The term of this agreement shall be for one (1)
year, provided MARSH shall have the option of renewing this agreement
up to four (4) one year periods, provided notice in writing of
MARSH's intention to renew is given to the PORT at the address
above not later than one hundred twenty (120) days prior
to December 1st of each year. The parties agree that this lease
is personal to the MARSH's and is entered into on the basis
of the fact that the MARSH's formerly owned the real property
herein described and have experience in managing this particular
orchard.

MARSH, from the date of signing of this lease or
any extension thereof, if MARSH is in good standing under all
the other terms of this lease, shall have the right to vacate
the house located on the premises being leased and retain this
lease as to the orchard land, which the parties agree encompasses
19.7 acres, and outbuildings. In the event MARSH vacates the house
the consideration stated hereinafter as rental for the residence
shall terminate.

3. MARSH agrees that they shall pay the sum of \$200.00 per month as rental for the residence on the premises and in the event they vacate the residence said rent shall be prorated on a daily basis.

4. In the event MARSH vacates the residence and wish to retain the lease on the orchard, they shall also have the right to utilize the outbuildings and tenant house other than the residence located on the leased premises.

5. There is no personal property being leased.

6. As additional consideration MARSH agrees to pay the PORT per bin on all fruit produced on the premises at the rate of \$6.00 per bin during the calendar years 1978, 1979, 1980, thereafter at the rate of \$8.00 per bin, with all such rental payable at least out of the crop proceeds from the first funds available from the marketing agency after MARSH has been reimbursed for the picking and hauling charges, but however, in no event later than the 30th day of June of the year following that in which the crop was produced. Said payments are not limited to any payments from funds available from the marketing agency and MARSH is liable for said rental in any event.

7. MARSH shall insure that a ranch number or other identification method agreed upon with the PORT will be assigned those bins that are harvested from the leased premises so an accurate count of bins may be made, the parties understanding that MARSH owns and operates other orchard lands.

8. In the event new trees are necessary to replace dead or dying trees, the cost of the trees shall be borne by the PORT, and the planting expenses will be borne by MARSH; the parties agree that the replaced trees shall be bosc pear trees.

9. MARSH agrees that they will pay all real property taxes on the leased premises, including the orchard, at farm use value, and the improvements for the period of time they occupy the same, and in the event that they vacate the residence prior to the termination of the lease, that portion of the real property

taxes attributable to the residence shall be borne by the PORT.

10. MARSH also agrees to pay the irrigation water charges together with utility bills and domestic water charges attributable to the residence, tenant house or outbuildings during the period of time they lease the same.

11. The PORT agrees to keep the residence, tenant house and the outbuildings insured against loss by fire.

12. The parties understand and agree that the residence currently located on the premises is a multi-storied dwelling which, in the event of any runway extension may be deemed, under Federal Aviation Administration regulations, excessive in height. The parties understand and agree that the PORT is applying for federal and state monies for the Easterly extension of the airport runway located in the vicinity of the leased premises and that in the event the PORT receives said monies or is granted a commitment for said monies, the PORT shall undertake to extend in an Easterly direction the runway and the parties agree that the PORT, at the PORT's expense, may remove the attic and top story of the house so long as the work is done in a workmanlike manner with a minimum of inconvenience to MARSH, and that any trees that lie within the extension area, the Easterly clear zone approach surface and the adjacent transitional approach area may be removed, cut or trimmed to conform with the then existing FFA regulations concerning obstructions in and about airports.

15. The parties agree that MARSH shall use the residence as a single family dwelling only and the land for agricultural purposes only for the period that this lease is in full force and effect.

16. MARSH agrees to pay all electricity used for pumping irrigation water and to hold the PORT harmless therefrom and agrees to properly fertilize, care for and protect any replants or transplants and to keep and maintain the buildings on the premises in good a condition as they now exist reasonable wear and tear excepted.

17. That within 15 days after the final delivery of the crop from the leased premises to the marketing agency the tenants will furnish the PORT with the written statement of exact number of bins so harvested and delivered.

18. The PORT in making this lease has relied upon the personal ability of MARSH and the rights of MARSH here are personal and may not be assigned or sublet in any manner and any attempt at assignment or attempt at subletting, voluntarily or involuntarily, by MARSH shall give the right to the PORT at that time and any subsequent time to terminate this lease, and in addition such act shall constitute a default under the terms of this lease.

19. MARSH grants to the PORT a security interest in the crops to be produced on the premises in each year for the purpose of securing the amounts to become due to the PORT under the terms of this lease, both as orchard rental and residence rental, however it is recognized that this security interest will be subordinate to the charges of the processing of the fruit after it has been delivered to the packing house door.

20. MARSH shall farm and care for the premises and protect the property all in a good husbandry like manner and will at all proper times fertilize, prune, thin, spray, irrigate and care for the orchard and the trees growing thereon in accordance with the recommended practice for good orchard management in Hood River County and will do all things reasonably necessary to protect the orchard from all horticultural diseases and do all things reasonably possible to produce and market therefrom the best quality and quantity of fruit and in the proper seasons produce, care for, harvest and market the fruit in accordance with the MARSH agreement with their marketing agency.

21. MARSH will neither commit nor permit any strip or waste of the premises and will apply the available irrigation water to the premises to the best advantage for

the growing and maturing of the fruit thereon and to preserve the trees and keep clean and in good repair at all times all pipe, ditches and flumes located on or about the premises.

22. If the parties do not agree upon the interpretation of any provision of this lease concerning the raising of fruit the matter shall be determined by two orchardists of Hood River Valley, one chosen by each party and the third to be the County Agricultural agent and their decision as to the matter not agreed upon shall be final. If either party fails to make such nomination to his arbitrator within ten (10) days then the County Agent and the arbitrator shall meet and return their decision. The cost of arbitration shall be borne equally by the parties.

23. Time and the strict performance of all the terms and conditions and covenants of this lease are of the essence thereof and any default by MARSH in the performance thereof gives the PORT, at its option to elect then or at any future time to enforce any and all rights to which the PORT is entitled under the laws of the State of Oregon, either decisional or statutory. Failure of the court to promptly declare this lease terminated for any default shall not operate as a waiver of the right to subsequently terminate it or any renewal thereof during the continuance of default or the right to subsequently terminate it for any subsequent breach nor shall it constitute a waiver of this non-waiver clause.

24. Nothing herein contained shall be construed to deprive either of the parties from any right or remedy which they would otherwise have at law or equity for damages or to retain possession of the premises or regain possession of the premises, or to assert their rights under this agreement, and the prevailing party shall be entitled in case of any action at law or equity for the enforcement or the protection of the rights to a reasonable

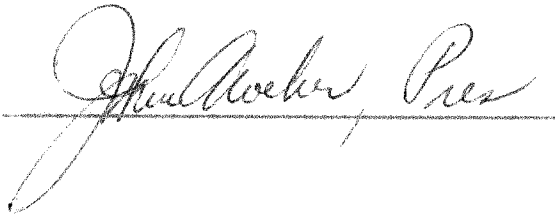
attorney fee from the losing party as shall be determined by the Court to be reasonable upon trial or any appeal and in addition to costs and disbursements as provided by statute.

25. The obligations of MARSH are joint and several.


Glenn W. Marsh


Pauline Marsh

PORT OF HOOD RIVER

By: 

ATTEST:

