



CITY OF MANITOWOC
WISCONSIN, USA
www.manitowoc.org



Date: October 23, 2020
To: Finance Committee
From: Adam Tegen, Director
Re: Hecker/Viebahn Agricultural Land Lease

With the acquisition of the 90 acres of land from the County at the intersection of Hecker Road and Viebahn Street, the City also inherited a farming tenant. The lease that was in place between Charmwood Farms and the County "expires" in April of 2021. Before moving forward with additional farming improvements and planting, the tenant would like to see a new lease agreement in place. Staff has worked with the City Attorney to draft the attached lease agreement that contains very similar language to the County agreement. Key points of the agreement include:

- 5 year lease that can be canceled by the tenant or City with good cause.
- Maintain the existing rent level at \$14,400 per year or \$200 per acre of tillable land.
- Restriction on use and requirements to follow best management practices.
- Indemnification language and liability insurance requirements.

Staff is supportive of entering into the 5 year lease as drafted. The tenant has a strong history of working with the County to not only maintain, but also improve, the quality of the land. As always, if you have any questions or concerns, do not hesitate to contact me at ategen@manitowoc.org or 920-686-6930.

AGRICULTURAL LAND LEASE

This Agricultural Land Lease (LEASE) is entered into by and between the City of Manitowoc, a municipal corporation with its offices located at 900 Quay Street, Manitowoc, WI 54220 (LESSOR) and Charmwood Farms, located at 8202 Brunner Road, Newton WI 53063 (LESSEE).

For and in consideration of the mutual agreements, covenants, promises, and obligations set forth below, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. LEASE LAND.** LESSOR hereby leases the following described land (PROPERTY), which is located in Manitowoc County, Wisconsin, to the LESSEE, subject to the terms and conditions of this LEASE:

Section 2, T18N, R23E, described as parcel numbers 052-802-102-000 and 052-802-103-000 which contain 47.3 farmable acres, and parcel number 052-802-201-000, which contains 24.7 farmable acres.

- 2. TERM AND TERMINATION.**

- (a) The term of this LEASE is from midnight at the start of the day on April 1, 2021 through midnight at the end of the day on March 31, 2026.
- (b) LESSOR may terminate this LEASE for cause immediately upon actual or constructive notice to LESSEE.
- (c) This LEASE will be terminated if the land is sold or used for non-agricultural purposes at the City's discretion. If LESSOR accepts an offer from a third party to purchase all or any part of the PROPERTY, LESSOR may terminate this lease prior to the expiration of the term specified in paragraph 2(a) upon 90 days written notice to LESSEE. If LESSOR terminates the LEASE pursuant to this provision, LESSOR will refund LESSEE's rent for the current lease year and any reasonable expenses actually paid by LESSEE during the current lease year that are directly related to raising and harvesting crops on the PROPERTY during the current lease year, offset by any revenue that LESSEE has received or will receive from raising and harvesting crops on the PROPERTY during the current lease year.
- (d) LESSEE shall make its best effort to inform the LESSOR by August 1 that the LESSEE will have the ability to plant and harvest the field the following growing season.
- (e) This LEASE may be terminated at any time by mutual agreement of the parties.

- 3. RENT.**

- (a) LESSEE agrees to pay annual rent of \$200.00 per farmable acre for a total of \$14,400.00 annually.
- (b) LESSEE will make rent payments to the City of Manitowoc subject to the following schedule:
 - April 1, 2021: \$14,400.00 for the 2021 growing season;
 - April 1, 2022: \$14,400.00 for the 2022 growing season;
 - April 1, 2023: \$14,400.00 for the 2023 growing season;
 - April 1, 2024: \$14,400.00 for the 2024 growing season;
 - April 1, 2025: \$14,400.00 for the 2025 growing season.

- (c) LESSEE agrees to pay rent at the time and in the manner stated and to pay simple interest at the rate of one percent per month, or any portion of a month, on any delinquent rent.
- (d) If the tillable acreage of the PROPERTY changes during the term of this LEASE, the annual rent due will be prorated based on the change in the number of acres (rounded to the nearest tenth of an acre), the month in which the acreage change occurs, and the annual rent per acre.

4. TITLE TO CROPS.

- a. LESSOR and LESSEE agree that title to and ownership of all crops raised and harvested on the PROPERTY during the term of the lease will remain with the LESSOR until all outstanding sums of rent for the year have been fully paid.
- b. LESSEE may contract for and collect the proceeds from the sale of crops as the fiduciary of the LESSOR, provided that so much of the proceeds received for such crops as necessary are promptly applied to or held in reserve to be applied to the rent due for the year.
- c. If any crops are attached, claimed, or levied upon by execution by any person for any reason before all rent due for the year has been paid, then all rents due under this LEASE will immediately become due and payable to LESSOR.

5. RIGHT OF POSSESSION, ENTRY, AND REENTRY.

- (a) LESSOR agrees that LESSEE may, subject to LESSEE's payment of rent and compliance with the terms and conditions of this LEASE, quietly and peacefully, have, hold, and enjoy the PROPERTY for the term of this LEASE.
- (b) LESSOR may enter onto the PROPERTY for the purpose of inspecting the PROPERTY, evaluating LESSEE's compliance with the terms and conditions of this LEASE, making repairs, or showing the PROPERTY to prospective purchasers or lessees.
- (c) LESSOR will, upon the expiration or termination of this LEASE, have the right to reenter, take possession, and have, hold, and enjoy the PROPERTY.

6. LIABILITY INSURANCE. LESSEE agrees to maintain liability insurance with minimum policy limits of at least \$150,000 for personal injury and \$150,000 for property damage. LESSEE agrees that LESSOR will be an additional insured on said insurance. LESSEE will provide LESSOR with a Certificate of Insurance in a form acceptable to LESSOR.

7. AGRICULTURAL USE LIMITATIONS.

- (a) LESSEE agrees to use the PROPERTY only for agricultural purposes.
- (b) LESSEE agrees that it will not plant winter wheat or any other winter crop during the last year of the LEASE without prior written approval from the LESSOR.

8. CULTIVATION AND USE OF LAND. LESSEE agrees, warrants, and covenants to adopt and follow a conservation plan, including sound land stewardship practices of crop rotation, erosion control, fertilization, manure management, soil conservation and protection, tillage, and water conservation and protection as are necessary to preserve the productive value of the PROPERTY as crop land and to prepare the PROPERTY for use as crop land for each following year.

9. CHEMICALS.

- (a) LESSEE agrees that any and all agricultural chemicals used on the PROPERTY will be applied according to Wisconsin Department of Agriculture, Trade and Consumer Protection Resource Management Rules.
 - (b) LESSEE agrees that any person who uses or directs the use of pesticides on the PROPERTY for the purpose of producing an agricultural commodity will be certified or licensed as required by the Wisconsin Department of Agriculture, Trade and Consumer Protection. LESSEE agrees that it will not use or apply any agricultural chemicals that have been declared illegal by any federal or state authorities.
 - (c) LESSEE agrees that it will not apply more than two pounds of atrazine per acre.
- 10. POLLUTANTS OR HARMFUL OR HAZARDOUS SUBSTANCES.** LESSEE agrees that it will not apply, deposit, or otherwise permit any pollutants or harmful or hazardous substances to be introduced onto the PROPERTY.
- 11. PROPER REPAIR.** LESSEE agrees and covenants to keep the PROPERTY, including any hedges and fences, in proper condition and to make any necessary repairs.
- 12. IMPROVEMENTS.**
- (a) LESSEE agrees that it will not make any improvements to the PROPERTY or construct, erect, or move any buildings, fixtures, or structures on or onto the PROPERTY without LESSOR's prior written consent.
 - (b) LESSEE agrees that all improvements will be made at LESSEE's sole expense; will be made in a skillful manner; will be in compliance with all applicable federal, state, and municipal laws, ordinances, and regulation; and will become LESSOR's property upon the expiration or termination of this LEASE.
- 13. WASTE.** LESSEE agrees not to commit waste to the PROPERTY and agrees that no gravel, marl, minerals, oil, sand, or timber may be removed from the PROPERTY without LESSOR's prior written consent.
- 14. WEEDS.** LESSEE agrees and covenants to keep the PROPERTY free from all noxious weeds and grasses. LESSEE agrees that in the event that any noxious weeds appear on the PROPERTY, LESSEE shall prevent their bearing seed and will comply with all statutes as to the time and manner of destroying noxious weeds.
- 15. ASSIGNMENT OR SUBLEASE.**
- (a) LESSEE may not assign, sublet, or otherwise convey this LEASE or any portion of the PROPERTY without LESSOR's prior written consent. LESSEE acknowledges that LESSOR will not approve any assignment, sublease, or other conveyance of this LEASE or any portion of the PROPERTY for any purpose other than an agricultural purpose.
 - (b) Any assignment or sublease of this LEASE or conveyance of any portion of the PROPERTY must expressly provide for the assignee or sublessee to assume and be bound by LESSEE's obligations under this LEASE.
 - (c) LESSEE agrees that no assignment or sublease of this LEASE or other conveyance of any portion of the PROPERTY will relieve the LESSEE on any of its obligations, expressed or implied, under this LEASE.
 - (d) LESSOR agrees that it will not unreasonably withhold approval of any request to assign or sublease this LEASE or otherwise convey any portion of the PROPERTY.

16. INDEMNIFICATION.

- (a) LESSEE agrees to hold harmless, defend, and indemnify LESSOR, its agents, employees, officials, and officers from and against any and all causes of action, claims, costs, demands, expenses, judgements, legal fees, liabilities, liens, or losses (including, without limitation, reasonable attorney fees) for damage to property or injury to or the death of any person that arises out of or is in any way related to the subject matter of this LEASE, the performance of this LEASE, or the PROPERTY, or any portion of the PROPERTY, leased herein. LESSOR will have the right to control the defense and to select counsel to be used in fulfilling its defense obligations.
- (b) LESSOR agrees to hold harmless and defend LESSEE from and against any and all causes of action, claims, costs, demands, expenses, judgements, legal fees, liabilities, or losses (including, without limitation, reasonable attorney fees), for damage to property or injury to or the death of any person that arises out of or is in any way related to any negligent act or omission of LESSOR, its officials, agents, and employees in connection with this LEASE. LESSOR will have the right to control the defense and to select counsel to be used in fulfilling its defense obligations.
- (c) In the event either party receives notice of a claim or lawsuit that relates in any way to the subject matter of this LEASE, such party shall promptly notify the other party in writing of the claim or lawsuit.
- (d) The covenants contained in this section will survive the termination of this LEASE regardless of the cause of the termination.

17. COSTS, EXPENSES, AND ATTORNEY'S FEES. LESSEE agrees to pay any and all costs, expenses, and attorney's fees incurred by LESSOR to enforce the terms of this LEASE.

18. NOTICE OF DEFAULT, OPPORTUNITY TO CURE, AND REMEDIES.

- (a) LESSOR may notify the LESSEE of any default and require LESSEE to immediately take action to cure the default.
- (b) Within 5 days of such notice, LESSEE shall notify LESSOR of all actions taken or proposed to be taken to cure the default.
- (c) If LESSEE fails to notify LESSOR of the actions taken or proposed to be taken to cure the default, LESSOR will have the right to take such action as may be necessary to cure the default, to recover any costs incurred by LESSOR as a result of the default, and to immediately terminate this LEASE for cause.
- (d) As permitted by Wis. Stat. Sec. 704.11, the parties expressly agree that in the event of a breach of any provision of this LEASE by LESSEE, this LEASE creates a lien interest for and on behalf of LESSOR against LESSEE's personal property to the extent of any amounts due and owing LESSOR under this LEASE at the time and for the remainder of such breach.

19. NOTICE.

- (a) All notices, reports, requests, or demands given by either party to the other under the provisions of this LEASE will be in writing and delivered in person or by certified mail, delivery service, or email addressed as follows

If to LESSOR: Adam Tegen, Director
City of Manitowoc Community Development
900 Quay Street
Manitowoc, WI 54220
ategen@manitowoc.org

with a copy to: Manitowoc City Clerk
900 Quay Street
Manitowoc, WI 54220
mreedkadow@manitowoc.org

If to LESSEE: Dan Buck
Charmwood Farms
8202 Brunner Road
Newtown, WI 53063
d7bucks@gmail.com

- (b) Notice in person is deemed given at the time of delivery. Notice by certified mail is deemed given when accepted for delivery by the U.S. Postal Service. Notice by delivery service is deemed given when received by the delivery service. Notice by email is deemed given at the time shown on an electronic delivery confirmation report. The party giving notice has the burden of proving when notice was given.
- (c) Either party may, in writing, designate another person or address where notice is to be given.

20. FAMILY PURPOSE. If LESSEE is married, then pursuant to the provisions of Wis. Stat. 766 pertaining to Marital Property, LESSEE acknowledges and agrees that the obligations agreed to and assumed under this LEASE are incurred in the interest of LESSEE's marriage and family and that such obligations are deemed to be joint and several.

21. ENTIRE AGREEMENT. This LEASE represents the entire agreement of the parties and supersedes any written or oral representations made by either party to the other. No modification of this LEASE will be effective unless it is in writing executed with the same formalities as this LEASE.

22. RESERVATION OF RIGHTS. LESSOR or LESSEE's failure to enforce any provision of this LEASE, any right with respect to this LEASE, or any election provided for by this LEASE will not in any way be considered to waive such provision, right, or election or to in any way affect the validity of this LEASE. LESSOR or LESSEE's failure to exercise any provision, right, or election will not preclude or prejudice LESSOR or LESSEE from later enforcing or exercising the same or any other provision, right, or election that it may have under this LEASE.

23. COMPLIANCE WITH LAWS. LESSEE will, at its sole expense and at all times during the term of this LEASE, comply with all orders, laws, regulations, and rules of any and all federal, state, or local governments, including any agents, boards, commissions, committees, departments, employees, officials, and officers thereof, now or hereinafter in effect which may be applicable to this LEASE.

24. GOVERNING LAW. This LEASE is governed by and will be construed in accordance with the laws of the State of Wisconsin.

25. SIGNATURE AUTHORITY. The persons signing this LEASE warrant that they have been authorized to enter into this LEASE by and on behalf of their respective parties and that they have full and complete authority to bind their respective parties by executing this LEASE.

IN WITNESS WHEREOF, LESSOR and LESSEE, intending to be legally bound, have executed this LEASE in duplicate on the dates shown below.

CITY OF MANITOWOC

CHARMWOOD FARMS

By: _____

Justin Nickels
Mayor, City of Manitowoc

By: _____

Daniel Buck, Agent

Date: _____

Date: _____

By: _____

Deborah Neuser
City Clerk

Date: _____