

Jim  
5-15-17

17-0497

## AGRICULTURAL LAND LEASE

This Land Lease (LEASE) is entered into by and between the City of Manitowoc, 900 Quay Street, Manitowoc, Wisconsin 54220 (LESSOR) and Honey Comb Farms, LLC, located at 6006 Wagon Wheel Road, Manitowoc, Wisconsin 54220 (LESSEE).

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

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

Property located in SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Sec. 1, T.18N, R23E,  
City of Manitowoc, Manitowoc County, Wisconsin.

Also described as Lot 2 of Certified Survey recorded in  
Vol. 32 P. 47 Doc. No. 1160475

Parcel No. 052-801-102-051-00.

## **2. TERM, TERMINATION AND RENEWAL.**

(a) The term of this LEASE is from March 1, 2017 through March 31, 2022.

(b) LESSOR may terminate this LEASE in the event of a default of any obligation under this LEASE, including the obligation to pay rent in a timely manner or for such other cause as LESSOR, in the reasonable exercise of its judgment may determine to be appropriate; provided that LESSOR gives LESSEE notice of the default, affords LESSEE at least 30 days in which to cure the default, and LESSEE fails to do so.

(c) This LEASE may be terminated at any time by mutual agreement of the parties.

(d) This LEASE will be terminated if the land is sold or used for non-agricultural purposes at the City's discretion.

(e) This LEASE may be renewed upon substantially the same terms at the expiration of its initial or any renewal term by written agreement of the parties, except that the parties may agree to a different amount of rent per acre. LESSEE must notify LESSOR at least 90 days prior to the expiration of the initial or any renewal term if LESSEE wishes to negotiate a renewal of this LEASE.

### **3. RENT.**

(a) No rent will be asked for the initial one-year lease period. LESSEE agrees to pay annual rent of \$100/ tillable acre for the second one-year lease period. LESSEE agrees to pay annual rent of \$200/ tillable acre for all subsequent one-year lease periods.

(b) LESSEE will make rent payments to the Manitowoc City Treasurer by March 1 of each year. Payments received after March 10 of each year will be subject to a rate of 1% interest per month, or any portion of a month, on any unpaid rent due under this LEASE.

(c) If the tillable acreage of the PROPERTY changes during the term of this LEASE, the annual rent due will be pro rated 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 this 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. ASSIGNMENT, SUBLEASE OR CONVEYANCE.**

(a) LESSEE may not assign, sublet, or otherwise convey this LEASE or any duty, interest, or right under this LEASE to any person, including a successor-in-interest, without LESSOR's prior written consent.

(b) Any assignment, sublease, or conveyance of this LEASE or any duty, interest, or right under this LEASE must expressly provide for the assignee or subLESSEE to assume and become bound by LESSEE's obligations under this LEASE. LESSEE agrees that no assignment, sublease, or other conveyance of this LEASE or any duty, interest, or right under this LEASE will relieve LESSEE of any of its obligations, expressed or implied, under this LEASE.

(c) LESSEE acknowledges that LESSOR will not approve any assignment, sublease, or conveyance of this LEASE or any duty, interest, or right under this LEASE for any

purpose other than an agricultural purpose.

(d) LESSOR agrees that it will not unreasonably withhold approval of any request to assign, sublet, or otherwise convey this LEASE or any duty, interest, or right under this LEASE.

#### **6. 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 has the right to 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.

(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.

#### **7. CULTIVATION AND USE OF LAND.**

(a) LESSEE agrees to use the PROPERTY only for agricultural purposes.

(b) 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.

#### **8. IMPROVEMENTS.**

(a) LESSEE agrees that it will not make improvements to the PROPERTY without LESSOR's prior written consent.

(b) LESSEE agrees that it will not construct or erect any buildings, fences, fixtures, improvements, or structures on the PROPERTY or move any buildings, fences, fixtures, improvements, or structures on to the PROPERTY without LESSOR's prior written consent.

(c) LESSEE agrees that all improvements will be made at LESSEE's sole expense; will be made in a skillful manner; will be made in compliance with all applicable federal, state, and municipal laws, ordinances, and regulations; and will become the LESSOR's property.

**9. PROPER REPAIR.** LESSEE agrees and covenants to keep the PROPERTY, including any hedges and fences, in proper condition and to make any necessary repairs.

**10. WASTE.** LESSEE agrees that it will not commit waste to the PROPERTY and agrees that no gravel, marl, minerals, oil, sand, or timber will be removed from the PROPERTY without LESSOR' s prior written consent.

**11. 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.

**12. AGRICULTURAL USE LIMITATIONS.**

(a) 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 Agricultural, Trade and Consumer Protection.

(b) LESSEE agrees that all agricultural chemicals used on the PROPERTY will be applied according to Wisconsin Department of Agriculture, Trade and Consumer Protection Resource Management Rules.

(c) LESSEE agrees that it will not apply any agricultural chemicals that have been declared illegal by federal or state authorities, pollutants, or harmful or hazardous substances onto the PROPERTY and that it will not apply any agricultural chemicals in a manner which is illegal under federal, state, or local law.

(d) LESSEE agrees that it will not apply more than two pounds of atrazine per acre.

(e) LESSEE agrees that it will not plant winter wheat or any other winter crop during the last full calendar year of this LEASE.

(f) LESSEE agrees that it will not apply, deposit, or otherwise permit any pollutants or harmful substances to be introduced onto the PROPERTY.

**13. INSURANCE.**

(a) LESSEE agrees to maintain liability insurance with minimum policy limits of at least \$150,000 for personal injury and \$150,000 for property damage.

(b) LESSEE will provide LESSOR with a Certificate of Insurance in a form acceptable to LESSOR.

**14. COMPLIANCE WITH LAWS.** LESSEE will, at its sole expense and at all times during the term of this LEASE, comply with all applicable federal, state, or local orders, laws, regulations, and rules that are applicable to this LEASE or to LESSEE's use of the PROPERTY.

**15. INDEMNIFICATION.**

(a) LESSEE agrees to defend, hold harmless, and indemnify LESSOR and its agents, employees, officials, and officers from and against any and all actions, awards, causes of action, charges, claims, controversies, costs, damages, debts, demands, expenses, fees, judgments, liabilities, liens, losses, obligations, penalties, proceedings, settlements, and suits of every kind and character for damages to property, injury to persons, or death arising out of or relating in any way, whether directly or indirectly, in whole or in part, to this LEASE. 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 actions, awards, causes of action, charges, claims, controversies, costs, damages, debts, demands, expenses, fees, judgments, liabilities, liens, losses, obligations, penalties, proceedings, settlements, and suits of every kind and character for damages to property, injury to persons, or death arising out of or relating in any way, whether directly or indirectly, in whole or in part, to this LEASE.

(c) If a party receives notice of a claim or lawsuit that relates in any way to the subject matter of this LEASE, the party will immediately notify the other party in writing of the claim or lawsuit.

(d) The provisions of this paragraph will survive the termination of this LEASE regardless of the cause of the termination.

**16. NOTICE OF DEFAULT, OPPORTUNITY TO CURE, AND REMEDIES.**

(a) LESSOR may notify LESSEE of any default and require LESSEE to immediately take action to cure the default.

(b) Within 5 days of such notice, LESSEE must 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 is 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.

**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.**

(a) Any notice given under this LEASE must be in writing and delivered in person or by certified mail, delivery service, or email addressed as follows:

If to LESSOR: Manitowoc City Clerk  
Manitowoc City Hall  
900 Quay Street  
Manitowoc, WI 54220  
E-mail: [jhudon@manitowoc.org](mailto:jhudon@manitowoc.org)

If to LESSEE: Honey Comb Farms, LLC  
6006 Wagon Wheel Road  
Manitowoc, WI 54220  
E-mail: [honeycombfarmsandapiary@gmail.com](mailto:honeycombfarmsandapiary@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.

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

**20. RESERVATION OF RIGHTS.** The failure of LESSOR or LESSEE to enforce any provision of this LEASE, any right with respect to the 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. The failure of LESSOR or LESSEE to exercise any provision, right, or election will not preclude or prejudice the LESSOR or LESSEE from later enforcing or exercising the same or any other provision, right, or election that it may have under this LEASE.

**21. MARITAL PROPERTY.** If LESSEE is married, then in accordance with the provisions of Wis. Stat. Ch. 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.

**22. LIEN INTEREST.** 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.

**23. ENTIRE AGREEMENT.** The 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.

**24. 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**

By: \_\_\_\_\_  
Justin Nickels, Mayor

By: \_\_\_\_\_  
Jennifer Hudon, City Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**HONEY COMB FARMS, LLC**

By:   
Jay Steuer, Agent

Date: 5-1-2017