Del. Co. Auditor

DELAWARE COUNTY, IOWA
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2002 NOV 25 AM 11:21
BOOK 2002 PAGE 4444
DEBORAH D. HEMMER
RECORDER
N/C

Preparer Information: John W. Bernau (Individual's Name) | 301 East Main Street (Street Address) | Manchester (City) | 563-927-3819 (Phone)

SPACE ABOVE THIS LINE FOR RECORDER

FARM LEASE - CASH OR CROP SHARES

THIS LEASE ("Lease") is made between Delaware County, Iowa ("Landlord"), whose address for the purpose of this Lease is Delaware County Courthouse, 301 East Main Street, Manchester, Iowa 52057, and Kevin Nieman, ("Tenant"), whose address for the purpose of this Lease is 2380 Highway 38, Delhi, Iowa 52223.

THE PARTIES AGREE AS FOLLOWS:

1. **PREMISES AND TERM.** Landlord leases to Tenant the following real estate situated in Delaware County, Iowa (the "Real Estate"):

That part of the North One-Half (N 1/2) of Section 18 lying West of the railroad right-of-way, except the North 132 feet of the West 330 feet thereof, and the North One-Half (N 1/2) of the Southwest Quarter (SW 1/4) of said Section 18, all in Township 88 North, Range 4, West of the 5th P.M., excepting, however, the lagoon area located in the North One-Half (N 1/2) of said Southwest Quarter (SW 1/4) and the building site and real estate located East of the building site located in the North One-Half (N 1/2) of said Section 18 as detailed on the aerial photo attached hereto.

This description includes approximately 154 acres of cropland and 20 acres of pastureland for a total of approximately 174 acres.

and containing _____ (total)(tillable) acres, more or less, with possession by Tenant for a term of three (3) years to commence on March 1, 2003, and end on February 28, 2006, _____. The Tenant has had or been offered an opportunity to make an independent investigation as to the acres and boundaries of the premises. In the event that possession cannot be delivered within fifteen (15) days after commencement of this Lease, Tenant may terminate this Lease by giving the Landlord notice in writing.

2. **RENT.** Tenant shall pay to Landlord as rent for the Real Estate (the "Rent"):

a. Total annual cash rent of $ 21,945.00 payable, unless otherwise agreed, as follows: $ 10,972.50 on 1st day of June & Dec., 2003, $ 10,972.50 on 1st day of June & Dec., 2004, and $ 10,972.50 on 1st day of June & Dec., 2005; or

b. Crop share - _____ % of corn, _____ % of soybeans, and _____ % of other crops raised on the Real Estate.

All Rent is to be paid to Landlord at the address above or at such other place as Landlord may direct in writing. Rent must be in Landlord's possession on or before the due date. Participation of this farm in any offered program by the U.S. Department of Agriculture or any state for crop production control or soil conservation, the observance of the terms and conditions of this program, and the division of farm program payments, requires Landlord's consent. Payments from participation in these programs shall be divided 100 % Landlord _____ % Tenant. Governmental cost-sharing payments for permanent soil conservation structures shall be divided 100 % Landlord _____ % Tenant. Crop disaster payments shall be divided 100 % Landlord _____ % Tenant. to the extent rent remains due in the year such payment is received by the tenant.

3. **LANDLORD'S LIEN AND SECURITY INTEREST.** As security for all sums due or which will become due from Tenant to Landlord, Tenant hereby grants to Landlord, in addition to any statutory liens, a security interest as provided in the Iowa Uniform Commercial Code and a contractual lien in all crops produced on the premises and the proceeds and products thereof, all contract rights concerning such crops, proceeds and/or products, all proceeds of insurance collected on account of destruction of such crops, all contract rights and U.S. government and/or state agricultural farm program payments in connection with the above described premises whether such contract rights be payable in cash or in kind, including the proceeds from such rights, and any and all other personal property kept or used on the real estate that is not exempt from execution. Tenant shall sign and deliver to Landlord a UCC-1 financing statement showing the existence of this security interest. Tenant shall also sign any additional forms required to validate the security interest in government program payments.

Tenant shall not sell such crops unless Landlord agrees otherwise. Tenant shall notify Landlord of Tenant's intention to sell crop at least three (3) business days prior to sale of the crop (with business days being described as Monday through Friday, except any Iowa or federal holidays). Tenant shall pay the full rent for the crop year in which the crop is produced, whether due or not, at the time of sale pursuant to Landlord's consent to release Landlord's security interests. Upon payment in full Landlord shall release Landlord's lien on the crop produced in that crop year on the premises. The parties agree that by the Landlord releasing the lien as to the crop in one year, the Landlord in no way releases the lien or agrees to release the lien in any prior or subsequent year.

Tenant shall sign and deliver to Landlord a list of potential buyers of the crops upon which Landlord has been granted a security interest in this lease. Unless Landlord otherwise consents, Tenant will not sell these crops to a buyer who is not on the potential list of buyers unless Tenant pays the full rent due for the crop year to the Landlord at or prior to the date of sale. Landlord may give notice to the potential buyers of the existence of this security interest.

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4. **INPUT COSTS AND EXPENSES.** Tenant shall prepare the Real Estate and plant such crops in a timely fashion as may be directed by _____ **(Landlord) (Tenant)**. Tenant shall only be entitled to pasture or till those portions of the Real Estate designated by Landlord. All necessary machinery and equipment, as well as labor, necessary to carry out the terms of this lease shall be furnished by and at the expense of the Tenant. The following materials, in the amounts required by good husbandry, shall be acquired by Tenant and paid for by the parties as follows:

	% Landlord	% Tenant
(1) Commercial Fertilizer	_____	100
(2) Lime and Trace Minerals	_____	100
(3) Herbicides	_____	100
(4) Insecticides	_____	100
(5) Seed	_____	100
(6) Seed cleaning	_____	100
(7) Harvesting and/or Shelling Expense	_____	100
(8) Grain Drying Expense	_____	100
(9) Grain Storage Expense	_____	100
(10) Other	_____	100

Phosphate and potash on oats or beans shall be allocated _____% the first year and _____% the second year, and on all other crops allocated _____% the first year and _____% the second year. Lime and trace minerals shall be allocated over _____ years. If this Lease is not renewed, and Tenant does not therefore receive the full allocated benefits, Tenant shall be reimbursed by Landlord to the extent Tenant has not received the benefits. Tenant agrees to furnish, without cost, all labor, equipment and application for all fertilizer, lime, trace minerals and chemicals _____.

5. **PROPER HUSBANDRY; HARVESTING OF CROPS; CARE OF SOIL, TREES, SHRUBS AND GRASS.** Tenant shall farm the Real Estate in a manner consistent with good husbandry, seek to obtain the best crop production that the soil and crop season will permit, properly care for all growing crops in a manner consistent with good husbandry, and harvest all crops on a timely basis. In the event Tenant fails to do so, Landlord reserves the right, personally or by designated agents, to enter upon the Real Estate and properly care for and harvest all growing crops, charging the cost of the care and harvest to the Tenant, as part of the Rent. Tenant shall timely control all weeds, including noxious weeds, weeds in the fence rows, along driveways and around buildings throughout the premises. Tenant shall comply with all terms of the conservation plan and any other required environmental plans for the leased premises. Tenant shall do what is reasonably necessary to control soil erosion including, but not limited to, the maintenance of existing watercourses, waterways, ditches, drainage areas, terraces and tile drains, and abstain from any practice which will cause damage to the Real Estate.

Upon request from the Landlord, Tenant shall by August 15 of each lease year provide to he Landlord a written listing showing all crops planted, including the acres of each crop planted, fertilizers, herbicides and insecticides applied showing the place of application, the name and address of the applicator, the type of application and the quantity of such items applied on the lease premises during such year.

Tenant shall distribute upon the poorest tillable soil on the Real Estate, unless directed otherwise by Landlord, all of the manure and compost from the farming operation suitable to be used. Tenant shall not remove from the Real Estate, nor burn, any straw, stalks, stubble, or similar plant materials, all of which are recognized as the property of Landlord. Tenant may use these materials, however, upon the Real Estate for the farming operations. Tenant shall protect all trees, vines and shrubbery upon the Real Estate from injury by Tenant's cropping operation or livestock.

6. **DELIVERY OF GRAIN.** If this lease is a crop share lease, Tenant, without cost to Landlord, shall deliver Landlord's grain pursuant to request, at reasonable times, to the elevator at _____, or elsewhere at no further distant point.

7. **LANDLORD'S STORAGE SPACE.** If this lease is a crop share lease, Landlord reserves _____ % of all crib and granary space for storage of the rent share crops.

8. **ENVIRONMENTAL.**

a. Landlord. To the best of Landlord's knowledge to date:

i) Neither Landlord nor, Landlord's former or present tenants, are subject to any investigation concerning the premises by any governmental authority under any applicable federal, state, or local codes, rules, and regulations pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of toxic or hazardous substances, air emissions, other environmental matters, and all zoning and other land use matters.

ii) Any handling, transportation, storage, treatment, or use of toxic or hazardous substances that has occurred on the premises has been in compliance with all applicable federal, state, and local codes, rules, and regulations.

iii) No leak, spill release, discharge, emission, or disposal of toxic or hazardous substances has occurred on the premises.

iv) The soil, groundwater, and soil vapor on or under the premises is free of toxic or hazardous substances except for chemicals (including without limitation fertilizer, herbicides, insecticides) applied in conformance with good farming methods, applicable rules and regulations and the label directions of each chemical.

Landlord shall hold Tenant harmless against liablility for removing solid waste disposal sites existing at the execution of this Lease, with the exception that Tenant shall be liable for removal of solid waste disposal sites to the extent that the Tenant created or contributed to the solid waste disposal site at any time.

Landlord shall assume liability and shall indemnify and hold Tenant harmless against any liability or expense arising from any condition which existed, whether known or unknown, at the time of execution of the lease which is not a result of actions of the Tenant or which arises after date of execution but which is not a result of actions of the Tenant.

Landlord shall disclose in writing to Tenant the existence of any known wells, underground storage tanks, hazardous waste sites, and solid waste disposal sites. Disclosure may be provided by a properly completed groundwater hazard statement to be supplemented if changes occur.

b. Tenant. Tenant shall comply with all applicable environmental laws concerning application, storage and handling of chemicals (including, without limitation, herbicides and insecticides) and fertilizers. Tenant shall apply any chemicals used for weed or insect control at levels not to exceed the manufacturer's recommendation for the soil types involved. Farm chemicals ~~(may)~~ **(may not)** be stored on the premises for more than one year. Farm chemicals for use on other properties ~~may~~ **(may not)** be stored on this property. Chemicals stored on the premises shall be stored in clearly marked, tightly closed containers. No chemicals or chemical containers will be disposed of on the premises. Application of chemicals for agricultural purposes per manufacturer's recommendation shall not be construed to constitute disposal.

Tenant shall employ all means appropriate to insure that well or ground water contamination does not occur, and shall be responsible to follow all applicator's licensing requirements. Tenant shall install and maintain safety check valves for injection of any chemicals and/or fertilizers into an irrigation system (injection valve only, not main well check valve). Tenant shall properly post all fields (when posting is required) whenever chemicals are applied by ground or air. Tenant shall haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements. Tenant shall not dispose of waste oil, tires, batteries, paint, other chemicals or containers anywhere on the premises. Solid waste **(may) (may not)** be disposed of on the premises. Dead livestock ~~may~~ **(may not)** be buried on the premises. If disposal of solid waste or burial of dead animals is permitted as stated in the previous two sentences, the disposal or burial shall be in compliance with all applicable environmental laws. Tenant shall not use waste oil as a means to suppress dust on any roads on or near the premises. No underground storage tanks, except human waste septic systems that meet current codes, rules, and regulations, shall be maintained on the premises.

Tenant shall immediately notify Landlord of any chemical discharge, leak, or spill which occurs on premises. Tenant shall assume liability and shall indemnify and hold Landlord harmless for any claim or violation of standards which results from Tenant's use of the premises. Tenant shall assume defense of all claims, except claims resulting from Landlord's negligence, in which case each party shall be responsible for that party's defense of any claim. After termination, Tenant shall remain liable for violations which occurred during the term of this Lease.

In the absence of selection of an alternative where choices are provided in this paragraph 8b, the choice of the word "may" shall be presumed unless that presumption is contrary to applicable environmental laws and regulations.

9. **TERMINATION OF LEASE.** This Lease shall automatically renew upon expiration from year-to-year, upon the same terms and conditions unless either party gives due and timely written notice to the other of an election not to renew this Lease. If renewed, the tenancy shall terminate on March 1 of the year following, provided that the tenancy shall not continue because of an absence of notice in the event there is a default in the performance of this Lease. All notices of termination of this Lease shall be as provided by law.

10. **POSSESSION AND CONDITION AT END OF TERM.** At the termination of this Lease, Tenant will relinquish possession of the Real Estate to the Landlord. If Tenant fails to do so Tenant agrees to pay Landlord $ 50.00 per day, as liquidated damages until possession is delivered to Landlord. At the time of delivery of the Real Estate to Landlord, Tenant shall assure that the Real Estate is in good order and condition, and substantially the same as it was when received by Tenant at the commencement of this Lease, excusable or insurable loss by fire, unavoidable accidents and ordinary wear, excepted.

11. **LANDLORD'S RIGHT OF ENTRY AND INSPECTION.** In the event notice of termination of this Lease has been properly served, Landlord may enter upon the Real Estate or authorize someone else to enter upon the Real Estate to conduct any normal tillage or fertilizer operation after Tenant has completed the harvesting of crops even if this is prior to the date of termination of the lease. Landlord may enter upon the Real Estate at any reasonable time for the purpose of viewing or seeding or making repairs, or for other reasonable purposes.

12. **VIOLATION OF TERMS OF LEASE.** If Tenant or Landlord violates the terms of this Lease, the other may pursue the legal and equitable remedies to which each is entitled. Tenant's failure to pay any Rent when due shall cause all unpaid Rent to become immediately due and payable, without any notice to or demand upon Tenant.

13. **REPAIRS.** Tenant shall maintain the fences on the leased premises in good and proper repair. Landlord shall furnish necessary materials for repairs that Landlord deems necessary within a reasonable time after being notified of the need for repairs. Tenant shall haul the materials to the repair site without charge to Landlord.

14. **NEW IMPROVEMENTS.** All buildings, fences and improvements of every kind and nature that may be erected or established upon the Real Estate during the term of the Lease by the Tenant shall constitute additional rent and shall inure to the Real Estate, becoming the property of Landlord unless the Landlord has agreed in writing prior to the erection that the Tenant may remove the improvement at the end of the lease.

15. **WELL, WINDMILL, WATER AND SEPTIC SYSTEMS.** Tenant shall maintain all well, windmill, water and septic systems on the Real Estate in good repair at Tenant's expense except damage caused by windstorm or weather. Tenant shall not be responsible for replacement or installation of well, windmill, water and septic systems on the Real Estate, beyond ordinary maintenance expenses. Landlord does not guarantee continuous or adequate supplies of water for the premises.

16. **EXPENSES INCURRED WITHOUT CONSENT OF LANDLORD.** No expense shall be incurred for or on account of the Landlord without first obtaining Landlord's written authorization. Tenant shall take no actions that might cause a mechanic's lien to be imposed upon the Real Estate.

17. **NO AGENCY.** Tenant is not an agent of the Landlord.

18. **TELEVISION AND RADIO.** Tenant may install and remove, without causing material injury to the premises, Tenant's television reception antennas, microwave dishes, and radio reception and transmission antennas.

19. **ACCOUNTING.** The method used for dividing and accounting for the harvested grain shall be the customary and usual method used in the locale.

20. **ATTORNEY FEES AND COURT COSTS.** If either party files suit to enforce any of the terms of this Lease, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees.

21. **CHANGE IN LEASE TERMS.** The conduct of either party, by act or omission, shall not be construed as a material alteration of this Lease until such provision is reduced to writing and executed by both parties as addendum to this Lease.

22. **CONSTRUCTION.** Words and phrases herein, including the acknowledgement, are construed as in the singular or plural and as the appropriate gender, according to the context.

23. **NOTICES.** The notices contemplated in this Lease shall be made in writing and shall either be delivered in person, or be mailed in the U.S. mail, certified mail to the recipient's last known mailing address, except for the notice of termination set forth in Section 9, which shall be governed by the Code of Iowa.

24. **ASSIGNMENT.** Tenant shall not assign this Lease or sublet the Real Estate or any portion thereof without prior written authorization of Landlord.

25. **ADDITIONAL PROVISIONS.**

(a) The Tenant is obligated to comply with all ASCS program requirements regarding the farm.

DATED: November 25, 2002

TENANT:

Kevin Nieman
Kevin Nieman

LANDLORD: DELAWARE COUNTY, IOWA

BY: Shirley E. Helmrichs
Shirley Helmrichs, Chairperson, Delaware Co. Board of Supervisors

BY: Sharon McCrabb
Sharon McCrabb, Auditor

STATE OF IOWA
COUNTY OF DELAWARE
This instrument was acknowledged before me on November 20th, 2002,
by Kevin Nieman

KATHY M. HAUSCHILD
COMMISSION NO. 155818
MY COMMISSION EXPIRES
4-19-05

Kathy M. Hauschild
, Notary Public

STATE OF
COUNTY OF
This instrument was acknowledged before me on , 19 ,
by
as
of .

If a corporation: Said person(s) acknowledged that the corporation (has no seal) (has a seal which is affixed thereto).

, Notary Public

[ATTACH OTHER APPROPRIATE ACKNOWLEDGEMENT(S) HERE]

STATE OF IOWA)
) ss:
DELAWARE COUNTY)

On this 25 day of November, 2002, before me, Carolyn A. Wilson, a Notary Public in and for the State of Iowa, personally appeared Shirley Helmrichs and Sharon McCrabb to me personally known, and who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of the County of Delaware, Iowa; that the seal affixed to the foregoing instrument is the county seal of the county and that the instrument was signed and sealed on behalf of the county, by authority of its Board of Supervisors, as contained in Ordinance No. _____ passed (or Resolution adopted) by the Board of Supervisors under Roll Call No. _____ of the Board of Supervisors on the 4th day of November, 2002, and Shirley Helmrichs and Sharon McCrabb acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the county, by it voluntarily executed.

Carolyn A. Wilson
Notary Public, State of Iowa

NOTARIAL SEAL IOWA
CAROLYN A. WILSON
Commission Number 167742
My Comm. Exp. 12-17-04