

ORDINANCE NO. 2008-017

AN ORDINANCE AUTHORIZING THE VILLAGE MANAGER
TO ENTER INTO A FARM LEASE AGREEMENT
FOR THE BOWMAN PROPERTY

WHEREAS, the Village has recently acquired certain real property, referred to as the Bowman property, that is not currently needed for public purposes, but that will be needed in the future; and

WHEREAS, this property is suitable for farming purposes in the interim period until such time as it is needed for public purposes; and

WHEREAS, the property is currently part of the CAUV tax program due to its history of farmland; and

WHEREAS, if the Village does not continue to farm the property, there is a risk that it will be removed from the CAUV program, thereby requiring the Village to pay a three year tax recoupment; and

WHEREAS, the Village is authorized to lease real property without publicly advertising and soliciting bids pursuant to its Home Rule authority under the Constitution of the State of Ohio and in conjunction with the Village Charter.

NOW THEREFORE BE IT ORDAINED by the Village Council of the Village of Waynesville, 7 members elected thereto concurring:

Section 1. That the Village Manager is hereby authorized and directed to execute a farm lease agreement substantially in the form of the agreement attached hereto as Exhibit "A."

Section 2. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall be effective immediately upon its passage. The reason for said declaration of emergency is the need to continue farming the property in question during the upcoming farm season such that it remains eligible for the CAUV tax program.

Adopted this 5th day of May 2008.

Attest:
Staci Morris, Clerk of Council

Earl J. Isaacs, Mayor

348104.1

first reading - 05/05/2008

second-emergency

05/05/2008

VILLAGE OF WAYNESVILLE



Bowman Property Lease Agreement

May 2008

FARM LEASE

This Lease is made and entered into on this ____ day of _____, 2008, by and between Village of Waynesville ("Landlord" – Village Manager, contracting authority), and _____ ("Tenant").

1. Lease of Property. Landlord leases to Tenant, and Tenant leases from Landlord, on the terms and conditions set forth in this Lease, the real estate located in Warren County, Ohio, which consists of the following property:

- The land for lease is approximately ##.# tillable acres contained on Farm # ????, according to the Warren County Farm Service Agency.
- Attachment A – Copy of Certificate of Title
- Attachment B – Aerial photo of Farm #????

Both parties acknowledge that the Property does not include any dwellings, houses, barns, or other farm structures, or any fixtures or equipment that may be located on the Property.

2. Term. This Lease shall be a year-to-year lease beginning June 1, 2008, and continuing each year thereafter until a thirty (30) day written notice of termination is given by the Tenant to the Landlord of its intent to terminate this Lease. The Landlord may terminate the Lease at any time in the event that it is deemed to be in the best interest of the Landlord to terminate the Lease. In the event the Tenant has crops planted at the time the Landlord initiated termination of the Lease, Landlord hereby agrees that Tenant shall be entitled to receive as damages for the termination of the Lease the then prevailing rate for the estimated annual yield of the planted crops.

3. Rent. Tenant agrees to pay the Landlord as rent for the Property \$100.00 per acre for an estimated ##.# acres for a total lease amount of \$#,####.## per year. The Tenant agrees to pay annual rent by June 1st of each lease year, or no more than thirty days after entering into and signing this agreement, whichever is later in the calendar year. This June 1st payment schedule shall continue for the duration of the Lease.

4. **Use and Care of Property.** Tenant will use the Property solely for agricultural purposes as contemplated by this Lease. Tenant agrees to take proper care of the Property, to cultivate, maintain, and manage the Property and the soil in a careful and prudent manner, to control soil erosion as completely as practicable, to protect the underground aquifer/wellfield and to comply with all applicable laws, including, but not limited to, laws pertaining to the protection of the environment. Tenant shall make no alterations or improvements on the Property without Landlord's prior written consent. Tenant agrees to regularly mow and otherwise maintain all areas of the property that are not used for crops, including access points and buffer areas.

No livestock shall be permitted on the Property for any purposes whatsoever. Tenant will not commit waste on or damage to the Property. Tenant will not store or leave automobiles, trucks, or tractors or other farm equipment on the Property, except in the normal course of farming. Tenant shall use insecticides or herbicides only when approved by Landlord and only in a manner consistent with other actual or potential uses of the Property and adjacent lands.

The Landlord agrees to consider reimbursing the Tenant, in part or in full, the costs of improving the property through excavation and construction of a levy or a dike in order to prevent excessive flooding of the parcel, but Landlord assumes no legal responsibility, liability or risk associated in any way with the said improvements and Landlord makes no guarantee as to the effectiveness of the improvements. No such improvements shall be made without prior expressed written consent from the Landlord.

5. **Environmental Covenants.** Tenant shall not, in violation of any Environmental Laws (as defined herein), use all or any portion of the Property for the generation, treatment, storage, disposal or release of any pollutants, dangerous substances, toxic substances, hazardous waste, hazardous materials or hazardous substances as defined in or pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, as amended or any other environmental, health or safety related federal, state or local law, ordinance, rule or regulation (the

"Environmental Laws"). Tenant specifically agrees to indemnify and hold harmless Landlord (the Village of Waynesville), its elected and appointed officials, officers, managers, employees, agents, and volunteers from any and all claims, liabilities, costs or expenses, including reasonable attorney fees and any costs of all necessary clean up activities as a result of the release of such Hazardous Materials arising out of or related to the generation, treatment, storage, disposal or release of Hazardous Materials by Tenant, his family members, invitees, or other agents.

6. Insurance and Liability. Tenant shall maintain commercial general liability insurance suitable and customary for farming operations (including automobile and farming equipment), for personal injury, death and property damage in an amount satisfactory to Landlord and adequate workers' compensations insurance in compliance with the laws and statutes of Ohio. Landlord shall be an additional, insured on any such policy. Tenant will provide Landlord with certificates of any insurance policy and will demonstrate compliance with the Ohio workers' compensation laws. Any personal property kept on the Property by Tenant shall be at Tenant's sole risk.

7. Indemnification. Tenant shall indemnify, defend and hold harmless the Landlord, its elected and appointed officials, its officers, managers, employees, and agents from and against any and all judgments, orders, claims, liabilities (including statutory liability and liability under workers' compensation laws and other applicable employment laws), losses, damages, costs and expenses which arise directly or indirectly out of or in connection with any occurrence on or about the Property, the use and occupancy of the Property by Tenant, his invitees, employees, agents or contractors or the breach of any of Tenant's obligations under this Lease.

8. Right of Entry. Landlord reserves the right to enter upon the Property to inspect the same, to make improvements, and for any and all lawful purposes arising from the ownership of the Property. Landlord also reserves the right to enter Property in order to explore possible future

non-agricultural use of the Property so long as it does not unreasonably interfere with the rights of the Tenant as provided in this Lease.

9. **Default.** It is agreed that any violation of this Lease by either party shall, after ten (10) days notice (during which the default may be cured), be just cause for immediately terminating this lease. Such termination shall be in addition to any other remedies that may be available at law or in equity.

10. **Possession at End of Lease.** Upon termination of this Lease, Tenant will provide possession of the Property to Landlord without further notice, and in as good order and condition as when the same was entered by Tenant, beyond ordinary wear and tear.

11. **Assignment and Subleasing.** Tenant shall not assign this Lease or sublet the Property in whole or in part without Landlord's expressed written consent. Subject to this limitation, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and assigns.

12. **Miscellaneous.** This Lease sets forth the entire agreement of the parties and supersedes any prior understandings. This Lease may be modified only by written agreement of both parties. No waiver of any provision of this Lease shall be effective unless in writing, and no waiver on one occasion shall constitute a waiver on any further occasion. The provisions of this Lease shall be severable and the invalidity of one provision shall not affect any others. IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

Authorized Landlord Signature Date

Tenant Signature Date

Attest Date