

FARM PROJECT LEASE AGREEMENT

THIS LEASE AGREEMENT is made and executed this _____ day of _____, 2015, by and between the City of Gunnison, a Colorado home-rule municipality (“Lessor”), and Headwaters Farm, LLC, a Colorado limited liability company and Timothy DeLory, individually, of the County of Gunnison (“Lessee”).

The parties agree as follows:

- 1. Description and Use of Property. Lessor leases to Lessee, to occupy and use for crop production purposes, and for no other purpose, a portion of the VanTuyl Ranch owned by the City, located in the City of Gunnison, County of Gunnison, State of Colorado, more particularly described in Exhibit A, attached hereto and incorporated herein (“Property”).
- 2. Term. The term of this lease agreement shall be for a period of _____ years, from _____, 2015, to _____. Either Lessor or Lessee may cancel the remaining term of this Lease by giving written notice of such cancellation to the other party no later than November 1 of any year of the lease.
- 3. Consideration. As consideration for this lease agreement, Lessee agrees that during the term of this lease, Lessee shall pay to Lessor annual rental in the following amounts:

Year One – 0
 Year Two - _____
 Year Three - _____

Such lease payments shall be made no later than November 1 of each year, without notice or demand.

- 4. Security Deposit. Lessee will pay the sum of \$500.00 as a deposit against damage to the Property, necessary repairs or cleanup, and not as rent. The security deposit provided for in this Agreement will be returned to the Lessee within thirty (30) days after the expiration of this lease, less any expenses required to restore the Property to its condition at the inception of this lease, except that Lessee shall not be required to return the soil and ground cover to its pre-lease condition.
- 5. Renewal. Lessor grants to the Lessee, an option to renew this Agreement for one additional period of time equal in length to the term of this Agreement, under terms, conditions and rental payment to be negotiated by the parties at the expiration time of the term of this lease. Lessee shall give notice to Lessor thirty (30) days prior to the expiration of the Lease of Lessee’s desire to renew the Lease.
- 6. Land Use. Lessee shall use the Property described herein solely for the purpose of producing and harvesting vegetables grown as annual or seasonal crops. No trees, bushes, perennials, or other forms of permanent vegetation shall be grown on the Property without the express written permission of the Lessor. No marijuana may be grown on the Property.

No animals shall be maintained on the Property. Lessee may also store equipment used to grow, maintain, and harvest crops upon the Property. No other use of the Property shall be permitted without the express written consent of the Lessor.

Lessee covenants and agrees that the Property will be put to the use identified herein and that the Property will not be allowed to sit fallow or unproductive for any period within the lease term, subject to limitations imposed by the growing season in Gunnison. Lessee further covenants and agrees to maintain the Property in a neat and orderly condition. Failure to keep the Property in a neat and productive state shall constitute a condition of default under the terms of this lease.

7. Utilities. The Tenant shall be responsible for the prompt payment of any and all utilities associated with the Property including electricity and water service.
8. Construction, Maintenance and Removal of Fences. Lessee shall not remove or relocate any fences that are on the leased Property at the commencement of this lease without the prior, express, and written consent of Lessor. Lessee shall, at its own expense, build any fences necessary for use of the Property as defined herein. All fences, whether currently on the Property or constructed thereon in the future, shall be kept in good repair to the satisfaction of Lessor.
9. Improvements. Lessee shall not build structures or other improvements without the prior written approval of Lessor. Upon such consent being given, Lessee shall fully pay for all materials joined or affixed to the Property pursuant to this lease, and pay, in full, all persons who perform labor on the Property, and will not permit any mechanic's lien or material supplier's lien of any kind or nature to be enforced against the Property for any work done or materials furnished on the Property, at Lessee's request. At the time of termination of this lease agreement, all such improvements or structures, except those that cannot be removed without injury to the Property, shall be immediately removed from the Property.
10. Labor and Materials. Lessee shall be solely responsible to acquire and pay for all labor and materials necessary to operate the Property for the purposes expressed herein.
11. Permits/Licenses. Lessee shall obtain and continuously maintain in force all necessary licenses and permits required to conduct its businesses on the Property.
12. Taxes. Lessee shall be solely responsible to pay all ad valorem taxes assessed against any personal property belonging to Lessee and used in the operation of the Property.
13. Insurance. Lessee shall be solely responsible for acquisition of casualty loss and extended coverage insurance on all personal property located upon the Property, as well as such casualty insurance as deemed necessary to protect Lessee's interest in the improvements, if any, located upon the Property described herein. Lessor undertakes no responsibility for casualty or extended coverage insurance or loss to any improvements located upon the Property.

In addition, Lessee will obtain and deliver to Lessor a certificate of public liability and property damage insurance naming Lessor as an additional insured, under Lessee's insurance policy. Such insurance shall be in the amount of at least that required by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., or any successor legislation as the same may be amended from time to time. Such certificate of insurance shall provide that the Lessor shall be given at least ten days' notice prior to cancellation or termination of such insurance coverage. Lessee shall provide such certificate of insurance to Lessor annually, or upon such other periodic term as is required by such insurance policy. In addition, Lessee shall maintain such workmen's compensation insurance as may be necessary or required to cover employees hired for the purpose of operating the Property pursuant to this lease agreement.

14. Use of Chemicals on Property. Lessee shall apply no chemicals, be they fertilizers, herbicides, or pesticides on the Property without the prior written consent of Lessor. While Lessor's consent shall not be unreasonably withheld, Lessor's interest is to protect the water supply of the Lessor, and Lessor may deny consent for application of any persistent chemicals which may affect the Lessor's water supply.
15. Assignment or Sublease. This lease agreement is personal to the Lessee, and Lessee shall neither assign nor sublease any portion of the Property during the term hereof. Lessee may, by agreement with others, grow crops of others for consideration, may sell any crops raised on the Property, and may keep proceeds thereof.
16. Assumption of Risk and Indemnity. Lessee agrees to assume the risk of all injuries, including death, resulting directly or indirectly, wholly or in part, from the performance or omission of any work or obligations undertaken or required by this lease agreement, or the occupation and possession of the Property, and to indemnify, defend and hold harmless the Lessor from and against any and all liability arising therefrom, including liability arising in whole or in part from negligence or breach of duty, statutory or otherwise, on the part of Lessor, its agents, servants, and employees, and including all expense, legal or otherwise, incurred by Lessor in the investigation and defense of any claim or suit.
17. Right of Entry. Lessor shall have access to the Property, including any building or structure that may, at any time, be on the Property at all reasonable times for the purpose of examining or inspecting the condition of the Property or in order to exercise any right, power, or obligation reserved to Lessor under this lease agreement.
18. Default. If Lessee shall fail to substantially carry out the provisions of this lease agreement, except the obligation to pay the rent set forth herein, within fifteen days after service by Lessor of written notice to Lessee of Lessee's failure to fulfill the obligations, or in the event the default identified in Lessor's notice is one that cannot be rectified within such fifteen-day period, within a reasonable time thereafter, Lessor, at its sole option, may elect to terminate this lease agreement, and to enter upon the Property and retake possession thereof. If Lessee fails to pay any installment of rent due hereunder within three days of service by Lessor upon Lessee of a written demand therefor, Lessor shall have the right to terminate this lease and recover judgment for such unpaid rental installment.

19. Surrender of Property Upon Termination. Upon termination of this lease agreement, whether by cancellation by Lessor or Lessee, as a result of default hereunder by Lessee, or by expiration of the full term hereof, Lessee shall vacate the Property, leaving them in the same condition they were in at the time of execution hereof, except for reasonable use and wear, acts of God, or damage by causes beyond the control of Lessee, and return possession thereof to Lessor, except that Lessee shall not be required to return the soil and ground cover to its pre-lease condition. Unless otherwise agreed by the parties, upon termination of this lease agreement, Lessor shall have the right to own and possess, at Lessor's election, all crops remaining unharvested at the time of termination. It shall be Lessee's responsibility to remove all personal property, including harvested crops, from the Property at the termination of this lease agreement.
20. No Waiver. Failure of either party to this agreement to insist upon performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such waiver or forbearance had occurred.
21. Attorney's Fees. In the event either Lessor or Lessee shall bring suit to compel performance of or recover for breach of any covenant, agreement, or condition contained in this lease agreement, the prevailing party shall be entitled to recover from the other party costs and reasonable attorney's fees.
22. Governing Law. It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Venue for any action shall be in Gunnison County, Colorado.
23. Effect of Partial Invalidity. The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect, as if they had been executed by both parties subsequent to the expungement of the invalid provision.
24. Entire Agreement. This agreement shall constitute the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party, except to the extent incorporated in this agreement.
25. Modification of Agreement. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if placed in writing and signed by each party, or an authorized representative of each party.
26. Notices. All notices and communications required herein shall be in writing and shall be sent by registered or certified mail at the following addresses:

Lessor: City of Gunnison
Attn: Ken Coleman, City Manager
P.O. Box 239
Gunnison, CO 81230

Lessee: Headwaters Farm, LLC
Attn: Timothy DeLory
308 E. Ruby Street
Gunnison, CO 81230

Notice shall be deemed properly given when mailed to the above addresses. Any party may change its address of record by giving written notice of the change to the other party.

27. Counterparts. This Agreement may be executed in duplicate counterparts, which shall constitute duplicate originals.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

LESSOR:

City of Gunnison, a Colorado
home-rule municipality

By: _____
Robert Drexel, Mayor

Attest:

Gail Davidson, City Clerk

LESSEE:

Headwaters Farm, LLC, a Colorado
Limited liability company

By: Timothy DeLory, Manager

Timothy DeLory, an Individual