



LAKE COUNTY FOREST PRESERVES
www.LCFPD.org

Preservation, Restoration, Education and Recreation

DATE: November 5, 2018
MEMO TO: Craig Taylor, Chair
Operations Committee
FROM: James L. Anderson
Director of Natural Resources

RECOMMENDATION: Ratify a Farm License Agreement at Black Crown Forest Preserve with Gerald Henningfeld.

STRATEGIC DIRECTIONS SUPPORTED: Conservation; Organizational Sustainability

FINANCIAL DATA: Ratifying the license will generate \$17,833.54; revenue will be credited to the Farmland Management Fund (28642500-403000).

BACKGROUND: The farming program is conducted with local farmers to provide cost-effective, interim land use management until the District is ready to convert farmland to other forest preserve purposes. Mr. Henningfeld held a Farm License Agreement at Black Crown Forest Preserve, but did not comply fully with the terms of his agreement. Specifically, Mr. Henningfeld farmed a field owned by the District and licensed to another farmer, outside of the field that was licensed to him. Due to this non-compliance, Mr. Henningfeld’s Agreement was terminated on May 9, 2018. Subsequently, Mr. Henningfeld told District staff that, prior to the time he received a default notice, he had already planted both fields (approximately 72 acres) of land at Black Crown Forest Preserve with a soybean crop. Pursuant to Committee direction, staff and Corporate Counsel negotiated a license agreement with Mr. Henningfeld allowing him to harvest the crops from both fields, subject to his payment of an above-market license fee that takes into account his wrongful planting in the other field and property taxes to be assessed against the fields and partially reimburses the District for its staff and legal expenses. The Farm License Agreement will expire on December 31, 2018.

REVIEW BY OTHERS: Chief Operations Officer, Director of Finance, Corporate Counsel.

APPROVAL:

Motion to ratify the attached license agreement with Gerald Henningfeld for a short-term farming license at Black Crown Forest Preserve.

Date: _____ Roll Call Vote: Ayes: ____ Nays: _____
 Voice Vote Majority Ayes; Nays: _____

**LAKE COUNTY FOREST PRESERVE DISTRICT
FARMING LICENSE AGREEMENT**

This Farming License Agreement ("Agreement") is made as of the 12th day of October, 2018, by and between the **LAKE COUNTY FOREST PRESERVE DISTRICT**, an Illinois unit of local government and a political subdivision, with its principal office located at 1899 West Winchester Road, Libertyville, Illinois 60048 ("District"), and Gerald Henningfeld, a [form of entity], with its principal place of business located at 2577 108th Street, Franksville, WI 53126 ("Licensee").

In consideration of the recitals and agreements set forth below, the sufficiency of which is acknowledged by the parties, the parties agree as follows:

SECTION 1. RECITALS.

A. District holds fee simple title to those certain parcels of land commonly known as: (i) Black Crown – Row Crop, comprising field numbers 1, 7 and tract numbers 11008 ; and (ii) Black Crown – Hay, comprising field numbers 1, 3 (partial) and tract numbers 10859 , and generally depicted on **Exhibit A** attached to this Agreement as "Row Crop: 53 Acres" and "Hay Field: 19 Acres" (collectively, the "Licensed Property").

B. Licensee wishes to temporarily use the Licensed Property for the sole purpose of farming pursuant to District's Farm Management Program ("Program") and subject to the terms and conditions of this Agreement.

SECTION 2. LICENSE GRANTED; TERM; ANNUAL LICENSE FEE.

A. **Grant of License.** District hereby grants to Licensee, and Licensee hereby accepts from District, a license to use the Licensed Property for the sole purpose of farming in strict accordance with the terms and conditions of this Agreement ("License").

B. **Limitation of Interest.** The License vests in Licensee no legal, beneficial, or equitable interest in the Licensed Property itself. Rather, the License is a revocable contractual right to use the Licensed Property, subject to the provisions of this Agreement. Licensee's rights under this Agreement shall vest only in Licensee and no such rights shall vest in any of Licensee's employees, agents, subcontractors or partners, if any.

C. **License Term.** The License and this Agreement shall be effective for a term beginning on the date first written herein above, and ending on the earlier of its termination, as provided herein, or December 31, 2018 ("License Term").

D. **License Fee.** Licensee shall pay the District a license fee of \$17,833.54, payable as follows: (i) \$5,000.00 to the District upon execution of this Agreement; and (ii) \$12,833.54 to the District no later than December 31, 2018 (collectively, the "License Fee").

SECTION 3. USE OF THE LICENSED PROPERTY.

A. **Farming Use.** As a condition of receiving the License granting Licensee the right to use the Licensed Property of the purpose of farming, Licensee must conduct crop farming on the Licensed Property.

Licensee acknowledges that (i) pursuant to the Program, the District has made the Licensed Property available for crop farming as an interim land management tool, (ii) District has granted the License to Licensee based on Licensee's agreement that it will affirmatively undertake and pursue crop farming on the Licensed Property and will not leave the Licensed Property fallow, (iii) Licensee's failure to undertake and pursue crop farming on the Licensed Property will diminish the District's goals under the Program, and (iv) therefore, Licensee's failure to undertake and pursue crop farming will be an Event of Default, if not cured as provided in Section 12.C. Licensee may not use the Licensed Property, or permit the Licensed Property to be used, for any use other than farming under the Program and activities incidental to farming under the Program.

B. Authorized Persons. The persons identified on **Exhibit B** may conduct Authorized Uses on behalf of Licensee on the Licensed Property ("Authorized Persons"). Licensee shall not cause or permit any person other than the Authorized Persons to perform any work or activity on the Licensed Property without the prior written consent of the Executive Director of District (the "Executive Director").

C. Restrictions on Use.

1) Commencement of Use. The District has completed preparation of, and approved, a conservation plan for the Licensed Property pursuant to Section 6.A of this Agreement ("Conservation Plan").

2) Hours of Farming Use. Licensee shall not engage in the Authorized Uses between the hours of midnight and 5:00 a.m. without the prior written approval of the Executive Director.

3) Incidental Uses. Licensee may conduct uses on the Licensed Property that are incidental to the Authorized Uses, such as fence repair, road or trail repair, other access improvements, tree trimming, or beaver dam removal ("Incidental Uses"), only if it first obtains the Executive Director's written approval of such Incidental Uses.

4) Improvements. Licensee shall not cause or allow any improvements, including without limitation signs, placards, fences, and structures, to be erected, built, constructed, or installed on the Licensed Property without the prior written approval of the Executive Director.

5) No Damage to Licensed Property; No Waste or Nuisance. Licensee shall not damage, destroy, or permit to be damaged and destroyed, any fence or tree located on the Licensed Property, and shall not commit or suffer any waste or nuisance upon the Licensed Property.

6) No Unlawful Use. Licensee shall not use or permit the Licensed Property to be used for any unlawful purpose or in any manner that will unreasonably disturb neighbors.

7) Entry and Egress. Licensee and Authorized Persons shall enter and exit the Licensed Property only at locations on the Licensed Property identified by District.

8) Vehicles. Licensee may use vehicles and equipment on the Licensed Property only if and to the extent they are necessary to conduct the Authorized Uses and any permitted Incidental Uses. Licensee may only store vehicles and equipment on the Licensed Property (i) between the hours of 5 a.m. and 11:59 p.m. on any single day or (ii) at any time while Licensee is harvesting crops on the Licensed Property, unless it receives the prior written approval of the Executive Director.

D. **Consent and Approval.** The Executive Director may, in his sole discretion, withhold, deny, or condition approval for any action, activity, or work that requires approval or consent of the Executive Director pursuant to this Section 3.

SECTION 4. EXPENSES. Licensee shall be solely responsible for all costs and expenses incurred by Licensee in connection with the Licensee's use of the Licensed Property pursuant to this Agreement.

SECTION 5. CONDITION OF LICENSED PROPERTY. Licensee acknowledges that it has inspected the Licensed Property prior to signing this Agreement and accepts the condition of the Licensed Property, including, but not limited to, the soil conditions of the Licensed Property, "AS IS" and "WHERE IS."

SECTION 6. NATURAL RESOURCE CONSERVATION.

A. **Conservation Plan.**

1) **Compliance with Conservation Plan and Procedures.** Licensee hereby agrees to implement, and use the Licensed Property in accordance with, the Conservation Plan and the Procedures. Licensee shall not modify or amend the Conservation Plan without the prior written consent of the Executive Director, which consent may be denied at the Executive Director's sole discretion. District shall monitor Licensee's compliance with the Conservation Plan and the Procedures. Any failure by Licensee to comply with the Conservation Plan or the Procedures shall be an Event of Default (hereinafter defined).

B. **Nutrient Management Plan and Pesticide Management Plan.**

1) **Development of Plans.** The District developed and prepared a "Nutrient Management Plan" and "Pesticide Management Plan" approved by NRCS for the Licensed Property that (i) comply with the Procedures and (ii) incorporate and satisfy the requirements of the Conservation Guidelines.

2) **Compliance with Plans.** Licensee shall implement and use the Licensed Property in accordance with the Nutrient Management Plan and Pesticide Management Plan. Licensee shall not modify or amend the Nutrient Management Plan or the Pesticide Management Plan without the prior written consent of NRCS and the Executive Director, which consent may be denied at the sole discretion of the Executive Director. Any failure by Licensee to comply with the Nutrient Management Plan or the Pesticide Management Plan shall be an Event of Default.

3) **Pesticide Permit.** Each Authorized Person who applies pesticides to the Licensed Property must be in possession of his or her commercial pesticide applicator/operator license issued by the Illinois Department of Agriculture and shall, before making his or her first application in a calendar year, submit to the District a copy of such license.

SECTION 7. PROPERTY MANAGEMENT AND MAINTENANCE.

A. **Maintenance in Proper Condition.** Licensee shall, at its sole cost and expense, keep and maintain the Licensed Property, and all plantings and all improvements thereon, in the proper condition for their intended use, in a condition of good repair, and in a safe, clean, and sightly condition so as to avoid and prevent any and all hazards on the Licensed Property. Without limitation of the preceding sentence, Licensee shall:

1) If requested by the District, mow all lawns, grassy areas, or noxious weeds at the locations and during the times designated by District;

2) Protect existing trees, utilities, and other improvements located on the Licensed Property from removal or damage;

3) [INSERT ADDITIONAL PROPERTY-SPECIFIC MAINTENANCE RESPONSIBILITIES AS NEEDED.]

C. **Abatement of Dangerous Condition.** If the Licensed Property, any part thereof, or any improvement thereon threatens the public health and safety, Licensee agrees that: (a) District shall have the right, but not the obligation, to immediately take all necessary action to abate the dangerous condition, and (b) Licensee shall reimburse District for all costs incurred by District in the performance of such abatement.

SECTION 8. RESERVATION OF RIGHTS. District hereby reserves the right to use the Licensed Premises in any manner that will not prevent, impede, or interfere in any way with the exercise by Licensee of the rights granted pursuant to this Agreement. District shall have the right to grant other non-exclusive licenses or easements, including, without limitation, licenses or easements for utility purposes, over, along, upon, or across the Licensed Property. District further reserves its right of full and normal access to the Licensed Premises by its commissioners, officers, agents, attorneys and employees, for any use described above, including without limitation for the purpose of inspecting the Licensed Property, making repairs thereto, or showing the Licensed Property to any inspectors or to any prospective licensees or grantees. Whenever practical, District shall notify Licensee before entering the Licensed Property.

SECTION 9. HAZARDOUS MATERIALS. Licensee (a) shall comply with all federal, state and local laws, ordinances, rules and regulations that prohibit, restrict or regulate any material defined therein as a hazardous, radioactive, toxic or carcinogenic material, substance, pollutant or contaminant (the "Hazardous Materials") in the use of the Licensed Property; and (b) shall not permit any person to handle, bury, store, retain, refine, produce, spill, allow to seep, leak, escape or leach, pump, pour, emit, empty, discharge, inject, dump, transfer or otherwise dispose of or deal with Hazardous Materials in, on, under or about the Licensed Property.

SECTION 10. ASSUMPTION OF RISK; WAIVER AND RELEASE OF ALL CLAIMS; INDEMNIFICATION.

A. **Acknowledgement and Assumption of Risk.** Licensee hereby acknowledges that the Authorized Uses involves risks of bodily injury, including death, and property loss. Licensee hereby assumes the full risk of any injuries, including death, and of any property loss, and of all costs, damages, and losses that Licensee may sustain as a result of engaging in the Authorized Uses on the Licensed Property. Licensee hereby also assumes complete and strict liability for the acts and omissions of all Authorized Persons engaged in work and activities related to the Authorized Uses or any act or omission of any unauthorized person.

B. **Waiver and Release of Claims.** Licensee hereby waives, releases, and relinquishes all claims, demands, rights of action, damages, liabilities, and controversies of every kind, known and unknown, present and future, that it may have against District and its commissioners, officers, agents, employees, insurers, attorneys, successors, and assigns arising out of, connected with, or in any way related to Licensee's use (including use by Authorized Persons or any unauthorized persons) of the Licensed Property, including any use pursuant to this Agreement or any previous license agreement between Licensee and District.

C. **Indemnification.** Licensee shall defend, hold harmless, and indemnify District and its commissioners, officers, agents, employees, insurers, attorneys, successors, and assigns, from any and all claims that may be asserted at any time against any of those parties in connection with: (i) the use of the Licensed Property pursuant to this Agreement by Licensee, Authorized Persons, and any unauthorized person ; or (ii) Licensee's or

any Authorized Person's performance of, or failure to perform, its obligations under this Agreement (collectively, "Indemnified Claims"), whether or not any such Indemnified Claim is due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or willful misconduct or fault of the Licensee, any Authorized Person, or any unauthorized person. Licensee shall cause all Authorized Persons to execute a written agreement under which the Authorized Persons agree to indemnify District for all Indemnified Claims as set forth in this Section 10.C. The provisions and obligations of this Section 10 shall survive this Agreement, and shall be in addition to, and shall not be limited by, the amounts of any insurance provided by Licensee pursuant to this Agreement.

SECTION 11. INSURANCE. Licensee shall procure and maintain at all times during the License Term a policy of commercial general liability insurance written on an "occurrence" basis from a company licensed to do business in the State of Illinois and acceptable to District. The policy of insurance shall (a) provide coverage for all bodily injury, sickness, death and property damage arising from, or in any manner connected with, Licensee's use of the Licensed Property; (b) include general liability coverage covering the obligations assumed by Licensee under this Agreement; and (c) be for limits of not less than \$1,000,000 for each occurrence with a combined single limit for bodily injury and property damage and not less than \$2,000,000 in the aggregate with a single combined limit for bodily injury and property damage. The policy of commercial general liability insurance shall include an endorsement specifically naming the District as an additional insured and shall not be subject to cancellation or modification prior to 30 days advance written notice by the insurer to the District. Licensee shall not commence use of the Licensed Premises before providing the District with a Certificate of Insurance and, if requested, a copy of the actual policy (including all endorsements thereto) showing the coverages enumerated therein. If the Licensee does not have revolving policies, the Licensee shall annually provide the District with copies of all insurance policies when the policies are renewed. Neither Licensee nor any Authorized Persons shall enter upon the Licensed Property until Licensee has complied with all of the requirements of this Section 11.

SECTION 12. TERMINATION.

- A. Termination by District for Convenience.** District may terminate this Agreement at any time by giving 30 days advance written notice to Licensee.
- B. Reimbursement of Licensee.** If District terminates this Agreement for convenience, District shall pay the Licensee an amount equal to the value of (i) any crops planted, but not harvested, by Licensee on the Licensed Property prior to termination (the "Un-Harvested Crops"), and (ii) any reasonable costs for fertilizer, pesticides, and other field inputs actually incurred by Licensee in connection with planting and growing the Un-Harvested Crops ("Input Costs"). The value of any Un-Harvested Crops will be calculated based on available County data regarding the average yields and unit prices of crops harvested in Lake County of the same type or types as the Un-Harvested Crops. District will only reimburse Licensee for Input Costs if (i) soil tests performed by District show that nutrient levels in the soil of the portion of the Licensed Property where the Un-Harvested Crops are planted comply with the levels set forth in the Nutrient Management Plan, and (ii) Licensee provides District with receipts documenting the amount of Input Costs. If District terminates this Agreement for convenience, Licensee hereby waives any claim for payment of any amounts, other than the amount equal to the value of the Un-harvested Crops and Input Costs, by District after such termination. District will not pay or reimburse Licensee for any amounts if District terminates this Agreement for cause.
- C. Termination by District for Cause.** District may, by providing written notice to Licensee, immediately terminate this Agreement for cause if Licensee fails to (i) comply with or fulfill any of the terms and conditions of this Agreement, including, without limitation, any failure to (a) pay the Annual License Fee

or any other amount due to District under this Agreement or (b) comply with the Conservation Plan, Nutrient Management Plan, Pesticide Management Plan, and the Procedures, and (ii) cure such failure within 10 days after receiving written notice thereof (an "Event of Default").

D. District Remedies. If District terminates this Agreement for cause, District shall have the right, at its option and without prejudice to any other remedies available at law or in equity, to any one or more of the following remedies:

1) Recovery of Costs. District may recover from Licensee any and all costs, including without limitation attorneys' fees and administrative costs, incurred by District as a result of any Event of Default or as a result of actions taken by District in response to any Event of Default;

2) Repair of Licensed Property by Licensee. District may require Licensee, at Licensee's sole cost and expense, and within a reasonable time determined by District, to repair or correct any damage to the Licensed Property and any improvements thereon caused by Licensee's use of the Licensed Property and Event of Default;

3) Repair of Licensed Property by District. District may perform or cause to be performed all work necessary to repair or correct any damage to the Licensed Property and any improvements thereon caused by Licensee's use of the Licensed Property and Event of Default and may recover from Licensee all of the costs and expenses, including without limitation attorneys' fees and administrative costs, incurred by District in connection therewith; and

4) Recovery of Damages. District may recover from Licensee any other damages suffered by District as a result of Licensee's use of the Licensed Property and Event of Default.

E. Mutual Termination. Licensee may submit, on or before February 1 of the year in which Licensee desires to terminate this Agreement, a written request to District for mutual termination of this Agreement if natural conditions on the Licensed Property or other circumstances beyond Licensee's control cause or will cause extreme economic hardship for Licensee. The request must describe the hardship experienced or to be experienced by Licensee and the reasons for the hardship. District may, but has no obligation to, approve termination of this Agreement if it determines, in its sole discretion, that Licensee did not cause the hardship and that the hardship justifies termination of this Agreement. If District does not receive a request for mutual termination by February 1 of the applicable year, Licensee shall pay the full amount of the Annual License Fee for that year. If District approves mutual termination of this Agreement, District shall provide Licensee with written notification of termination, and Licensee shall immediately cease using and surrender possession of the Licensed Property.

F. Effect of Termination. Immediately upon termination of this Agreement, for whatever reason, all rights granted to Licensee hereunder shall revert to District, and District shall have the right to relicense the Licensed Property.

SECTION 13. KEYS AND LOCKS. Licensee shall not change, alter or replace any locks on the Licensed Property. Licensee shall return all District keys for Licensed Property locks within 10 days after the License Agreement expires or is terminated.

SECTION 14. TIME OF ESSENCE. Time is of the essence in the performance of all of the terms and conditions of this Agreement.

SECTION 15. ASSIGNMENT. Licensee shall not assign this Agreement or sublicense the Licensed Property without the prior written approval of the District's Finance and Administrative Committee , which approval may be denied in the Committee's sole discretion .

SECTION 16. PAYMENT OF TAXES. Licensee shall pay, before any fine, penalty, interest or other cost is added thereto, all real estate taxes or other *ad valorem* taxes, if any, levied or assessed on the Licensed Property or the rights granted herein and any other tax or governmental charge arising out of Licensee's use of the Licensed Property. District, at its option, may pay any such tax, governmental charge or administrative expense and charge Licensee therefor. Licensee shall reimburse District for any such payment within ten (10) days of receipt by Licensee of District's demand for reimbursement.

SECTION 17 REMOVAL OF LIENS. The parties acknowledge that the Licensed Property is public property and therefore is not subject to liens pursuant to the Illinois Mechanic's Lien Act, 770 ILCS 60/0.01 et seq. Nevertheless, Licensee shall, at its sole cost and expense, take all necessary action to keep all portions of the Licensed Property, and any funds held by the District, free and clear of all liens, claims, and demands, including without limitation mechanic's liens, in connection with any work performed on the Licensed Property. If the Licensed Property becomes encumbered by any lien, Licensee shall, at its sole cost and expense, cause such lien to be removed not later than 5 days after receiving written notice from District to remove the lien. District shall have the right, but not the obligation, to remove or satisfy any lien upon the Licensed Property with or without notice to Licensee, and Licensee shall reimburse District for all costs and expenses, including attorneys' fees and administrative expenses, incurred by District in connection with removing or satisfying any lien within ten (10) days after Licensee receives written demand from District therefor.

SECTION 18. COMPLIANCE WITH LAWS. Licensee shall use the Licensed Property in compliance at all times with all applicable laws. Licensee shall give all notices, pay all fees, and take all other action that may be necessary to ensure that Licensee's use of the Licensed Property conforms with all applicable laws and other government approvals that may be required for Licensee's use of the Licensed Property.

SECTION 19. GOVERNING LAW. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

SECTION 20. ENFORCEMENT COSTS. Licensee shall pay all reasonable costs, attorneys' fees, and expenses incurred by District in enforcing this Agreement.

SECTION 21. SEVERABILITY; WAIVER. If any provision of this Agreement is held invalid, the validity of any other provision of this Agreement that can be given effect without such invalid provision shall not be affected thereby. The District's failure to notify of, or its forbearance in seeking any remedy for, an Event of Default shall not be a waiver of its rights with respect to that Event of Default or any other right under this Agreement.

SECTION 22. NOTICES. All notices required or permitted to be given under this Agreement shall be given by the parties by: (i) personal delivery; (ii) certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid; or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section 22. The address of any party may be changed by written notice to the other parties. Any mailed notice shall be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier shall be deemed to have been given and received upon receipt, as established by evidence of delivery from the courier.

Notices and communications to District shall be addressed to, and delivered at, the following address:

Lake County Forest Preserve District
1899 West Winchester Road
Libertyville, Illinois 60048
Attention: Executive Director

Notices and communications to Licensee shall be addressed to, and delivered at, the following address:

Gerald Henningfeld
2577 108th Street
Franksville, WI 53126

IN WITNESS WHEREOF the parties have caused this Agreement to be executed, effective as of the date first written above.

WITNESS:

ATTEST:
DISTRICT

By: _____
Its: Secretary

Licensee:

By: Gerald Henningfeld 10/14/18

LAKE COUNTY FOREST PRESERVE

By: _____
Its: President

EXHIBIT A

Licensed Property – Aerial Photo of Licensed Property

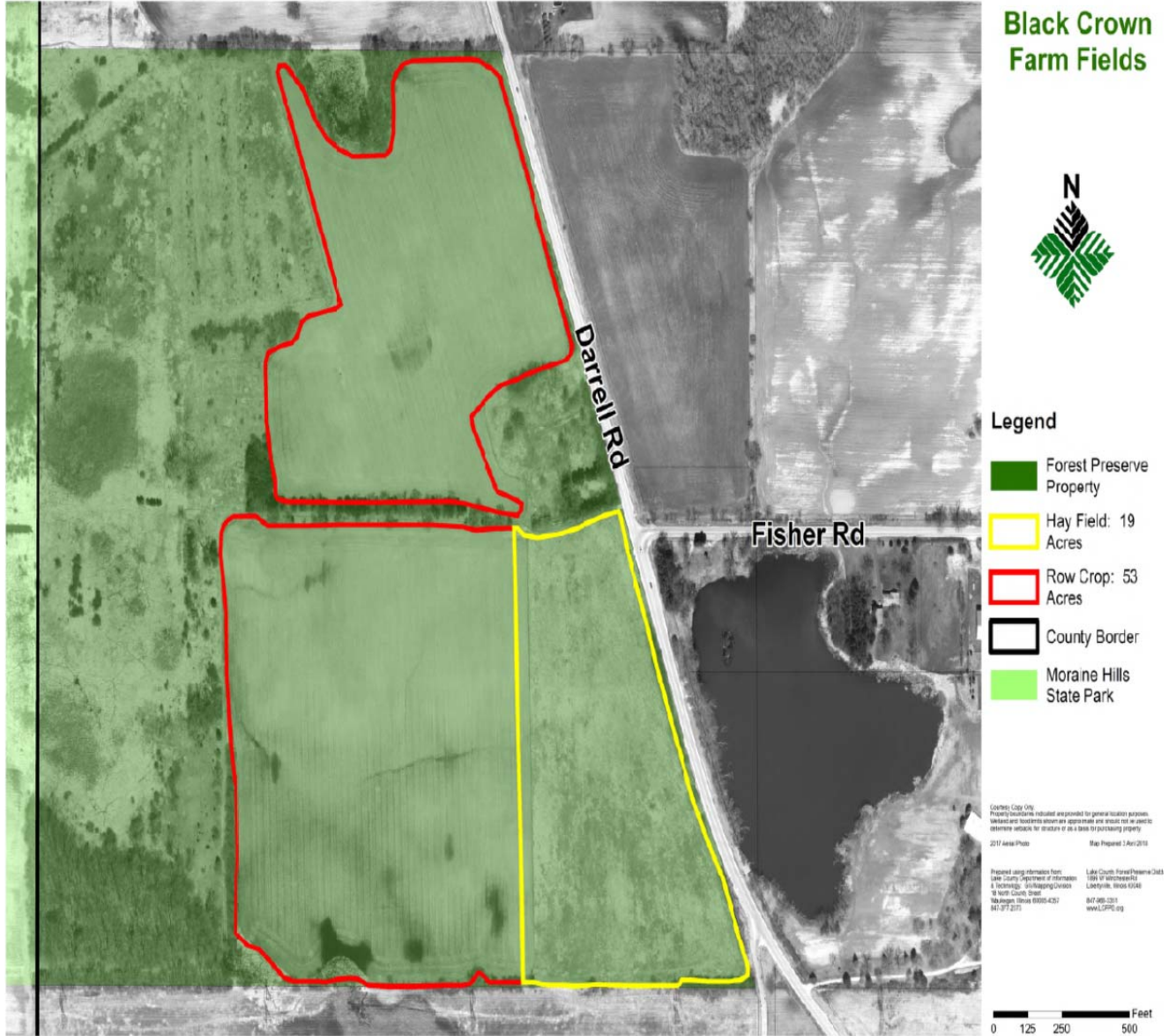


EXHIBIT B

AUTHORIZED PERSONS

The Licensee has listed the following persons and entities, including any subcontractors, who may conduct Authorized Uses on behalf of Licensee on the Licensed Property. Besides these identified persons, Licensee shall not permit any other person or entity to use the Licensed Property without the prior written consent of the Executive Director.

Persons or entities that may conduct Authorized Uses on behalf of Licensee on the Licensed Property:

Name Affiliation (e.g., company name, employee, etc.) Phone Number

NO OTHER CONTRACTORS OR SUBCONTRACTORS
WILL BE ENTERING THIS PROPERTY FOR THE
HARVESTING OPERATION

Licensee Signature Gerald Henningfeld Date 10/14/18

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