

MICHIGAN CASH FARMLAND LEASE

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SOME OWNER AND OPERATOR CONSIDERATIONS FOR CASH CROPLAND LEASING

Many landowners and lessees have long utilized verbal leases. Commercial agriculture, along with the world, is changing. The average age of a farmland owner is increasing. A retiring farmer may want to keep ownership of the land and lease it for retirement income. Other farmers may have one or more farm business successors but not the land base to support additional families. An option to expand their business is leasing additional land. To ensure that there are no unpleasant surprises and to avoid misunderstandings, we recommend that farmers utilize a written lease agreement instead of a verbal one.

The lease template provided here is designed to be flexible so that it can be used in a variety of situations, including irrigated cropland.

It is also designed to be interactive so that it can be completed using a home computer.

Exhibit A is the legal description of the property, a standard component of any lease agreement.

Exhibit B provides a map of the farm that denotes all areas included in the lease. The farm map prevents misunderstandings about the exact fields or areas of the farm that are covered in the lease.

Exhibit C lists lease terms agreed to by both parties that are not provided for in the template.

The template also provides choices that the parties can select because they are more appropriate for a particular situation than other choices.

If there is a fill-in that is not applicable to your situation, it is suggested that N/A be filled in. For example, under Section II General Terms of Lease, if both owner and operator have agreed that there will be no termination notice required, N/A can be filled in instead of a date. N/A can be utilized throughout the lease in this manner.

Farmers leasing or looking to lease farmland need to consider a number of factors before entering into a cash lease of cropland:

- Will the lease term be for one calendar year, a fixed term of years, or year-to-year and automatically renew?
- What facilities and equipment is the cropland owner (hereinafter referred to as the "owner") providing? These should be clearly stated, along with their condition.
- Will the owner or the renter (hereinafter referred to as the "operator") receive any advance notice of lease expiration, or will one or both waive any termination notification?
- Will the rent be paid in advance or in installments? Will security be required from the operator to secure the unpaid installments? If so, what type? Examples include an irrevocable letter of credit or a crop lien.
- Will the owner or the operator be responsible for maintaining the facilities? If the operator is required to maintain them, what types of repairs or maintenance is the operator expected to perform? If a repair is beyond the operator's capability, such as complicated irrigation repairs, how will that be handled? If the operator is to provide his labor for facility or

irrigation equipment maintenance, at what point can he hire an outside professional if he feels the repair is beyond his qualifications? Does he seek owner approval, or is approval already granted if the repair is less than a predetermined maximum cost? To maintain the facilities, can the operator purchase materials? If so, should there be a defined dollar limit before the operator must obtain owner approval to purchase more?

- Who is providing the insurance on the facilities? Will insurance that each party obtains name the other as an additional insured party?
- Will the operator be required to obtain crop insurance?
- Is the owner required to replace any or all portions of any equipment or facilities damaged by fire or other natural disasters?
- Will water be furnished by the owner? If well water is used, who will pay the costs to repair or replace pumps, electric motors, electric panels, etc.?
- How will conflicts between owner and operator be settled? Will conflict resolution be limited to mediation, arbitration or some other method?
- Will the operator be allowed to construct or add improvements? Section D -- capital improvements, irrigation systems, semi-permanent plantings, long-lasting fertilizer investment -- provides a method to reimburse the operator for improvements made to the property or facilities. It establishes in advance the timetable for reimbursement in case the lease terminates early. For example, the operator and the owner agree that the operator will pay for and install a water well in year 1 at a cost of \$20,000. In Section D, both parties agree to the schedule by which the operator will be reimbursed if the lease terminates before the 10-year reimbursement period expires. In this example, if the lease terminates in year 5, the operator would be reimbursed \$10,000.

It is strongly advised that you obtain legal assistance to better understand the provisions presented in the sample lease form. ***This form is not a substitute for obtaining legal counsel regarding the lease – it is intended to help focus discussions between landowner (owner), the lessee (operator) and qualified legal counsel.***

Michigan Cash Farmland Lease

This lease is entered into this day of , 20 , by and between (hereinafter referred to as "Owner") and (hereinafter referred to as "Operator").

I. PROPERTY DESCRIPTION

The Owner hereby leases to the Operator to use for agricultural purposes that area which is more particularly described and shown on the attached Exhibit A, containing total acres, more or less, which is also shown on the farm map attached as Exhibit B, located in the township(s) of , county of and state of , with all improvements thereon except as follows:

II. GENERAL TERMS OF LEASE

(Type N/A in the fill-in boxes that do not apply to your situation.)

Time period covered. The lease shall be from through only (**choose one**). During the final year, Owner or Operator will give written termination notice by (example: Sept. 1).

- A. Additionally, termination will occur on a field-by-field basis after harvest, and the Owner or his agent may perform customary seasonal work, including preparation for the following year's crops.
- B. Amendments and alterations. Amendments and alterations to this lease shall be in writing and shall be signed by both the Owner and the Operator.
- C. No partnership intended. It is particularly understood and agreed that this lease shall not be deemed to be or intended to give rise to a partnership relation.
- D. Transfer of property. If the Owner should sell or otherwise transfer title to the property, it will be subject to the provisions of this lease and Operator's reimbursement for improvements in Section D.
- E. Right of entry. The Owner, including his agents or employees, shall have the right of entry to all parts of the premises for any purpose not in conflict with the right of the Operator's quiet enjoyment of the premises for farming purposes. The Owner shall not carry on any activity on the premises that will interrupt or interfere with the Operator's farm practices or cause injury and destruction to the Operator's growing crops.
- F. Sublease. The Owner does (**choose one**) convey to the Operator the right to lease or sublet any part of the property or to assign the lease without the Owner's written permission. If the Owner allows the lessee to sublease, the Operator shall have the right to assign or transfer any or all of the Operator's rights under this lease. The Operator may also sublease to a limited

liability company, corporation, trust or other entity recognized by Michigan law if the Operator is the manager or incorporator or holds more than 51 percent of the membership interest in the entity and the entity was formed to conduct the Operator's farming operations. Subleasing and assigning by the Operator does not release the Operator of any obligations during the term of the lease.

- G. Binding on heirs. The provisions of this lease shall be binding on the heirs, personal representatives, trustees, holders of powers of attorney, conservators, guardians, successors and assigns of both Owner and Operator in like manner as upon the original parties, except as provided by mutual written agreement.
- H. Settlement of differences. Any difference between the parties over their rights or obligations under this lease that are not settled by mutual agreement after thorough discussion shall be submitted for arbitration to a committee of three disinterested persons, one selected by each party and the third by the two thus selected. The committee's decision shall be accepted by both parties.

III. AMOUNT AND PAYMENT OF CASH RENT

(Type N/A in the fill-in boxes that do not apply to your situation.)

- A. The annual cash rent shall be the sum of \$. This represents irrigated acres at \$ per acre, other cropland acres at \$ per acre, plus \$ for woodland, pasture, etc., plus \$ for buildings and lots and other leased items. The cash rent shall be payable as follows:

Option 1: 100 percent due on of the lease year.

Option 2: In installments of \$ due

Option 3:

Payment should be made to the Owner at the following address:

In the event of late payment, interest charges shall accrue at the rate of percent per annum.

The Owner reserves his rights under any statutory lien of Michigan as security for the payment of rents herein specified and the faithful performance and strict fulfillment of all the covenants of the Operator in this lease. The rental payment shall (choose one) be secured by an irrevocable letter of credit (choose one) in a form satisfactory to the Owner.

Default by the Operator. Should the Operator default in the performance of this lease, any rent obligations due and owing under this lease shall be offset with a residual value for lime, other long-lasting fertilizer, tile, irrigation, semi-permanent plantings and other personal property applied at the expense of the Operator, as shown in Section D, capital improvements, irrigation systems, semi-permanent plantings, long-lasting fertilizer investment. Should the Operator default in the performance of this lease, the Owner may terminate this lease and re-enter and regain possession of the premises through any lawful means available under the laws of the state of Michigan.

Default by the Owner. Should the Owner default in the performance of this lease, the default shall not terminate the lease unless written notice of termination is provided to the Owner. Upon default, the Operator may recover any damages incurred by the Operator under the terms in Section D, capital improvements, irrigation systems, semi-permanent plantings, long-lasting fertilizer investment.

IV. OPERATION AND MAINTENANCE OF PROPERTY

A. Land use. The land described on Exhibit A will be used in the following manner. If it is impractical in any year to follow such land use plan, appropriate adjustments will be made by mutual written agreement between the parties.

1. Cropland
 - a. Corn acres
 - b. Soybeans acres
 - c. Vegetables (e.g. asparagus) acres
 - d. Wheat acres
 - e. Pasture acres
 - f. Other acres
 - g. Other acres

Noxious weeds. The Operator will use diligence to prevent noxious weeds from becoming established or going to seed. Treatment of noxious weeds and the cost thereof shall be handled as follows:

The Operator agrees:

1. Costs of operation. To provide all knowledge, labor, tillage equipment, seed, fertilizer and other necessities to carry on farming operations in a businesslike manner. The Operator shall be responsible for all expenses incidental and necessary for farming operations, including utilities, machine and fuel expenses for harvesting, seeding, spraying and application of fertilizer or any other expense incidental to good, modern farming practices. The Operator agrees to return the premises in as good condition as it was at the beginning, normal wear, depreciation and damage from causes beyond the Operator's control excepted.

2. Nutrient management. The Operator shall maintain all of the Owner's acreage in the Operator's total nutrient management plan during the term of the lease. Manure and fertilizer application following applicable Generally Accepted Agricultural Management Practices (GAAMPs) that keep the Operator in compliance with the Michigan Right to Farm Act are acceptable to the Owner. Owner and Operator agree to test the soil at reasonable intervals on the basis of sound soil testing protocols to determine crop fertilizer requirements. A copy of the test will be furnished to the Owner.

Owner and Operator agree to share soil testing costs as follows: (choose one) (a). 50/50 between Owner and Operator. (b) Paid 100 percent by the Operator. (c) Paid 100 percent by the Owner.

3. Conservation. The Operator will control soil erosion according to an approved conservation plan; keep in good repair all terraces, open ditches, inlets and outlets of tile drains and ponds; preserve all established watercourses or ditches, including grassed waterways and field borders; and refrain from any operation or practice that will injure such structures.
4. Insurance. To provide workers' compensation on all employees and no-fault insurance on farm automobiles and other vehicles. Procure and maintain public liability and property damage insurance providing for coverage for personal injury to or death of any one person of not less than \$, for personal injury to or death of more than one person of not less than \$ and coverage for property damage liability of not less than \$.
5. Crop production documentation. Annually the Operator will provide the Owner with yield or production information for harvested crops sufficient to meet requirements for crop insurance documentation and participation in USDA commodity programs.
6. Environmental laws. The Operator will comply at all times with federal, state and local rules, regulations, statutes, ordinances and directives that may now or hereafter be applicable to the leased premises and that are related to hazardous or toxic materials pollution control and environmental matters, including (a) any laws and regulations governing water use, groundwater, wetlands and watersheds associated with the leased premises; (b) any pesticide, herbicide, fertilizer or chemical record-keeping and reporting laws and regulations; (c) any pesticide, herbicide, fertilizer or chemical applicator licensing laws and regulations; (d) the Worker Protection Standard for Agricultural Pesticides. The operator further agrees to be in strict compliance with all manufacturers' label instructions, use requirements and precautionary statements and warnings. The Operator will use the utmost care in the handling and application of any pesticides, fertilizers and chemicals to protect all persons upon the leased premises and the environment, and will dispose of all pesticide, fertilizer and chemical containers only in a lawful manner and will not dump, bury or burn said containers on the premises.

B. The Owner agrees:

1. Loss replacement. The Owner will replace or repair some none all (choose as appropriate) buildings or equipment leased by the Operator from the Owner that may be destroyed or damaged by fire, flood or other cause beyond the control of the Operator, or to make rental adjustments in lieu of replacements. Additional agreements regarding replacement of buildings or equipment are:
2. Insurance. The Owner will fully insure the property against casualty, theft or other loss, and against personal liability.
3. Removable improvements. The Owner shall not be responsible for property owned by the Operator. The Operator shall have the right to place and remove irrigation equipment and portable buildings at the Operator's expense. Such moving must be done within _____ days following termination of the lease, unless additional time is granted in writing. If such property is not removed, it shall be considered abandoned, and the Operator shall claim no further interest in it except by written agreement between the Owner and the Operator.

C. Both agree:

1. Not to obligate the other party. Neither party shall pledge the credit of the other party for any purpose whatsoever without the written consent of the other party. Neither party shall be responsible for debts or liabilities incurred or for the damages caused by the other party.
2. The Operator has inspected the premises and accepts such in as-is condition and agrees to assume all risks and liability for accidents to himself, his family, his employees, his guests and agents in pursuance of the operations.
3. Materials for repairs. The Operator agrees to pay up to \$ _____ in any one year and not seek reimbursement for materials purchased by the Operator for purposes of repair and maintenance of fences, tile, irrigation and other improvements on the property being leased. The Owner will reimburse the Operator for materials purchased by the Operator for purposes of repair and maintenance of fences, tile, irrigation and other improvements on the property being leased in excess of the above amount not to exceed \$ _____ in any one year, provided these improvements are not removed when the Operator leaves the farm. Reimbursement shall be made by December 31 of each year.
Additional agreements regarding materials and labor are:
4. Water withdrawal reporting. If applicable, the Owner or the Operator (choose one) will annually report water withdrawals and water conservation practices by April 1 of each year to the Michigan Department of Agriculture and Rural Development as required by P.A. 148 of 2003.

D. Capital improvements, irrigation systems, semi-permanent plantings, long-lasting fertilizer investment. The Operator will be reimbursed for the costs of establishing irrigation wells or equipment, permanent structures, perennial forage crops, semi-permanent or permanent crops, lime or other long-lived fertilizers or new conservation structures. The Operator shall be reimbursed as follows: (check option that applies.):

(1) The Operator will be reimbursed by the Owner when the improvement is completed.

(2) The Operator will be compensated by the share of the depreciated cost of the Operator's contribution when the lease is terminated, on the basis of the value of the Operator's contribution and the depreciation rate shown in the following table. Rates of labor, power and machinery contributed by the Operator for the construction of permanent improvements shall be agreed upon before repairs are made or construction is started.

If, during the term of this lease, improvements are made or expenses are incurred by and with the written consent of the Owner for which it is agreed that the Operator may claim credit upon the final accounting upon termination of the lease, such credit shall be allowable only with respect to the items included herein. (See schedule below.) The rate or amount of the allowance shall not exceed the rate of exhaustion.

Description of capital improvements to be constructed:

Date of expenditure	Operator's Item	Operator's share	Operator's amount	Rate of exhaustion (years)									
				1	2	3	4	5	6	7	8	9	10

Example:

3-1-12__ Water well 100% \$20,000 X
(In this example, if the lease terminates in year 5, the operator would be reimbursed \$10,000.)

% \$

% \$

E. Participation in government programs. Participation in any offered program of the U.S. Department of Agriculture or other federal, state or county government agencies for crop production control, soil and water conservation, or other purposes shall be at the following option (check the appropriate statement):

Owner and Operator must agree to participate in such program.

Participation or non-participation shall be at the option of the Operator, and the Owner will complete any necessary forms to allow the Operator's participation. Enrolling the acreage does not change the fact of true ownership and is for record-keeping purposes only. Both parties agree to allow farming records for this farm to be transferred to the _____ County Farm Service Agency office to comply with these programs.

F. Mineral rights and wind development. The Owner shall have the right to enter into agreements for the development of petroleum, wind or other resources on the property, and may also authorize third

parties to enter the property to survey, construct and/or operate the facilities reasonably necessary to develop those resources. The Owner will give notice to the Operator when an agreement has been entered into. The Owner agrees to reimburse the Operator for any actual damage suffered for crops destroyed by these activities and to release the Operator from obligation to continue farming this property when and if development of such resources interferes materially with the Operator's opportunity to make a satisfactory return.

G. Hunting privileges. The Owner reserves and retains all hunting privileges.

H. Applicable law. The lease shall be construed and enforced in accordance with the laws of the state of Michigan.

I. Other provisions. Owner and Operator further agree as noted on Exhibit C.

Exhibit A
Legal Description

Exhibit B
Farm Plat

(This is for a page that has a map of the farm or an aerial photo of the farm. The fill-in box will only take text. If you want to insert a map or photo, you will need to insert separately. You may use the fill-in box for any explanation you may want to make.)

Exhibit C
Additional Provisions

(This can be a fill-in box that memorializes any other agreements between the parties that did not fit into the lease template.)

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