

Agricultural ECONOMICS

Farm Management

Indiana Cash Farm Lease

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Introduction

A written cash farm lease agreement serves two functions. First, it provides a record of the specific agreement. While an oral lease is valid and widely used, disagreements can arise because of forgetfulness, a misunderstanding of exactly what was agreed upon, or the death of one of the parties to the lease. The process of writing an agreement tends to prevent oversights and misunderstandings, improve communication between the parties, and provide specifics regarding the parties' intentions and a written record for heirs.

The second function of a written lease is to provide legal proof of the agreement. This publication includes a blank cash lease form designed to help landlords and tenants put their agreement in writing. The included form is not intended to substitute for the advice of an attorney regarding the legal aspects of a lease, but rather to raise issues that need to be considered in the development of a lease agreement.

The publication first presents some explanations and suggestions for appropriate use of the cash lease form. Where applicable, these are keyed to specific sections of the form. For additional information on the legal aspects of a farmland lease, see *Legal Aspects of Indiana Farmland Leases and Federal Tax Considerations*, EC-713, available on the Web at <<http://www.agcom.purdue.edu/AgCom/Pubs/EC/EC-713.pdf>>.

Suggestions for Use

Will a Cash Lease Meet Your Needs?

A cash farm lease fits a tenant who has financial resources to pay for all production inputs, including rent; who can make all management decisions; and who can withstand the fluctuations in revenue resulting from price and yield variations. The cash tenant pays the landlord a fixed amount, usually part in advance, for the use of farm real estate and receives all of the resulting production. The tenant pays all costs of production and thus assumes all production risks (drought, insect, hail, etc.) and all price risks.

On the other hand, the cash tenant receives all of the rewards from favorable weather and prices, and from superior management and marketing skills. The cash tenant needs sufficient financial reserves to pay the rent and production costs and to bear the risk involved. The tenant also enjoys the convenience of not needing to separate out the landlord's share of

the crops or having to be sure that input costs are properly divided. The tenant also gains some flexibility regarding planting dates.

A cash farm lease fits a landlord who may be unable or unwilling to pay part of production costs and bear the risks of a crop-share arrangement. Many landlords need a secure return from their land in order to meet living expenses. Others prefer not to be bothered with the division of production required with share leases; paying bills for production expenses; making decisions about pricing, storage, and LDPs; and trying to understand modern production methods.

Change the Lease to Meet the Individual Farm Situation

The form included with this publication is intended to serve as a guide to aid landlords and tenants in preparing cash leases. Changes should be made in the form when necessary to meet the needs of a specific situation. Provisions that are not desired

should be deleted. Provisions can be added. These changes may necessitate retyping the form.

The form included serves only as a guide to illustrate important considerations in the construction of a written cash lease. This form cannot substitute for the advice of an attorney regarding the legal aspects of a lease.

Length of Term of the Lease (Section I, Item 3)

Some cash leases have a clause providing for continuation of the agreement from year to year unless written notice of termination is given by either party to the other on or before a specified date, but Item 3 of this lease form provides for a specific termination date. Termination often is after one year, but may be longer. The specific termination date forces re-negotiation of the amount of cash rent and prevents the possibility that, due to negligence in giving a termination notice, one party may become obligated for an undesirable agreement.

Land Use and Cropping Program (Section II)

The interest of the landlord in maintaining the long-term productivity of land may require restrictions on land use. Item 1 indicates acreages of major land use categories: cultivated land, permanent pasture, and woods. Some farms also have Conservation Reserve Program (CRP) acreage. This land would normally not be included as tillable land.

Item 2 (maximum acreage of corn and beans) might apply on a rolling farm that should not be row-cropped every year.

Amount of Rent (Section III, Item 1)

Productivity of the soil, often measured in typical or average corn yields, is important in determining the amount of rent. Other factors to consider include fertility levels (best measured by soil tests), weed problems, field size, drainage, and location. Space is provided in Item 1 to record the rent separately for tillable and non-tillable bare land and for buildings.

Obtaining information about cash rental rates on a local basis is often difficult. Some lenders and local Extension Educators have a good “feel” for the land rental market. The USDA collects cash rent information as of January 1 of each year and publishes a statewide estimate of rent per acre. This information

usually is available in the spring and can be obtained from the Indiana Agricultural Statistics Service, Purdue University, West Lafayette, Indiana, 47907 <<http://www.nass.usda.gov/in/prices.html>>. Purdue’s Department of Agricultural Economics also collects cash rent information for three land classes and six sub-areas of the state. The information is published in the August or September issue of *Purdue Agricultural Economics Report*, located on the Web at <<http://www.agecon.purdue.edu/ext/paer/>>.

Tenants could do a cost/return analysis before agreeing on a cash rent figure. Cash rents may be at a level where it is difficult for some tenants to cover all of their per acre costs, including family labor. Rents may be bid up by tenants with superior management ability and/or those who have excess machinery and labor capacity, the cost of which will go on whether or not they farm extra acreage. Cash rents can also be bid up by individuals willing to charge only a small amount for their labor or machinery investment. For the business to be sustainable, the return must be large enough to cover expected depreciation, interest, etc.

Landlords may also be interested in a cost/return analysis as a guide in establishing rental rates. They should remember that a satisfactory tenant/landlord relationship is one in which the tenant has a reasonable opportunity to pay all cash costs of production and earn a satisfactory return for unpaid labor and machinery use. ID-166, 2002 *Purdue Crop Guide*, contains production cost estimates for crop enterprises and is available on the Web at <http://www.agecon.purdue.edu/ext/pubs/crop_guide_02.pdf>.

Time of Payment (Section III, Item 2)

Time of rent payments (Item 2) varies widely. In a few cases, a single payment is made, either in advance or after harvest. In some agreements, rent is paid monthly as a convenience to landlords who rely heavily on rent to defray living costs. As compared to the fairly common two rental payments (often in March and December), rent paid fully in advance would logically be less, and rent would be more if paid in full after harvest.

Landlord and Tenant Agreements of Responsibility (Sections IV and V)

Landlords and tenants need to discuss what they expect of each other. Possibilities and options are presented in Sections IV and V. The landlord paying for lime is by no means universal. Item 4 of Section IV allows this to be a shared cost. If the tenant pays for all or part of the lime, it would be logical to have a provision in the lease for the landlord to pay the tenant for the residual lime when the lease is terminated.

Item 6 of Section V is not found in some leases, but it is important in keeping the farm eligible to participate in federal farm programs. Major requirements relate to wetlands, land clearing and drainage, and compliance with soil conservation requirements. Details can be obtained from your county FSA office <<http://www.fsa.usda.gov/IN/>>.

Item 7 of Section V (storage and use of pesticides) has become more important in recent years. Expensive clean-up procedures can result from chemical spills (including tractor and motor vehicle fuels and oils), improper disposal of containers, rinsing of sprayer equipment near water supplies, etc. It is in the interest of both tenant and landlord to avoid these expenses because either or both parties may be held liable. Chemical application records (material used, rates, dates, location, etc.) are required to be kept.

Specification of minimum and maximum rates of fertilizer, Item 9, Section V, is included because of the interest of the landlord in maintaining soil fertility and in preventing excess nitrogen from leaching into ground water.

Rights and Enforcement (Sections VI and VII)

Sections VI and VII pertain, respectively, to the rights and privileges agreed to by the landlord and tenant, and to the means of enforcing those agree-

ments. The provisions presented in the sections provide example considerations that can be modified to fit the specific situation.

Renewal (Section XR 1-4)

The lease form does not contain provisions for automatic renewal, but Section XR can be used to renew the lease for another year and to specify the amount of rent. If other changes are needed to the contract, it is possible to make these changes in writing and have them dated and initialed by the parties of the contract. However, this can lead to confusion about the intent of the parties. Given the ease with which word processors can be used to make changes, it may be a better business practice to make the necessary modifications to the original agreement with the parties signing the new agreement.

Indiana Cash Farm Lease Form*

This Cash Farm Lease form can provide the landlord and tenant with a guide for developing an agreement to fit their individual situation. This form is not intended to take the place of legal advice pertaining to contractual relationships between the two parties. Because of the possibility that a farm operating agreement may be legally considered a partnership under certain conditions, seeking proper legal advice is recommended when developing such an agreement.

Section I. Date, Contracting Parties, Description of Property, and Terms of the Lease

1. This lease is made this _____ day of _____, 20____, by and between _____ hereinafter called the Landlord(s), and _____ hereinafter called the Tenant(s).
2. The Landlord, hereby leases to the Tenant, to use for agricultural purposes as described in Section II, Item 1 (below), the acreage _____ (name of farm) farm, containing _____ acres, located in _____ Township, _____ County, State of _____, described as follows:
_____, with all improvements thereon except _____.
3. This lease agreement shall become effective on the _____ day of _____, 20____ and shall terminate on the _____ day of _____, 20____. The Tenant agrees to contact the Landlord _____ days prior to the termination date to consider re-negotiating for the following year the amount of rent and other terms and conditions of this lease.
4. Amendments and alterations to this lease shall be in writing and shall be signed by both the Landlord and the Tenant.
5. This lease shall not be deemed to be, nor is it intended to give rise to, a partnership relation.
6. The provisions of this lease shall be binding upon the heirs, executors, administrators, and successors of both Landlord and Tenant in like manner as upon the original parties, except as provided by mutual written agreement.

Section II. Land Use and Cropping Program

1. Approximately _____ acres of the farm are to be cultivated, _____ acres are to remain in permanent pasture, _____ acres in woods not to be grazed. The tracts that are to be included in respective classes shall be designated by the Landlord at the beginning of this lease.
2. The combined annual acreage of corn and soybeans shall not exceed _____ acres.
3. The extent of participation in government programs will be discussed and decided upon on an annual basis. The course of action agreed upon shall be placed in writing and signed by both parties. A copy of the course of action so agreed upon shall be made available to each party.
4. No permanent pasture shall be plowed without the written consent of the Landlord.
5. Land previously placed in a government program, such as the Conservation Reserve Program, shall not be included in the lease, and any payments related thereto shall accrue to the landlord.
6. Hunting rights will/will not be retained by the landlord.

* Prepared by Agricultural Economists Craig L. Dobbins and J.H. Atkinson

Section III. Amount of Rent and Time of Payment

1. The Tenant shall pay to the Landlord the sum of \$_____ annual rent for the entire acreage referred to in Section I, calculated as follows:

_____ acres of tillable land @ \$_____ per acre \$_____

_____ acres of non-tillable land @ \$_____ per acre \$_____

Building rent for: dwelling \$_____

grain bins \$_____

other _____ \$_____

Total annual cash rent \$_____

2. The annual cash rent shall be paid as follows:

\$_____ on or before _____, 20_____

\$_____ on or before _____, 20_____

\$_____ on or before _____, 20_____

If rent is not paid when due, the Tenant agrees to pay interest on the amount of unpaid rent at the rate of _____ percent per annum from the due date until paid.

Section IV. The Landlord Agrees to:

1. Furnish the land and the fixed improvements referred to in Section I.
2. Pay all taxes and the assessments against the real estate and all taxes on the Landlord's personal property on the farm.
3. Furnish materials and labor for mutually agreed upon repairs, improvements, and construction of buildings, drains, and fences on the farm. To pay for materials purchased by the Tenant for purposes of repair and maintenance in an amount not to exceed \$_____ in any one year, except as otherwise agreed upon. Reimbursement shall be made within _____ days after the Tenant submits the bill.
4. Furnish _____ % of the limestone used on the farm, together with _____ % of hauling and spreading costs. If the Tenant hauls and/or spreads the limestone furnished by the Landlord, the Landlord shall pay the Tenant the customary rate per ton for such work as agreed upon in writing before the work is done.
5. Replace or repair as promptly as possible the dwelling or any other building or equipment regularly used by the Tenant that may be destroyed or damaged by fire, flood, or other cause beyond the control of the Tenant and, until such replacement or repair is made, to compensate the tenant as follows:

6. Other responsibilities of the Landlord:

Let the Tenant make minor improvements of a temporary or removable nature, which do not mar the condition or appearance of the farm, at the Tenant's expense. The Landlord further agrees to let the Tenant remove such improvements at any time this lease is in effect or within _____ days thereafter, provided the Tenant leaves in good condition that part of the farm from which such improvements are removed. The Tenant shall have no right to compensation for improvements that are not removed except as mutually agreed.

7. Reimburse the Tenant at the termination of this lease for field work done and for other crop costs incurred for crops to be harvested during the following year. Unless otherwise agreed, current custom rates for the operations involved will be used as a basis of settlement.

Section V. The Tenant Agrees to:

1. Follow the farming practices that are generally recommended for and that are best adapted to this type of farm and for this locality unless other practices are agreed upon.
2. Furnish all labor, power, machinery, and movable equipment and all related operation and maintenance expenses to operate the farm except as follows:
3. Furnish all labor for minor repair and the minor improvement of buildings, fences, and drains with the material to be furnished by the Landlord. The buildings, fences, and other improvements on the farm are to be kept in as good condition as they are at the beginning of the lease, or in as good condition as they may be put in by the Landlord during the term of the lease; ordinary wear, depreciation, or unavoidable destruction excepted.
4. Cut the weeds in lots, fence rows, and along roads to prevent reseeding. Mow permanent pastures at least once each year when it is most effective to destroy weeds and other undesirable plants.
5. Keep livestock out of the fields when the soil is soft, and protect sod crops, especially new seedings, from too close grazing that might impair the following year's crop.
6. Follow NRCS and/or FSA recommendations and fulfill all other requirements necessary to maintain the rights of current and future tenants of this farm to participate in federal farm programs. Planted acreages and yields of crops shall be reported as required by FSA.
7. Store and use pesticides, fertilizers, and other chemicals, and dispose of containers in accordance with state and federal regulations and recommendations. Furnish the Landlord a written field-by-field record of the amount, kinds, and dates of applications of pesticides and fertilizers.
8. Store no motor vehicles, tractors, fuel, and chemicals on the farm in violation of restrictions in the Landlord's insurance policies.
9. Apply fertilizer as follows:

	<u>Corn</u>	<u>Soybeans</u>	_____
Potash (K ₂ O) no less than	_____ lb/a	_____ lb/a	_____ lb/a
Phosphate (P ₂ O ₅) no less than	_____ lb/a	_____ lb/a	_____ lb/a
Nitrogen (N) no more than	_____ lb/a	_____ lb/a	_____ lb/a
10. Neither assign this lease to any person or persons nor sublet any part of the real estate for any purpose without the written consent of the Landlord except in case of death or disability of the tenant.
11. Not to: a) erect or permit to be erected on the farm any permanent structure, b) incur any expense to the Landlord for such purposes, or c) add electrical wiring, plumbing, or heating to any building without written consent of the Landlord.
12. Control soil erosion according to a conservation plan approved by NRCS; keep in good repair all terraces, open ditches, inlets and outlets of tile drains; preserve all established watercourses or ditches including grassed waterways; and refrain from any operation or practice that will injure such structures.
13. Plant no fall seeded crops without written consent of the landlord.
14. When leaving the farm, to pay the Landlord reasonable compensation for any damages to the farm for which the Tenant is responsible. Any decrease in value due to ordinary wear and depreciation or damage outside the control of the Tenant is exempted.
15. Yield peaceable possession of the farm at the termination of this lease.

Section VI. Rights and Privileges

1. The Landlord or anyone designated by him shall have the right of entry at any mutually convenient time to inspect the property and/or the farming methods being used.
2. The Tenant shall have the right of entry for _____ days after the termination of the lease for the purpose of harvesting spring seeded crops. The Landlord or his designated agent shall have the right of entry to plant fall crops following harvest of the current year's crops.
3. If this lease is terminated before the Tenant shall have obtained the benefits from any other labor or expense he may have made in operating the farm, according to contract or agreement with the Landlord during the current lease year, the Landlord shall reimburse the Tenant for such labor and expense. The Tenant shall present, in writing to the Landlord, his claim for such reimbursement at least _____ days before the termination of this lease.
4. Transfer of ownership of this farm shall be subject to the provisions of this lease.

Section VII. Enforcement of Agreements and Arbitration

1. Failure of either the Landlord or the Tenant to comply with the agreement set forth in this lease shall make that person liable for damages to the other party. Any claim by either party for such damages shall be presented, in writing to the other party, at least _____ days before the termination of this lease.
2. The provisions of this lease shall be binding on the heirs, executors, administrators, and assigns of the party or parties involved.
3. Any disagreements between the Landlord and the Tenant shall be referred to a board of three disinterested persons, one of whom shall be appointed by the Landlord, one by the Tenant, and the third by the two thus appointed. The decision of these three shall be considered binding by the parties to this lease unless a sum exceeding \$_____ is involved. Any cost for such arbitration shall be shared equally between the two parties of this lease.

Section VIII. Other Agreements and Provisions

Section IX. Signatures

_____	_____	_____	_____
(Tenant)	(Date)	(Landlord)	(Date)
_____	_____		
(Witness or Notary Public)	(Date)		

Section XR1. Annual Renewal for Crop Year 20_____

1. Annual rent for crop year 20_____ shall be \$_____ payable on the same dates and in the same proportion as specified in Section II.
2. All other agreements in this lease are hereby renewed for crop year 20_____.

(Tenant)_____
(Date)_____
(Landlord)_____
(Date)**Section XR2. Annual Renewal for Crop Year 20_____**

1. Annual rent for crop year 20_____ shall be \$_____ payable on the same dates and in the same proportion as specified in Section II.
2. All other agreements in this lease are hereby renewed for crop year 20_____.

(Tenant)_____
(Date)_____
(Landlord)_____
(Date)**Section XR3. Annual Renewal for Crop Year 20_____**

1. Annual rent for crop year 20_____ shall be \$_____ payable on the same dates and in the same proportion as specified in Section II.
2. All other agreements in this lease are hereby renewed for crop year 20_____.

(Tenant)_____
(Date)_____
(Landlord)**Section XR4. Annual Renewal for Crop Year 20_____**

1. Annual rent for crop year 20_____ shall be \$_____ payable on the same dates and in the same proportion as specified in Section II.
2. All other agreements in this lease are hereby renewed for crop year 20_____.

(Tenant)_____
(Date)_____
(Landlord)_____
(Date)

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