

**LONG-TERM ORCHARD/VINEYARD LEASE**

(This lease is designed to accommodate an orchard/vineyard from pre-planting through its productive life).

**THIS INDENTURE** made this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year), by and between \_\_\_\_\_ of \_\_\_\_\_, Michigan, hereinafter referred to as LESSOR, and \_\_\_\_\_ of \_\_\_\_\_, Michigan, hereinafter referred to as LESSEE.

**WITNESSETH:**

**WHEREAS:** \_\_\_\_\_

As LESSOR(s) for and in consideration of the covenants and agreements hereinafter mentioned to be performed by \_\_\_\_\_, as LESSEE(S), do hereby demise and lease to said LESSEE the premises in the county of \_\_\_\_\_, State of Michigan, described as follows:

To have and to hold above demised premises by the LESSEE, commencing on the \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year) and to remain in full effect until the \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year). This lease is extendable beyond the period specified above by written, mutual consent of both LESSOR and LESSEE.

**SECTION I**

(A) The LESSOR, for itself, it's successors and assigns agrees herein to provide the following on subject premises:

- 1) All real estate as described above;
- 2) All other real or personal property specifically itemized below: (For example, this could include such items as fruit trees, cooling pad, buildings, deer fences, well, equipment, irrigation, trellis, etc.)

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.

3) LESSOR shall bear the entire cost of all property taxes assessed on the above-described premises for the duration of this lease. In the event that LESSOR has subject property taxes in arrears, LESSEE has the option to pay such taxes and deduct those from subject lease payments.

4) LESSOR shall permit ingress and egress to subject premises whenever it is necessary and consistent with acceptable farming practices.

5) Any insurance desired for the above items will be \_\_\_\_\_ responsibility.

(B) The LESSOR, for itself, its successors and assigns agrees herein to provide to LESSEE the right to match any acceptable bona-fide offer on the purchase of subject lands presented at any time this lease is in effect. LESSOR shall provide to LESSEE, by certified mail, the terms, price, and other conditions of sale AND shall inform both LESSEE and sales agent/broker of LESSEES and SALES AGENTS' identification, address, and phone numbers respectively, within 7 days of original bona-fide offer.

LESSEE shall have 30 days, commencing upon receipt of certified mail, to respond in writing, also by certified mail, to both LESSOR and sales agent/broker of LESSEE'S intentions to either accept or reject original purchase offer.

If LESSOR properly and judiciously informs LESSEE of acceptable purchase offer as specified above, failure of LESSEE to return certified mail intentions within the subsequent 30 days, as specified above, shall invalidate LESSEE'S right to match purchase offer and leave LESSOR free to consummate the original purchase offer.

## SECTION II

The LESSEE, for itself, its successors and assigns agrees herein to perform all the following functions on subject premises:

- (A) Except as otherwise provided for by mutual consent of both LESSOR and LESSEE, LESSEE shall provide to LESSOR the actual quantities marketed by crop type on all subject crops harvested, on or before December 15 of that crop year. If possible, processor receipts or other third-party documentation should be submitted in support of this report.
- (B) LESSEE shall maintain any and all portions of these subject premises in a condition consistent with generally acceptable farming practices.
- (C) LESSEE shall hold LESSOR harmless from any liability based upon LESSEE'S operations on subject premises.
- (D) LESSEE shall make no claim and LESSEE expressly waives all claims against LESSOR due to any personal injuries sustained or damages to property incurred on subject premises unless such injury or damages is attributable to LESSORS conduct or omissions.

(E) LESSEE, at their sole discretion, shall be responsible for all marketing and sales decisions on subject crops, unless as specified hereinunder in this document. This shall include but not be limited to, any diversion requirements under any enforceable marketing order.

LESSOR, however, reserves the right to obtain reasonable compensation for any diversion exceeding statutory requirements as specified in a following section of this document.

(F) LESSOR, if subject to exclusive delivery contracts, is solely responsible to either cancel this obligation or mutually resolve this obligation with LESSEE.

(G) LESSEE shall be responsible for all income distribution of subject crops as specified hereinunder in this document.

(H) LESSEE shall bear all responsibility to make available any and all stock or equity required to sell or otherwise market any subject crops.

(I) LESSEE shall have the right, at their sole discretion, to record this lease at the County Register of Deeds where subject lands reside.

**SECTION III**

THE LESSEE, for itself, its successors and assigns, AND LESSOR for itself, its successors and assigns agrees to the following:

(A) DURING ORCHARD/VINEYARD ESTABLISHMENT AND COMMERCIALY NON-BEARING YEARS, DEFINED AS THE FIRST \_\_\_\_\_ YEARS OF POST-PLANTING:

- 1) Direct operating expenses on subject premises, including costs for fertilizer, chemicals, IPM scouting, repellants, and mulches shall be borne by the

respective parties according to the following percentages:

LESSEE: \_\_\_\_\_%

LESSOR: \_\_\_\_\_%

2) EQUIPMENT on subject premises shall be provided for as follows:

3) LABOR AND MANAGEMENT on subject premises shall be provided for as follows:

4) TREES, VINES and TRELIS SHALL BE provided by the respective parties on subject premises according to the following percentages:

LESSEE \_\_\_\_\_%

LESSOR \_\_\_\_\_%

5) IRRIGATION SHALL be provided on subject premises as follows:

6) ALL REPAIRS AND MAINTENANCE necessary to maintain subject lands and orchards/vineyards, fixtures, equipment and irrigation in accordance with generally accepted farming practices, shall remain LESSEE'S sole responsibility unless defined specifically otherwise immediately below, to wit:

7) Other considerations (such as deer fencing, cooling pads, wells, buildings, land clearing or preparation, etc.) shall be provided for specifically as follows:

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

(B) DURING COMMERCIALY BEARING YEARS (DEFINED AS YEARS FOLLOWING NON-BEARING YEARS AS SPECIFIED IN SECTION III A PREVIOUSLY:

1) LESSEE shall provide all labor, management, equipment, and all operating expenses necessary for maintenance, harvesting and trucking of all subject crops in accordance with generally accepted farming practice EXCEPT as provided for immediately below, to wit:

2) OTHER CONSIDERATIONS SHALL be provided for specifically as follows:

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

SECTION IV

**LEASE PRICING OPTIONS DESCRIPTION AND DEFINITION OF "SUBJECT CROP INCOME".**

(A) OPTION "A": If chosen, this pricing option is designed to reimburse LESSEE their operating expenses attributable to subject crops FIRST. Residual returns thereafter are typically shared between LESSOR and LESSEE.

(For example, LESSEE received the first 14 cents/lb. of tart cherries; LESSEE and LESSOR then each receive 50% of remaining residual income as it is received. Per acre, bushel, or per ton may be other pricing units.)

(B) OPTION "B": If chosen, subject crop income is allocated by a defined percentage of each payment received to LESSOR and to LESSEE.

(For example, LESSEE retains 90% of crop income subject to lease; LESSOR receives 10% of each subject payment. An alternative frequently allows LESSEE to "hold" LESSOR'S share until a specified date.)

(C) OPTION "C": An annual fixed rate or amount is paid by LESSEE to LESSOR on or before specified date(s).

(For example, LESSEE pays LESSOR \$50 per acre annually for the first 7 years of orchard establishment, then \$250 per acre per year thereafter.)

(D) OPTION "D": (You define this option.)

For purposes of this Lease, "Subject Crop Income" to be allocated and distributed is defined as follows:

Actual income received from buyer(s) for subject crop plus any allocable withholdings not directly related to sales of that subject crop.

(For example, deductions such as marketing taxes, assessments, storage, packing, or box rental allocated to subject crop are herein considered to be directly related to sales of that crop. Net allocable payment received after these deductions would, therefore, be "subject crop income". However, deductions for stock purchases, liens to creditors, trucking (LESSEE'S obligation prior section herein) or for expenses deducted against non-subject crops must be added back to net payment in determining "subject crop income", since they are not directly related to LESSOR'S obligations of that subject crop. Other identified deductions relating to "subject crop income" shall be defined as follows:

**SECTION V**

**LEASE FORMULAS DEFINED BY CROP:**

- (A) CROP #1: \_\_\_\_\_
- 1) UNRESTRICTED OR "FREE-MARKET" PORTION
    - a. OPTION TYPE (FROM SECTION III): \_\_\_\_\_
    - b. TERMS:
    - c. SCHEDULE OF PAYMENTS TO LESSOR:
  - 2) RESTRICTED OR DIVERSION CROP PORTION UP TO STATUTORY REQUIREMENT:
  - 3) EXCESS DIVERSION PORTION OVER STATUORTY REQUIREMENT (IF ANY)

(B) CROP #2: \_\_\_\_\_

1) UNRESTRICTED OR "FREE-MARKET" PORTION

a. OPTION TYPE (FROM SECTION III): \_\_\_\_\_

b. TERMS:

c. SCHEDULE OF PAYMENTS TO LESSOR:

(C) CROP #3: : \_\_\_\_\_

2) UNRESTRICTED OR "FREE-MARKET" PORTION

a. OPTION TYPE (FROM SECTION III): \_\_\_\_\_

b. TERMS:

c. SCHEDULE OF PAYMENTS TO LESSOR:

## SECTION VI

### **LEASE TERMINATION PRIOR TO PREVIOUSLY DEFINED DATES**

(A) Lease can be terminated at any time by mutual agreement of settlement arrangements in writing by both LESSOR and LESSEE.

(B) In the event that early termination of this lease becomes desirous by either LESSOR or LESSEE, and mutual agreement cannot be obtained to that end by both LESSOR and LESSEE, settlement of lease termination shall be consummated as follows:

1) **IF LEASE TERMINATION IS INITIATED BY LESSEE WITHOUT MUTUAL CONSENT:**

- a. LESSEE must inform LESSOR, in writing, by certified mail on or before December 15 of the year preceding crop year of intention to prematurely terminate lease.
- b. LESSEE must provide to LESSOR, by certified mail within 120 days of termination notice, a reasonable and justifiable estimate of all allocable expenses attributable to subject lease actually disbursed by LESSEE from inception of lease through termination date, with no interest adjustment. This figure should include all direct, out-of-pocket operating expenses allocated to leased properties which LESSEE actually paid.
- In addition, this figure shall include LESSEE'S direct investments in subject crops' capital assets calculated at "book" value, as evidenced by IRS depreciation lapse schedules, if such assets remain with LESSOR.
- c. LESSEE must also provide by certified mail to LESSOR all subject crop income received to LESSEE from lease inception, inclusive, also by due dates defined in Section VI B(1)b above.
- d. Subject crop income received by LESSEE, as defined immediately above, shall be subtracted from allocated expenses defined in Section VI(B)1b above.
- e. If the result in Section VI(B)1d is positive, this represents actual expenses paid by LESSEE that have not been re-imbursed from income,

subject to the lease. LESSOR must pay directly to LESSEE 100% of this calculation (in addition to any accrued interest, according to terms identified in Paragraph (h) below) OR the certified appraised value of subject orchard/vineyards on proposed termination date whichever is less. This certified appraisal shall be performed by someone recommended as appropriately experienced by Farm Credit Services. Cost for this service shall be borne equally by LESSOR and LESSEE.

- f. Documentation in support of these calculations should be provided to LESSOR if such request is appropriate, available, and reasonable.
- g. Failure of LESSEE to provide above calculations under Section VI B (1) b, c, and d, within the 120 days of termination notice to LESSOR shall limit LESSEES compensation to zero.
- h. If termination settlement is unresolved 90 days after receipt of calculations in Section VI (B)(1) b,c, and d, a third-party arbiter shall be identified as mutually agreeable by both LESSOR and LESSEE. Said arbiter's findings on calculations shall be binding on both LESSOR and LESSEE. All costs to pay for arbiter shall be borne equally by both LESSOR and LESSEE. Interest shall accrue on any arbitered or agreed settlement amount at 15% Annual Percentage Rate beginning 91 days after receipt of calculations to LESSOR from LESSEE.

i. LESSOR shall pay all settlement, with interest, on or before 180 days of receipt of LESSEE'S calculations in Section VI(B)1e above. Failure to do so expressly permits LESSEE to file appropriate liens on LESSOR'S subject lands. Interest shall continue to accrue at the above stated rates until paid in full.

2) **IF LEASE TERMINATION IS INITIATED BY LESSOR WITHOUT MUTUAL CONSENT:**

- a. LESSOR cannot terminate this lease without consent of LESSEE for a minimum period of 20 years from the initial signing of this lease.
- b. Subsequent to the above-described 20 year minimum restriction, LESSOR must inform LESSEE, in writing by certified mail of intention to prematurely terminate lease; such notice must be given on or before December 15 preceding the crop year to be terminated.
- c. LESSEE must provide to LESSOR, by certified mail, a reasonable and justifiable estimate of foregone future value of profits to LESSEE (defined as expected subject future crop income minus all allocable future expenses, including non-hired labor, management, and equipment) adjusted by a reasonable and justifiable present value discount, calculated to original lease termination date as defined on Page 1.
- d. Documentation in support of these calculations should be provided to LESSOR if requested, available, and appropriate.

- e. Failure of LESSEE to provide above calculations under Section VI(B)(2)c on or before April 15 preceding the terminated crop harvest shall limit LESSEES compensation to zero.
- f. LESSOR shall have the right to request a Financial Consultant recommended as appropriately experienced by Farm Credit Services to review LESSEE'S calculations related to their termination compensation. Cost of this consultation work shall be borne equally by LESSOR and LESSEE.
- g. LESSEE shall accept as termination compensation this outside consultant review if such compensation is less than LESSEE's own calculations, with one exception:  
If termination compensation disputes continue, and resolution cannot be obtained between LESSOR and LESSEE after the arrangements and options above have been exhausted, then a mutually agreeable third party shall be selected. This person shall have final authority in negotiating a settlement, and their word is binding.
- h. LESSOR agrees herein to pay to LESSEE 100% of lease termination compensation, complete with accrued interest on or before 180 days of receipt of LESSEES calculations. Interest shall be charged, beginning 91 days from receipt of LESSEES calculations under Section VI B(2)c at the Annual Percentage Rate of 15%.

Failure of LESSOR to pay LESSEE total compensation as outlined above before 180 days of receipt of LESSEE'S calculations expressly allows LESSEE to file appropriate liens on LESSOR'S subject lands. Interest shall continue to accrue at the above stated rates until LESSOR pays termination obligation with interest in full.

**SECTION VII**

- (A) COOPERATIVE PATRONAGE IS considered herein to be a return from cooperative activity, not from crops. Unless otherwise specified herein, all patronage distributions remain with the stockowner.
- (B) Crop insurances received remain with whomever pays the insurance premiums.
- (C) Unless otherwise specified herein, all Government Program payments allocated to leased land or subject crops remain with LESSEE.
- (D) THIS LEASE SHALL in no way be deemed to give rise to a partnership relation; neither LESSOR nor LESSEE shall have authority to obligate the other without written consent, except as otherwise specifically provided for in this document.
- (E) This lease is assignable or conveyable without mutual consent of LESSOR and LESSEE. However, any recipient of a successorship, conveyance or assign shall be fully obligated to all terms and requirements respectively, heretofore described in this lease document.

(F) THIS ORCHARD/VINEYARD LEASE CONTRACT SHALL BE binding on the heirs, successors, and personal representatives of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
LESSOR:

\_\_\_\_\_  
LESSEE:

\_\_\_\_\_  
WITNESS:

\_\_\_\_\_  
WITNESS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, a Notary Public in and for said County personally appeared \_\_\_\_\_ and \_\_\_\_\_

to me personally known to be the same persons described in and who executed the within instrument, who acknowledged the same to be their free act and deed.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County  
Michigan

My Commission Expires: \_\_\_\_\_

MSU-Extension, North Region  
Proofed 5/14/2001  
J.N./J.B./G.K.