STATE OF IOWA, MADISON COUNTY, ss. Inst. No. 1963 Filed for Record this 24 day of March 19 78 at 4:30 PM
Book 31 Page 770 Recording Fee 4.50 Mary E. Welty, Recorder, By mw Deputy

770

Comm. 3

2pgs

IN
RE
PAGE 1

FARM LEASE—CASH OR CROP SHARES

THIS LEASE, made and entered into this 28th day of November, A. D. 19 77, by and between HAROLD ELI[illegible] St. Charles, Iowa hereinafter referred to as Landlord, and BILLIE B. McKIBBEN hereinafter referred to as Tenant,

WITNESSETH: That Landlord, in consideration of the agreements hereinafter mentioned to be kept and performed by Tenant, does by these presents lease to Tenant the following described land, situated in Madison County, Iowa, to-wit:

All of the cropland located in the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of Section Three (3), Township Seventy-five (75) North, Range Twenty-six (26) West of the 5th P. M.

and containing 18.6 acres, more or less, to have and to hold the same to Tenant from the first day of March, 19 78, to the last day of Feburary, 19 81. And Tenant, in consideration of the leasing of the premises as above set forth, and in consideration of the promises and performances herein undertaken by the Landlord, agrees with Landlord:

1. To pay as rent for the same to the Landlord at his residence in St. Charles Madison County, Iowa, or at such other place as he may from time to time direct, as follows:

Six Hundred Fifty-one Dollars ($651) per year cash rent, the cash rent each year to be paid one half on or before May 1, and the balance on or before November 2, of each year during the term of this lease.

and employ such cultivation practices or soil conservation techniques

2. To prepare such ground and to plant such crops as may be designated and directed by Landlord ; unless otherwise agreed, in writing.[1]

3. **PROPER HUSBANDRY.** Tenant covenants to farm said premises in a good and husbandman-like manner; and, consistent therewith, and with the terms of this lease, to get the best crop production the nature of the soil and the season will permit.

4. **HARVESTING OF CROPS.** Tenant covenants to properly care for all growing crops in good and husbandman-like manner, and to harvest all crops in proper season, and failing so to do, Landlord may enter upon said premises, by himself or agents, and properly care for or harvest said crops and charge the cost to Tenant, as part of the rental herein, and so secured.

5. **TERMINATION OF LEASE.** This lease shall be continued for the lease term herein provided, except as it may be terminated by default of Tenant. Further, such lease shall continue after such agreed term from year to year, upon the same terms and conditions, unless either party gives due timely and legal written notice to the other of election to cancel or terminate any such extended lease period whereupon the tenancy shall terminate March 1, following; provided further such tenancy shall not continue because of absence of notice in case there be default in the performance of the existing rental agreement. Due, timely and legal written notice shall be notice on or betore September 1, as provided by law (Section 562.7 I.C.A. as amended), unless by express agreement, the parties provide the same notice at an earlier time, as follows:

6. **POSSESSION AND CONDITION AT END OF TERM.** At the expiration of the term of this lease, Tenant will yield up the possession of said premises to Landlord, and failing thus to deliver up said premises, Tenant agrees to pay Landlord $ 2.00 per day, as liquidated damages for any holding over period. Said premises at the time of such delivery of possession shall be in as good order and condition as when the same were entered upon by Tenant, excusable or insurable loss by fire, inevitable accidents and ordinary wear excepted.

7. **FARM BUSINESS ONLY.** No business other than operation of this farm shall be conducted by the Tenant except:

8. **CARE OF SOIL.** Tenant shall haul out and distribute upon the poorest tillable soil on said premises (except as may be otherwise directed by landlord) all the manure and compost suitable to be used whether on said premises at the beginning of this lease or accumulated during the term thereof; and further he shall not haul or remove from said premises, nor burn, any straw, stalks, stovers, stubble, or similar plant materials all of which shall be the property of the landlord unless otherwise herein expressly agreed, but Tenant may use the same on the premises for the farming operations.

9. **FERTILIZER, LIME AND CHEMICALS.** (a) Each shall be furnished, as required, by good husbandry, by the parties, and in the percentages, as follows:

	% Landlord	% Tenant
(1) **Commercial Fertilizer**		100
(2) **Lime and Trace Minerals**	0	100
(3) **Weed Control Chemicals**	0	100
(4) **Pest Control Chemicals**	0	100
(5) **Weed Spraying, Weed or Pest**	0	100
(6) **Other**	0	100

~~(b) Allocation: Phosphate and potash on oats as beans shall be allocated % first year and % second year, and on all other crops allocated % first year and % second year. Lime and trace minerals shall be allocated over 5 years. If Tenant does not stay enough years to receive the full above allocated benefits, he shall be reimbursed to the extent not received. Except as set out above, Tenant agrees to furnish without cost all labor, equipment and application for all fertilizer, lime, trace minerals, and chemicals.~~

10. **COST OF COMBINING AND SHELLING OF CROPS.** Such expense shall be borne as follows all by Tenant

10½. **FARM MACHINERY AND EQUIPMENT,** as necessary shall be furnished at the expense of, and by all by Tenant

11. **CARE OF TREES, SHRUBS AND GRASS.** Tenant shall preserve and keep the fruit and ornamental trees, vines and shrubbery, that are now or may be planted upon the premises, from injury by plowing or from cattle or other stock.

12. **WEED CONTROL.** All noxious weeds shall be sprayed or otherwise timely destroyed by Tenant. Weeds in fence rows shall by him be timely cut with a mower or scythe or sprayed with herbicide.

Copyright 1972 by The Iowa State Bar Association.
All rights reserved. No part nor all of this form may be reproduced by any means, without permission, in writing, from The Iowa State Bar Association.

For Notice of Termination see Misc. Rec. 33-551

13. **FURNISHING AND CLEANING SEED.** Seed shall be furnished and cleaned as follows: all by Tenant

In case any sweet clover, timothy, alfalfa or other grass crops are harvested for seed, Landlord is to receive 0 % of all seed free of expense to Landlord, but Landlord shall make reasonable adjustment on cash rent if seed is harvested from cash rent land.

~~14. DOWN BAR CORN. Tenant shall reimburse Landlord for one half of the down ear corn in excess of _____ bushels per acre.~~

15. **LANDLORD'S RIGHT OF ENTRY.** Landlord reserves the right to plow the ground after Tenant has harvested the crops if notice of the termination of this lease has been properly served. Landlord, or his legal representatives, may enter upon said premises for the purpose of viewing or seeding and making repairs, or other reasonable and ordinary purpose as Landlord.

~~16. NO REMOVAL OF GRAIN OR PRODUCE UNTIL PAYMENT OF RENT. Tenant further covenants except as arranged with or agreed by Landlord not to remove any of the grain or produce raised on said premises, during the term of said lease, until the rent herein specified shall be fully paid nor to sell the same or any part thereof. And if any grain or produce raised on said premises during said term shall be removed or attempted to be removed by any person or persons before the payment of said rent, or if Tenant should sell or attempt to sell said grain or produce, or any part thereof, except as aforesaid, or if the same or any part thereof shall be claimed or attached or levied upon by execution or claimed by any other person or persons upon any pretense whatever before said rent shall be fully paid, then upon the happening of any such contingencies said rent shall immediately become due and payable and Landlord, or his legal representative shall have the right to enter into said premises and take possession of said grain, wherever the same may be found, and to remove the same and sell the same or any part thereof, or if the same shall not be sufficiently matured for harvesting or gathering, to cultivate the same and to preserve or protect the same until it shall be fit, and then harvest and gather or sell the same or any part thereof, at private or public sale, and apply the proceeds thereof to the payment of the expenses and costs of carrying out the provisions of this [illegible] and the payment of said rent hereby reserved.~~

17. **VIOLATION OF TERMS OF LEASE.** If Tenant shall fail to cultivate said premises as herein agreed, or shall fail to keep any of the covenants contained in this lease or shall assign this lease or underlet said premises or any part thereof without the written consent of the Landlord, then this lease shall, at the election of the Landlord, be null and void, and the Landlord, or his legal representatives, shall have the right to take possession of said premises, using force as may be necessary with or without process of law, and all damages growing out of the failure to perform any of the covenants of this lease, shall be added to and become part of the rent, recoverable as rent. Without limiting the generality of the foregoing, any failure to pay rent when due shall entitle the Landlord to immediate possession, and any violation of the terms of this lease, or failure to pay any cash rent when due, shall cause all unpaid cash rent to become due and collectible at once, and without notice to, or demand upon, Tenant.

~~18. DELIVERY OF LANDLORD'S GRAIN. Tenant, without cost to Landlord, shall deliver Landlord's grain when requested by Landlord from time to time, to the elevator, [illegible] or elsewhere as directed by Landlord, at no further distant point.~~

19. **LANDLORD'S STORAGE SPACE.** Landlord reserves 0 % of the crib and granary space for storage of rent share crops.

20. **LANDLORD'S LIEN AND SECURITY INTEREST. TENANTS' WAIVER.** Tenant as to any of his personal property on said premises hereby waives and relinquishes all rights of exemption from sale or seizure under distress or execution, that he now has or may hereafter have by virtue of any law of the state exempting personal property from seizure and sale to the extent necessary to protect Landlord in the enforcement of his liens herein and in the payment of all rental as agreed. Said Landlord shall have in addition to the lien given by law, a security interest as provided in the Uniform Commercial Code of Iowa, upon all personal property owned, kept and used on said premises by Tenant, during the term hereby agreed to be paid. Landlord may proceed at law or in equity with any remedy by law for the recovery of rent, or from the termination of this lease, because of Tenant's default in its performance.

21. **REPAIRS.** Tenant shall keep said premises, including the hedges and fences, in proper **repair**, provided that Landlord shall furnish necessary material, that he or his agent consider needful to **repair** said premises within reasonable time after being notified, and Tenant shall haul said material to said premises without charge.

22. **NEW IMPROVEMENTS.** All buildings, fences and improvements of every kind and nature that may be erected on the above described land during the term of this lease by Tenant shall be deemed as additional rent and shall inure to the premises and become the property of the Landlord unless permission to erect and remove same shall be obtained in writing and made a part of this lease.

23. **EXPENSES INCURRED WITHOUT CONSENT OF LANDLORD.** No expense shall be incurred for or on account of Landlord without first obtaining his written order. As to this paragraph and as to paragraphs 21, 22 and 25, no mechanics' liens shall be imposed upon or foreclosed against the real estate described herein.

24. **PARTICIPATION IN GOVERNMENT PROGRAMS.** Participation of this farm in any offered program by the U. S. Department of Agriculture for crop production control or soil conservation and the observance of the terms and conditions of same shall be at the option of Landlord. Division of Government payments thereunder shall be 50-50 unless otherwise agreed between these parties, as follows: _____

25. **WELL, WINDMILL AND WATER SYSTEM.** Tenant agrees to keep the well, windmill and water system in good **repair** at his own expense, except in case of severe windstorm damage or complete destruction which cannot be attributed to his neglect. No guarantee either expressed or implied is made by Landlord for any continuous and adequate water supply.

26. **ACCOUNTING.** The method used for dividing and accounting for the harvested grain shall be a customary method and chosen by Landlord.

27. **ATTORNEY FEES AND COURT COSTS.** Tenant also agrees to pay and discharge all costs and attorney fees or any expense that shall arise from enforcing any of the covenants of this lease by Landlord and all crops growing, or in cribs or granary on said premises shall be security for all sums due or to become due from Tenant to Landlord as evidenced by book account or note held by and originally payable to Landlord (or either, if more than one).

28. **CHANGES IN LEASE TERMS.** No act of either party, or both parties, shall be construed as an extension of this lease, or any change in the terms and provisions, unless changes are reduced to writing and signed by both parties.

29. **DELAY IN GIVING POSSESSION.** If Landlord is unable with due diligence, to give Tenant possession at the beginning of the term hereof, the cash rent only shall be rebated on a pro rata basis as to time, until possession can be delivered, which rebated cash rental shall be accepted by Tenant as full settlement of all damages occasioned by said delay; and if possession cannot be delivered within 15 days after the beginning of the said term either Landlord or Tenant may thereupon terminate this lease by giving the other party notice of such termination.

30. **TELEVISION.** Tenant shall have the right to install and remove television antenna on said premises and shall be liable for any and all damages occasioned thereby.

31. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as the appropriate gender, according to the context.

32. **ADDITIONAL PROVISIONS.** By express agreement, the following special provisions are made a part of this lease:

Landlord acknowledges that this lease is made as a part of a transaction in which Tenant is leasing an additional 24 acres adjacent to the above property from Joseph Jones, St. Charles, Iowa, and agrees that he will take no action inconsistent with Tenant farming Mr. Jones' 24 acres and the land covered in this lease as one field or parcel.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

Billie B. McKibben

Billie B. McKibben

TENANT

Harold Ellson

Harold Ellson

LANDLORD

Mailing address of Tenant; also sometimes referred to as Debtor in the Uniform Commercial Code, Section 554.9402:

Address of Landlord; also sometimes referred to as the Secured Party in the Uniform Commercial Code, Section 554.9402:

For additional individual acknowledgments use Official Form No. 11

For additional corporate acknowledgments use Official Form No. 12

STATE OF IOWA, MADISON County, ss:

On this 27 day of December, 19 77 before me, the undersigned a Notary Public in and for said County and said State, personally appeared Billie B. McKibben and Harold Ellson

to me known to be the identical persons named in and who executed the foregoing Lease, and acknowledged that they executed the same as their voluntary act and deed.

CAROLYN H. AUSTIN

Carolyn H. Austin

Notary Public in and for said County and State

[1](Numbered paragraph 2 above). As to the desirability of this paragraph under certain circumstances, consider "The Farm Operation Agreement—Partnership or Lease" by Gene L. Needles and Edward R. Hayes, 6 Drake Law Review 37, at page 50, middle: "Social Security Problems in Farmers' Retirement Planning," by Francis Fitzgibbons, Program of Annual Tax School of the Iowa State Bar Association (1957) page 117; News Bulletin of Iowa State Bar Association, October 1956, page 3; and News Bulletin, February, 1957, page 1.

Mc Kibben to Harold Ellson, Apt. 1, Apt. Chandler