



FLEXIBLE CASH LEASE AGREEMENTS

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This Factsheet is one of a series on leasing agreements. The first Factsheet *Land Lease Arrangements*, Order No. 01-065 details the legal, tax and management considerations of leasing land.

Leasing and renting land is a common practice in rural Ontario. The types of rental arrangements for cropland vary widely throughout the province, as do the relationships between landlords and tenants. What is desirable or fair for one particular landlord-tenant relationship is not acceptable for others. The purpose of this Factsheet is to help tenants and landlords develop fair crop share lease agreements and assist them in making sound decisions. A sample flexible cash lease can be found in Appendix A.

SECTION 1 — THE BASICS OF A LEASE AGREEMENT: LEGAL AND TAX ISSUES

HUMAN COMPONENTS OF A SUCCESSFUL LEASE

Any form of business agreement requires a good deal of mutual respect and trust. Leasing land is no different. To be successful the lease arrangement must satisfy both the landlord and the tenant. Before entering into a lease the landlord and the tenant should consider more than just price. The compatibility of the landlord and the tenant and the fairness of the lease should be considered. The following is a list of characteristics commonly found in successful lease agreements:

- **Compatibility** — Can you get along and discuss differences?
- **Honesty** — Do you trust the person you're dealing with?
- **Clarity** — Do you both know what the terms of the lease are and is in writing?
- **Equitable Terms** — Are the terms fair to each party?
- **Flexibility** — Can you adjust the lease if changes occur?
- **Suitability** — Does the lease fit the crop and encourage good agricultural practices?

IS A CROP SHARE LEASE THE BEST ARRANGEMENT FOR YOU?

The high capital cost of land makes leasing an attractive alternative to ownership. There are advantages and disadvantages to leasing farmland to consider before entering into a leasing agreement. *Table 2* lists the advantages and disadvantages of a flexible cash lease arrangement.

ADVANTAGES OF A WRITTEN AGREEMENT

While the majority of farm lease agreements are verbal in nature, there are advantages to putting an agreement in writing.

- The greatest benefit is a clear understanding of the terms of the lease agreement. Even though a verbal lease agreement is a valid form of contract, it is exceedingly difficult to prove what the terms are in the event of a disagreement. A written lease provides both the landlord and the tenant with a record of what they have agreed to.
- It makes the expectations and responsibilities of both parties clear and, if a dispute arises it can prevent costly legal action by providing for alternatives to a court proceeding.
- It provides a valuable guide to heirs if the landlord or tenant should die.
- It provides documentation for tax purposes.

A written agreement is not a sign of distrust, but rather a desire of both parties to have a clear understanding of the agreement they are making.

TABLE 1. Summary of Required, Recommended and Optional Lease Items

WRITTEN LEASE AGREEMENTS

Required Items	Recommended Items	Optional Items
Names and Addresses of Tenant and Landlord	Right of Inspection and Removal of Crops — landlord has the right to enter the rented property, the tenant has the right remove the crops. Also deals with compensation for the tenant and the incoming tenant rights	Resolving Differences — an arbitration clause describes how disagreements that the tenant and landlord cannot resolve themselves, would be dealt with. The most common practice is appointing an arbitrator
Description of Property to Be Rented — includes common legal description and specifies buildings or areas to be excluded	Transfer of Property —landlord and tenant should discuss their expectations if/when the landlord sells the farm property to a new owner during the term of the lease	Production Practices and Management Decisions — decisions the landlord wants carried out by the tenant. For example: <ul style="list-style-type: none">• cropping decisions• use of manure, fertilizer and chemicals• crop and revenue insurance• delivery and sale of crop
Term and Renewal of the Lease — when it starts, how long it lasts and, when and how the lease can be renewed	Termination of the Lease — clause that clearly spells out how the lease can be terminated	Income Support Payments, Subsidies and Reimbursements — a clause clearly specifying who will receive government or marketing agency payments
Rent Payable — how much, how it is calculated and when it is to be paid	The Use of the Land — clause that states how the tenant is going to use the land	Compensation for Repairs to Buildings, Fences, and Improvements — who is responsible for repairing buildings, fences, and other improvements, and how the expenses will be shared
	Environment Matters —clause addressing issue of environmental policies and responsibilities	Compensation for Property Damages — the party who has suffered the loss should receive any compensation payable
	Insurance —clause allows landlord and tenant to identify who will be responsible for insurance coverage	Rights of First Refusal — the landlord may include an option for the tenant to purchase the property by matching the offer the landlord receives from a third party
	Rights to Assign or Sublet the Lease — a clause that prevents the tenant from subletting	Option to Purchase — a clause giving the tenant the option to purchase the leased lands
		Municipal Zoning Restrictions — the tenant enters into a farm lease with the express intention of conducting agricultural operations; thus, it is important that the landlord provide an assurance to the tenant that the lands are properly zoned for such use

THE COMPONENTS OF A LEASE AGREEMENT

A written lease can be as simple or detailed as the landlord and the tenant wish. *Table 1* and the following section summarize the information to consider in drawing up a lease agreement. These are categorized under 3 headings:

- **Required** — all leases must contain this information
- **Recommended** — items that every landlord and tenant should consider including in the lease agreement
- **Optional** — items add clarity to the lease agreement and provide discussion points for the landlord and tenant as they formulate the lease agreement.

TAX IMPLICATIONS OF LAND LEASES

The tax implications of leasing are discussed in detail in the OMAFRA Factsheet *Land Lease Arrangements*, Order Number 01-065.

Loss of Rollover and \$500,000 Capital Gains Exemption

Landlords can inadvertently disqualify themselves from being able to use the following 2 major tax provisions.

1. The ability to use a tax deferred rollover on the transfer of land to children (called a rollover)
2. The \$500,000 capital gains exemption on their land.

This can happen because Canada Customs and Revenue Agency (CCRA) do not consider many types of leasing arrangements farming. Even a share crop lease, where a percentage of the crop is given to the landowner as payment for the land rent, does not meet their definition. As a result some leasing arrangements can cause a landowner to lose their farming status and the ability to use the tax provisions. While these cases are not widespread and can often be remedied, consult with your accountant on how a lease might affect your situation.

Goods and Service Tax (GST)

Rent, which is paid by way of share of the crop, is not subject to the goods and service tax. The treatment of cash rents for GST purposes depend on whether the landlord is registered with Canada Customs and Revenue Agency to collect and remit the GST. If a landlord is not registered they are not required to charge the tax on the rent. If the landlord is registered, then the GST must be charged on cash rentals. The tenant is able to claim an Input Tax Credit on the tax paid.

Farmland Property Tax Program

The Farmland Property Tax program enables eligible farm properties to be taxed at 25% of the municipal residential/farm tax rate. The farm residence, and 1 acre of land surrounding it, is taxed as part of the residential class. To be eligible for the reduced rate a property must be part of a farming business with gross farm income of \$7,000 or

more, and must have applied for and received a valid farm business registration number. A landlord who is not registered can still obtain the reduced tax rate if the tenant has a valid farm business registration number. For further information contact AGRICORP toll free at 1-866-327-3678 or visit the Web site at www.farmbusreg.com.

SECTION 2 — DEVELOPING A FLEXIBLE CASH LEASE ARRANGEMENT

FLEXIBLE CASH LEASE ARRANGEMENTS

Since farm commodity prices and crop production costs can fluctuate widely from year to year, tenants and landlords may not want to commit themselves to a fixed cash rent for more than one year. Tenants are concerned a fixed cash rent could create a financial hardship if prices drop or if poor growing conditions reduce yields. Landlords may think it is unfair for the tenant to reap all the benefits of a sharp rise in crop prices or yields. At the same time, neither party wants a crop share leasing arrangement.

In these cases a flexible cash lease arrangement can help a tenant and landlord reach an agreement that addresses both their concerns.

Table 2 outlines the advantages and disadvantages of a flexible cash lease arrangement for both tenant and landlord.

TABLE 2. Advantages and Disadvantages of Flexible Cash Leases

Advantages:	Disadvantages:
The tenant reduces their financial risk if the cash rent is adjusted down when crop prices or yields are below normal.	Flexible cash leases increase the financial risk for the landlord.
Less communication and joint decision making required that would be typical in a crop share lease.	If the rent adjustment involves yield the landlord will need to trust the tenant to accurately measure the production.
Cash rates tend to be set by previous year's prices. Flexible rent is based on the current year.	Calculating flexible cash leases can be more difficult and especially on lands that have multiple crops.
A well-designed flexible lease can reduce the need for frequent re-negotiation of cash lease levels.	The tenant will have to share the profits from unexpected price increases.
Flexible cash rent enables the landlord to share in the additional income that results from above average prices, yields or both.	

ESTABLISHING A RENTAL PRICE

A flexible cash lease rental price can be arrived at by adjusting for:

- crop price
- crop yield
- crop price and crop yield (gross margin).

In general, each method of adjusting the rental amount uses the same two concepts to arrive at a cash rental amount.

1. Either the yield or price is set in advance and the cash rent is calculated by multiplying the harvest price or yield.
2. A base price is set and an adjustment is made based on the price, yield or gross margin. These adjustments can be as simple or complex as the parties wish to make them.

There are almost an unlimited number of ways to make your lease agreement flexible. The following tables outline just some of the methods you can use.

Adjusting for Crop Price

Adjusting for price means that only the crop price affects the cash rental rate. The crop yield does not affect the rental rate. From a tenant's point of view this arrangement would not be advised if the land was prone to widely variable yields since low yields would not adjust the cash rent downward. The tenant in this case is exposed to the production risk.

This type of agreement must have a method of pricing the crop at harvest. For example, the price may be the average daily price of the crop from November 1st to December 1st as quoted by three local elevators. The landlord and tenants may also wish to consider a maximum and minimum amount of rent for those years of low yields and/or unusually high prices. In addition to this the tenant and landlord should decide how they are going to handle government support payments such as Market Revenue and if they will be included in the price determination formula.

Table 3 outlines the various methods that can be used to adjust for crop prices.

TABLE 3. Adjustments for Price Only

Method	Details	Example Calculation
Fixed Amount of Commodity	<ul style="list-style-type: none"> • rent is valued at a set quantity of yield • price is calculated using a local elevator or crop insurance 	Rent = 30 bushels/ac × \$3.30 = \$99.00 per acre As price changes so does the rental rate
Base Rent plus a set number of Bushels Priced at Harvest	<ul style="list-style-type: none"> • a base rent paid regardless of yield • additional rent based on the price of a set number of bushels of crop at harvest 	Rent = \$80 + (5 bu. × price at harvest) = \$80 + (5 × 3.30) = \$80 + 16.50 = \$96.50 per acre
Base Rent Varies with Base Price	<ul style="list-style-type: none"> • the base rent and base price of the crop are determined at the beginning of the lease • the harvest price is used in the final calculation to adjust the cash rental rate • the agreement would specify a method of determining the current year's price 	Base rent = \$100 per acre Base price = \$2.70 per bushel Current year's price = \$3.10 Rent = \$100 × $\frac{3.10 \text{ (current price)}}{2.70 \text{ (base price)}}$ = \$100 × 1.15 = \$115.00 per acre
Base Rent with Adjustments for Prices Outside a Specified Range	<ul style="list-style-type: none"> • the base rent and the price range that the base rent applies to are established • when the current year's price moves outside of that range the base price is adjusted based on a predetermined formula 	Base rent = \$100 per acre Price range = \$3.00 – \$3.20 Current year's price = \$2.80 Adjustment = for each 10¢ price change above or below this range the rent would change by \$5.00/acre. = $(\$3.00 - \$2.80) / 0.10 = 2$ Rent = \$100 – (2 × \$5.00) = \$90.00 per acre
Minimum Base Rent with Upward Adjustments	<ul style="list-style-type: none"> • a base rent is adjusted upward if the crop price at harvest rises above a predetermined level 	Base rent = \$100 per acre Current year's price = 3.30 Adjustment = \$5/acre for each 10¢ rise in price above \$3.20 Rent = \$100 + ((\$3.30 – \$3.20)/0.10) × \$5.00 = \$100 + (1 × 5.00) = \$105.00 per acre

TABLE 4. Adjustments for Yield Only

Method	Details	Example
Percentage of Crop	<ul style="list-style-type: none"> rent is paid based on a percentage of the crop at a predetermined price 	Yield = 130 bushels Percentage = 30% Pre determined price = \$2.90 Rent = $130 \times 0.30 \times 2.90$ = \$113.10 per acre
Fixed Payment per bushel	<ul style="list-style-type: none"> rent is calculated using a fixed price per unit of crop harvested 	Fixed payment per bushel = \$0.80 Yield = 140 bushels Rent = \$112.00 per acre
Base Rent plus a Fixed rate for each bushel over a minimum yield	<ul style="list-style-type: none"> base rent is fixed a fixed rate per bushel is made for yields above the predetermined minimum yield 	Base rent = \$100 per acre Minimum yield = 120 bushels Actual yield = 150 bushels Fixed rate for yields above the minimum = 0.80/bu Rent = $100 + ((150-120) \times .80)$ = $100 + (30 \times .80)$ = $100 + 24 =$ \$124.00 per acre
Landlord Takes Delivery of a Percentage of the Crop	<ul style="list-style-type: none"> landlord makes arrangements with the tenant and a local elevator to have a percentage of the crop registered in his name elevator deducts and remits any marketing fees landlord markets crop 	Percentage of Crop = 30% Yield = 150 bushels Landlord takes delivery of $150 \times 30 =$ 45 bushels /acre Note: <ul style="list-style-type: none"> this is sometimes referred to as a crop share lease, but is not in the true sense. See Factsheet 01-067 <i>Crop Share Lease Agreements</i> for more detail

TABLE 5. Adjustments for Both Price and Yield

Method	Details	Example
Percentage of the Crop	<ul style="list-style-type: none"> the most common type rent is based on a percentage of the crop price is established at harvest 	Percentage of crop = 30% Price of crop at harvest = 3.00 Yield = 140 bushels Rent = $0.30 \times 140 \times 3.00 =$ \$126.00 per acre
Base Price with Adjustments for Yield and Price	<ul style="list-style-type: none"> a base rent, price and yield are established the actual price and yield are then used to adjust the base rent 	Base rent = \$80 Base yield = 120 bushels Base price = \$2.80 per bushel Actual yield = 130 bushels Actual price = \$2.95 per bushel Rent = $80 \times \frac{130 \text{ (act. Yield)}}{120 \text{ (base yield)}} \times \frac{2.95 \text{ (act. price)}}{2.80 \text{ (base price)}}$ = $80 \times 1.08 \times 1.05$ = \$90.72 per acre
Base Rent Tied to Gross Income	<ul style="list-style-type: none"> a base rent is established adjustments are made to the base rent based on the amount of gross income from the crop above an established level e.g. \$0.50 for every 1 dollar over \$400 of gross 	Base rent = \$100 Actual yield = 160 bushels Actual price = \$3.00 per bushel Minimum Gross = \$400 per acre Actual Gross value = $160 \times 3.00 =$ \$ 480.00 Rent = $100 + ((480 - 400) \times .50)$ = $100 + (80 \times .50)$ = $100 + 40 =$ \$140.00 per acre

Adjusting For Crop Yield

Adjusting for yield only can be done several ways as outlined in *Table 4*. This type of agreement must have a mechanism for measuring the yield of the crop.

Adjusting For Crop Price And Yield (Gross Income)

If a landlord and tenant want to share both the price and the yield risk associated with a crop, they can do so using the methods of adjusting for both price and yield in *Table 5*.

COMPARING THE METHODS OF ADJUSTING

It is important that the landlord and tenant consider the possible outcomes of the flexing method they are using. The following example outlines the 3 methods and shows the results for both the landlord and tenant in *Table 6* and *Table 7*.

In each of the scenarios the base rent was set at \$100.00. In a real life situation the landlord and tenant would attempt to choose a base price that was close to the average rent in the area or slightly below. This would be the desired rental rate in an average year. In the examples below the average yield was 40 bushels and the average price was \$7.00. These prices and yields are only examples. Each landlord and tenant should determine the averages they want to use based on their individual situation.

Scenario A — Adjust for Only Price

The base rate is adjusted by \$3.25/acre for each 10 cent change in soybean price from the base price of \$7.00.

Note what happens to the rental rate if the yield is low and the price rises. The rental rate rises significantly. The landlord reaps a larger share of the profit while the tenants return increases only slightly.

Scenario B — Adjust Only for Yield

In this scenario the base rent of \$100.00/acre is adjusted by \$4.00 for every bushel above 40 bushels. For example a yield of 50 bushels would result in a rental rate of \$100.00 + $(\$4.00 \times 10) = \140.00

The landlord in this case does not benefit from an increase in the price or suffer because of a decrease.

Scenario C — Adjust for Both Price and Yield

In scenario C the base rent of \$100.00 is adjusted by the gross revenue of the crop. The base gross revenue is set at \$280 ($\7.00×40 bu.) The rental per acre is adjusted by \$0.50 for each \$1.50 change in gross income. For example at a price of \$8.00 and a yield of 45 bushels the gross income change would be \$80.00 ($\$360 - \280) The rent would be $\$100.00 + ((\$80 / \$1.50) \times \$0.50) = \$126.67$

ESTABLISHING A PRICE AND YIELD

The method of establishing both price and yield should be clearly spelled out in the written agreement. The tenant and landlord should clarify the following issues:

1. How is yield going to be measured? Will it be by volume in storage at the close of harvest, total weight, or harvested samples?
2. Will adjustments be made for moisture?
3. If volume is used as the measure, when is it measured and is test weight being considered?
4. How will the price be established? Will it include government support payments?

RESOURCES

Knowing your costs is important in determining a fair rental rate and developing a lease agreement. Your own records are the best source of this information, however when these are not available it is important to use realistic estimates. The following sources can be of help:

- **Publication 69, *Ontario Farm Management Analysis Report (OFMAP)***, published annually by OMAFRA
- **Publication 60, *Crop Budgets***, updated annually these 12 crop budgets can provide you with cost estimates.
- **Sample lease agreements** — electronic versions of the lease agreements
- **Land Leasing Tools Spreadsheet** – contains all the tables and calculations in this Factsheet.

All these documents can be found on the Business Development page of the OMAFRA Web site at: www.gov.on.ca/OMAFRA/english/busdev.

SUMMARY

One major purpose of a flexible lease is to reduce the tenant's risk. In exchange, the landlord shares in some added return if the yield or price increases. Both the landlord and the tenant should test their method of adjusting rent by using various crop yields and price scenarios. This will assure the agreement does not place undue hardship upon either the landlord or tenant. As in all crop lease situations, the tenant should estimate their cost of producing each crop closely before negotiating the lease. In addition, flexible leases do not adjust for unexpected changes in the cost of purchased inputs. Consequently, flexible rents should be re-examined periodically and adjusted to in response to changing input costs.

TABLE 6. Example of Flexible Cash Rent for Soybeans

	A				B				C			
	Base Rent with an Adjustment for the Price				Base Rent with an Adjustment for the Yield				Base Rent with an Adjustment for Price and Yield (Gross Value)			
Price /bu	Bushels per acre				Bushels per acre				Bushels per acre			
	35	40	45	50	35	40	45	50	35	40	45	50
\$ 6.50	83.75	83.75	83.75	83.75	80.00	100.00	120.00	140.00	82.50	93.33	104.17	115.00
\$ 7.00	100.00	100.00	100.00	100.00	80.00	100.00	120.00	140.00	88.33	100.00	111.67	123.33
\$ 7.50	116.25	116.25	116.25	116.25	80.00	100.00	120.00	140.00	94.17	106.67	119.17	131.67
\$ 8.00	132.50	132.50	132.50	132.50	80.00	100.00	120.00	140.00	100.00	113.33	126.67	140.00
\$ 8.50	148.75	148.75	148.75	148.75	80.00	100.00	120.00	140.00	105.83	120.00	134.17	148.33

TABLE 7. Tenant Position After Rent Payment

Tenants Position — Net Revenue After Rent Payment												
	Base Rent with an Adjustment for the Price				Base Rent with an Adjustment for the Yield				Base Rent with an Adjustment for Price and Yield (Gross Value)			
	35	40	45	50	35	40	45	50	35	40	45	50
\$ 6.50	143.75	176.25	208.75	241.25	147.50	160.00	172.50	185.00	145.00	166.67	188.33	210.00
\$ 7.00	145.00	180.00	215.00	250.00	165.00	180.00	195.00	210.00	156.67	180.00	203.33	226.67
\$ 7.50	146.25	183.75	221.25	258.75	182.50	200.00	217.50	235.00	168.33	193.33	218.33	243.33
\$ 8.00	147.50	187.50	227.50	267.50	200.00	220.00	240.00	260.00	180.00	206.67	233.33	260.00
\$ 8.50	148.75	191.25	233.75	276.25	217.50	240.00	262.50	285.00	191.67	220.00	248.33	276.67

This publication is intended as general information and not as specific advice concerning individual situations. It outlines some of the legal and tax considerations of leasing arrangements but it should not be considered as either an interpretation or complete coverage of the *Income Tax Act* or the law affecting land rental arrangements. The Government of Ontario assumes no responsibility towards persons using it as such. All land rental arrangements should be discussed with your farm management advisor, accountant, or lawyer before they are signed.

This Factsheet was written by **Rob Gamble**, Finance and Business Structures, Program Lead, Agriculture and Rural Division, OMAFRA, Guelph. Portions of this Factsheet were taken from a paper written by **Brian Hall**, OMAFRA and from a North Central Regional Extension Publication No. 73 entitled *Fixed and Flexible Cash Rental Arrangements for Your Farm*, by **Larry N. Langemeier**, Professor, Kansas State University. The author would like to gratefully acknowledge their permission to do so.

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APPENDIX A — SAMPLE FLEXIBLE CASH LEASE AGREEMENT

This sample lease provides landlords and tenants 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.

SECTION 1 — REQUIRED ITEMS

1. Names and Addresses of the Tenant and Landlord

This lease is entered into on *December 1st, 2000*, between *name of*, Landlord, of *R.R. # town name, Ontario* and *name of*, spouse of Landlord and *name of*, Tenant, of *R.R. # town name, Ontario* and *name of*, spouse of Tenant.

Instructional Note: If the family residence is included in the lease then it is important for the non-owning spouse to consent to the lease in order to satisfy the obligation of spouses under the family law of Ontario.

2. Description of Property to be Rented

The Landlord rents and leases to the Tenant, to occupy and to use for agricultural purposes only, the following real estate located in the *Township Name*, in the County, District or Region of *County Name* in the *Province of Ontario*, legally described as *Lot number, Concession number*, commonly known as the *common name* farm and consisting of approximately *number of acres*.

3. The Term of the Lease

Instructional Note: A lease of this nature cannot extend beyond a term of 21 years; it is suggested that the maximum term of the lease for paragraph (a) below be 20 years.

Only use one of the clauses below. If a continuing lease is desired, use paragraph (a) and strike out (b). If a definite term is desired, use paragraph (b) and strike out paragraph (a). No notice of termination is necessary if paragraph (b) is used.

- a) **Continuing Lease** — The term of this lease agreement shall be in effect for *number of year(s)* commencing on the *day month and year of*, and shall continue in effect from year to year thereafter (as an annual lease) unless written notice of termination is given by either party to the other at least *number of days* prior to expiration of this lease or the end of any year of continuation.
- b) **Annual Lease** — The term of this lease shall be *number of year(s)*, commencing on the *day month and year of* and ending on the *day month and year of*. If the Tenant wishes to renew this lease the Tenant must notify the Landlord in writing not less than sixty (60) days prior to the expiry date of the lease of the Tenant's desire to renew. If such a notice is delivered,

then the Landlord and Tenant shall seek agreement on the terms of such renewal which must be agreed to within thirty (30) days prior to the expiry of the then current term of the lease failing which this lease shall terminate on the date set for expiration and the Tenant shall give up possession of the leased premises.

4. Rent Payable

The annual cash rent per acre shall be calculated on a flexible basis by adjusting for [*insert method*]

Instructional Note: Flexible rent can be adjusted by using a formula that adjusts for price or yield or both. It is important to specify the base rent or percentage of the crop (if these will be used), how and when the price of the crop will be determined at harvest. These will then be used to calculate the final price per acre.

Tables 3, 4 and 5 in Factsheet *Flexible Cash Lease Agreements*, Order No. 01-067, outline the basic formulas that can be used to adjust for price. In this section of the lease agreement it would be important to include the formula and also specify the mechanisms for determining the price and yield at harvest time. Possible methods for doing so are outlined in the Factsheet.

GST will be added to the rental amounts when applicable.

The rent shall be payable as follows:

\$amount on or before the *date* day of *month and year*
\$amount on or before the *date* day of *month and year*

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

5. General Clauses

Right to Sublet or Assign — The Tenant shall have the right to sublet or assign this lease provided the Tenant obtains the written consent of the Landlord, which consent shall not be unreasonably withheld.

Amendments and Alterations — Amendments and alterations to this lease shall be in writing and shall be signed by both the Landlord and Tenant.

No Partnership Intended — It is particularly understood and agreed that this lease shall not be deemed to be nor intended to give rise to a partnership relation.

Binding on Heirs — This Lease shall be binding upon the Landlord and Tenant and their respective personal representatives, trustees, successors and assigns.

Landlord liability — The Tenant takes possession of the leased premises subject to the hazards of operating a farm, and assumes all risk of accidents personally as well as for family, employees, or agents in pursuance of farming operations, or in performing repairs on buildings, fences, tile, and other improvements except for any liability arising out of the gross negligence of the Landlord.

SECTION 2 — RECOMMENDED ITEMS

1. Right of Inspection and Removal of Crops

Landlord's right to enter property — The Landlord reserves the right personally or by agents, employees, or assigns to enter upon the premises at any reasonable time to view them, to work or make repairs or improvements thereon, to care for and dispose of the Landlord's share of crops, to develop mineral resources or, after constructive notice has been given that the lease may not be extended, and following severance of crops, to plow and prepare a seed bed, make seedings, apply fertilizers, and any other operation necessary to good farming by the succeeding operator, these operations not to interfere with the Tenant's in carrying out the regular farming operations.

Tenant's right-of-way — The Landlord agrees to give quiet possession of the leased premises. The Landlord shall give to the Tenant a right-of-way over lands owned by the Landlord which abut the leased premises for the purpose of allowing the Tenant to plant, care for or harvest the crops on the leased premises if such a right-of-way is necessary and such right-of-way shall cease upon the termination of this lease.

Tenant's Compensation on Termination of Lease — The Landlord agrees to 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.

2. Transfer of Property

Sale of Property recognizes the lease — If the Landlord should sell or otherwise transfer title to the leased premises, the Landlord shall do so subject to the provisions of this lease.

Lease Terminated on the Sale of the Property — In case the Landlord should desire to sell the leased premises and premises during the term of the lease, the lease may be terminated at any time by giving **number of days** notice to the Tenant. The Tenant shall, at the expiration of the notice period, peaceably and quietly give up possession of the leased premises to the Landlord. The Landlord shall, after the Tenant has delivered up possession in manner aforesaid, and paid to the Landlord the full proportion of rent up to the beginning of the notice period will compensate the Tenant for the value of the crops sown and then growing, or of the field work done on the leased premises in preparing for a crop, the amount of such compensation to be determined by arbitration if the parties cannot agree thereon.

3. Termination of Lease

Grounds for Termination of Lease — If either party fails to carry out substantially the terms of this lease in due and proper time, the lease may be terminated by the other party by serving a written notice citing the instance(s) of default and specifying a termination date of **number of days** from the date of such notice. Settlement shall then be made in accordance with the provisions under the Right of Inspection and Removal of Crops section of this lease and any amendments to this lease.

4. The Use of the Land

The Tenant further agrees to perform and carry out the stipulations below. (Strike out any not desired.)

A. Activities required

Condition of Land at the end of the lease — The Tenant agrees to leave the rented land in the same condition as at the beginning of the lease.

Compensation to Landlord for Damages — The Tenant agrees when he leaves the leased premises, to pay the Landlord reasonable compensation for any damages to the leased premises for which he, the Tenant, is responsible.

Good Stewardship — To cultivate the leased premises faithfully and in a timely, thorough, and business-like manner and in accordance with normal farm practices.

Weed Control — To prevent noxious weeds from going to seed on the leased premises and to destroy the same and keep the weeds and grass cut.

Soil Erosion — To control soil erosion as completely as reasonably possible; 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.

Repairs — To keep the fences and other improvements in as good repair and condition as they are when the Tenant takes possession or in as good repair and condition as they may be put by the Landlord during the term of the lease, ordinary wear, loss by fire, or unavoidable destruction excepted.

B. Activities restricted

The Tenant further agrees, unless the written consent of the Landlord has been obtained:

No Alterations — Not to remove, alter or change the style or position of any building or fence on the said leased premises

No Other Activities — Not to permit, encourage, or invite other persons to use any part or all of this property for any purpose or activity not directly related to its use for agricultural production.

No Cutting of Trees — Not to cut live or dead trees for the purpose of sale or personal uses.

No Signage — Not to erect or permit to be erected any commercial advertising signs on the leased premises.

No Mineral Rights — Nothing in this lease shall confer upon the Tenant any right to minerals underlying the land. Such mineral rights are hereby reserved by the Landlord together with the full right to enter upon the premises and to bore, search, excavate, work, and remove the minerals, to deposit excavated rubbish, to pass over the premises with vehicles, and to lay down and work any railroad track or tracks, tanks, pipelines, power lines, and structures as may be necessary or convenient for the above purpose. The Landlord agrees to reimburse the Tenant for any actual damage the Tenant may suffer for crops destroyed by these activities and to release the Tenant from obligation to continue farming this property when development of mineral resources interferes materially with the Tenant's opportunity to make a satisfactory return.

5. Environmental Matters

The parties hereto hereby acknowledge that the Tenant intends to use the leased premises described in this lease for agricultural purposes and that such use of the land may have an environmental impact; accordingly, the parties agree as follows:

Use of Normal Farm Practices — The Tenant shall conduct its operations on the leased premises in accordance with normal farm practices including, but not limited to, the application of fertilizers, pesticides and herbicides and shall only engage licensed applicators of such substances or shall ensure that the Tenant is appropriately licensed for such applications.

Manure and Nutrients — To haul and spread manure only on appropriate fields at times and in quantities consistent with sound manure management practices and in accordance with the guidelines and regulations of the *Nutrient Management Act* 2001. Where a Nutrient Management Plan (NMP) is in place the Tenant shall apply manure and other nutrients in accordance to the rates, manner and separation distances from neighbours, wells and watercourses and any other guideline as stated in the nutrient management plan. The Tenant shall also keep a record of nutrient applications and will produce them at the request of the Landlord. The Tenant shall also notify the Landlord in writing if the Tenant is submitting nutrient information to a municipal or region government as part of an official nutrient management tracking system.

Municipal Sludge — The Tenant shall not, without the written consent of the Landlord, apply or give permission to have applied, any municipal waste or sludge on the leased premises. Where the Landlord has granted permission, any municipal sludge or waste shall be applied in accordance to the *Nutrient Management Act* 2001.

Chemical Spills — The Tenant shall immediately report any spill or misuse of chemicals to the Landlord and to comply generally with all environmental laws including the provisions of the *Environmental Protection Act* (Ontario) including the requirement to attend to the immediate clean-up of any such spill at the sole cost of the Tenant.

Chemical Storage — The Tenant shall insure that no chemicals will be stored on the property for longer than is required for the current years application or use and in no greater amounts than is required for the leased land. The Tenant shall ensure that they are stored in a secure dry location away from all wells and watercourses in closed, tight containers above ground and clearly marked. No chemicals or chemical containers will be disposed of on the property.

Noise — The Tenant shall ensure that no undue noise or other nuisance emanates from the leased premises or from the operations of the Tenant on the leased premises.

Spill Insurance — The Tenant shall be required to obtain and maintain during the currency of this lease adequate policies of insurance, the content and policy limits thereof to be satisfactory to the Landlord acting reasonably, naming the Landlord as an additional insured party for the risks attendant with any environmental matter including, but not limited to, the improper disposal of wastes or the application or misapplication of toxic substances. In setting the policy limits the Landlord shall act reasonably having regard to the potential risks associated with such a spill.

Landlord Not Responsible for Costs — For separate consideration, the Tenant hereby agrees to indemnify and save harmless the Landlord from any costs incurred by the Landlord arising directly or indirectly from the breach by the Tenant of this provision.

Tenant Must Carry Insurance — For the term of the lease, the Tenant shall maintain insurance, insuring the Tenant while performing on these premises. The Tenant shall furnish a Certificate of Insurance at the Landlord's request and agrees that all applicable insurance policies name the Landlord as an additional insured and to receive notice of termination of coverage.

SECTION 3 — OPTIONAL ITEMS

1. Resolving Differences

Disagreements Will Be Submitted to an Arbitrator(s) — Any differences between the parties as to their several rights or obligations under this lease and to the affairs of the leased premises that are not settled by mutual agreement after thorough discussion, shall be referred to the arbitration of a single arbitrator, if the parties hereto agree upon one; otherwise to three arbitrators, one to be appointed by each party and a third to be chosen by the first two named before they enter upon the business of arbitration. The award and determination of such arbitrator or arbitrators, or any two of such three arbitrators, shall be binding upon the parties hereto and their respective heirs, executors, administrators and assigns.

2. Production Practices and Management Decisions (choose one under each heading)

Cropping Plans — The Tenant shall make all decisions with respect to growing of crops on the land unless stated otherwise in this agreement. The Tenant shall prior to the beginning of each lease year, provide a plan of operation for the Landlord's information.

– or –

The Tenant and Landlord will agree on an annual cropping plan by the beginning of each lease year. The cropping plan will include crops to be grown, pesticides to be used and conservation practices to be employed for each year, unless stated otherwise in this agreement.

– or –

The extent to which the Landlord will participate in management decisions shall be governed by provisions attached to this lease form and hereby incorporated as a part of this lease.

Pesticides — The Tenant and Landlord will jointly make all decisions with respect to which pesticides can be used on the land.

– or –

By December 31 of each year of this lease, the Tenant must supply the Landlord with a listing of what pesticides were applied to crops growing on the land, plus by April 30 of the last year of this lease, a proposed pesticide usage plan for the final crop year.

– or –

The Tenant is prohibited from using the following pesticides, unless mutually agreed upon: List Pesticides

3. Income Support Payments, Subsidies and Reimbursements

Tenant Receives Government Payments for Crops — In the event that any payment, subsidy or other reimbursement is made under any government agency or any marketing agency in connection with income support to the actual producer of crops grown on the leased premises during the term of this lease the amount paid in respect of the land leased in this agreement shall be paid to the Tenant.

4. Compensation for Repairs to Buildings, Fences, and Improvements

Tenant Responsible for Normal Repairs — The Tenant shall not make major improvements, other than what is considered normal repair and maintenance, to the leased land or any other assets identified in this agreement without written permission of the Landlord.

Landlord Responsible for Major Improvements — Major improvements, which without restricting the generality of the term, shall include: water development, erosion control, fencing and building construction, clearing, breaking, and seeding to pasture and hayland. Such consent shall be attached to and form part of the lease agreement. The amount of compensation shall be an amount agreed upon by the Landlord and Tenant. Title to all improvements shall vest in the Landlord and no improvements shall be sold, removed, disposed of or encumbered without the written consent of the Landlord.

5. Compensation for Crop and Property Damages, Oil and Gas, Utilities, Roads, and Rights-of-Way

Compensation Paid to Party who Suffers the Loss —

Compensation for reasons such as, but not limited to, property damage and inconvenience from oil and gas exploration, pipeline development, power and telephone line installations, or road construction, shall accrue to the party that has suffered the loss. The Landlord will have the final say on who has suffered the loss except as follows:

- a) *Crop Damage* — where the compensation is for crop damage, the loss shall be deemed to be the Tenants.
- b) *Work Completed by Tenant* — where the compensation is for work completed by the Tenant such as, but not limited to, fence re-construction, grass reseeding or topsoil leveling, the compensation will be paid to the Tenant.
- c) *Compensation for Nuisance* — where the compensation is for the creation of a nuisance situation such as, but not limited to, gates being left open, dust or noise, the compensation will be paid to the Landlord.
- d) *Land Damage or Loss* — where the compensation is for a decrease in the land's value such as, but not limited to, loss of acres from the development, severing a parcel of land or top soil disturbance, the payment shall be made to the Landlord.

– or –

Compensation for reasons such as, but not limited to, property damage and inconvenience from oil and gas exploration, pipeline development, power and telephone line installations, or road construction, shall accrue to the Landlord.

– or –

Compensation for reasons such as, but not limited to, property damage and inconvenience from oil and gas exploration, pipeline development, power and telephone line installations or road construction, shall be determined by mutual agreement between the Landlord and Tenant. If mutual agreement cannot be reached, it shall be submitted to arbitration.

6. Rights of First Refusal

In the event that the Landlord receives a bona fide offer to purchase the leased premises which the Landlord is willing to accept, then the Landlord shall provide a copy of such offer to purchase to the Tenant within forty-eight hours of the receipt of such offer at which time the Tenant shall have a period of a further forty-eight hours to confirm to the Landlord that the Tenant wishes to purchase the leased premises upon the same terms and conditions as set out in the offer to purchase failing which the Landlord shall be at liberty to sell the leased premises pursuant to the offer to purchase.

Instructional Note: The lease should be signed by the Landlord and the Tenant and their respective spouses where necessary and witnessed by a third party.

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