

CASH LEASE AGREEMENTS FOR CROPLAND

R. W. Gamble

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 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 CASH 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* and *Table 3* lists the advantages and disadvantages of a 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.

1. 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.
2. 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.
3. It provides a valuable guide to heirs if the landlord or tenant should die.
4. 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 to 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 that 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 individual 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 CASH LEASE ARRANGEMENT

There are both advantages and disadvantages to cash rent arrangements. Landlords and tenants should consider the arguments outlined in *Tables 2 and 3*.

TABLE 2. Advantages and Disadvantages of Cash Leases for Landlord

Advantages	Disadvantages
Fixed cash rent relieves concern over variations in prices and yields. Price, cost and production risks borne by tenant.	When substantial increases in commodity prices occur unexpectedly, landowner fails to share profits from higher prices.
No concern with marketing of crops.	Once a fixed cash rent is set, it may be difficult to negotiate changes as yields and costs increase over time.
Requires less managerial input than other kinds of leasing arrangements.	Rental income is not considered farming income. If maintaining farming status is important consider different arrangement.
Because of reduced involvement in management, reduced friction between owner and tenant on management decisions.	Less opportunity to reduce tax by timing income (by holding crops or incurring expenses) in cash rental vs. crop share.
Reduces concern about tenant recording accurate crop yield information.	May be increased danger tenant will "mine" the land. Competition for land and appropriate requirements in a written lease can minimize this problem.
Straightforward method of payment.	Tenant may not pay all of cash rent (for various reasons) or may be slow in paying rent.
	Income received from a crop share agreement is eligible for NISA; cash rent is not eligible.

TABLE 3. Advantages and Disadvantages of Cash Leases for Tenant

Advantages	Disadvantages
Allows tenant to make a larger profit if an unexpected increase in crop prices occurs or unusually favourable growing season results in higher yields.	Cash rental rates tend to be negotiated based on last year's market prices. Following good years this optimistic outlook can result in rents higher than justified.
Less record keeping and time spent on dividing crops or income from sale of crops.	Tenant bears all the yield and price risk. This is a greater concern if the land is not ideal or the crop is more variable in that location.
Tenant has a relatively free hand in management decisions.	Cash rent becomes a fixed cash expense, which may be very difficult to pay in a poor crop year or with abnormally low crop prices.
Less likelihood of friction between tenant and landowner over management of crop.	Cash rental rates tend to trend upward as crop yields increase, even though most of the yield increases may be a result of managerial skills. Rental rates don't immediately decline with decreases in crop yields or prices.
	Landlord may be less willing to share land improvement costs. In a crop share agreement the increased productivity would increase their return.

ESTABLISHING A RENTAL RATE

Most rental rates are established by using local market rates that reflect the supply of and demand for rental land in a local area.

In turn, crop share and flexible agreements use the market rate as the basis for establishing the crop shares or flexing provisions in the agreement. In the case of crop shares a traditional 1/3 – 2/3 or 1/4 – 3/4 split is common.

If the decision is to rent for cash, how is a fair rental rate determined? There are 3 approaches that can be used to establish a fixed cash rent for a particular farm or field:

- Current Market Approach
- Landlord's Cost Approach
- Tenant's Net Return Approach

A fourth approach not detailed in this Factsheet is to calculate the amount on a crop share basis and then adjust it to a cash rent basis. The adjustment takes into account the lower risk to the landlord that a cash rental carries. For information on calculating a crop share see the Factsheet *Crop Share Lease Agreements*, Order Number 01-067.

Current Market Approach

This method requires knowledge of cash rents being paid for farms in the area. Make adjustments for differences in the productivity of the farm, and the amount and quality of improvements. There are many factors that affect the rental price of land. Some of them are:

- **Crop Prices** — Rental rates often reflect the price of the crop being grown, but lag behind the down turns in the market price for that crop.
- **Local supply and demand** — Land that is close to farmers who want to rent land, particularly livestock and specialty operations, will be in greater demand.
- **Drainage** — Well drained, early land that is able to grow a high yielding crop is worth more.
- **Fertility, compaction, erosion, heat units, and weed control** — Fields that are relatively weed free and do not exhibit any signs of compaction, erosion or fertility deficiencies are worth more. Land in an area with higher heat units has greater potential yield.
- **Small, irregularly shaped** parcels with poor access for large machinery are worth less.

Other factors are also important to many landowners, who might take less rent than could be obtained from the highest bidder because of them.

- **Farmland Property Tax Program** — Landowners that lease to a registered farm business are eligible for the Farmland Property Tax Program. Eligible farmland is taxed at 25% of the residential tax rate. This is a significant benefit to the landowner.
- **Good Land Stewardship** — Tenants that apply good land stewardship and care for the property are preferred over those that do not.
- **Punctual payment** — Tenants that pay on time are preferred.
- **Long term leases** — mean that the tenant has a greater incentive to keep the land in top condition. Long term leases encourage good land stewardship.

The cash market approach has some disadvantages. It may be difficult to determine actual cash rents being paid for comparable farms and estimate what the rental rate adjustments should be. Despite these difficulties the prevailing market rates cannot be ignored. Even if other approaches for calculating the cash rent produce reasonable figures the local market will have the most influence in the negotiating process.

Landlord's Cost Method

Under this approach, the landlord calculates the cost of land ownership to determine what rent is desirable. Landlords however will seldom receive enough cash rent to cover total ownership costs. Consequently, this method may result in an higher value than can be supported by production or local market prices. It does however give the landlord a basis for setting the "asking price" in cash-rent negotiations. *Table 4* shows an example of this approach.

Some points to remember in calculating the ownership costs are:

Land — Land is valued at its current fair-market value for agricultural purposes. The influence of cities and other nonagricultural factors on land value is ignored. The value of land may include the value of such assets as buildings, improvements, and irrigation equipment if those items are also being rented.

Interest on land — A practical "bargaining" rate of interest can be set at the 4%–6% range.

Property Taxes — Use actual property taxes paid on land.

Land Improvements — Use the average dollars spent annually for lime, conservation practices, and other land improvements.

TABLE 4. Landlord Ownership Costs Worksheet

	Total Per Acre Value		Rate (%) or Life (years) ⁽¹⁾	Annual Cost per Acre
Value per Acre of Land (bare land)	\$1,800			
Interest ⁽¹⁾		×	4.0%	\$ 72.00
Property Tax		×	0.5%	\$ 9.00
Value of Land Improvements	\$10	×	6.0%	\$ 0.60
Equipment Associated with land	\$0			
Depreciation ⁽²⁾		/	10 years	\$ —
Interest ⁽³⁾		×	5.0%	\$ —
Repairs		×	1.0%	\$ —
Insurance and Taxes ⁽⁴⁾		×	0.25%	\$ —
Buildings	\$0			
Depreciation ⁽²⁾		/	20 years	\$ —
Interest ⁽³⁾		×	5.0%	\$ —
Repairs		×	1.0%	\$ —
Insurance and Taxes ⁽⁴⁾		×	0.1%	\$ —
Other Items	\$0	/		
Depreciation ⁽²⁾			25 years	\$ —
Fences		×	5.0%	\$ —
Water System		×	1.0%	\$ —
Total Desired Return per acre				\$ 81.60

(1) The rate of interest or return does not take into account capital gains and therefore would be lower than other investment rates of return.

(2) Years of life will vary for buildings, fences, and different types of irrigation equipment.

(3) Do not compute an interest charge if value of buildings, improvements, and certain irrigation equipment are included in value of land.

(4) Do not include taxes on buildings, improvements, and certain irrigation equipment if taxes on these assets are included in property taxes calculated on land.

Buildings and Equipment — Only include these if they are being rented as part of the package. Use depreciation, interest, repairs, taxes, and insurance charges on buildings and equipment. Estimate the average useful life of buildings and equipment as the basis for determining annual depreciation charge. The interest charge is on one half the investment value. Use actual annual repair, insurance, and taxes if known; or use a percentage of investment value. **Note:** Do not include taxes if already included in real estate.

Other — If capital has been invested to improve land productivity, such as drainage, then include a reasonable depreciation allowance for this investment. Tile lines are depreciable as Class 8 depreciable property, which is at 20% per year on a declining balance.

Tenant's Net Return to Land Approach

Competition for land in some areas may see tenants bid more for land than they can actually afford. Tenants must calculate how much money will actually be available to pay for the use of land after variable expenses, fixed costs on machinery, and a return to labour and management have been deducted from the gross value of crops. *Table 5* outlines a method to estimate how much can be paid for land in the form of cash rent. *Table 8* is a blank worksheet for entering your own numbers.

The values for labour and management may be the most difficult to determine. The labour value used should reflect the amount of time used only for crop production and general farm maintenance. The hourly rate should equal what could be earned if working for other farmers in the area. Management is sometimes valued at 5%–10% of gross value of crops, or 1.5%–2.5% of the investment in land, equipment, and machinery.

TABLE 5. Tenant's Net Return to Land Approach

	Column 1	Column 2	Column 3	Row
Crop Revenue				
	Corn	Soybeans	Wheat	
Number of Acres	120	60	45	A
Expected Yield per acre	145	45	45	B
Price per tonne or bushel (or other unit)	\$ 3.20	\$ 6.50	\$ 3.75	C
Crop Revenue per acre (B × C)	464.00	292.50	168.75	D
Government Payments per acre	—	—	—	E
Total Revenue per acre — Add (D + E)	464.00	292.50	168.75	F
Total Revenue from Each Crop (A × F)	\$ 55,680.00	\$ 17,550.00	\$ 7,593.75	G
Total Number of Acres	225			H
Average Revenue per acre (Add Col. 1, 2 & 3 on row G, then ÷ H)	\$ 359.22			I
Variable Expenses for Crops (Reference OMAFRA Crop Budgets)				
	Corn	Soybeans	Wheat	
Seed	49.00	37.00	28.00	
Fertilizer	78.15	13.20	47.00	
Herbicide	28.00	42.00	5.00	
Insecticide	15.00			
Machinery Fuel	21.00	16.20	12.60	
Machinery Repairs and Maintenance	19.00	16.00	18.00	
Crop Insurance	6.45	8.50	6.55	
Marketing Fees				
Drying				
Custom Work	8.00		7.00	
Trucking				
Storage				
Consulting and hired labour	16.00			
Operating Interest	8.00	5.35	4.10	
Other Expenses	15.00			
Total Variable Expenses per acre (Add each column)	263.60	138.25	128.25	J
Contribution Margin (Gross Margin) per acre (F – J)	200.40	154.25	40.50	K
Total Variable Expenses (A × J)	31,632	8,295	5,771	L
Average Variable cost per acre	\$ 203.10			M
(Add Col. 1, 2 & 3 in Row L, then ÷ H, total number of acres)				
Average Contribution Margin (I – M)	\$ 156.11			N
Fixed Costs				
Machinery Value	\$ 120,000			O
Investment per Acre (O ÷ H)	533.33			P
Desired Interest rate return on machinery investment	7%			Q
Interest on average investment (P × Q)	18.67			R
Depreciation (P × 0.10)	53.33			S
Insurance (P × .0025)	1.33			T
Other Fixed Costs per acre	—			U
Total Fixed Costs per acre (Add R + S + T + U)	\$ 73.33			V
Labour and Management Costs				
Number of Hours of Labour per acre	0.5			W
Dollars per hour for labour (yours or hired)	9.00			X
Labour expense per acre (W × X)	4.50			Y
Operators Management Charge (suggested 5.0%–8.0%)	5.0%			Z
Management Expense (I × Z)	17.96			AA
Total Labour and Management Costs (Y + AA)	22.46			BB
Total Production Costs (M + V + BB)	\$ 298.90			CC
Amount Available to Cover Rent Payments (I – CC)	\$ 60.32			

THE NEGOTIATING PROCESS

Both the tenant and landlord can negotiate a final cash rental payment after considering all 3 methods. *Table 6* summarizes the example values derived from the different methods. Both parties need to recognize that pressing an advantage too far can result in an unfair arrangement for one or the other. A lease that is unfair to either party is unlikely to last. An unfair, lopsided arrangement tends to encourage dishonesty and poor co-operation from the disadvantaged party. Over time, changes may occur, and “the shoe may be on the other foot”.

TABLE 6. Comparison of Methods

Method Used	Examples	Your Farm
Cash-rent Market Method	\$ 65.00	\$
Landlord's cost or Desired Return Method (<i>Table 4</i>)	\$ 81.60	\$
Tenant's Net Return Method (<i>Table 5</i>)	\$ 60.32	\$

TIMING OF RENT PAYMENTS

Both tenants and landlords should consider the timing of rent payments. Several possibilities exist.

The landlord's chief concern may be that he actually gets full payment. But some landlords would prefer not to receive the entire rent payment at one time. Tenants can encounter cash flow problems if the rent is due in a single payment particularly if it is timed when no crops or livestock are ready for sale.

Some landowners require that a portion of the rent be paid at the beginning of the crop year with the remainder to be paid when the main crop or crops are harvested. If a single payment is used, it probably should be due at harvest time. But regardless of the number of rent payments agreed to, it is reasonable to schedule the payments to coincide with probable major sales of crops.

SECTION 3 — LEASE CHECKLIST AND WORKSHEETS

TABLE 7. Farmland Lease Checklist

Identity of the Parties		Obligations of Parties	
Name of Landlord		Who is to maintain the premises	
Address of Landlord		Who is to repair the premises	
Name of Tenant		Who pays the property taxes	
Address of Tenant		Who pays for insurance	
Consent of Spouse		What type of insurance	
Description of the Property		Right to remove fixtures	
Check Deed for Description		Right to harvest crops	
If only part of lands, describe as only part		Right to make improvements	
Term of Lease		Ownership of Improvements	
Length of Term		Environmental Obligations	
Commencement Date		Environmental Indemnity	
Termination Date		Termination	
Right of Renewal		Notice of Termination	
Right of First Refusal		Rights of Assignment	
Option to Purchase		Breach of Covenants	
Rentals		Change of Ownership	
Rental Amount		Consequences of Termination	
GST Included or Excluded		Resolving Differences	
Date payable			
Method of Payment			
Interest on Arrears of Rent			
Place of Payment			

TABLE 8. Blank Ownership Costs Worksheet

	Total Per Acre Value		Rate (%) or Life (years) ⁽¹⁾	Annual Cost per Acre
Value per Acre of Land (bare land)				
Interest ⁽¹⁾		×		
Property Tax		×		
Value of Land Improvements		×		
Equipment Associated with land				
Depreciation ⁽²⁾		/		
Interest ⁽³⁾		×		
Repairs		×		
Insurance and Taxes ⁽⁴⁾		×		
Buildings				
Depreciation ⁽²⁾		/		
Interest ⁽³⁾		×		
Repairs		×		
Insurance and Taxes ⁽⁴⁾		×		
Other Items		/		
Depreciation ⁽²⁾				
Fences		×		
Water System		×		
Total Desired Return per acre				

- (1) The rate of interest or return does not take into account capital gains and therefore would be lower than other investment rates of return.
- (2) Years of life will vary for buildings, fences, and different types of irrigation equipment.
- (3) Do not compute an interest charge if value of buildings, improvements, and certain irrigation equipment are included in value of land.
- (4) Do not include taxes on buildings, improvements, and certain irrigation equipment if taxes on these assets are included in property taxes calculated on land.

TABLE 9. Blank Tenant Net Cost Worksheet

	Column 1	Column 2	Column 3	Row
Crop Revenue				
	Crop 1	Crop 2	Crop 3	
Number of Acres				A
Expected Yield per acre				B
Price per tonne or bushel (or other unit)				C
Crop Revenue per acre (B × C)				D
Government Payments per acre				E
Total Revenue per acre — Add (D + E)				F
Total Revenue from Each Crop (A × F)				G
Total Number of Acres				H
Average Revenue per acre (Add Col. 1, 2 & 3 on row G, then + H)				I
Variable Expenses for Crops (Reference OMAFRA Crop Budgets)				
	Crop 1	Crop 2	Crop 3	
Seed				
Fertilizer				
Herbicide				
Insecticide				
Machinery Fuel				
Machinery Repairs and Maintenance				
Crop Insurance				
Marketing Fees				
Drying				
Custom Work				
Trucking				
Storage				
Consulting and hired labour				
Operating Interest				
Other Expenses				
Total Variable Expenses per acre (Add each column)				J
Contribution Margin (Gross Margin) per acre (F – J)				K
Total Variable Expenses (A × J)				L
Average Variable cost per acre (Add Col. 1, 2 & 3 in Row L, then + H , total number of acres)				M
Average Contribution Margin (I – M)				N
Fixed Costs				
Machinery Value				O
Investment per Acre (O ÷ H)				P
Desired Interest rate return on machinery investment				Q
Interest on average investment (P × Q)				R
Depreciation (P × 0.10)				S
Insurance (P × .0025)				T
Other Fixed Costs per acre				U
Total Fixed Costs per acre (Add R + S + T + U)				V
Labour and Management Costs				
Number of Hours of Labour per acre				W
Dollars per hour for labour (yours or hired)				X
Labour expense per acre (W × X)				Y
Operators Management Charge (suggested 5.0%–8.0%)				Z
Management Expense (I × Z)				AA
Total Labour and Management Costs (Y + AA)				BB
Total Production Costs (M + V + BB)				CC
Amount Available to Cover Rent Payments (I – CC)				

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.

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 an article written by **Joel Bagg**, OMAFRA and 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.

The author would also like to thank **Douglas C. Jack**, Barrister and Solicitor, Fergus, Ontario for his assistance in the preparation of the sample lease agreement.

Agricultural Information Contact Centre
1-877-424-1300
ag.info@omafra.gov.on.ca

www.gov.on.ca/omafra

APPENDIX A — SAMPLE CASH LEASE AGREEMENT FOR CROPLAND

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 \$ *dollar amount* per acre for *number of acres* acres of tillable land for a total of \$ *total amount*. 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*

\$ *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.

– or –

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, powerlines, 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.

– or –

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.

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.

FOR YOUR NOTES

POD
ISSN 1198-712X
Également disponible en français
(commande n° 01-072)

