

SAMPLE CASH LEASE AGREEMENT

I. INTRODUCTION

There are three basic leases: a **crop share lease**, a **cash lease** or a **flexible cash lease**. The lease agreement will state the amount of rent payable, the date of the rental payment, the length of the lease term and the rights and responsibilities of both parties, depending on the type of the lease.

Landowners should consider the tax implication of leasing land. An important tax consideration is the potential loss of the capital gain rollover to a child.

A. Considerations

- Farmers can expand production without financing land purchases.
- Production and marketing risk can be shared.
- Inter-generational farm transfers can be facilitated.
- Suitable land for growing special crops can be acquired.
- Retirement income can be earned on real property.
- Farmers have increased flexibility in farm planning decisions.
- Rent paid over a long period of time does not contribute to equity of tenant.
- Appreciation in land value goes to the landlord.
- The tenant's security of tenure is limited to the length of the term of lease.
- Long term farming practices which promote production efficiency, soil conservation and improvements may not be practiced in short term leases.

B. Features of Successful Lease Agreements

- The landlord and tenant should be open and honest with each other, and be able to resolve disagreements cordially.
- To maximize long term profit, the terms of the lease should be fair to both the landlord and tenant.
- Written agreements help to prevent conflict between the landlord and tenant, and force them to think through an equitable and reasonable lease.
- Leases should be flexible enough to permit fair adjustments to any unexpected situations.
- A lease should be adapted to suit each individual situation, yet remain simple enough to work. The lease period should also be long enough to allow the tenant to adopt good farming practices.

C. Tax Considerations in Leasing Land

- Farmers who rent land to persons other than a spouse or child may not qualify for the capital gain rollover when land is transferred to a child. A custom farming arrangement could be used. Consult a tax professional before taking action in this area.

- Rental income earned by a landlord can be included as earnings in calculating the maximum allowable RRSP contribution, and in calculating Canada Pension Plan (CPP) contributions. A **bargain purchase option** exercised at a price significantly lower than the fair market value at the end of the lease can create an unexpected tax liability. An accountant or farm management advisor should be consulted before entering into any custom farming arrangement or lease which contains a bargain purchase option.

D. Legal Rights in Leasing Land

- A lease is enforceable in court, providing a valid contract exists. If the tenant has paid rent, or has done field work on the leased land, a valid contract exists.
- Unless waived in the lease agreement, The Real Property Act gives the tenant the right to have possession of the land without interference from the landowner. The act also gives the landlord the right to repossess and occupy the property if the tenant has not paid the rent for a period of two months from the due date. Landlords should include a term in the lease agreement which allows them to take specific action to recover the rent, such as seizing and selling grain in the field or in storage.
- To have an enforceable lease against a new owner, a tenant should register a caveat (legal claim) against the land title of the rental property before any change in ownership occurs.
- To be valid and binding on homestead property, The Homestead Act requires that the spouse of a landowner give written consent to any lease agreement. A homestead is any land(s) upon which the husband/wife has lived since marriage in which the husband/wife had an interest (up to a maximum of 320 acres).

II. SELECTING A LEASE AGREEMENT

Select an appropriate lease arrangement and adapt it to suit your particular situation. In a **crop share lease**, the landlord will receive a share of all crop sales. In a **cash lease**, the tenant will receive the income from all crop sales and will pay the landlord a fixed dollar amount for each year of the agreement. In a **flexible cash lease**, the tenant will receive the income from all crop sales, but the dollar amount paid to the landlord for rent varies with the price of the grain.

Factors other than the rental amount to consider in selecting a lease agreement include:

- Method and Time of Rental Payment
Rent due dates and the method of calculating rent depend on the type of lease agreement. In a crop share lease, the landlord will receive the share of the crop sales when the crop is sold. In a cash lease, the rental payment may be paid in full at the beginning of the season or it may be divided into a spring and fall payment. In a flexible cash lease, part of the rent may be paid in the spring and the balance paid in the fall.
- Length of the Lease
Crop shares and flexible cash leases often have longer lease terms since they can be

extended without renegotiating the rental amount. Cash leases should reflect changes in grain prices.

- Proper Farming Practices
Leases may contain terms which influence cropping decisions and management practices of a tenant.
- Ease of Rent Calculations
For crop share leases, accurate records on crop yields and input costs on each field and crop must be kept. Cash and flexible cash leases may be determined annually.

III. TYPES OF LEASE ARRANGEMENTS

A. Crop Share Lease

- The share arrangement could be either the traditional one-third crop share or a crop share based on the cost contributions of the landlord and tenant. The landlord may share in the payment of crop inputs (fertilizer and chemicals) in the same proportion as the crop is shared.
- The crop share lease agreement could clarify and define the landlord's and tenant's rights and responsibilities regarding the following areas:
 - Influence on Cropping Decisions - A landlord may wish to influence the cropping decisions and production practices of a tenant to maintain the quality and condition of the land.
 - Use of Fertilizer and Chemicals - Both parties should agree on the amount of crop inputs to be applied and how the costs are to be shared.
 - Crop Insurance Coverage - Hail insurance can be taken separately by both the tenant and landlord, provided that both have an all-risk contract. AgrilInsurance provided by the Manitoba Agricultural Services Corporation is available to any person who is actually engaged in farming in Manitoba, as well as to the landlord who has a direct financial interest in the crop. In order for the landlord to be eligible for AgrilInsurance, the payment of rent, as specified in the Crop Share Lease Agreement, must be based entirely on a share or portion of the crop and may not include any cash per acre, cash per bushel or other similar arrangement for payment. If the rent is based on anything other than or in addition to crop share, then the landlord is not eligible for crop insurance.
 - Delivery and Sale of Grain - Both parties should agree on who will have the responsibility for delivery and sale of grain.
 - Government Payments and Subsidies - Under these programs, usually the producer (tenant) receives the payments and subsidies in the same proportion as the share of the crop (or a stated amount or percentage).

B. Cash Lease

In a cash lease, the tenant will pay a fixed cash payment to the landlord for the use of the land and facilities. The tenant will receive all of the income and pay all his own expenses. The cash lease is suited for absentee landlords and those who wish to have a stable income.

Considerations:

- The landlord can receive a guaranteed return.
- The tenant has more flexibility and independence in production and management decisions.
- The results of the tenant's superior farming skill are not shared with the landlord.
- Detailed records on crop yields and inputs are not required.
- The tenant assumes all production and marketing risk.
- Part of the rent may be required to be paid in advance of crop sales.
- The landlord has less influence on a tenant's cropping decisions.
- Leases are generally short term due to periodic changes in grain prices.
- The landlord will not immediately feel the effects of extreme fluctuations in yields and prices.
- The cash rental amount can be determined using the income or crop share approach, but is usually established by going rates in an area. These going rates are influenced by land productivity, suitability to certain crops, yield histories and current market prices for the relevant crops, as well as supply and demand for rental land in the community.
- The cash lease agreement should specify the date(s) on which the rent is due and payable; and the rights of the landlord to recover the payment of rent. In addition to the rights provided by The Real Property Act, a landlord should specify the actions he can take to recover the debt, such as seizure of the crop and grain.

C. Flexible Cash Lease

In a flexible cash lease, the rental payment varies each year with the price of grain, thus the risk of any change in grain prices is shared with the landowner. Compared to cash leases, these agreements do not require periodic renegotiation when grain prices change.

Considerations:

- The tenant has greater independence in decision making than a crop share lease.
- The risk of changes in grain prices is shared with the landlord.
- The results of a tenant's superior farming skills are not shared with the landlord.
- The landlord's rent is guaranteed in relation to quantity, but not to the price of grain.
- Leases with longer terms can be negotiated, thus encouraging the use of better farming practices.
- The tenant assumes all risks in crop production.
- The landlord has less influence on the tenant's management.

- Amount of Rent

It is important to keep the procedure for calculating flexible cash rent simple. The landlord's share of crop production can be calculated using the crop share approach. The average production for a commonly grown crop will be used as an

estimate. This estimate is then adjusted for an allowance for crop failure, and the landlord's share is determined.

The method for selecting the prices of the commonly grown crops will also be included in the lease, to determine the actual amount of rent due. The rental payment can be made by delivering an agreed quantity of grain to market in the landlord's name or by paying the equivalent cash price.

- Considerations in Establishing Prices

An average grain price for 30 days prior to the rent payment could be applied. Alternatively, the price of a specified type and grade of grain on the day payment is made can be used.

- Flexible Cash Lease Terms

The flexible cash lease should specify the date(s) on which the rent is due and payable; the delivery point at which prices are to be determined or the point at which the landlord's quantity of grains are to be delivered; and the rights of the landlord to recover the payment of rent (seizure of crop and grain).

D. Custom Farming Arrangements

Custom farming arrangements provide an alternative to leasing for those landowners who wish to remain classified as a farmer under The Income Tax Act. The arrangement allows a landowner to retain close control of the farm business, without becoming actively involved in the operation.

Considerations:

- The capital gains rollover provision can be preserved.
- The capital gains exemption on farmland is maintained.
- Contributions to AgrilInvest and to the Canada Pension Plan can be made on these earnings.
- The landowner assumes all risk.
- All farm operations are arranged by the landowner.

- Types of Agreements

Custom Hiring Agreement - The landowner makes all the farming decisions, arranges for the completion of all field operations and pays for all crop inputs. The landowner also receives all the income from grain sales and agrees to pay the custom operator a basic lump sum fee by a specified date, plus a bonus (usually on a crop share or percent of profit basis).

Joint Farming Venture Agreement - The landowner and custom farm operator are both considered to be farmers. The parties share the crop sales and input costs on a percentage basis (e.g., 50:50).

Farming partnership agreement - The landowner receives all of the income from crop sales and pays a farmer a share (e.g., two-thirds). The customer operator pays for all of the crop inputs and equipment.

- It is important to consult a lawyer, accountant or farm management specialist before entering into any custom farming agreement. Some agreements may not meet the income from farming criteria.

IV. STEPS IN COMPLETING A LEASE AGREEMENT

1. Consult with your farm management advisor and lawyer.
2. Study and compare the examples and sample lease agreement forms provided by Manitoba Agriculture. It will assist you in determining the type of leasing agreement that will best suit the needs of both the landlord(s) and tenant(s). Remember, the type of lease agreement you choose must be adapted for each individual situation.
3. Determine an equitable rental arrangement by first studying the example and then using the worksheet provided for your calculations.
4. READ AND DISCUSS the lease with the prospective landlord(s) and tenant(s) and make changes where desired. Some clauses include a choice of terms. Select the terms that suit your situation. Delete term(s) which do not apply by drawing a line through them and have the parties to the lease initial the deletion(s). If the terms do not suit your situation, write out the terms that meet your particular needs. **Wording is important, so it is advisable to consult a lawyer.**

Important terms in all lease agreements requiring careful attention by a landlord and tenant include:

- compensation for repairs to building, fences and improvements
 - rights, responsibilities and compensation for major improvements
 - restrictions and responsibilities regarding production practices and management decisions
 - responsibility for grain storage
 - rights and restrictions of storing grain on leased property at the beginning and end of the lease
 - arbitration
5. The landlord(s) and tenant(s) should each receive one copy of the lease agreement, with any required supplementary forms attached.
 6. Provision should be made on the agreement forms for signatures of joint landlords and tenants.
 7. Ensure that the requirements of The Homestead Act are fulfilled when the leased property is a homestead property.

The act requires that the spouse give his/her written consent (consent-of-spouse form) to any disposition of a homestead property.

The act also requires that the spouse appear before a solicitor, notary public, justice of the peace, the registrar of land titles, a local registrar of the Court of Queen's Bench or district court judge to have this form completed. This is to ensure the spouse understands his/her rights in the homestead and that the lease agreement and consent-of-spouse form be signed of his/her own free will, without any compulsion on the part of the other spouse.

8. Complete the Affidavit of Execution

When all parties have signed a lease agreement, it is final and binding. If the signatures are witnessed and the witness completes the affidavit of execution, it is not necessary at a later date to prove the signatures.

9. Where required, complete the following supplementary forms:

- **Caveat**

A tenant should register a caveat against the land title of the rental property to protect his lease in the event of a change in land ownership.

- **Lease Renewal**

To renew the lease agreement, complete the LEASE RENEWAL FORM, THE HOMESTEAD ACT CONSENT-OF-SPOUSE, CERTIFICATE OF ACKNOWLEDGMENT BY SPOUSE, and the AFFIDAVIT OF EXECUTION. A CAVEAT must also be completed to have an enforceable lease with a new landowner.

- **Consent to Make Major Improvements**

The tenant should have the landlord complete the CONSENT TO MAKE MAJOR IMPROVEMENTS form in duplicate prior to making major improvements on the rented land. It should be clearly outlined what buildings or improvements are to be made, who will pay the cost of materials, and how the tenant will be compensated for his labour or any costs which he may incur. **Attach one copy of each form to each copy of the lease agreement.**

Notice to Reader: This information is general in nature and is intended as a guide only. Interpretation and utilization of this information is the responsibility of the user. No liability for decisions based on this publication is assumed. For application to a specific situation, a professional in the industry should be consulted.

SAMPLE CASH LEASE AGREEMENT

THIS AGREEMENT made in duplicate this _____ day of _____, 20____.

BETWEEN:

(Landlord's name)
being the registered owner or purchaser under an
Agreement for Sale of the land described in Schedule "A".

of _____
in the Province of Manitoba,
(address)

(the "Landlord")

- and -

(Tenant's name)
of _____
in the Province of Manitoba,
(address)

(the "Tenant")

WHEREAS the Landlord has agreed to lease the land described in Schedule "A" for the sole purpose of being cultivated and harvested by the Tenant.

AND WHEREAS that the Landlord hereby demises and leases unto the Tenant and the Tenant hereby leases and takes from the Landlord, the Leased Lands identified in Schedule "A".

NOW THIS AGREEMENT WITNESSETH that in consideration of the mutual agreements and undertakings herein, the parties covenant and agree with each other as follows:

DISCLAIMER

This sample agreement is designed for informational purposes only and is not intended or implied to be a substitute for professional or legal advice. Users of this sample agreement should consult with their professional and legal advisors to determine the appropriateness of this sample agreement for their own situation.

The Manitoba government and its ministers, officers, employees and agents make no representations, expressed or implied, as to the accuracy, adequacy, completeness or reliability of this sample agreement. This sample agreement may be changed or updated without notice. The Manitoba government and its ministers, officers, employees and agents will not be liable to any person, organization or entity for any damages of any kind, which may arise from use of this sample agreement.

SECTION 1.00 DEFINITIONS

- 1.01 "Alterations and Improvements" means any and all fixtures, improvements, installations, alterations and additions made, erected or installed by or on behalf of the Tenant in or upon the Leased Lands with the exception of the Tenant's equipment and machinery;
- 1.02 "Leased Lands" means the agricultural lands identified in Schedule "A" hereto;
- 1.03 "Term" means the term specified in Section 3.01 hereof.
- 1.04 "Taxes" means all taxes, including (but not limited to) goods and services tax, real property tax and school tax, rates, duties, levies and assessments of any kind levied, imposed or assessed against the Leased Lands, any building thereon or any Alterations and Improvements made thereto, or with respect to the Tenant's use of the Leased Lands.

SECTION 2.00 DESCRIPTION OF BUILDINGS ON LEASED LAND

- 2.01 In consideration of the rent, covenants, promises and agreements contained in this Lease, the Landlord leases to the Tenant the farm lands and premises as described in Schedule "A", together with all buildings, barns, stables and other outhouses located on the Leased Land except (list any buildings that are located on the Leased Lands that are not accessible by the Tenant) namely:

SECTION 3.00 DEMISE AND TERM, AS IS BASIS

- 3.01 The term of this Lease shall be _____ year(s) commencing on the _____ day of _____, 20____, and ending on the _____ day of _____, 20____.
- 3.02 The Tenant accepts the Leased Land on an "As Is", and "Where Is" basis and any Alterations and Improvements made, erected or installed during the Term, with the Landlord's prior written approval, shall be at the risk, cost and expense of the Tenant and to the entire satisfaction of the Landlord.

SECTION 4.00 ANNUAL RENTALS

- 4.01 The Tenant must pay annual rent (the "Rent") for the Lease to the Landlord in the amount of \$ _____:
 - (a) to be paid in full on or before _____ for each year of this Lease;
 - (b) to be paid (1/2, 1/3 etc) on or before _____ for each year of this Lease.
- 4.02 All Rent is payable to the Landlord at its address shown above.

SECTION 5.00 TAXES

- 5.01 Unless otherwise agreed upon, the payment of all Taxes on the Leased Land shall be paid by the Landlord.

SECTION 6.00 PAYMENT FROM GOVERNMENT AGENCY

- 6.01 In the event that any payment, subsidy or other reimbursement is made under any government agency, or any marketing agency in connection with grain production on the said Leased Land during the Term of this Lease, the payments identified with the Leased Land shall be paid to the Tenant unless otherwise agreed upon.

SECTION 7.00 USE OF LEASED LANDS

The Tenant covenants with the Landlord, that throughout the Term of the Lease it shall:

- 7.01 Cultivate, seed and harvest the said land in a good husbandlike and proper manner and will perform all fall work necessary in order to leave the Leased Land in a proper condition for the following year's cultivation and will not impoverish or waste the same.
- 7.02 Use this Leased Land and premises for the purpose of crop production only, unless otherwise limited or restricted in writing by the Landlord.
- 7.03 Not remove any sand, gravel, clay, or topsoil except for his own use, and agree that he has no rights whatsoever to valuable stone or other such substances existing or, or under the surface of the said Leased Land.
- 7.04 Not change the natural course of any waterways on the said Leased Land, or cut down trees growing upon the Leased Land, nor permit any other person to do so, without the written consent of the Landlord.
- 7.05 Use all best efforts to rid the Leased Lands of noxious weeds and in this regard, the Tenant shall comply with all lawful orders imposed by the relevant municipal or local government district.
- 7.06 At no time allow or permit any liens, (including but not limited to builders' liens) to arise or be filed against any of the Leased Lands on account of any work, labour, services or materials supplied to or on behalf of the Tenant.
- 7.07 Allow the Landlord, including its employees, agents and representatives to enter upon the Leased Lands at any time for the purpose of inspecting the Leased Lands, including any Alterations and Improvements thereon.

SECTION 8.00 STORAGE OF CROP

- 8.01 The Landlord shall provide _____ (tonnes, bushels) of crop storage. In the event additional crop storage is required, it shall be the sole responsibility of the Tenant.

SECTION 9.00 ALTERATIONS AND IMPROVEMENTS

9.01 Title to all Alterations and Improvements shall vest in the Landlord and no alterations and improvements shall be sold, removed, disposed of, or encumbered without the written consent of the Landlord.

SECTION 10.00 LIABILITY AND INSURANCE

10.01 The Tenant shall protect the said land and indemnify the Landlord in regard to any and all liens and charges by reason of or in any way accruing from the construction of any building or the making of any improvements thereon done by or on behalf of the tenant.

10.02 The Tenant shall indemnify and save harmless the Landlord against all claims, liabilities, demands, damages or rights or causes of action whatever made or asserted by anyone arising out of or incidental to this indenture or use or occupancy of the said lands and premises.

10.03 That if the term hereby granted or any of the goods and chattels of the tenant or his assigns shall be at any time seized or taken in execution or in attachment by any creditors of the tenant or his assigns, or if the Tenant or his assigns shall make any assignment for the benefit of creditors, or becoming bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, or if any writ of execution shall issue against the goods and chattels of the Tenant or his assigns, the then current year's rent shall immediately become due and payable, and the said term shall immediately become forfeited and void at the option of the landlord.

SECTION 11.00 SUBLETTING

11.01 The Tenant shall not sublet, or assign this Lease, or any part thereof, or any interest therein without obtaining the prior written consent of the Landlord to the sublease or assignment. Upon any consent by the Landlord, the original Tenant remains liable for the remainder of the Term.

SECTION 12.00 RENEWAL

12.01 The Term of this Lease may be extended by mutual agreement between the Landlord and Tenant for a further period upon the same terms and conditions as contained herein, except as otherwise agreed in writing by the parties executing a renewal statement.

SECTION 13.00 DEFAULT

13.01 The Tenant is in default under this Lease if:

- (a) The Rent or any part of the Rent is in arrears for fifteen days after the due date, whether or not the Landlord has made a demand for payment; or
- (b) The Tenant assigns or sublets the land without the Landlord's approval; or

- (c) The Tenant breaches any of the covenants of this Lease.

SECTION 14.00 UTILITIES, ROADS, AND RIGHTS-OF-WAY:

14.01 In the event that a new installation such as power line, gas pipeline, oil pipeline, oil well, road, or railway is erected upon the said land, the landlord and tenant shall:

- (a) Renegotiate the terms of this agreement by mutual agreement. If mutual agreement cannot be obtained it shall be submitted to arbitration as outlined in Section 17.00

SECTION 15.00 TERMINATION

15.01 If the Tenant defaults in the payment of the Rent, or in the performance of any other of the Tenant's covenants under this Lease, and the default continues for fifteen (15) days, the Landlord may give to the Tenant a notice in writing requiring the Tenant to remedy the default within a period of fifteen (15) days from the notice, and if the Tenant fails to remedy the default within the period of fifteen (15) days, the Landlord may:

- (a) Enter upon and take possession of the Leased Land or any portion thereof in the name of the Landlord and repossess and enjoy same, and the Term granted shall cease; or
- (b) Re-enter the Leased Land without terminating this Lease and the Tenant shall be liable for any actual loss of Rent which the Landlord may incur during the unexpired portion of the Term, provided that the Landlord shall take all reasonable steps to re-lease the Leased Land and to mitigate the Landlord's losses and damages.

15.02 The Tenant may terminate this Lease as of January 1st of any year during the Term provided that:

- (a) The Tenant gives the Landlord written notice of termination no later than December 1st of the previous year; and
- (b) The Tenant is not otherwise in default or in arrears in remitting any amount payable by the Tenant under this Lease, or in default with respect to any other covenant or undertaking contained in this Lease.

SECTION 16.00 YIELDING UP LANDS, RESTORATION

16.01 Upon the expiry of this Lease, the Tenant shall yield up the Leased Land, together with any Alterations and Improvements that the Tenant has elected to leave, in such condition that is consistent with good farm management, husbandry and conservation practices. Nothing herein amends or modifies the Tenant's obligations as set out in Section 7.00.

SECTION 17.00 ARBITRATION

17.01 Any disagreement which may arise between the contracting parties hereto shall, when a

mutually satisfactory settlement cannot be reached, be submitted to arbitration. The arbitration authority may either be a single person mutually satisfactory to both parties, or a board of three, one member to be proposed by each party and a third selected by the two as chosen. The recommendation of the arbitrator or arbitration board shall be accepted as final. The cost of arbitration will be split 50/50 between the Landlord and the Tenant.

SECTION 18.00 GENERAL

18.01 Time shall be of the essence of this Lease.

18.02 This document and the attached Schedule "A" contain the entire agreement between the parties. There are no undertakings, representations or promises express or implied, other than those contained in this Lease.

18.03 No amendment or change to, or modification of this Lease shall be valid unless it is in writing and signed by both parties.

18.04 This Lease shall be interpreted, performed and enforced in accordance with the laws of Manitoba.

18.05 This Lease enures to the benefit of and binds the Landlord and the Tenant and their respective heirs, executors, successors and assigns.

The Parties to this Cash Lease Agreement do hereby accept this Agreement subject to the conditions, restrictions and covenants set forth.

SIGNED, SEALED, AND DELIVERED

in the presence of:

(Witness)

(Landlord)

Where the Landlord is a corporation

(Corporation's Name)

Per: _____ (c/s)
(Name of Signatory)

SIGNED, SEALED, AND DELIVERED

in the presence of:

(Witness)

(Tenant)

Where the Tenant is a corporation

(Corporation's Name)

Per: _____ (c/s)
(Name of Signatory)

SCHEDULE "A"

LEGAL DESCRIPTION OF LEASED LANDS

- A. PARCEL (QUARTER/SECTION/TOWNSHIP/RANGE)
- B. TOTAL ACRES (HECTARES)
- C. EXCEPTING AND RESERVING UNTO THE LANDLORD THE FOLLOWING LANDS AND BUILDINGS NAMELY:
 - LANDS RESERVED: _____
 - BUILDINGS RESERVED: _____

For more information, contact your local [Manitoba Agriculture Farm Business Management Specialist](#) or [Manitoba Agriculture Office](#)