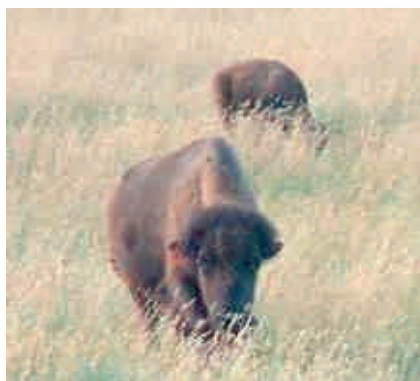




Guide for Agriculture Lease Agreements in British Columbia

2014 Edition



1 Acknowledgement

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2 Disclaimer

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Table of Contents

Table of Contents.....	2
Introduction.....	3
Land Lease Basics	4
Beyond Basics – Land	6
Right of First Refusal vs. Option to Purchase	7
Sample Land Leases and Licenses.....	8
Keeping property taxes affordable when leasing out your land.....	28
Property Tax benefits for retired farmers	31
Important Considerations for Lessors	31
The Oil and Gas Surface Lease.....	32
Resources for Land Owners – Sample BC Surface Lease Agreement.....	32
Resources for Landowners – Rent Reviews, Fair Compensation	33
Before you sign a Surface Lease	36
Consider the impact.....	37
Pipeline and Hydro Rights of Way	38
Equipment Leases – Lease or Buy	39
Tax Write-Offs.....	40
Caution Notes.....	41
Sample Equipment Leases	42
Livestock Leasing – Pros and Cons	53
Making it work	54
Types of livestock lease agreements	56
Sample Livestock Leases	57
Leasing Livestock for Vegetation Control	74
The last pages.....	75



Introduction

Agriculture in British Columbia is as diverse as the geography, and whether you are an orchardist in the Okanagan, a grain farmer in the Peace, a sheep farmer on Vancouver Island, or a vegetable farmer in the Fraser Valley, this guide will provide you with basic information on leasing, along with sample leases and web links to lease documents on line to get you started.

HOWEVER – This cannot be stressed enough; before signing any lease, have it reviewed by your tax professional, accountant and lawyer, or seek other advice specific to your situation.

Lease it or buy it? For a variety of reasons, that is often a question in the minds of farmers and ranchers throughout BC about various farm assets – land, orchards, equipment and livestock.

Leases in the agricultural community can be a useful tool for increasing production without the financial commitment of purchase. They can benefit a young farmer just starting out or an existing farmer wishing to expand or to try out a new agricultural activity for a short term. Leases are equally important for farmers winding down, but wishing to retain the land base. By leasing to another farmer who meets BC Assessment's minimum farm income requirements, the land (and possibly farm buildings) can continue to receive beneficial property tax treatment. Leases may also be useful for those times when a short-term break is needed for example illness, vacation or engaging in another activity away from the farm.

A lease agreement can allow a farmer to sell a parcel and continue to farm it by leasing it from the new owner while using the proceeds from the sale to acquire other land or agricultural assets. In some cases, a lease can provide an income tax benefit. In parts of BC, at this time mostly in the northeast, a farmer or rancher may be a party to a lease agreement that he or she didn't choose to take on – usually a surface lease for oil and gas activities.

Leases can be for land, land and buildings, machinery and equipment, and livestock – short or long term. There are important considerations, both positive and negative, in any leasing decision. Some of these are common to every type of lease, and others specific to the type of asset being leased.

Whatever type of lease you are considering, there are fundamental aspects that must be present in order for that lease to be valid and enforceable. The basic elements are a description of the asset being leased, signatures of the lessor (owner of the asset) and the lessee (user of the asset), start date, end date, frequency of payments (monthly, annual, etc.) and amount of payment. Then there are additional clauses – such as what happens in the event of default, which party is responsible for taxes, and how the asset will be used.

Land Lease Basics

The simplest definition of a lease is a contract by which one party conveys an asset to another for a specified time usually in return for a periodic payment. A more thorough definition is “A contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to various conditions, in exchange for something of value, but still retains ownership.”¹

Confusion often arises between a Lease and a License. Here are two useful definitions:

License Legal Definition: A special permission to do something on, or with, somebody else’s property which, were it not for the license, could be legally prevented or give rise to legal action in tort or trespass.²

Lease Legal Definition: A special kind of contract between a property owner and a person wanting temporary enjoyment and exclusive use of the property, in exchange for rent paid to the property owner.³



¹ <http://legal-dictionary.thefreedictionary.com/lease> (2014.02.11)

² <http://www.duhaime.org/LegalDictionary/L/License.aspx> (2014.02.11)

³ <http://www.duhaime.org/LegalDictionary/L/Lease.aspx> (2014.02.11)

The difference, in a nutshell, is that a lease grants exclusive use and a license does not. A lease creates an estate in land but a license does not – which means that a long-term lease could, in the right circumstances, be considered as an asset by a lender, whereas a license would not.

Another “leasing” arrangement is a crop-share lease. The landowner normally supplies the land, buildings, perhaps some machinery, and perhaps some payment for operating expenses. The tenant supplies the labour and usually the major portion of the machinery and operating expenses and the profit from crop production is shared.

In order for a valid lease or license contract to exist, it must contain certain basic items:

- A commencement date;
- A term – specifying the end date;
- Particulars of the Lessor (the owner of the asset);
- Particulars of the Lessee (the person or corporation who will have possession and use of the asset);
- A clear description of what is being leased;
- Conditions of use of the asset;
- The consideration (the periodic payment) and when it is to be paid;
- Witnessed signature of the parties to the lease, and the date that each signed;
- The consequence for failure to pay rent.
- If it is a lease of land for 3 years or more in BC, it must be registered at the Land Title Office.⁴
- If it is a surface lease for oil and gas activities, it must contain the wording prescribed by the Surface Lease Regulation, B.C. Reg. 497/74 in the Petroleum and Natural Gas Act.

⁴ Land Title Act, RSBC 1996, Chap. 250, Section 20.

Beyond Basics – Land

Beyond the basic conditions for a valid lease there are other terms and conditions that are important to the parties, depending on their circumstances.

- Lease payments are subject to GST if the Lessor (landowner) is a GST registrant. Currently it is 5%, if it increases or decreases during the term of the lease, the tax portion of the lease payment will reflect that change.
- Is there an option to renew the lease?
- Is there provision in the lease to review and change the rent periodically? How often? Will it be a fixed dollar or percentage increase? Will it be tied to production? How will any dispute be resolved?
- Who will pay the property taxes?
- Will the lessee (farmer) ensure that farm classification is maintained, and if it isn't, does the lessee (farmer) agree in writing to pay the resulting difference in taxes?
- What will the lessor's (landowner's) involvement in the farming operation be?
- What rights does the lessor (landowner) retain if the farming operation is not meeting the conditions of the use in the lease?
- Will the lease continue after the lessor's death, or sale of the property? A registered lease runs with the land and will enable it to continue – but it may be useful to specify a length of time after the lessor's death that the lessee can continue.
- If the lessee dies, will the right to farm continue to her/his heirs?
- Is there an option for the lessee to purchase the land, or is there a right of first refusal?

This is by no means an exhaustive list. For a more detailed list of considerations for both lessor and lessee, we recommend downloading the Land Access Guide, Edition 2.0 published by Young Agrarians, and available for download at <http://youngagrarians.org/download/2706/>

In their own words, the Young Agrarians say: “This guide is for beginning farmers wanting to pursue farming and find land. The guide shares the stories of a handful of young and new BC farmers and how they have accessed land. It has a checklist for

assessing land for agricultural suitability, a breakdown of different types of land access arrangements, and a list of questions for when negotiating an arrangement with a land owner.”

A word of caution: Before entering into a lease, license or crop share agreement, it is prudent for you as lessee to search the title of each parcel of land you intend to lease, to ensure that there is no foreclosure or other pending litigation that could interfere with your ability to lease the land. You can do this yourself at www.bconline.ca or have it done at your nearest Service BC location – www.servicebc.gov.bc.ca

If you are leasing a parcel of land with a pipeline or hydro right of way on it, you will want to refer to page 38 of this guide.

Right of First Refusal vs. Option to Purchase

If you would like to own the leased land in the future, there are two clauses to be considered: an Option to Purchase or a Right of First Refusal.

An option to purchase is usually used when a prospective purchaser knows that they want the land or that they may want it within a certain time period. A right of first refusal is usually used if the potential purchaser wants to have the opportunity to buy the land should it come on the market.

An option to purchase property is a right to buy property at a pre-determined price. The right lasts until a specified time has expired. The holder of the option does not have to buy the property. The owner of the property, however, does have to sell the property to the holder of the option if the holder performs all terms and conditions of the option.

A right of first refusal is a promise by the owner of property not to sell it without first offering it to the holder of the right on the same terms and conditions. If the owner receives a bona fide offer that they want to accept, the holder of the right of first refusal has a specified amount of time to match that offer and buy the property.⁵

If your land lease contains a right of first refusal or an option to purchase it is important that you register it, even if it is for a term less than the mandatory registration requirement (leases for terms of 3 or more years).

⁵ <http://ablawg.ca/2008/06/30/rights-of-first-refusal-and-options-to-purchase-what%E2%80%99s-the-difference/> (2014.02.28)

Sample Land Leases and Licenses

A sample short-term lease agreement and a sample license agreement published by Young Agrarians, are both available for download at their web site:

<http://youngagrarians.org>

The lease agreement can be downloaded at <http://youngagrarians.org/download/3103/> and the license agreement at <http://youngagrarians.org/download/3106/>

Another source of license and lease agreements, as well as Profit a Prendre and Memorandum of Understanding agreements can be found in the publication “A Guide to Farmland Access Agreements” produced by The Land Conservancy of British Columbia and Farm Folk City Folk. It can be downloaded in PDF format from their site at <http://www.farmfolkcityfolk.ca/community-farms-program/a-guide-to-farmland-access-agreements/>

Sample lease and license documents, derived from both the Young Agrarians and the Farm Folk City Folk documents follow. The guide and sample documents are not intended to replace competent legal and financial advice, but they enable the farmer and the landowner to agree on terms and conditions, and then seek legal and financial advice to make sure it is in their best interest.

Sample Lease

THIS AGREEMENT made the _____ day of _____, 20_____
(pursuant to the Land Transfer Form Act – Part 2), and effective the _____ day of _____, 20_____
(the “Effective Date”)

BETWEEN:

_____ (Landlord/Landowner)

_____ (Address)

_____ (Address)

LESSOR

AND:

_____ (Tenant)

_____ (Address)

_____ (Address)

LESSEE

WHEREAS the Lessor is the registered owner of the following property in _____ name of municipality or regional district _____ in the Province of British Columbia, legally described as

(address)

_____ - _____ - _____ (PID) _____ (Lot #, Plan#)

Block, Section, Township, Range, Land District as applicable

Containing _____ (acres, or hectares) as shown on the map attached to this Lease in Appendix A. This property is herein after referred to as **“the Lands”**.

Grant of Lease

- 1. Subject to the terms and conditions set out in this Lease, the Lessor agrees to lease the Lands to the Lessee.

Scope of the Lands Leased

- 2. The Lands include all:
 - a) buildings on the Lands as of the Effective Date;
 - b) buildings constructed on the Lands during the term of this Lease;
 - c) ways, paths and passages on the Lands;
 - d) waters and water courses on the Lands, including access to and use of water; and
 - e) privileges, advantages and appurtenances whatsoever related to the Lands.

Pre-existing Terms or Easements

- 3. This grant of lease is subject to:
 - a) existing terms contained in any original grant of the Lands or in any other disposition from the Crown with respect to the Lands; and
 - b) any highway, or public right-of-way, watercourse, right of water or other public easement found on the Lands.

4. The Lessor represents that the Lessor has informed the Lessee of any and all pre-existing terms or public easements described in clause 3.

Duration of Lease

5. This Lease will be in effect for years / months, starting on the Effective Date and ending on _____ (Date).

Rent Payable

6. The Lessee will pay to the Lessor the sum of \$ _____, payable in _____ monthly or annual or quarterly as applicable installments on the _____ day of each _____ month, year or quarter as applicable without invoice or notice from the Lessor ("Rent").

INSERT ADDITIONAL CLAUSES HERE:

See Recommended Additional Clauses on following pages.

THE LESSEE

Signature

Witness

Print Name

Print Name

Date

THE LESSOR

Signature

Witness

Print Name

Print Name

Date

Recommended Clauses – use as appropriate to your situation

Termination

7. This Lease may be terminated in the following ways:
- a) upon written agreement of both Lessor and Lessee to terminate this Lease;
 - b) the Lessee gives the Lessor _____ days advance written notice that the Lessee wishes to terminate this Lease;
 - c) the Lessee does not pay Rent when due and the Lessor gives the Lessee written notice of an intention to terminate this Lease for non-payment of Rent, unless the Lessee pays the outstanding Rent in full within _____ days of receipt of the notice, in which case this Lease remains in force;
 - d) any party to this Lease gives the opposing party written notice of the opposing party's non-performance of one or more of the covenants contained in this Lease, specifying the instance(s) of non-performance, and the opposing party does not
 - i. contest the notice by initiating dispute resolution pursuant to this Lease, or
 - ii. correct the non-performance
 - e) the Lessee becomes insolvent or bankrupt and takes the benefit of any act that may be in force for bankrupt or insolvent debtors;
 - f) any of the Lessee's property on the Lands is seized or taken in execution or attachment by any creditor of the Lessee; or
 - g) the Lessee makes an assignment for the benefit of his creditors.
8. If the Lessor terminates this Lease in accordance to sub-clause 7 b) or 7 c) then the Lessor must notify the Lessee of the termination, after which the Lessor may immediately:
- a) take possession of the Lands or any part thereof; and
 - b) subject to clause 10, remove all persons and property from the Lands, if the Lessee does not do so.

9. If the Lessor terminates this Lease in accordance with clause 8 and the Lessee has planted crops on the Lands that have not been harvested at the time of termination, then:
- a) the Lessee maintains the exclusive right to harvest crops planted by the Lessee on the Lands and to access the Lands for that purpose; or
 - b) the Lessor may pay compensation to the Lessee for the Lessee's reasonable expenses and labour in relation to the crops, in which case the Lessee has no further right to harvest or access crops on the Lands.

Overholding

10. If, following the expiry of the term of this Lease, the Lessee continues to occupy the Lands and the Lessor continues to accept Rent, the new tenancy created is deemed to be a yearly tenancy subject to all the provisions of this Lease insofar as those provisions apply to a tenancy from year to year.

Ownership and Transfer

11. The Lessee owns all personal property improvements (chattels) brought or made on the Lands at the Lessee's expense or on the Lessee's behalf during the period of time covered by this Lease.
12. All improvements to the real property (fixtures) made on or to the Lands at the Lessee's expense or on the Lessee's behalf during the period of time covered by this Lease remain on the Lands, without any form of compensation to the Lessee at the termination of this Lease.

Subordination and Non-Disturbance

13. This Lease is and will be subject, subordinate, and postponed to all Mortgages to the extent that without execution of any document other than this Lease, the Mortgages will have priority over this Lease notwithstanding the respective dates of execution, delivery, or registration of them. Without limiting the generality of the foregoing, the Lessee agrees to promptly execute any document in confirmation of such subordination and postponement of this Lease to any of the Mortgages, provided however that such subordination or postponement will not be effective with respect to a specific Mortgage unless and until the Lessor's Mortgagee holding such Mortgage confirms in writing to the Lessee that the Lessee has the right, if not in default under this Lease, to remain in possession of the Lands in accordance with the terms of this Lease in the event the Lessor's Mortgagee obtains title to the Lands by way of foreclosure or otherwise.

Attornment

14. Whenever required by any of the Lessor's Mortgagees under any of the Mortgages, or in the event of an exercise by any of the Lessor's Mortgagees of the power of sale in any of the Mortgages, the Lessee will attorn to and become, in each case, a tenant of such Lessor's Mortgagees or any purchaser from such Lessor's Mortgagee for the then unexpired residue of the term upon all of the terms and conditions of this Lease.

Utilities

15. The Lessee must promptly pay all charges for heat, water, gas, hydro, sewage and all other utilities supplied to or consumed on the Lands.

Taxes

If it is a term of the Lease that the Lessor pays the taxes:

16. The Lessor must promptly pay all taxes, levies, duties, assessments and license fees whatsoever whether municipal, school, provincial, parliamentary or otherwise levied, imposed or assessed against the Lands.

If it is a term of the Lease that the Lessee pays the taxes, then substitute the word Lessee for Lessor.

Liens

17. The Lessee must make best efforts to prevent the filing of any liens, judgments, or other charges against the Lands. In the event of the filing of any liens, judgments or charges against the said lands as a result of the actions of the Lessee, the Lessee must, within _____ days of being advised of same, take all necessary steps to have the liens or charges discharged or cancelled.

Lessor Access

18. The Lessee must permit the Lessor to enter the Lands:
 - a) at any time in the case of an emergency that threatens life or property; and
 - b) upon at least 24 hour's notice and during regular business hours, where such will not unreasonably disturb or interfere with the Lessee's use of the Lands, to examine and inspect the Lands.

Responsible Use

19. The Lessee must use the Lands in a socially responsible manner, causing no harm and creating no nuisance to neighbours. The Lessee takes responsibility for the use of the Lands by members of the Lessee's families, employees, friends or visitors.

Construction

20. The Lessee must:

- a) get written approval from the Lessor for construction of any major improvement (over \$_____);
- b) not alter, improve, change, remodel, tear down or destroy any buildings erected upon the Lands without written approval from the Lessor; and
- c) not construct housing for human habitation on the Lands without written approval from the Lessor. Any housing construction must meet all federal, provincial and local government legislation and bylaws.

Operations

21. The Lessee must:

- a) use the Lands only for the primary purposes of farming legal commercial crops;
- b) perform all acts required to be done under any Act or by regulation or by-laws with respect to weed and insect control;
- c) comply with all the laws, rules, regulations and ordinances and by-laws of any government or other body having jurisdiction over the Lands; and
- d) at the time of expiry or termination leave the Lands in the same or better condition than recorded on the Effective Date.

Repair and Maintenance

22. The Lessee assumes full responsibility for the operation, repair, and maintenance of the Lands and any improvements constructed on the Land (whether or not such improvements were constructed by the Lessee), ensuring all is kept in good working condition (including fixtures and chattels).

23. If the Lessee fails to meet any expense when due or carry out repair or maintenance work on the Lands and improvements that is reasonably necessary and not merely cosmetic, then the Lessor may give the Lessee written notice to pay the said expense or commence the said work. If the Lessee does not abide by the notice or initiate dispute resolution under this Lease within _____ days, then the Lessor may enter the Lands and do the said work or pay the said expenses all at the expense of the Lessee, the cost of which is added to the Rent.

Quiet Enjoyment

24. The Lessor must:

- a) not interfere with the personal lives, associations, expressions or actions of the Lessee, except insofar as permitted under terms and conditions of this Lease;
- b) expressly recognize the rights of the Lessee to the quiet enjoyment of the Lands and to the Lessee's right of privacy; and
- c) not enter into agreements with others in regards to use and occupation of the Lands without written approval from the Lessee.

Subletting and Assigning

25. The Lessee may not assign or sublet the Lands in whole or in part without the Lessor's prior consent in writing, such consent not to be unreasonably withheld.

Dispute Resolution

26. If a breach of this Lease occurs or is threatened, or if there is disagreement as to the meaning of this Lease:

- a) either the Lessee or the Lessor may give notice to the other parties requiring a meeting of all parties for dispute resolution within _____ business days of receipt of the notice;
- b) all activities giving rise to an alleged breach, or threatening a breach of this Lease, or giving rise to a disagreement as to the meaning of this Lease, must immediately cease upon receipt of the notice;
- c) the parties must meet and attempt to resolve the dispute, acting reasonably and in good faith, within _____ Business Days of receipt of the notice;

- d) if the parties are not able to resolve the matter within that time, the parties may appoint a mutually acceptable person to mediate the matter. If the parties are unable to agree on the appointment of a mediator within _____ days after the mediation process is invoked, any party may apply to the British Columbia Mediator Roster Society, or its successor, or such other organization or person agreed to by the parties in writing, for appointment of a mediator. The parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within _____ days of the appointment of the mediator;
- e) the cost of the mediation will be borne equally between the parties, which costs will not include costs incurred by a party for representation by counsel at the mediation; and
- f) a party may not seek to have an alleged breach of this Lease adjudicated in Court until the dispute resolution process set out in this clause has concluded, unless both parties agree to forego mediation.

Non-Waiver

27. If the Lessor does not insist upon strict performance of any of the conditions in this Lease this is not a waiver or relinquishment for the future of any such condition unless the Lessor gives a waiver in writing. The acceptance of any rent or performance of any Lease condition by a person other than the Lessee shall not be construed as an admission by the Lessor of any right, title or interest of any such persons as a sub-tenant, assignee, transferee or otherwise in place and stead of the Lessee.

Independent Contractor

28. The Lessor enters into this Lease as an independent contractor and in no sense is the Lessee or the Lessee's employees, invitees or agents to be considered an agent of or under the control of the Lessor.

Insurance

29. The Lessor represents that the Lands are insured by the Lessor to the extent set out in the insurance documents attached to this Lease as Appendix "A". The Lessor agrees to maintain a level of insurance for the Lands that is equal to or better than that set out in Appendix "A" for the duration of the Lease.

30. The Lessee shall not do or omit to do or permit to be done anything that will cause or have the effect of causing:
- a) the cost of the Lessor's insurance in respect of the Lands to increase at any time during the Lease; or
 - b) the Lessor's insurance in respect of the Lands to be subject to cancellation

Notice

31. Wherever any notice is required to be given to either party under the terms of this Lease, the notice must be in writing and will be deemed to be sufficiently given if it is forwarded by registered mail to the address of the party set out on the first page of this Lease.

Registration of Lease

32. This Lease shall be registered with the BC Land Title and Survey Authority.

General

33. This Lease and everything herein contained shall ensure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the parties hereto, subject to the granting of consent by the Lessor to any assignment or sub-lease, and every reference herein to any party hereto shall include the heirs, executors, administrators, successors, assigns and other legal representatives of such party.
34. Where there is more than one Lessee, the provisions herein shall be read with all grammatical changes thereby rendered necessary and all the covenants shall be deemed joint and several.
35. Amendments and alterations to this Lease must be in writing, must be signed by both the Lessee and the Lessor and must be appended to this Lease.
36. In the event of an emergency situation the Lessee may use their best judgment to respond to the emergency and must notify the Lessor as soon as possible of the actions taken.
37. The parties agree that this Lease does not give rise to a partnership relationship.

- 38. The parties agree that this Lease will be construed in accordance with, and be governed by, the laws of the Province of British Columbia and the laws of Canada applicable thereto.
- 39. Notwithstanding the termination or expiry of this Lease:
 - a) the Lessee shall continue to be liable to the Lessor for all outstanding Rent due at the time of termination or expiry of this Lease; and
 - b) the provisions in this Lease under the headings “Overholding”, “Ownership and Transfer” and “Dispute Resolution” will continue in effect.
- 40. Time is of the essence of this Lease.
- 41. This Lease is the complete and exclusive agreement between the parties and it supersedes all other agreements between the parties with respect to the Lands, whether oral or written, including any renewals and extensions and restatements.

OPTIONAL CLAUSES

Roll-Over

- 42. Every _____ year(s) at:
 - _____ (date)
 - _____ (date)
 - _____ (date)

The contents of this Lease, including Rent, may be modified as mutually agreed upon by the Lessee and Lessor. If the parties are not able to come to a mutual agreement on changes to the Lease, the parties may use the Dispute Resolution process outlined in this Lease. If the parties are not able to come to a mutual agreement through the Dispute Resolution process then the terms of the Lease will continue in force without modification.

Renewal

- 43. If the Lessee duly pays the Rent and performs all of the Lessee’s obligations under the Lease, the Lessor will, upon the request of the Lessee made at least _____ months prior to the expiration of the term of this Lease, grant to the Lessee a renewal lease of the Lands for a further term of _____ years, subject to the same covenants, provisos and agreements as herein contained with the exception of this clause and with the exception of Rent, which shall be mutually agreed upon by the

parties. If the parties are not able to come to a mutual agreement on Rent for the renewal term, the parties may use the Dispute Resolution process outlined in this Lease. If the parties are not able to come to a mutual agreement on Rent for the renewal term within _____ days of the commencement of the Dispute Resolution process, then the renewal of the Lease will not take effect.

Interest

44. If the Lessee does not pay Rent on or before the due dates in this Lease, the Lessee agrees to pay interest on the amount of unpaid Rent at the rate of the prime business interest rate set by the Bank of Canada, plus _____%.

Sample License

REQUIRED CLAUSES

THIS AGREEMENT made the ___ day of _____, 20__ (pursuant to the Land Transfer Form Act - Part 2), and effective the ___ day of _____, 20__ (**the “Effective Date”**).

BETWEEN:

_____ (**Landlord/Landowner**)

Of _____ (address)

_____ (address)

herein after referred to as the **“Licensor”**.

AND:

_____ (**Tenant**)

Of _____ (address)

_____ (address)

herein after referred to as the **“Licensee”**.

WHEREAS The Licensor is the registered owner of the following property in _____, Province of British Columbia, commonly known as _____ (farm name), and legally described as:

(address)
_____-_____-_____(PID)_____(Lot #)
_____(Block range)_____(Section)
_____(District)_____(Plan)

consisting of _____ acres as shown on the map attached to this License in Appendix A. This property is herein after referred to as **“the Lands”**.

The Licensee wishes to have possession of and use of the Lands, for the purpose of farming legal commercial crops for local food production over and above household self-sufficiency, (the **“Permitted Use”**).

Grant of License

- 1. Subject to the terms and conditions set out in this License, the Licensor agrees to grant a non-exclusive license of occupation to the Licensee.

Scope of the Lands Licensed

- 2. The Lands include all:
 - a) buildings on the Lands as of the Effective Date;
 - b) buildings constructed on the Lands during the term of this License;
 - c) ways, paths and passages on the Lands;
 - d) waters and water courses on the Lands, including access to and use of water; and
 - e) privileges, advantages and appurtenances whatsoever related to the Lands.

Pre-existing Terms or Easements

- 3. This grant of license is subject to:
 - a) existing terms contained in any original grant of the Lands or in any other disposition from the Crown with respect to the Lands;
 - b) any highway, or public right-of-way, watercourse, right of water or other public easement found on the Lands;
 - c) the Licensee does not acquire any interest in the Lands under this Agreement. The Licensor does grant to the Licensee either by this Agreement, through prescription or otherwise any interest in the Lands other than the right to use the Lands pursuant to the terms of this Agreement. The Licensor's rights, other than those specifically granted under this Agreement, remain in force.
- 4. The Licensor represents that the Licensor has informed the Licensee of any and all pre-existing terms or public easements described in clause 3.

Duration of License

- 5. This License will be in effect for ____ years / months, starting on the Effective Date and ending on _____ (date).

License Fee Payable

- 6. The Licensee will pay to the Licensor a license fee of \$ _____, for use of the Lands payable in monthly installments on the _____ day of each month without invoice or notice from the Licensor ("**License Fee**").

THE LICENSEE

Signature

Witness

Print Name

Print Name

Date

THE LICENSOR

Signature

Witness

Print Name

Print Name

Date

RECOMMENDED CLAUSES

Termination

- 7. Without limiting any of its other rights or remedies, the Licensor may terminate the license granted under this Agreement:
 - a) By giving the Licensee _____ days advance written notice that the Licensee wishes to terminate this License;
 - b) Without giving the Licensee any prior notice if the Licensee breaches any of the Licensee’s obligations under this Agreement.

Ownership and Transfer

- 8. The Licensee owns all personal property improvements (chattels) brought or made on the Lands at the Licensee’s expense or on the Licensee’s behalf during the period of time covered by this License.
- 9. All improvements to the real property (fixtures) made on or to the Lands at the Licensee’s expense or on the Licensee’s behalf during the period of time covered by this License remain on the Lands, without any form of compensation to the Licensee at the termination of this License.

Utilities

- 10. The Licensee must promptly pay all charges for heat, water, gas, hydro, sewage and all other utilities supplied to or consumed on the Lands.

Taxes

11. The Licensor must promptly pay all taxes, levies, duties, assessments and license fees whatsoever whether municipal, school, provincial, parliamentary or otherwise levied, imposed or assessed against the Lands or upon the Licensee in respect thereof.

Liens

12. The Licensee must make best efforts to prevent the filing of any liens, judgments, or other charges against the Lands. In the event of the filing of any liens, judgments or charges against the said lands as a result of the actions of the Licensee, the Licensee must, within _ days of being advised of same, take all necessary steps to have the liens or charges discharged or cancelled.

Licensor Access

13. The Licensee must permit the Licensor to enter the Lands:

- a) At any time in the case of an emergency that threatens life or property; and
- b) Upon at least 24 hours’ notice and during regular business hours, where such will not unreasonably disturb or interfere with the Licensee’s use of the Lands, to examine and inspect the Lands.

Responsible Use

14. The Licensee must use the Lands in a socially responsible manner, causing no harm and creating no nuisance to neighbours. The Licensee takes responsibility for the use of the Lands by members of the Licensee’s families, employees, friends or visitors.

Construction

15. The Licensee is entitled to construct and install on the Lands such temporary improvements as _____

16. The Licensee must:

- a) Use the Lands only for the primary purposes of farming legal commercial crops;
- b) Perform all acts required to be done under any Act or by regulation or by-laws with respect to weed and insect control;

- c) Comply with all the laws, rules, regulations and ordinances and by-laws of any government or other body having jurisdiction over the Lands; and
 - d) at the time of expiry or termination leave the Lands in the same or better condition than recorded on the Effective Date.
17. The Licensee must ensure that in using the Lands for the Permitted Use, no act whatsoever shall be done or omitted to be done in or upon the Lands, which may result in nuisance, damage or disturbance to the occupiers or owners of any lands or premises adjoining the Lands or to the holders of any easement, right of way or other encumbrance charging the whole or part of the Lands;
18. If deemed prudent or necessary by the Licensor the Licensee will:
- a) Designate the boundaries of the Lands by notices, posted signs, fences or otherwise, as approved by the Licensor;
 - b) Control, regulate and direct the movement, activities and the access and entry of all Licensee employees, agents, contractors, consultants, licensees or any other persons for whom Licensee is responsible to or on the Lands;
 - c) Regulate the use and movement of vehicles of all Licensee employees, contractors, consultants, or any other persons for whom Licensee is responsible to or for on the Lands.

Repair and Maintenance

19. The Licensee assumes full responsibility to keep, at all times and at the Licensee's expense, the Lands and any improvements constructed on the Lands (whether or not such improvements were constructed by the Licensee) in good repair, including without limitation, the fences, gates, and roads.

Quiet Enjoyment

20. The Licensor must:
- a) not interfere with the personal lives, associations, expressions or actions of the Licensee, except insofar as permitted under terms and conditions of this License;
 - b) not use the property in a manner that would derogate from the Licensee's rights under this Agreement.

Dispute Resolution

21. If a breach of this License occurs or is threatened, or if there is disagreement as to the meaning of this License:
- a) either the Licensee or the Licensor may give notice to the other parties requiring a meeting of all parties for dispute resolution within business days of receipt of the notice;
 - b) all activities giving rise to an alleged breach, or threatening a breach of this License, or giving rise to a disagreement as to the meaning of this License, must immediately cease upon receipt of the notice;
 - c) the parties must meet and attempt to resolve the dispute, acting reasonably and in good faith, within _____ business days of receipt of the notice;
 - d) if the parties are not able to resolve the matter within that time, the parties may appoint a mutually acceptable person to mediate the matter. If the parties are unable to agree on the appointment of a mediator within _____ days after the mediation process is invoked, any party may apply to the British Columbia Mediator Roster Society, or its successor, or such other organization or person agreed to by the parties in writing, for appointment of a mediator. The parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within _____ days of the appointment of the mediator;
 - e) the cost of the mediation will be borne equally between the parties, which costs will not include costs incurred by a party for representation by counsel at the mediation; and
 - f) a party may not seek to have an alleged breach of this License adjudicated in Court until the dispute resolution process set out in this clause has concluded, unless both parties agree to forego mediation.

Non-Waiver

22. If the Licensor does not insist upon strict performance of any of the conditions in this License this is not a waiver or relinquishment for the future of any such condition unless the Licensor gives a waiver in writing. The acceptance of any License Fee or performance of any License condition by a person other than the Licensee shall not be construed as an admission by the Licensor of any right, title or interest of any such persons as a sub-tenant, assignee, transferee or otherwise in place and stead of the Licensee.

Independent Contractor

23. The Licensee enters into this License as an independent contractor and in no sense is the Licensor of the Licensor's employees, invitees or agents to be considered an agent of or under the control of the Licensor.
24. No inspection undertaken by the Licensor, granting of a consent by the Licensor, delivery of plans, specifications or other information to the Licensor nor Licensee's compliance with any orders or directions given by the Licensor shall relieve Licensee from complying with, or derogate from Licensee's obligations to comply with, the Licensee's obligations under this Agreement. The Licensor is under no obligation to review any plans or specifications conveyed by Licensee to the Licensor to inspect, repair or maintain the Lands or any improvements nor insure any improvements made or installed by or on behalf of Licensee.

Insurance

25. The Licensor represents that the Lands are insured by the Licensor to the extent set out in the insurance documents attached to this License as Appendix "A". The Licensor agrees to maintain a level of insurance for the Lands that is equal to or better than that set out in Appendix "A" for the duration of the License.
26. The Licensee shall not do or omit to do or permit to be done anything that will cause or have the effect of causing:
 - a) the cost of the Licensor's insurance in respect of the Lands to increase at any time during the License; or
 - b) the Licensor's insurance in respect of the Lands to be subject to cancellation.

Notice

27. Wherever any notice is required to be given to either party under the terms of this License, the notice must be in writing and will be deemed to be sufficiently given if it is forwarded by registered mail to the address of the party set out on the first page of this License.

General

28. Where there is more than one Licensee, the provisions herein shall be read with all grammatical changes thereby rendered necessary and all the covenants shall be deemed joint and several.
29. Amendments and alterations to this License must be in writing, must be signed by both the Licensee and the Licensor and must be appended to this License.

- 30. Time is of the essence of this License.
- 31. This License is the complete and exclusive agreement between the parties and it supersedes all other agreements between the parties with respect to the Lands, whether oral or written, including any renewals and extensions and restatements.

OPTIONAL CLAUSES

Roll-Over

- 32. Every _____ year(s) at:
_____ (date)
_____ (date)
_____ (date)

The contents of this Agreement, including the License Fee, may be modified as mutually agreed upon by the Licensee and Licensor. If the parties are not able to come to a mutual agreement on change to the License, the parties may use the Dispute Resolution process outlined in this License. If the parties are not able to come to a mutual agreement through the Dispute Resolution process then the terms of the License will continue in force without modification.

Renewal

- 33. If the Licensee duly pays the License Fee and performs all of the Licensee’s obligations under the License, the Licensor will, upon the request of the Licensee made at least _____ months prior to the expiration of the term of this License, grant to the Licensee a renewal License of the Lands for a further term of _____ years, subject to the same covenants, provisos and agreements as herein contained with the exception of this clause and with the exception of the License Fee, which shall be mutually agreed upon by the parties. If the parties are not able to come to a mutual agreement on License Fee for the renewal term, the parties may use the Dispute Resolution process outlined in this Agreement. If the parties are not able to come to a mutual agreement on License Fee for the renewal term within _____ days of the commencement of the Dispute Resolution process, then the renewal of the Agreement will not take effect.

Interest

34. If the Licensee does not pay License Fee on or before the due dates in this License, the Licensee agrees to pay interest on the amount of unpaid License Fee at the rate of the prime business interest rate set by the Bank of Canada, plus _____%.

Keeping property taxes affordable when leasing out your land

For the landowner (lessor), keeping the leased land in farm classification makes a big difference in property taxes, and if the farmer (lessee) is responsible for paying property taxes, it makes a difference in profit margin.

Property taxes are significantly lower for properties qualifying for farm classification for these reasons:

- Land is assessed at regulated farm rates, which are typically lower than market value;
- In rural taxation areas, farm land receives a 50% exemption from school taxes;
- In a rural taxation area, all farm buildings, including a farmer's dwelling are exempt from general taxes;
- In a municipality, the farmers dwelling is fully taxable, but farm buildings receive an exemption of \$50,000 or 87.5% of their assessed value for both general and school purposes.
- In rural taxation areas, the farmers dwelling is fully taxable for school taxes, but other farm buildings will receive an exemption of \$50,000 or 87.5% of their assessed value, whichever is greater.

Complete up to date information on exemptions and farm classification can be found at <http://www.bcassessment.ca/public/Pages/default.aspx>

BC Assessment provides other useful online resources about farm classification and in particular for leased land. Your first stop should be BC Assessment's website: <http://www.bcassessment.ca>

The basics for leased land (and buildings) to qualify are:

- the owner applies to have land classified as a farm;
- the owner and lessee enter into a lease;
- the leased land makes a reasonable contribution to the farm operation; and
- the lessee – farmer meets the income and sales requirements.

The lease document must contain:

- the names and signatures of the lessee (farmer) and lessor (owner),
- the legal or other well-defined description of the land being leased,
- the commencement date,
- the signing date,
- the duration of the lease (end-date specified),
- size of the leased area,
- rent or other compensation paid for the lease,
- and the intended use of the leased land.⁶

BC Assessment will recognize agreements that are lease, license, or crop share, and in the absence of a written agreement, BC Assessment provides a basic lease form, which it will accept when completed and signed by both parties. A fillable PDF form can be accessed at:

<http://www.bcassessment.ca/forms/Documents/Farm%20Class%20Lease%20Form.pdf>

A sample follows on the next page:

⁶ BC Assessment Fact Sheet: Classifying Land Leased to Farmers,
<http://www.bcassessment.ca/public/Fact%20Sheets/Classifying%20Land%20Leased%20to%20Farmers.aspx> (2014.02.12)

BC Assessment

FARM CLASSIFICATION LEASE FORM

If you are leasing all or part of your property to a farmer, please provide a copy of your lease or complete the lease information form below, which will be considered the lease document for purposes of section 7 of B.C. Reg. 411/95. If you provide a copy of your own lease, please ensure that the lease includes the information requested below and if it does not, please provide the information. Please note that the lease fee does not qualify as farm income.

Please print

Assessment Roll No. _____

or

Legal Description _____

Lease Start Date (mm/dd/yyyy) _____ Term of Lease _____ years

Lease Expiry Date (mm/dd/yyyy) _____

Lease Fee \$ _____

Use of leased land: Pasture Crop Other (specify) _____

Please Check (what is included in the lease?) Land Farm Buildings House

Area Leased _____ acres (or) _____ hectares

Lessor Name (owner)

Lessee Name (farmer)

Address

Address

City Postal Code

City Postal Code

Telephone #

Telephone #

Signature Date (mm/dd/yyyy)

Signature Date (mm/dd/yyyy)

The personal information requested on this form is collected under section 15(2), 16(2), 17(1), 17(2), and/or 24(10) of the *Assessment Act* and under section 26 of the *Freedom of information and Protection of Privacy Act (FOIPPA)* for the purposes set out in the *Assessment Act* and Regulations, the *Assessment Authority Act*, and related purposes. If you have questions about the collection, use or disclosure of your personal information, please contact BC Assessment's Senior Information & Privacy Analyst, Legal Services, by mail (400 – 3450 Uptown Blvd., Victoria, BC V8Z 0B9) or telephone (1-866-825-8322 ext 00282).

Property Tax benefits for retired farmers

Until recently, if a retired farmer leased out the land to another farmer but continued to live in the farmhouse, the farmhouse and the dwelling land were taxed as residential. Now, if the land is in the ALR, the dwelling is the owner's principal residence, and some portion of the dwelling parcel or an adjacent parcel continues to be farmed, the farmer is at least 65 years old, and has farmed land owned by him or her for at least 20 years, the owner can make application by October 31 of each year to receive tax exemption for the dwelling in the following year.

Find out more at <http://www.bcassessment.ca>

Important Considerations for Lessors

It is important to bear in mind that if the lessee does not meet the minimum income and sales requirements on his or her farming operation, the owner will lose farm classification on the leased property – resulting in higher taxes.

It is not just a matter of drawing up a lease that meets BC Assessment's requirements. It is a matter of being sure you have a lessee who will meet the income requirements.

If you are entering into a "lease" agreement with a farmer, will he or she have exclusive possession? In many cases, the answer is no, because you will continue to live on the property, using various buildings on the property, and you may continue to be involved in some of the farming decisions. What you will really have in place is a license and drawing up a license agreement may be the best way to formalize your agreement – then simply fill out the BC Assessment form for farm classification purposes.

Lessors need to be mindful of what constitutes farming activity for farm classification purposes. These are clearly set out in BC Regulation 411/95 Classification of Land as a Farm Regulation, as is a list of items that do not qualify: manufactured derivatives from raw agricultural materials, products for domestic consumption on the farm, agricultural services other than horse stud fees, and breeding and raising of pets other than horses.

Lease payments do not constitute farm income for an owner.

When an owner leases the property to a farmer under a crop-share agreement, the land that is farmed will be eligible for farm class, but the land beneath a residence will not be eligible for farm class unless the occupant is involved in the day-to-day activities of the farm (i.e., it is a farmer's dwelling).⁷

⁷ <http://www.bcassessment.ca/public/Fact%20Sheets/Classifying%20Land%20Leased%20to%20Farmers.aspx> (2014.02.14)

Will the farm buildings, i.e. barns, implement sheds, grain bins, etc. be used by the lessee farmer? If so, they must be included in the lease, otherwise they will not receive exemption.

The Oil and Gas Surface Lease

In BC with few exceptions, landowners do not own subsurface rights to natural gas, petroleum or minerals. These rights are owned by the Crown, and the government can sell rights to explore and extract on private property. The tenure by which access is gained is called a Surface Lease, negotiated with the landowner. If agreement is not reached, the dispute will be mediated and/or arbitrated by the BC Surface Rights Board, and in the absence of a lease agreement, an order of the Surface Rights Board will grant entry.



Surface leases are typically 20 years, with an optional 20 year renewal; however they can be terminated by the undersurface rights holder (the company) after two years, upon providing 90 days' notice. This is mentioned as a caution against relying on the lease income when making farm business plan decisions.

Resources for Land Owners – Sample BC Surface Lease Agreement

Despite the compulsory nature of Surface Rights Leases, there are resources available to landowners. The first is a sample Surface Lease, drafted in 2009 by NEEMAC (Northeast Energy and Mines Advisory Committee), which was comprised of representatives from Custodians of the Peace Country Society, Peace River Regional District, Peace River Forage Association (BC), Canadian Association of Petroleum Producers (CAPP), Small Explorers and Producers Association of Canada (SEPAC) and Canadian Association of Petroleum Landmen (CAPL). The (then) BC Ministry of Energy, Mines and Petroleum Resources helped to facilitate the negotiation of the sample surface lease agreement.

The sample lease and its companion Q & A Guide can be accessed at the Farmers' Advocacy Office website:

[http://www.farmersadvocate.ca/documents/BC Standard Surface Lease Agreement.pdf](http://www.farmersadvocate.ca/documents/BC_Standard_Surface_Lease_Agreement.pdf)

The sample lease contains the compulsory wording contained in the Surface Lease Regulation.

Resources for Landowners – Rent Reviews, Fair Compensation

Because most of the companies operating in BC are Alberta-based, there is a continuing problem with land agents signing up landowners to a lease that is not compliant with BC legislation—in fact, in the body of such leases reference is made to legislation from Alberta. A very important difference in the two provinces' legislation is:

- In BC rent reviews can be requested at the end of the 4th year, and the land owner is responsible for initiating the rent review, but
- In Alberta leases, the company is required to advise the owner of their right to negotiate a review.

Complete information on requesting a rent review can be found on the BC Surface Rights Board website:

<http://www.surfacerightsboard.bc.ca/Documents/InformationSheets/InfoSheet11.pdf>

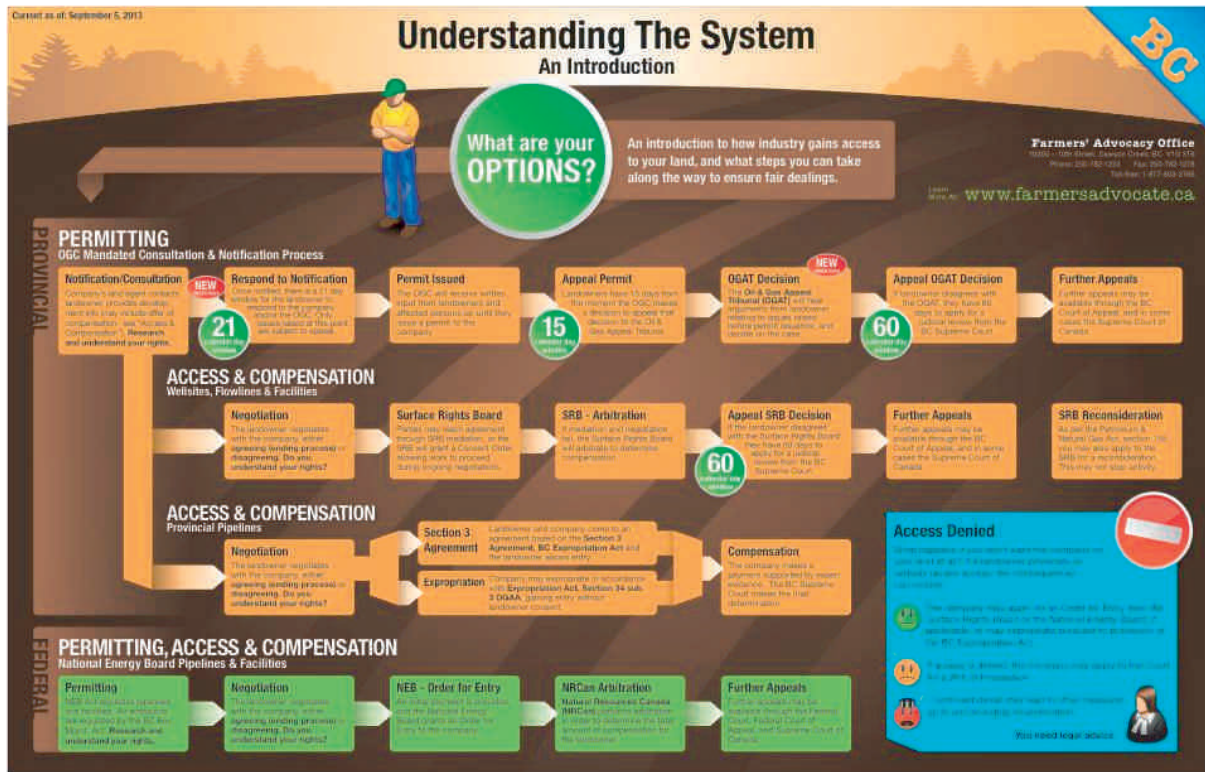
The Board provides a set of information sheets that are useful for landowners dealing with surface lease disputes at:

<http://www.surfacerightsboard.bc.ca/ResourcesForParties/>

There are resources available for landowners through the Farmers' Advocacy Office, located in Dawson Creek, and serving landowners in the Peace River Regional District. Visit their website at www.farmersadvocate.ca

Some of the resources available to no cost to the landowner are:

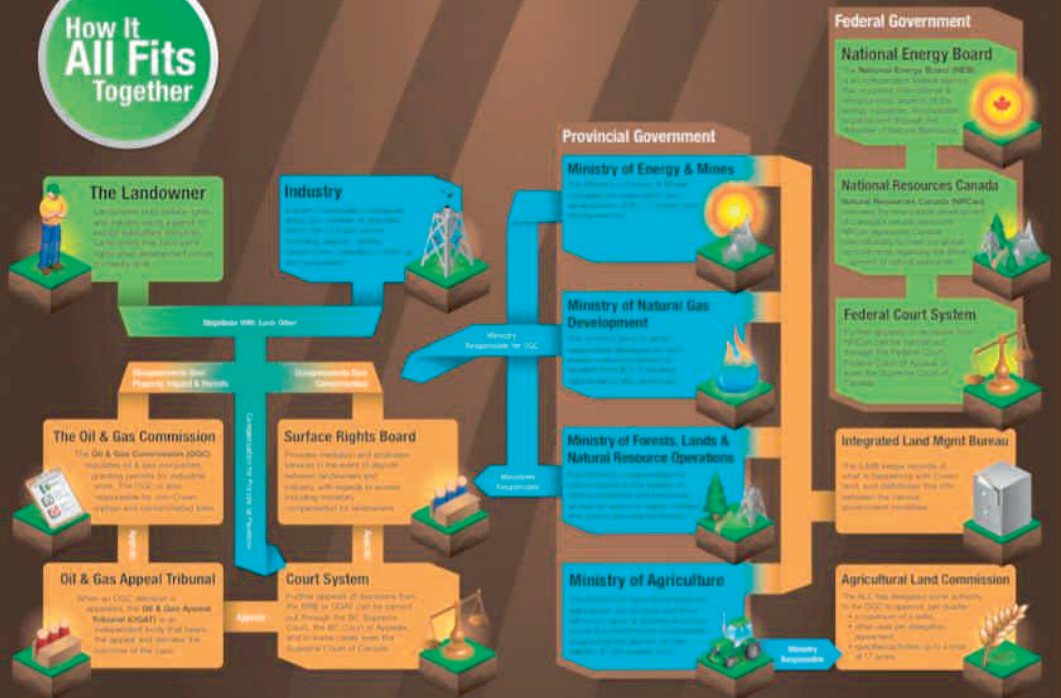
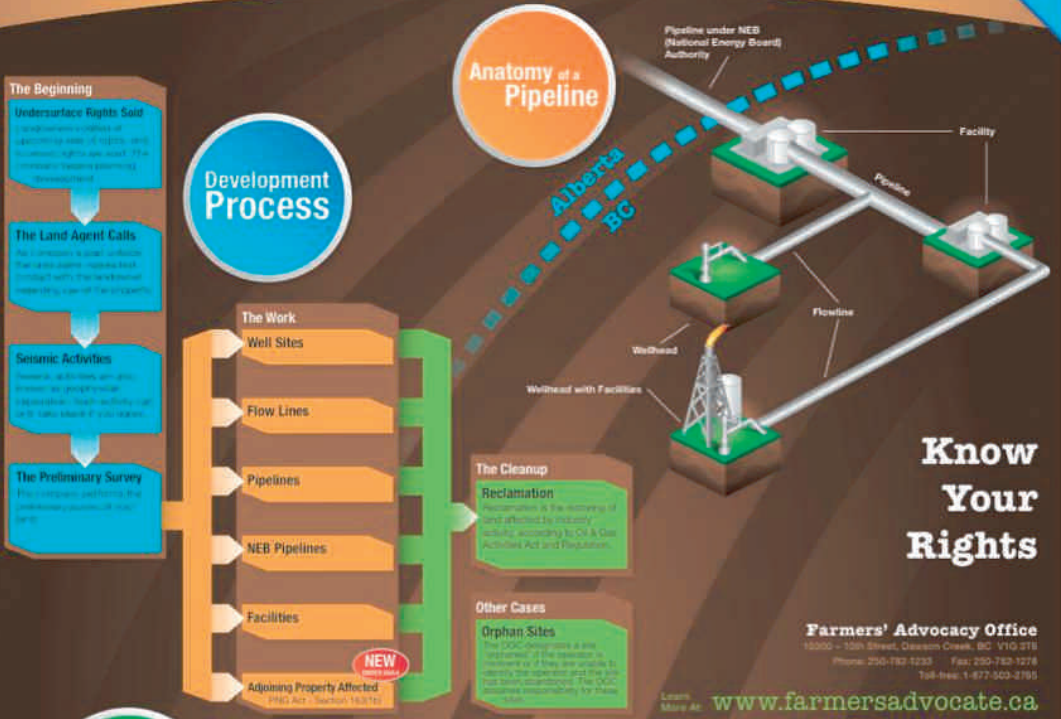
- An interactive satellite imagery map showing surface lease rents per acre, so landowners can see what has been negotiated in their area.
- An interactive map showing recent sales of large vacant agricultural parcels (>80 acres).
- Advice on compensation, rights and other issues relating to oil and gas leases, pipeline rights of way and other facilities—an advisor is available to meet with individuals or landowner groups.
- A meeting room to use for negotiations.
- An advisor who will assist in negotiations.
- Community information sessions.
- A two-sided poster-size guide available online or by request from the Farmers' Advocacy Office (250-782-1233)



Understanding The System

An Introduction

BC



Before you sign a Surface Lease

Landowners are strongly advised to seek independent advice or go to the Farmers' Advocacy Office for assistance before signing a Surface Lease. As a land owner, you need to bear in mind that the land agent approaching you to sign the lease is an agent of the oil and gas company, and it is not his or her job to ensure that the terms of the lease are in your best interest.

Furthermore, there is a requirement under the Oil and Gas Activities Act that Notification and Consultation packages be delivered to affected parties within a prescribed radius of the proposed activity. This should be received and considered BEFORE a surface lease is negotiated, because it affords the affected party an opportunity to make a written submission to the Oil and Gas Commission and the oil and gas company concerning the proposed activity and its location.

There is a 21-day response window and this is the time to express concerns and suggest mitigation methods, i.e. changes that lessen the impact on your home or agricultural operation. The Oil and Gas Commission will review responses, and could refuse to issue a permit, require the company to attempt to resolve concerns, modify its application, or add mitigation measures. If the permit is issued and the owner does not believe their concerns have been adequately addressed, they have 15 days to appeal to the Oil and Gas Appeal Tribunal.

Oil and gas surface lease negotiations are time-sensitive, so landowners are strongly advised to act quickly in terms of ensuring their rights and the rights of the farmer lessee are protected, and to act slowly and only after receiving adequate information and advice when it comes to signing a Surface Lease Agreement.

The BC Oil and Gas Commission (OGC) provides a Land Owner's Information Guide for Oil and Gas Activities in British Columbia, which is available for online viewing or download at <https://www.bcogc.ca/public-zone/landowner-guides/landowner-guides/landowner-guide/land-owners-information-guide>

As well, OGC has produced a series of Fact Sheets, available at <https://www.bcogc.ca/public-zone/fact-sheets>

For the fact sheet explaining consultation and notification see In Brief: Landowners visit <https://www.bcogc.ca/node/5923/download>

BC Assessment provides a Fact Sheet for landowners with oil and gas well sites on their property. It is entitled Oil and Gas Well Sites: A Guide for Property Owners and can be accessed at <http://www.bcassessment.ca/public/Pages/FactSheets.aspx>

Consider the impact

Beyond compensation, the impact of a surface lease on farming operations must be considered:

- The risks associated with sour gas (H₂S) and how farming operations are affected by the Emergency Response Plan associated with the proposed well(s).
- Will drilling and fracking compromise water wells or dugouts?
- Is the location so close to livestock containment and buildings that continued operation during drilling and subsequently operation of the well (or wells) will be impossible, or severely impacted? Bear in mind that surface leases are often for a multi-well pad, resulting in drilling and fracking over an extended period of time.
- How will noise, vibration, light, increased traffic and dust affect the farming operation and the residence?
- What weed control measures will take place during drilling, and afterward during operation?
- What degree of soil admixture will take place?
- How will the location of the well and access road impact operation of farm equipment? Does it result in a severed portion of a field where production will be lost because large equipment can no longer operate there? How many extra turns of equipment will be required, and what cost does this add?
- If the farm is organic, how will introduction of chemicals on the lease site affect organic certification? Can the farmer contract with the company to remove weeds from the lease area without use of herbicides?
- Will lease construction result in destruction of fencing or shelterbelt trees?
- The tax impacts of initial payment compensation, lease fees, and “compensation in kind”, e.g. a dugout built by the company. If after consulting with a tax professional it is determined that there will be an adverse tax consequence, it is advisable to negotiate a “tax gross-up” provision in the lease, so the landowner is compensated for it.

- If the land is leased out to another farmer, and is not being farmed by the owner, who is entitled to the portions of the initial payment dealing with crop loss, nuisance and disturbance? The lease with the farmer may need to be adjusted to reflect less acreage, and perhaps a lower rate because of the increased cost of farming it, or assignment of the portion of the annual lease payment allocated to crop loss to the farmer leasing the land.
- What will remediation look like? There are standards for remediation, and once a well is decommissioned, these standards must be met before a Certificate of Restoration will be issued by the Oil and Gas Commission. Until that happens, you are entitled to rent. However, there may be specific remediation that you want to include in a lease, such as removing all gravel and ditching from an access road and replacing the topsoil, or filling in borrow pits. A Certificate of Restoration will not be issued by OGC unless there is a landowner release form signed by the landowner submitted with the application.
- What happens if the oil and gas company goes broke and abandons the well site?
- Learn about the orphan site reclamation fund at <http://www.bcogc.ca>

Pipeline and Hydro Rights of Way

These are typically not leased, but are a charge registered against the title and compensated for on a one-time basis. They are outside the scope of this guide, but are mentioned here just to introduce three items that a lessor and lessee should consider when leasing land with rights of way crossing it.

- Crossing the pipeline right of way with heavy equipment. Is this permitted by the right of way agreement and are there specified pipeline crossing locations?
- Setback requirements for building near a right of way.
- Access to the right of way by the grantee (hydro or pipeline company)—will it involve damage to the crops or fencing of the lessee farmer? BC Hydro typically has what is called a “blanket easement” which means they can travel over any part of your property to access their right of way.

Equipment Leases – Lease or Buy

The lease vs. buy decision for equipment has different factors at play than for land. In the case of equipment, there are two types of lease—a capital lease, or an operating lease. Lease payments are generally fully deductible for tax purposes, whereas the tax-deductible portion of purchased equipment is the CCA (capital cost allowance—or allowed depreciation) plus interest, if financed. An equipment lease is a capital lease if it is a way to buy the equipment, i.e. a favourable purchase option exists at the end of the lease term. An operating lease would exist when a lease is for a fixed term and the equipment goes back to the lessor at the end of the term.




In general, the decision to lease is more appropriate in situations where:

- The farmer wants to preserve capital for other investments;
- The equipment is needed for a short term – perhaps to match a short term land lease;
- The size of the operation will be changing – either increasing or decreasing, so leasing offers the flexibility to match equipment to the size of the operation as it changes.
- The reliability of the latest equipment is important.
- The farmer is nearing retirement and wants to limit capital assets.
- Leasing may create a tax advantage – by reducing or deferring tax, because the entire lease payment is deductible, rather than just the interest portion of a purchase payment. However, this may be offset by the fact that writing off depreciation (capital cost allowance) depreciation is not an option when leasing.

Leasing equipment is not without disadvantages, such as:

- The equipment could be subject to hours of use restrictions – and if operator exceeds the number of hours, the cost of extra hours is likely to be at a higher rate.

- The leased equipment is not a capital asset, so it generally cannot be used as security;
- It cannot be used as an asset for capital cost allowance on income tax returns.
- While there is no GST on purchase of most agricultural equipment, there is GST on lease payments. Although GST is recoverable as an input tax credit, it could reduce monthly cash flow. GST on purchased equipment is generally recoverable at the time of purchase.
- Farm Credit Corporation offers two videos worth watching when considering the leasing vs. purchasing farm equipment question.



Read. Watch. Listen. Learn. Repeat.

FCC.ca is your source for agriculture. Learn from industry experts and find the information you need to help grow your business. Dig in, explore and come back often.

- <https://www.fcc-fac.ca/en/ag-`knowledge/production/management-moment-buy-lease-or-hire-questions-to-ask.html>
- <https://www.fcc-fac.ca/en/ag-knowledge/production/management-moment-the-value-of-machinery-costs.html>

Tax Write-Offs

Before assuming that a lease will provide an income tax benefit when compared to a purchase agreement, it is important to seek professional financial advice from your accountant.

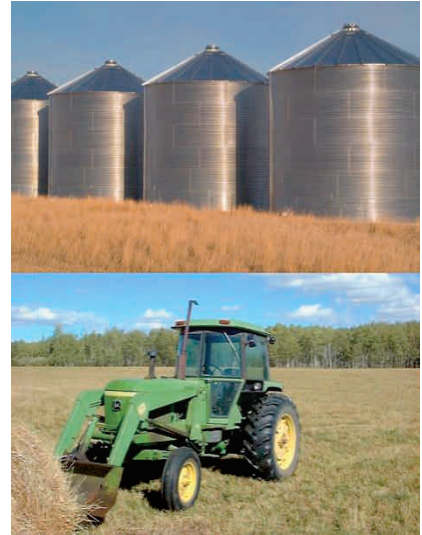
The difference between leasing and purchasing equipment can vary depending on the time of year.

Because depreciation in the first year of purchase is half of the Capital Cost Allowance (CCA) rate, e.g. 15% if the CCA rate is 30%, the sum of depreciation plus purchase payment interest is not likely to be as much of a tax deferral as the sum of the lease payments. Later in the year, the reverse is often true and purchasing at or near year-end results in a faster write-off.



Timing is not the only variable – the CCA rate makes a difference. For example a tractor has a rate of 30%, an air-seeder 20%, and grain bins 5%. Typically, the lower the CCA rate, the greater the tax advantage by leasing.

There can be a situation where the trade-in of a used piece of equipment followed by leasing of its replacement can provide a significant write off in year 1 if lease payments are pre-paid, provided the lease payments do not relate to a taxation year 2 or more years after the year of payment. Again, variables are timing and CCA rate and again, professional advice is recommended from your accountant or tax professional.



Canada Revenue Agency provides information in its Farming Income Guide T4003 2012, last updated in February 2013. You are advised to check CRA website for the most recent version at <http://www.cra-arc.gc.ca/E/pub/tg/t4003/README.html>

Caution Notes

- At present, all lease payments are accepted by Canada Revenue as an expense. However, in the case of leases with a beneficial purchase option at the end, it could be argued that the lease is merely a financing arrangement, and therefore only the interest is eligible. This could be a matter of interpretation by Canada Revenue Agency.
- Assuming you have decided that leasing is for you, you will want to make sure that the lessor is really the owner of the equipment, and that there are no liens or charges against it that would make leasing it an unwise decision. This can be done at your local Service BC location. They will do the search for you for a \$10 fee per serial number for machinery and equipment registered in BC. Alternatively you can request the search by mail, or use the services of a title search company. Your first point of contact should be Service BC at 1-800-663-7867 or www.servicebc.gov.bc.ca where you can get the contact information for the Service BC location nearest you, or the name of a title search company. If the equipment is not registered in BC, you will need to contact the province where it has been registered. For Alberta, contact www.servicealberta.ca

Sample Equipment Leases

Equipment dealers have their own lease documents, and they will vary from dealer to dealer. Very often they will provide for several different “end of lease” options. In other words, the lessee can return the equipment, lease the equipment again, purchase the equipment outright, or arrange a financing plan to purchase it. Having your financial and legal advisor take a look at the leasing documents and options before you sign is a good idea.

If the lessor is not an equipment dealer, but a private equipment owner, such as another farmer, you will want to draw up a lease agreement. There are a number of on-line sites where for a small fee (currently <\$20), you can draw up the lease yourself by providing all the relevant information in the pre-document questionnaire. The system-generated lease will contain the appropriate clauses based on the information you provided. Such an automated Equipment Rental Agreement can be prepared at www.lawdepot.ca or similar online legal documentation sites. This site has a review service. For a fee, your documents can be reviewed for consistency, correct grammar and spelling. There is also a section on the site for legal terminology, so you can correctly express any other clauses you wish to add that are not found in the template. It is important to make sure you specify British Columbia, so that the lease will be legal and registerable in this province.

The information you will need to provide is:

- Lessor name(s) and contact information
- Lessee name(s) and contact information
- Particulars of the equipment (new/used, year, model, serial number)
- Start and End Date (term of lease)
- Rent particulars (amount, payment dates, e.g. first day of each month)
- Delivery particulars (how does the equipment get to the lessee)
- Use of Equipment conditions (Lessor may specify where it will be used, and by whom)
- Repair of Equipment conditions (Lessee agrees to keep it in good condition)
- Warranties for use, condition, and purpose
- Loss and Damage provisions

- Return of Equipment provisions
- Insurance
- Taxes
- Default provisions – what happens if you default on payments
- Assignability – can either party assign the lease to another?
- Renewal provisions – can it be renewed? At the same rent or at what rent?
- Additional provisions (you draft your own, using tips provided)
- What rate of interest will be charged on payments in default?
- Information for lessee: cash value, value of any other items such as administration fees, trade-ins, and the total cost over the term of the lease of rent payments, other fees and property.
- Signing details.

A sample Equipment Lease document follows. It was prepared using Law Depot.

Equipment Lease Agreement

THIS EQUIPMENT RENTAL AGREEMENT dated this _____ day of _____, 20__

BETWEEN

Equipment Owner Company, BC Incorporation Number 1234567, of 123 Farm Road,
Anywhere, British Columbia, V0C2C0 (the “Lessor”)

OF THE FIRST PART

-And-

Jane Farmer and John Farmer of 345 Farm Rd, Anywhere, British Columbia, V0C2C0
(the “Lessee”)

OF THE SECOND PART

(The Lessor and Lessee are collectively the “Parties”)

IN CONSIDERATION of the mutual covenants and promises in this Agreement, the sufficiency of which the Parties acknowledge, the Lessor leases the Equipment to the Lessee, and the Lessee leases the Equipment from the Lessor on the following terms:

Definitions

1. The following definitions are used but not otherwise defined in this Agreement:
 - a) "Casualty Value" means the market value of the Equipment at the end of the Term or when in relation to a Total Loss, the market value the Equipment would have had at the end of the Term but for the Total Loss. The Casualty Value may be less than but will not be more than the original purchase price of the Equipment.
 - b) "Equipment" means 1 new 2014 John Deere 8RT series tractor, model #23456, serial *RT78987, green & yellow
 - c) "Total Loss" means any loss or damage that is not repairable or that would cost more to repair than the market value of the Equipment.

Lease

2. The Lessor agrees to lease the Equipment to the Lessee, and the Lessee agrees to lease the Equipment from the Lessor in accordance with the terms set out in this Agreement.

Term

3. The Lease commences on the 1st day of _____, 20__ and will continue until the 31st day of December, 20__ (the "Term"). Early termination of the Lease will be a breach of the Lease and will entitle the Lessor to pursue the Remedies.

Rent

4. The rent is \$_____ each year and will be paid in installments of \$_____ each year, in advance, beginning on the 1st day of January, 20_____ and will be paid each succeeding year through the Term (the "Rent").

Delivery of Equipment

5. The Lessor will, at the Lessor's own expense and risk, deliver the Equipment to 345 Farm Road, Anywhere, British Columbia, V0C 2C0. (OR) The Lessee will, at the Lessee's own expense and risk, pick up the equipment at (specify location) and transport it to 345 Farm Road, Anywhere, British Columbia, V0C 2C0.

Use of Equipment

6. The Lessee will use the Equipment in a good and careful manner and will comply with all of the manufacturer's requirements and recommendations respecting the Equipment and with any applicable law, whether municipal, provincial/territorial or federal respecting the use of the Equipment, including, but not limited to, environmental and copyright law.
7. The Lessee will use the Equipment for the purpose for which it was designed and not for any other purpose.
8. Unless the Lessee obtains the prior written consent of the Lessor, the Lessee will not alter, modify or attach anything to the Equipment unless the alteration, modification or attachment is easily removable without damaging the functional capabilities or economic value of the Equipment.
9. The Lessee will, at the Lessee's own expense, keep the Equipment in good repair, appearance and condition, normal and reasonable wear and tear excepted. The Lessee will supply all parts that are necessary to keep the Equipment in such a state.
10. If the Equipment is not in good repair, appearance and condition when it is returned to the Lessor, the Lessor may make such repairs or may cause such repairs to be made as are necessary to put the Equipment in a state of good repair, appearance and condition, normal and reasonable wear and tear excepted. The Lessor will make the said repairs within a reasonable time of taking possession of the Equipment and will give the Lessee written notice of and invoices for the said repairs. Then the Lessee will reimburse the Lessor for the actual expense of said repairs.
11. The Lessee may, but is not obligated to, enforce any warranty that the Lessor has against the supplier or manufacturer of the Equipment. The Lessee will enforce such warranty or indemnity in its own name and at its own expense.

Warranties

12. The Equipment will be in working order and good condition upon delivery. The Equipment is of merchantable quality and is fit for the following purposes: _____

Loss and Damage

13. The Lessee will be responsible for risk of loss, theft, damage or destruction to the Equipment from any and every cause.

14. If the Equipment is lost or damaged, the Lessee will continue paying Rent, will provide the Lessor with prompt written notice of such loss or damage and will, if the Equipment is repairable, put or cause the Equipment to be put in a state of good repair, appearance and condition.
15. In the event of Total Loss of the Equipment, the Lessee will provide the Lessor with prompt written notice of such loss and will pay to the Lessor all unpaid Rent for the Term plus the Casualty Value of the Equipment, at which point ownership of the Equipment passes to the Lessee.

Ownership, Right to Lease and Quiet Enjoyment

16. The Equipment is the property of the Lessor and will remain the property of the Lessor.
17. The Lessee will not encumber the Equipment or allow the Equipment to be encumbered or pledge the Equipment as security in any manner.
18. The Lessor warrants that the Lessor has the right to lease the Equipment according to the terms in this Agreement.
19. The Lessor warrants that as long as no Event of Default has occurred, the Lessor will not disturb the Lessee's quiet and peaceful possession of the Equipment or the Lessee's unrestricted use of the Equipment for the purpose for which the Equipment was designed.

Surrender

20. At the end of the Term or upon earlier termination of this Agreement, the Lessee will make the Equipment available for pick up at 123 Farm Road, Anywhere, British Columbia, V0C 2C0, and the Lessor will arrange, at the Lessor's cost and expense, to pick up the Equipment. If the Lessee fails to make the Equipment available for pick up, the Lessee will pay to the Lessor any unpaid Rent for the Term plus the Casualty Value of the Equipment plus _____% of the Casualty Value, at which point ownership of the Equipment will pass to the Lessee.

Insurance

21. The Lessee will, during the whole of the Term and for as long as the Lessee has possession of the Equipment, take out, maintain and pay for insurance against loss of and damage to the Equipment for the full replacement value of the Equipment and will name the Lessor as the loss payee.

22. The Lessee will, during the whole of the Term and for as long as the Lessee has possession of the Equipment, take out, maintain and pay for comprehensive general liability insurance against claims for bodily injury, including death, and property damage or loss arising out of the use of the Equipment. The insurance policy will have limits of at least \$_____.
23. The insurance will be in the joint name of the Lessor and the Lessee so that both the Lessor and the Lessee will be protected from liability and will provide primary and non-contributing coverage for the Lessor. The insurance policy will have a provision that it will not be modified or cancelled unless the insurer provides the Lessor with thirty (30) days written notice stating when such modification or cancellation will be effective.
24. Upon written demand by the Lessor, the Lessee will provide the Lessor with an original policy or certificate evidencing such insurance.
25. The Lessee appoints the Lessor as the Lessee's agent ("Agent") with the power to maintain the above insurance and to secure payments arising out of any insurance policy required by this Agreement. The Agent has the power to do all acts that are necessary or desirable to secure such payments.
26. If the Lessee fails to maintain and pay for such insurance, the Lessor may, but is not obligated to, obtain such insurance, but if the Lessor does obtain such insurance, the Lessee will pay to the Lessor the cost of such insurance upon notification from the Lessor of the amount.

Taxes

27. The Lessee will report and pay all taxes, fees and charges associated with the Equipment, with the use of the Equipment, and with revenues and profits arising out of the use of the Equipment, including, but not limited to, sales taxes, property taxes, and license and registration fees. The Lessee will pay any and all penalties and interest for failure to pay any tax, fee or charge on or before the date on which the payment is due. The Lessee will pay any and all penalties and interest for failure to report required information to any taxing authority with jurisdiction over the Lessee or the Equipment. If the Lessee fails to do any of the foregoing, the Lessor may, but is not obligated to, do so at the Lessee's expense.
28. Notwithstanding any other provision of this Agreement, the Lessee will not be required to pay any tax, fee or charge if the Lessee is contesting the validity of same in the manner prescribed by the legislation governing the imposition of same, or in the absence of a prescribed form, in a reasonable manner. However, the Lessee will indemnify and reimburse the Lessor for damages and expenses

incurred by the Lessor arising from or related to the Lessee's failure to pay any tax, fee or charge, regardless of whether the Lessee is contesting the validity of the same or not.

29. If the Lessee fails to pay any and all taxes, fees, and charges mentioned in this Agreement and the Lessor, on behalf of the Lessee, pays the same, the Lessee will reimburse the Lessor for the cost upon notification from the Lessor of the amount.

Indemnity

30. The Lessee will indemnify and hold harmless the Lessor against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees and costs, arising out of or related to the Lessee's use of the Equipment.

Default

31. The occurrence of any one or more of the following events will constitute an event of default ("Event of Default") under this Agreement:
- a) The Lessee fails to pay any amount provided for in this Agreement when such amount is due or otherwise breaches the Lessee's obligations under this Agreement.
 - b) The Lessee becomes insolvent or makes an assignment of rights or property for the benefit of creditors or files for or has bankruptcy proceedings instituted against it under the Federal bankruptcy law of Canada or other competent jurisdiction.
 - c) A writ of attachment or execution is levied on the Equipment and is not released or satisfied within 10 days.

Remedies

32. On the occurrence of an Event of Default, the Lessor will be entitled to pursue any one or more of the following remedies (the "Remedies"):
- a) Declare the entire amount of the Rent for the Term immediately due and payable without notice or demand to the Lessee.
 - b) Commence legal proceedings to recover the Rent and other obligations accrued before and after the Event of Default.
 - c) Commence legal proceedings for the return of the Equipment.

- d) Terminate this Agreement immediately upon written notice to the Lessee.
- e) Pursue any other remedy available in law or equity.

Assignment

- 33. THE LESSEE WILL NOT ASSIGN THIS AGREEMENT, THE LESSEE'S INTEREST IN THIS AGREEMENT OR THE LESSEE'S INTEREST IN THE EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSOR.
- 34. If the Lessee assigns this Agreement, the Lessee's interest in this Agreement or the Lessee's interest in the Equipment without the prior written consent of the Lessor, the Lessor will have recourse to the Remedies and will be entitled to all damages caused by the assignment.
- 35. THE LESSOR WILL NOT ASSIGN THIS AGREEMENT, THE LESSOR'S INTEREST IN THIS AGREEMENT OR THE LESSOR'S INTEREST IN THE EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSEE. THE LESSOR WILL NOT ASSIGN OR TRANSFER THE LESSOR'S RIGHT TO COLLECT RENT OR ANY OTHER FINANCIAL OBLIGATION OF THE LESSEE.
- 36. If the Lessor assigns this Agreement, the Lessor's interest in this Agreement or the Lessor's interest in the Equipment without the prior written consent of the Lessee, the Lessee will be entitled to terminate this Agreement without penalty.

Renewal

- 37. The Lessee may renew this Agreement for an additional Term if the Lessee has given the Lessor 30 days written notice of the Lessee's intention to renew and if the Lessee is not in default of any of the terms under this Agreement. Other than as agreed upon in writing between the Parties, the renewal will be on the same terms as this Agreement, except for this renewal clause.
- 38. Upon written demand by the Lessor, the Lessee will execute and deliver to the Lessor documents required by the Lessor to protect the Lessor's interest in the Equipment including, but not limited to, the documents necessary to register the Lessor's interest at the personal property registry.

Entire Agreement

- 39. This Agreement will constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement will not be binding on either Party except to the extent incorporated in this Agreement.

Address for Notice

40. Service of all notices under this Agreement will be delivered personally or sent by registered mail or courier to the following addresses:

Lessor: _____

Lessee: _____

Payment

41. All dollar amounts in this agreement refer to Canadian dollars, and all payments required to be paid under this Agreement will be paid in Canadian dollars unless the Parties agree otherwise.

Interest

42. Interest payable on any overdue amounts under this Agreement will be at a rate of 10 percent per annum or at the maximum rate allowed under applicable legislation, whichever is lower.

Interpretation

43. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

44. It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and proceedings under this Agreement, be construed in accordance with and governed by, to the exclusion of the law of any other forum, the laws of the Province of British Columbia without regard to the jurisdiction in which any action or proceeding may be instituted.

Severability

45. If there is a conflict between any provision of this Agreement and the applicable legislation of the State (the "Act"), the Act will prevail and such provisions of the Agreement will be amended or deleted as necessary in order to comply with the

Act. Further, any provisions that are required by the Act are incorporated into this Agreement.

46. If there is a conflict between any provision of this Agreement and any form of Agreement prescribed by the Act, that prescribed form will prevail and such provisions of the Agreement will be amended or deleted as necessary in order to comply with that prescribed form. Further, any provisions that are required by that prescribed form are incorporated into this Agreement.
47. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions will nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Agreement and the remaining provisions had been executed by both Parties subsequent to the expungement of the invalid provision.

General Terms

48. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
49. Time is of the essence in this Agreement.
50. This Agreement will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each Party to this Agreement.
51. Neither Party will be liable in damages or have the right to terminate this Agreement for any delay or default in performance if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections, natural disasters, such as earthquakes, hurricanes or floods and/or any other cause beyond the reasonable control of the Party whose performance is affected.

Notice to Lessee

52. NOTICE TO THE LESSEE: This is a lease. You are not buying the Equipment. Do not sign this Lease before you read it. You are entitled to a completed copy of this Agreement when you sign it.
53. Cash Value of Equipment: \$_____
54. Value other than Rent paid or being paid to Lessor: \$_____

55. Total Cost of Lease: \$ _____

IN WITNESS WHEREOF the Parties have executed this Lease Agreement on this _____ day of _____, 20_____.

Equipment Owner, Lessor (if a company)

Per: _____ Print Name: _____
(Authorized Signatory)

Witness Signature

Jane Farmer, Lessee

Name _____

Address _____

(Please print)

John Farmer, Lessee

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After both parties have agreed to the terms and conditions of the lease, having legal and financial advisors look it over is recommended.

Livestock Leasing – Pros and Cons

The advantages of livestock leasing, from the lessee's (operator's) perspective are:

- It permits a larger scale of operation with less capital investment;
- Risk sharing between the parties;
- Opportunity for a younger rancher to gain management skills from an experienced operator;
- Existing farmers or ranchers wishing to try out a different species or breed of livestock or improve the genetics of their herd;
- Ability to lease livestock for a particular short-term purpose – such as sheep to graze in a Christmas tree farm.



From the lessor's (owner's) perspective, leasing appeals to:

- Producers who wish to retire but not leave the industry;
- Producers who need to leave the business but intend to return;
- Livestock owners who may have insufficient forage and facilities but wish to maintain the size of the herd;
- Investors or producers who want to take advantage of a lessee's superior management skills;
- A producer who wants to retain ownership of the herd while specializing in another aspect of farming;
- A producer who wants to adjust the scale of his or her own operation to something more manageable.

The risks and concerns facing parties considering a livestock leasing agreement include:

- The lessor has the potential for low returns if the operator is inefficient;

- The lessor loses direct control over management of livestock; and
- The lessor may find it difficult to keep the livestock, especially in the short term, if the agreement is terminated;
- Both parties might find it difficult to share the decision making, and the lessee might find that the owner interferes with management decisions;
- The lessee may have the potential for low returns if the livestock comes to the farm in poor condition;
- The lessee could find it difficult to adjust production processes in the short term, if the agreement is terminated;
- The lessee may find the additional record keeping onerous and both parties may find it difficult to arrive at an appropriate rental rate.

Making it work

In order for a livestock lease agreement to work, it must meet both parties' expectations and equitably share expenses, income, and production and market risks.

Competent management can minimize production risks such as feed costs, weight gain, pregnancy and calving rates and death loss; and marketing risks such as calf type and condition, fluctuation prices, location and timing of sales. Each party must be satisfied as to the balance between risk and profit potential.



The terms of the agreement must be fair to each party, and the lease document should be signed only after each party has received independent legal and financial advice. It will be worth the cost to have the lease document professionally drawn up.

Before setting the terms down in writing it is useful to consider and agree upon the following list, excerpted from the Government of Saskatchewan Agriculture website.

Issues important to the Lessor (owner)

- Are you comfortable with the back-up plan if grass runs out?

- Is there a soundness score for cattle going into the arrangement and a condition score for cattle leaving the operation? How will compensation be calculated if these factors are not met?
- Have you agreed on an acceptable rate of death loss?
- Are you comfortable with how the operator handles the livestock and how often the cattle are checked?
- Do you trust the operator?

Issues important to the Lessee (operator)

- Are you aware of the condition of the livestock coming in? Condition can be a key factor in the first year's profitability.
- Do you have enough influence over the selection of replacements?
- Do you trust that the owner is in this arrangement for the long term?
- Who is responsible for the purchase and the selection of bulls or semen?
- Are you comfortable that the agreement gives some flexibility for you to manage properly (i.e. dates when to remove bulls, breeding ratios and feeding program)?
- Who pays for antibiotics and veterinary services for the cowherd? For the calves?

Issues important to both parties

- Have you agreed on the replacement procedure for culls?
- Which veterinarian will be used?
- Whose brand will the cows and calves carry?
- When and how will culls and calves be sold?
- Do you have a provision to renew or cancel the agreement?
- Will both parties be required to carry liability insurance?
- Is there a minimum and maximum number of head that the herd will contain?
- How will death loss of cows and calves be handled and losses verified?

- Are strays and stolen cattle handled the same as death loss?
- What happens if the owner or operator dies?
- Are both parties comfortable that they are protected against the other's creditors or heirs?

Types of livestock lease agreements

Cash Lease Agreement

- The operator pays the owner a fixed annual payment, which can be negotiated every year or remain constant for the term of the lease.
- In this type of lease the operator assumes all production and marketing risk.
- The operator's return is subject to all the variables of production and marketing, while the owner's return is not affected.
- Lease payment will cover the cost of owning the herd, the annual replacement cost, a value for death loss and interest on investment.

Calf Share Agreement based on a percentage of costs

- The operator and the owner share both the production and market risks.
- Each party's share will vary with the weight and the price of cattle sold.
- The owner and the operator share the revenue based on the percentage of the costs that each party contributes.

Fixed Number of Calves Lease Agreement

- The owner receives a predetermined number of calves as rent.
- The operator maintains almost all of the production risk and a portion of the market risk. The operator is exposed to the variations in weaning percentages, weaning weights, market price and feed costs.
- The owner's risk is limited to variations in weaning weights and market price on the number of calves received as lease payment.
- The owner's revenue will not vary with number of calves weaned.

- The percentage of costs contributed could be used as a basis for determining the number of calves received as payment.

Flexible Share Lease Agreement

- The flexible share lease agreement is similar to a calf share lease agreement in that it is based on the percentage of costs approach.
- However, under a flexible share lease agreement, revenue from calf sales is used to cover the operating costs first, followed by the fixed costs such as depreciation on buildings and equipment and herd replacement allowance.
- Opportunity costs such as interest on investment and returns to management are then provided for with any surplus revenue being divided based on a predetermined share.
- Under the flexible share lease agreement, the owner of the cattle is exposed to a greater amount of production and market risk.
- Higher rate of return (interest) for owner to reflect greater risk.
- More security for operator, knowing that operating and fixed costs will be covered first.

Sample Livestock Leases

The lease you draw up for a lease of livestock for grazing a Christmas tree farm will be much simpler than one for leasing bred cattle.

A simple Cow-Calf Lease Agreement follows:

COW-CALF SHARE LEASE AGREEMENT

THIS AGREEMENT made in duplicate this _____ day of _____, 20__

BETWEEN:

(OWNER) LESSOR

AND:

LESSEE

WHEREAS the Owner and the Lessee wish to enter into a lease agreement with respect to the leasing of the cattle by the Lessee:

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

SECTION 1.00 DEFINITIONS

- 1.1 "Bred animal" means an impregnated cow or heifer.
- 1.2 "Un-bred animal" means a cow or heifer exposed to the breeding bull but (for whatever reason) not impregnated.
- 1.3 "Breeding bull" means the bull, acceptable to both the Owner and the Lessee, that will be used to breed the animal and/or heifers.
- 1.4 "Calf crop" means the number of calves that are born annually to a particular cow group. This is usually expressed as a percentage of calves weaned from a particular cow group.
- 1.5 "Offspring" means the progeny of animal or heifers.

- 1.6 "Cattle" means all animal, calves, heifers, bulls, steers, etc. leased to the Lessee by the Owner.
- 1.7 "Term" means the term specific in Section 2.1.
- 1.8 "Premises" means the physical location where the Cattle will be kept for the duration of the Term.

SECTION 2.0 TERM

- 2.1 The term of this Lease shall be _____year(s) commencing on the _____day of _____, 20__, and ending on the _____day of _____, 20__.

SECTION 3.0 DESCRIPTION OF THE BRED ANIMALS

- 3.1 The Bred animals shall be certified to be pregnant by a Veterinarian.
- 3.2 The Bred animals shall be clearly marked with a brand, or other marking, agreed to by both parties.
- 3.3 The Owner shall deliver the Bred animals, as described in the attached Schedule "A", to the Premises on or before _____, 20__.

SECTION 4.0 BREEDING OF BRED ANIMAL

- 4.1 The Owner shall pay all costs of the services of a Breeding bull or semen.
- 4.2 The Lessee shall carry out a breeding program in accordance with currently accepted and recommended practices in the Province of British Columbia, and shall make all reasonable efforts to insure the animals are bred to calve by ____ of each year of the Term.
- 4.3 The Owner shall be responsible for, and have the option of replacing each Un-bred animal with a Bred animal that is acceptable to both parties.
- 4.4 The Owner shall be responsible for all costs relating to pregnancy testing of the Bred animals.

SECTION 5.0 CARE AND MANAGEMENT OF THE BRED ANIMAL

- 5.1 The Owner and Lessee shall share, in the same proportion as they share in the Calf crop, such costs arising from medicines, drugs, and services administered by a Veterinarian to the Bred animals and their Offspring in the case of treatment for sickness.
- 5.2 The Lessee shall supply and pay at his/her cost, vitamins, minerals, and any other medicines or vaccinations not administered by a Veterinarian to the Bred animals and their Offspring that are necessary to prevent disease or malnutrition and to promote the growth and well being of the Cattle
- 5.3 The Lessee shall carry out the health practices for Bred animals that are currently accepted and recommended practices in the Province of British Columbia.
- 5.4 The Lessee shall supply, at his/her cost, feed, water, pasture, necessary shelter, and all labour for supervision and care of the Cattle.
- 5.5 The Lessee shall permit the Owner, or anyone entering on behalf of the Owner, to enter the Premises to examine the Cattle at any time.

SECTION 6.0 DEATH LOSS, RECOMMENDED SALE, AND INSURANCE

- 6.1 The Owner shall be responsible for the Bred animals which die (“Death Loss”), or those which the Veterinarian recommends be sold (“Recommended Sales”) due to sickness or injury, for a period of 30 days immediately following their delivery to the Lessee’s farm.
- 6.2 Any proceeds from Recommended Sales are the Owners’.
- 6.3 The Owner shall have the replacements, for Death Loss and Recommended Sale, delivered to the Lessee’s premises by December 31st of that year of the Term.
- 6.4 If the Lessee is negligent resulting in death or injury to the Bred animals, then the Lessee will be responsible for the replacement cost of, or Veterinarian services required for, those Bred animals.
- 6.5 The Lessee may, at his/her expense, carry fire and liability insurance on the Owner’s Cattle.
- 6.6 If during the Term of this Agreement, a calf dies and is replaced, the cost of the replacement calf shall be split between the Owner and Lessee at an agreed upon percentage. (NB: Alternatively can use the percentage in Section 8.01)

SECTION 7.0 CULLED ANIMALS AND THEIR REPLACEMENTS

- 7.1 On or about October 31st of each calendar year during the Term, the Owner and Lessee shall mutually agree upon those Cattle which are to be culled (“Culled Animal”).
- 7.2 The Owner may replace each Culled Animal with an animal acceptable to the Lessee and will deliver such animals to the Lessee’s premises by December 31st of that year of the term.
- 7.3 Any proceeds from the sale of Culled Animals are the Owner’s.

SECTION 8.0 CALF CROP PROCEEDS

- 8.1 When sold, the Calf crop will be sold in the name of the Owner, and _____% of the net income (less sales commissions) from the sale of the Calf crop shall be paid to the Lessee within _____ days from the date of the sale.

SECTION 9.0 TERMINATION

- 9.1 The Owner or the Lessee may terminate this Lease by providing written notice to the other on or before September 1st in any year during the Term. The written notice shall be effective as of October 1st (the “Termination Effective Date”) in the year during which it was given.
- 9.2 Upon termination, the Lessee shall deliver to the Owner the Bred animals within _____ days. The Lessee is responsible for transporting the Bred animals at no expense to the Owner for the first _____ kms from the Premises. The Owner shall pay all costs of transportation of the Bred animal or replacements over _____ kms.

SECTION 10.0 OWNER’S RIGHTS

- 10.1 If, during the Term of the Lease, any of the goods or chattels of the Lessee are seized by any creditors of the Lessee, or if the Lessee makes any assignment of chattels involved in the Lease for benefit of creditors without first obtaining written consent from the Owner, or if the Lessee becomes bankrupt, this Lease shall, at the option of the Owner, become forthwith forfeited and void and the year’s share of the Offspring shall become forthwith due.

SECTION 11.0 LESSEE’S RIGHTS

- 11.1 The Lessee, upon performing the covenants, promises, agreements, and undertakings herein contained on his/her part, shall and may peacefully possess and enjoy the said Cattle for the duration of this Lease without any interruption or disturbance from the Owner or any person claiming through or under the Owner except as noted in Section 5.5.

SECTION 12.0 STABILIZATION PROGRAMS AND SUBSIDIES

- 12.1 In the event that any payment subsidy or other reimbursement is made under any government agency, or any marketing agency in connection with costs and benefits as associated with cattle during the term of this Lease, the payments associated with the Cattle shall be split as identified in Section 8.1.
- 12.2 If the Owner and Lessee mutually agree to participate in a stabilization program, the costs and benefits should be split as identified in Section 8.1

SECTION 13.0 ARBITRATION

- 13.1 Any disagreement which may arise between the Owner and Lessee 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 Owner and Lessee.

SECTION 14.0 GENERAL

- 14.1 Time shall be of the essence of this Agreement.
- 14.2 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 Agreement.
- 14.3 No amendment or change to, or modification of this Agreement shall be valid unless it is in writing and signed by both parties.

This Agreement shall be interpreted, performed and enforced in accordance with the laws of British Columbia.

This Agreement shall enure to the benefit of and be binding upon the parties hereto, and their respective heirs, successors and assigns.

SIGNED, SEALED, AND DELIVERED

In the presence of:

(Witness)

(Owner)

Where the Owner is a corporation

(Corporation's Name)

Per: _____
(Name of Signatory)

SIGNED, SEALED, AND DELIVERED

In the presence of:

(Witness)

(Lessee)

Where the Lessee is a corporation

(Corporation's Name)

Per: _____
(Name of Signatory)

The next sample lease provides alternatives by changing the wording to match the agreed upon leasing arrangement:

- Cash lease
- Percentage of Costs
- Fixed number of Calves
- Flexible share

LIVESTOCK AGREEMENT

This Livestock Lease Agreement made in duplicate, this ____ day of _____, 20__

BETWEEN:

_____ of _____
(Owner's Name) (Address)

in the Province of British Columbia, ("the Owner"),

-and-

_____ of _____
(Operator's Name) (Address)

in the Province of British Columbia, ("the Operator"),

THE PARTIES AGREE AS FOLLOWS:

1. Description of the Herd
 - a. The Owner shall deliver _____ cows and or heifers (*you may want to indicate a range of numbers, such as "not more than but not less than" and you may want to ensure that the cows are already bred*) described in Schedule A, ("the Herd") at the Operator's farm on or before _____ (date).
 - b. The Herd shall arrive in good condition. The Cattle will have a condition score of between _____ and _____ on arrival.
 - c. The animals shall be clearly marked with a brand or other marking agreed to by both parties.

- d. Bred cows from the Herd shall be certified to be pregnant by a professional veterinarian. The Owner shall be responsible for costs relating to pregnancy testing.
- e. The livestock will be fed and cared for at the facilities located on _____
_____ *(legal description of address or property)* and will not be moved without the Owner's consent.

2. The Offspring

- a. It is agreed and understood that the Owner owns the Herd. All offspring born during this agreement are the property of the Owner until _____
(specific date or life stage such as birth or weaning, or at the date of sale) of each year, after which ownership shall transfer to the Operator as specified in this agreement.
- b. All offspring will be identified with the Owner's _____ *(brand, tag or other method of identification)* until ownership changes. At the time when ownership changes, a brand release *(if applicable)* shall be signed by the Owner to acknowledge the transfer of ownership to the Operator. *(You may wish to clearly indicate how and when the unique identification tags will be used, in accordance with The Domestic Game Farm Animal Regulations.)*

(The key point of this section is to make it clear to all parties the point at which ownership transfers whether it occurs at birth or at weaning, or some other time. This may not seem all that important, especially if the lease is based on sharing the revenue from the sale of the calves; however, it is very important if the agreement is to be terminated for some reason.)
- c. The Operator will keep an accurate record of performance of the cows. *(You may wish to identify the information that the operator will record, such as weaning weights, etc.)*

3. Breeding

- a. The Owner shall provide _____ breeding bulls which meet mutually agreeable standards *(these standards may stipulate that the bulls are fit and have been recently semen tested by a veterinarian)* and any injured or non performing bulls will be replaced at the expense of the Owner so that the cow-to-bull ratio is not more than _____ cows to one bull.

-or-

The Operator shall provide _____ breeding bulls which meet mutually agreeable standards (*these standards may stipulate that the bulls are fit and have been recently semen tested by a veterinarian*) and any injured or non-performing bulls will be replaced at the expense of the Operator so that the cow to bull ratio is not more than _____ cows to one bull.

- b. The Operator agrees that the bulls will be placed with the cows on _____ (date) and removed by _____ (date) of each contract year. (*You may want a clause to clearly state any specific breeding requirements, such as the Owner wants his/ her cows bred by the Owner's bull only.*)

Artificial insemination (AI) shall be handled in the following manner: _____

The clause must address who pays for semen and the additional time and labour, etc.

4. Management, Care and Veterinary Services

- a. The Operator shall supply at his or her cost water, pasture, feed, vitamins and minerals, necessary shelter and all labour for supervision and care of the animals, in order to promote growth, prevent disease and care for the well-being of the Herd and its offspring. (*This listing should include or exclude any of the above and can extend to routine care, such as de worming, growth hormones or antibiotics.*)
- b. The Operator shall care for the livestock in accordance with industry's recommended code of practice. (*You may wish to specifically identify the code, such as the code of practice as written by the Canadian Agri Food Research Council.*)
- c. The Operator will keep the livestock in good condition, maintaining a condition score of not less than _____.
- d. If grazing capacity is lowered due to drought or any other natural disaster, the following plan will be enacted: _____

- e. The Owner and Operator shall share, in the same proportion as the calf crop, (*or whatever method of sharing*) such costs arising from medications and

treatment procedures by the Operator or any service administered by a professional veterinarian to the Herd and their offspring. *(This should include a listing of what medical treatments the Operator may perform, but for which the Owner is responsible, this might include special treatment for foot rot, or some injury where the animal must be segregated.)*

5. Death, Loss, Forced Sale and Insurance

- a. Death, loss or forced sale of any animal from the Herd shall be at the expense of the Owner, up to a loss rate of *(or per cent)*. Any losses greater than this shall require a veterinarian, at the cost of the Operator, to verify the cause of death. If the cause of death is by natural causes, the Owner agrees to accept the loss.

If the Operator is deemed negligent toward the death, loss or forced sale of an animal from the Herd, as determined by a veterinarian, then the Operator will be responsible for the replacement cost of that animal with an animal which is mutually acceptable to both parties.

- b. Death, loss or forced sale of any of the offspring of the Herd shall be at the expense of both parties, shared in the same proportion as the calf crop, between the Owner and the Operator up to a maximum loss rate of animals *(or per cent)*. Any losses greater than this shall require a veterinarian, at the cost of the Operator, to verify the cause of death. If the death is determined to be by natural causes, the Owner and the Operator agree to share the loss in the same proportion as the calf crop. All costs associated with the sale or disposal of any of the offspring as well as any revenue will be shared in the same proportion as the calf crop.

If the Operator is deemed negligent toward the death, loss or forced sale of an offspring of the Herd, as determined in this section, then the Operator will be responsible for the replacement cost of that animal with an animal which is mutually acceptable to both parties.

- c. The Operator or Owner *(jointly or individually)* may, at his or her expense, carry any insurance on the Herd or its offspring and that party would be entitled *(jointly or individually)* to the insurance proceeds.

6. Culls and Their Replacements

- a. On or before *(date)* of each year of this agreement, the Owner and Operator shall mutually agree upon the livestock that are to be

culled. *(In some arrangements, the Operator may want to have the power to decide which animals need to be culled.)*

- b. The animals identified as cull animals will be sold on or before _____
(date).
- c. The Owner will receive _____ per cent of the proceeds from the sale of all cull animals and is responsible for all trucking and marketing costs.
- d. Upon the sale of cull animals, the Owner shall replace each cull animal with an animal acceptable to both parties.

7. Division of Income *(Use the appropriate clause)*

Cash Lease

The Operator agrees to pay the Owner the sum of \$ _____ per cow or heifer delivered and described in Section one of this agreement. Payment is to be made on or before _____ *(date)* of each year. *(In some arrangements the payment is based on a full season, by the month or even by the number of weaned calves.)*

- or -

Percentage of Costs Approach

The Operator shall be entitled to _____ per cent and the Owner _____ per cent of the revenue from the sale of the calves by _____ *(date)* of each year.

Revenue from the sale of the calves is herein considered to be gross receipts minus all marketing costs such as yardage, selling commissions, insurance and transportation. Date of sale is to be as mutually agreed.

- or -

Fixed Number of Calves

The Operator agrees to provide the Owner with _____ calves by _____ *(date)* of each year. The ownership of the remaining calves will be transferred to the Operator on _____ *(date)*. The method of fairly dividing the offspring shall be as follows:

(Describe how the calves are to be divided between the Owner and the Operator, including whether or not the size, type and gender of the calves to be taken is to be specific or general, or the method to be used, such as alternating picks or chute run.)

- or -

Flexible Share Lease

A. Operating Costs

The Operator shall be entitled to _____ per cent and the Owner _____ per cent of the revenue from the sale of the calves for the first _____. *(Dollars per calf – operating costs)*

B. Fixed Costs

The Operator shall be entitled to _____ per cent and the Owner _____ per cent of the sale revenue from the sale of the calves for any amount greater than _____ *(Dollars per calf – operating costs)* and less than _____. *(Dollars per calf – operating plus fixed costs)*

C. Opportunity Costs

The Operator shall be entitled to _____ per cent and the Owner _____ per cent of the revenue from the sale of the calves for any amount greater than _____ *(Dollars per calf – operating plus fixed costs)* and less than _____ *(Dollars per calf – operating costs plus fixed costs plus opportunity costs)*

D. Additional Revenue

The Operator shall be entitled to _____ per cent and the Owner _____ per cent of the sale revenue from the sale of the calves for any amount greater than _____. *(Dollars per calf – operating costs plus fixed costs plus opportunity costs.)* Revenue from the sale of calves is considered to be gross receipts minus all marketing costs such as yardage, selling commissions, insurance and transportation. Date of sale is to be mutually agreed.

The revenue received from the sale of the calves will be divided between the owner and operator in the same portion as they contribute to the operating costs, fixed costs, and opportunity costs (*as shown in Schedule B*). If revenue are insufficient to cover all costs (*operating, fixed and opportunity costs*), the revenue will be divided on the basis of the contributions toward operating costs, until all operating costs are covered, then the revenues will be divided on the basis of the contributions toward the fixed costs, until all fixed costs are covered, with any balance being divided on the same basis as the contributions toward opportunity costs. If revenue exceeds all of the costs (*operating, fixed and opportunity*), the surplus revenues will be divided in a manner described in Schedule B. The parties would agree to complete Schedule B, which would describe the percentage of operating, fixed and opportunity costs that each party is contributing. Schedule B would also indicate how any surplus revenue is to be divided.

8. Termination of This Agreement

- a. This agreement will commence on _____ (*date*) and expire on _____ (*date*). The Owner or the Operator may terminate this agreement by providing 60 days written notice to the other party or by mutual agreement at any time.
- b. Upon termination of this agreement, the Operator shall deliver the Herd and the Owner's share of its offspring to a place as directed by the Owner. The Owner shall pay costs of transportation over _____ kms.
- c. _____ per cent of the cattle so delivered shall be certified pregnant by a veterinarian; the cost of such certification shall be paid by the Operator. In the event that less than the required amount of animals are bred, the Operator will replace at his or her expense, a sufficient number of the open cows with animals that are certified to be pregnant and are of similar quality, in order to ensure that the percentage of bred animals is met.
- d. At the time of delivery, the cattle shall be in good health. If the parties cannot agree concerning the health of a particular cow, the matter shall be determined by a veterinarian with the expenses shared equally by both parties. If a particular cow is not in good health, the Operator shall replace the cow with one which is in good health.
- e. Upon the death of the Owner, this agreement will terminate on December 31st in the year of death. The Herd and the Owner's share of the off-spring shall be returned to the estate, with the Operator responsible for transportation costs.

- f. Upon the death of the Operator, the agreement will terminate immediately and the Herd and the Owner's share of its off-spring shall be returned to the Owner, with the Owner responsible for transportation costs. The Operator's estate will be entitled to compensation as if the Operator were still alive.

9. Owner's Rights

- a. If during the term of the lease, any of the goods and chattels of the Operator are seized by any creditors of the Operator, or if the Operator makes any assignment of chattels involved in the lease for benefit of creditors without first obtaining written consent from the Owner, or if the Operator becomes bankrupt, this lease shall, at the option of the Owner, become forthwith forfeited and void and the year's share of the offspring shall become forthwith due.
- b. The Operator shall permit the Owner to enter onto the property to examine the Herd and its offspring on any day between the hours of _____ and _____.

10. Operator's Rights

- a. If the Operator fulfils the terms and conditions of this agreement, he/she shall and may peaceably possess and enjoy the cattle for the duration of the agreement without any interruption or disturbance from the Owner or any person claiming through the Owner except as noted in 9(b).
- b. If, during the term of the lease, any of the goods and chattels of the Owner are seized by any creditors of the Owner, or if the Owner becomes bankrupt, this lease shall, at the option of the Operator, become forthwith forfeited and void and the year's share of the offspring shall become forthwith due.

11. Provisions for Arbitration

Any disagreement which may arise between the contracting parties with respect to the rights and responsibilities as provided for by this agreement, shall when a mutually satisfactory settlement cannot otherwise be reached, be submitted to arbitration, pursuant to The Arbitration Act.

12. Subsidies or Compensation

Any subsidies or compensation shall go to the party owning the animals on which the payment is made. *(You may consider an added paragraph on compensation from*

Agriculture and Agri-Food Canada if herd has to be disposed of, and compensation is paid.)

- or -

Any subsidy or compensation arising from the Herd shall go to the Owner, and any subsidy or compensation arising from the offspring of the Herd shall be shared in the same proportion as the calf crop.

SIGNED AND DELIVERED ON _____, 20__

Witness

Owner

SIGNED AND DELIVERED ON _____, 20__

Witness

Operator

Leasing Livestock for Vegetation Control

This would be the type of lease to cover an arrangement such as leasing sheep to graze down vegetation around Christmas trees. It would be a much simpler lease, but would still require the lease basics: contact information and signatures of lessor (animal owner) and lessee (farm operator), start date and completion date of lease, or start date and number of days, rental payment amount, who is responsible for delivery and pick up of the animals, and address or legal description of where the sheep will graze, with a clear map if it is only a portion of the property, who is responsible for maintaining fencing, insurance coverage, and animal health and loss of animals.

Other Leases – Where it's more than land

Certain types of lease arrangements go beyond being a land lease. An orchard lease is an example of this, because it is a lease of land plus the trees that produce the yield. Without sufficient trees in place and producing, it is unlikely that the lessee would continue the lease.

A sample orchard lease can be downloaded at http://www.agf.gov.bc.ca/busmgmt/bus_arrange/lease.htm

It contains several clauses particular to the existence of fruit trees, including one that allows the Lessee to terminate the lease if a specified percentage of the trees are killed by winter frost or other casualty.



The last pages...

There is always more (and new) (and updated) information on the Internet. This guide is meant to be a starting point for you, and like all information, it will get out of date – the rules change, the links fail, or content is removed from the Internet. As of March 2014 – these are recommended links for the information provided in this guide.

Legal Terminology:

- <http://www.duhaime.org/LegalDictionary.aspx> - Duhaime Law

Land Guide and Sample Leases:

- <http://www.youngagrarians.org> – Young Agrarians
- <http://www.farmfolkcityfolk.ca/community-farms-program/a-guide-to-farmland-access-agreements/> - Farm Folk City Folk, The Land Conservancy of British Columbia

Farm Classification – Property Tax Assessment:

- <http://www.bcassessment.ca> – BC Assessment

Oil and Gas Surface Lease:

- <http://www.farmersadvocate.ca> – Farmers' Advocate
- <http://www.surfacerightsboard.bc.ca> – BC Surface Rights Board
- <http://www.bcogc.ca> – BC Oil and Gas Commission
- <http://www.bcassessment.ca> – BC Assessment

Income Tax Implications:

- <http://www.cra-arc.gc.ca> – Canada Revenue Agency

Land Title Searches:

- <http://www.bconline.gov.bc.ca> – BC Online
- <http://www.servicebc.gov.bc.ca> – Service BC

Equipment Searches:

- www.servicebc.gov.bc.ca – if registered in BC
- www.servicealberta.ca – if registered in AB

Do-It-Yourself Lease Forms:

- www.lawdepot.ca – Law Depot

Lease vs. Buy:

- www.fcc-fac.ca – Farm Credit Corporation
- www.collinsbarrow.ca – Farm Alert June 2013 – Collins Barrow, Chartered Accountants

Livestock Leases:

- http://www.agf.gov.bc.ca/busmgmt/bus_arrange/lease.htm – Government of British Columbia – Ministry of Agriculture
- http://www.agriculture.gov.sk.ca/cow-calf_lease_agreements – Government of Saskatchewan – Farm Business Management
- <http://www.gov.mb.ca/agriculture/business-and-economics/> – Government of Manitoba – Agriculture

