

The term of the lease must be clearly described.

TERM

To have and to hold the said lands for and during the term of years to be computed from the first day of , A.D. 19 , and to be fully completed and ended on the day of , A.D. 19 .

Clause used where land leased for cash.

RENT

Yielding and paying therefore unto the Lessor at or at such other place as the Lessor may direct in writing, rental for the said lands in the sum of DOLLARS in lawful money of Canada payable in yearly installments of DOLLARS, the first of such yearly installments to be paid on the day of , A.D. 19 , and subsequent installments on the day of in each year thereafter during the term of this lease.

Clause used where land leased under a crop/share arrangement.

ALTERNATE RENT CLAUSE

Yielding and paying therefore unto the Lessor at or at such other place as the Lessor may direct in writing, yearly commencing in the year 19 and every year thereafter during the term therein by way of clear rental an amount equal to PERCENT of the annual gross proceeds from the sale of the whole of the crops of the different kinds and qualities which shall be grown on the said lands in each of the years during the said term of this Lease, without any deduction, defalcation or abatement whatsoever and payable on the day of , A.D. 19 , and on the day of of each and every year thereafter during the said term in respect of the annual gross proceeds in each such year.

DEFINITION OF GROSS PROCEEDS

OPTIONAL

Where rental is made by way of a crop/share arrangement, one must define "gross proceeds".

For the purposes of this agreement "gross proceeds" shall mean the proceeds received from the sale of the whole of the crops as aforesaid (including, but without limiting the generality of the foregoing, not only the proceeds of sale but any other funds received from crop, hail, income or any other insurance carried in respect of such crops received by reason of such crops or any deficiency therein or out of the pools conducted for the sale of such crops and the crops of other growers of similar type arising by virtue of any governmental or other compensation, subsidy or grant) without deduction for irrigation rates and levies upon the said lands, costs for labour and material for planting, pruning, fertilizing, spray-

Lessee to covenant or promise to do certain things with the land its operation. Failure to live up to those covenants amounts to a breach of the lease whereupon the Lessor has the right to terminate the lease and potentially sue for damages. Some of the more common covenants are set out here. It should be emphasized that these covenants are not mandatory and may be deleted or additional covenants may be added depending on the individual needs of the parties to the lease in a given situation.

ing, and generally cultivating the fruit grown thereon, or for picking the fruit to be grown thereon or packing, handling or selling the same, or for any insurance premiums of any kind whatsoever, all of which costs and expenses the Lessee covenants and agrees to meet promptly at his own expense as the same become due.

LESSEE'S COVENANTS

The Lessee covenants with the Lessor:

- i) To pay rent as aforesaid;
- ii) To pay all irrigation district rates and levies in respect of the said lands;
- iii) To cultivate the said lands as a commercial orchard during the entire lease term and at his own expense during the currency thereof to till, prune, spray, fertilize, irrigate and generally cultivate the trees grown upon the said lands and to farm the whole of the said lands in a good and husbandlike manner, according to modern horticultural standards recognized in the Okanagan Valley in the Province of British Columbia and to harvest and market the tree fruit crop in each year during the term hereof and to use his best efforts to ensure the highest cash return on the crops sold during the term of this lease.
- iv) To be fully responsible for all the operating costs incurred in the operation of the orchard on the said lands during the term of this agreement and to indemnify the Lessor for any costs, charges, expenses, resulting from the failure of the Lessee to pay all operating costs, which said failure causes damage to the Lessor.
- v) To prevent any liens, judgments, or other charges against the said lands, and further, in the event of the filing of any liens, judgments or charges against the said lands, the Lessee covenants within ten (10) days of being advised of same to have the said liens or charges removed by paying same in full or providing alternative security.
- vi) Not to assign or sublet in whole or in part without the Lessor's prior consent in writing, such consent not to be unreasonably withheld.
- vii) To keep down all noxious weeds and to carefully protect and preserve the fruit trees from waste, injury or destruction, and not to allow any

horses, cattle or sheep or any field pest to have access to such trees.

- viii) To repair, clean out and keep clean and in a state of repair all irrigation pipes and other irrigation equipment and to do all the irrigating work required using the irrigation water as a careful husbandman would use the same in irrigating crops of like nature, planted in like soil, such irrigation to be carried on at the Lessee's expense in the most approved manner so that no injury shall be done to the said lands or to any adjoining lands, and if any such injury is done, then the Lessee shall indemnify and save harmless the Lessor of and from all claims and demands arising therefrom, but nothing herein contained shall be construed as a warranty or covenant as to the quality or sufficiency of water available for the said lands.
- ix) To comply with all the laws, rules, regulations and ordinances and by-laws of any government or other body having jurisdiction over the said lands including, but without limiting the generality thereof, the Dominion of Canada, the Province of British Columbia, the City of _____ and any community planning area or Regional District, in the use and occupation of the said lands, and to indemnify and save harmless the Lessor from all liability, loss or damage in respect thereof.
- x) To apply for and maintain crop, hail and income insurance and such other insurance or subsidy programs which may be come available through the government of the Province of British Columbia or any other level of government during the currency of this lease and to maintain for the common benefit of the Lessor and Lessee public liability insurance in the form and amount satisfactory from time to time to the Lessor and with insurers acceptable to the Lessor and to deliver promptly to the Lessor a copy of each such policy of insurance if so required by the Lessor, such insurance to be obtained at the Lessee's expense.
- xi) To leave the said lands and any fixtures thereon in good condition and to use the said lands and premises hereby demised for the purposes of a commercial orchard only.
- xii) Not to do any act which could potentially disqualify the crops grown on the said lands from qualifying for or under the government insurance and/or subsidy programs described herein.

In a crop/share lease the cost of the insurance may be divided in the same percentage as the relative shares of the income from the crop.

- xiii) Not to alter, improve, change, remodel, tear down or destroy any buildings erected upon the said lands without the prior written consent of the Lessor.
- xii) To make available at all times and from time to time to the Lessor or his Accountants or other nominee all books of record and accounts of expenditures and income with full particulars thereof in connection with the farm operation and that he will maintain such records and accounts fully and accurately and on a continuous basis.
- xiii) To allow the Lessor or an agent or representative of the Lessor the right at all reasonable times to attend and inspect the said lands.

LESSOR'S COVENANTS

The Lessor hereby covenants and agrees with the Lessee:

Key Promise or Covenant of Lessor is for quiet or uninterrupted enjoyment of the lands by the Lessee. As in the Lessee's Covenants there is no limit as to the matters which may be included here. Each lease and the covenants therein will depend on the individual needs of the parties to the Lease.

- i) That in consideration of the Lessee paying the rent hereby reserved and performing all of the covenants herein on its part contained, the Lessee shall and may peaceably possess and enjoy the said lands for the term hereby granted without any interruption or disturbance from the Lessor or any other person or persons lawfully claimed by, from or under him.
- ii) To pay all taxes levied against the said lands.
- iii) To allow the Lessee to register the within lease, provided that the Lessor shall have the right to assign the lease to any new owner and provided, further, that if required by the Lessor to do so, the Lessee shall subordinate this lease to any mortgages which now or hereafter during the said term may affect or relate to this lease or to the said lands, and to all modifications or renewals thereof.

PROVIDED ALWAYS AND IT IS HEREBY AGREED BETWEEN THE LESSOR AND LESSEE AS FOLLOWS:

Clause setting out right of Lessor to take possession and cancel the lease if the

- 1) DEFAULT - If and where the rent hereby reserved or any part thereof, whether lawfully demanded or not, is not paid when due, or in the case of breach of non-observance or non-performance by the Lessee of any of the covenants, agreements, provisos, or conditions on the

Lessee fails to perform the covenants and conditions of the lease.

part of the Lessee to be kept, observed or performed and any such default on the part of the Lessee shall continue for fifteen (15) days after written notice thereof to the Lessee by the Lessor, and in every such case, the Lessor, in addition to any other remedy now or hereafter provided by law, may at its option, cancel this lease and re-enter and take possession of the said lands or any part thereof by force, if necessary, without any previous notice of intention to re-enter and may remove all persons and property therefrom and may use such force and assistance in making such removal as the Lessor may deem advisable and such re-entry shall not operate as a waiver or satisfaction in whole or in part of any right, claim or demand arising out of or connected with any breach or violation by the Lessee of any covenant or agreement on its part to be performed.

Clause stating Lessee has examined the lands and that there are no representations other than those contained in the Lease.

- 2) EXAMINATION OF LANDS - The Lessee agrees that it has leased the said lands after examining the same and that no misrepresentations, warranties or conditions have been made other than those expressed herein and that no agreement collateral hereto shall be binding upon the Lessor unless it is made in writing and signed on behalf of the Lessor.

Clause allowing Lessee to terminate Lease were % of trees are killed by an Act of God.

- 3) TERMINATION BY ACT OF GOD - In the event that PERCENT of the trees on the said lands are killed or severely damaged by winter frost or other casualty, then the Lessee shall have the right to terminate this lease and the Lessee will not be liable to the Lessor for any rent during the year that this lease is terminated, provided that, notice of termination is provided to the Lessor prior to the harvesting of the crop during the termination year.

Interest on overdue rent.

- 4) INTEREST ON OVERDUE RENT - Any installment of rent not paid on the due date shall, without prejudice to any other rights of the Lessor arising from such breach, bear interest from such due date at the rate of PERCENT per annum until paid.

Failure to insist on performance of a covenant does not amount to waiver of same.

- 5) NON-WAIVER - The failure of the Lessor to insist upon strict performance of any covenants or conditions in this lease or to exercise the right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition or option and no waiver shall be inferred from or implied by anything done or omitted by the Lessor, save only express waiver in

writing. The acceptance of any rent or the performance of any obligation hereunder 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.

Clause to be implemented where Lessee remains in possession after the term of the lease has expired.

6) OVERHOLDING - Should the Lessee continue to occupy the said lands after the expiration of the term granted hereby, the Lessor shall accept rent, and the new tenancy created thereby shall be deemed a yearly tenancy and shall be subject to the covenants and conditions contained in this lease insofar as the same are application to a tenancy from year to year, save and except that the rental payable shall be as determined by the Lessor.

Renewal of Lease Clause.

7) RENEWAL - The Lessor and Lessee further agree that if the Lessee duly pays the said rent and keeps and performs all and every of the covenants, provisos and agreements herein and on the part of the Lessee to be paid, kept and performed, the Lessor will, upon the request of the Lessee made three months previous to the expiration of the term hereby granted and at the cost of the Lessee, grant to the Lessee a renewal lease of the said 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 hereto and in the event that such parties are unable to agree, then it shall be mutually agreed by and between the parties hereto that a reasonable rent shall be determined by arbitration held pursuant to the Arbitration Act, Chapter 18 of the Revised Statutes of British Columbia, 1979 and amendments thereto.

Remedy of Lessor where Lessee has not operated lands in a husbandlike manner.

8) FAILURE TO PERFORM WORK - Should the Lessee fail to perform any of the work as herein provided or meet any expenses when due or repair, then the Lessor may give to the Lessee seven (7) days notice to commence the said work and if the default shall continue, then the Lessor or its agent duly authorized in that behalf may enter upon the said lands with such agents, servants or workmen as he may consider necessary and proceed to do the said work and pay the said expenses all at the expense of the Lessee and the Lessee hereby covenants forthwith thereafter to pay the Lessor the costs of the same.

Arbitration clause to be used where the parties disagree as to whether or not the farming operation is being run properly.

9) ARBITRATION - In the event that the parties hereto disagree as to whether or not the said lands are being operated in a proper and husbandlike manner, such disagreement shall be settled by arbitration pursuant to the provisions of the Arbitration Act of the Province of British Columbia, hereinbefore described. The arbitration shall be conducted by and before three (3) arbitrators, one to be chosen by each party hereto and the third by the two so chosen, provided that such arbitrators shall be persons experienced in the matters of dispute. The decision of the arbitrators shall be final and binding upon the parties hereto. Pending the completion of any arbitration, the parties agree to proceed insofar as practicable in the performance of this Agreement.

Remedy of Lessor where Lessee bankrupt or insolvent.

10) BANKRUPT OR INSOLVENT - It is hereby expressly agreed and understood by and between the parties hereto that if the interests of the Lessee hereunder and any of the goods and chattels of the Lessee shall at any time during the said term or any renewal thereof be seized or taken in execution or attachment by any creditor of the Lessee or if the Lessee shall make an assignment for the benefit of his creditors, or become bankrupt or insolvent and shall take the benefit of any act that may be in force for bankrupt or insolvent debtors or shall abandon the said lands, then, in every such case the current year's rent shall immediately become due and payable and the term hereby granted shall, at the option of the Lessor, forthwith be forfeited and determined.

Clause giving Lessee the right to purchase the lands before they are offered for sale to another party.

11) RIGHT OF FIRST REFUSAL - Should the Lessor desire at any time during the term of this Lease to sell his interest in the said lands, the Lessor agrees to first offer such property to the Lessee at a price to be named by the Lessor, and if the Lessee shall not within days accept such offer, then the Lessor shall be at liberty to sell such property to any other person or persons at the same or at a higher price but shall not sell the said lands to any other person or persons at a lesser price or on better terms unless and until it shall first have been offered to the Lessee at such lesser price and on similar terms and that such last mentioned offer shall not have been accepted within days by the Lessee, all such offers and acceptances and any refusal to be made in writing. Any such sale to a person or persons other than the Lessee shall be subject to this lease for the initial term

hereof, save and except the option for first refusal to purchase herein granted, which shall lapse upon such sale. In the event that the Lessee exercises his option hereunder to purchase, fair adjustment shall be made in favor of the Lessor with respect to rental to the date of such purchase, calculated proportionately to that portion of the calendar year then expired, multiplied by an amount equal to PERCENT of the annual gross proceeds on the sale of the whole of the crops of the said lands in the said year, based upon a fair estimate of same for the said year in relation to conditions then prevailing and in relation to such gross proceeds for prior years. Further provided, that if the Lessee does not exercise his option herein to purchase the said lands, and the said lands are in consequence duly sold by the Lessor to any other person or persons, the Lessee shall at the Lessor's request promptly execute a release of this option for first refusal to purchase in registrable form and deliver the same to the Lessor for registration, and the Lessee hereby irrevocably appoints the Lessor as his attorney to duly execute a release of the option for first refusal to purchase in such event on his behalf, and authorizes the Registrar of Land Titles having jurisdiction to accept such a release duly executed by the Lessor as his attorney, verified by a Statutory Declaration of the Lessor as to the circumstances aforesaid, for registration so as to release the option for first refusal to purchase herein in such event.

Notice - where to be given.

12) NOTICE - Any notice hereunder may be given by prepaid registered mail, addressed to the other party at the other party's respective address as aforesaid, or at such other address as either party may notify the other of in writing during the term hereof and any such notice shall be deemed to have been received the day following its posting. any such notice may also be given to either party by delivering the same in writing to the said party by hand.

Lease binding on heirs, successors, etc. of each party to the lease.

13) This Lease and everything herein contained shall enure for 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 and where there is more than one Lessee or where there is a female party

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or corporation, the provisions herein shall be read with all grammatical changes thereby rendered necessary and all the covenants shall be deemed joint and several.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals in the presence of their officers duly authorized in that behalf, or have hereunto set their hands and seals, as the case may be, on the day and year first above written.

SIGNED, SEALED AND DELIVERED

in the presence of:

THE CORPORATE SEAL OF

was hereunto affixed in the presence of:

SAMPLE ONLY