

**THE RURAL MUNICIPALITY OF WHITEMOUTH**

**BY-LAW NO. 676/17**

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEMOUTH TO AUTHORIZE THE ENTERING INTO AND EXECUTION OF AGREEMENTS WITH BRIAN PROCEVIAT.

**WHEREAS** Section 250(2) of Part 8, Division 1 of The Municipal Act provides in part as follows:

250(2) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following:

- (d) enter into agreements with a person, with an agency of the Government of Manitoba or the Government of Canada, or with another municipality, including a municipality in another province, to do with or on behalf of the municipality anything the municipality has the power to do within the municipality;

**AND WHEREAS** it is deemed expedient and in the best interests of the residents of The Rural Municipality of Whitemouth that The Rural Municipality of Whitemouth enter into agreements with Brian Proceviat;

**AND WHEREAS** the terms of the agreement have been settled and are contained in the agreements attached hereto as Schedule "A";

**NOW THEREFORE BE IT AND IT IS HEREBY ENACTED** that the Council of The Rural Municipality of Whitemouth, duly assembled, enact as follows:

1. **THAT** the entering into the proposed Agreement attached hereto as Schedule "A" is hereby approved and authorized.
2. **THAT** the Reeve and the Chief Administrative Officer of The Rural Municipality of Whitemouth are hereby authorized and instructed to execute the agreement, as set out in Schedule "A" attached hereto, for and on behalf of the Municipality.

**DONE AND PASSED** by the Council of The Rural Municipality of Whitemouth in regular session assembled, this 14<sup>th</sup> day of *March*, AD., 2018 .

For:            *Against:*  
All              *None*

  
\_\_\_\_\_  
Reeve

  
\_\_\_\_\_  
Chief Administrative Officer

Read a first time this 28<sup>th</sup> day of *February*, AD. 2018 .  
Read a second time this 28<sup>th</sup> day of *February*, AD. 2018 .  
Read a third time this 14<sup>th</sup> day of *March*, AD. 2018 .

**RURAL MUNICIPALITY OF WHITEMOUTH**

**CASH LEASE AGREEMENT**

**THIS AGREEMENT** made in duplicate this 14<sup>th</sup> day of March, 2018.

**BETWEEN:**

**THE RM OF WHITEMOUTH**

being the registered owner  
of the land described in Schedule "A".  
of 49 Railway Avenue, Whitemouth  
in the Province of Manitoba,

(the "Landlord")

- and -

**BRIAN PROCEVIAT**

of Elma  
in the Province of Manitoba,

(the "Tenant")

**SECTION 1.00 DEFINITIONS**

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

**SECTION 2.00 DESCRIPTION OF BUILDINGS ON LEASED LAND**

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

### **SECTION 3.00 DEMISE AND TERM, AS IS BASIS**

- 3.01 The term of this Lease shall be five years commencing on the 1<sup>st</sup> day of January, 2018, and ending on the 31<sup>st</sup> day of December, 2022.
- 3.02 The Tenant accepts the Leased Land on an "As Is", and "Where Is" basis and any Alterations and Improvements made, erected or installed during the Term, with the Landlord's prior written approval, shall be at the risk, cost and expense of the Tenant and to the entire satisfaction of the Landlord.

### **SECTION 4.00 ANNUAL RENTALS**

- 4.01 The Tenant must pay annual rent (the "Rent") for the Lease to the Landlord in the amount of \$125.00.

(a) to be paid in full on or before July 31<sup>st</sup> for each year of this Lease;

- 4.02 All Rent is payable to the Landlord at its address shown above.

### **SECTION 5.00 PAYMENT FROM GOVERNMENT AGENCY**

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

### **SECTION 6.00 USE OF LEASED LANDS**

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

- 6.01 Not remove any sand, gravel, clay, or topsoil and agree that he has no rights whatsoever to valuable stone or other such substances existing or, or under the surface of the said Leased Land.
- 6.02 Not change the natural course of any waterways on the said Leased Land, or cut down trees growing upon the Leased Land, nor permit any other person to do so, without the written consent of the Landlord.
- 6.03 Use all best efforts to rid the Leased Lands of noxious weeds and in this regard, the Tenant shall comply with all lawful orders imposed by the relevant municipal or local government district.
- 6.04 At no time allow or permit any liens, (including but not limited to builders' liens) to arise or be filed against any of the Leased Lands on account of any work, labour, services or materials supplied to or on behalf of the Tenant.
- 6.05 Allow the Landlord, including its employees, agents and representatives to enter upon the Leased Lands at any time for the purpose of inspecting the Leased Lands, including any Alterations and Improvements thereon.

### **SECTION 7.00 TAXES**

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

### **SECTION 8.00 ALTERATIONS AND IMPROVEMENTS**

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

## **SECTION 9.00 SUBLETTING**

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

## **SECTION 10.00 DEFAULT**

10.01 The Tenant is in default under this Lease if:

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

## **SECTION 11.00 TERMINATION**

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

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

11.02 The Tenant may terminate this Lease as of January 1<sup>st</sup> of any year during the Term provided that:

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

## **SECTION 12.00 YIELDING UP LANDS, RESTORATION**

12.01 Upon the expiry of this Lease, the Tenant shall yield up the Leased Land, together with any Alterations and Improvements that the Tenant has elected to leave, in such condition that is consistent with good farm management, husbandry and conservation practices. Nothing herein amends or modifies the Tenant's obligations as set out in Section 6.00.

**SECTION 13.00 ARBITRATION**

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

**SECTION 14.00 GENERAL**

- 14.01 Time shall be of the essence of this Lease.
- 14.02 This document and the attached Schedule "A" contain the entire agreement between the parties. There are no undertakings, representations or promises express or implied, other than those contained in this Lease.
- 14.03 No amendment or change to, or modification of this Lease shall be valid unless it is in writing and signed by both parties.
- 14.04 This Lease shall be interpreted, performed and enforced in accordance with the laws of Manitoba.
- 14.05 This Lease ensures to the benefit of and binds the Landlord and the Tenant and their respective heirs, executors, successors and assigns.

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

**SIGNED, SEALED, AND DELIVERED**

in the presence of:

Jay Myall  
(Witness)

Colleen Johnson  
Chief Administrative Officer  
The Rural Municipality of Whitemouth  
(Landlord)

Jay Myall  
(Witness)

Brian Proceviat  
Brian Proceviat (Tenant)

**RURAL MUNICIPALITY OF WHITEMOUTH  
SCHEDULE "A"**

**LEGAL DESCRIPTION OF LEASED LANDS**

- A. PARCEL (NE 19-10-12E)
- B. TOTAL ACRES – 160 pasture land