



Young Ontario farmers at the Muskoka Young Agrarians Mixer, 2014

— YOUNG AGRARIANS —

ONTARIO LAND ACCESS GUIDE

2018 V. 1

Guide adapted by the
National Farmers Union—Ontario



ACKNOWLEDGEMENTS

Thank you to all of the farmers, organizations, collaborators and funders who participated!

Particularly, thanks to Jenny Cook, Haley Smith & Colin Paterson, Heather MacMillan and Paula Reynolds for taking the time to share your stories and the heartfelt and sometimes hard learnings from your journeys into farming.

This document was originally produced by Young Agrarians for new and young farmers in British Columbia. Young Agrarians in British Columbia is a partnership with FarmFolk CityFolk Society. Thank you to the original funder of the guide: The Real Estate Foundation of British Columbia. This guide has been adapted to the Ontario context by the National Farmers Union - Ontario with financial support from The Law Foundation of Ontario. Young Agrarians and NFU-O are solely responsible for all content.



ONTARIO GUIDE ADAPTATION TEAM:

WRITER & EDITOR
Ayla Fenton

LEGAL REVIEW
Burgandy Dunn &
Rizwan Khan,
Viridius Lex LLP

PHOTOGRAPHY
Sara Dent, Shelby Tay,
Marlene & Paul Thimmer

BRITISH COLUMBIA ORIGINAL GUIDE TEAM:

LEAD RESEARCHER
& WRITER
Robin Tunnicliffe

PRODUCER &
CONTRIBUTING
RESEARCHER & WRITER
Sara Dent

CONTRIBUTING WRITERS
& EDITORS
Shelby Tay, Darcy Smith



FUNDERS



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WELCOME YOUNG FARMERS!



Young Agrarians is a farmer to farmer resource network made up of new and young farmers growing food ecologically. The network began because of inspiration from U.S. young farmer movements including The Greenhorns and the National Young Farmers Coalition. The work Canada-side is to support the growth of the next generation of farmers through networking, resource sharing, and developing supports and services towards farm viability.

Young Agrarians are: young and new agriculturalists, rural, peri-urban and urban farmers, market gardeners, ranchers, rotational grazers, seed producers, food policy geeks, community groups, educational institutions, organizations, and anyone focused on ecologically rebuilding the agriculture of our country. Programs began in B.C. in 2012 and have grown across Canada. In 2016, Organic Alberta adopted the program platform, and in 2017, NFU-Ontario initiated the adaptation of the Young Agrarians Land Access Guide for Ontario.

Nationally, Young Agrarians offers educational and networking events throughout the year on and off farms (contact us if you want to organize one on your farm!) and online resources and opportunities. Add your farm or future farm business project to the **Young Agrarians UMAP**, which lists 14 categories of resources for new and young farmers. Visit: youngagrarians.org to connect.

In B.C., Young Agrarians (YA BC) offers a Business Mentorship program, pairing up new farms in start-up with an experienced farm mentor who supports with both production and business guidance. As well, in collaboration with Quebec's ARTERRE, YA BC is developing a land matching program for the southern portion of the province, where the land base is prohibitively expensive to acquire, and farmers need support to negotiate tenured lease opportunities. In Alberta, (YA AB) an on-farm apprenticeship program has been developed based on the Quivira Coalition model (New Mexico, U.S.). This program connects new farmers to training opportunities on farms. We are excited to develop programming with NFU-Ontario for new and young farmers looking to access resources and supports.

Learn more at www.youngagrarians.org



Young Ontario farmers at the Eastern Ontario Young Agrarians Mixer, 2014

NATIONAL FARMERS UNION – ONTARIO



The National Farmers Union - Ontario is a membership based organization of farmers and farm supporters. NFU-O advocates for policies to revitalize agriculture in Ontario by promoting food sovereignty and agroecology – in other words, a food system that is ecologically sound, economically viable, socially just, and locally focused. NFU-O members believe that the problems facing farmers are common problems and that farmers producing diverse products must join forces to advance effective solutions. Farmers and eaters work together in the NFU-O to encourage vibrant rural communities, environmentally sustainable practices and the production of safe, wholesome food.

Promoting local food is at the heart of our advocacy work. Through our Local Food Advocates Network project, we brought together people working in diverse fields (including healthcare, education, the arts, and faith communities) and equipped them with the tools and resources they need to promote local food.

Protection of farmland and access to land by new farmers is one of our key priorities. We collaborate with a number of organizations to offer succession planning resources and promote policies that protect farmland for future generations. NFU-O is now partnering with Young Agrarians in Ontario to offer more resources and programming to support new and young farmers in accessing land and growing successful farms.

NFU Youth are a network of young Canadians concerned with the future of food and farming in Canada and around the world. Many NFU Youth members are new or aspiring farmers committed to building food sovereignty. NFU Youth work at the national, provincial, and local levels to promote policies and cultural shifts that will support the next generation of farmers and responsible land stewards in Canada.

The NFU is also a member of La Via Campesina, the international movement of peasants and small farmers.

Learn more at
www.nfuontario.ca,
www.nfu.ca and
www.viacampesina.org



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HOW THIS GUIDEBOOK CAN SUPPORT YOU



The purpose of this guide is to support new and landless farmers as they journey toward accessing land. In researching and writing this guide, the driving question has been: how have new farmers gotten onto land? There are several different options to consider: from leasing and purchasing, to community farms and incubator plots—each with its own set of pro’s and con’s. Farming is hard work, and it takes significant planning, perseverance, and determination to be successful.

This guide will lead you through a brainstorming and reflection process to help frame your needs and directions. It will outline the various choices for accessing land. It provides useful tips for assessing land for farming, as well as a checklist for negotiating an agreement with a landowner. You will also find sample lease and license templates. We’ve included examples of different types of land access relationships—from leasing, to owning, to family tenure. All of the organizations, resources, and links cited throughout this guide are listed for your reference under **Resources** at the end.

FARMLAND SUCCESSION CONTEXT

In Ontario, 55% of farmers are over the age of 55, and only 9.4% are under the age of 35¹. The 2016 census saw the first small uptick in the number of young farmers since 1991. The average age of farmers in Canada is also 55, and only 1 in 8 have a succession plan in place². In the next twenty years, Ontario is going to see an unprecedented turnover in land tenure, and it is essential to ensure that farmland remains in the hands of farmers—and is accessible to new farmers.

LAND ACCESS FOR NEW FARMERS

Farmland prices in Ontario are some of the highest in Canada with a provincial average of over \$10,000 per acre³. Things have changed for our generation. Housing and job markets look different than they did 20 years ago. These days, many of us work several different jobs with considerably less job security and a limited ability to plan for retirement. Buying land without existing capital (equity), family support, or a business partner to finance farm start-up is extremely challenging. That’s why we put this guide together: to support you in your decision-making process to figure out what is viable for you and your farm business.

1. Source: <https://www150.statcan.gc.ca/n1/pub/95-640-x/2016001/article/14805-eng.htm>
2. Source: <https://www150.statcan.gc.ca/n1/daily-quotidien/170510/dq170510a-eng.htm>
3. Source: <https://www.fcc-fac.ca/fcc/about-fcc/reports/2017-farmland-values-report-e.pdf>

I. GETTING THE EXPERIENCE YOU NEED



READY, SET, GO!

This section explores some of the steps that can prepare you for farming, starting with an excerpt remixed from the *Greenhorns Guidebook for Beginning Farmers* that we thought summed things up nicely.

To enter farming requires ongoing education, planning, fortitude, and patience. Maybe you are already signed up for a summer apprenticeship. Maybe you are just super tuned-in to food and are dreaming of an agrarian future. Maybe it's winter. Whatever the factors, there are quite a few things you can do right now to get closer to your goal:

- GET STRONG** run up the stairs, bike to work, establish good posture, begin a stretching routine, build core muscle strength, start using small hand tools and grow the calluses on your hands...
- GET NIMBLE** start a savings account, pay off all debt, attend skill shares, workshops and practical trainings, network aggressively, practice thrift, scavenge, and cache useful implements and well-built kitchen supplies, learn to can/jam/preserve and cook food cheaply and well, learn carpentry, basic plumbing, machine repair, welding, and above all skills—share with your friends who know how to do all of that stuff.
- GET COMMUNITY** repair any strained relations with land-owning friends and family, show up at community events, stay in touch.
- GET OPPORTUNITY EYES** start composting NOW, observe and learn how to read the landscape, think water retention and drainage, and land use, read natural history, read human history.
- GET READY TO WORK** help out on a farm near where you live, be an opportunistically friendly neighbor and helper in your community, apply yourself fully to the task at hand, do not flinch when it is hot and smelly, accustom yourself to service.

FINDING LEARNING OPPORTUNITIES

Most farmers start by learning from others, whether through volunteering on farms, working seasonal farm jobs, or pursuing farm education in a formal learning environment. Internships and apprenticeships are a good route for getting more practical hands-on learning; they can be paid or unpaid. Some farms have more structured educational programs established; on other farms, you may be fully immersed in day-to-day activities and build your skills and knowledge as you go. Whatever route you pursue, getting an education in farming is key to understanding whether you want to start your own farm business and how to run it.

Check out the Young Agrarians online resource **UMAP (maps.youngagrarians.org)** to see what educational programs exist in Ontario and organizations that can connect you to volunteer, intern, and job opportunities. Farmers markets are great places to connect with farmers who are doing the type of farming that interests you and to find out whether they take volunteers, have internship programs, or paid work. Joining a general farm organization like the National Farmers Union-Ontario is a great way to learn more about the agricultural industry, build a diverse network of farmer contacts, and advocate for yourself as a new farmer.



TRAINING OPPORTUNITIES IN ONTARIO:

CANADIAN ORGANIC GROWERS

COG is a national organic farmer and consumer association that offers training and resources to raise awareness about organics and assist farmers and gardeners in adopting sustainable and commercially viable organic production methods. COG has published a number of valuable technical manuals for farmers on topics such as record keeping, crop planning, livestock rearing, field crop production, and fruit & vegetable production. They also run an online lending library with an impressive collection of titles.

Visit: cog.ca.

COLLABORATIVE REGIONAL ALLIANCE FOR FARMER TRAINING

CRAFT is a network of farms in Ontario that offer internships and plan education workshops for interns and farmers in various regions of the province. CRAFT is a popular gateway to the immersive farm internship experience that many aspiring farmers start with. To learn more, visit the regional websites:

For Southwest Ontario visit: craftsouthwestontario.ca

For Kawartha/Northumberland visit: craftfarms.ca.

ECOLOGICAL FARMERS ASSOCIATION OF ONTARIO

EFAO has been promoting the advancement and understanding of ecological agricultural methods since 1979. Run by farmers, for farmers, EFAO focuses on farmer-to-farmer training and support. There are dozens of farm tours, workshops, and kitchen table meetings held across the province every year. EFAO's Advisory Service and online discussion forum are invaluable resources for the new farmer in Ontario.

Visit: efao.ca

EVERDALE

Everdale is a teaching farm that provides hands-on, solutions-based food and farming education. Everdale's Sustainable Farming Certificate program is an intensive, curriculum based program designed to help participants acquire comprehensive food growing skills. SFC students live and learn at Everdale's organic farm in Hillsburgh, ON. Everdale also offers a Farm Planner course to help aspiring farmers develop a comprehensive farm plan with help from experienced farmers and peers.

Visit: everdale.org.

FARMS AT WORK

Farms at Work's mission is to promote healthy and active farmland in east central Ontario. Programs include skills-building workshops for farmers, field courses, and a business planning program. Their website contains resources for farm business financing, diversification, and marketing, as well as a local agriculture services directory.

Visit: farmsatwork.ca.

FLEMING COLLEGE – SUSTAINABLE AGRICULTURE CO-OP PROGRAM

This program is designed for aspiring farmers seeking an intensive, applied learning experience in sustainable, ecological or natural farming methods. The program includes three semesters of courses plus a 21-week, on-farm co-op experience.

Visit: flemingcollege.ca/programs/sustainable-agriculture-co-op

JUST FOOD

Just Food is a local, non-profit, community-based organization that works on both rural and urban food and farming issues in the Ottawa area. The Just Food Start-Up Farm Program provides access to land, training, shared infrastructure and equipment, as well as training and supports to new and established farmers throughout the Ottawa region.

Visit: justfood.ca.

WORLDWIDE OPPORTUNITIES ON ORGANIC FARMS

"In return for volunteer help, WWOOF hosts offer food, accommodation and opportunities to learn about organic lifestyles." WWOOFing is a great way to gain experience on a diversity of farms in Ontario or around the world.

In Canada: wwooof.ca

International: wwooofinternational.org.

THERE IS NO SUBSTITUTE FOR EXPERIENCE.

There is so much learning that happens when you're fully immersed in a farming operation (both the good and the bad), and it will inform how you chose to manage your farm in the future. Maybe you like your tools organized a certain way or like to use particular harvesting and washing techniques, prefer to work markets or sell through a Community Supported Agriculture (CSA) model... whatever the case, getting experience on other people's farms is key to knowing whether farming is for you.

THAT FIRST FARM EXPERIENCE WILL HELP YOU FIND ANSWERS TO THE FOLLOWING QUESTIONS:

What do you want to farm? Are you an animal person, a vegetable person, a cut-flower person? Do you like interacting with the eaters? Is your focus inner-city nutrition or high cuisine?

Do you like food-processing/value-added products? Do you have the discipline for dairy? The might for fieldwork? The patience for regulatory labyrinths? The stamina for farmers markets?

Some folks decide that they don't want to be farmers and instead start other farm-based businesses, like specialty tool companies.¹

The land-seeking farmer should think hard about whether they have the necessary experience to pull off their endeavour. We say this because growing food is hard work, both physically and mentally. Many farmers can relate to the challenges of working alone for periods of time in order to operate their farms and the regret of expensive mistakes. For the new entrant to agriculture, an apprenticeship under an experienced farmer is an invaluable first step, and working as a hired farmhand can impart a sound grasp of the business of farming. Being connected to a farm can also provide valuable networks in the community that can be worth a lot in terms of saving time and creating future opportunities if you decide to start your own farming business in the future.

There are many different types of farming and, in turn, many ways to shape your commitment to the land. Building an agrarian lifestyle that is financially sustainable and creates a healthy balance is an evolving process and requires solid planning. Often, farmers have a hybrid strategy of on and off-farm work, as well as seasonal highs and lows in production and income, which is important for assessing cash flow for the year. Farming requires you to develop contingency plans in case things don't go as planned, and it requires thinking well into the future for the long-term management of crops, soil health, and business development. The next section will guide you to reflect on how you want to shape your agrarian life.

1. Source: Greenhorns Guidebook for Beginning Farmers

YOU + FARMING = ?

Whether you've just gotten the farm bug or have been farming for years and are now ready to take on a piece of land on your own, take some time to get into the nitty gritty of what your ideal farming scenario looks like.

We encourage you to write down responses to the following questions:

What aspects of farming are you good at, and what aspects do you find challenging?

Many (often unanticipated) skills go into running a successful farm. Figuring out what your assets are and where you have skills gaps will help you figure out what you need to run a viable operation. This doesn't mean you have to be good at everything, but it means you can hone in on the things that will give you the best return and figure out how to bring in the skills that you need. Maybe you can harvest salad greens like nobody's business or maybe you are great at building structures or selling at the farmer's market.

What are your lifestyle dreams / hopes / needs outside of farming? Do you want to be a part-time or full-time farmer?

Farming, like many livelihoods, blends occupation with lifestyle, which on the one hand is what draws a lot of farmers into farming. On the other hand, it means there's always more to be done. And that means being pressed to make sacrifices. Think about what is important to you, and what you aren't ready to give up. For example: Do you need to attend your favourite cultural events in the summer months or go take care of family in another part of the country? Are you a contractor that wants to farm and do your other paid work at the same time? If these are lifestyle needs for you now, you may want to consider putting in an orchard, which would require less intensive management than annual vegetables or livestock, and your heavy work times would be spring and fall rather than throughout the growing season. Think about what crops and practices will enable you to make space for the other things that are important to you.

How much risk and financial insecurity can you take on?

Consider your tolerance for risk, financial insecurity, isolation, and physical labour. There are ways to figure out how to work within your limits, but these are all things that you will likely have to navigate. Knowing where your limits lie will help you make better decisions for yourself and stronger commitments when it comes to working with others. That may mean that you decide to take another year to save up, build more credit, or take care of that crick in your back. For instance, clearing raw land in the north may be cheaper than buying land in southern Ontario, but how much market cultivation will you have to do to sell your product? Farming in an urban setting may be convenient for access to markets but growing your business may involve leasing multiple parcels that can result in a lot of landlord relationships to maintain. No farming situation is perfect, but thinking through your ideal scenario will help you weigh your options.

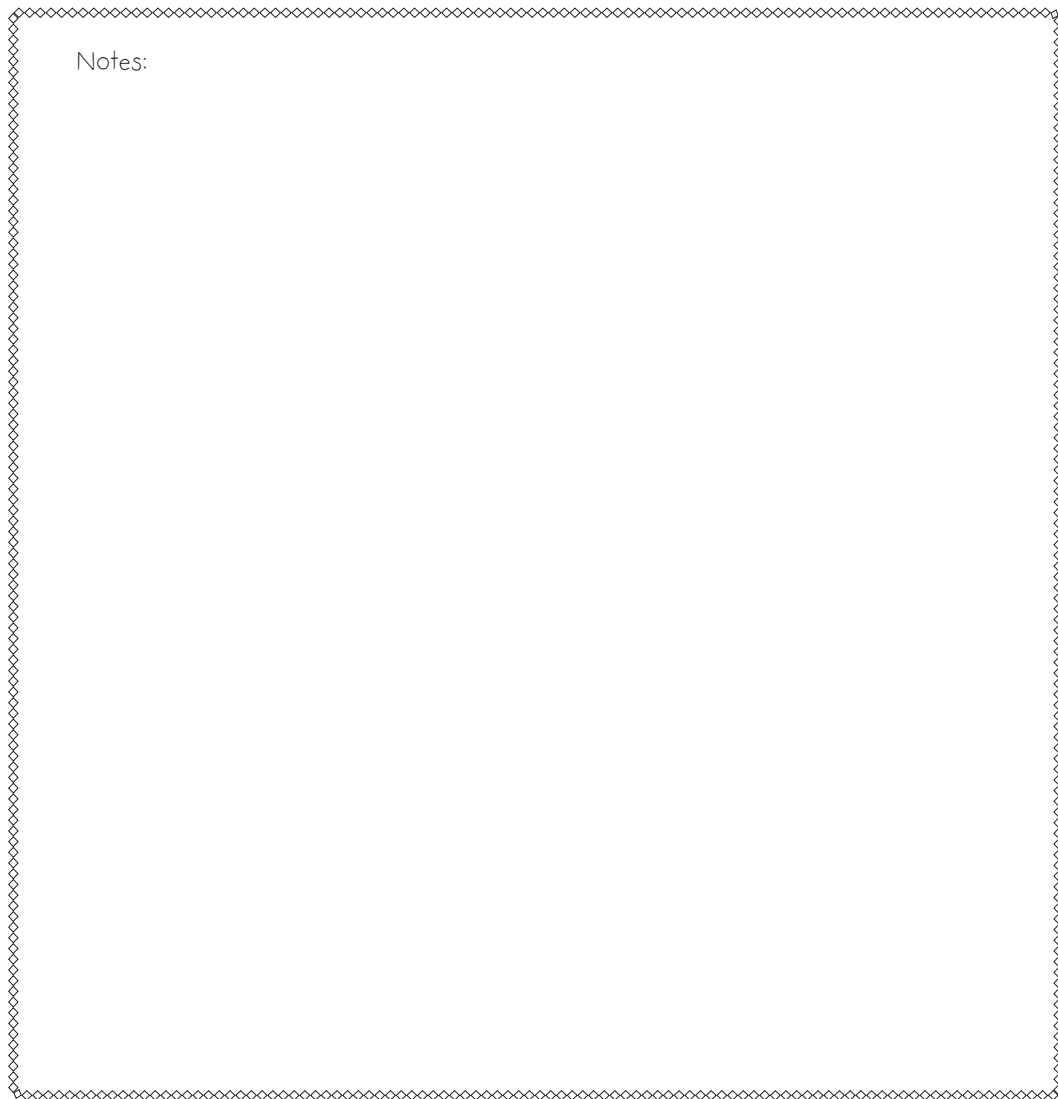
What do you want your community to look like?

Growing your business in an established farming community may require more attention to marketing and maintaining a competitive edge, but being part of a farming community also provides the opportunity to connect with peers for knowledge sharing, co-operative marketing models, and other forms of collaboration.

Think about what you're looking for in a farm and in a community.

Do you want to live rurally or near to the city? Do you want an area that has strong support for agriculture with farmers markets and businesses that are actively seeking and promoting their local food purchasing? Or are you willing to trail blaze and contribute to building a local food culture in a more remote location?

Notes:



STORY: FARM INTERN TO FARM OWNER

JENNY COOK, KNUCKLE DOWN FARM

Jenny Cook started farming in 2010 through a CRAFT internship. She loved it so much she ended up interning for a second year. Her second internship wasn't as enjoyable as the first, so she began to think about starting her own farm project. During this time, she met another farm owner in the CRAFT network who had some land for rent.

Jenny rented a small plot from this farmer who was a market gardener that had unused fields and space in the house for a tenant. Jenny paid \$500/month to rent the apartment and a small piece of land. This was a very beneficial arrangement for Jenny who was able to use all of the farmer's existing infrastructure and equipment without making the investments herself. She decided to market a CSA program to eaters in Toronto so she wouldn't be competing with her host, who sold mostly into the local rural area. Jenny speaks highly of this experience, as she got along well with the farm owner and had a built in mentor. She says the support she received felt similar to an incubator farm experience. She spent two years there building her customer base and business viability.

Eventually, she was ready to purchase her own land. In 2014, Jenny bought a farm with the help of family members who co-signed the mortgage with her. The new farm is a bit farther away because land close by to where she was renting was out of her price range. Her new farm is still close enough to Toronto that she was able to keep the CSA and farmers market customer base she developed during her time renting land.

Jenny says she is still playing catch up on the new farm—she started production in her first year there, whereas she says it would have been much easier if she had taken a year to prepare the land first. She is now running a successful business and gives a lot of credit to the farmers who took her under their wing and allowed her to learn before starting out on her own.

II. DEVELOPING A BUSINESS PLAN



(WHAT YOU + FARMING = IN NUMBERS)

Writing a business plan can seem like a daunting task especially if you're new to managing a business (let alone a farming business) or if you're someone who isn't in the practice of writing things down. Nonetheless, it is an essential step for actualizing your farming vision and for clearly articulating your vision to others. You may also need a business plan to apply for a loan or funding or to demonstrate your commitment to a potential landlord. Through this process you'll get a lot clearer on what it is that you want to achieve and how. Do seek out advice and mentorship as you solidify your business plan. It will evolve as you grow your farm (plan to revisit it annually or even seasonally), and a good framework will give you the space to iron out the kinks.

For step-by-step guides on how to create a business plan, please visit the Community Farms page under Resources on the **FarmFolk CityFolk** website.

A business plan will help paint a picture of your ideal farming operation and what you require in terms of land, length of lease, and infrastructure (such as buildings, fencing, greenhouses, and irrigation) to run your business.

Think about the following questions to help figure out your requirements for land:

- How much land will you need in your first year, and do you want to increase your acreage in future years?
- Do you want to be certified organic?
- How long will your crops take to produce?
- What kind of soil and terrain do you need for your crops or livestock?

It will highlight your financial situation. Planning for cash flow can make or break your farming business. Having a solid grasp on your finances is absolutely crucial before you consider applying for funding/financing, signing a lease, or talking to a realtor. See **Appendix C** for a sample Net Worth Statement.

- How much income do you need to live on?
- How much can you expect to bring in from on and off-farm work?
- How much can you afford to spend on your business in the beginning?
- How much money do you need monthly to cover production expenses?
- How long will your money last before you have to find other work?
- Can you afford labour, or will you keep the scale of your operation manageable for you and/or your family?

TIPS FOR WRITING A BUSINESS PLAN

1. Make lots of time to do it right. Daydream, read, visit other farms, and find ways to collect your ideas in photos and writing.
2. Build the foundation to give your dream some legs: figure out the markets for what you want to sell, find out what other farmers are charging, talk to farmers about the feasibility of your plan, and talk to your prospective clients about what kind of volume they would buy at different prices.
3. Think about what your farm would need to look like to accomplish these marketing goals: size of land, buildings, tools, and staff.
4. Research, scout, document, and put it on paper!

Notes:

III. STRUCTURING YOUR FARM BUSINESS



There are many ways to set up your farm business depending on what’s right for you. Below, we’ve identified a number of different governance structures. Key things to consider when deciding how to structure your farm business are:

- What type of management philosophy do you have?
- Do you prefer to work solo or with a team?
- How will revenues, expenses, and cash flow be managed?
- How will you be taxed?
- What types of capital can you access to start your business?

This section provides an overview of various business structures relevant to farms and some of the most notable advantages and disadvantages of each. The information that follows is intended to assist you in understanding which business structure may be best suited for your future farm.

Information in this Guide does not constitute legal advice. It is highly recommended that the legal and tax implications of the potentially relevant organizational structures below are discussed with a lawyer and account/tax expert respective to the specifics of your situation.

TYPES OF FARM BUSINESSES

There are numerous business and incorporation structures used by farm businesses, ranging from for-profit to not-for-profit. Social enterprises have a social and/or environmental focus to the organization and can refer to either for-profits or not-for-profits. Discussed below are some of the business structures traditionally used in farming, such as sole proprietorships, corporations, and co-ops, as well as business structures developed as innovative responses to the variety of economic, social, and environmental concerns of today’s farmers such as community and incubator farms, which are generally housed under non-profits.

FOR-PROFIT:

Sole Proprietor

Partnership

Joint Venture

Corporation

Cooperative

NON-PROFIT:

Not-for-profit Corporation

Non-profit Organization

Charity

Community Farm

Co-operative

Incubator Farm

Land Trust

SOCIAL ENTERPRISE:

Community Farm

Incubator Farm

Land Trust

SOLE PROPRIETOR

A sole proprietorship farm business is owned by one individual, and there is no distinction between the owner and the business.

- + Start-up is comparatively easy to set up with minimal filing requirements
- + Relatively few and simple tax implications
- + Privacy
- + Independence.
- Unlimited financial and legal liability
- Sole proprietors are personally responsible for any business debts and are personally liable in the case of a lawsuit for damages.

PARTNERSHIP

A partnership is a business entity other than a corporation that 'subsists between persons carrying on a business in common with a view to profit.' In a partnership, ownership, management, and liability of the business is shared by two or more individuals. A partnership is not a separate legal entity from the partners, each partner may act as an agent of the partnership, and each is jointly and severally liable (i.e., bears financial and legal responsibility) for the actions of the other partner(s). While not required, a partnership may be formalized by way of a partnership agreement. Whether or not a business entity constitutes a partnership depends on whether or not the business entity has the following characteristics:

- the sharing of profits and losses of the business;
- joint ownership of assets;
- the ability of each partner to contractually bind the other(s);
- the use of the term 'partner' and 'partnership' as self-descriptions;
- the use of a joint bank account or other accounts; and
- registration as a partnership.

While a partnership may exist formally or informally (i.e., with or without a written agreement), it is highly recommended that a formal partnership agreement be used to lay out the rights and obligation of the partners. In the absence of an agreement to the contrary, partners are deemed to have equal interests in the enterprise. For farm businesses, the impetus behind forming a partnership is usually related to succession planning, to facilitate the intergenerational transfer of a farm business, or to enable income-splitting between spouses or parents and children.

- + Combined assets and complementary skills
- + Sharing the high capital cost of starting a farm business

- + Relative ease of formation and dissolution
- + Joint operation allowing sharing of responsibility and profits
- + Enabling intergenerational transfer
- + Maintaining tax deferral opportunities and income splitting (especially between spouses, parents and children, siblings, or arm's length partners).
- Unlimited liability (i.e., partners are jointly and severally liable for the actions of other partners)
- Partnership is not subject to preferential tax rates but is taxed at the individual tax rate and is taxed on the net income of the partnership
- Record keeping and professional fees are more onerous than with a sole proprietorship
- A partnership may cease if a partner dies or retires, unless adequate planning is in place to avoid this eventuality.

CORPORATION

Setting up a corporation creates a legal entity distinct from the owners or shareholders with limited liability for owners.

- + Tax advantages (from tax deferrals, lower tax rates, personal tax credits, and capital gains tax exemptions)
- + Potential for faster repayment of debt
- + Limited legal and financial liability
- + Perpetual existence and succession
- + Flexibility in terms of assets owned and payment of shareholders
- + Tax liabilities are limited to an individual's investment in the corporation and any guarantees provided.
- Costly start-up
- More complex structure
- Annual filing requirements (i.e., tax filing requirements by both corporation and individual shareholders); and potentially the need for public disclosure. All of which may necessitate professional legal advice (i.e., with respect to share structure, ownership of assets, and the development of a shareholder agreement), as well as tax advice.
- Under a corporate structure the farmer is also no longer the direct owner of the business assets, and personal and business financial affairs must be kept separate.

JOINT VENTURE

A joint venture is essentially an informal partnership. In particular, a joint venture is usually subject to a specific term or duration and is project specific. Under a joint venture, the parties retain individual ownership of assets, and profits are shared according to the percentage of contribution to the venture. Notably, a joint venture is not a legal entity, cannot own assets, and does not pay taxes (the individual joint venturers do). Joint venturers remain separate business entities but receive/pay a share of the business's revenues and expenses. A joint venture may be useful in situations where parties would like to increase in scale by working together, sharing costs, and providing diversification without merging their entire operations (such as in revenue and/or cost sharing arrangements). Joint ventures may also be used as an alternative to paying a wage to a spouse or family member or instead of a land lease (to ensure the continuity of 'farm' income and preserve tax deferrals). Joint ventures have also been used as a creative means of enabling succession planning by facilitating the intergenerational transfer of knowledge and, eventually, the farm business which ensure both the financial security of the retiring farmer and the long-term viability of the successor.

It is advisable for parties to create a joint venture agreement in writing, which sets out that the business relationship is a joint venture and not a partnership; lays out the parties' respective rights, obligations, and decision making processes; provides for the sharing of revenue and expenses; addresses ownership of the land, machinery, and buildings; notes the labour and other resources contributed; and defines the length or term of the arrangement. It is recommended that parties to a joint venture have their agreement reviewed by a lawyer.

- + Complementary skills and resources
- + Sharing of capital costs and lowering cost of production
- + Allowing for the transfer of management experience and ownership in a business within a flexible and less formal business arrangement (as compared to either a partnership or corporation)
- + Simplicity
- + Low cost to set up and dissolve; less liability risk than with a formal partnership (in a joint venture, parties are not liable for each others actions).
- A joint venture may be interpreted as a partnership. It is important to understand the difference between a joint venture and a partnership so that parties do not inadvertently enter a partnership arrangement and with it assume unintended liability and tax consequences.

CO-OPERATIVE

A co-operative is an organization owned by the members who use its services or are employed there. They can provide virtually any product or service. Co-operatives have a long and successful tradition both in Canada and around the world and have proven amazingly flexible in meeting a wide variety of human needs. Globally there is an estimated 2.6 million co-operatives, representing one billion members and clients.¹

As a legal entity, a co-op is owned by a group of people, businesses, or not-for-profit corporations known as members. Control rests equally with all members, each of whom contributes resources with the primary purpose being to address the common needs and/or meet a common goal of the members. A co-operative operates on the following democratic and financial principles: (1) open, voluntary membership; (2) democratic control by members (one member = one vote); (3) economic participation by members; (4) autonomous control by members; (5) education, training and support for members; (6) co-operation; and (7) concern for community.

A co-op can be incorporated under federal or provincial/territorial legislation depending in which jurisdiction(s) the co-op will operate. Co-ops can be incorporated with or without share capital, as a worker co-op or as a not-for-profit (without share capital). By-laws, which are subject to legislative requirements, and the co-ops articles of incorporation are the internal rules which address how members are admitted, how meetings are held, the election and term length of directors, responsibilities of directors and officers, and the appointment and role of auditors.

To incorporate, a co-op requires a minimum of five legal persons (corporations or persons age 18 or over) who intend to be members of the co-op, and at least two-thirds of the board of directors must be members that are elected at the general meeting. While a co-op's directors may be held liable, its member's liability is limited to the share subscription (or membership amount or in a shareholder co-op, the amount of investment), and generally, members are not responsible for the co-op's debts and liabilities. Further, a co-op, as a legal entity, can own assets, acquire debt, and enter into contracts as would a person or corporation. Note that the surplus of a for-profit co-op is distributed to members based on their use of the co-op while surpluses of not-for-profits are returned to the general reserve. A co-op may be desirable where agricultural producers are seeking to scale their operations or acquire ownership in value-added and further processing activities.

- + Democratic governance and structure, which allow for members to share ownership and control
- + Reduced expenses and operational costs
- + Reduced financial risk
- + Limited liability

1. Source: <https://www.un.org/esa/socdev/documents/2014/coopsegm/grace.pdf>

- + Shared resources and marketing efforts
- + Access to credit, financing, equipment, and production supplies
- + Economies of scale
- + A co-op also shares many of the same advantages as a corporation, noted above, including the ability to own assets; acquire debt; enter contracts; and benefit from preferential tax implications (including income tax reductions/deductions particular to co-operatives and agricultural co-operative corporations).
- Strict regulations with respect to democratic control
- Complex structure
- Longer decision-making process
- The possibility of discord among members
- The need for careful regulatory compliance with respect to filing, reporting, and record-keeping requirements.

SOCIAL ENTERPRISE

A social enterprise engages in market activities that produce revenue as well as clear social, environmental, and/or cultural benefits. Three types of social enterprises which facilitate access to agricultural land for the new farmer are: (1) community farms, (2) incubator farms, and (3) agricultural land trusts.

Community farms and incubator farms will be discussed in the next section.

LAND TRUSTS AND AGRICULTURAL EASEMENT AGREEMENTS

Agricultural land trusts can be established providing for agricultural land to be held in trust for community benefit in perpetuity, such that only prescribed uses (i.e., agricultural uses) are permitted. Balancing individual (i.e., landowner) and community interests, agricultural land is purchased or donated to a land trust which becomes responsible for ensuring its protection or use for prescribed purposes (i.e., conservation, stewardship, economic development). The land trust then leases the land to a tenant farmer under specific terms and conditions regarding land usage.

Alternatively to obtaining title to the land, an agricultural land trust may obtain an easement; that is, the legal right to a specific use of the land. An agricultural easement can be donated by the landowner or purchased by the land trust, and the agricultural easement agreement generally contains provisions providing for the protection of farmland by restricting land uses that are not compatible with agriculture and/or prescribing or restricting the use of certain farm or environmental practices. In Ontario, an agricultural easement agreement can be made between a landowner and the province, a municipality, conservation authority, or registered land trust. With an agricultural easement agreement, the land remains owned by the landowner, but the easement agreement is registered against the title to the subject property, meaning it applies to all future owners of the land. Both forms of agricultural land trust serve to increase the accessibility of farmland to new farm entrants while compensating the landowner and providing the assurance that the agricultural land will be protected in perpetuity.

IV. FINDING LAND



WHERE TO LOOK FOR LAND

ONLINE LAND LISTINGS

Farmlink.net provides a listing space for landowners and land seekers in Ontario. It is a great space to find or share farm opportunities and resources.

The YA Land Listing section on the **UMAP (maps.youngagrarians.org)** also provides landowners with a space to list their land opportunities with relevant details such as land use history, water rights, and more. You can also list yourself as a Farmer Seeking Land so that landowners can find you too.

Farms at Work (farmsatwork.ca) and **GoodWork (goodwork.ca)** also list farm postings, along with Kijiji, Craigslist, and other online classifieds.

ORGANIZATIONS

Local food and farm-focused organizations can be invaluable resources for knowing who is looking for land and who is looking to lease land in your area. Some organizations also manage local email listservs that can be useful for sending out your 'land wanted for farming' ad. Consult the **Young Agrarians UMap** to look up local organizations in your area. Reach out to your National Farmers Union–Ontario Local (nfontario.ca/wpr/locals/) to help connect you with the farming community in your area.

ATTENDING FARMER MEETINGS

Farmers often know which pieces of land are available for lease and can help you make the connections you need. It's good to get your name out in the farming community and establish trust. Your request may pass through the community by word of mouth.

NEWSPAPERS

Some landowners and farmers with available land use print media rather than websites. The classified section of the community's local newspaper is a great place to find land for sale and for rent. Reading the local paper will also give you a feel for the culture of the community. Posting your wanted ads can also be useful and could accompany a short paragraph or one-pager outlining the key aspects that you are looking for and how to contact you.

BULLETIN BOARDS AT FARM STORES AND FARM STANDS

Occasionally landowners will post flyers advertising that they are looking for a farmer on their land. You can also post that you are looking for land to farm in the area.

REAL ESTATE AGENTS

Some real estate agents may be knowledgeable about farmland rentals or sales. They may also know of new farmland purchasers who may be looking for a farmer. Call different agencies and ask.

V. ASSESSING A SITE FOR AGRICULTURAL SUITABILITY



For some, taking over an existing farm site is an option, but you may also be thinking about converting a piece of land with no history of agriculture and little or no existing infrastructure. As you're studying listings and researching potential sites, here's a checklist of things to consider. Once you've decided to work through a lease with a landowner, see Appendix B: Working Through Your Agreement for a detailed breakdown of questions to run through with your landowner and address in your land access agreement.

SITE ASSESSMENT CHECKLIST

WATER FOR IRRIGATION

Ensure there is adequate water supply before considering the land. Check with landlords to see if they have ever experienced shortages. If so, explore other options for accessing water like getting hooked up to city water or freshening the well. It is not advisable to farm where there is the potential for water shortage.

POTABLE WATER FOR WASHING PRODUCE

If there is no potable water, there are options for treating water. Ultraviolet light systems are getting more affordable. This is not an insurmountable problem, but it should be priced out before proceeding.

LENGTH OF LEASE

How long are the landowners willing to lease their land? Year-to-year is often the standard for new farmers but holds a level of risk as a lot of time and money is invested in getting the land in shape for production. Five years is the typical length of time for a farmer to realize a meaningful return on investment. Feel out the landowner for their willingness to give you a longer lease.

LOCATION OF THE FARM

How close is the farm to your markets, to supply stores, to available labour? Make sure to factor driving time into your decision-making—and anticipate more driving and transportation during the initial establishment.

HISTORY OF THE LAND

Has the land been farmed before and were there any past practices that might impact the soil health? For example: old cars parked in the greenhouse or fill dumped on the land. If the landowners don't know, ask the neighbours. If the neighbours aren't sure, contact the local district government's zoning department to find out what history they have on file for the property.

SOIL AND TOPOGRAPHY

Certain soil types are not conducive for growing vegetables: very sandy soils or very heavy clays are less desirable. Check the soil maps for Ontario—a link can be found in **Appendix A**.

HOUSING / RESIDENCE

Is there housing for you on the land or affordable housing nearby? If you can't live on or near the farm, raising livestock will be a lot more challenging.

ACCESS / PARKING

Is the road and/or gate wide enough for a tractor to get through? Is there enough parking for a farm stand and for volunteers? Are on-farm workshops or farm tours part of your business plan? Ask the landowner how they feel about traffic on the land.

EQUIPMENT

Does the farm come with machinery that you can use? Is it in working order, or are the landlords willing to have it repaired?

OUTBUILDINGS

Storing and securing farm equipment is essential. If there are no outbuildings, will you have the ability to build on the land? How do the landowners feel about paying for the materials for you to build a permanent structure on their land?

FARM STAND

If you'd like to do on-farm marketing, having a farm stand or the ability to build one is key. Some landlords and/or neighbours can have issues with the increased traffic, and it's an important point to talk through. In some areas, a pre-existing farm stand nearby may be open to you selling your products there.

FENCING

If there is no fencing, ask if the landowners will pay for the cost if you supply the labour. If not, seriously consider fencing that you can take with you if you leave so you can still hold on to your infrastructure investment.

LIVESTOCK

Livestock can be an asset if it is already part of your business plan or can be adapted into your plan. If you're able to use manure for your soil it's important to find out the feed and medications given to livestock, especially if you plan to be certified organic.

PRODUCT STORAGE FACILITIES, COOLERS, FREEZERS

The potential for refrigeration and post harvest storage of farm products adds value and makes harvest easier. Insulated rooms can be cheaply turned into coolers using an air conditioner and a coolBot system (see **Appendix A**).

SECURITY AND PRIVACY

Do you have the ability to secure your equipment, and can you control unwanted traffic on the land? What are the neighbours like? Have they been exposed to agriculture before, and are they likely to complain?

FEED STORAGE FACILITIES

For livestock, this is essential and can be an expensive piece of infrastructure. If no infrastructure exists, consider using grain wagons with a cover, which can be moved to a new location.

GREENHOUSES

Greenhouses are invaluable for season extension and starting seedlings. If there are no greenhouses, discuss sharing the cost or installing greenhouses that you can take with you.

LAND ORIENTATION

While southerly exposure is a huge advantage for vegetable farmers, it can be a liability for ranchers because pasture can dry out.

POWER SUPPLY

Access to power is invaluable for electric fencing, for heating and venting cold frames, and for heat lamps for chicks, goslings and ducklings.

WIND, SUN EXPOSURE

Constant wind can dry out soils and make annual vegetables a challenge, and lack of sun can be a stressor to plants. These challenges can be overcome by changing the crops you grow, but it will take some creativity.

VEGETATION

The presence of noxious weeds can be a serious deterrent.

CELL PHONE RECEPTION

Can you operate your farm while being out of cell phone range? For example, if you are selling to chefs, they may be returning calls at various times during the day.

RESTRICTIONS / RESTRICTED USES

Does the landlord have conditions that limit your options on the land? Examples could be aesthetic in nature, such as no stockpiling tarps or no compost piles above a certain size.

VI. OPTIONS FOR LAND ACCESS



This section gives an overview of different ways to gain access to agricultural land, including purchasing land, as well as various types of land access agreements. Even if purchasing land is an option for you, it's a good idea to research all avenues. Finding the right land can take years, so leasing, licensing, or working out a memorandum of understanding could be an option while you take time to really search for the ideal spot. Keep your mind wide open during your land search process.

A NOTE ON LAND TENURE

The term “tenure” comes from the Latin word *tenere*, which means “to hold.” Tenure arrangements (including land title documents in the case of ownership and lease agreements in the case of leasing) can be short or long term, exclusive or shared and come with a variety of different conditions—they are the key documents for clearly outlining the conditions of tenure. Many of the rights we commonly associate with land ownership can be achieved or approximated without actually owning land. Leasing, licensing, renting, and crop sharing are several types of tenure that will be discussed in this document—and no doubt creative arrangements will continue to be developed to contend with the high prices of land.



INCUBATOR FARMS

Incubator farms are programs that assist new farm businesses by providing short term access to shared resources to facilitate knowledge transfer (from mentors to new farmers) and enable access to agricultural land through subsidized, centralized, land tenure. As a farm business grows and becomes financially viable, the farmers move off the incubator site and find their own land to farm, usually through leasing or purchasing land.

- + Incubator sites are attractive because they often require very little investment from the farmer, and start-up costs can be minimal depending on the arrangement.
- + Some incubator sites offer land that has been well stewarded and support farmers through providing infrastructure, such as fencing, irrigation, tools, post-harvest storage, outbuildings, tractors, and coolers.
- + There can also be mentorship, business development resources, and marketing help available.

All of this infrastructure, as well as a team model of community support, can be very valuable for a new grower to test out starting a farm business and in some cases make all the difference in getting a new business established. They can be worthwhile for the networks they enable farmers to access and the potential to pursue group purchasing opportunities.

- Drawbacks of incubator plots can be the volunteer time required to participate in overall site operations and potential group dynamics. We've probably all had good and bad experiences working in groups.
- Incubator farms inevitably require more effort to develop and shape, especially for newer and smaller incubator sites which may be restrictive in size or too temporary.
- New farmers may need to invest a lot of time and energy in order to build the site to its true potential.
- Incubator sites require working in community, which demands patience and (again) superior communication skills. While this can be a very worthwhile community contribution, it can be hard to balance this type of commitment with the work of building a new business.
- Incubator farm programs are still relatively few in Ontario; there is often a long waiting list and an application procedure, and securing an incubator farm plot can also be a competitive process.

When investigating incubator sites and community farms it is important to think about the logistics of how they work. Who is responsible for which tasks? How much class time or volunteer work is required of you each week? Seasonally? Get to know the other folks involved and decide if you can work together. See if there is potential for incorporating your ideas.

STORY: INCUBATOR FARM

PAULA REYNOLDS, SALAD DAYS FARM

Paula Reynolds was born and raised in Toronto. At one point in her mid-twenties while unemployed and searching for a job, she happened to come across Fresh City Farms. FCF operates an urban farm at Downsview Park in Toronto, as well as a “Member Farmer” program. The Member Farmer program was established to connect aspiring urban farmers to land, facilities, and a supportive learning community—essentially, an informal incubator farm in the heart of the city. Member farmers can pay rent in cash or through a work exchange on the main farm.

Paula took the plunge and rented 1000 square feet of land. She started a small CSA for family and friends. She says she operated it just like a “real” farm with crop and business plans at a very small scale. It was an invaluable learning experience to have a network of peer support, and by working with a group, she was able to save money by bulk ordering seeds and inputs. Almost all of the farmers did the work exchange, which not only saved them money but allowed them to learn about farming on a slightly larger scale.

After running her micro-CSA for a few years, Paula got a job as the assistant farm manager at FCF. This job gave her more experience with crop planning and running a larger business. This experience was perfect for her, as she was very interested in pursuing farming as a career, but the prospect of moving out of the city at that time was challenging. She was paid a salary with benefits, and all the tools and infrastructure were already in place for her to use. It was a very risk-free opportunity to gain experience managing a commercial farm.

After a few seasons building her confidence at FCF, Paula decided to start looking for land in the countryside. She and her partner were preparing to buy a home anyways, so they ended up buying a small farm in Bellwood, ON—close enough for her partner to commute to work in Oakville. She says it was lucky they bought when they did because land prices have increased dramatically in the years since. Even still, her partner’s income is essential to help cover the mortgage.

Paula has been farming on this seven acre property since 2016, and while she doesn’t feel completely financially sustainable yet, things are getting better every year. She works on 1.5 acres and runs an 80 member CSA, sells at a farmers market, through a roadside farm stand, and to a few local chefs.

She feels that by owning the land, they have the advantage of secure land tenure, and everything they put into the land is an investment in their future. Because her partner’s salary helps with the mortgage, Paula is able to reinvest farm revenues in infrastructure. She also received a Carrot Cache grant to assist with building the farm stand and a second greenhouse. She hopes that by making these early investments in infrastructure they will be able to get the farm to a point where her partner can leave his job and join her full time on the farm.

COMMUNITY FARMS

Community farms are social enterprises that focus on food production often in conjunction with other activities. They may be operated by institutions, societies, land trusts, or co-operatives. Some also operate incubator farms as part of the community establishment. The community farm model is becoming more widespread with the rising price of land and the increasing interest in sustainable food production among younger people. There are many great examples to investigate.

Similar to incubator farms, community farms foster a supportive community environment that is often geared to providing new farmers access to land. In general, their structure differs from incubator farms in that they may provide less infrastructure and mentorship while offering longer-term leases or tenure. For a great resource on community farms check out **FarmFolk CityFolk's Community Farms Program** under Projects at farmfolkcityfolk.ca.

- + Sharing costs; supporting one another with pooled labour; and conserving land for the long term are some of the many benefits.
- There is much to consider: legal structures; financing; zoning variances for multiple dwellings; and navigating the social landscape.

Establishing a new community farm requires lots of paperwork before the ground gets broken, and it can be a big task that requires lots of commitment. Many ventures into community farming don't get past the planning stages because they are unable to navigate the requirements and limitations of building a site that supports a more complex live-work community. However, when farmers can stick together through the policy and legal framing, the results can be truly inspiring!

PURCHASING LAND

The benefit to purchasing land is that you have title (i.e., ownership) and can therefore design the farm the way you want (while navigating building/zoning regulations). You have control over what happens on your property and don't have to worry about your land tenure. When you're old and gray, you have some assurance of being able to sell your land or succession plan for the next generation of farmers on your land.

At first glance, purchasing and owning land may seem like the most preferable situation for a farmer. However, this is not necessarily the case financially. Buying land for the purpose of agriculture may not offer the best return on investment due to the high cost of land, especially somewhere like southern Ontario, where what can be earned on the farm may not pay for the cost of production (land value and infrastructure). Other alternate models of land access allow farmers to build their customer base and hone their land needs prior to the financial outlay that purchasing land requires.

Some new farmers find themselves so far in debt after purchasing land that they have to stop farming just to afford their mortgage payments. Many new farmers who start out by purchasing land end up being unable to properly invest in infrastructure for their farms because all of their capital is tied up in the mortgage.

If you decide land ownership is right for you, you'll need to ensure you are prepared financially and emotionally for the commitment that purchasing land involves. The **Young Agrarians Resource UMAP** and the **Young Agrarians Business Tools** page list a number of resources that can help you assess your readiness to purchase land. The business planning process covered in the previous section will be instrumental in ensuring that your business model will support the expense of land ownership.

MEETING WITH A LENDER—REFERRING TO YOUR BUSINESS PLAN

Your business plan will outline how much money you will have available for the down payment and for ongoing costs such as monthly mortgage payments, yearly property maintenance, and property taxes.

Before you meet with a lender you will need:

- A net worth statement (statement of assets and liabilities, see **Appendix C**);
- A recent pay stub or written employer verification letter if you or your spouse has off-farm employment; and
- A complete and accurate business plan;
- Income tax returns from you and your spouse for the past three years;
- A good credit rating (an important reason to be sure you make regular payments on debts and credit cards!)

EQUITY

Equity is the term used for describing your financial stake in a property or business; it represents the assets you have that could be leveraged for a loan (which the bank would be able to draw on to offset money owed). Banks will calculate your net worth based on equity and this will be a deciding factor for them when offering you a loan. See **Appendix C Net Worth Statement Template**.

STRATEGIES FOR BUILDING YOUR EQUITY:

ENLIST HELP FROM A CO-SIGNER:

If you have a family member or responsible friend who qualifies as a mortgage holder for your prospective farm, you can ask them to co-sign for you at the bank. However, if you genuinely don't have enough reliable income to pay the mortgage, this is likely not the best option as it implicates the co-signer as financially responsible for the property (and therefore the monthly mortgage payments).

FINANCING FROM THE SELLER:

In some situations, especially if you have a prior relationship to the property owner or if they have a strong interest in having their farm in production from a person or family like you, they may be willing to help you finance the purchase of their property. This can be a rare find because most retiring farmers are selling their farm in order to have money to retire on. However, it is an option to pursue especially if you are just a bit short for a mortgage. The seller can offer what the bank calls a "second mortgage" to cover your short fall. Legal documents are required to cover this circumstance.

BUILD YOUR NET WORTH BY STARTING SMALL:

If you can't find a property that works for your business plan, you may consider starting with a smaller, less expensive property. A creative option might be to buy a small house and lease an adjacent property for farming. While you farm, you can build your net worth and eventually qualify for a bigger mortgage. This could mean you have to stop farming for a while, focus on making money, and then re-apply for a bigger mortgage when your finances look better on paper.

NAVIGATING LAND ACCESS AGREEMENTS

In addition to purchasing land, land access for the purposes of farming can be achieved by way of land access agreements. A land access agreement may convey an interest in land or may merely create contractual rights to use land. These differences are more fully discussed in what follows.

Accessing land through an agreement can take many forms. The simplest form of a land access agreement might involve a small parcel with no services or infrastructure. A more complex arrangement might involve a farmer using an existing farming operation with buildings, equipment, and a client base. Agreements can be made with private individuals or public landowners. Again, a business plan and some vision about what kind of farming operation is feasible for your lifestyle, budget, and skills will provide a good foundation to figure out what type of agreement you need. One benefit to a land access agreement is that you aren't tied down to a mortgage, and often, you won't need to bear the full costs of maintaining and even prepping a farm. In some cases, you may be leasing acreage on well-established farm sites and can take advantage of existing infrastructure. The downside—you may have less flexibility and security to optimize your farm operation in the ways that you want.

Money spent on infrastructure will pay itself back over time, so having tenure on a piece of land that enables that return on investment is important for financial viability.

This section provides an overview of various land access agreements. The information that follows is intended to assist you in understanding which agreements may be best suited for your particular situation. Again, nothing in this Guide constitutes legal advice. It is highly recommended that any land access agreement be reviewed by a lawyer, and that an accountant or tax expert is consulted with respect to any tax or other financial implications.

OVERVIEW OF FARMLAND ACCESS AGREEMENTS

WHAT IS A CONTRACT?

Most land access agreements are contracts, including leases, licences, and (sometimes) memorandums of understanding. A contract conveys legally enforceable contractual rights. In some cases, as described below, property rights may also be conveyed pursuant to an agreement (i.e., in the case of a land lease).

A contract is a legally binding agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit (described as consideration). In order for a contract to be legally valid, it must:

- be an offer coupled with an acceptance;
- include an exchange of considerations, where something of value must come from each party (e.g. one person pays rent in exchange for using someone's property);
- include subject matter that is not illegal; and
- involve parties that are competent to create a contract (e.g. an adult or other legal entity like a co-operative) and who have a mutual intention to be legally bound.

Contracts also need to be drafted properly in order to be legally enforceable with contractual terms that are sufficiently certain (not vague or ambiguous). It is highly recommended that any contract or agreement governing land access by a farmer be reviewed by a lawyer.

WHAT IS A LEASE?

A lease is a type of interest in land and gives a person all of the occupation and usage rights of a landowner to a piece of land (or portion of land) for a determined period of time in exchange for rent paid to the landowner. The property owner retains the right to dispose of the land (i.e. transfer ownership, sell, or otherwise give up) while the tenant has exclusive possession of the land under the lease and the responsibility of maintaining it according to the terms in the lease. Exclusive possession means that the landowner gives up the right to enter onto the leased land or its buildings and must be granted permission by the lessee unless the lease agreement includes a clause providing the landowner the right to enter the premises in order to cure a default on behalf of the tenant or to inspect the condition of the premises.

There are two main categories of commercial leases: gross leases and net leases. Under a gross lease, the tenant pays a fixed amount of rent; whereas under a net lease, the tenant pays a minimum amount of rent plus certain expenses related to the property (such as taxes, insurance, maintenance and management, etc). There are also several leases that are unique to agriculture.

REGISTERING A NOTICE OF LEASE ON TITLE

It is advisable for a tenant to perform a search on the title when considering leasing agricultural land to ensure that the person presenting as the lessor is the actual owner of the land. (Note: when signing a lease ensure that the legal landowner is the lease signatory.) A title search may be done through the Ontario Land Registry Office.

Lease agreements are an interest in land. A landlord or tenant may register notice of the interest in the lease on title to the property. Registering a notice of lease on title, through the Ontario Land Registry, establishes priority, gives notice to the public of the leasehold interest, and ensures eligibility for provincial assurance funds under the Land Titles System. It also provides, to the public, the names of the parties to the lease, as well as a description of the leased premises, the term of the lease, any exclusive rights granted to the tenant, and whether there exists the option to renew.

Registered leases “run with the land” meaning that when the land is sold, the lease is conveyed as part of the sale of the property. The purchaser (new owner) is then obligated to perform all covenants and is entitled to benefit from all covenants made by the tenant, which run with the land under the lease.

In the absence of registration, a purchaser of the land could take ownership of the property without any obligation to honour the terms of the lease. The general rule is that the priority of an interest in land is determined by the order in which it is registered, meaning that the first right registered will have priority over any subsequent registered right. Note that under Ontario law, except for certain short-term leases where there is actual occupation by the tenant, an unregistered lease will not have priority against a subsequently registered interest by a third party. It is advisable for a tenant to register the lease or notice of lease on title in order to protect its leasehold interest.

WRITTEN LEASE AGREEMENTS

Under Ontario law, all documents that create an interest in land must be in writing. They are also important in terms of mitigating legal costs that may arise from a verbal or “handshake” agreement upon a dispute with respect to the rights and obligations of each party to the agreement; they can be designed to allocate risk appropriately (for example, in the event of an environmental liability) and provides documentation for heirs if either party dies.

The written lease agreement should include, at a minimum, the names and addresses of the parties to the agreement (i.e., landlord and tenant(s)), a detailed description of the leased property, the duration of the lease agreement and whether there is an option to renew, and all relevant financial considerations such as rent payable, and responsibility for maintenance, operating costs, leasehold improvements, repairs to buildings and structures, and payment of property taxes, utilities, insurance, etc. It may also be advisable to include additional terms, such as a right of inspection (for the landowner), the right of the tenant to complete harvesting after termination of the lease (or on the sale of the property) or compensation in lieu, terms respecting the lease arrangement upon transfer/sale of the property, the termination of the lease, restrictions on farming practices, permissible uses of the land and any requirements with respect to soil or environmental management, and conflict resolution.

- + Sharing the risks of farming
- + Lower initial capital investments
- + Increased financial efficiency allowing for increased investment in farm supplies (such as machinery, soil amendments, seed).
- + Leasing land may also be beneficial for succession planning, providing the lessee with access to land and farm experience, while providing the retiring farm owner retirement income and the assurance that the land will remain as productive agricultural land.
- Lack of control due to unequal bargaining power and, often, an unfavourable division of managerial control over the land (as between the landowner and tenant farmer)
- A lack of security of tenure for the tenant farmer (especially with respect to short term leases)
- Difficulty in obtaining financing (insofar as a lender won't be able to secure financing against the land)
- No building of direct equity in the land for the farmer.
- Further, from a financial and tax perspective, a tenant farmer does not benefit from the appreciation of the value of land and cannot benefit from any capital gain and related beneficial tax implications.

A lack of incentive (on the part of the tenant) to invest in the land for the long term (in relation to soil conservation and environmental protection) can be a disadvantage for the landowner. Note that to some extent, the terms of a lease agreement can address this concern, by including clauses that restrict certain land uses or prescribe the need to adopt (or prohibit) certain practices. Another disadvantage for a landowner is the possible disqualification from certain tax benefits, depending on the nature and type of lease if the leasing of the land is not considered 'farming' on behalf of the landowner (i.e., leasing land may disqualify a tax deferred rollover to children and the capital gains exemption). Likewise, certain farm income may not qualify as income for the purposes of Canada Pension Plan contributions. An accountant or tax expert should be consulted for advice on the possible tax and financial consequence of leasing agricultural land for retiring farmers.

Note that Ontario law provides that where property is held jointly by spouses, one spouse cannot create an interest in land, including a leasehold interest, if the interest will impact the use and enjoyment of the family residence unless consent is obtained from the other spouse. As such, it is important that a tenant ensure consent to the lease by both spouses.

SHORT-TERM AGREEMENTS VS. LONG-TERM AGREEMENTS

A short-term agreement is typically for less than three years but could be for two or three years. A short-term lease may act as a “trial period” for you and your landlord, allowing an opportunity to test out your skills and move on with few consequences. The drawback is that it’s difficult to make longer-term investments and decisions in this situation. If a short-term arrangement is sought, alternatives to a lease agreement may be worth exploring (such as a license or memorandum of understanding described below).

A standard lease is often for a term of three to ten years, and a long-term agreement is generally one that is longer. It provides several advantages over short term agreements, including facilitating succession planning and offering an alternative where land access is sought but financing the purchase of land and equipment is not viable.

Long-term leases provide more security to the farmer, allowing them to plan for the future and possibly build equity by having land to build a business on long-term (that generates enough income to build investments outside of the land base). Long term leases may be advantageous from a landowner and environmental perspective in that they, to some extent, correct for financial incentives which prevent tenant farmers from investing in the long term environmental conditions of the farm. Farmer tenants are more likely to invest in improving the soil, undertake conservation measures, or build structures if they will see a return, over time in productivity, on their investment and environmental stewardship. Longer agreements can be more complex, but there are advantages for both parties.

A long-term lease may be of any duration and can apply to land, buildings, and/or farm equipment. However, there are important repercussions to note if the lease is longer than 21 years or over 50 years.

A lease for a term of 21 years or more (including options to renew) may be considered void if the landlord owns adjoining lands not subject to the lease. Consent from the applicable committee of adjustment, or land division committee, may be required. In which case an application for a consent certificate may have to be submitted and registration of the subdivision registered on title. If contemplating a long-term lease which may, with renewal, extend beyond twenty-one years, it is advisable to approach the municipality early regarding the process for obtaining consent; obtain a solicitor’s opinion that consent is not required; or obtain title insurance with a leasehold endorsement. Note that the term of the lease plus all potential renewals is considered when calculating the term of a lease.

A lease for a term of 50 years or more is considered a disposition of a beneficial interest in land and subject to the payment of land transfer tax as per the Land Transfer Tax Act.



STORY: LONG-TERM LEASE AGREEMENT

HEATHER MACMILLAN, LITTLE TRICKLE FARM

In her early twenties, Heather first got interested in farming while working in a restaurant that served local food. To satisfy her curiosity, she decided to take part in a full-season farm internship at Whole Circle Farm near Guelph—a diversified farm with a vegetable CSA, livestock, dairy cows milked by hand, chickens, pigs, small scale grains, and a small scale mill and bakery. Heather was totally inspired by this experience and loved working with the livestock and baking bread.

The following year, she did another internship at a small-scale grass-fed beef farm in the Ottawa Valley. This is when she met her partner Patrick. A few years later, Patrick and Heather moved back to the Ottawa farm and rented a room in the farmer's home. They were able to use some of the land for free and started small, raising chickens, growing garlic, and baking bread. They sold their own products, as well as the host farmer's beef, at a market in Ottawa. On a handshake deal, they got 30% of his sales in exchange for their work marketing, which made it more viable to go to market with their own products. The farmer was looking to diversify his farm and develop a succession plan, and while it was nice to have a mentor, it was challenging to all live in the same house. They decided to start looking for their own land.

A friend of a friend had recently bought his uncle's old farm but had no plans to farm it. Patrick and Heather started discussions with him and managed to secure their current land tenure arrangement. Heather pushed for a proper lease agreement so that they would be protected as they grew their business. She used lease templates she found online and recruited help from a lawyer friend. They signed a five year lease, of which they are currently in their fourth year. The lease agreement included contributions from the owner to renovate and improve the farm. The house was nearly unlivable when they moved in, and Patrick did most of the renovations himself. They moved in, built a mobile bread oven and chicken coop, and invested in livestock fencing. They made sure to write a clause in their lease stating that they will take these investments with them when they leave.

The farm is a 160 acre property of which they use 30 acres plus the house and out-buildings. The remaining acreage is rented to a neighbouring dairy farmer. They are now starting to outgrow their 30 acres, and with the lease renewal approaching, they decided to purchase their own land. They found a farm nearby and have applied to their bank for a CALA loan. (Under the Canadian Agricultural Loan Act, the federal government will guarantee loans of up to \$500,000 for new farmers, which can incentivize banks to lend to new farmers. See **Appendix A** for more details).

Leasing the farm for the past five years has allowed them to build their business and gain the experience needed to be confident buying a farm because they now know how to write a business plan with accurate growth projections. They have been very mindful about where they have put their money over the past five years, investing primarily in portable infrastructure they can take with them to their new farm. Unfortunately, the indirect investments they have made in improving the pasture will not be moving with them!

WHAT IS A LICENSE?

Unlike a lease, a license is not an interest in land but gives a person permission to do something on or with someone else's property that would otherwise constitute a trespass—usually for when a very specific use of the land is desired, for example, a grazing license where the leasing farmer can graze their sheep on the land but doesn't have permission for other activities such as growing vegetables or servicing farm equipment. Another example includes short-term agreements (e.g. three years) for the purpose of ensuring that land is temporarily kept in production or where it represents a trial period between a farmer and landowner prior to entering into a more binding agreement, such as a lease.

WHAT IS A MEMORANDUM OF UNDERSTANDING?

A memorandum of understanding (MOU) is an agreement between at least two people that obliges each party to do or not to do specific things. MOUs are typically used as temporary agreements between a farmer and landowner or where the future ownership of the land is uncertain. For example, an MOU may be drafted as a preliminary agreement before entering into a long-term agreement (e.g. outlining the obligations and responsibilities of parties in setting up a lease).

Other examples might be if the agreement represents a trial period between a farmer and landowner prior to entering into a more binding long-term agreement. This type of land access agreement might also be appropriate for urban farming in residential front yards. Licences are also suitable for scenarios where an MOU is appropriate and may be more legally robust than an MOU.

An MOU is often considered an “agreement to agree” and does not include legally enforceable provisions. MOUs may be used to establish general principles guiding a relationship or arrangement often followed by the execution of a formal and legally binding agreement. This may occur where a farmer begins to use the land while discussions are ongoing with the landowner with respect to a lease agreement. For example, an MOU may include provisions stating that the parties agree to negotiate in good faith and that they agree to the formation of a land lease agreement. It is important to note that none of the legal protections provided to a farmer (who obtains an interest in land pursuant to a lease or contracts rights under a licence) apply to a MOU if it is not a contractual agreement. This means that a landowner can terminate the agreement at will. Note that caution should be used if the intent is not to create a legally binding agreement. An MOU will be considered a contract (and legally binding), regardless of what it is called by the parties, if it meets the written conditions of a contract described above. In particular, certain provisions may have enforceable qualities, such as those pertaining to termination, notice, and exclusivity. It is highly recommended that legal advice be obtained if you are considering the use of an MOU whether the intent is to create a contractually binding or non-contractual agreement.

STORY: SHORT-TERM MEMORANDUM OF UNDERSTANDING

HALEY SMITH AND COLIN PATERSON, NOURISHED ROOTS MARKET GARDEN

6 years ago, Haley Smith was in college, training to become a chef when she did a short placement on an organic farm in Owen Sound. This first farm experience piqued her interest in where her food was coming from. Then, while living out west and studying holistic nutrition, she came to deeply understand how human health is impacted by the way in which food is produced. At that point, she decided to pursue growing food rather than cooking it. She wanted to contribute to change in the food system and improve the health of her community.

Over the next 6 years, Haley and her partner Colin Paterson WWOOFed on farms across Canada and worked as tree planters to earn some money. In 2017, they spent their first full season working on an organic vegetable farm in central Ontario. By the end of the season, they decided they were ready to branch out on their own and started looking for land.

They tried searching through word of mouth, unsuccessfully. Eventually, they turned to FarmLink.net, the online farmland classifieds system, and wrote up a profile saying what they were looking for. They looked at a few places but nothing felt right until they found a family with a small piece of land near Acton, ON. The owners worked in Toronto but lived in the countryside, and wanted to see their land used by new farmers.

Haley and Colin met with the owners, and after several long conversations felt confident that they had similar values and vision for the land. The owner worked with the pair to draft a Memorandum of Understanding (MOU). The contract process was intimidating to Colin and Haley at first, but they went back and forth a lot until everyone understood and was comfortable with the agreement.

Now they have a 20 page MOU contract laying out both parties' expectations, a map of the farm showing the area rented, what both parties are allowed and not allowed to do and contingency plans in case anything goes wrong. They are paying rent for a small apartment to live in on the property, and will be paying for the land with only vegetables. They will be running a small CSA and market garden on half an acre. There are a lot of unknowns about the land since it has never been farmed by the owners, so they signed the contract for a two-year period with an agreement to reassess after the first year.

Haley and Colin couldn't afford to buy land right away, but now they have an opportunity to start building their new business without too much financial risk. However, they may invest a lot of time and energy in this rented land and if it doesn't work out, they will take a loss. Colin and Haley have decided that this risk is worthwhile, and Haley is optimistic to know that there are people out there who want to see their land used and are willing to take a risk by giving an opportunity to new farmers like them.

VARIATIONS ON LEASE ARRANGEMENTS

LEASING OPTIONS & CLAUSES

CASH RENTAL AND CROP SHARE LEASES

In a cash lease, the farmer pays the landowner an agreed upon sum of cash each year (often paying a portion at the time of signing the lease and the remainder after harvest). In a crop sharing arrangement, the rent is a percentage of the income from the crop which provides for the sharing of risk (and benefits) between farmer and landowner. A crop share lease can be a good option for beginning farmers who do not have a lot of start-up capital. In some arrangements, the production costs and profits are both split between the farmer and the landowner.

LEASE RENEWAL: EXTENSION/RENEWAL & ROLLING LEASE

An option to renew within a lease agreement provides the tenant the option to extend the lease beyond its original term. While it is common for landlord and tenants to agree to renew on the same terms and conditions as contained in the original lease, determining the base rent payable under the renewal term can be a source of conflict. Note that a renewal clause will be void if it amounts to an "agreement to agree." To be enforceable, a renewal clause must be sufficiently clear, and the amount payable on renewal must be ascertainable with reasonable certainty. Determining the amount of rent on renewal should be made with reference in the renewal clause to "market value," "market rent," or "appraised value," all of which should be defined within the lease agreement. It is also advisable to include a clause addressing leasehold improvements that states expressly whether the renewed rental price should include or exclude improvements made by the landlord or tenant. A tenant would likely want to include "as was" wording in the renewal and an express exclusion of tenant leasehold improvements from the renewal/extension clause. Whereas a landlord would want to include 'as is' language, regardless of who made the improvement. It is also advisable to address the effect of any restrictions on use within the renewal clause. It is a good idea to include an arbitration process within the renewal clause to assist with determining the amount of rent where the parties cannot come to an agreement.

With a rolling lease, the lease agreement is automatically renewed at the end of the lease term for another full term. For example, a rolling five-year lease will renew annually for another five years. This can benefit the farmer in terms of security in knowing that they have the next five years to continue farming on the land and the incentive of a longer period in which to benefit from investments made to improve the land. Rolling lease agreements should include sub-clauses that make it clear to parties under what conditions they can choose not to renew, such as how much notice is required and whether both parties must consent or whether the decision can be made by one party.

It should also be noted that, as discussed above, a lease of 21 years or more (including automatic renewals and options to renew) may be considered void if the landlord owns adjoining lands not subject to the lease. Likewise, a lease agreement with a term of 50 years (including automatic renewals and options to renew) or more will be subject to the payment of land transfer tax.

RIGHT OF FIRST REFUSAL

A “right of first refusal” clause in an agreement requires the landlord to notify the tenant in the event the landlord receives a third party offer to purchase the property, giving the farmer tenant the option to buy before any third party offer is accepted. Once a third party offer to purchase is received by the landlord, the tenant’s right of first refusal is triggered and crystallizes into an option to purchase. Until the stipulated expiration period passes or the tenant declines, the tenant has an equitable interest over the property. The landowner’s offer to the tenant farmer must match the offer made by the third party. The tenant does not have any negotiating power if the asking price is too high or if they are not financially ready when the property goes up for sale. A right of first refusal does not create an obligation on the tenant to purchase.

LEASE WITH OPTION TO PURCHASE

An option to purchase clause, like the right of first refusal clause, provides the tenant the right to purchase the leased lands. The agreement imposes a time during which it applies (often after a certain date) and the determination of the purchase price. Note that an option agreement does not create a legally binding condition—the tenant could decide not to purchase. In certain circumstances, for example, when farmland is up for sale but has no immediate buyers, and the seller is not in a hurry to sell, an option agreement may be advisable. This arrangement can also provide the opportunity for the farmer to get to know the land and circumstances before jumping into a purchasing situation. Creative arrangements can be made where the annual rent gets applied to the purchase price. Other possible option agreements could focus on housing. For instance, if a landowner has a secondary suite that is currently occupied by tenants, a farmer leasing land may want to include an option agreement in the lease that when the existing residential lease expires, or the tenants terminate the residential lease, the tenant farmer has the option to absorb the residential lease.

REVIEWING THE TERMS OF YOUR AGREEMENT

Good communication is critical for making any land access arrangement work. Take some time to learn about the elements of effective communication and put them into practice as you develop your relationship with your prospective landlords. Don't assume that the other party knows what you are thinking—until things are written down there is always room for differences in interpretation. For resources Google: communications skills, farmers.

While land access agreements can be a verbal handshake, this is not recommended. Memory is a mutable thing, and when a farmer has invested their sweat and money into a piece of land, having unclear expectations and boundaries can be tragic. Written agreements are more likely to be legally enforceable, and the process of sitting down together to write an agreement is a useful exercise in building the landlord/tenant relationship. See **Appendix B** for a complete checklist of questions you should ask when meeting with a prospective landlord and negotiating a farm land access agreement.

When discussing the terms of your agreement, it is useful to walk your landlord through all aspects of your plans for the land. Try to put yourself in the position of running through as many possible scenarios as you can. As mentioned in the Site Assessment Checklist, having a year-to-year agreement is often the standard for new farmers but holds a level of risk as a lot of time and money is invested in getting the land in shape for production. Five years is the typical length of time for a farmer to realize a return on investment.

- Ask about the landowners' future plans to see if they plan to be on the land for a long time and if they are thinking of using your parcel for projects in the near future.
- Ask about water and see if they have had shortages with their well during peak times. Water access can make or break a farming situation very quickly. If shortages have happened, discuss contingency plans.
- Talk about traffic, especially if you plan to have volunteers, farm tours, or a direct marketing aspect to your operation.
- Describe what your farm will look like. When landlords hear that you plan to build structures out of old pallets and recycled metal, they may offer to buy new materials so the buildings are more aesthetically pleasing.
- Discuss usage if they have equipment and when it can be borrowed and what terms they may assign to its use.

SELLING YOUR FARMING BUSINESS

As you are building your farm business on land that you do not own, make sure there are provisions in your land access agreement that would enable you to potentially sell your business. Consider the work that you put in to developing a network of customers and distribution channels, determining what grows best on the farm, and building the health of your soil—these are all assets that have value that can be transitioned over to the next farmer (saving them a lot of time and capital). For example, if you have been farming on a piece of land for a few years and are feeling ready to take on a larger parcel, previous farm apprentices may be interested and a good fit to take over running the operation that you've worked to establish. It's good to have an exit clause in your agreement that would enable you to have the potential to recoup some of your expenses through selling your farming business while also giving the landlords the opportunity to screen the potential new candidates.

FARMING IN AN URBAN CONTEXT

Urban farming has been growing in cities and more densely populated areas worldwide for many years and brings its own set of benefits and challenges. Diverse models for urban farming operations are emerging and vary widely in terms of scale, organizational and business models, and overall mandates.

In Ontario, urban agriculture is generally dependent only on the permission of the landowner and ensuring compliance with municipal by-laws. Land access arrangements in urban settings can include property that is either privately or publicly (i.e., government) owned, such as:

- residential yards;
- unused or underused urban spaces (e.g. parking lots and rooftops);
- public parks;
- institutional land (hospital and school grounds);
- brownfields (e.g. industrial areas); and
- agricultural zoned land.

Benefits of growing food in the city include the strong community ties that come with being embedded in the social fabric of a more densely populated place. As an urban farmer, you get to connect with neighbours and build community while also living in an urban setting. Many urban farms come together through collaboration with developers, community organizations, the food service industry, and local governments. Urban farming also provides educational value to the public by connecting people to a larger food system.

Farming in urban areas presents some unique challenges, including limitations in tenure, water access, soil quality, livestock capacity, and for many, the added logistics of juggling multiple sites. Other challenges stem from the fact that, in many municipalities agriculture remains a primarily, if not exclusively, rural activity. The challenges urban farmers face when municipalities have not aligned their municipal land use planning documents and by-laws to support urban agriculture include having to navigate municipal planning documents and by-laws related to: zoning, business licensing, and built structures.

Despite these challenges, urban growers and producers are finding innovative ways to grow in the city, ranging from movable raised beds, to leasing land in exchange for a harvest share, to partnering with municipalities to grow on city-owned land. In some municipalities, in an attempt to promote urban agriculture, local governments have established, often in partnership with local not-for-profit organizations, community gardens programs and land trusts for use as community gardens.



VII. IN SUMMARY

Accessing land for farming can be a long and complex process and made more challenging by rising land prices and development pressures on agriculturally viable lands. New and collaborative models and leasing arrangements offer opportunities for new and young farmers to begin their farm businesses without the high costs of buying land or the necessity of moving away from markets (or friends and family) to cheaper land. While incubator and community farms have created the potential for a variety of start-up options, they all have their own set of challenges and advantages. Creating the space for self-reflection and thorough business planning will help in the process of choosing the best site for your farming operation.

We hope the information in this Land Access Guide will provide a valuable framework, whether you are a new farmer or are dreaming of what a farming life might look like. Undoubtedly, there are models that haven't been covered here that will emerge as the agroecology world evolves and new and creative young people find their way into agriculture!

Talk to us! We want to know about where you are at in your process of becoming a farmer and getting on land. Tell your story and inspire other new potential farmers! Write a blog post. Start a hub! Get involved—host an event—build community! It's going to take all of us to rebuild our local food system into a vibrant, healthy and abundant food system for all!

Email: office@nfuontario.ca

www.nfuontario.ca

www.nfu.ca



APPENDIX A: RESOURCES

MORE FARMLAND ACCESS GUIDES:

ATTRA.

Finding Land to Farm.

<https://attra.ncat.org/attra-pub/summaries/summary.php?pub=174>

CORNELL UNIVERSITY.

Finding a Farm to Buy or Lease.

<http://nebeginningfarmers.org/publications/farming-guide/>

DRAKE UNIVERSITY.

The Landowner's Guide to Sustainable Farm Leasing

www.sustainablefarmlease.org.

FARMSTART & EVERDALE ENVIRONMENTAL LEARNING CENTRE.

Accessing Land for Farming In Ontario: A guidebook for farm seekers and farmland owners.

<http://sustainableaglandtenure.com/2010/08/farm-lease-agreements-and-the-law/>

FRIENDS OF FAMILY FARMERS.

Fields For Food: Ways to Bring Unused Farmland into Production for the Benefit of Landholders and Beginning Farmers.

www.friendsoffamilyfarmers.org/wp-content/uploads/2008/12/Landholder-Info-Sheet.pdf

GREENHORNS.

Land. Liberty. Sunshine. Stamina. A mini compendium of resources for beginning farmers on the topic of finding sustainable land tenure.

www.thegreenhorns.net/wp-content/files_mf/1335220206GH_landtenureworkshop_minicompendium.pdf

GREENHORNS.

Guidebook for Beginning Farmers.

www.thegreenhorns.net/wp-content/files_mf/1335219697greenhorns_guide_sept2010_web.pdf

JUST FOOD OTTAWA.

Looking for Land: Characteristics that Comprise a Viable Farmstead.

www.farmstart.ca/wp-content/uploads/Characteristics-that-Comprise-a-Viable-Farmstead1.pdf

LAND FOR GOOD.

Farmland Leasing for Private Landowners: A Short Guide.

www.landforgood.org/Farmland%20Leasing%20for%20Landowners%20%28Short%20Guide%29.pdf

LAND FOR GOOD.

A Landowner's Guide to Leasing Land for Farming.

www.landforgood.org/pdfs/LandownersGuidetoLeasingLand.pdf

NEW ENGLAND SMALL FARM INSTITUTE.

Access to Land.

http://www.smallfarm.org/main/for_new_farmers/resources_by_topic/land/

NEW ENTRY SUSTAINABLE FARM PROGRAM.
Finding, Assessing and Securing Farmland Guide.
<http://nesfp.nutrition.tufts.edu/downloads/MAFarmlandGuide.pdf>

UNIVERSITY OF VERMONT.
Farmland Tenure and Leasing.
<http://nebeginningfarmers.org/files/2012/05/Farmland-Tenure-and-Leasing-Legal-Guide-2fsrzyi.pdf>

YOUNG AGRARIANS.
BC & Ontario Land Access Guides, Lease & License Templates
<http://youngagrarians.org/tools/land/>

FARMLAND POLICY & PROTECTION RESOURCES:

NATIONAL FARMERS UNION

The National Farmers Union is unique among farm organizations in working for people's interests and food sovereignty against corporate control of the food system. The NFU Youth are a network of young NFU members advocating for policies and cultural change to ensure that the next generation of responsible land stewards can succeed.

www.nfu.ca

KEY DOCUMENT:

Losing Our Grip: How Corporate Farmland Buy-Up, Rising Farm Debt, and Agribusiness Financing of Inputs Threaten Family Farms and Food Sovereignty.

www.nfu.ca/issues/losing-our-grip-2015-update

LA VIA CAMPESINA

The international peasant's movement coordinating the global struggle for food sovereignty and agroecology.

www.viacampesina.org

KEY DOCUMENT:

Struggles of La Via Campesina for Agrarian Reform and the Defense of Life, Land and Territories.

<https://viacampesina.org/en/struggles-la-via-campesina-agrarian-reform-defense-life-land-territories/>

ONTARIO FARMLAND TRUST

The mission of OFT is to protect and preserve Ontario farmlands and associated agricultural, natural, and cultural features of the countryside through direct land securement, stewardship, policy research, and education for the benefit of Ontarians today and future generations.

www.ontariofarmlandtrust.ca

ADDITIONAL RESOURCES:

AGRI-FOOD MANAGEMENT INSTITUTE

AMI promotes new ways of thinking about agribusiness management and has developed resource materials, online training options and hands-on workshops and courses to help farmers enhance their management skills. Check out their “Starting Your Farm Business” resource package:

<http://takeanewapproach.ca/starting-your-farm-business/>

CANADIAN AGRICULTURAL LOANS ACT PROGRAM (CALA)

CALA is a federal loan guarantee program designed to increase the availability of loans to farmers and agricultural co-operatives. Lenders, such as banks and credit unions, can issue and administer loans up to \$500,000 that are guaranteed by the federal government under the CALA program. New farmers (with less than 6 years experience) can access up to 90% financing.

www.agr.gc.ca/cala

CARROT CACHE

Carrot Cache is a non-profit organization that supports small projects in Ontario working toward a sustainable and just regional food system. Their small loans and grants are great for funding infrastructure improvements on your new farm.

www.carrotcache.com

FARMLINK.NET MATCHMAKER TOOL

Connecting farmers and farm seekers.

www.farmlink.net

LOCAL FOOD AND FARM CO-OPS NETWORK (LFFC)

The authority on co-ops in Ontario, LFFC specializes in organizing and development support for food and farming co-ops throughout the province. They provide training, online and in-person capacity building, and coordinate peer-to-peer support.

www.localfoodandfarm.coop

MULTIPLE LISTING SERVICE OF THE CANADIAN REAL ESTATE ASSOCIATION

Centralized real estate listings service for all of Canada.

www.mls.ca

ONTARIO MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS (OMAFRA)

Your local OMAFRA office can help answer questions about regulations, starting your farm, and available funding. OMAFRA has also produced Starting a Farm in Ontario—Business Information Bundle for New Farmers.

www.omafra.gov.on.ca/english/busdev/newentrant/newent.htm

www.omafra.gov.on.ca/english/index.html

ONTARIO AGMAPS GEOGRAPHIC INFORMATION PORTAL

This interactive online application allows you to create maps and find agricultural information on soils, drainage, and other data layers.

<http://www.omafra.gov.on.ca/english/landuse/gis/portal.htm>

ONTARIO SOIL AND CROP IMPROVEMENT ASSOCIATION

OSCIA administers government cost-share funding to producers in Ontario through the Canadian Agricultural Partnership (CAP), a five-year federal-provincial-territorial initiative. They administer free “Grow Your Farm Profits” and “Environmental Farm Plan” workshops—common prerequisites for accessing cost-share funding.

<https://www.ontariosoilcrop.org/canadian-agricultural-partnership/>

TUFTS UNIVERSITY NEW ENTRY FARMING PROJECT

http://nesfp.nutrition.tufts.edu/resources/farmland_documents.html

APPENDIX B: WORKING THROUGH YOUR AGREEMENT

Adapted excerpt from FarmStart Ontario's Accessing Land for Farming in Ontario: A guidebook for farm seekers and farmland owners. Published by FarmStart and Everdale, lead author: Pat Learmonth (2011).

To start, the farm seeker and the farmland owner should meet in an informal setting and ensure that their general goals and ideas are a good fit. Then, each of you may want to work through these questions (Sections A through J) separately. When you meet again, you will be ready to see how your more specific ideas fit together and iron out any differences in expectations. It is unlikely that all the questions will be relevant to your situation, so just use them as a guideline.

This guidebook encourages you not to be restricted by standard lease agreement forms, and to draft an agreement that best suits your particular situation. A lawyer can then look over what you've written and include additional legal requirements. However, if it is helpful for you to look over some standard lease forms, you'll find a sample short-term lease in the Appendix.

CONSULT YOUR TAX ADVISOR!

Be aware that some farmland owners may suffer negative financial impacts if they change the use of their land by renting it out. While this is not the norm, it is critical that farmland owners consult their financial advisors to ensure they are not unknowingly jeopardizing their status under capital gains tax or Canada Pension Plan rules (for example) before entering into a rental agreement.

SECTION A: BASIC INFORMATION

1. Name and address of registered owner of the land.
2. Is the owner a citizen or permanent resident? If not, the renter may have to withhold 25% of any cash rent for the Canada Revenue Agency.
3. Name of the spouse of the owner. The spouse may have to sign any agreement that affects the use or enjoyment of the owner's personal residence on the farm.
4. Is the owner a GST registrant? If yes, GST will be charged on cash rents.
5. Name and address of renter(s).
6. Is the renter a citizen or permanent resident? If not, the renter may not be able to sign the necessary forms to obtain the Farm Property Class tax rate for the owner.
7. Address and lot/concession number/township/county of land referred to in the agreement.
8. Sketch of plot if less than the whole property owned by the owner at the location above, with as much detail as possible.

SECTION B: TIMEFRAME FOR AGREEMENT

1. How long is this agreement intended to last? Think about months and seasons, as opposed to simply years.
2. If this period ends and the renter has been unable to take off a crop, will he or she be able to return to do so? For how long? Will the owner require the use of the property to prepare for the following season as of a certain date?
3. When will the renter and owner sit down to talk about extending the agreement for a further period and/or modifying it? Think about how soon this would have to be done in order for the renter to plan effectively for the next crop year or plant a fall cover crop.
4. How can the agreement be terminated before its agreed expiry date? By whom? On what notice? What if the renter has a crop in the ground, or has already prepared the ground for the next crop?
5. Will the renter have the right to sublet to another farmer? Note: It is usually recommended that this not be allowed without the permission of the owner, and with the specific agreement that the owner can arbitrarily withhold permission.
6. If the land is sold, do the parties intend that the renter will continue to have the right to farm there? If so, this can decrease the value of the land at sale.
7. If the renter dies, is it intended that the right to farm there will continue ie. be passed on to an heir?
8. If the landowner dies, is it intended that the agreement continues or comes to an end?

SECTION C: TERMS OF ACCESS

In many cases today, the renter is accessing property where the owner actually lives. The renter also may need to access the property on a continuous and intensive basis (compared to taking off the hay twice a year). This creates a need for realistic discussion about what the implications will be for the day-to-day interactions between the parties. This subject has the potential to become a real irritant if not thoroughly canvassed in the beginning and recorded on paper.

1. Precisely what areas of the property will the renter have the right (or not have the right) to freely access (e.g. laneways, buildings, crop areas)?
2. What areas are private areas of the owner?
3. What restrictions (if any) will be placed on the hours or days the renter will be allowed to access the rented areas? Think about late-night loading of livestock, early morning harvesting, religious preferences, etc.
4. In exceptional circumstances, what notice will be given by the owner that normal access must be restricted? What types of things might be exceptional circumstances?
5. Who may the renter bring on to the land and for what purposes? Interns, employees, volunteers, friends... Will there be restrictions on how many people will be brought on the land at any one time?

6. Will the renter be permitted to send people on to the land without him or her being in attendance as well? If so, how will those people know what the terms of access are?
7. Will people unknown to the owner be required to introduce themselves before entering? If the owner lives on the property, it can be disconcerting to have unlimited access by unknown persons.
8. If members of the public are to be invited by the renter (e.g. for a farm tour) is notice to the owner required? How much notice?

SECTION D: SPECIFIC ACTIVITIES

1. What is the understanding between the parties as to business activities of the renter? (e.g. vegetables, livestock, field crops, processing)
2. Are there any activities that are not acceptable to the owner? (e.g. stocking rates, fuel storage, spreading biosolids, use of chemicals or pesticides)
3. Who is responsible for manure removal and management?
4. If the renter is going to undertake an activity that could affect the owner's enjoyment of his property, what sort of notice or agreement will be required? (e.g. spreading manure)
5. Does the renter require assurance that the land is suitable for his purposes? Proof of current organic certification? Who will pay for this? Does the land qualify for certification? How soon? Will the landowner support the renter in obtaining certification? Is the land subject to flooding? Are soil tests available?
6. Will the renter require specific permission to erect farm signage?
7. Are there any general production practices or stewardship standards that the owner requires the renter to follow? How will this be monitored and enforced? This is an important topic, but is easily overlooked. The value of land for farming is in the soil. If the soil is in good condition when the rental starts, it is to the advantage of the renter. If it is improved over the course of the rental it is to the advantage of the owner. However, if the soil is depleted by removal of crops and no nutrients are returned, the owner's asset will be less valuable at the end of the rental period.
8. Does the landowner have any certification, regulatory or contractual constraints that the renter should be aware of? For example, if the land is certified organic, the renter should understand what this means so that his actions do not jeopardize certification. If the owner enjoys tax benefits such as Managed Forest Land or has areas regulated by a conservation authority, the tenant should be aware that proper stewardship of affected areas is mandatory. (For info on the Managed Forest Classification in BC, visit the BC Assessment website – <http://www.bcassessment.ca>)
9. What "housekeeping" standards will be adhered to? (e.g. tidy appearance of rented areas) In this respect, once again, it should be remembered that the owner might live on the property and take pride in it. At the same time, normal farming activities cannot be restricted.

SECTION E: USE OF FACILITIES AND INFRASTRUCTURE

1. Will the renter have exclusive use of any buildings or structures on the property?
For what purposes? Who is responsible for maintenance and repairs?
2. Will the renter share use of any buildings or structures with the owner? For what purposes and how much space? Who is responsible for maintenance and repairs?
3. Is there a source of water available to the renter? Is it adequate for the needs of both the renter and the owner in a drought? Is there a backup plan? Who is responsible for any repair costs?
4. Are there septic or washroom facilities available to the renter? Who is responsible for maintenance?
5. Is fencing in place that is required by the renter for his or her business? If so, who is responsible for maintenance?
6. Does the renter plan to (and have the right to) build any non-moveable infrastructure? If so, are there arrangements for compensation when the agreement ends?
7. Is the renter entitled to the use of electricity? On what terms and how will this be monitored?
8. If there are fuel tanks on the property, will the renter have the right to use them? On what terms and how will this be monitored?
9. Will the renter have the use of any equipment belonging to the owner?
How will this be valued?
10. Will the owner have the right to enter and inspect the rented land and buildings?

SECTION F: OTHER BENEFITS TO RENTER

1. Will the owner perform any services for the renter? How will these be valued? (e.g. if the owner is a farmer, he or she might agree to spread manure or do tillage)
2. If the owner is a farmer, will he or she provide formal mentoring to the renter?
How will this be valued?
3. Is the property certified to any standard that benefits the renter? (e.g. organic certification)
How will this be valued?
4. Will the owner be providing a right of first refusal to the renter if the property is to be sold?
5. Will the renter be given an option to buy the property at a certain time and price?
6. Will the owner be prepared to have the agreement survive a sale to a new purchaser?
If so, this could decrease the value of the property.

SECTION G: INSURANCE, TAXES AND LEGAL FEES

1. Who is responsible for carrying insurance? For what purposes? What about liability for personal injury to the renter or others he/she invites on the land? Consult your insurance company as well.
2. Who is paying the property taxes?
3. How will any jointly agreed legal fees be divided and paid?

SECTION H: HOUSING

Is there housing available on the property for the renter? If so, it is strongly recommended that a separate lease be prepared for this purpose. There are a number of important legal differences between an agreement to rent land and an agreement to rent a house or apartment. Consult a lawyer for more information. Consider what the implications will be if the rental of the land is terminated and the rental of housing is subject to different rules about termination.

SECTION I: FINANCIAL ARRANGEMENTS

The financial arrangements between the renter and the owner can take many forms. **The important question is whether each party believes that s/he has received fair "value" for what s/he has given in the relationship.** If either party feels that the agreement is not fair, it will not last. In some cases, cash may not change hands, as the parties have agreed that other forms of payment are more appropriate for their circumstances. In any contractual relationship, some form of value (called "consideration") must flow in each direction.

1. How will use of the land be valued?
2. In addition to use of the land itself, what is the owner offering to the renter? Is non-cash value flowing from the renter back to the owner? (e.g. traffic that may also benefit the owner's woodworking/craft/other business on site, the owner's feeling of supporting something good and important, etc.)
3. Is more value flowing in one direction than the other? What is left "owing"?
4. How will this be "evened up"? Through a cash payment? Are there other creative solutions?
5. Is a variable payment suited to your situation?
6. When will the agreed upon compensation be payable? Think about the annual cash flow of the renter – will the money be available at the time the payment is due?
7. What do the parties agree will happen if the cash rent is not paid on time? Not paid at all?
8. What will happen if unforeseen circumstances beyond the control of the parties make the rented area un-farmable or unproductive?
9. Will the renter perform any services for the owner? How will this be valued?

10. Will the renter supply the owner with any product of his farm enterprise for consumption? How will it be valued?
11. If the renter has a Farm Business Registration Number (and the owner does not), will s/he sign the required tax form so that the owner's property taxes can be reduced? What is the value that this represents?
12. Will the renter actively improve the soil or pay for improvements to fences or structures? Will this impact the rental payment in any given year?
13. Anything else you can think of?

SECTION J: ENFORCEMENT

1. If one party does not do what s/he has agreed, what rights should the other have? Financial compensation? The right to force the other to comply? (i.e. to do something like permit access or perform work). What if the reason is something beyond that person's control? Explore fully and record your thoughts on this topic. This is the time it can be discussed calmly and logically, making decisions easier down the road if things go wrong.
2. If the parties are unable to resolve differences down the road, what will happen? Sometimes, a provision for arbitration is inserted in leases.

APPENDIX C: NET WORTH STATEMENT

Sample NET WORTH STATEMENT as of (MM-DD, YYYY) _____, _____.					
Name(s):					
ASSETS	PRESENT VALUE	LIABILITIES	MAX LIMIT	CURRENT OUTSTANDING	
Current assets	in thousands	Current liabilities	in thousands	in thousands	Financed with (provide creditor name)
Cash on hand		Line of credit / operating loan			
Savings					
Accounts receivable (due to you)		Account payable			
Grain on hand		CWB advance			
bus. of @ \$ /bus.		Other advance(s)			
Prepaid expenses		Crop input loan(s)			
Market/replacement livestock					
Feed and supplies					
Crop input supplies		Other liabilities (credit cards)			
Growing crops					
		Market livestock loans			
		Property taxes			
Total current assets		Total current liabilities			
TERM ASSETS		TERM LIABILITIES (PURPOSE/CREDITOR)		PAYMENT AMOUNT, FREQUENCY AND RATE	
Quota (dairy or poultry)		Equipment loans			
Breeding livestock					
Farm Equipment		Equipment leases			
Land					
Buildings		Mortgages			
Investments, household contents					
House/Residence		Other loans			
Other assets e.g. vehicles		Other leases e.g. vehicle			
Total term assets		Total term liabilities			
Total assets (sum of current and term assets)		Total liabilities (sum of current and term liabilities)			

APPENDIX D: SAMPLE LEASE & LICENSE AGREEMENTS

BACKGROUND: PURPOSE OF CONTRACTS

by Rizwan Kahn, Viridius Lex LLP

Contracts are essential to any kind of business, farming included. Regardless of the context, the basic principles for contracts is the same: they are an agreement reached between two or more parties, with consideration granted. “Consideration” is something that is given up in order to enter into an agreement. It might be money, grain, a promise not to do something, or anything else of value.¹

In general, contracts have three important functions:²

Contracts provide certainty. A well drafted contract informs each of the parties of what they will gain and what they will be surrendering.

Contracts help avoid and settle disputes. By their nature, contracts force parties to think about issues before entering into an agreement. This means that parties can turn their minds to avoiding specific problems and establish mechanisms to resolve disagreements. This can help avoid arguments altogether or, if they cannot be avoided, include a way to quickly resolve disputes.

Contracts balance the risks. While contracts cannot always ensure that each party has received at least as much as it has surrendered, they can help each party decide what is most important to them and consider ways in which to minimize the risk to a preferred outcome.

It is important to keep in mind that generally the drafter of a contract “took care of themselves”. This means that the party presenting a lease or license has a substantial amount of control. It is important to keep in mind that a sustainable agreement takes the interests of both parties into account. A contract that is completely one-sided will likely prove ineffective. A party that gains nothing from an agreement will have little incentive to complete its obligations. Recognize that the other party needs to get something out of the contract as well.³

All contracts to some extent balance risk and reward. To be effective in balancing risk, parties to a contract should understand the risks involved. “Risk” is not a monolithic concern. It manifests in many different forms. Some risk can be controlled, some can be managed, and some is best avoided altogether. Examples include:⁴

PRICE RISK. The chance that prices will decrease, often considerable and difficult to predict.

PRODUCTION RISK. This includes any possibility that could affect the ability to grow and deliver a crop. Weather is a major production risk, so is the farmer’s personal health.

COUNTER PARTY RISK. The risk that the other side to a contract will be unable to perform is counter party risk. For example a buyer’s insolvency could mean no payment for the farmer, despite having delivered crop.

1. Zawada, C. (2004). Grain And Seed Contracts For Farmers. Agriculture Institute of Management in Saskatchewan.

2. Ibid. at pg. 4.

3. Ibid. at pg. 5.

4. Ibid. at pg. 6.

CONTROL RISK. Some contracts require several stages of decision making after signing. There is a risk, for example, that market activity will cause the net return to become unacceptable before you have an opportunity to react. This is control risk.

As many reasonable risks as feasible should be accounted for when contracting. In addition to the kinds of risks, parties need to assess which risk are:¹

- (a) are the most likely.
- (b) could have the biggest impact.
- (c) are the most important to them. Everyone will have a different risk tolerance on the basis of their particular set of circumstances. For instance, you might take more risk if you are living alone than if you have children.

The authors of this Guide and the sample agreements do not claim that the sample agreements are the best. They are just one way of accomplishing a given task. Even within the few forms included here, there are numerous ways that they can be varied. Some variations will result because of negotiations by the parties, other because of stylistic choices. There may even be cases when these precedents will not be usable or appropriate. For example, when a farmer is dealing with a large company, the farmer may well have to accept the buyer's standard contract.

The purpose of these samples then is to provide a baseline from which to approach the consideration of entering into a land access agreement. Reasons for consulting precedent agreements include:²

1. They provide context. A favourable clause in one area might have to be balanced by an unfavourable one elsewhere. Looking at a whole contract helps identify how this can work.
2. They provide a starting point. Few contracts are built from scratch, without some input from previous experience. Some of the terms in these precedents may not fit individual situations, but the overall structure can build a framework.
3. They provide ideas. Experienced lawyers still look to precedents. They want to see different approaches and solutions, to best tailor them to a situation. Even if you never draft a contract, looking at as many agreements as possible will show you the alternatives.

The input of lawyers is an important consideration that cannot be overstated. The disclaimer for the use of any legal precedents including the agreements included here is that all contracts should be prepared by a lawyer. Drafting a contract can be a complicated endeavour. While individual clauses can be obtained and assembled to form a contract. The manner in which the resulting contract will function may not be clear until it is too late to remedy a drafting error. The number of variables involved in a transaction is almost infinite, and even small changes can have a significant effect on an agreement. Just as a non-farming lawyer might be able to grow some crops, albeit inefficiently, most farmers who do not possess the training or the experience, won't know where issues may be present in a contract.³

The agreements here should be approached in the same way that any lawyer uses precedents—as a starting point that can then be revised and tailored to individual circumstances.

1. Ibid. at pg. 7.
2. Ibid. at pg. 8.
3. Ibid. at pg. 9.

AGRICULTURAL LAND ACCESS - LICENCE

May 2018

Prepared by Rizwan Khan and Burgandy Dunn for the National Farmer's Union.

Agricultural Land Access Agreements Generally

Agricultural land access agreements vary according to the parties, and the parties' needs. An agreement is a legally binding contract which can take many forms; for example, two of the most widely used land access agreements are land leases and licenses. An agreement is a lease or a license depending on how the agreement is drafted (ie whether it grants an interest in the land, in which case it is a lease, or if it only grants permission to use the land for prescribed purposes, in which case it is a license).

Note that the information contained herein is current as of the date of submission (June, 2018). Note also that this document and the associated sample leases and licenses are general in nature, and for informational purposes only. Every agreement, whether it is a lease or license, should be tailored to reflect the unique circumstance of each individual case. The annotations are intended as information purposes only, and do not substitute legal advice

Legal Note

In Ontario, farmers commonly use leases rather than licenses when forming land agreements. To create an agreement that would operate similar to a land license, short term leases (usually 1-year) are used.

Note that a landowner can enter into multiple license agreements with respect to the same piece of property, and, as such, exclusivity of possession can not be assumed or guaranteed.

As with all contracts, to be of legal effect, a license must include:

- An offer
- Acceptance of the offer
- Consideration – an exchange of value from each party

Agricultural Land License

An agricultural license, unlike a lease, is not an interest in land but a contract which grants permission to do something on, or with, someone else's property. An agricultural license is a limited agreement, and does not grant exclusive possession, and is usually quite narrowly construed, and often tailored to a specific farming practice, such as a grazing license, which grants permission for some but not all farming activities. The use of a license is generally only recommended where a very specific land use is sought, or where the term for which the land is needed is temporary.

The case of *Mihaylov v. 1165996 Ontario Inc.*, 2017 ONCA 116 (CanLII) explains the basic principle of a license. *A right to walk over a path on another's land is a good example of this. If I give you the right to walk along a path on my land so that you can reach the lake in front of it, that right may be a license. Because a license is a personal right, a license would give only you the right to walk along the path on my property to reach the lake – that right would not extend to anyone else. Further, that right is neither connected to the use of any lands which you might own nor does it amount to an estate or interest in my land. The license simply makes lawful that which would otherwise be trespass. Without the license, the act of your entering on my land and walking along it to reach the lake would amount to trespass. Importantly, unless we agree otherwise, I may revoke, at will, the permission I gave you (i.e., the license).*

The most common form of license in agriculture are:

- a very specific use of the land is desired, for example, a grazing license where the licensee can graze their sheep on the

Legal Note

A license is a personal, essentially contractual right to use another's land, but that is not an ownership interest in land. A license is the grant of authority to enter upon another's land for an agreed purpose where such entry would otherwise be a trespass until the license comes to an end or is revoked: *394 Lakeshore Oakville Holdings Inc. v. Mizek*, 2010 ONSC 6007 (CanLII).

A license, not being an interest in land, does not run with the land and does not bind successor owners of the servient [licensed] property. Thus, with a change of ownership of the servient [licensed] land, the beneficiary of the right to use the servient [licensed] land loses his or her right of usage: *Williams v. Ducks Unlimited (Canada)* (2003), 2004 MBCA 153 (CanLII).

In essence, a lease grants exclusive use and a license does not.

Note, to "run with the land" means the rights and covenants in a deed remain with the land, regardless of ownership. When rights and covenants run with the land, they are tied to the property (land) and not to the owner and will be enforceable against subsequent owners of the land. A license does not "run with the land." This means that if the land is sold the license is terminated, unless provided for otherwise in the contract of purchase and sale for the land.

A lease creates an "interest in land" but a license does not – this means that a lease may be considered an asset by a lender, whereas a license would not.

- land, but does not have permission for other activities such as growing vegetables or servicing farm equipment; or
- the agreement is for a short-term period (e.g., three years) such as to ensure that land is temporarily kept in production or where it is a trial period between a farmer and landowner prior to entering into a more binding agreement such as a lease.

SAMPLE LICENCE

THIS AGREEMENT made this _____ day of _____, (in pursuance of the ---Act) and effective the ___ day of _____, 20____ (the "Effective Date")

BETWEEN:

___[landlord/landowner]___, of ___[address]_____, a body corporate incorporated pursuant to the laws of the Province of Ontario, hereinafter referred to a the "Licensor".

[Alternatively]

_____, an individual residing in the Province of Ontario, hereinafter referred to a the "Licensor".

AND:

___[name of licensee]_____, of ___[address]_____, herein after referred to as the "Licensee"

[Alternatively]

Legal Note

The parties to the license are the licensor (the landlord or land owner) and the licensee (the farmer or farm business being ranted to use the land for specified purposes.) The licensor owns the property and grants permission to the licensee to use the property in exchange for monetary compensation. The licensee does not acquire an interest in the land, and the land is not encumbered, and its value not affected by, the granting of a license.

It is important to ensure the parties listed are the same as those signing the signature block (which follows the last clause of the agreement).

_____, an individual residing in the Province of Ontario, herein after referred to as the "Licensee."

For the purpose of _[describe agricultural purpose/operations/practices]_____.

WHEREAS The Licensor is the registered owner of the following property in

Province of Ontario, commonly known as _____ [farm name] _____, consisting of _____ acres as shown in Schedule A, and legally described as:

_____ (address)

_____ (PIN)

_____ (Lot)

_____ (Plan)

herein after referred to as "the Lands"

I. PERMITTED USE

The Licensee wishes to have possession and

use of the Land for the purpose of

_____ (the "Permitted Use").

Legal Note

Since an agricultural license is a grant of permission to use the Lands, one of the most important clauses within the contract is the "Permitted Use" clause which identifies expressly and specifically what farming practice is being permitted pursuant to the license.

Optional clauses may follow, specifying whether the licensee's right to use the lands are subject to any terms, or any existing interests in the land.

For the sake of accuracy, and to avoid disagreements as to meaning, you may wish to include at this point a "Definitions and Interpretation" clause to define specific words or clauses used in the Agreement.

2. GRANT OF LICENCE

2.1 Subject to sections ___ and ___, as well as the rights of termination ins sections ___ and ____ in this Agreement, the Licensor grants a non-exclusive license of occupation to the Licensee, to use the Lands for the Permitted Use for he period from ___(date)___ to ____ (date)_____.

2.2 The Licensee does not acquire any interests in the Lands under this Agreement. The Licensor does not grant to the Licensee either by this Agreement or otherwise any interest in the Lands other than the right to use the Lands pursuant to the terms of this Agreement. The Licensors rights, other than those specifically granted under this Agreement, remain in force.

Legal Note

If the Licensor or Licensee is comprised of more than one person or other legal entity, all covenants and obligations should be specified as 'joint and several'.

A license can (and is recommended to) stipulate if the licensee can enter into a sublicense, an agreement between the licensee and a third party for all or part of the primary license. The original license between the licensee and the landowner remains in place, and the original licensee, unless released from liability by the landowner, is still liable for the obligations under their original license with the landowner.

3. TERM OF THE LICENCE

3.1 The term of this agreement shall be in effect for _____ (state number of months or years), starting on _____ (date) and ending on _____ (date).

4. RENT PAYABLE

4.1 The Licensee agrees to pay to the Licensor a license fee ("License Fee") of \$_____ for use of the Lands.

4.2 The License fee is due and payable as follows: _____

4.3 The License fee will be paid to _____ on or before the dates (or schedule) herein agreed to, without invoice or notice by the Licensor.

Legal Note

There are a variety of different ways of arranging payment under a license. Depending on the purpose of the license, it may be more appropriate to schedule some schedule of payment other than monthly payments, such as seasonal or quarterly payments. This clause should be drafted to reflect the needs of the Licensor and Licensee.

Note also, that you may want to include an optional clause laying out what will be the consequence of non-payment by the Licensee, (i.e., stipulate that a penalty will be applied, or interest will be charged at a rate of [__]%).

5. OWNERSHIP AND TRANSFER

5.1 The Licensee owns all personal property improvements made on the Lands at their expense or on their behalf during the period of time covered by this Agreement.

5.2 All improvements to the real property made on or to the Lands at the Licensee's expense or on their behalf during the period of time covered by this Agreement remain on the Lands, without compensation to the Licensee at the termination of this Agreement.

6. LICENSEE RIGHTS AND OBLIGATIONS

6.1 The Licensee shall:

- (a) Be entitled to use the Lands as provided for in this Agreement;
- (b) Be entitled to construct and install on the Lands such temporary

Legal Note

The Licensee's rights and obligations is a clause which is very specific to the unique circumstance of the parties to the agreement. Because it is generally in the interest of the land owner, but not necessarily a short-term license holder, to ensure proper care and management of the soil, the Licensor can specify that the Licensee adhere to certain principles or farming practices to ensure proper care and management of the land. These may include 'green obligations', (i.e., targets for energy use, water consumption, waste diversion, GHG emissions); soil conservation best practices; or adherence the Canadian Organic Standards.

- (c) improvements as the Licensee considers necessary or desirable to enable the Licensee to use the Lands for the Permitted Use provided
- (d) that the Licensee obtains the written consent of the Licensor prior to the construction or installation of any such improvements; and all work associated with the temporary improvements is done in a good and workmanlike manner by qualified and experienced contractors, professionals or trades people.
- (e) Not enter a sub-license Agreement granting the rights and obligations herein described prior to the Licensor's written consent is obtained.
- (f) Ensure that no claim of lien shall be filed in respect of any work which may be carried out on the Lands, and, if a lien is filed in respect of the Lands, the Licensee shall take all necessary steps to

Legal Note

Consider inclusion of sustainability clauses within your license which will establish obligations on both the licensor and the licensee to achieve specified sustainability targets (such as adherence to organic farming, climate change mitigation, energy, water and resource conservation, recycling and air-quality goals, amongst others).

An example may be the inclusion of a "sustainability" standard, defined within the lease, for repair and maintenance as well as building operations obligations, which allow for recycled and re-used material to be used, water and energy conservation targets, or a restriction on the use of certain chemicals (i.e., chemical pesticides or fertilizers, or volatile organic compounds ("VOC's") in construction materials).

Incorporating such clauses in a license may stem from shared values with respect to environmental protection and resource conservation, or in order to keep an upperhand on anticipated environmental regulation and sustainability standards.

- (g) have the claim of lien cancelled and discharged from the Lands within ____ days of the Licensee receiving notice of the lien. If
- (h) the Licensor procures a discharge of a lien by paying the amount to be due, the Licensee shall forthwith reimburse the Licensor and pay to the Licensor the sum of all costs and expenses incurred by the Licensor in respect of the claim of line.
- (i) Manage its farm operations in such a way at is respectful of the Licensor's commitment to sustainable farm practice, and mandate to protect important habitat for plants, animals, as well as the ecosystems and processes that sustain them;
- (j) Practice due diligence in order to avoid contaminating the soil and water on the Lands, and to take reasonable care to avoid unnecessary harm to plant, animal or human health;

Legal Note

All farm licenses should address environmental matters. It is much less costly and complicated to appropriately allocate environmental risk within the license agreement than to leave it to the courts to allocate environmental liability. It is advisable to specifically allocate environmental risk within the license. A Licensor may want to include a clause requiring the Licensee to provide a "clean" environmental report at the termination of the Agreement, with a clear definition of the standard to which the site must adhere, and a mechanism for the Licensor's acceptance of the site at termination. In order to have a point of comparison, it is necessary to have detailed the pre-license condition of the site as far as possible.

- (k) to employ agricultural best management practices so as not to impoverish, depreciate or injure the soil, and protect ground and surface waters, and shall:
- i. cultivate, seed, control weeds, insects and disease, and harvest crops on the Lands in a diligent and sustainable manner and in accordance with the requirements of the laws of Ontario;
 - ii. use agricultural chemicals, including pesticides, herbicides and fertilizers, in accordance with label directions;
 - iii. rotate annual crops in accordance with good farming practice; and
 - iv. minimize soil loss from erosion
- (l) to refrain from:
- i. diverting or altering any wetland or watercourse;
 - ii. overloading nutrient levels on the Lands or adjacent water bodies;
 - iii. allowing pesticide to drift onto non-target lands, including adjacent crops, shelter belts or yard sites;
 - iv. permitting or allowing the accumulation of any waste material, debris, refuse, or garbage on the Lands; or
 - v. allowing any site contamination such as, but not limited to, chemicals, oil spills, hydrocarbons, or any other waste materials on the Lands or adjacent water bodies.
- (m) to supply to the Landlord a record of what pesticides were applied to crops growing on the Land's upon request;

- (n) Not use the Lands nor allow the Lands to be used for any purpose other than the Permitted Use;
- (o) Not alter, improve, or destroy any buildings on the Lands without written consent by the Licensor;
- (p) pay when due
 - i. All charges for electricity, gas, water, and other utilities supplied to the Lands;
 - ii. All taxes or other charges levied by government bodies with jurisdiction over the Lands for which the Licensee is liable to pay under Ontario laws.
- (q) Not deposit any waste on the Lands, without written permission of the Licensor and, where necessary, government authorization under governing legislation and regulations, including, but not limited to, the *Environmental Protection Act*, the *Ontario Water Resources Act*, and the *Nutrient Management Act*;
- (r) Ensure that in using the Lands for the Permitted Use, no act shall be done or omitted to be done upon the Lands which may result in nuisance, damage or disturbance to the occupiers or owners of the Lands or any lands or premises adjoining the Lands;
- (s) Obtain and maintain during the term of the Agreement the requisite authorizations, permits, and approval to use the Lands for the Permitted Use;

(t) Comply with all applicable laws, regulations, by-laws, notices, instruments or government authority(ies) acting under statutory authority while engaging in Permitted Use on the Lands;

(u) By not later than ___days after the termination of this Agreement, have removed, all personal effects, business equipment, and personal property improvements constructed on the Lands.

7. LICENSOR RIGHTS AND OBLIGATIONS

7.1 Upon at least 24 hour's notice and during regular business hours, where such will not unreasonably disturb or interfere with the Licensee's use of the Lands, The Licensor may enter on the lands for the purpose of examining the condition and state of repair of the Lands and the improvements; or for undertaking any repair or maintenance as required of it under this Agreement.

7.2 The Licensor shall not:

- (a) interfere with the personal lives, associations, expressions or actions of the Licensee except insofar as they involve the terms and conditions of this Agreement;
- (b) use the property in a manner that would derogate from the Licensee's rights under this Agreement.

8. REPAIR AND MAINTAINANCE

8.1 The Licensor assumes full responsibility to keep, at all times and at the Licensor's expense, the Lands and any improvements constructed on the Lands constructed by the Licensor in good repair, including without limitation, the fences, gates, and roads.

Legal Note

The responsibility for the cost of repairs and maintenance under a license can be allocated to either Licensee or Licensor, as per the parties' wishes.

9. INSURANCE

9.1 The Licensee agrees to provide the Licensors with evidence of liability insurance coverage.

10. INDEMNITY AND RELEASE

10.1 The Licensee shall indemnify the Licensors from all claims, demands, losses, costs, expenses and damages related to, or arising out of, the use of the Lands by the Licensee, the intent being that the Licensors bear no expense, cost, or loss, to which it would not have been put but for this Agreement.

II. NOTICE

II.1 Wherever any notice is required to be given to either party under this Agreement, the notice must be in writing and will be deemed to be sufficiently given if:

- (a) it is forwarded by registered mail to the address of the party set out on the first page of this License; or

Legal Note

The obligation to obtain insurance coverage is often, but not always, on the Licensee. The clauses within a contract that address allocating risk, and the related requirement to obtain general liability insurance, are very fact-specific, and depend largely on the party's to a license, the situations in which permission may be granted to use lands, for what purposes, any unique circumstances around the co-occupation or use of the Lands, including the presence of other licensees, and the nature of the land owner's continued use and occupation of the Lands during the term of the license. When making a decision with respect to how risk should be allocated, consideration should be given to: what kinds of risks are entertained/possible and which party is in the best position to know about them and prevent them.

(b) a copy of the notice is left with the party set out on the first page of this License.

12. AMENDMENTS

12.1 The terms of this agreement may be amended by mutual consent. All amendments and alterations to this Agreement must be in writing and signed by both the Licensee and Licensor, and appended to this Agreement.

13. TERMINATION

13.1 Without limiting any of its other rights or remedies, the Licensor/Licensee may terminate the license granted under this Agreement: (a) by giving the other party to the Agreement at least ___ days/months notice; (b) upon breach of the contract by giving the other party ____ days/weeks notice.

14. DISPUTE RESOLUTION

Legal Note

There are two potential stages to the process for resolution of a dispute under the Agreement. First, once one party begins the dispute resolution process by sending a notice to the other party, the two parties must sit down together within a given time to try to resolve the dispute. Second, if that is unsuccessful, either party may initiate mediation. If mediation is unsuccessful, the parties may bring the matter to Court, but they cannot do so before that time (unless both parties agree).

Note that It is also possible and beneficial to include an arbitration clause in the Agreement. Under an arbitration clause, instead of going to Court to resolve a dispute, the parties agree to be bound by the decision of a neutral and impartial arbitrator that they select. The potential advantage of arbitration is that it is often cheaper and simpler than Court.

14.1 If there is disagreement as to the meaning of this Agreement, or if a breach of the Agreement occurs or is threatened, either party to it may give notice to the other requiring a meeting of all parties with in ___ days of notice.

15. ENTIRE AGREEMENT

15.1 This Agreement and the Attachments hereto constitute the [entire agreement or complete and exclusive] agreement between the parties and it supersedes all prior or contemporaneous negotiations, commitments, agreements (written or oral) and writings between Licensor and Licensee with respect to the subject matter hereof. All such other negotiations, commitments, agreements and writings will have no further force or effect, and the parties to any such other negotiation, commitment, agreement or writing will have no further rights or obligations there under.

Legal Note

The inclusion of an 'entire agreement' clause in the agreement prevents pre-contract statements and representations from having any contractual force.

IN WITNESS WHEREOF the Landlord and the Tenant have executed this Agreement as of the date first set forth above.

The Licensee

Signature

Witness

Print Name

Print Name

Date

Address

The Licensor

Signature

Witness

Print Name

Print Name

Date

Address

SAMPLE AGRICULTURAL LAND ACCESS: LEASE AGREEMENT

June 2018

Prepared by Rizwan Khan and Burgandy Dunn for the National Farmer's Union.

Agricultural Land Access Agreements Generally

Agricultural land access agreements vary according to the parties, and the parties' needs. An agreement is a legally binding contract which can take many forms; for example, two of the most widely used land access agreements are land leases and licences. An agreement is a lease or a licence depending on how the agreement is drafted (i.e., whether it grants an interest in the land, in which case it is a lease, or if it only grants permission to use the land for prescribed purposes, in which case it is a licence).

Note that the information contained herein is current as of the date of submission (May, 2018). Note also that this document are general in nature, and for informational purposes only. Every agreement, whether it is a lease or licence, should be tailored to reflect the unique circumstance of each individual case. The annotations are intended for information purposes only, and do not substitute legal advice.

Legal Note

Ontario's *Commercial Tenancies Act* governs the relationship, rights and obligations between commercial landlords and tenants. While some of the provisions of the Act can be binding regardless of what is stipulated in a lease agreement, the parties have broad discretion to set the terms of their agreement, and the signed lease Agreement may prevail over the provisions of the Act. Certain provisions cannot be contracted out of, such as certain notice requirements. Where an agreement is silent, the Act prevails.

From a farmer's perspective, a lease is often the most desirable type of long-term farmland access agreement because it creates a situation very similar to that of owning the land, provides an incentive (if a long-term lease) to invest in the land, soil health, and structures, and can be registered with the title to the land to provide additional security (please see the Land Access Guide for additional information).

Agricultural Land Leases

An agricultural land lease is essentially a contract conveying from the lessor (landlord or land owner) to the lessee (tenant) the right to occupy and use a specific property for a definite term at a definite rate. Private parties, corporate entities, and governmental bodies may enter into agricultural land leases, and the complexity and scope of these agreements can vary significantly.

Note that an agricultural land lease is not an instrument granting permission to use land or assets for a prescribed purpose, but is an agreement establishing rights in the land's usefulness for certain activities. The most common form of leases in agriculture are: land leases, cash rent leases; and the crop-share leases. Where the compensation in a cash rent lease is calculated based on a set price per acre or a set rate for the entire acreage of the leased property; a crop-share lease grants the lessor (landlord or land owner) a share of the crops produced in exchange for the tenant's use of the land. It is also possible to combine aspects of the cash rent lease and crop-share lease to form a hybrid lease.

Parties can, and should, negotiate the terms of their agricultural land lease based on their individual circumstance, so as to ensure the drafting contract terms which reflect their understanding of the agreement, and to appropriately allocate risk.

Legal Note

Some land transactions are not enforceable if not written.¹ To be enforceable, a contract for the lease of land must be in writing and signed by the parties and should address the following: the identity of the parties; a description of the property being leased; the term of lease and whether it is long-term or short-term, net or gross, renewable; the type of lease (cash rent lease, crop-share lease, or hybrid); the rent payable and payment terms; and all other material terms not incidental to the landlord-tenant relationship. Although some short-term agricultural land leases do not necessarily need to be in writing to be valid, it is recommended so as to avoid misunderstandings, disputes and litigation. If a lease is not written, it is at risk of being considered a 'tenancy at will' which can be terminated by any party at will.²

In some cases, where a party has acted, and relied, on the terms of an oral agreement, the courts may find it unjust to insist on strict adherence to the requirement that interests in land be in writing. Nonetheless, leaving the determination of whether an agreement exists, and its terms and conditions, to the courts presents unnecessary risk and cost to parties.³

Parties to an oral agreement should be careful that they don't create a binding agreement through email communication and part performance resulting in a contract with unclear or unfavourable terms, or an unintentional interest in land. It is recommended that parties to either oral or written land lease agreements obtain legal advice to ensure that their agreement is valid, that their understanding of the deal is properly reflected in written form, and, ultimately, that their interests are protected.⁴

SAMPLE

THIS LEASE AGREEMENT is made this _____ day of _____, in the Township/City of _____ in the County of _____ in the Province of Ontario

BETWEEN:

_____ [Landlord] _____
of _____ [address] _____ (herein
after referred to as the "**Landlord**")

AND:

_____ [Tenant] _____
of _____ [address] _____ (herein
after referred to as the "**Tenant**")

WHEREAS the Landlord is the registered owner of the following property in _____, Province of Ontario, commonly known as _____ [farm name] _____, consisting of _____ acres as shown in Schedule A, and legally described as:

_____ (municipal address),
_____ (PIN) _____ (Lot)
_____ (Plan) (herein after referred to as "**the Lands**")

AND WHEREAS the Tenant has agreed to lease from the Landlord the land, buildings, and other prescribed features the Lands for the purposes of farming,

IN CONSIDERATION of the mutual covenants and agreements contained herein, the Landlord and Tenant hereby agree as follows:

Legal Note

The parties to the lease are the lessor (the landlord or land owner) and the tenant (the farmer or farm business intending to use the land for agriculture.)

Standard contract clauses should be reviewed carefully with particular attention paid to clauses addressing: the description of property; tenant assignment or sublet; permissible uses of the land; ownership of any leasehold improvements; allocation of environmental risk; provisions re insurance, indemnity, dispute resolution; tenant self-help; events of default, notice requirements, and a process for termination; and party names and party signature blocks. Note that because the relationship of landlord/tenant can sometimes be confused with the relationship of joint venture or partnership, especially in the case of a crop share lease where both parties are contributing, it is important that the parties be clearly defined as landlord and tenant.

If the Leased Property is not easily described in the lease agreement, and a Schedule is used, it is prudent to include a description including both the municipal and legal description of the land contemplated under the lease, as well as the location, acreage, bounds, features, conditions, and any structures included in the lease, as well as any visual aids as may be available (such as a sketch, map, survey or aerial photograph).

I. GRANT OF LEASE

I.1 The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the property municipally known as _____ [insert address] (the “**Leased Property**”) and more fully described in Schedule “A” attached hereto, subject to all easements now existing or which the Landlord may grant in the future, as outlined in Schedule B, together with any structure(s) located thereon as described below (the “**Building**”) (the Lands and Building being collectively referred to as “the Premises”).

2. TERM OF THE LEASE

2.1 This Lease will be in force for a term of _____ months/years commencing on the _____ day of _____, 20____ (the “**Commencement Date**”) and ending on the _____ day of _____, 20____ (the “**Termination Date**”) unless terminated in accordance with the provisions of this Lease.

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

Legal Note

A lease may be of any duration, and can apply to land, buildings, and farm equipment. Note, however, a lease for a term of 21 years or more (including options to renew) may be considered void if the landlord owns adjoining lands not subject to the lease. Note also that a lease for a term of 50 years or more is considered a disposition of a beneficial interest in land, and subject to the payment of land transfer tax, as per the *Land Transfer Tax Act*.

When it comes to the termination of the lease, it is important to know that the tenant farmer has no legal right to remain in the premises upon termination of the term of the lease unless the lease grants a right of extension or renewal. You may want to include an option to extend the lease or an ‘option to renew’ clause.⁵ Note that a renewal clause will be considered void if it amounts to an “agreement to agree”. To be enforceable, a renewal clause must be sufficiently clear and the amount payable on renewal must be ascertainable with reasonable certainty. Determining the amount of rent payable on renewal should be made with reference to “market value” or “market rent” or “appraised value”, and be defined within the lease agreement. Under an option to renew, is it prudent to include clauses addressing: (a) leasehold improvements; (b) the effect of any restrictions on use; and (c) an arbitration process

3. RENT

3.1 Minimum Rent. The Tenant covenants to pay the Landlord rent in the amount of \$_____ each year. The Tenant shall pay the entire amount of the rent to the Landlord at the beginning of the lease term and on the anniversary thereof unless otherwise mutually agreed.

3.2 Additional Rent. The Tenant shall also pay throughout the Term, at the times and in the manner provided in this Lease, all Additional Rent which shall, except as otherwise provided in this Lease, be payable within 15 days of receipt by the Tenant of an invoice, statement or demand for it.

Legal Note

The payment of rent can be tailored to the unique circumstances of the Landowner and Tenant, including annually, on a monthly basis, or a portion at the commencement date and the remainder after harvest. The most common formulas provide for regular interval cash payments, or payments in crops, or a hybrid of both payment in cash and crops.

This lease is based on annual lump sum rent payments. For a lease with monthly rent payments, the following clause may be used: *The Tenant shall pay to the Landlord, during each year of the Term, rent for the Premises of \$___ per annum, payable in equal monthly installments of \$___ in advance of the first day of each and every month.* If required, a schedule can be attached to the lease agreement laying out the formula for how rent will be paid. In this case, this clause of the agreement may read: *The Tenant agrees to pay to the Landowner, during each year of the term, rent for the Leased Property in accordance with the Rental Formula, as set out in Schedule "XX" as attached hereto.*

There are two main categories of commercial leases: gross leases and net leases. Under a gross lease, the tenant pays a fixed amount of rent, whereas under a net lease, the tenant pays a minimum amount of rent plus certain expenses related to the property (such as property taxes, operating costs, insurance, maintenance and management, etc.). This sample lease contemplates a gross lease. If additional expenses are to be borne by the Tenant, the "Additional Rent" clause can be used, along with a note in the "Definitions and Interpretation" section or an attached Schedule detailing what charges and expenses constitute 'Additional Rent' for which the Tenant will be held responsible.⁶

In the case of a crop share agreement, the rent clause should clearly itemize the landlord's and tenant's respective share of each crop type and production cost and include a dispute resolution agreement. Note that when using a crop-share agreement, crop and liability insurance can be paid in the first instance by the Tenant and reimbursed by the Landlord or adjusted from the Landlord's crop share.

4. PERMITTED USES

4.1 The Tenant will use the Lands only for the sole purpose of _____;

- [list].

5. PROHIBITED USES

5.1 The Tenant shall not, unless by mutual agreement to the contrary, engage in any of the following activities on the Leased Property.

- [list].

6. LANDLORD ACCESS

6.1 The Landlord has the right to access the Leased Property for the purpose of _____ with prior notification of _____ to the Tenant.

7. REGISTRATION

7.1 The Tenant shall be entitled to register notice of this Lease against the Leased Premises provided that such registration shall not disclose the Rent payable hereunder.

Legal Note

Together Clauses (4) and (5) restrict the tenant to business activities and premises specified in the agreement; and may be drafted to include restrictions on farm or environmental practices, such as agricultural BMPs, soil management and water conservation practices. If the Tenant is intended to have limited access to the use of structures or buildings located on the Leased Property, the Lease Agreement should specify which structures/buildings and for what purposes.

Note that Clause (6) gives a right to the Landlord which the Landlord doesn't otherwise have under a commercial lease. Given the complex shared land use arrangements that can arise in the context of agricultural leases, it is common for a landowner to want or need continued access to the Leased Property, especially if he/she resides or farms on property abutting the Leased Property. Likewise, Tenants want to ensure their rights and the exclusivity of their leasehold interest. It is wise to address this issue up front in the lease agreement, and establish terms to which the Parties can agree, including a provision requiring the Landlord give the Tenant notice.

Lease agreements create a leasehold interest in land which can be registered against the title of the Leased Property.⁷ If a tenant farmer wishes to secure financing against the leasehold interests, this should be negotiated with the Landlord and a clause included in the lease stipulating that a mortgage is allowed and under what terms. Note that lenders may require the registration of the leasehold interest with Ontario's Land Titles System.⁸

8. REPRESENTATIONS AND WARRANTIES OF THE LANDLORD

8.1 The Landlord makes the following representations and warranties to the Tenant acknowledging that the Tenant is relying on each such representation and warranty in connection with the lease of the property under this Agreement, and with the further acknowledgment that the Tenant would not have entered this Agreement without any of the representations and warranties of the Landlord.

8.2 The Landlord represents and warrants to the Tenant that:

- (a) the Landlord is the registered owner of the Leased Property, and has all right, title, and interest in and to the Property, and the right to lease the same to the Farm Tenant under this Agreement;
- (b) the Landlord is not bankrupt, insolvent or subject to any legal form of moratorium, preference or other law or regulation relating to or affecting the enforceability of creditor's rights generally;
- (c) that this Agreement has been duly authorized, executed and delivered by the Landlord and is legal, valid, and binding obligation on the Landlord enforceable against the Landlord by the Tenant in accordance with its terms;
- (d) that no party has any written oral agreement or option or any right or privilege in respect to the Leased Property;
- (e) that as of the date of this Agreement the Leased Property including the land, buildings, structures, and equipment, are in good and marketable condition, and subject to reasonable wear and tear, in a state of reasonable repair and maintenance;
- (f) that the septic system is in compliance with applicable regulatory requirements, is in

Legal Note

In the context of a lease agreement, a 'representation' is an assertion of fact upon which another party to the agreement is expected to rely.

A warranty is an express or implied promise or assurance that a particular statement of fact with respect to the Leased Property is true.

The breach of a representation and warranty give rise to different legal remedies: rescission (discharge from the obligations under the contract) and damages (i.e., monetary compensation) respectively.

If a representation is untrue, or is made with the belief that it is true and the party discovers it is untrue before the signing of the Agreement, the party must disclose this information to the other party, otherwise the clause may be deemed a misrepresentation. If a misrepresentation is material and induces a party to enter into a contract, the innocent party may rescind the contract.

good working order, and there are no outstanding requirements for repair or maintenance;

- (g) that the well and all components for delivery of water are in good working order; there is sufficient quantity of water to meet the reasonable requirements of the Tenant under this Agreement; and there have been no adverse test results in regard to the quality or safety of the water supply, nor is the Landlord aware of any problem or other concern in regard to the potability of the water supply;
- (h) that the property is in compliance with all applicable statutes, ordinances, by-laws, regulations, orders, directives and decisions of any government authority in regard to environmental protection, and that there are no outstanding orders from the Ministry of Environment and Climate Change in regard to the same;
- (i) that no hazardous substances are or have been stored, treated, or disposed of on the Property;
- (j) that the usage of the property for agriculture (or specify: _____) is in full compliance with the Official Plan and applicable zoning by-laws;
- (k) that there is free and unfettered access to the property and the Landlord is not aware of any fact or circumstance that may restrict or impede in any manner or to any extent such access;
- (l) that no notice or proceeding in respect of expropriation of the Property, or any part thereof, by any government authority has been given or commenced, nor is the landlord aware of any intent or proposal to give such notice or to commence any such proceedings;
- (m) that to the best of its knowledge, the Landlord has complied with, in all material

Legal Note

The representations and warranties included in Clauses 8 and 9 should include the facts and promises made which induced the parties to enter the agreement, and on which they are relying. In a lease agreement representations and warranties usually relate to assurances that the Tenant will obtain a leasehold interest free of encumbrances, and that the Landlord is contracting with a Tenant that is financially sound and able to make the agreed upon rent payments.

Note that the term 'reasonable wear and tear' is generally assumes reasonable conduct by the Tenant and is interpreted by the courts in relation to the specific use of the property

respects, with all applicable laws, regulations, rules, judgements, decrees or orders applicable to the Property;

(n) that the Landlord has filed in a timely manner all tax returns required to be filed regarding the Property and has made complete and accurate disclosure in such returns, and has paid all property taxes due including those required for its operation as a farm business; and

(o) that there are no actions, audits, assessments, reassessments, suits, proceedings, investigations, or claims now threatened or pending against the Landowner in respect of the Property.

9. REPRESENTATIONS AND WARRANTIES OF THE TENANT

9.1 The Tenant makes the following representations and warranties to the Landlord acknowledging that the Landlord is relying on each such representation and warranty in connection with the lease of the property under this Agreement, and with the further acknowledgment that the Landlord would not have entered this Agreement without any of the representations and warranties of the Tenant.

9.2 The Tenant represents and warrants to the Landlord that:

(a) The Tenant represents and warrants to the Landlord that the Tenant is not bankrupt, insolvent or subject to any legal form of reorganization, moratorium, preference or other law or regulation relating to or affecting the enforceability of creditors' rights generally;

(b) The Farm Tenant represents and warrants to the Landlord that this Agreement has been duly authorized, executed and delivered by the Tenant and is a legal, valid and binding

Legal Note

If the Tenant is operating under a Net Lease, it is advisable to include a provision stipulating that the Landlord will provide and permit the Tenant to use the electricity, domestic water, sewage disposal and other utility services serving the Leased Property in such quantities as the Landlord, from time to time determines to constitute normal use for Tenant given the agricultural use of the Leased Property.

It is advisable that the Tenant obtain from the Landlord an environmental warranty regarding the use, condition and history of the premise.

obligation of the Tenant, enforceable against the Tenant by the Landlord in accordance with its terms except only as such enforcement may be restricted or limited by any applicable laws in regard to bankruptcy, insolvency or the enforcement of creditors' rights generally.

10. LANDLORD COVENANTS

The Landlord covenants with the Tenant:

- (a) for quiet enjoyment of the Premises; and
- (b) to observe and perform all the covenants and obligations of the Landlord herein.

II. TENANT'S COVENANTS

The Tenant covenants with the Landlord:

- (a) to pay all amounts payable by the Tenant to the Landlord under this Lease (collectively the "Rent");
- (b) to observe and perform all the covenants and obligations of the Tenant herein;
- (c) to use the Premises only for the purpose of _____ and any and all uses ancillary thereto;
- (d) to employ agricultural best management practices so as not to impoverish, depreciate or injure the soil, and protect ground and surface waters, and shall:
 - i. cultivate, seed, control weeds, insects and disease, and harvest crops on the Lands in a diligent and sustainable manner and in accordance with the requirements of the laws of Ontario;
 - ii. use agricultural chemicals, including pesticides, herbicides and fertilizers, in accordance with label directions;

Legal Note

Inclusion of the tenant's or landlord's covenants should be drafted with care, and based on the business decision between the parties. The provisions included here should only be included if appropriate, given the nature of the agreement between the parties, the Tenant's farm operations, and the permitted and restricted uses of the land.

It may be necessary to include in the lease agreement a provisions stipulating that it is the Landlord's responsibility to remove any existing waste and/or clean up and remediate the land before the Commencement Date, in which case a clause should be included requiring the Landlord to disclose related information to the Tenant; providing that the Landlord comply with all applicable laws, by-laws, regulations, orders, guidelines, Ministry orders, or the recommendations of an environmental engineer; and provide proof of compliance to the Tenant. A lease may also provide that if the Landlord fails to comply, the Tenant may undertake, and pay for, any necessary clean up or remediation and deduct all costs and expenses occurred in so doing from the Rent payable by it pursuant to the Lease until deducted in full. The lease should be clear as to who has responsibility for off-site migration onto the leased premises.

- iii. rotate annual crops in accordance with good farming practice; and
- iv. minimize soil loss from erosion
- (e) to refrain from:
 - i. diverting or altering any wetland or watercourse;
 - ii. overloading nutrient levels on the Lands or adjacent water bodies;
 - iii. allowing pesticide to drift onto non-target lands, including adjacent crops, shelter belts or yard sites;
 - iv. permitting or allowing the accumulation of any waste material, debris, refuse, or garbage on the Lands; or
 - v. allowing any site contamination such as, but not limited to, chemicals, oil spills, hydrocarbons, or any other waste materials on the Lands or adjacent water bodies.
- (f) to supply to the Landlord a record of what pesticides were applied to crops growing on the Land's upon request;
- (g) to maintain the fences on the Land;
- (h) that no live trees on the Land will be cut and no crop residue such as straw or cornstalks will be burnt without the prior written permission of the Landlord;
- (i) not to remove sand, gravel, topsoil or minerals from the Premises;
- (j) to keep the mouths of all underdrains on the Premises open and free from obstruction and in good running order at all times during the Term and will not suffer or permit such drains or the water-courses in any open ditches on the Premises, to become obstructed, but will constantly keep them free and clear for the escape of the water flowing therein;

Legal Note

Note that the Landlord may want to, in order to ensure proper care and management of the land, require that the Tenant adhere to certain principles or farming and/or environmental practices such as 'green obligations', (i.e., targets for energy use, water consumption, waste diversion, GHG emissions); soil conservation best practices; or adherence the Canadian Organic Standards.

- (k) not to allow any public use of the Premises without the written consent of the Landlord, acting reasonably;
- (m) not to install any equipment which would exceed or overload the capacity of the utility facilities for the Premises or the electrical wiring and service in any structure(s) and if any equipment installed by the Tenant shall require additional utility facilities, such facilities shall be installed, if available, and subject to the Landlord's prior written approval thereof (which approval may not be unreasonably withheld), at the Tenant's sole cost and expense in accordance with plans and specifications to be approved in advance by the Landlord, in writing.

12. COMPLIANCE WITH LAWS

12.1 The Tenant shall use and occupy and shall cause the Leased Property to be used and occupied in compliance with all Applicable Laws, present and future, and in a safe, careful and proper manner, which shall include, but not be limited to, all activities related to the application of pesticides; the generation, use, application, storage, and disposal of nutrients (including manure, commercial fertilizers, and off-farm sources); and the storage and/or disposal of wastewater (including sewage, process water, and stormwater) and hazardous waste. It is the Tenant's responsibility to ensure that its use is permitted by all Applicable Laws. At the Landlord's request the Tenant shall comply with any directive, policy or request of any governmental or quasi-governmental authority or any other reasonable request of the Landlord, in respect of any environmental protection, energy conservation, water

Legal Note

Consider inclusion of sustainability clauses within your lease which will establish obligations on both the landlord and the tenant to do their respective parts to achieve specified sustainability targets (such as adherence to organic farming, climate change mitigation, energy, water and resource conservation, recycling and air-quality goals, amongst others).

An example may be the inclusion of a "sustainability" standard, defined within the lease, for repair and maintenance as well as building operations obligations, which allow for recycled and re-used material to be used, water and energy conservation targets, or a restriction on the use of certain chemicals (i.e., chemical pesticides or fertilizers, or volatile organic compounds ("VOC's") in construction materials).

Incorporating such clauses as covenants in a lease may stem out of the Landlord and Tenant shared values with respect to environmental protection and resource conservation, or in order to keep an upperhand on anticipated environmental regulation and sustainability standards.

conservation, waste management, health, safety, security or other matter relating to the Tenant's use and occupancy of the Leased Property. If due to the Tenant's use or occupancy of the Leased Property, improvements or changes are necessary to comply with any Applicable Laws or with any such directive, policy or request or with the requirements of insurance carriers, the Landlord may at its option either do the necessary work, at the expense of the Tenant, or forthwith give Notice to the Tenant to do such work within the requisite period of time and the Tenant shall then do such work within the requisite period of time. The Tenant shall pay to the Landlord the costs of any such work done by the Landlord.

13. REPAIR AND MAINTENANCE

13.1 The Tenant shall at its sole cost manage, maintain, repair, and keep the Leased Property and all Leasehold Improvements in good order and condition to the standards from time to time prevailing for similar properties in the area in which the Leased Property is located; subject to reasonable wear and tear not inconsistent with such standards with the exception only of those repairs which are the obligation of the Landlord under this Lease, including: [list].

14. ALTERATIONS BY TENANT

14.1 The Tenant may from time to time at its own expense make changes, additions and improvements to the Premises to better adapt the same to its business, provided that any change, addition or improvement shall be made only after obtaining written consent of the Landlord, and shall be carried out in a good and workmanlike manner and only by persons selected by the Tenant and reasonably approved in writing by the Landlord. The

Legal Note

The contents of clause 13 depends entirely on the nature of the leasing arrangement between landlord and tenant, and should be customized given each individual circumstance. This clause is drafted on the assumption that the Landlord will not retain a significant role in farm repair and maintenance. The allocation of responsibility for repair and maintenance should be reflected in the cost of rent.

All commercial leases, farm leases included, should address environmental matters. It is much less costly and less complicated to appropriately allocate environmental risk within the lease agreement, than to leave it to the courts to allocate the environmental liability between the Landlord and Tenant. It is advisable to specifically allocate environmental risk within the lease agreement. A Landowner may want to include a covenant requiring the Tenant to provide "clean" environmental report at end of Lease term, with a clear definition of to what standard the site must adhere, and a mechanism for the landlord's acceptance of the site at lease termination. In order to have a point of comparison, it is necessary to have detailed the pre-lease condition of the site as far as possible. It is also advisable to stipulate who bears responsibility for environmental problem not created by the Tenant, and clearly identify who has responsibility for off-site migration onto the Leased Property.

Tenant shall pay promptly when due all costs for work done or caused to be done by the Tenant to the Premises which could result in any lien or encumbrance on the Landlord's interest in the property and shall keep the title to the property and every part thereof free and clear of any lien or encumbrance.

15. DAMAGE AND DESTRUCTION

15.1 If there is damage, destruction or contamination (collectively, "Damage") to all or any material part of the Leased Property to the extent that the ability of the Tenant to carry on the farming operation thereon is prevented or substantially hindered, then:

- (1) If the Damage can be substantially repaired under Applicable Laws within 180 days from the date of such Damage (employing normal construction methods without overtime or other premium), the Landlord shall forthwith repair such Damage other than Damage to Leasehold Improvements and any other property that is not the responsibility of or is not owned by Landlord;
- (2) If the Damage cannot be substantially repaired under Applicable Laws within 180 days from the date of such Damage (employing normal construction methods without overtime or other premium), then: (i) either party may elect to terminate this Lease on thirty (30) days' prior written notice to the other Party, failing which the Landlord shall forthwith repair such Damage other than Damage to Leasehold Improvements or property that is not the responsibility of or is not owned by the Landlord.

14.2 If the Landlord is required to repair Damage to the Premises under Section 14.1 the Basic Rent payable by the Tenant shall be

Legal Note

The *Commercial Tenancies Act* provides under s. 35(1) that "A tenant may set off against the rent due a debt due to the tenant by the landlord", and as such most commercial leases include a clause providing that rent is to be paid "without any deduction, set-off or abatement whatsoever". Some leases go further, including in their Rent clause, an explicit waiver by the Tenant of "the benefit of any statutory or other right in respect of abatement or set-offs in its favour at the time hereof or at any future time. Except under Damage and Destruction clauses, leases do not normally include a right on the part of the Tenant to set-off against rent. However, a tenant can try to negotiate inclusion of a clause providing that if the landlord is in breach of a covenants the tenant is entitled, after notice to the landlord, to perform the covenant itself, and set-off the cost of doing so against the rent otherwise due. Note that, before a tenant is entitled to a set-off against rent, the effect of the Landlord's breach of covenant should have materially adversely affect the tenant's ability to use for farming purposes the Leased Property.

Likewise, 'abatement' rights (which refer to the right to the reduction of the agreed rental amount in certain circumstances) in commercial leases are rare and landlords generally oppose their inclusion. If included, a right of abatement should be paired with a covenant by the Landlord to obtain business interruption insurance. The need for an abatement clause is less often necessary if the Tenant has business interruption insurance.⁹

proportionately reduced to the extent that the Premises are rendered untenable or inaccessible, from the date of the Damage until 30 days after completion by the Landlord of the repairs to the Premises or until the Tenant again uses the Premises (or the part thereof rendered untenable), whichever first occurs. The Tenant shall effect its own repairs as soon as possible after completion of the Landlord/s repairs in accordance with its obligations under this Lease.

16. INSURANCE

16.1 The Tenant will take out and maintain insurance against any liability of the Tenant to third parties arising from or in relation to the Tenant's use or occupancy of the Lands, in at Least the amount of _____.

16.2 The Tenant agrees to provide the Landlord with evidence of liability insurance coverage on or before the Commencement Date.

16.3 The Tenant shall advise the Landlord of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder.

16.4 The Tenant covenants not to do, omit to do or permit to be done anything which will cause or shall have the effect of causing the cost of the Landlord's insurance in respect of the Premises to be increased at any time during the Term or any policy of insurance on or relating to the Premises to be subject to cancellation.

16.5 The Landlord will maintain insurance against any liability of the Landlord to third parties arising from or in relation to the

Legal Note

A lease agreement often provides for the Tenant and/or Landlord to obtain various forms of insurance including: commercial property insurance, rental insurance, leasehold interest insurance, business interruption insurance, liability insurance, boiler/machinery insurance.

When deciding on the allocation of risk, and which party is required to obtain insurance, consideration should be had of the specific arrangement, nature of the farm business, who is in the best position to minimize risk, who is most at risk, who is most in control of a particular risk, and who is expected to bear the risk of loss. In determining what is right for your situation, thought should be given to what needs to be insured against (i.e., what kind of loss – a landlord may be concerned about environmental risk, or disruption in rental income, while a Tenant may be more worried about the cost of repairing or replacing buildings or equipment, the loss of use of the premises, and the liability to pay rent despite the damage and loss of use).¹⁰

Proof of insurance, such as copies of actual Declarations pages and policy wordings, should be acquired prior to the lease effective date, and proof of continued insurance provided annually. It is advisable to have the insurance clause of the lease agreement reviewed by a lawyer as well as your insurance provider. Note that a Tenant (in ground lease, or net lease) may also be able to obtain a title insurance policy to insure its leasehold interest in the premises.

Tenant's use or occupancy of the Lands, as well as business interruption insurance.

16.6 If the Tenant fails to effect and keep such insurance in force, the Landlord shall have the right, upon written notice to the Tenant, to effect such insurance at the cost of the Landlord and all outlays by the Landlord shall be immediately payable by the Tenant to the Landlord as Additional Rent without prejudice to any other rights and recourses of the Landlord hereunder. No such insurance taken out by the Landlord shall relieve the Tenant of its obligation to insure hereunder and the Landlord shall not be liable for any loss or damage suffered by the Tenant in connection therewith.

17. RIGHT TO ENTER

17.1 Landlord shall have the right to enter upon the Leased Property enter upon the Leased Property to examine, inspect and show the Premises for purposes of leasing, sale or financing, to provide services or make repairs, replacements, changes or alterations as provided for in this Lease or for other reasonable purposes that do not interfere with the Tenant's ability to carry out regular farming operations and to take such steps as the Landlord may deem necessary for the safety, improvement or preservation of the Premises. The Landlord shall give reasonable Notice to the Tenant prior to such entry (other than in the case of an emergency or apprehended emergency), but no such entry shall constitute a re-entry by the Landlord or an eviction or entitle the Tenant to any abatement of Rent.

Legal Note

If included, an indemnity clause will serve to protect one party against liability, effectively shifting liability from one party to the other. Insurance and Indemnity clauses need be drafted (and reviewed) together to ensure the risk allocation intentions of the parties are properly reflected in their written agreement. Indemnity clauses that are overly broad may be found to be unenforceable. A contractual undertaking by one party to secure property insurance operates in effect as an assumption of risk by that party (i.e., an implicit agreement that the insurance proceeds would cover the risk of loss.) As such, the purchase of insurance, or sharing of the cost of insurance, by the Landlord or Tenant, may implicitly release a party from liability, even for acts of negligence. That said, a covenant to insure may be limited by express provisions to the contrary.

The Landlord and Tenant can cooperate when it comes to allocating risk and arranging insurance. When both Landlord and Tenant carry insurance, either because coverage limits are not sufficient, or there is concern that one or both parties may not maintain the insurance as required under the lease, the policies can be arranged to complement one another, with one policy providing excess coverage to the other policy.

18. ASSIGNMENT AND SUBLETTING

18.1 The Tenant shall not assign or sublet the Tenant's interest in this Lease, nor grant any licence or part with possession of the Leased Property or transfer any other right or interest under this Lease without the Landlord's prior written consent, the Landlord acting reasonably.

19. SURRENDER

19.1 Upon the expiration or other termination of the Term, unless extended or renewed, the Tenant shall immediately quit and surrender possession of the Lease Property in substantially the condition in which the Tenant is required to maintain the Leased Property excepting only reasonable wear and tear, and upon surrender, all right, title, and interest of the Tenant in the Leased Property shall cease.

20. EVENTS OF DEFAULT

20.1 Upon the occurrence of any of the following events (an "Event of Default"):

(a) the Tenant fails to pay any Rent or other sums due hereunder when due, and such Rent or other sums are not paid within five (5) days after notice is given by the Landlord of such non-payment;

(b) the Tenant has breached any of its obligations in this Lease and, if such breach is capable of being remedied and after Notice from the Landlord the Tenant fails to remedy such breach within thirty days; or if such breach cannot reasonably be remedied within thirty days, the Tenant fails to commence to remedy such breach within such thirty days;

(c) the Tenant or any person or corporation bound to perform the obligations of the Tenant hereunder either as guarantor or indemnifier or as one of the parties constituting the Tenant takes any steps or

Legal Note

Note that under Ontario law, commercial tenants are allowed to sublet or assign their lease without restriction unless their lease agreement prohibits it. Lease agreements often require the landlord's prior written consent for an assignment or sublet, and requiring the landlord act reasonably in considering the tenant's request.

You may want to include a provision detailing the process for obtaining Landlord consent, as well as a provision with respect to the ground on which the Landlord may withhold consent, such as a continuing event of default on the part of the tenant, or the Assignee is not satisfactory (because of the nature of its business, the proposed use of the property, the financial background of the Assignee, or the Assignee's history of non-compliance with law, or other reasons).

Note that under a sublet or assignment of a lease, a tenant is not released from its obligations under the lease unless the agreement expressly provides such a release.¹¹

Note that if the lease is going to be assigned or subletted, it is in the interest of the original Tenant and the Landlord to ensure the amending agreement with the assignee is completed, and that any necessary inspections or investigations (re site conditions, environmental status) is conducted prior to the assignment, so that the original Tenant can be released on terms that squarely deal with environmental issues.

suffers any order to be made for its winding-up or other termination of its corporate existence or becomes insolvent or commits an act of bankruptcy or becomes bankrupt;

(d) the Tenant abandons the Premises during the Term without the Landlord's written consent, or the Tenant does or permits anything causing cancellation or threat of cancellation of the Landlord's insurance on the Premises;

then the Landlord may, at its option:

(i) be entitled to the full amount of the current month's and the next three months' installments of Rent which shall immediately become due and payable and the Landlord may immediately distrain for the same, together with any arrears then unpaid;

(ii) re-enter the Leased Property after giving the Tenant fifteen (15) days notice and take possession and re-let the Leased Property on behalf of the Tenant or otherwise as the Landlord in its discretion may determine including, without limitation the right to: (i) take possession of the Tenant's crops sown and growing, and any equipment or other property on the Leased Property; (ii) store such property at the expense and risk of the Tenant; (iii) sell or otherwise dispose of such property in such manner as the Landlord sees fit; and (iv) make alterations to the Premises to facilitate the re-letting;

(iii) after giving the Tenant fifteen (15) days notice, seize and sell any crops sown and then growing, any equipment or other property of the Tenant on the Leased Property and may apply the proceeds thereof to all Rent to which the Landlord is then entitled under this Lease;

Legal Note

Notice by the Landlord must be given for termination or for late payment of Rent, etc. Although notice can be given orally, to be legally binding, it is preferable that it is given in writing.

The events giving rise to the Landlord's right of re-entry should be specifically set out (e.g., non-payment of rent, breach or non-performance of any Tenant covenant, failing to occupy, vacating or abandoning the Leased Property, or using the Leased Property for an unauthorized purpose) together with any specific period of time the Tenant has to cure a particular default.

The events giving rise to the Landlord's right of re-entry should be specifically set out together with a reasonable period of time for the tenant to cure a particular default.

Note that a Landlord must give notice to the Tenant of the intent to exercise the right of re-entry, for breach of any covenant or condition other than for non-payment of rent. The notice must specify the particular breach which gives rise to the right of re-entry, and require the tenant to remedy the breach or to make monetary compensation for the breach. The right of re-entry can be exercised if the breach is capable of remedy, and the Tenant fails within a reasonable time to remedy the breach.

Consider whether or not contamination constitutes a "default" such that it may prejudice other rights under the lease, as well as which party should bear responsibility for environmental risk.

(iv) terminate this Lease by giving the Tenant fifteen (15) days prior written notice of the termination; and remove and sell the Tenant's crops sown and growing, any equipment or other property of the Tenant therefrom.

21. TERMINATION

Either party may terminate this Lease at any time with ___ months written notice to the other party.

22. NOTICE

19.1 Any demand, notice, direction or other communication to be made or given hereunder (in each case, "Communication") shall be in writing and shall be made or given by personal delivery, by courier, by facsimile transmission, or sent by registered mail (charges prepaid), addressed as follows:

in the case of the Landlord: _____

in the case of the Tenant: _____

or to such other address or facsimile number as any party may, from time to time, designate in accordance with this Section.

19.2 A Communication will be considered to have been given or made on the day that it is delivered in person or by courier, or sent by facsimile or, if mailed, seventy-two (72) hours after the date of mailing. If the postal service is interrupted or substantially delayed, any Communication will only be delivered in person or by courier, or sent by facsimile

Legal Note

Note that under the *Commercial Tenancies Act*, 15 days must elapse before the landlord can terminate a lease for non-payment of rent. However, this period is usually reduced or eliminated altogether in leases. Note also that a lease agreement may not vary the statutory requirement, under s. 19(2) of the *Commercial Tenancies Act*, which requires the Landlord to give the Tenant notice of the Landlord's intention to exercise its right of re-entry upon breach of a covenant by the Tenant (other than non-payment of rent).

If the Landlord wishes to include in the Lease an alternate clause, providing the Landlord the right to terminate the Lease at its sole option, a provision should be included requiring adequate notice to the Tenant (i.e., not less than thirty (30) days written notice) and a clause added detailing tenant remedies in the case of breach of covenants by the Landlord.¹²

Also consider including a clause providing the Tenant with access to the property within a reasonable period of time after the termination of the lease if the Tenant has planted crops on the Leased Property, for the purpose of harvesting said crops. Also consider addressing compensation for the Tenant if the Landlord terminates the agreement early, such as compensation for investments into the soil, land, or structural improvements (i.e., fertilizer, cover crops, subsurface drainage tiling, etc).

Note that under the common law, a tenant is entitled to terminate its lease if the landlord has committed a fundamental breach; that is, a breach of covenant so fundamental that it goes to the "root of the contract."¹³

23. AMENDMENTS

The terms of this agreement may be amended by mutual consent, and to be valid, must be set out in writing and executed by the Landlord and the Tenant.

24. ENTIRE AGREEMENT

This Agreement and the Attachments hereto constitute the entire agreement between the parties and it supersedes all prior or contemporaneous negotiations, commitments, agreements (written or oral) and writings between Licensor and Licensee with respect to the subject matter hereof. All such other negotiations, commitments, agreements and writings will have no further force or effect, and the parties to any such other negotiation; commitment, agreement or writing will have no further rights or obligations there under.

25. OBLIGATIONS AS COVENANTS

All of the provisions of this Lease are to be construed as covenants and agreements.

26. SEVERABILITY

Should any provision of this Lease be, or become, invalid, void, illegal or unenforceable, it shall be considered separate and severable from the remaining provisions of this Lease, which shall remain in force and be binding as though the provision had never been included.

27. TIME OF THE ESSENCE

Time shall be of the essence hereof.

28. FORCE MAJEURE

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any term, covenant, or act required hereunder by reason beyond the control of the party affected, including, without

Legal Note

Note that the 'reasonable wear and tear' provision, which assumes reasonable conduct by the Tenant and is specific to the use of the Property, means that a Tenant may not be required to restore the property to a "pristine" condition even if this was what the property was at commencement, especially where the Landlord has knowledge of the Tenant's uses of the land. This is not to say that a Landlord should turn a blind eye but rather should actively monitor the Leased Property and Tenant's uses of the land in order to avoid surprises down the road. A provision in the lease which provides for the landlord's right (but not the obligation) to enter and conduct inspection, including testing where appropriate, will protect the Landlord's interest in the Land by better managing risk and appropriately allocating risk for environmental degradation, or contamination, of the land. The greater the knowledge of the landlord of the tenant's uses at commencement and throughout the term, the greater the likelihood that the landlord will be required to accept the consequences of such uses under the "reasonable wear and tear" exception.

limitation, strikes, lock-outs, labor disputes, the enactment, amendment or repeal of any Applicable Laws, the shortage or unavailability of labour or materials, failure of power, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such covenant or act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. This provision should not relieve the Tenant of its obligation to pay rent when due.

29. GOVERNING LAW

This Lease shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

30. SUCCESSORS AND ASSIGNS

This Lease shall extend to and bind the legal representatives, heirs, executors, administrators, successors and permitted assigns of the parties hereto, except as may be specifically excepted herein.

31. SALE BY LANDLORD

31.1 If the Landlord sells or otherwise disposes of all or part of the Leased Property, the Landlord will do so subject to the provisions of this Lease, unless the Landlord and the Tenant agree otherwise in writing.

Legal Note

A "right of first refusal" clause in an agreement requires the landlord to notify the tenant in the event the landlord receives a third party offer to purchase the property, giving the farmer tenant the option to buy before any third party offer is accepted.

In the case of the land owner's bankruptcy or insolvency, the interest in land provided by a lease is not necessarily assured; the Tenant may want to include clauses to detail what happens in the case of bankruptcy.

A good lease accurately reflects the intentions of the parties, and appropriately allocates responsibility and risk. The clauses necessary for any lease agreement depend on the arrangement between Landlord and Tenant. It is important that any preliminary agreement that is negotiated by the parties to a lease be put into writing and reviewed by a lawyer.

32. RELATIONSHIP OF THE PARTIES

The parties hereto expressly disclaim any intention to create, and nothing in this Lease shall be construed to constitute the Landlord and the Tenant as partners, joint venturers or members of a joint or common enterprise, and neither of the parties hereto shall have any authority to act for or to assume any obligation or responsibilities on behalf of the other except as otherwise expressly provided herein.

33. DISPUTE RESOLUTION

If a dispute arises between the parties, including in respect of the content or interpretation of this Lease, and which has not been resolved within thirty (30) days [or such other period of time] such dispute may be submitted to a 3rd party mediator, the choice of mediator to be agreed upon by the parties, and failing agreement to choose a mediator within an additional thirty (30) days, the mediator to be appointed by a judge of the Superior Court, for resolution via non-binding mediation conducted pursuant to the National Mediation Rules of the ADR Institute of Canada.

Legal Note

Note that because the relationship of landlord/tenant can sometimes be confused with the relationship of joint venture or partnership, especially in the case of a crop share lease where both parties are contributing, it is important that the parties be clearly defined as landlord and tenant.

It is important to ensure that all parties to the Agreement sign the signature block, and that the parties listed on the first page of the Lease Agreement as "Landlord" and "Tenant" are the same as those signing the signature block (which follows the last clause of the agreement).

It is also important to ensure that the party signing is the registered owner of the Leased Property, or, in the case of a corporation, is duly authorized to execute and deliver the lease on behalf of the Corporation.

For the sake of accuracy, and to avoid disagreements as to meaning, you may wish to include a clause or Schedule with "Definitions and Interpretation" to define specific words or clauses used in the Agreement.

Schedules to the Agreement may also be needed to add additional details of the agreement, such as a description of the Leased Property, a formula for determining rent, and any agricultural or environmental practices that are to be adhered to.

REFERENCES

¹ The Ontario *Statute of Frauds* (RSO 1990, s. S.19) requires that transactions concerning interests in land be evidenced in writing unless the lease is of less than three years and the rent to be paid is at least two-thirds of the full improved value of the land.

² Note that if a lease does not comply with the Statute of Frauds, a 'tenancy at will' is created such that it can be terminated by any party at will.

³ If the leasing agreement is oral, it may be saved under the doctrine of part performance if one party to the agreement has partially performed their undertaking under the oral agreement, and strict adherence to the requirements of the *Statute of Frauds* would be unjust. The doctrine of part performance may apply in such a case, if a party acted to his/her detriment in performance under the oral agreement, and the performance was referable to the alleged oral contract

⁴ Recent caselaw developments suggest that electronic communications, such as email correspondence, may suffice to meet requirement that agreements governing land transactions (including land lease agreements and agreements of purchase and sale) be in writing.

⁵ An extension continues the existing contractual relationship uninterrupted on the same terms, whereas a renewal creates a new lease between the parties. Note that under an extension, a landlord can terminate the lease for breaches of covenant that occurred prior to the extension term whereas under a renewal, the tenant is only liable for its covenants under the new agreement.

⁶ Some operating costs may be expressly excluded from inclusion in the "Additional Rent" Clause. This will depend on the nature of the land lease arrangement but may include: major repairs to structural components that are required as a result of defective design or construction of such structural components; costs relating to tenant inducements, allowances or similar expenses; all leasing expenses, real estate brokers' fees, leasing commissions, advertising and space planners' fees. Note that where it is the Landlord's responsibility to obtain insurance, consider whether this expense will be shared, pursuant to an 'Additional Rent' clause, by the Tenant. If the cost is to be shared, consideration should also be given to whether this extends to losses incurred or claims paid either below the insurance deductible amount or as the co-insurance portion of an insured claim. Additional rent often includes the property taxes for the portion of the Leased Property and consideration

should also be given to whether the Tenant or Landlord will be responsible for other property-related taxes. Likewise, depending on the circumstances, it may be that the tenant is expected to contribute to the operating costs, such as insurance coverage, property management and services such as janitorial, waste collection, disposal and recycling, snow removal, machinery, and utilities and services (such as electricity, fuel, heat, HVAC, water, telephone, gas, sewage disposal and telecommunications), as well as shared supplies, tools and equipment used in connection with the Leased Property. The cost to maintain and repair the Leased Property may also be shared by the Landlord and Tenant, depending on the circumstances. Note that the Tenant and Landlord may agree to share the cost of investment in environmental protection and conservation initiatives, such as energy and water conservation equipment, or upgrades to achieve a specific standard of certification. In any Additional Rent clause, it should be expressly provided what costs will be shared and whether they include remuneration of personnel employed as well as professional services (i.e., auditing, accounting, legal and other consulting fees and disbursements) incurred in connection with the maintenance, repair, replacement, operation, administration, supervision and management of Leased Property.

⁷ The general rule is that the priority of an interest in land is determined by the order in which it is registered. Registering a leasehold interest with the Ontario Land Registry to establishes priority, meaning that the first right registered will have priority over any subsequent registered right. Registered leases "run with the land" meaning that when the land is sold, the lease is conveyed as part of the sale of the property. In the absence of registration, a

purchaser without notice of the lease may take ownership of the property without any obligation to honour the terms of the lease. The legal doctrine of actual notice provides that a registered interest (i.e., a transfer (sale), mortgage, or lien) that had actual knowledge of an existing, unregistered interest in land, will not have priority over the unregistered interest. It is advisable for a tenant to register the lease or notice of lease on title in order to protect its leasehold interest.

⁸ Note that the *Canadian Agricultural Loans Act*, RSC 1985, c 25 (3rd Supp) is a federal loan guarantee program which provides loans to eligible farm tenants. For more information see: Government of Canada, Agriculture and Agri-Food Canada, "Canadian Agricultural Loans Act – Lenders' Guidelines" online: <http://www.agr.gc.ca/eng/?id=1369846155609#al>

⁹ Tenants should inform themselves as to what type of insurance is available and what exclusions apply. Note that an abatement clause may have implications for a mortgage or the sale price of the Leased Property. If you decide to include an abatement clause, clearly define what triggers the abatement right. Note that abatement period needs to have a clearly defined beginning and end, and the lease should specify how the abatement it is to be calculated and which elements of the rent abate.

¹⁰ It is common for the Landlord to covenant to provide insurance coverage in a Lease Term, including: (a) liability insurance; (b) "all risks" property insurance; and (c) boiler and machinery insurance. The Tenant and Landlord may agree that the Tenant will contribute to the cost of the Landlord's insurance with respect to the Leased Property, or parts of it. Note that under the immunity principle, a tenant may be entitled to claim the benefit of an insurance policy which the landlord covenanted to provide. Some leases include the express provision that notwithstanding Tenant contributions to the cost of the Landlord's insurance "the Tenant shall not have any insurable interest in, or any right to recover any proceeds under any of the Landlord's insurance policies". Tenant Insurance may include "all risks" insurance (on all property owned by the including equipment, and Leasehold Improvements); commercial

general liability insurance (against claims for bodily injury, personal injury, economic loss and property damage arising from occurrences in or about the Leased Property or arising from or in any way relating to the tenants use or occupancy of the Leased Property); legal liability insurance (for the full replacement cost of any buildings or structures located on the Leased Property as well as loss of the use of the Leased Property; business interruption insurance; and if applicable, comprehensive form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount not less than the full replacement cost of all Leasehold Improvements and all property in the Leased Property not owned by the Landlord. As was the case when the Landlord purchased insurance, a Tenant's covenant to insure is a contractual benefit conferred to the Landlord.

¹¹ *Commercial Tenancies Act*, s 23. See also: OMAFRA Factsheet No. 16-023 "Lease Agreements and Land Leases" (May 2016) online:

<http://www.omafra.gov.on.ca/english/bugsdev/facts/16-023.htm#components>; and see: "Real Estate Law in Canada" Osler Hoskin Harcourt LLP, online: <https://www.osler.com/osler/media/Osler/reports/real-estate/Real-Estate-Law-in-Canada.pdf>

¹² Note that tenant remedies should be drafted so you can claim other remedies as well

¹³ The *Commercial Tenancies Act* does not provide a commercial Tenant with any right to terminate a commercial lease. The threshold for establishing a fundamental breach is very high. It must deprive the Tenant of the very essence of the benefit of the Lease. If this happens, the Tenant is entitled to treat the contract as at an end and sue the Landlord for damages (monetary compensation).

IN WITNESS WHEREOF the Landlord and the Tenant have executed this Lease as of the date first set forth above.

Landlord:

Per: ____ (Signature)_____
Name: _____
Title: _____

Tenant

Witness

Signature

Name

Witness

Signature

Name