Accessing Land for Farming In Ontario

A guidebook for farm seekers and farmland owners | First Edition
Updated June 2011

FarmStart & Everdale Environmental Learning Centre
Available as a free download on our websites

Accessing Land for Farming In Ontario

A guidebook for farm seekers and farmland owners

First Edition
Updated June 2011

Primary Author
Pat Learmonth

Contributing Authors
Amy Darrell
Alexandra English
Laurie Thomas
Melissa Watkins
Tarrah Young

Illustrations
Michael Byers

The development of this guidebook was made possible through the support and financial assistance of Everdale Environmental Learning Centre, FarmStart, and the George Cedric Metcalf Charitable Foundation. It is not intended to provide legal or financial advice.

This publication may be cited as:
Learmonth, P. (2011). Accessing Land for Farming in Ontario. FarmStart & Everdale Environmental Learning Center. First Edition.

TABLE OF CONTENTS

OVERVIEW 2

ACCESS TO LAND FOR FARMING 4

A. USING SOMEONE ELSE'S LAND 4

B. BUYING FARMLAND 14

SUMMARY 19

RESOURCES 20

OVERVIEW

Over the last decade or so, the public has found a renewed interest in food – where it comes from, and how it is produced and processed. This interest, in turn, has spurred a new group of people to take an interest in producing food, especially for local markets. Many of these individuals have not grown up in the farming community and have limited access to capital. Many are young people, whose parents or grandparents may have been part of the migration off the farm in previous decades. Others are immigrants with plenty of skill but little capital. Some are second-career individuals, looking for a change of direction. These new farmers may be looking to purchase land or for alternative ways to access farmland that is affordable and secure.

At the same time, large numbers of "baby boomer" farmers are selling their farms in order to access the capital they need to retire. Over the next 15 years as many as one half of Ontario's current farmers will retire, leaving perhaps 1% of the province's population on active farms. Most of their farms will be sold outside the family. Non-farmers, as well as investors and developers, are frequent purchasers of these farms. This is driving the price of farmland beyond the means of most new farmers, especially in areas close to the same urban markets that are clamouring for "local food".

These factors combined are creating a new dynamic between the owners of farmland and farmers. Increasingly, farmland is being farmed by "tenants" under a wide variety of creative arrangements, which may or may not involve traditional "rental" payments.

This guidebook has been developed to assist farmers, especially new farmers, who are looking to "rent" or buy land for farming, and also farmland owners looking for someone to use their land for farming.

When To Use This Guidebook

This guidebook is intended as a practical guide or road map, facilitating preliminary discussion between a farm seeker and a farmland owner. It will help you both think through the many choices you have in order to arrive at the best possible arrangement.

It is quite common for a farmland owner and a farm seeker to meet and to not feel ready to develop an agreement. Here are some things to consider before you begin to work through this guide with a farm seeker or farmland owner, so that you feel adequately prepared and are more likely to develop a successful arrangement.

- Be clear about your short and long term goals for your farmland or new farm business. Clarify your financial, environmental and quality of life goals so that you can communicate them to the other person.
- Good communication is critical to making this work. Take some time to learn more about what makes for good communication and think about how you might employ those strategies as you move forward.

As a farm seeker, specifically:

- Take the time to develop the skills you need to start and manage a farm business. Working and learning on someone else's farm before you begin your own business will save you countless mistakes and loads of money.
- Develop a business plan or at least a "farm vision" that you can communicate to the landowner.
- Know what you are looking for in a farm and the surrounding community (ex: soil and climate, infrastructure, proximity to markets, access to farm and community services).

There is no magic formula. Every agreement is individual and you need not be restricted by the names given to arrangements you have seen, sample agreements or even what has worked for someone else. The most important thing is for you to record your ideas for an arrangement that works for both parties in your specific situation. If you have to, you can always adjust your plan after obtaining legal advice.

Preliminary discussions help to create a relationship of trust, especially where the parties do not know each other. Making sure both parties believe their plan is really fair will help eliminate misgivings that may sour the relationship later.

Particularly in a rental situation, both parties must think through the implications of their relationship in detail. As a farm seeker, you are building a business, putting time and money into improving the land and setting up infrastructure for your operation. Moving from farm to farm is not financially wise, and takes time away from your core work. As a farmland owner, you may be offering daily access to your home farm to another farmer. For both of you, discussing and eliminating future sources of friction should be a high priority, as it will increase the likelihood of a successful relationship.

This guidebook does not address the purchase of a farm business. It also generally assumes that, even if the owner of the land is farming, his or her farm business is separate from that of the farm seeker.

Put It On Paper

Perhaps you have heard the old saying "good fences make good neighbours". Fences ensure a clear understanding of where a boundary lies, in the same way as written contracts clearly define a relationship.

Traditionally, many rental agreements in Ontario are based on a handshake with a neighbour. They work because the terms are often well understood and fairly simple (e.g. for the use of additional acres for pasture or cash cropping by an established farmer within his or her own community).

However you should not assume that a "handshake" agreement is the best approach for you, and you should not feel that suggesting a written agreement is a sign of distrust. In arrangements involving new farmers without a local farming background:

- the parties are less likely to be well known to each other,
- the land is more likely to be used for intensively managed vegetable and/or livestock production (requiring more time on-farm),
- the tenant is more likely to make a heavy investment in the soil, and
- the agreement is more likely to involve some form of sharing of facilities and/or housing for the tenant.

In addition, some agreements are not legally enforceable if they are not written, and every agreement is easier to enforce if it is.

Finally, a written agreement for access to land may also be helpful (or required) if you apply for funding under programs such as Growing Your Farm Profits (http://www.omafra.gov.on.ca/english/busdev/growfwdgyfpwkshp.htm).

Given all these factors, making a detailed record of the terms of agreement is wise.

Help from a Third Party

Parties may find it beneficial to either review their workbook answers or work through challenging sections with an unbiased third party prior to seeking legal advice. A mediator or coach may provide constructive feedback or lead both parties closer to agreement on specific issues that would otherwise be left for costly meetings with the lawyers. Appropriate third party help and support may be found through contacting the Canadian Association of Farm Advisors (CAFA), FarmStart or through contacting your local economic development organization and enquiring about services for business startups/succession. Third parties may also include other farmers who have successfully been through the same process you are now embarking upon.

Obtain Legal Advice

Once the basic terms of your plan have been discussed and recorded, seek legal advice. *This guidebook is not intended to provide legal advice.*

Your preliminary discussions will likely save you considerable legal fees, as your lawyer will be concentrating on fine-tuning the legal aspects of your arrangement rather than sitting in on your discussions.

Ask whether there are any legal steps needed to carry out your intended plan. These may include:

- preparing a signed document containing particular statements, or following particular rules of execution (signing), so that later, if one of you fails to live up to your agreement, the other is protected, or
- registering a copy of the document against the title of the property to ensure that, if the property is sold, the new purchaser knows about the rental arrangement beforehand (and therefore your rights to use the land are preserved).

Any agreement relating to the sale of land must be reviewed by a lawyer and put in writing, as must some lease agreements.

ACCESS TO LAND FOR FARMING

If you don't own farmland and want to farm, you generally have two choices – **you can use someone else's land or you can buy land**. And while buying land may seem like the obvious choice for those who have the available capital, there are some advantages to using someone else's land. These include:

- not needing capital at start-up
- freeing up capital to invest in other farm assets
- avoiding debt
- providing a "testing period" (of market, property, location, business idea, general suitability to farming)
- mentorship and support of landowner

A. USING SOMEONE ELSE'S LAND

The alternative to ownership of the land you farm is arranging the use of someone else's land. From a legal perspective, there are a number of different frameworks (see "Farmland Access Agreements") in which this can be done. However, for your purposes, it is probably not too helpful to get tangled up in the legalities. That is what a lawyer is for.

In this guidebook, the terms "renter" and "owner" will be used to describe the two parties, regardless of the technical legal relationship between them. You, as the renter, could be dealing with an individual landowner, but you could also be talking with an institutional landowner, such as a local government, school, religious order, conservation authority, or land trust.

Your access arrangement may or may not include a cash payment to the owner. As you work through the guidebook, many ideas are presented for how two parties can come to a fair "deal", where both receive value for what they are offering. In any contractual arrangement, this "give and take" concept is important.

FARMLAND ACCESS AGREEMENTS

Some agreements for the use of land create rights to the land, called "interests in land", while others are simply contracts to permit actions to be taken on the land. Legally, farmland access agreements are categorized into types and given formal names. If one of the parties fails to live up to his or her promises, the tools available to the other depend on the type of agreement struck. The kinds of tools available include:

- preventing a landowner from forcing a tenant to leave before the agreed time is up,
- suing for unpaid rent, and
- taking and eventually selling property belonging to a tenant for unpaid rent.

No one wants to resort to these sorts of legal remedies, which can be expensive and time-consuming. The purpose of a well thought-out agreement is to avoid disagreement later.

For the curious, an overview of various types of farmland access agreements is found in "A Guide to Farmland Access Agreements – Leases, Profits a Prendre, Licences and Memoranda of Understanding" prepared by The Land Conservancy in British Columbia. While many references are made to BC law, the general concepts in the document are applicable in Ontario. See the Resources section (available online).

Remember, no matter what name you give your agreement, the legal implications will be determined by the terms you have actually agreed upon. If you work through the questions in the following guidebook section, you will have gone a long way toward defining your legal relationship. You will also save yourself time and money in legal fees. Your lawyer will be able to see what you are intending from the record of your discussions.

Working Through Your Agreement

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 the questions in the guidebook (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.

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: Record your 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 HST registrant? If yes, HST 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 the plot with as much detail as possible (if less than the whole property owned by the owner at the location above is being rented).

Section B: Timeframe for Agreement

9. How long is this agreement intended to last? Think about months and seasons, as opposed to simply years.
10. 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?
11. 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.
12. 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?
13. 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.
14. 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.
15. If the renter dies, is it intended that the right to farm there will continue (i.e. be passed on to an heir)?
16. If the landowner dies, is it intended that the agreement continues or comes to an end?

A LEASE TEMPLATE?

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, it can be very helpful to look over sample agreement forms. You'll find a sample short term lease and a sample multi-year lease developed by Land for Good in the Resource section. You can also reference factsheets developed by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) on Business Arrangements and Agreements (http://www.omafra.gov.on.ca/english/busdev/agreements.html) where you'll find information, sample leases and blank forms for common lease arrangements such as a "Cash Lease" and "Crop Share Lease".

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.

17. 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)
18. What areas are private areas of the owner?
19. 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.
20. 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?
21. Who may the renter bring on to the land and for what purposes? Interns, employees, volunteers, friends…
22. Will there be restrictions on how many people will be brought on the land at any one time?
23. Will the renter be permitted to send other people on to the land when she is not there? If so, how will those people know what the terms of access are?
24. 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.
25. 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

26. What is the understanding between the parties as to business activities of the renter? (e.g. vegetables, livestock, field crops, processing)
27. Are there any activities that are not acceptable to the owner? (e.g. stocking rates, fuel storage, spreading biosolids, use of chemicals or pesticides)
28. Who is responsible for manure removal and management?
29. 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)
30. Will the renter require specific permission to erect farm signage?
31. 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?

"I DO?"

The on-farm wedding had been planned for months, and the day dawned sunny and clear. But what is that big tanker across the road? Pig manure?! You are spreading today?! This unfortunate occurrence really happened. Disaster was averted at the last moment, but the lesson was a good one. Tell your neighbours when you are planning a farming activity that could create a "nuisance" for them, and ask them to tell you when planning important on-farm social events.

ORGANIC CERTIFICATION

As a general rule, it takes three years without the use of "prohibited substances" (such as inorganic fertilizers and chemical pesticides) for land to be certified organic. However, it is not always necessary to actually wait three years to become certified if proof is available that the farm has been managed organically in the past two years. In this case, only one year under the supervision of a certifier may be needed.

As a general rule, animals may be certified organic if the mother is managed organically during the last trimester of gestation. Birds are an exception. They may be certified if managed organically from hatching.

Before you embark on organic management, be sure you fully understand the requirements. Contact one or more accredited certifiers, choose one and establish a relationship. The Canadian Food Inspection Agency maintains a complete list for Canada at http://www.inspection.gc.ca/english/fssa/orgbio/cbliste.shtml. There are several that operate in Ontario. OMAFRA has published a list found on their website at http://www.omafra.gov.on.ca/english/crops/organic/organic.html. The Organic Council of Ontario is another excellent resource at http://www.organiccouncil.ca/

32. 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.
33. 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 the Conservation Land Tax Incentive Program (CLTIP), or Managed Forest Tax Incentive Program (MFTIP), has signed a conservation agreement or has areas regulated by the Conservation Authority, the tenant should be aware that proper stewardship of affected areas is mandatory.
34. 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.

STEWARDSHIP PLANS

An excellent discussion about developing a stewardship plan in a tenancy situation can be found in Chapter VII of *"Holding Ground – A Guide to Northeast Farmland Tenure and Stewardship"* prepared by the New England Small Farm Institute. See the Resources section for a full citation.

Section E: Use of Facilities and Infrastructure

35. Will the renter have exclusive use of any buildings or structures on the property? For what purposes? Who is responsible for maintenance and repairs?
36. 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?
37. Will the owner have the right to enter and inspect the rented land and buildings?
38. Are there septic or washroom facilities available to the renter? Who is responsible for maintenance?
39. Is fencing in place that is required by the renter for his or her business? If so, who is responsible for maintenance?
40. 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?

41. Is the renter entitled to the use of electricity? On what terms and how will this be monitored?
42. 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?
43. Will the renter have the use of any equipment belonging to the owner? How will this be valued?
44. 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?

Section F: Other Benefits to Renter

45. 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)
46. If the owner is a farmer, will he or she provide formal mentoring to the renter? How will this be valued?
47. Is the property certified to any standard that benefits the renter? (e.g. organic certification) How will this be valued?
48. Will the owner be providing a right of first refusal to the renter if the property is to be sold?
49. Will the renter be given an option to buy the property at a certain time and price?
50. 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

51. Who is responsible for carrying insurance? For what purposes? What about liability for personal injury to the renter or others she invites on the land? For a complete discussion of insurance issues, including environmental issues, see OMAFRA Factsheet Farm Business Insurance, Order No. 00-041. Consult your insurance company as well.
52. Who is paying the property taxes?
53. How will any jointly agreed legal fees be divided and paid?

WATER – A CRITICAL FACTOR!

Water is never an issue until there isn't enough. But how much is enough? And how do you know how much there is? Here are some tips.

- It is often said that, as a rule of thumb, you need 1 inch of water per week to irrigate vegetables during a drought. This is referred to as an "acre inch", and equals 27,000 gallons. There is a great deal of useful information available from OMAFRA on the subject of irrigation.
- If you are drawing water from a well, you can find out the pumping rate and recovery rate by reading the "well record" that must be prepared when a well is dug or drilled. These are filed at the Ministry of the Environment and can be ordered by calling 1-888-396-WELL(9355).
- Think about what is in the water you are relying on. If well water is high in salt, you may harm the soil by "salinating" it. If water contains e coli bacteria, this could affect the safety of your produce. You can obtain a water test by contacting a lab for a complete water analysis. The Ministry of the Environment keeps a list of licensed labs at http://www.ene.gov.on.ca/en/water/sdwa/licensedlabs.php

Section H: Housing

54. 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 they have received fair "value" for what they have 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.

Read through the case study called "A CSA at Whole Circle Farm". The renters and owners in that case recognized the value of their mutual contributions to each other's businesses, and that the relationship went far beyond "renting the land". However, every situation is unique, and so the best way to start is by doing an "inventory" of your relationship.

Go back through Sections E, F, G and H. Make up a spreadsheet to show what is flowing in each direction. What is the "value" of each item? Can they be valued in dollars?

In attempting to value some items, OMAFRA's Guide to Custom Farmwork and Short-Term Equipment Rental may be helpful (http://www.omafra.gov.on.ca/english/busdev/facts/10-049.htm#survey).

55. How will use of the land be valued?

VALUING THE USE OF LAND

Land is the foundation of the agricultural business. Above all else, it is the asset you need to make money in farming. So valuing its use (apart from the use of other on-farm resources or equipment) is a critically important question.

When a farmer is renting land for hay, pasture or cash crops, he will often pay a "going rate" or "current market rate" in the area for land for that purpose. Those rates vary widely in Ontario, but are fundamentally based on the productivity of the land, the economics of the crop being grown, and supply and demand in the area. They represent what the "willing landowner" and "willing renter" feel is fair in an open market, and assume that there is more than one potential renter in the market. OMAFRA publishes fact sheets on these standard types of leases. See Business Arrangements and Agreements at http://www.omafra.gov.on.ca/english/busdev/agreements.html.

However, using "going rates" when renting land for purposes other than hay, pasture and cash-cropping introduces some challenges. The economics of the crops are different and the land base being rented may be fairly small and specifically suited to the purpose. There really is no "going rate" because of the lack of comparable arrangements. For these reasons, it is best to steer away from a formulaic approach, although local rates can be used as a starting point.

In leases of land for non-traditional purposes, a multi-faceted approach that comes at the question from a number of angles is recommended. Consider questions such as:

- What can the renter afford to pay, given his or her costs of production and income from the land?
- What other uses does the landowner have for the land (what opportunities is he giving up)?
- What investment does the landowner have in the land?
- Is the land specially suited for the renter's purposes in any way (eg. location, quality of the soil, certification, availability of water etc)?
- Is a long term commitment being offered?

Here is some food for thought. In an urban community garden, you might rent a 50 by 20 foot "plot" to grow vegetables and pay $100 for the season. That is the equivalent of about $4300 per acre. So a renter cannot expect to pay the same rate for an acre as for 50 acres. Scale usually reflects the economics of what the land is being used for and by whom.

Many of these types of factors have been addressed in this guidebook earlier, so reviewing your thoughts from those sections might help to pinpoint factors that influence the land's value in your circumstances.

OMAFRA has put together a good resource in the Factsheet entitled: Land Lease Arrangements (see Resources, available online). This includes a discussion of five approaches to establishing fair rental rates for farmland.

None of these approaches are mutually exclusive. Once you have looked at your situation from a number of angles, you will be able to come to a compromise with the owner as to how the land will be valued. Then you can go on to look at the valuation of other aspects of your arrangement.

CASE STUDY 1: A CSA AT WHOLE CIRCLE FARM

Jeff, Leslie and I arrived at Whole Circle Farm after a few years of working on other farms. We wanted to learn from the two very experienced farmers at Whole Circle, Johann and Maggie Kleinsasser, but were also interested in starting our own business under their guidance. The situation couldn't have been better: Johann and Maggie were already farming vegetables and therefore had an incredible amount of knowledge as well as the necessary tools, equipment and infrastructure (e.g. three tractors, all the implements you could desire, a farm store, greenhouse and cold storage).

They agreed to have us take on responsibility for the market garden while they focused on the farm's livestock and grains. We continued to grow vegetables for their farm store and one farmers market, and expanded the garden to begin selling through Community Supported Agriculture (CSA). (CSA is a way of selling farm products where members commit to the farm by paying an up-front membership fee in the spring, and in turn receive a share of the farm's fresh produce.)

We stayed at Whole Circle Farm for three years, each year taking on more responsibility for the garden. By the third year we were running the market garden as a separate business. While we lived off the farm in nearby Guelph (about a 20 minute commute to the farm), two of our three interns lived on the farm with Johann and Maggie. In the winter preceding our third season, with two years under our belt of working closely together, we developed a new arrangement to replace the profit sharing one that we had been using (in which Jeff, Leslie and I received a certain percentage of the garden's gross sales). The three of us wanted to know if a 250-member summer CSA and a 150-member winter CSA could be a profitable venture for three business partners.

As we developed a budget for the coming year, we made sure to identify additional expense categories that would appear under this new arrangement. Simply put, we tried to name all of the "things" that Johann and

Maggie would be providing us with and then worked together to put a fair value on each item. These included obvious things like the rental of land, machinery and buildings but also less obvious things like electricity, food and help in the garden. Similarly, we listed all of the "things" that Jeff, Leslie and I would be providing the Kleinsassers with and placed a value on them too. Where it made sense, we bartered one service or product for another. Below is a list of some of these expenses and the way in which they were valued.

Out in the field we kept note of tractor use and hours worked and transferred those numbers into a spreadsheet each week. Numbers and dollars were tallied four times a year and the Kleinsassers were paid accordingly. At the end of the day, the exact dollar value probably mattered less than the act of truly acknowledging and expressing gratitude for all those things that could easily be taken for granted.

Our agreement was only for one year, and that is all it lasted. It confirmed for the three of us that you could make a decent living market gardening, and gave Jeff and Leslie the confidence to go on and buy their own farm where they have since developed a CSA that builds on everything they learned at Whole Circle.

PAID TO KLEINSASSERS	VALUE/PAYMENT	COMMENTS
Land rent	$75/acre x 13 acres	
Irrigation rental	$705/year	1/5 of the original cost ($3,000) + 3.5% interest
Greenhouse and pellet stove rental	$1,295/year	1/10 of the original cost ($9,000) + 3.5% interest
Use of garden tractor + implements	$20/hour	
Use of field tractor + implements	$30/hour	
Johann custom work	$55/hour	e.g. spreading manure, tractor repairs
On-call labour	$10/hour	e.g. help with harvest
Room and board for interns	$400/month/intern	
Meals for three farm managers	$2.50/lunch	
Hydro	$3,000/year	Complicated calculation where we estimated electricity use for shed, irrigation, etc.
Contributions to phone and internet	$25/month	
Insurance	$1,147/year	¼ of farm liability insurance + all of delivery vehicle insurance
Organic certification	$213	¼ of total farm certification cost
Potato Seed	In exchange for potato seed from this year's harvest.	On condition that is of equal or superior quality.
Shed rent	Barter for property upkeep and Saturday dump run.	
Store rent	Barter for upkeep and increased traffic.	
Use of computer, printer and office	Barter for promotion, design, administrative help and computer repairs.	
PAID TO FARM MANAGERS	**VALUE/PAYMENT**	**COMMENTS**
On-call labour	$10/hour	e.g. help with livestock
Vegetables	Bartered for meat and other farm products	

Ali English, FarmStart, Guelph, Ontario

56. 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)
57. Is more value flowing in one direction than the other? What is left "owing"?
58. How will this be "evened up"? Through a cash payment? Are there other creative solutions?
59. Is a variable payment suited to your situation?
60. 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?
61. What do the parties agree will happen if the cash rent is not paid on time? Not paid at all?
62. What will happen if unforeseen circumstances beyond the control of the parties make the rented area un-farmable or unproductive?
63. Will the renter perform any services for the owner? How will this be valued?
64. Will the renter supply the owner with any product of his farm enterprise for consumption? How will it be valued?
65. If the renter has a Farm Business Registration Number (and the owner does not), will she sign the required tax form so that the owner's property taxes can be reduced? What is the value that this represents?
66. 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?
67. Anything else you can think of?

Section J: Enforcement

68. If one party does not do what she 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.
69. If the parties are unable to resolve differences down the road, what will happen? Sometimes, a provision for arbitration is inserted in leases.

If you have worked through the guidebook to this point, it is time to go see a lawyer. You may also want to take a look at the Resources section, including OMAFRA's factsheets, to see whether they provide you with any more ideas about your particular situation.

VARIABLE CASH RENTAL PAYMENTS

It is possible to specify that the cash rental will depend on the success of the enterprise, as long as a specific method is established ahead of time for calculating the rent each year. For example, it could be agreed that the owner be paid a certain percentage of the renter's gross income as rent. This does not mean that the owner and the renter are "partners" in the business. Business partners would share all the costs as well as the benefits of the business, and would enter a separate partnership agreement. Crop Share Leases and Flexible Cash Leases specifically state that the renter and owner are not partners. See OMAFRA's Factsheets "Crop Share Lease Agreements" and "Flexible Cash Lease Agreements" for further information.

FARM PROPERTY CLASS TAX RATE PROGRAM

If your property is assessed as a farm for tax purposes, and it is being actively farmed by you or by a tenant, it is probably eligible for the Farm Property Class Tax Rate Program. This will reduce your property taxes on the farmland portion of the property by 75%. For complete information on this program, go to http://www.omafra.gov.on.ca/english/policy/ftaxbac.htm, phone OMAFRA at 1-800-469-2285 or send an email to farmtax.omafra@ontario.ca

B. BUYING FARMLAND

If you are considering purchasing a farm, the first question to ask yourself is "Am I ready?" If you are planning to make your living (or part of your living) from a farm business, it is critical that you:

- have acquired the necessary farming skills
- have developed a viable business plan, and therefore
- know what you are looking for in a farm and the surrounding community.

Buying a farm is a serious commitment and can be a complicated process that may require many years of preparation. The sooner you begin to plan and research for it, the more likely you are to purchase the right farm and to develop a successful farm business.

CASE STUDY 2: **BUYING GREEN BEING FARM**

We were 5 years into our careers as new farmers, and had taken the path from intern to farm manager. We were ready to have our own farm business. Not believing purchasing would be a possibility for us, we pursued a number of different land tenure options. But it was, admittedly, the romance of ownership that kept calling to us. I had commuted to farm jobs before, and farmed on other people's land, but there is a power in the notion of waking up every day on your own piece of land, and planting trees you hope to take shelter under in 40 years time.

It started with a late night surfing trip on mls.ca, where the bulk of farms are listed for sale online. Next, a phone call to an agent. After all, it can't hurt to take a look at a farm or two, right? This started us on a whirlwind journey that in a year's time would find us on a farm of our own. The first thing we needed was money. My husband has had a non-farm job for a few years, but this was not enough. I took a job in the city as well to leverage some capital for the downpayment. We realized we had to stop farming in order to keep farming. We turned our bedroom into Farm Hunt Central, with a map of Ontario on the wall, next to listings of interest, and a 12 month wall calendar, with dates selected for certain events such as "Find Financing". September 30th loomed ahead: "Buy Farm".

The day did come when we found the farm of our dreams. Incidentally, it was also the first day both our sets of parents met. There we were, all 6 of us, standing in the kitchen of our new home. This was it.

We put an offer in. The offer was not accepted, we countered with a higher offer, it was not accepted, and finally we met in the middle. Then all we had to do was get our conditions met, the most daunting one of course being financing! Who would lend two young kids from the city enough money to buy a farm?

Farm Credit Canada would not. Hopefully the times are changing, but our business plan for organic pastured livestock and a winter CSA was not in line with the sort of farming they fund. However, we did manage to get a residential mortgage from Scotia Bank. Essentially, a residential mortgage is given to people buying houses. The bank does not lend you money for the farm portion of the property. So for a farm with a price tag of $342,500, the bank loaned us $240,000, which is what they felt the house was worth. It was up to us to make up the difference.

We were extremely fortunate in that my mom loaned us $50,000, repayable only if we re-sell. And though I hadn't worked at my new city job long enough for the bank to consider it in their mortgage calculations, over the year of farm hunting we saved every last penny and were able to put aside almost $30,000. We also had some savings in the bank and used the Home Buyers Plan to liquidate our RRSPs to put toward our downpayment as well.

> Finances aside, the other thing that allowed us to buy the right farm was our experience. Our years of ‘practice’ on other farms were essential in order to know what we needed when we started farm shopping! A solid business plan was also necessary to help us set the criteria for what we needed on our own farm: proximity to a market, proper soil type, infrastructure for livestock, etc. It is critical to know how to farm and to have a plan for how to do so successfully before making the leap towards farm ownership.
>
> This is our story, and every farmer has a different one. I think that the most important thing for a farmer to do with the dream of owning their own land, is to start early. Figure out what it’s going to take to make your dream come true and get going. If you think that in 5 years you might like to own a farm, start planning now. It will likely take some serious sacrifice, innovative thinking and maybe collaboration, but the payoff at the end of the day is worth it.

Tarrah Young, Green Being Farm, Neustadt, Ontario

Applying for a Mortgage

If you are not sure whether you can afford to buy a farm, start by talking to a variety of lenders - your bank, Farm Credit Canada (FCC) or other mortgage lenders.

New farmers often find mortgage financing challenging because:

- they do not have the cash down payment (usually about 25%, but depends on the type of farm business),
- they do not have a well enough developed business plan, or income that currently produces the cash flow needed to support the mortgage,
- their business plan is “non-traditional” and so has less credibility,
- interest rates are often higher on farm mortgages than residential mortgages, because the risk and the costs for the lender are higher, and
- farmland may be valued by some mortgage lenders based on a residential valuation (house plus a few acres) rather than as an operating farm, so they will loan less of the sale price.

Shopping around a bit will help you find the most willing lender for your circumstances. When you go to meet with a lender, you should be prepared with the following kinds of information:

- a net worth statement (statement of assets and liabilities) – see Resources section for a sample
- income tax returns and/or accountant prepared financial statements for the past three years
- if you have significant off-farm income, a recent pay stub or written employer verification
- a credible business plan, and
- a good credit rating – make sure you make regular payments on any other debts and credit cards.

Some funders have creative mortgage “products” that may help you to start up your farm business. For example, there are mortgages that will allow you to reduce your downpayment, or defer capital and even interest payments for a period of time, if you qualify. Other funding arrangements may allow you to essentially borrow over time, building capital faster, because the landowner does not need (or want) all the cash price up front. Be sure to ask about these kinds of possibilities and see if they can be made to work for you. Ask also about federal and provincial government assistance programs.

For example, the Canadian Agricultural Loans Act (CALA) program, which amended and replaced the former Farm Improvement and Marketing Cooperatives Loans Act (FIMCLA) program, is a well-established federal loan guarantee program that has recently become more useful to new farmers. A new farmer can now qualify under the program, whereas under the FIMCLA program, access was limited to established farmers only.

Essentially, under the CALA program, Agriculture and Agri-Food Canada (AAFC) guarantees your loan from a financial institution. You pay a percentage-based fee for this. However, there are a number of advantages. The financial institution cannot charge a floating rate of more than its prime plus 1% if the rate is variable, or its comparable residential mortgage rate plus 1% if the rate is fixed. As a new farmer (a farmer having farmed less than six years), you cannot be asked for a down payment of more than 10%. You can borrow up to an aggregate of $500,000, with $500,000 available for real property (land and buildings) and $350,000 available for all other purposes (such as breeding livestock, implements, equipment, machinery, etc., all of which must be used in the farming operation). You have up to 15 years to repay a loan for the purchase of land, and up to 10 years for all other purposes.

If a default on loan repayment occurs, the financial institution will take action to recover the loan amount outstanding. Once collection activity has been completed, the financial institution can claim any residual amount owing from AAFC, which will pay the financial institution 95% of any eligible outstanding amount. As any amount paid by the federal government becomes a debt owing to the Crown, the federal government will still require you to repay your loan to it.

WHAT IS A MORTGAGE?

It is an agreement under which you borrow money, but if you default on your loan payments (under specific sets of circumstances) the lender can sell your property to get back the money you owe. Obviously, the property you purchase has to be worth enough, and be saleable enough, to give the lender security in knowing it can recoup its money by selling it.

The CALA program guarantee is a product that a financial institution can choose to offer as part of its portfolio of products. Thus the lending decision rests with the financial institution, which will still look at your creditworthiness, in addition to the benefit of the CALA guarantee.

CALA program details are available online at www.agr.gc.ca/cala, by calling 1-888-346-2511, or from your financial institution.

In the end, you have to convince the lender that you are creditworthy, and that may be challenging. But remember - very few people have large amounts of capital available at a young age to start a business – whether that business is farming or opening a restaurant!

So let's assume you do not yet qualify to borrow from a conventional lender to buy your dream farm, but you do not want to continue renting. What are your options?

Buy Small and Build Your Net Worth

Think about whether you need a 100-acre farm, or could start with a smaller parcel that would allow you to build your business and your personal "net worth" over time (see "Statement of Net Worth"). Over the last decade, many houses and farm buildings have been severed off of farmland on the basis that they are "surplus". The assumption has been that bigger farms are the way of the future, and that the houses on these 100 acre farms are not going to be needed. This may provide an opportunity, if you can find the buildings you need, plus a small severed acreage. You might be able to rent an adjacent field as well, to get more space. Continue to build your farm business, make your mortgage payments and build equity. Equity is the value in your land (and business) that is yours after you pay off all your debts. Building equity will increase your ability to borrow if and when you need to purchase more land later.

At the same time, think about how to make money with steady off-farm work, which will improve your reliable cash flow and credit-worthiness. Make sure you make all your payments on time so that your credit rating remains good.

The main disadvantage of buying small, if it is just a temporary solution, is that you have the costs of selling and buying (legal fees, real estate fees, land transfer tax, etc) a second time, when you move to a more ideal location. These costs can eat away at equity.

Find a Co-Signer

If you do not qualify on your own, then one option is to find someone who does, and have them co-sign the mortgage with you. However, this leaves the co-signer with the same obligations as you – to pay back the debt. If you do not have reliable income to make the mortgage payments, then you are putting yourself and the co-signer at very high risk by using this approach.

Financing from the Seller

You might find a farmland owner who is willing to lend you the money (give you a mortgage) to buy his land without your having to qualify through the usual lending channels. In Ontario, this is often referred to as "mortgage-back" or "vendor take-back". It can be used for the entire mortgage you need or just the amount the conventional lender won't lend. In the latter scenario, the conventional lender will take a "first mortgage" and the seller gives you a "second mortgage".

Realistically, most retiring farmers need to sell their farm for cash in order to have the money they need to live on. However, you may find a farmer with sufficient assets to consider helping you this way without jeopardizing his own finances.

It requires a relationship of trust between a farmland owner and a new farmer to make this work and legal advice is absolutely necessary. If you have no prior relationship, the seller is likely to want to build a relationship with you over a period of time. This will give him or her confidence that you can make the payments, especially if you have tried and failed to get a conventional mortgage. They might start by leasing (see "Lease with Option to Purchase" below) to you, to see how you are running your business and whether it is maturing.

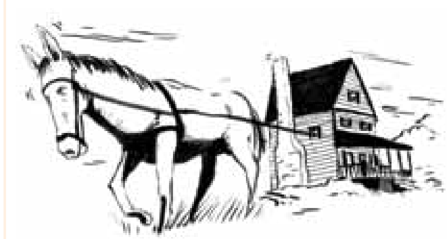
Generally speaking, you should expect that the seller will behave like a mortgage company once the sale is completed and title has passed to you. Don't expect that you will get leniency with your payments, unless this is has been explicitly addressed. However, it could be worth discussing the possibility that seasonal cash flow be considered in the payment schedule (i.e. that payments could be higher at certain times of the year and lower at others, if all parties agree).

Agreement of Purchase and Sale

An Agreement of Purchase and Sale is a contract to sell land in which title passes to you at a future date, once certain conditions are met. This option allows a seller to retain title until you have paid off the purchase price or a portion of it and may be useful if you need time to put your down payment or your financing in place. If you are unsuccessful, the deal never closes. The agreement can include a vendor take-back mortgage, but need not.

STATEMENT OF NET WORTH

A Statement of Net Worth lists all your "assets" and all your "liabilities" and then balances them against each other to determine your "net worth". Your net worth is (in concept) how much money you would have if you sold everything you own and then paid all your debts. A sample is found in the Resources section, but online templates are also available (e.g. Microsoft's free fillable one at http://www.officetemplates.org/statement-of-net-worth-template.htm) and financial institutions all have them.



CHECK THE ZONING!

Especially if you are looking at smaller parcels of land, always check the zoning to be sure that you will be allowed to carry out the activities you have planned. Talk to the township where the land is located. Also, do not assume that you will be able to build a barn or a house wherever you want. There are set-back and minimum distance separation rules that may prevent new dwellings and livestock barns from being built close together. Even land with barns and a small amount of acreage that could be used for some kinds of agricultural production may not be eligible for the agricultural property tax rate because the land is classified as rural residential (not agricultural).

Lease with Option to Purchase

A lease with an option to purchase gives you the right to rent land for period of time and to decide later whether to purchase it. The purchase price might be arranged at the outset, or the parties may agree that it will be set later using a certain method, once you decide to exercise your option buy. The agreement can also stipulate that part of the rent go towards an eventual downpayment.

To make this work, you will need to find a seller who is planning to sell within the same timeframe as the agreement. If you do not exercise your option to buy, she will simply put the farm on the open market.

CASE STUDY 3: **LEASE WITH OPTION TO PURCHASE**

John and Sue are new farmers and farm partners. They have lots of farming experience and training, have rented land until now, and their business is doing well. However, they do not have the down payment or income needed to borrow from a traditional lender to buy their own farmland. They have found a farm that meets their needs and belongs to a farmer (Frank) who plans to retire and sell within the next couple of years.

John, Sue, and Frank have talked about how they might purchase Frank's land at that time. They have decided that they will first lease land from Frank. They will help him on the farm, as partial payment, and Sue will take an off-farm job. That way, they can save money for a down payment, as well as build up their income stream and credit rating.

After two years, John and Sue will have the option to purchase the farm at an agreed price, which they will exercise if they have managed to obtain the mortgage financing they require. Otherwise, the farm will be sold on the open market so that Frank can retire.

PRIVATE SALES

One advantage of relationship-based sales, where the farm is not yet on the market, is that the seller can save the cost of a real estate agent's fees (usually 5%) by selling directly to you. He might split that saving with you. On the other hand, because the property is not on the open market, a selling price has to be established some other way. If "fair market value" is the price, then a professional valuation (or two or three) may be required, and these will also cost money.

Farmland Conservation Agreements (FCAs)

In 2005, farmland conservation agreements became available in Ontario as another potential tool to protect land. The rules around the establishment of FCAs (sometimes called "easements") are laid out in Ontario's Conservation Land Act. Farmland conservation agreements are registered permanently on title, and specify what may and may not be done in the future with the land. Most commonly, they restrict future development to protect agricultural uses. When an FCA is donated, the value of the property for tax purposes is reduced by the appraised value of the donation, and a tax receipt is issued to the landowner for this amount.

Because of the potential tax benefits that a landowner may achieve by registering an FCA, there may be an opportunity for a new farmer to purchase the protected farm at a somewhat reduced price. This possibility depends on a number of factors:

- the availability of a land trust (or other qualified organization) to take on the long-term management of ensuring the terms of the FCA are not violated,
- a set of circumstances that creates tax savings for the farmland owner, which he can then pass on to the new farmer, and
- the willingness of the farm owner.

Farms with ecologically significant features are the most likely candidates for a farmland conservation agreement.

This tool has been used in the US to ease farm transfers to new farmers. However, because it is a relatively new concept in Ontario, you should approach your local land trust, and/or Ontario Farmland Trust (www.ontariofarmlandtrust.ca), in advance to explore this option in your geographical area.

SUMMARY

The basic concepts outlined in this guidebook illustrate that many creative arrangements are possible, as long as both the renter and owner, or buyer and seller, are willing. Under the right circumstances, a new farmer may even be able to gain a head start on farming his or her own farm by renting it to begin with, and buying it later. Always keep in mind that agreements are most likely to succeed if they are fair and equitable to both parties. After all – you are starting a business that depends on the land, your most valuable business asset.

Best of luck in negotiating the farmland access arrangement that suits your needs best!

THE COMMUNITY LAND TRUST MODEL – AN EVOLVING TENURE TOOL

Adapted from *Holding Ground: a Guide to Northeast Farmland Tenure and Stewardship* (See the Resources section)

There is growing interest in new kinds of tools and models that help provide affordable and secure access to land for farmers who may not be able to purchase farmland outright. Among these are Conservation Agreements, cooperative ownership and the Community Land Trust (CLT) model. While these tools are relatively new, especially in Canada, they hold significant potential and are good to know about.

A CLT is a not-for-profit organization with membership open to any resident of the region where it is located. The purpose of a CLT is to create a democratic institution to hold land and retain its use-value for the benefit of the community. The effect of a CLT is to provide affordable access to land for housing, faming, small businesses, and civic projects.

A CLT acquires land by gift or purchase. It develops a land-use plan for the parcel and leases sites for the agreed-upon purposes. Leases may be very long term, inheritable and renewable. The leaseholder owns the buildings and any agricultural improvements on the land itself. Resale restrictions ensure that the land will never again be capitalized and will be affordable to future generations.

There are a number of CLTs in the US. For more information visit the U.S. National Community Land Trust http://www.cltnetwork.org/ and Equity Trust http://www.equitytrust.org/.

RESOURCES

Canadian Resources

A Guide to Farmland Access Agreements: Leases, Profits a Prendre, Licences and Memoranda of Understanding – This Guide has been prepared by The Land Conservancy of British Columbia for use by landowners, farmers, communities and other land trusts. It identifies and explains different types of farmland access agreements, and provides samples. It focuses on two general categories of agreements: long-term agreements (10 years or more) and short, trial period agreements. Additional information is provided on topics such as taxation, financing, and accounting for equity. Available online: http://www.ffcf.bc.ca/programs/farm/cf/laa.html

Canadian Association of Farm Advisors (CAFA) – CAFA is a non-profit, self-regulating organization for Canadian farm advisors. Its mission is to continually improve the quality of advice being given to farm producers and their families. A farm advisor listing is available online. CAFA members include accountants, lawyers, financial planners, bankers, insurance brokers, family therapists and other professionals. http://www.cafanet.com/

Everdale Organic Farm and Environmental Learning Centre – Everdale is an organic farm and learning center that offers a variety of workshops and new farmer training programs including an Organic Farming Certificate, a farm business planning program and a regional land-linking program. http://www.everdale.org/

FarmStart – FarmStart is a provincial not-for-profit organization dedicated to supporting new ecological farmers through their farm incubator program, a variety of business planning and technical courses and workshops, the FarmLINK program (see below) and a variety of land access and succession services for farm seekers and farmland owners. http://www.farmstart.ca/

FarmLINK.net – This website brings together farm seekers who are looking for land and/or mentorship and farmland owners who have land available and/or expertise to share. The website also includes a resource collection. http://www.farmlink.net/

Ontario Farmland Trust (OFT) – OFT is a charitable organization that has been established to work with farmers, rural communities and other interested parties to promote the protection of farmland in the province of Ontario. Their work includes helping landowners develop farmland conservation agreements for their properties. http://www.ontariofarmlandtrust.ca/

Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) – OMAFRA has a series of factsheets that focus on "Business Arrangements and Agreements" that provide information, sample leases and blank forms for a variety of arrangements including Cash Lease, Crop Share Lease, Flexible Cash Lease and Farm Building Lease. There are also factsheets on other business arrangements, such as Business Partnerships, Joint Ventures, Corporations and Co-operatives. Available online: http://www.omafra.gov.on.ca/english/busdev/agreements.html

US Resources

Farm Transfer Network of New England – A network of professionals and organizations offering expertise in farm transfer and succession. The website has a great resource section. http://farmtransfernewengland.net/resources.htm

Finding Land to Farm: Six Ways to Secure Farmland – Developed by ATTRA (National Sustainable Agriculture Information Service), this publication creatively highlights some common ways to lease or own land. It outlines important considerations about each of these leasing options and paths to ownership. Available online: http://attra.ncat.org/attra-pub/PDF/finding.pdf

Greenhorns Mini Compendium on Land Tenure Resources – Land. Liberty. Sunshine. Stamina. A mini compendium of resources for beginning farmers on the topic of finding sustainable land tenure. This compendium was put together for a Land Access Forum for beginning farmers in the Hudson Valley on September 29, 2010 at the Pfeiffer Center in Chesnut Ridge, NY. Available online: http://thegreenhorns.net/

Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship – This comprehensive guide offers models and mechanisms, other than outright ownership, for secure tenure on farmland in any U.S. region. Contains simple explanations of tenure options, useful worksheets, case studies, and sample short- and long-term leases. A New England Small Farm Institute (NESFI) publication available from their Bookstore. http://www.smallfarm.org/

International Farm Transition Network (IFTN) – The IFTN is a network of organizations in the US (and a few in Canada) that work to support the next generation of farmers and ranchers. Their website provides a listing of all US land linking programs. http://www.farmtransition.org/

Land For Good – Land For Good is a New England non-profit that provides farm and land access assistance, farm transfer planning, farm design, and farm use agreements. Their website has a terrific resource section, which includes a free 4 module online tutorial called "Is Farm Leasing Right for You?" that provides basic information, lease example and linked resources. An "Acquiring a Farm" online tutorial, also in that section, enables you to develop your own farm seeker's action plan. Both tutorials prepare farm seekers to access further assistance or proceed independently. http://www.landforgood.org/

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)**			

Land For Good: Sample Short-Term Lease Agreement

This agreement is between ________________ (landowner) and ________________ , (tenant), for the lease of certain parcels of land for the purpose of ____ [describe agricultural purpose(s) and operation].

1. The parcel(s) contained in this agreement are is/described as follows: [parcel location, acreage, bounds, features, condition, etc.]
2. The term of this lease shall be from ______________ to ____________________ except as terminated earlier according to the provisions below.
3. The tenant agrees to pay a lease fee to the landowner of $_______ per acre or $_______ total, per year. The tenant agrees to pay such sum at the beginning of the lease term and on the anniversary thereof unless otherwise mutually agreed. A late penalty of up to [ ]%/month may be assessed on all late payments. This lease fee may be renegotiated annually.
4. Permitted Uses: The tenant is permitted all normal activities associated with the above purposes, including but not limited to:

The tenant agrees to employ standard best management practices. It shall not be considered a default of this Lease if weather or other circumstance prevents timely practices or harvesting.

5. Prohibited Uses: The tenant shall not, unless by mutual agreement to the contrary, engage in any of the following activities on said parcel(s):
6. The tenant agrees to prepare an annual management plan for review by the landlord, complete annual soil testing, and apply amendments as indicated at his/her own expense. The tenant agrees to proper disposal of trash and waste. The tenant further agrees:
7. The [landowner/tenant] agrees to pay all taxes and assessments associated with this parcel.
8. The farmer agrees to provide the landowner with evidence of liability insurance coverage.
9. Either party may terminate this lease at any time with _____ month notice to the other party. The tenant agrees not to assign or sublease his/her interest.
10. The terms of this lease may be amended by mutual consent.
11. A default in any of these provisions by either party may be cured upon written notice by the other party within ____ days of receipt of such notice. Any disputes occurring from this lease may be resolved by standard mediation practices, if necessary.
12. Landowner retains his/her right to access the parcel(s) for the purposes of inspection with prior notification to the tenant.
13. Other special terms and conditions in this lease:

Signed:

______________________________________ Date ____________________

______________________________________ Date ____________________

Attachments may include:

- Plan of land
- NRCS or other Farm Conservation Plan
- Proof of insurance
- Other documents as mutually agreed

Land For Good: Sample Multi-Year Lease Agreement

This Lease Agreement is entered into on this ___ day of _____________, ____, by and between ________________ as Lessor ("Lessor"), and____________________, as lessee("Lessee"), for the Lease of certain land bounded by ____________in _______________, for the purpose of establishing and developing an agricultural enterprise.

I. Prologue and Statement of Purpose

[Broad statement of shared vision and goals. For example...Whereas both parties share a mutual interest in the long-term health and productivity of the agricultural lands and related features described below; and whereas the Lessor wishes to offer a secure and affordable farming opportunity to the Lessee; and whereas the Lessor wishes the property to be maintained according to high standards of stewardship], the parties agree as follows:

II. Description of Leased Premises

a) The Premises shall consist of cropland and other land, roads and/or structures as more particularly described in Attachment A. Attachment A. should include:

   a. Metes and bounds if available and appropriate, or adequate written description of leasehold boundaries

   b. Written description of all structures and other improvements (defined as anything installed upon the property such as fencing, well, pond, wind turbine, etc. Include present (baseline or "as is") condition, attaching photos if appropriate. Include roads, gates, culverts... anything subject to maintenance.]

   c. A farm plan showing intended uses of fields, built areas, conservation installations (e.g., windbreaks, drainage, etc.)

b) [If applicable] So that the Lessee can reside in close proximity to the land and provide for its care and supervision, Lessor and Lessee shall also be parties to a separate residential lease agreement for a term beginning on _________ and ending on ____________ for the farmhouse property located at ________________ (the "Residential Lease"). If the parties agree to an extension or renewal of this Lease, Lessor shall also offer Lessee an extension of the Residential Lease for a similar term, with the rental amount and other terms of such extension to be mutually agreeable to both parties.

III. Lease Term

a) The term of this Lease shall be for a period commencing ________________ and ending _________________.

b) No later than [three] months prior to the termination of this Lease, the parties have the option to negotiate a new Lease (= renewal with same or revised conditions) or an extension.

IV. Lease Fee

a) Lessee, on or before the first day of the Lease term, shall pay Lessor an annual Lease fee of $ ___________. This fee shall be payable by ___________________. A late fee of ____%/month will be charged to the Lessee.

b) The lease fee shall be increased by ___% over the prior year's Lease fee, according to the following agreed upon formula: ____.

c) [If applicable] Notwithstanding the foregoing, Lessor recognizes that Lessee may incur startup costs at the beginning of the Lease term related to improving the agricultural soils on the Premises or making other improvements to the Premises. Toward that end, the first annual Lease fee will be reduced by $_____.

d) The Lease fee may be renegotiated for any Lease renewal or extension.

e) Farm utilities are not included and such costs are to be borne by the Lessee.

V. Permitted Uses and Use Restrictions

a) Lessee is hereby permitted all normal activities associated with agricultural purposes including but not limited to: planting, cultivating and harvesting of crops, including perennial crops; application of soil amendments; pest and weed management, erection and management of temporary structures such as greenhouses, hoop houses, temporary fencing, irrigation systems, livestock sheds etc.; use, routine maintenance and storage of tools and equipment; post-harvest washing, cooling, sorting, and packing; keeping of bees for farm pollination; management of brush, field edges and roads; conversion of necessary and related land to agricultural production including but not limited to row crops and perennial plantings; and on-site sales of goods produced on the Premises as permitted by local regulations. Lessee may conduct educational and other public programming on the Premises related to, and in furtherance of, farm stewardship. Other permitted uses include: ____________________

b) Lessee agrees to prepare and comply with a Conservation Plan under the guidance of the USDA Natural Resources Conservation Service or comparable agricultural technical service provider. Such plan shall include applicable conservation practices including but not limited to crop rotation, drainage management, soil fertility, waste management, etc. The plan shall be periodically reviewed and updated by the provider, Lessee and Lessor. Lessee shall complete annual soil tests and amend the soil as indicated at his/her own expense. In addition, Lessee shall provide Lessor with a copy of Lessee's annual crop plan for informational purposes only.

c) Lessee agrees to abide by stewardship standards and practices as specified in Attachment C.

d) Lessor and Lessee shall conduct joint inspections of the Premises on an annual basis at minimum. In the interests of fostering frequent communication and a positive working relationship between the parties, Lessor may, at any time and from time to time, designate one or more individuals to act as Lessor's representative to the Lessee on all issues related to this Lease, including, without limitation, property management, stewardship standards and planning issues.

e) The Lessee shall not, unless by mutual agreement and prior approval to the contrary, engage in any of the following activities on the Premises: [FOR EXAMPLE: cutting trees; erecting permanent fencing or structures; removing minerals or topsoil, storing vehicles or farm equipment not essential to the farm operation; retail operations, except as provided herein; public events.]

f) Lessor reserves the right to approve plans as to design, location and materials of approved activities and structures. Such plans shall be submitted by Lessee at least ________ months in advance of anticipated commencement. Lessor shall not unreasonable withhold approval.

g) Lessee agrees to abide by all local, state and federal laws and regulations.

h) Lessee agrees to apply for all applicable permits at Lessee's expense, subject to any advance agreement between the parties to share such expenses.

i) Lessor reserves the right to enter the property for the purposes of inspection with 24 hours prior notification to the Lessee.

VI. Maintenance, Repairs and Improvements

a) Lessee is responsible for normal maintenance of the Premises including, without limitation, performing all minor repairs and ____________________. The Lessee will also keep the Premises free of trash to the greatest extent feasible. {Normal maintenance and repairs are more particularly described in Attachment E.]

b) At the commencement of this Lease and annually (in January of each calendar year or in such other month as may be mutually agreed to by the parties) or upon extension, Lessor and Lessee shall agree on major repairs, additions, alterations, replacements and improvements. Such specification shall be in written form and signed by both parties. (See Attachment E.)

c) With prior written approval from the Lessor (pursuant to the process described in Section VI (b), above, or at such other times mutually agreed to by the parties), the Lessee may place and maintain improvements including but not limited to any structures, wells, fencing, and perennial plantings upon the Premises.

d) In each case, both parties shall agree in writing as to how the costs of such major repairs, additions, alterations, replacements and improvements shall be allocated and whether the Lessee will own and/or have the right to remove such improvement at the conclusion of the Lease term in accordance with Section VI (f), below.

e) The Lessee shall be responsible for maintenance of all improvements constructed or installed after the date of this Lease.

f) Subject to the provisions of any specific agreements between the parties made in accordance with the provisions of Section VI (d), above, at the termination of the Lease, [FOR EXAMPLE… the Lessee may have the right to remove certain improvements constructed or installed after the date of this Lease, or may be required by the Lessor to do so, and return the property to its prior condition. Alternatively, the improvement may remain and become the property of the Lessor. The Lessor shall not be obligated to compensate the Lessee for the remaining improvements; however, the Lessor and the Lessee may establish alternative agreements set forth in writing and signed by both parties.]

VII. Insurance

a) Lessee is responsible for maintaining general liability insurance with coverage of [$2 million aggregate/$1 million per occurrence] and naming Lessor as additional insured during the period of the Lease.

b) Lessor shall maintain fire and extended casualty insurance coverage on the premises; such coverage shall be adequate to replace or repair farm buildings, if any, or equipment regularly used by the Lessee that may be destroyed by fire, flood or other casualty loss and to replace or repair such structure as soon as practicable.

c) Lessee shall provide Lessor with evidence of the above insurance coverage at the commencement of the Lease term and annually thereafter on the renewal date of such policies.

VIII. Transfer, Sale, Assignment and Sublease

a) Lessee may not sublease or assign the Lease without written permission from the Lessor. Lessor may, in Lessor's sole discretion, refuse to grant such permission or may stipulate conditions for such assignment or sublease.

b) The terms of this Lease shall remain with the land; sale of the Premises or portions thereof shall not invalidate lease terms.

c) [If applicable] Lessee agrees to abide by terms of any conservation or agricultural easement placed upon the Premises or portions thereof. Such terms shall not unduly restrict normal agricultural activities.

IX. Termination and Default

a) Either party may terminate this Lease only upon default by the other as specified in (b) below. Upon termination at the end of the Lease term or for any other reason, Lessee must vacate the property and remove all personal possession and any improvements that Lessee is required or permitted to remove per Section VI above. Property must be left in the same condition as at the commencement of this Lease, or better, normal wear and tear notwithstanding. If either party shall default in the performance of any of its obligations, covenants or agreements under this Lease and such default shall not be cured within sixty (60) days after written notice to the defaulting party, then the non-defaulting party may declare the Lease terminated.

c) Events of default by Lessee shall include, without limitation, the failure to: (i) pay the Lease fee when due, (ii) comply with the stewardship standards described in Attachment C, (iii) comply with repair and maintenance standards under Section VI, and (iv) maintain the insurance coverage required under Section VII. c) Events of default by Lessor shall include, without limitation, (i) failure to make the Premises fully available to Lessee for the establishment and development of an agricultural enterprise, and ____________________.

d) The parties recognize that weather, "acts of God" or similar unforeseen events may, in extreme circumstances, interfere with the Lessee's farming practices and could prevent the Lessee's timely compliance with the terms of the Lease. The Lessor shall take such circumstances into account before declaring an event of default. If the Lessor fails to remedy any default within the above-described 60- day period, the Lessee has the right to withhold rent and to pursue other remedies. A default under the Residential Lease entered into between the parties shall constitute a default under this Lease, and vice versa.

XI. Dispute Resolution

Both parties agree to the best of their abilities to resolve any disputes regarding the interpretation and performance of this Lease through mutual good faith effort. All disputes that cannot be resolved through such efforts shall be determined and settled by arbitration in Boston, Massachusetts in accordance with the rules and procedures of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, except that each party shall pay for the cost of its own experts, evidence, and legal counsel.

XII. Severability

If any part of this Lease is invalid or unenforceable, the balance of this Lease shall remain effective, absent such provision.

XIII. Amendments

No change in this Lease shall be effective unless it is in writing and signed by both parties.

XIV. Joint and Several Liability

All persons comprising the Lessee shall be jointly and severally liable for the Lessee's obligations hereunder.

IN WITNESS THEREOF, the parties have executed this Lease to be effective as of the date first set forth above.

LESSOR:

____

____

____

LESSEE:

____

____

____

Attachments

Attachment A. Description of Leased Premises

Attachment B. Lease fee schedule

Attachment C. Stewardship Standards

Attachment D. NRCS Farm Conservation Plan or equivalent

Attachment E. New Improvements

Attachment C. Stewardship Standards [Example]

The purpose of these stewardship standards is to embody Lessor's and Lessee's mutual commitment to protecting and enhancing the natural resources of the Premises. Both parties prioritize the long-term health and sustainability of the natural resources of the site.

1. Lessee will prepare within 9 months of the Commencement Date, and comply with a conservation plan prepared by a qualified consultant or agency (Attachment D to this Lease). The plan may use a Holistic Management framework. Such plan will address, at minimum, the following:
    a. Agricultural soils management and enhancement
    b. Non-productive land, including field edges, wetland, scrub and shrub areas, land under and around structures, access roads
    c. Weed and pest management
    d. Water resources including irrigation water management, drainage management and improvement
    e. Wildlife habitat
    f. Cultural resources, including stone walls, historic and archeological features
    g. Crop placement and rotation
2. Comply with all current and future woodlot management plans. Lessee may be granted permission, in consultation with Lessor and Lessor's forester, to harvest firewood for use by Lessee in Lessee's farming enterprise or for heating the house on the farm.
3. Both parties agree to review and discuss these standards annually, with the understanding that their observance is a condition of this Lease.
4. With exceptions for fruit tree cultivation, Lessee shall use Lessee's best efforts to bring and maintain the property to be certifiable under any organic certification program.
5. The Lessee agrees to manage the Premises to maintain a visually pleasing environment, free of debris, junk and trash.
6. The Lessee is permitted to create and maintain new cropland by clearing brush and saplings; removal of trees greater than 6 inches in diameter shall require prior consent of Lessor and shall be in accordance with any woodlot management plans. The Lessee is permitted to manage field edges to prevent encroachment, improve air circulation and manage pests.
7. In recognition of the parties' shared interest in fostering bird populations, Lessee shall, to the greatest extent practicable, protect and enhance bird habitat, in balance with normal agricultural activities permitted in this Lease and Lessor's woodlot management plan (e.g., clearing field edges, removing brush and trees).