A Guide to Farmland Access Agreements

Leases, Profits à Prendre,
Licences & Memoranda of Understanding

Community Farms Program

TLC
The Land Conservancy of British Columbia

FARMFOLK CITYFOLK

Published by *TLC* The Land Conservancy of British Columbia, April 2009

© 2009 by *TLC* The Land Conservancy of British Columbia.

All Rights Reserved.
We encourage use of this information and request *TLC* be credited.

Publisher contact information: 301-1195 Esquimalt Road, Victoria, British Columbia
250-4790-8053 www.conservancy.bc.ca

The Land Conservancy (*TLC*) is a non-profit, charitable land trust protecting natural areas, heritage landmarks, and agricultural lands throughout British Columbia. *TLC*'s agricultural mandate is to protect farmland for sustainable, local food production We own title or hold covenants on farmland, arrange long-term farm leases for new farmers, and provide information and education to farmers, local food groups and communities.

FarmFolk/CityFolk Society is a non-profit society that works with farm & city to cultivate a local, sustainable food system. We develop and operate projects that provide access to & protection of foodlands; that support local, small scale growers and producers; and that educate, communicate and celebrate with local food communities.

A Guide to Farmland Access Agreements

Leases, Profits à Prendre, Licences & Memoranda of Understanding

by
Wanda Gorsuch BSc, MA, A.Ag.
April 2009

This Guide is funded by

THE REAL ESTATE FOUNDATION OF BRITISH COLUMBIA

THE LAW FOUNDATION OF BRITISH COLUMBIA

FarmFolk/CityFolk and The Land Conservancy of British Columbia

Community Farms Program

The Community Farms Program brings together landowners, farmers, local communities, and resources to develop and support community farm models in BC.

ACKNOWLEDGEMENTS

The Community Farms Program is supported by program partners FarmFolk/CityFolk and The Land Conservancy of British Columbia. We thank The Law Foundation of BC, Notaries Foundation of BC, Organic Sector Development Program, Real Estate Foundation of BC, Vancity Community Foundation, and Vancouver Foundation for funding projects under this Program.

This project was made possible through grants from The Real Estate Foundation of BC and The Law Foundation of BC.

Thanks to the many people and organizations (both non-government and government) who contributed their time and knowledge to this publication.

Key contributors included:
Ramona Scott of *TLC*, and Heather Pritchard and Barbara Joughin of FarmFolk/CityFolk, Anne Brunet of Providence Farm, Chris Bodnar of Glen Valley Organic Farm Cooperative, Tina Fraser-Baynes of Haliburton Community Organic Farm, and Bill Turner, Kathleen Sheppard and Kathryn Martell of *TLC*.

Deborah Curran, LL.M provided advice on the text.

Legal review of sample agreements was provided by Eric Schroter of Campbell Froh May & Rice, Barristers and Solicitors.

About the author
Wanda Gorsuch is a private contractor providing research and writing skills to projects that support sustainable agriculture in BC.

Editing was provided by Judith Brand.

Cover photographs by Paula Hesje and Karen Platt

PREAMBLE

THE PURPOSE OF THIS GUIDE is to explain the different types of farmland access agreements and to provide samples. The Land Conservancy of BC (*TLC*) supports and encourages agreements that:

- give farmers tenure similar to that of owning land, and
- include terms for environmentally supportive farm management practices.

TLC provides access to land for farming by holding donated or purchased farmland in trust for farming. Farmers have access to *TLC* farmland through various types of agreements (leases, profits à prendre, licences or memorandums of understanding). Each section of this document is designed to act as a stand-alone information source on the different types of farmland rental agreements. To the best of our knowledge, this is the first easily accessible compilation of basic information and models of leases, profits à prendre, licences and memorandums of understanding related to BC farmland access.

As a farmland trust, *TLC* has a mandate to "protect farmland for farming." A goal of the *TLC* 2008 Agriculture Strategic Plan is to "serve as BC's Farmland Trust by providing resources, information and expertise for the public and land trust community." This Guide supports farmland owners and new or continuing farmers by assisting with access to land for sustainable agriculture.

THIS GUIDE PROVIDES GENERAL INFORMATION ONLY. It is not legal advice. Please consult a lawyer when developing and signing any legal agreements.

Madrona Farm, Victoria, BC *Photo © Andrew Taylor*

Glen Valley Farm, Abbotsford, BC *Photo © Ramona Scott*

EXECUTIVE SUMMARY

AS BC LAND PRICES RISE, and farmland vanishes under housing and country estates, farmers struggle for affordable access to land in the Lower Mainland, Southern Vancouver Island and the Okanagan. One means of affordable farmland access is through rental agreements with landowners. This Guide from The Land Conservancy of BC (*TLC*) provides landowners, farmers, communities and other land trusts with information on and models for these farmland access agreements.[1] This Guide assists you in:

- understanding which agreement(s) may be best suited to a particular situation;
- understanding the implications of each agreement for farm classification and bona fide farmer status; and
- knowing what questions to ask, and of whom; for example, whether an agreement requires permission from the Agricultural Land Commission, or whether liability insurance is needed

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.[2]

Fraser Common, Aldergrove, BC *Photo © Ramona Scott*

For farmers, a lease is the ideal agreement for long-term farmland access as it conveys most of the rights of a landowner other than the right to sell the land or degrade it unreasonably. Leases can be registered on title, meaning the lease runs with the land, no matter who owns it. However, a lease is not possible or suitable for all situations. For example, it is very difficult to get approval from the Agricultural Land Commission (ALC) for multiple registered leases on one title in the Agricultural Land Reserve (ALR). In another situation, a short-term agreement would be more suitable for a "trial period" before committing to a longer-term, more binding relationship such as a lease.

Although not often used outside the forestry and mining sectors, a profit à prendre can also be registered on title and can be used in many situations, especially in those where multiple agreements on one parcel of land are sought. A profit à prendre implies or states the rights necessary to remove an item, such as crops, including the right to enter the land and use as much of the surface as necessary (e.g., crops, timber, game, minerals). The thing removed must be part of the land, and it can be owned.

Licenses and memoranda of understanding do not grant an interest in land, cannot be registered and only apply to the people who sign them. For example, if the land is sold, the new owner is not bound by the licence. If the person with the licence passes away, the estate cannot transfer the licence to the heirs unless stated so in the licence. If licences and memoranda of understanding meet certain criteria, they can be considered contracts and come within the law of

1 The farmland access agreements can be:
- between a land trust, as landowner, and the farmer(s)
- between a community organization, such as a non-profit society, as landowner, and the farmer(s)
- between a private landowner and the farmer(s)
- between a land trust, as landowner, and a community organization who in turn has an agreement with the farmer(s)
- between a provincial or local government and a farmer
- between a provincial or local government and a community organization who in turn has an agreement with a farmer.
- between a company and a farmer, or company and community organization who in turn has an agreement with a farmer.

2 I.e., the farmer receives return on their investment when they leave the land, as they would if they owned and sold the land at the end of their tenure.

contracts. These types of agreements may be suitable to shorter-term agreements between a landowner and farmer prior to committing to a longer-term agreement or where multiple agreements on one parcel of land are desired and the land is in no danger of being sold, for example, when the land is held by a land trust.

A landowner's eligibility for farm classification and hence bona fide farmer status can be affected if more than one farmer is sharing the piece of land. For example, if three farmers have separate agreements on one parcel of land, BC Assessment will consider each business separately, and each business will need to meet farm income levels for farm classification. On the other hand, BC Assessment may consider all incomes together if the farmers form a legal entity such as a cooperative and the cooperative (not the individual farmers) holds the lease.

As a starting point, good agreements are only possible when all parties are honest, equitable and flexible. Everyone involved should have a clear and common understanding of the terms in the agreement to ensure that the agreement is enforceable over the duration of the relationship between the parties.

Finally, the intent of this Guide is not to cover every possible contingency related to farmland access agreements you might encounter. Laws change, and each rental situation is unique. Hence special consideration should be given to the drafting of every agreement. The information provided in this Guide is not legal advice and should not be relied upon as such. Consult legal counsel when drafting farmland access agreements.

THIS GUIDE PROVIDES GENERAL INFORMATION ONLY. It is not legal advice. Please consult a lawyer when developing and signing any legal agreements.

Horse Lake, 100 Mile House, BC *Photo © Ramona Scott*

Table of Contents

Acknowledgements . . . iv
Preamble . . . v
Executive Summary . . . vi
Table of Contents . . . ix

1.0 Introduction . . . 1
1.1 Land ownership in Canada . . . 3
1.2 Get it in writing . . . 3
1.3 Characteristics of a successful agreement . . . 3
1.4 How to use this Guide . . . 4
1.5 Summary of Farmland Access Agreements . . . 4

2.0 Lease . . . 6
2.1 What is a lease? . . . 6
2.2 Registration on the title to the land . . . 6
2.3 Multiple leases on one parcel of land or one lease on part of a parcel . . . 7
2.4 Lease on the entire parcel . . . 7
2.5 How long can a lease last, and how is it terminated? . . . 7
2.6 Mortgage . . . 7
2.7 Sublease . . . 7
2.8 Suggested scenarios for use . . . 8
2.9 Miscellaneous . . . 8

3.0 Profit à Prendre . . . 9
3.1 What is a profit à prendre? . . . 9
3.2 Registration on the title to the land . . . 9
3.3 Multiple profits on one parcel of land or one profit on part of a parcel . . . 9
3.4 Profit à prendre on the entire parcel . . . 9
3.5 How long can a profit à prendre last and how is it terminated? . . . 9
3.6 Mortgage . . . 10
3.7 Subprofits à prendre . . . 10
3.8 Suggested scenarios for use . . . 10

4.0 License . . . 11
4.1 What is a license? . . . 11
4.2 Registration on the title to land . . . 11
4.3 Multiple licenses on one parcel of land or one license on part of a parcel . . . 11
4.4 License on the entire parcel . . . 11
4.5 How long can a license last, and how is it terminated? . . . 11
4.6 Mortgage . . . 12
4.7 Sublicenses . . . 12
4.8 Suggested scenarios for use . . . 12

5.0 Memorandum of Understanding (MOU) . . . 13
5.1 What is a memorandum of understanding? . . . 13
5.2 Registration on title to the land . . . 13

5.3 Multiple MOUs on one parcel of land or one MOU on part of a parcel . . . 13
5.4 MOU on the entire parcel . . . 13
5.5 How long can an MOU last, and how is it terminated? . . . 13
5.6 Mortgage . . . 14
5.7 Sub-MOUs . . . 14
5.8 Suggested scenarios for use . . . 14

6.0 Frequently Asked Questions About Farmland Access Agreements . . . 15

7.0 Resources . . . 20

8.0 Glossary . . . 22
Appendix A — Sample Agreements . . . 23
Sample Lease . . . 24
Sample Profit à Prendre . . . 36
Sample License . . . 48
Appendix B — Farmland Trusts and Farmland Access Agreements . . . 58
Appendix C — Enforcement of Long-term Leases and Subdivision . . . 59
Appendix D — General Agreement Completion Checklist . . . 61
Appendix E — Leases and Easements . . . 64

1.0 INTRODUCTION

FARMLAND ACCESS AGREEMENTS, such as leases, give farmers access to land without requiring them to have the capital necessary to purchase increasingly expensive land (e.g., in some areas of southern BC, farmland can be $70,000 to $100,000/acre). Currently, about 41 percent of farmland in BC is rented by farmers.[3]

Good agreements are only possible when all parties are honest, equitable and flexible. Strong relationships are a key factor in having a positive experience renting farmland, whether you are the landowner or the farmer. Relationship building should occur before signing an agreement.

Drafting a farmland access agreement serves several purposes. First of all, writing up an agreement together can draw out hidden assumptions by both parties and allows them to be clarified before entering into an agreement. Clear communication is a necessary part of developing a strong relationship and the process of drafting an agreement can be an aid in that process. Secondly, by using this Guide to develop a draft agreement you may reduce your legal fees. While a lawyer should review your legal agreement, by having a draft available for your lawyer, you lawyer can concentrate on editing your document rather then spending extra time drafting an agreement from scratch. Having an agreement to provide legal support if there is a dispute is important, but should not be the primary reason for drafting an agreement. The agreement should be used as a tool to strengthen relations, not to push them in a negative direction.

Farmland access agreements are complex, and every party, farm operation and property is unique. We hope this Guide will provide you with sufficient baseline information to:

- understand the basic legal background of the different types of access agreements,
- select an agreement type appropriate for your needs and situation,
- draft a basic agreement using the sample agreements and provide it for review by your lawyer(s), and
- know when and where to seek answers to specific questions (e.g., when to talk with BC Assessment or the Agricultural Land Commission).

If you are a land trust, please see Appendix B for specific information regarding farm access agreements.

The information and agreement models in this Guide are intended to help farmers, landowners, community organizations, land trusts and others understand what options they have when it comes to land access agreements. Each section can act as a stand-alone information source. This Guide focuses on two categories of agreements: long-term agreements (10-plus years), and shorter, "trial period" type agreements. The overall goal is to encourage agreements that give farmers tenure similar to that of owning the land and that integrate environmentally sustainable farm management practices.

Turtle Valley, Chase, BC *Photo © Ramona Scott*

3 SmartGrowth BC, November, 2008: www.smartgrowth.bc.ca/AboutUs/Issues/AgriculturalLandReserveALR/tabid/111/Default.aspx

The types of access agreements covered in this Guide include:

- Leases,
- Profits à prendre,
- Licenses and
- Memoranda of understanding.

For each type of access agreement, this Guide outlines:

- whether the agreement can be registered with the BC Land Title and Survey Authority (the registry that oversees all land transactions and records interests on title to property),
- whether multiple agreements are possible on one parcel of land (inside and outside of the Agricultural Land Reserve),
- how long the agreement can last and how it can be terminated,
- whether a mortgage can be taken out against the agreement,
- whether sub-agreements are possible and
- suggested scenarios for use.

An overview of the above information can be found in *Table 1, Summary Farmland Access Agreements* (page 13).

A Frequently Asked Questions (FAQ) section will assist you with some of the fundamental questions around access agreements. A list of resources and glossary can be found at the end of this guide.

Keating Farm, Duncan, BC *Photo © Nick Westover*

A model for each type of access agreement is presented in Appendix A. Each model includes optional terms for land trusts, addressing topics such as Whole Farm Management Plans and accounting for equity.[4] Appendix B is directed towards land trusts renting out farmland. Appendix C discusses subdivision and enforceability issues related to leases. Appendix D is a checklist for you when constructing your own agreements. Finally, Appendix E discusses using an easement with a lease is one means of providing access to part of a parcel of land without needing to go through the subdivision process.

The following information is not covered in this Guide:

- Crown (provincial or federal government) Intensive or Extensive agricultural leases or Crown grazing licences,
- fee simple purchase, life estates, gifts, grants or wills and
- tax and insurance implications of the agreements discussed in this Guide

Farmers and landowners entering into an agreement should fully investigate and address tax and insurance implications before signing. For example, the agreement may affect your capital gains exemption and/or your tax deferred rollover to children.

4 I.e., the farmer receives return on their investment when they leave the land, as they would if they owned and sold the land at the end of their tenure.

1.1 Land ownership in Canada

IN CANADA, THE CROWN is the absolute owner of the land. When you hold a title to a piece of land, you actually hold an "estate" in the land. An estate[5] in land is a bundle of rights but is less than absolute ownership. In general, the categories of estates in land, outside of absolute ownership by the Crown, include:

1. *Fee simple*: This is the largest "estate" known in law and is what most people think of as owning private property. Fee simple gives the owner a larger bundle of proprietary rights to the land than other estates, including the right to exclude and to use, within the bounds of the law.
2. *Other estates:* Life estates and similar estates provide fewer rights than fee simple and are not common in property law in North America.
3. *Lease*: A lease is where a landowner gives exclusive possession of a property or a portion of a property to a tenant. A landowner's rights to actual possession of the land are suspended during a lease. [6]

Although a profit à prendre is an interest in land[7] and can be registered on the land title like a lease, it is not an estate in land with the associated bundle of rights. Licences and memoranda of understanding are not estates in land. They cannot be registered on title. They can be contracts and fall under contract law if they meet certain criteria.

IT IS IMPORTANT to note that the legal distinction between types of farmland access agreements depends on the actual relationship between the parties, and not what the parties decide to call the agreement. For example, if you decide to call your agreement a "lease" but the actual relationship is more like a contract, your agreement may be viewed in law as a licence or a memorandum of understanding and you will not receive the benefits of a lease.

1.2 Get it in writing

ALL FARMLAND ACCESS AGREEMENTS should be in writing for clarity of communication and legal security for both parties. Putting an agreement in writing is not a sign of distrust; it is a way to ensure a continued good relationship by:

- clarifying responsibilities and providing a basis for negotiation in lieu of court proceedings if there is a disagreement,
- acting as a guide for successors if either landowner or person making use of the land dies or becomes incapacitated and
- providing documentation for tax purposes.

It is important to note that BC's *Law and Equity Act*, section 39, states that a contract respecting land or the disposition of land is not enforceable unless (a) there is, in writing signed by the party to be charged or by that party's agent, both an indication that it has been made and a reasonable indication of the subject matter. This means that an agreement dealing with land, such as a lease, must be in writing for it to be enforceable.

5 "An estate refers to the degree, quantity, nature and extent of...ownership rights". Cortesi, G. 2000. Mastering real estate principles, 3rd edition. Dearborn Trade Publishing.

6 Little, MacInnis & Mullen, 2004. Easements, covenants and similar rights in British Columbia: An overview. Fasken Martineau DuMoulin LLP.

7 Interest in land: "A comprehensive term to describe any right, clain, or privilege that an individual has toward real...property." West's Encyclopedia of American Law, Edition 2. Copyright 2008 The Gale Group, Inc.

1.3 Characteristics of a successful agreement[8]

WHEN ENTERING INTO A FARMLAND RENTAL AGREEMENT, you need to consider more than the price when making a decision. Characteristics of a successful agreement include:

- *Compatibility*: Do the parties have a similar vision? Can differences in opinion be discussed?
- *Honesty*: Do you trust each other?
- *Clarity*: Do you clearly understand the terms of the agreement? Are those terms in writing?
- *Equitability*: Are the agreement terms fair to each of you?
- *Flexibility*: Can the agreement be amended if changes occur?
- *Suitability*: Is the agreement suitable to the type of farm operation and does it encourage sustainable practices?

1.4 How to use this Guide

To make the best use of this Guide

1. Make a list of your needs and questions around farmland access.
2. Talk to the other people involved to understand their needs and questions.
3. Read the introductory sections on each type of agreement.
4. Discuss the information with the other party(s) and your lawyer to decide on an appropriate legal model (lease, profit à prendre, licence, memorandum of understanding).
5. Use the sample agreements in Appendix A and the Agreement Completion Checklist in Appendix D to help draft an agreement with the other parties and your lawyer that is best suited to your situation.

1.5 Summary of Farmland Access Agreements

TABLE 1 summarizes information on leases, profits à prendre, licences and memoranda of understanding.

THIS GUIDE PROVIDES GENERAL INFORMATION ONLY. It is not legal advice. Please consult a lawyer when developing and signing any legal agreements.

Nicomekl Farm, Langely Township, BC *Photo © Ramona Scott*

8 Modified from Gamble, R.W., 2001. Land lease arrangements. Ontario Ministry of Agriculture, Food and Rural Affairs.

Table 1: Summary of Farmland Access Agreements

	LEASE	PROFIT À PRENDRE	LICENSE	MEMORANDUM OF UNDERSTANDING
Description	Gives a person all of the use and occupation rights of a landowner to a property or portion of property for a determined period of time in exchange for rent. The landowner retains the right to dispose of the land. When the lease is over, the land reverts to the landowner.	Gives a person the right to enter another's land and take something from the land (e.g., crops, timber, game, minerals). Thing must be part of the land and can be owned. Implies or states the rights necessary, including the right to enter the land and use as much of the surface as necessary.	Gives a person permission to do something on or with someone else's property. Can be a contract.	Is an agreement between at least two persons that obliges each party to do or not to do specified things. Is not generally intended to be legally binding. Can be a contract.
Register With Land Title Office	Yes	Yes	No	No
Exclusive Possession Of Land Granted	Yes	No	No	No
Multiple On One Property	More than a 3 year lease requires subdivision approval*	Yes	Yes	Yes
ALR	Requires ALC approval	Yes	Yes	Yes
Non-ALR	Requires Approval Officer approval	Yes	Yes	Yes
Length	Any length of time	Any defined length of time up to 80 years	Any length of time	Any defined length of period
Mortgage Of Instrument	Yes	Yes	No	No
Sub-Agreement Possible	Yes	Yes	Yes	Yes
Action For Recovery Of Loss	If tenant is wrongfully evicted from the leased land, they can bring action to recover the leased land.	The profit holder can have action for damages for loss of their interest in land. May also have an action for specific performance of the profit.	If the licensor breaks the terms of the licence, the licencee can only recover monetary damages.	If a party breaks the terms of the MOU, recovery only for monetary damages

* See Appendix C fof further detail.

2.0 LEASES

THE FOLLOWING PROVIDES GENERAL INFORMATION on leases to assist you in developing your own lease agreement.

2.1 What is a lease?

A lease is an estate in land[9] (a type of interest in land[10]) and gives a person all of the use and occupation 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 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. When the lease is over, the land reverts to the landowner.

2.2 Registration on the title to the land[11]

As an interest in land, leases can be registered with the BC Land Title and Survey Authority on the title to the property. A registered lease is subject to the same *Land Title Act* requirements as a fee simple lot. When registered, leases "run with the land," which means that when the land is sold, the lease is transferred to the new landowner along with the title to the land. A registered lease also ensures that the agreement is legally recognized as a lease and cannot be interpreted as another type of agreement, such as a contract, that does not give any rights in land. See Frequently Asked Questions About Farmland Access Agreements for more information on registration and legal security.

2.3 Multiple leases on one parcel of land or one lease on part of a parcel[12]

Leases on part of a parcel of land and longer than three years, or that have the option to be extended past three years, are considered subdivisions under Section 73 of the *Land Title Act*. Before the lease(s) can be registered, the subdivision process must be followed and granted approval by an approving officer. The type of approving officer depends on where the property is located. Properties in municipalities gain approval from municipal approving officers (usually the Director of Planning or Engineering). Rural subdivisions that are in electoral areas of regional districts seek approval from the Ministry of Transportation and Highways through the regional district or Islands Trust. Property covered by the Nisga'a Agreement gains approval from the Nisga'a approving officer. If the property is in the Agricultural Land Reserve (ALR), permission for subdivision is required from the Agricultural Land Commission (ALC).

Two types of subdivision are possible. One is the standard fee simple subdivision where the parcel of land is permanently divided into separate lots. The second is a leasehold subdivision, which expires at the end of the lease. Unlike a fee simple subdivision, the portion of the land receiving subdivision approval under a leasehold subdivision cannot be transferred (e.g., sold) separately from the remainder of the parcel. A leasehold subdivision still requires approval from an approving officer. Although approval of leasehold subdivisions generally undergoes the same process as fee simple subdivisions, the approving officer may not require the same service and other requirements. For example, approval of a leasehold subdivision may not

9 "An estate refers to the degree, quantity, nature and extent of … ownership rights". Cortesi, G. 2000. Mastering real estate principles, 3rd edition. Dearborn Trade Publishing.

10 Interest in land: "A comprehensive term to describe any right, claim, or privilege that an individual has toward real … property." West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc.

11 An unregistered lease may still be seen as legally valid. However, an unregistered lease may not legally be seen as an interest in land.

12 Due to changes in the *Land Title Act* (2007), a lease on a portion of a property longer than three years or having the option of extending beyond three years that did not go through the subdivision approval process may not be unenforceable. See Appendix B.

require construction of roads and installation of utilities. Note that the longer the term of the lease, the more likely that subdivision and zoning requirements will need to be met. Subdivision approval will be based, in part, on local zoning bylaws.

If the property is in the Agricultural Land Reserve (ALR), permission for subdivision is also required from the Agricultural Land Commission.

2.4 Lease on the entire parcel

One lease on the entire parcel of land is not considered a subdivision, and permission from an approving officer and the Agricultural Land Commission is not required.

2.5 How long can a lease last, and how is it terminated?[13]

LEASES CAN BE FOR ANY LENGTH OF TIME. A lease terminates:

- at the end of the specified term in the lease,
- when the tenant voluntarily gives up the lease with permission of the landlord (*surrender*),
- when the tenant purchases the leased property from the landlord (*merger*),
- when the landlord defaults on any mortgage on the land and the mortgagee begins foreclosure proceedings (*foreclosure*),
- when the landlord gives notice to the tenant (*notice*),
- when the landlord re-enters because the tenant has not been following their obligations under the lease (*re-entry)* and
- when a court orders the lease terminated (*court order*).

If a lease is registered, it is binding on the purchaser of the land for the term of the lease. A registered lease is not terminated when the land is sold unless there is a clause in the lease stating so. A lease can pass to the successors on both sides unlike a contract (e.g., licence or memorandum of understanding), unless the contract stipulates it is to pass to the heirs.

2.6 Mortgage

A TENANT CAN OBTAIN A MORTGAGE AGAINST A LEASE. A lease agreement should stipulate if a mortgage is allowed and under what terms. See Frequently Asked Questions About Farmland Access Agreements for further information.

2.7 Sublease

A LEASE CAN (and is recommended to) stipulate if the lease holder can create a sublease[14]. A sublease is a lease agreement between the tenant and a third party for all or part of the leased land. The original lease between the tenant and the landowner remains in place.

Under a sublease, the third party takes over all or part of the leased land and activities. However, the original tenant, unless released from liability by the landowner, is still liable for the obligations under their original lease with the landowner, including payment of rent.

A sublease can be registered with the BC Land Title and Survey Authority. A registered sublease is considered a subdivision of the land if it is for three or more years and it is on only part of the land, in which case the applicable subdivision process and approvals are required.

13 Gamble, R.W. October 2001. Land lease arrangements. Ontario Ministry of Agriculture, Food and Rural Affairs, AGDEX 812.

14 A sublease is different from an assignment of a lease. An assignment is a complete transfer of the lease to a new tenant.

2.8 Suggested scenarios for use

FROM A FARMER'S PERSPECTIVE, a lease is the most desirable type of long-term farmland access agreement because it creates a situation very similar to that of owning the land. From a landowner perspective, a lease may decrease the value of the property if the owner is planning on selling before the term of the lease expires.

Leasing and subleasing part of a property, both in and outside of the ALR, where registration on the title to the land is desired may prove challenging and expensive because of subdivision requirements.

If multiple farmers or farm businesses will be leasing different sections of the same property, it may be easier, less time-consuming and more cost-efficient to use a different type of agreement, such as a profit à prendre or licence, that does not involve the subdivision process. Alternatively, the leases do not have to be registered. However, an unregistered lease will not "run with the land," and there is a risk it would not be recognized as an "interest in land" if challenged in court. For more information on the legal security of long-term leases and subdivision, see Appendix C, Enforcement of Long Term Leases and Subdivision.

Another strategy is for multiple farmers is to form a single legal entity such as a cooperative or a partnership and enter into one lease on the entire property. Finally, if a lease on only part of a parcel of land is desired, it may be possible to use a lease with an appurtenant easement (see Appendix E).

2.9 Miscellaneous

FARMLAND AND ASSOCIATED HOUSING leased under one agreement falls under the *Commercial Tenancy Act*, not the *Residential Tenancy Act*. According to the *Residential Tenancy Act*, section 4, it does not apply to: "living accommodation included with premises that (i) are primarily occupied for business purposes, and (ii) are rented under a single agreement." The *Residential Tenancy Act* also does not apply to "(i) living accommodations rented under a tenancy agreement that has a term longer than 20 years."

Ideally, if a farmer wishes to use a house on leased property, the house should be leased under a separate agreement. If the farmland and the house on the land are leased in two separate agreements, the *Commercial Tenancy Act* applies to the land and the *Residential Tenancy Act* applies to the house. The farmer has greater tenancy protection under the *Residential Tenancy Act* than the *Commercial Tenancy Act*. The Commercial Tenancy Act is landlord oriented in its approach.

Lohbrunner Farm, Victoria, BC *Photo © Ramona Scott*

3.0 PROFIT À PRENDRE

THE FOLLOWING PROVIDES GENERAL INFORMATION on profits à prendre to assist you in tailoring your own agreement.

3.1 What is a profit à prendre?

A profit à prendre (profit) is an interest in land[15] and gives a person the right to enter another's land and take something from the land such as crops, timber, pasture, fish, game or minerals. The thing taken must be part of the land and be capable of being owned. A profit cannot include water. A profit agreement either implies or states the rights needed to enjoy the thing taken. This would include the right to enter the land and the right to use as much of the surface as necessary, including buildings. Although a profit is an interest in land, it is less than an estate in land[16] and therefore does not involve exclusive possession, unlike a lease. In respect to oil and gas, the Canadian courts have found that a profit does not create a landlord-tenant relationship for the purposes of re-entry.[17]

3.2 Registration on the title to the land

As an interest in land, profits à prendre can be registered on the title to land with the BC Land Title and Survey Authority. When registered, profits "run with the land." This means that when the land is sold, the profit is transferred to the new landowner along with the title to the land. See Frequently Asked Questions About Farmland Access Agreements for more information on registration and legal security.

3.3 Multiple profits on one parcel of land or one profit on part of a parcel

A landowner can register multiple profits à prendre on one parcel of farmland or one profit on part of a parcel. For land in the Agricultural Land Reserve (ALR), permission from the Agricultural Land Commission (ALC) is not required.

3.4 Profit à prendre on the entire parcel

There are generally no legal restrictions to registering a profit à prendre on farmland in or out of the ALR. Permission of the ALC is not required.

3.5 How long can a profit à prendre last and how is it terminated?

Profits à prendre can be for any length of time up to 80 years. A profit terminates:

- at the end of the specified term in the profit
- at the end of 80 years (*Perpetuity Act*, Section 22),
- when the owner of the profit voluntarily gives up the profit with permission of the landowner (*surrender*),
- when the owner of the profit purchases the property from the landowner (*merger*),
- when the owner of the profit ceases to make use of it for a length of time where a reasonable owner may concluded it will no longer be used (*abandonment*),
- when a court orders the profit terminated (*court order*),

15 Interest in land: "A comprehensive term to describe any right, claim, or privilege that an individual has toward real … property." West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc.

16 "An estate refers to the degree, quantity, nature and extent of … ownership rights". Cortesi, G. 2000. Mastering real estate principles, 3rd edition. Dearborn Trade Publishing.

17 Re-entry occurs when the landlord can re-enter the property and seize to satisfy outstanding obligations..

If a profit is registered, it is binding on the purchaser of the land for the term of the profit. A registered profit is not terminated when the land is sold unless there is a clause in the profit stating so. The owner of a profit can sell, lease, give away or bequeath the profit to someone else unless explicitly prohibited. Like a lease, a profit à prendre can pass to the successors on both sides. This is unlike a licence or memorandum of understanding, which can be considered contracts in law.

3.6 Mortgage

The person holding the profit à prendre can obtain a mortgage or loan using the profit à prendre as security. The agreement should state if the profit à prendre can be used to obtain a mortgage or loan.

3.7 Subprofits à prendre

A profit à prendre can (and is recommended to) stipulate if the profit à prendre holder can create a subprofit. A subprofit is an agreement between the profit à prendre holder and a third party for all or part of the profit à prendre (the right to remove something from the land such as crops and the access necessary to remove the item). The original profit à prendre agreement between the landowner and the profit à prendre holder remains in place. This means that the original profit à prendre holder, unless released from liability by the landowner, is still liable for the obligations under their original profit à prendre agreement with the landowner

A subprofit can be registered on title with the BC Land Title and Survey Authority. No approvals are required from the Agricultural Land Commission or an approving officer.

3.8 Suggested scenarios for use

A profit à prendre could be suitable in a situation where

- there are multiple registered agreements on one parcel of ALR land or
- one agreement on part of ALR land is desired or
- the land could be sold (registration ensures the profit goes with the land) and/or
- the profit à prendre holder would like to bequest their profit à prendre.

From a landowner perspective, a profit à prendre may decrease the value of the property if there are plans to on sell before the term of the profit à prendre expires.

Glen Valley Farm, Abbotsford, BC *Photo © Ramona Scott*

Horse Lake, 100 Mile House, BC

4.0 LICENSE

The following provides information on licences, to assist you in developing your own licence agreement.

4.1 What is a licence?

A LICENCE GIVES A PERSON PERMISSION to do something on or with someone else's property. A licence, unlike a lease and a profit à prendre, is not an interest in land[18]. Hence a licence does not "run with the land" and is not enforceable against successors/purchasers of the land.

To be considered a contractual licence[19], a licence must include:

1. an offer coupled with an acceptance:
2. an exchange of considerations, where something of value comes from each party; (e.g., one person pays rent in exchange for permission to use someone's property);
3. subject matter that is not illegal and
4. parties that are "competent to contract" (e.g., an adult or other legal entity like a cooperative).

4.2 Registration on the title to land

A LICENCE IS NOT an interest in land it cannot be registered with the BC Land Title and Survey Authority. A licence does not "run with the land." This means that if the land is sold the licence is terminated, unless provided for otherwise in the contract of purchase and sale for the land. This is unlike a lease or a profit à prendre that are an interest in land, and when registered, do "run with the land."

4.3 Multiple licences on one parcel of land or one licence on part of a parcel

A landowner can enter into multiple licence agreements for one parcel of land or one licence on part of a parcel of land. There are generally no legal restrictions to a landowner entering into one or more licence agreements in relation to farmland in the Agricultural Land Reserve (ALR). Permission of the Agricultural Land Commission is not required. There are generally no legal restrictions to a landowner entering into one or more licence agreements in relation to land not in the ALR.

4.4 License on the entire parcel

THERE ARE GENERALLY NO LEGAL RESTRICTIONS to having a licence on farmland in or out of the ALR.

---

18 Interest in land: "A comprehensive term to describe any right, claim, or privilege that an individual has toward real … property." West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc.

19 In a contractual licence, the licensor cannot terminate the licence at will if the terms of the licence are followed. A bare or gratuitous licence can be revoked at will.

4.5 How long can a licence last, and how is it terminated?

A LICENCE LASTS FOR A DEFINED PERIOD OF TIME. If it is a contractual licence (there is an exchange of considerations such as rent for permission to use the land), a licence terminates:

- at the end of the specified term in the licence,
- when the licencee voluntarily gives up the licence with permission of the landowner (*surrender*),
- when the landowner cancels the licence because the terms of the licence are not being followed,
- when the licencee or licensor becomes deceased or non-competent,
- when the licencee purchases the property from the landowner (*merger*),
- when the licencee ceases to make use of it for a length of time where a reasonable owner may concluded it will no longer be used (*abandonment*) or
- when a court orders the licence terminated (*court order*)

4.6 Mortgage

The person with a licence cannot take out a mortgage on that licence.

4.7 Sublicences

A LICENCE CAN (AND IS RECOMMENDED TO) STIPULATE if the licencee can enter into a sublicence, an agreement between the licencee and a third party for all or part of the primary licence. The original licence between the licencee and the landowner remains in place, and the original licencee, unless released from liability by the landowner, is still liable for the obligations under their original licence with the landowner.

A sublicence cannot be registered with the BC Land Title and Survey Authority.

4.8 Suggested scenarios for use

A licence could be suitable in a situation where:

- multiple agreements on ALR land or an agreement on part of ALR land are desired, and the land is secured from sale/inheritance by a land trust or community organization; or
- a very specific use of the land is desired, for example, a grazing licence where the licencee can graze their sheep on the 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.

From a landowner perspective, a licence may not decrease the value of the property since the licence is not tied to the title of the land.

Madrona Farm, Victoria, BC *Photo © Carla Funk*

5.0 MEMORANDUM OF UNDERSTANDING (MOU)

THE FOLLOWING PROVIDES general information on memoranda of understanding to support you in developing your own agreement.

5.1 What is a memorandum of understanding?

A MEMORANDUM OF UNDERSTANDING (MOU) is an agreement between at least two persons that obliges each party to do or not to do specified things. An MOU is not generally intended to be legally binding. However, if it meets the criteria for a contract, it can be legally binding under contract law.

An MOU, unlike a lease and a profit à prendre, is not an interest in land[20]. Hence an MOU does not run with the land and is not enforceable against successors/purchasers of the land. To be considered a contract, a MOU 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 contract" (e.g., an adult or other legal entity like a cooperative).

5.2 Registration on title to the land

AN MOU IS NOT AN INTEREST IN LAND so it cannot be registered with the BC Land Title and Survey Authority. An MOU does not "run with the land." This means that if the land is sold the MOU is terminated unless agreed to otherwise by the vendor, purchaser and farmer. This is unlike a lease or a profit à prendre, which are an interest in land, and when registered, do "run with the land."

5.3 Multiple MOUs on one parcel of land or one MOU on part of a parcel

A LANDOWNER CAN ENTER INTO MULTIPLE MOU AGREEMENTS for one parcel of land or one MOU on part of a parcel of land. There are generally no legal restrictions to a landowner entering into one or more MOU agreements in relation to farmland in the Agricultural Land Reserve (ALR). Permission of the Agricultural Land Commission (ALC) is not required. There are generally no legal restrictions to a landowner entering into one or more MOU agreements in relation to land not in the ALR.

5.4 MOU on the entire parcel

There are generally no legal restrictions to having an MOU on a parcel of land in or out of the ALR.

20 Interest in land: "A comprehensive term to describe any right, claim, or privilege that an individual has toward real … property." West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc.

5.5 How long can an MOU last, and how is it terminated?

A contractual MOU lasts for a defined period of time. An MOU terminates:

- at the end of the specified term in the MOU,
- when the person with the MOU voluntarily gives up the licence with permission of the landowner (*surrender*),
- when the landowner cancels the MOU because the terms of the MOU are not being followed,
- when one of the parties in the MOU becomes deceased or non-competent,
- when the person with the MOU purchases the property from the landowner (*merger*),
- when the person with the MOU ceases to make use of it for a length of time where a reasonable owner may concluded it will no longer be used (*abandonment*) or
- when a court orders the MOU terminated (*court order*).

5.6 Mortgage

Financial institutions, such as banks, generally do not accept MOUs as collateral for debt such as a mortgage.

5.7 Sub-MOUs

AN MOU CAN (AND IS RECOMMENDED TO) STIPULATE whether the non-property-owning party to the MOU can enter into a sub-MOU or multiple MOUs with third parties. These are agreements between the non-property-owning party and a third party for all or part of the primary MOU. The original MOU remains in place between the landowner and the non-property-owning party.

Under a sub-MOU, the third party takes over all or part of the MOU. However, the non-property-owning party to the original MOU, unless released from liability by the landowner, is still liable for the obligations under the original MOU with the landowner.

A sub-MOU cannot be registered with the BC Land Title and Survey Authority.

5.8 Suggested scenarios for use

MOUS MAY BE SUITABLE FOR:

- agreeing to the process for entering into a long-term agreement (e.g., outlining the obligations and responsibilities of parties in setting up a lease),
- acting as a temporary agreement between farmer and landowner while developing a longer-term agreement,
- acting as a temporary agreement while the landownership is uncertain (e.g., land is being leased from the Crown and sublet to a farmer),
- multiple agreements on ALR land or an agreement on part of ALR land are desired (licences are also suitable and may be more legally robust) or
- land is secured from sale/inheritance by a land trust or community organization (there is no concern that the MOU does not run with the land — licences are also suitable and may be more legally robust).

From a landowner perspective, an MOU may not decrease the value of the property since the MOU is not tied to the title of the land.

6.0 FREQUENTLY ASKED QUESTIONS

THE FOLLOWING PROVIDES ANSWERS to some general questions related to farmland access agreements. Topics include: selecting access agreements, BC Assessment (Farm Classification); bona fide farmer status; not-for-profit tax status; ownership of buildings; registering an agreement on title; liability; loans and mortgages, and the tenancy acts. While not a comprehensive list of issues the answers found here should help resolve your basic questions and stimulate thought about others.

Selecting a type of access agreement

1. *When the land is being farmed during a transition period (e.g., trial period for three years), what type of agreement is most suitable – one that gives an interest in land or one that does not? For example, a short-term lease or a licence or MOU?*

   From the landowner's perspective, an MOU or a licence that does not give an interest in land may be most suitable for a temporary/short-term agreement. The short-term agreement could include terms promising a lease or a profit à prendre following, if certain conditions are met.

2. *Does a registered agreement (lease, profit à prendre) provide greater legal security for the farmer?*

   Yes. If an agreement is registered, the landowner or future landowner cannot ignore the interests[21] granted to the farmer by the agreement.

   However, there are two situations in which a landowner or future landowner must abide by an unregistered agreement:[22]

   - when a registration of an interest (e.g., lease) is pending,
   - when there is a lease or agreement for lease for a period of time not exceeding three years and there is actual occupation under the lease or agreement

   Licenses and memorandums of understanding cannot be registered since they are not an interest in land. These agreements are valid against only those parties who made them, not their successors, assigns or other beneficiaries. Conversely, registered agreements "run with the land" and must be taken into account by the landowner, even if the land is sold to a new person.

Keating Farm, Duncan, BC *Photo © Nick Westover*

Farm Classification

BC Assessment

3. *Who applies for farm classification – the landowner or the farmer using the land?*

   The landowner must apply to BC Assessment for farm classification.

21 The interest in land that goes with a lease or a profit à prendre.

22 Section 29 of the *Land Title Act*.

4. *If there are multiple farmers on one piece of land, how does BC Assessment handle farm classification? How does this affect bona fide farmer status and ability to apply for a Farmer ID card?*

   If several farmers are using the same property, under individual agreements, each individual would need to meet the income requirements for farm classification separately. Income requirements are based on the area of land under farm use[23]. Each farmer would then be eligible to apply for their Farmer ID card.

   If several farmers are using the same property, they could form a legal entity (e.g., a cooperative) and have one overall access agreement. In that case, BC Assessment would look at the combined farm income and land area when considering farm classification. As long as the land receives farm classification, individual farmers should then be able to apply for their Farmer ID card.

5. *BC Assessment, under the Assessment Act, provides for farm classification in situations where the land is leased to a farmer. What if the access agreement is a licence, a memorandum of understanding or a profit à prendre with a farmer rather than a lease? How does this affect farm classification, bona fide farmer status and ability to apply for a Farmer ID card?*

   In these situations it will be necessary to work with BC Assessment as these agreements are not clearly specified within the *Assessment Act*.

   The degree of control and management over the land by the landowner and the farmer will influence who is seen as the "farmer" by BC Assessment.

   If the landowner is relinquishing control and management of the land, the farmer would likely qualify as a type of "lessee" under the *Assessment Act*. In that case, the landowner would apply for farm classification, and if received, the farmer "leasing" the land could than apply for bona fide farmer status and their Farmer ID card.

   If the landowner or an umbrella organization, such as a farmers' cooperative, has an overall land control and management role, BC Assessment may decide that the landowner or organization is "the farmer." In this case, if several farmers are using the same property, their individual farm incomes would be pooled to determine if they meet the income requirements for farm classification. As long as the land receives farm classification, individual farmers should then be able to apply for their Farmer ID card. [24]

6. *What does a lease have to contain for BC Assessment to consider an application for farm classification?*
   - names and signatures of the lessee (farmer) and lessor (owner),
   - the legal or other well-defined description of the land being leased,
   - the commencement date,
   - the signing date,
   - the duration of the lease,
   - size of the lease area,
   - rent or other compensation paid for the lease and
   - the intended use of the leased land[25]

23 Contact BC Assessment for most recent Farm Classification income requirements.

24 Lorraine Gilbert, RI, Senior Appraiser, Assessment & Valuation Services, BC Assessment. Personal communication, May 2008.

25 November, 2008, www.bcassessment.bc.ca/process/agricultural_forestry/classify_leased.asp

Bona fide farmer status and Farmer ID Card

7. *If farm classification is given to the landowner, how does the farmer using the land apply for bona fide farmer status?*

   As long as BC Assessment classifies the land as "Farm," then the person farming the land is eligible for bona fide farmer status and can apply for their Farmer ID card. The BC Agriculture Council requires a copy of the current access agreement (e.g., lease), the most recent property assessment, the completed Farmer ID card application and application payment.

Not-for-profit tax status

8. *If a not-for-profit organization has tax-exempt status on a property under the Community Charter or the Taxation (Rural Area) Act, do they lose that tax exemption when they enter into an agreement with a farmer who uses the land for a farm business?*

   Generally this would not be the case; however, it is possible that the tax-exempt status of the land may be lost. The same provincial laws that give not-for-profits exemption from property tax contain wording that may remove the tax exemption of the land if it is used by a farm business.

   If a landowner has tax-exempt status, it would be advisable to consult a lawyer regarding what affect a farmer accessing the land would have on that tax-exempt status.

Ownership of buildings

9. *Can a house or other building be owned separately from the land? For example, can a farmer own a house on land they are leasing from the landowner?*

   A building can be owned separately from the land if the building is not considered to be permanently attached.

   Under property law,[26] there are two types of property – real property and personal property. Real property includes the land and anything attached to the land, including buildings that can be considered permanently attached. Real property belongs to the landowner. Personal property (sometimes called "chattels") is any property that is not real property. For example, a mobile trailer is personal property and can be owned by the farmer, not the landowner.

Registering an agreement on title

10. *Can more than one lease be registered against the title to a property?*

    Yes. Leases on part of a parcel of land and longer than three years, or that have the option to be extended past three years, are considered subdivisions under section 73 of the *Land Title Act*. Before the lease(s) can be registered, the subdivision process must be followed and given approval by an approving officer. The type of approving officer depends on where the property is located. Properties in municipalities gain approval from municipal approving officers (usually the Director of Planning or Engineering). Rural subdivisions in electoral areas of regional districts seek approval from the Ministry of Transportation and Highways through the regional district or Islands Trust. Property covered by the Nisga'a Agreement gains approval from the Nisga'a approving officer.

Agricultural Land Reserve

When land is located in the Agricultural Land Reserve, you also require permission from the Agricultural Land Commission to register multiple leases on the properties title.

See section 2.0 on leases and Appendix C, Enforcement of Long-term Leases and Subdivision for more information.

26 Classified under common law.

11. *Can multiple profits à prendre be registered against the title to a property?*

    Yes.

Liability

12. *If the farmer(s) take out a loan, is the landowner liable if the farmer defaults?*

    Generally, no. The loan is a personal contract between the farmer and the person or organization providing the loan. The landowner may be affected where the farmer defaults and the person or organization providing the loan attempts to seize the assets of the farmer that may be on the land.

13. *Does the landowner have the option of re-entry on a profit à prendre like they do with a lease?*

    No. [It would depend on the terms of the instrument – it may be a good idea for the landowner to have that right upon certain defaults by the farmer]

Loans and mortgages

14. *How can farmers who are renting farmland get a loan or a mortgage?*

    Farmers can take out a mortgage or loan against a lease or profit à prendre (see Sections 2.0 Lease and 3.0 Profit à Prendre). The agreement should specify if the farmer is allowed to do so.

    When farmers rent land, the risks for lending institutions include:

    - The potential loss of the rented land. Having a long-term leases on land held in trust mitigates some of this risk.
    - Farmers having sufficient cash flow to pay for crop inputs, land rental payments, operating expenses, living expenses and debt payments until they receive cash inflow from the farm's production.

    Farm Credit Canada (FCC) makes loans for land and equipment purchases, as well as any improvements to property. Clients are normally required to have a minimum of 25% equity in what is being purchased and used as security. For some deals, using existing equity in land or equipment is done by placing a charge against it and the new purchase. FCC prefers new farmers to demonstrate financial progress through one or more years of farm operation before making credit available.

Horse Lake, 100 Mile House, BC *Photo © Brian Harris*

    As far as the lands goes, FCC could finance any improvements made to the property if the land owner would be willing to have FCC place a mortgage relating to the improvements on the property. The owner would effectively be the mortgagee, with the renter could possibly be being a guarantor[27].

    Micro-credit is another option for farmers who do not own the land they are farming. Farmers looking to finance a small business and having trouble getting credit from traditional sources may

27 Personal Communication. May 20, 2009. Farm Credit Canada

be eligible for micro-credit. According to Finance Canada, micro-credit "refers to small loans made to low-income individuals to sustain self-employment or start up very small businesses."[28] Micro-credit loans are generally small, amounting to a few thousand dollars (e.g., under $25,000). Micro-credit is either community based or is accessed through specific programs (community development corporations, community-based organizations, credit unions, government and non-government programs). For example, VanCity Savings Credit Union has a peer lending program that provides loans to groups of three to six business owners, each borrowing for their own business. According to VanCity, lack of assets, traditional collateral or credit history will not necessarily prevent access to business credit with them.

Tenancy Acts

15. *Does the Commercial Tenancy Act or the Residential Tenancy Act apply when farmland with a residence is leased?*

Farmland and associated housing leased under one agreement falls under the *Commercial Tenancy Act*, not the *Residential Tenancy Act*. According to the *Residential Tenancy Act,* section 4, it does not apply to: "living accommodation included with premises that (i) are primarily occupied for business purposes, and (ii) are rented under a single agreement." The *Act* also does not apply to "(i) living accommodations rented under a tenancy agreement that has a term longer than 20 years." If the land and the house on the land are leased in two separate agreements, the *Commercial Tenancy Act* applies to the land and the *Residential Tenancy Act* applies to the house.[29] It is in the farmers' interest to lease the house separately as the *Residential Tenancy Act* provides stronger protection for tenants.

Madrona Farm, Victoria, BC Photo © David Chambers

Tomatoes Photo © Paula Hesje

28 Small businesses in this case refer to businesses with five or fewer employees and gross revenues of less than $500,000.

29 Personal communication. June 19, 2008. Residential Tenancy Branch, Victoria, BC.

7.0 RESOURCES

Agreement Resources

Ministry of Sustainable Resource Management. 2004. A Practical Guide to Effective Coordination of Resource Tenures.
srmwww.gov.bc.ca/rmd/crt/pdf/TENURE.pdf

Agricultural Land Reserve

Agricultural Land Commission
Phone: 604-660-7000
www.alc.gov.bc.ca

Bona fide Farmer/Farmer ID Card

British Columbia Agriculture Council: Application for Farmer Identification Card
Phone: 250-763-9790
www.bcac.bc.ca/bc_farmer_identity_card.htm

Business Structures

BC Ministry of Agriculture and Lands: Guides and forms for starting cooperatives and partnerships.
www.agf.gov.bc.ca/busmgmt/structure_leases.htm

General Law

Duhaime.org General law definitions and articles written in fairly plain language
www.duhaime.org

Land Title

Land Title and Survey Authority of BC: an independent corporation responsible for managing the land title and survey systems of BC
Phone: Check phone book for your local office
www.ltsa.ca/f

Legislation

Agricultural Land Commission Act [SBC 2002] CHAPTER 36
www.bclaws.ca/Recon/document/freeside/--%20a%20--/agricultural%20land%20commission%20act%20%20sbc%202002%20%20c.%2036/00_02036_01.xml

Land Title Act [RSBC 1996] CHAPTER 250
www.bclaws.ca/Recon/document/freeside/--%20l%20--/land%20title%20act%20%20rsbc%201996%20%20c.%20250/00_act/96250_00.htm

Local Government Act [RSBC 1996] CHAPTER 323
www.bclaws.ca/Recon/document/freeside/--%20l%20--/local%20government%20act%20%20rsbc%201996%20%20c.%20323/00_act/96323_00.htm

Property Tax

BC Assessment: Property classification and assessment for property tax purposes
Phone: Check phone book for local office
www.bcassessment.bc.ca

Samples

Ministry of Agriculture and Lands: Lease models for dairy, grain, pasture, vegetable, orchard and livestock
www.agf.gov.bc.ca/busmgmt/structure_leases.htm

Subdivision

BC Ministry of Community Service, Local Government Department: subdivision approval
Phone: 1-800-663-7867
www.cserv.gov.bc.ca/lgd/planning/subdivision_approval.htm

BC Ministry of Transportation: rural subdivision approval process
Phone: Check phone book for district office
www.th.gov.bc.ca/DA/L1_s_in_BC.asp

Turtle Valley, Chase, BC *Photo © Ramona Scott*

8.0 GLOSSARY

Estate in land: "An estate refers to the degree, quantity, nature and extent of … ownership rights". Taken from: Cortesi, G. 2000. Mastering real estate principles, 3rd edition. Dearborn Trade Publishing.

Interest in land: "A comprehensive term to describe any right, claim, or privilege that an individual has toward real … property." Taken from: West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc

Lessee: The person leasing the land.

Lessor: The person who owns the land and is leasing it out.

Licensee: The person who has a licence on the land.

Licensor: The person who owns the land and is offering a licence on it.

Run with the land: When the land is sold, the agreement (e.g., lease) is transferred to the new landowner along with the title to the land.

Transferee: The person with a profit à prendre on the land.

Transferor: The person who owns the land and is offering a profit à prendre.

Fraser Common, Aldergrove, BC *Photo © Ramona Scott*

APPENDICES

Appendix A — Sample Agreements

SAMPLE LEASE

SECTION I – REQUIRED CLAUSES

THIS AGREEMENT made the ___ day of __, 20___ (in pursuance of the Land Transfer Form Act - Part 2), effective the ___ day of ____, 20____ (the "**Effective Date**").

BETWEEN:

_____ (Landlord/Landowner)
of _____ (address)
_____ (address)
("**Lessor**") - *could use Landowner or Landlord or name of Lessor or appropriate acronym*

AND:

_____ (Lessee/Tenant)
of _____ (address)
_____ (address)
("**Lessee**") – *could use Tenant or name of Lessee, or appropriate acronym*

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

_____ (address)
_____ (PID) _____ (Lot) _____ (Block)
_____ (Section) _____ (District) _____(Plan)

consisting of ____ hectares. (*if required, describe any variations here e.g. area not included in this Agreement is the north west corner*) as shown on the map attached to this Agreement in Appendix A.
("**the Lands**")

GRANT OF LEASE

1. Subject to Sections 2 and 3 and the rights of termination in Sections ___, ___ and __ in this Agreement, the Lessor grants to the Lessee, the Lands described in this Agreement. This Agreement includes all buildings on the Lands as of the Effective Date and all buildings constructed during the term of this Agreement. This Agreement includes all ways, paths, passages, waters, water courses, privileges, advantages and appurtenances whatsoever related to the Lands.
2. This grant of lease is subject to: a) existing terms contained in any original grant or contained in any other disposition from the Crown with respect to the Lands; and

    a) existing terms contained in any original grant or contained in any other disposition from the Crown with respect to the Lands; and

    b) any highway, or public right-of-way, watercourse, right of water or other public easement found on the Lands.

TERM OF LEASE

3. The term of this Agreement shall be in effect for _____ years, starting on _____ (date) and ending on _____ (date);

(*the following is optional - omit or modify as required*)
every ___ years at:
_____ (date)
_____ (date)
_____ (date)
date, the contents of this Agreement, including Rent, may be modified as mutually agreed upon by the Lessee and Lessor. If the parties are not able to come to a mutual agreement on changes to the Agreement within 60 days of the roll-over date the parties will use the Dispute Resolution process outlined in Section ___. If the parties are not able to come to a mutual agreement ____ days after the Dispute Resolution process the Agreement shall be terminated by the Lessor.

RENT PAYABLE

4. The Lessee shall pay to the Lessor rent ("**Rent**") of $_____ for use of the Lands. Rent is based on calculations in Schedule A appended to this Agreement;
(*Note there are alternative forms of rent such as share cropping*)

a) Rent shall be due and payable as follows;

Due Date	Amount
_____	$_____
_____	$_____
_____	$_____
_____	$_____

b) Rent will be paid to _____ on or before the due dates in this Agreement without invoice or other notice from the Lessor;

(*the following is optional – omit or modify as required*)

c) if Rent is not paid on or before the due dates in this Lease, the Lessee agrees to pay interest on the amount of unpaid rent at the rate of Prime plus ____ %.

THE LESSEE

_____ _____
Signature Witness

_____ _____
Print Name Print Name

_____ Address
Date

THE LESSOR

By:

_____
Name

_____
Date

SECTION II – RECOMMENDED CLAUSES

DEFINITIONS AND INTERPRETATIONS

5. (*use this section to define specific words or clauses used in the Agreement that you feel are important e.g.* "Farm House" means the primary residence on the Lands, as identified in the Whole Farm Management Plan appended to this Agreement)

TERMINATION

6. This Agreement may be terminated by:

   a) ___ days written notice from the Lessee to the Lessor before termination; or

   b) abandonment by the Lessee for a period greater than ___ days; or

   c) on the non-payment of rent when due or non-performance of the covenants contained herein, by either party through serving written notice citing the instance(s) of default and specifying a termination date of _____ days from the date of such notice.; or

   d) the Lessee becomes insolvent or bankrupt and takes the benefit of any act that may be in force for bankrupt or insolvent debtors; or

   e) the interests of the Lessee are seized or taken in execution or attachment by any creditor of the Lessee; or

   f) the Lessee makes an assignment for the benefit of his creditors.

7. If this Agreement is terminated under the terms (b) or (c) in Section 6, the Lessee may:

    a) take possession of the Lands or any part thereof without previous notice of intention (*or offer of the Adjusted Sales Value as in Sections __, __ and __*); and

    b) remove all persons and property from the Lands;

8. Notwithstanding the termination or expiry of the Agreement, the Lessee shall continue to be liable to the Lessor for all payments due and obligations assumed under this Agreement.

OWNERSHIP AND TRANSFER

9. The Lessee owns all personal property improvements (chattels) made on the Lands at their expense or on their behalf during the period of time covered by this Agreement.

10. All improvements to the real property (fixtures) made on or to the Lands at the Lessee expense or on their behalf during the period of time covered by this Agreement remain on the Lands, without any form of compensation to the Lessee at the termination of this Agreement.

(*See Section III – Optional Clauses for clauses on how farmland trusts or other landowners can compensate farmers for equity invested during a long-term agreement*)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT CLAUSES

These clauses are vital for the interests of both the Lessor and Lessee. They should be crafted individually for each agreement.

Generally, if a landowner leases out their property after putting a mortgage on the land, the person leasing the property can be asked to vacate the land if the landowner defaults on their loan and the lender takes over the land. This is true even if the lease is registered. If a mortgage is placed on the land after it is leased the lease has priority and the lender cannot ask the lessee to leave. The landowner may insist on a subordination clause in the lease that gives the mortgage priority even if the mortgage is done after the lease. Again, in this situation if the landowner defaults on their loan the person leasing the land can be asked vacate by the lender taking over the land. If the land is leased or is likely to be leased it is in the lending institutions interest to require landlords to include subordination clauses in their leases before a mortgage will be approved.

If the person leasing the land is faced with subordination clauses or knows that there is a mortgage prior to the lease, they should ensure the lease agreement includes a non-disturbance clause. This clause(s) will ensure that the lender foreclosing on the loan will not disturb the possession rights of the lessee as long as the lessee continues to meet the terms of the lease.

An attornment clause means that the lessee is promising to recognize the lender as their landlord when the original landlord defaults on their mortgage obligations. A well written attornment clause will include an obligation by the lessee to become the tenant of any successor in title the lender might put in place.

Sample clauses:

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

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

LESSEE OBLIGATIONS

11. The Lessee shall:

Utilities and taxes

a) promptly pay:

(i) all charges for heat, water, gas, hydro, sewage and all other utilities supplied to or consumed on the Lands;

(ii) all taxes, levies, duties, assessments and licence fees whatsoever whether municipal, school, provincial, parliamentary or otherwise levied, imposed or assessed against the Lands or upon the Lessee in respect thereof;

Liens

b) prevent any liens, judgements or other charges against the Lands. If there is a filing of anyliens, judgement or charges against the Lands, the Lessee shall take all necessary steps to have the said liens or charges cancelled and discharged from the Lands within _____ days of the date the Lessee has notice of such filing. In any such event the Lessee shall reimburse the Lessor for all costs and expenses (including actual legal fees and disbursements expended) incurred by the Lessee, if the Lessor, in addition to any other right or remedy, discharges any claim of lien from the Lands by paying the amount claimed to be due or by procuring a discharge of such liens by deposit of such amount in the appropriate court:

Lessee Access

c) permit the Lessor to enter the Lands:

(i) outside business hours in the case of an emergency;

(ii) during business hours where such will not unreasonably disturb or interfere with the Lessee use of the Lands and operation of the Lessee business to examine and inspect the Land to provide services or make repairs, replacements or alterations as provided for in this Agreement;

Relations

d) use the Lands in a socially responsible manner, causing no harm and creating no nuisance to neighbours. Lessee takes responsibility for the use of the Lands by members of their families, employees, friends or visitors. The reasonable decision of the Lessor shall determine if the Lands are being used in this way.

Housing

e) only construct housing with written agreement from the Lessor. All proposals for housing construction must be for the purposes of providing housing for those persons (including their spouses and children) actively farming the Lands, their labour being demonstrated as necessary to theeconomic success of the farm business on the Lands and not less than 4 months full-time labour or an identified apprenticeship. Any housing construction must meet all federal, provincial and local government legislation and bylaws;

Operations and maintenance

f) use the Lands only for the primary purposes of farming legal commercial crops (*could add more specific description or add livestock*) for local food production over and above household self-sufficiency ("**Permitted Use**").

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

h) not alter, improve, change, remodel, tear down or destroy any buildings erected upon the Lands without written agreement with the Lessor;

i) perform all acts required to be done under any Act or by regulation or by-laws with respect to weed and insect control;

j) comply with all the laws, rules, regulations and ordinances and by-laws of any government or other body having jurisdiction over the Lands and to indemnify and save harmless the Lessor from all liability, loss or damage in respect thereof;

k) be fully responsible for all the operating costs incurred in the maintenance and operation of the Lands during the term of this Agreement;

l) at the time of expiry or termination leave the Lands in the same or better condition than recorded on the Effective Date;

Requested work

m) pay the Lessor the costs if the Lessee fails to perform any of the work in this Agreement or meet any expense when due and the Lessor gives the Lessee ___ days notice to commence the said work. The Lessor may enter the Lands and do the said work and pay the said expenses all at the expense of the Lessee. The Lessor may only give such notice if the requested repairs are reasonably necessary and not purely cosmetic;

New construction and major capital investments

n) get written approval from the Lessor for any major improvement construction or major capital investment (over $_____).

LESSOR OBLIGATIONS

12. The Lessor shall,

a) not interfere with the personal lives, associations, expressions or actions of the Lessee, except insofar as they involve the terms and conditions of this Agreement;

b) expressly recognize the rights of the Lessee to the quiet enjoyment of the Lands and to their right of privacy;

c) not enter into agreements with others in regards to use and occupation of the Lands without written agreement with the Lessee;

d) in addition to any other right or remedy, have the right, but not be obliged to post a Notice of Interest ("Notice") on the Lands pursuant to Section 3(2) of the Builders Lien Act and file the Notice in the Land Title Office.

DISPUTE RESOLUTION

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

a) either the Lessee or the Lessor may give notice to the other parties requiring a meeting of all parties within ___ Business Days of receipt of the notice; and

b) all activities giving rise to breach or threatening a breach of this Agreement, or giving rise to a disagreement as to the meaning of this Agreement must immediately cease upon receipt of the notice: and

c) the parties must attempt to resolve the matter, acting reasonably and in good faith, within ____ Business Days of receipt of the notice; and

d) if the parties are not able to resolve the matter within that time, the parties may appoint a mutually acceptable person to mediate the matter. If the parties are unable to agree on the appointment of a mediator within ____ days after the mediation process is invoked, any party may apply to the British Columbia Mediator Roster Society, or it successor, or such other organization or person agreed to by the parties in writing, for appointment of a mediator. the parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within _____ days after the mediator is appointed; and

e) the cost of the mediation will be borne equally between the parties, which costs will not include costs incurred by a party for representation by counsel at the mediation.

NON-WAIVER

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

INDEPENDENT CONTRACTOR

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

INDEMNITY AND RELEASE

16. The Lessee shall not do or omit to do or permit to be done anything that will cause or shall have the effect of causing the cost of the Lessor's insurance in respect to the Lands to increase at anytime during the Agreement or any policy of insurance on or relating to the Lands be subject to cancellation.

17. The Lessee will indemnify and save harmless the Lessor, its guests, invitees and agents from any and all liabilities, expenses, charges, damages, costs, actions and proceedings arising from or as a result of any breach of or interference with the Lessee's rights under this Agreement.

18. Upon the signing of this Agreement and each anniversary date thereafter, the Lessee will deliver to the Lessor, a completed "Province of British Columbia Certificate of Insurance" as set out in Schedule __.

19. The Lessor shall not be liable for any injury or damage to any person or property on, in or about the Lands, howsoever such damage may be occasioned. All risks of any such injury being assumed by the Lessee, who shall hold the Lessor harmless and indemnified therefrom except from any liability arising out of the gross negligence of the Lessor.

NOTICE

20. Wherever any notice is required to be given to either party und the terms of this Agreement, the notice shall be in writing and shall be deemed to be sufficiently given if forwarded by registered mail addressed as follows:

    If to the Lessor:

    _____ (Name)
    _____ (address)

    If to the Lessee:

    _____ (Name)
    _____ (address)

REGISTRATION OF AGREEMENT

21. This Agreement shall be registered with the BC Land Title and Survey Authority.

GENERAL

22. This Agreement and everything herein contained shall ensure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the parties hereto, subject to the granting of consent by the Lessor to any assignment or sub-lease, and every reference herein to any party hereto shall include the heirs, executors, administrators, successors, assigns and other legal representatives of such party.

23. Where there is more than one Lessee or where there is a female party or corporation, the provisions herein shall be read with all grammatical changes thereby rendered necessary and all the covenants shall be deemed joint and several.

24. Amendments and alterations to this Agreement shall be in writing, shall be signed by both the Lessee and the Lessor and shall be appended to this lease.

25. The Lessee is not to assign or sublet in whole or in part without the Lessor's prior consent in writing. At the Execution Date the Lessor's intent is not to allow the Lessee to sub-let the Lands.

26. In the event of an emergency situation the Lessee will use their best judgement to respond to the emergency and will notify the Lessor as soon as possible of the actions taken.

27. It is particularly understood and agreed that this Agreement shall not be deemed to be nor intended to give rise to a partnership relation.

28. The Lessee acknowledges and agrees that its interest in the Lands under this Agreement is taken subject to the encumbrances described in this Agreement and that the exercise of any rights under or in respect of such encumbrances or the use of the Lands pursuant thereto shall not constitute a breach or a default on the part of the Lessor or give rise to any right of action on the part of the Lessee as against Lessor, notwithstanding the effect of such exercise or use on the Lessee's rights hereunder in respect of the Lands or otherwise howsoever.

29. The Lessee agrees with the Lessor that this Agreement shall be construed in accordance with, and be governed by, the laws of the Province of British Columbia and the laws of Canada applicable thereto.

30. The headings in this Agreement form no part of the conditions and shall be deemed to have been inserted for convenience only.

31. Time is of the essence of this Agreement.

32. This Agreement is the complete and exclusive agreement between the parties and it supersedes all other agreements whether oral or written, including any renewals and extensions and restatements and any prescriptive rights the Lessee may have or may acquire by operation of law (*can include a list of previous agreements that this one supersedes*).

SECTION III - OPTIONAL CLAUSES

Optional clauses for farmland trusts or others

DEFINITIONS AND INTERPRETATIONS

"Farm Business" means the business operated by the Lessee for the commercial production and sale of local food, including related operations such as, but not limited to, agri-tourism and production and sale of value-added products.

"Farm House" means the primary residence on the Lands, as identified in the Whole Farm Management Plan.

"Whole Farm Management Plan" means a plan developed in collaboration between *TLC* and the Lessee based on, but not limited to, sustainable land use planning and sets forth the natural characteristics of the Lands, pertinent ecological principles, activity zones (e.g. tilled areas, processing, natural areas etc) and provides plans for major construction/capital investment. (Schedule ___ of this Agreement)

LESSEE OBLIGATIONS

The Lessee shall submit to the Lessor a ___ year business plan by _____ ___, 20__ to demonstrate the Farm Business is profitable. Subsequent business plans are to be submitted to the Lessor every ___ years for the duration of this Agreement.

The Lessee shall only construct housing at the direction of the Whole Farm Management Plan and with written agreement from the Lessor. All proposals for housing construction must be for the purposes of providing housing for those persons (including their spouses and children) actively farming the Lands, their labour being demonstrated in the Business Plan as necessary to the economic success of the farm business on the Lands and not less than 4 months full-time labour or is for an identified apprenticeship. Any housing construction must meet all federal, provincial and local government legislation and bylaws.

The Lesse shall use the Lands only for the primary purposes of farming legal commercial crops (*could add more specific description or add livestock*) for local food production over and above household self-sufficiency. The reasonable

decision of the Lessor, informed by the Whole Farm Management Plan and the Business Plan, shall determine whether the Lands are being operated as aforesaid and such decision shall be binding upon the parties hereto.

The Lessor may enter the Lands during business hours where such will not unreasonably disturb or interfere with the Lessees use of the Land and operation of the Lessees business for the purposes of research, inventory and evaluation of natural systems, to view the state of repair, and for the purposes of public education.

The Lessee shall implement the Whole Farm Management Plan for the entire Lands. All operations shall be consistent with the Whole Farm Management Plan, including, but not limited to maintenance of the integrity of the landscape and soil of the Lands and shall utilize the Lands consistent with this responsibility;

The Lessee shall follow the most recent version of the "British Columbia Certified Organic Production Operation Policies and Management Standards" published by the Certified Organic Associations of British Columbia. Certification by the Lessee is not required. Exceptions to these policies and management standards must be included in the Whole Farm Management Plan and agreed to in writing between the Lessee and the Lessor.

The Lessee shall not cut down timber except either in an emergency situation or by approval of the Whole Farm Management Plan or by written agreement with the Lessor.

The Lessee shall follow the Whole Farm Management Plan in regards to any major improvement construction or major capital investment (over $_____). The Lessor will, within ____ days of being notified in writing, advice the Lessee to what extent, if any the Lessor will fund the undertaking. The Lessee shall first deliver plans and specifications to the Lessor and obtain the Lessor's written consent to construct or install these improvements.

The Lessee shall determine how to use the Lands' resources to fully develop an economically viable, environmentally responsible and community supportive Farm Business.

The Lessee shall maintain membership in _____ for the duration of this Agreement.

LESSOR OBLIGATIONS

The Lessor shall ensure all Lessor contact with the Lessee will be only through _____.

The Lessor shall not sell the Lands nor use all or part of the Lands for activities outside of this Agreement.

The Lessor shall arrange public access to the Lands for Lessor organized public events (*can specify*). The Lessor will provide a minimum of ____ days written notice to request public access.

The Lessee, as stated in Sections ____, is in no way an agent or representative of the Lessor nor is in partnership with the Lessor and shall not be represented as such by either the Lessee or the Lessor;

a) the Lessee shall, beyond the normal activities (can specify), acquire written agreement from the Lessor prior to using the Lessor name and other Lessor representations, such as, but not limited to, logos, for marketing, promotion and other activities related to the Farm Business and the Lands;

b) the Lessor shall, beyond the normal activities(*can specify*), acquire written permission from the

Lessee prior to using the Farm Business name or other representations of the Farm Business in public.

The Lessor and the Lessee shall work in collaboration to:

a) develop a Whole Farm Management Plan by _____ with the assistance of qualified professionals as necessary and appended to this Lease as Schedule _____. The Whole Farm Management Plan will be amended:
   (i) every ___ years from the Effective Date in collaboration between the Lessor and the Lessee with the help of qualified professionals as required; and
   (ii) when both the Lessor and the Lessee agree in writing and append any changes to the Whole Farm Management Plan.

General optional clauses

"Farm Business" means the business operated by the Lessee for the commercial production and sale of local food, including related operations such as, but not limited to, agri-tourism and production and sale of value-added products.

The Lessee shall not cut down timber except either in an emergency situation or by written approval of the Lessor.

The Lessee shall use the Lands for cottage industries only related to farm production in accordance with applicable laws and regulations.

The Lesse shall have the option of using farm structures for, but not limited to: storage, shelter for animals, growing of plants, value-added processing of farm raised products, and retail sales of farm-raised products as well as educational and community based activities including classes, meetings, agri-tourism and similar activities.

The Lessee and the Lessor, if deemed prudent or necessary by the Lessor or the Lessee, shall designate the boundaries of the Lands by notices, posted signs, fences or otherwise as agreed to.

The Lessee shall obtain and maintain, during the term of this Agreement the requisite approvals and certificates to permit the Lessee to use the Lands for the Permitted Use.

The Lessee, by not later than 60 days after the expiry or the sooner termination of this Agreement, have removed, at the Lessee's expense, all improvements constructed prior to and after the Effective Date and shall restore the Lands to their original state unless the Lessor has elected to keep any of the improvements by written notice to Lessee prior to the expiry or the sooner termination of this Agreement, in which case the Lessor may re-enter and take possession of those specified improvements.

SAMPLE PROFIT À PRENDRE

SECTION I – REQUIRED CLAUSES

THIS AGREEMENT made the _____ day of _____, 20____ effective the_____ day of _____, 20____ (the "**Effective Date**").

BETWEEN:

_____ (Landlord/Landowner)
of _____ (address)
_____ (address)
("**Transferor**") - *could use name or appropriate acronym*

AND:

_____ (Transferee/Tenant)
of _____ (address)
_____ (address)
("**Transferee**") – *could name or appropriate acronym)*

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

_____ (address)
_____ (PID) _____ (Lot) _____ (Block)
_____ (Section) _____ (District) _____(Plan)

consisting of ____ hectares. (*if required, describe any exclusions here e.g. area not included in this Agreement is the north west corner*) as shown on the map attached to this Agreement in Appendix A.
("**the Lands**")

The Transferee is applying to the Transferor for the right to farm, cultivate, harvest, graze, keep, and raise domestic animals on the Land.

NOWTHEREFORE in consideration of $_____ and other good and valuable consideration now paid by the Transferee to the Transferor, (the receipt and sufficiency which is hereby acknowledged), the parties hereby agree as follows:

GRANT OF PROFIT À PRENDRE

1. The Transferor hereby grants, conveys, sets over and transfers to the Transferee the following interest in Lands, by way of a Profit a Prendre, that is to say, the full right, liberty and authority to the Transferee and its agents and contractors, and its and their respective officers, servants and workmen, with all necessary equipment, to enter upon and use the Lands with a non exclusive right of access for the exclusive purposes of farming, cultivating, harvesting, grazing, keeping and raising domestic animals on the Lands and all other matters incidental thereto.

2. This grant of profit à prendre is subject to:

    a) existing terms contained in any original grant or contained in any other disposition from the Crown with respect to the Lands; and

    b) any highway, or public right-of-way, watercourse, right of water or other public easement found on the Lands.

TERM OF PROFIT À PRENDRE

33. The term of this Agreement shall be in effect for ___ years, starting on _____ (date) and expiring on _____ (date);

(*following is an optional clause*)

every ___ years at:
_____ (date)
_____ (date)
_____ (date)
date, the contents of this Agreement, including Consideration, may be modified as mutually agreed upon by the Transferee and Transferor. If the parties are not able to come to a mutual agreement on changes to the Agreement within 60 days of the roll-over date the parties will use the Dispute Resolution process outlined in Section ___. If the parties are not able to come to a mutual agreement ____ days after the Dispute Resolution process the Agreement shall be terminated by the Transferor.

CONSIDERATION PAYABLE

34. The Transferee shall pay to the Transferor a consideration ("**Consideration**") of $_____ for this Agreement. Consideration is based on calculations in Schedule A appended to this Agreement; (*ensure final agreement has included a Schedule "A" explaining how the consideration was calculated*)

    a) The Consideration shall be due and payable as follows;

Due Date	Amount
_____	$_____
_____	$_____
_____	$_____
_____	$_____

    b) the Consideration will be paid to _____ on or before the due dates in this Agreement without invoice or other notice from the Transferor;
    (*following is an optional clause*)

    c) if the Consideration is not paid on or before the due dates in this Agreement, the Transferee agrees to pay interest on the amount of unpaid rent at the rate of Prime plus ____ %.

THE TRANSFEREE

_____ _____
Signature Witness

_____ _____
Print Name Print Name

_____ Address
Date

THE TRANSFEROR

By:

_____
Name

_____
Date

SECTION II – RECOMMENDED CLAUSES

Insert theses clauses into your agreement as required.

DEFINITIONS AND INTERPRETATIONS

35. (*use this section to define specific words or clauses used in the Agreement that you feel are important e.g.* "Farm House" means the primary residence on the Lands, as identified in the Whole Farm Management Plan appended to this Agreement)

TERMINATION

36. This Agreement may be terminated by:

a) ___ days written notice from the Transferee to the Transferor before termination; or

b) abandonment by the Transferee for a period greater than ___ days; or

c) ___ days written notice if the Transferee is not carrying out the terms of this Agreement; or

d) the Transferee becomes insolvent or bankrupt and takes the benefit of any act that may be in force for bankrupt or insolvent debtors; or

e) the interests of the Transferee are seized or taken in execution or attachment by any creditor of the Transferee; or

f) the Transferee makes an assignment for the benefit of his creditors.

37. If this Agreement is terminated under the terms (b) or (c) in Section 6, the Transferor may:

    c) take possession of the Lands or any part thereof without previous notice of intention (*or offer of the Adjusted Sales Value as in Sections __, __ and __*); and

    d) remove all persons and property from the Lands;

38. Notwithstanding the termination or expiry of the Agreement, the Transferee shall continue to be liable to the Transferor for all payments due and obligations assumed under this Agreement.

OWNERSHIP AND TRANSFER

39. The Transferee owns all personal property improvements (chattels) made on the Lands at their expense or on their behalf during the period of time covered by this Agreement.

40. All improvements to the real property (fixtures) made on or to the Lands at the Transferee expense or on their behalf during the period of time covered by this Agreement remain on the Lands, without any form of compensation to the Transferee at the termination of this Agreement.

    (See Section III – Optional Clauses for clauses on how farmland trusts or other landowners can compensate farmers for equity invested during a long-term agreement)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT CLAUSES

These clauses are vital for the interests of both the Transferor and Transferee. They should be crafted individually for each agreement.

Generally, if a landowner registers a profit on their property after putting a mortgage on the land, the person with the profit can be asked to vacate the land (profit cancelled) if the landowner defaults on their loan and the lender takes over the land. If a mortgage is placed on the land after the profit is registered, the profit has priority and the lender cannot ask the transferee to leave. The landowner may insist on a subordination clause in the lease that gives the mortgage priority even if the mortgage is done after the profit is registered. Again, in this situation if the landowner defaults on their loan the person with the profit can be asked vacate by the lender taking over the land. If the land has a registered profit or is likely to have a registered profit it is in the lending institutions interest to require landlords to include subordination clauses in their profit à prendre agreement before a mortgage will be approved.

If the person with the profit is faced with subordination clauses or knows that there is a mortgage prior to the profit being registered, they should ensure the profit à prendre agreement includes a non-disturbance clause. This clause(s) will ensure that the lender foreclosing on the loan will not disturb the rights of the transferee as long as the transferee continues to meet the terms of the profit à prendre.

An attornment clause means that the transferee is promising to recognize the lender as their landlord when the original landlord defaults on their mortgage obligations. A well written attornment clause will include an obligation by the transferee to recognize the successor in title the lender might put in place.
Sample clauses:

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

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

TRANSFEREE OBLIGATIONS

41. The Transferee shall:

Utilities and taxes

a) promptly pay:

(ii) all charges for heat, water, gas, hydro, sewage and all other utilities supplied to or consumed on the Lands;

(iii) all taxes, levies, duties, assessments and licence fees whatsoever whether municipal, school, provincial, parliamentary or otherwise levied, imposed or assessed against the Lands or upon the Transferee in respect thereof;

Liens

b) prevent any liens, judgements or other charges against the Lands. If there is a filing of any liens, judgements or charges against the Lands, the Transferee shall take all necessary steps to have the said liens or charges cancelled and discharged from the Lands within ____ days of the date the Transferee has notice of such filing. In any such event the Transferee shall reimburse the Transferor for all costs and expenses (including actual legal fees and disbursements expended) incurred by the Transferee, if the Transferor, in addition to any other right or remedy, discharges any claim of lien from the Lands by paying the amount claimed to be due or by procuring a discharge of such liens by deposit of such amount in the appropriate court;

Transferor Access

c) permit the Transferor to enter the Lands:

(i) outside business hours in the case of an emergency;

(ii) during business hours where such will not unreasonably disturb or interfere with the Transferee use of the Lands and operation of the Transferee business to examine and inspect the Land to provide services or make repairs, replacements or alterations as provided for in this Agreement;

Relations

d) use the Lands in a socially responsible manner, causing no harm and creating no nuisance to neighbours. Transferee takes responsibility for the use of the Lands by members of their families, employees, friends or visitors. The reasonable decision of the Transferor shall determine if the Lands are being used in this way.

Housing

e) only construct housing with written agreement from the Transferor. All proposals for housing construction must be for the purposes of providing housing for those persons (including their spouses and children) actively farming the Lands, their labour being demonstrated as necessary to the economic success of the farm business on the Lands and not less than 4 months full-time labour or an identified apprenticeship. Any housing construction must meet all federal, provincial and local government legislation and bylaws;

Operations and maintenance

f) use the Lands only for the primary purposes of farming legal commercial crops (*could add more specific description or add livestock*) for local food production over and above household self-sufficiency ("**Permitted Use**").

g) assume full responsibility for the operation, repair, and maintenance of the Lands and any improvements constructed on the Land (whether or not such improvements were constructed by the Transferee), ensuring all is kept in good working condition (including fixtures and chattels);

h) not alter, improve, change, remodel, tear down or destroy any buildings erected upon the Lands without written agreement with the Transferor;

i) perform all acts required to be done under any Act or by regulation or by-laws with respect to weed and insect control;

j) comply with all the laws, rules, regulations and ordinances and by-laws of any government or other body having jurisdiction over the Lands and to indemnify and save harmless the Transferor from all liability, loss or damage in respect thereof;

k) be fully responsible for all the operating costs incurred in the maintenance and operation of the

Lands during the term of this Agreement;

l) at the time of expiry or termination leave the Lands in the same or better condition than recorded on the Effective Date;

Requested work

m) pay the Transferor the costs if the Transferee fails to perform any of the work in this Agreement or meet any expense when due and the Transferor gives the Transferee ___ days notice to commence the said work. The Transferor may enter the Lands and do the said work and pay the said expenses all at the expense of the Transferee. The Transferor may only give such notice if the requested repairs are reasonably necessary and not purely cosmetic;

New construction and major capital investments

n) get written approval from the Transferor for any major improvement construction or major capital investment (over $_____).

TRANSFEROR OBLIGATIONS

42. The Transferor shall,

e) not interfere with the personal lives, associations, expressions or actions of the Transferee, except insofar as they involve the terms and conditions of this Agreement;

f) expressly recognize the rights of the Transferee to the quiet enjoyment of the Lands and to their right of privacy;

g) in addition to any other right or remedy, have the right, but not be obliged to post a Notice of Interest ("Notice") on the Lands pursuant to Section 3(2) of the Builders Lien Act and file the Notice in the Land Title Office.

DISPUTE RESOLUTION

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

a) either the Transferee or the Transferor may give notice to the other parties requiring a meeting of all parties within ___ Business Days of receipt of the notice; and

b) the parties must attempt to resolve the matter, acting reasonably and in good faith, within ____ Business Days of receipt of the notice; and

c) if the parties are not able to resolve the matter within that time, the parties may appoint a mutually acceptable person to mediate the matter. If the parties are unable to agree on the appointment of

a mediator within ____ days after the mediation process is invoked, any party may apply to the British Columbia Mediator Roster Society, or it successor, or such other organization or person agreed to by the parties in writing, for appointment of a mediator. The parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within ____ days after the mediator is appointed; and

d) the cost of the mediation will be borne equally between the parties, which costs will not include costs incurred by a party for representation by counsel at the mediation.

NON-WAIVER

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

INDEPENDENT CONTRACTOR

45. The Transferor enters into this Agreement as an independent contractor and in no sense is the Transferee or the Transferee's employees, invitees or agents to be considered an agent of or under the control of the Transferor.

INDEMNITY AND RELEASE

46. The Transferee shall not do or omit to do or permit to be done anything that will cause or shall have the effect of causing the cost of the Transferor's insurance in respect to the Lands to increase at anytime during the Agreement or any policy of insurance on or relating to the Lands be subject to cancellation.

47. The Transferee will indemnify and save harmless the Transferor, its guests, invitees and agents from any and all liabilities, expenses, charges, damages, costs, actions and proceedings arising from or as a result of any breach of or interference with the Transferee's rights under this Agreement.

48. Upon the signing of this Agreement and each anniversary date thereafter, the Transferee will deliver to the Transferor, a completed "Province of British Columbia Certificate of Insurance" as set out in Schedule __.

49. The Transferor shall not be liable for any injury or damage to any person or property on, in or about the Lands, howsoever such damage may be occasioned. All risks of any such injury being assumed by the Transferee, who shall hold the Transferor harmless and indemnified therefrom except from any liability arising out of the gross negligence of the Transferor.

NOTICE

50. Wherever any notice is required to be given to either party und the terms of this Agreement, the notice shall be in writing and shall be deemed to be sufficiently given if forwarded by registered mail addressed as follows:

If to the Transferor:

_____ (Name)
_____ (address)

If to the Transferee:

_____ (Name)
_____ (address)

REGISTRATION OF AGREEMENT

51. This Agreement shall be registered with the BC Land Title and Survey Authority.

GENERAL

52. This Agreement and everything herein contained shall ensure for the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the parties hereto, subject to the granting of consent by the Transferor to any assignment or sub-lease, and every reference herein to any party hereto shall include the heirs, executors, administrators, successors, assigns and other legal representatives of such party.

53. Where there is more than one Transferee or where there is a female party or corporation, the provisions herein shall be read with all grammatical changes thereby rendered necessary and all the covenants shall be deemed joint and several.

54. Amendments and alterations to this Agreement shall be in writing, shall be signed by both the Transferee and the Transferor and shall be appended to this Agreement.

55. The Transferee is not to assign or sublet in whole or in part without the Transferor's prior consent in writing. At the Execution Date the Transferor's intent is not to allow the Transferee to sub-let the Lands.

56. In the event of an emergency situation the Transferee will use their best judgement to respond to the emergency and will notify the Transferor as soon as possible of the actions taken.

57. It is particularly understood and agreed that this Agreement shall not be deemed to be nor intended to give rise to a partnership relation.

58. The Transferee acknowledges and agrees that its interest in the Lands under this Agreement is taken subject to the encumbrances described in this Agreement and that the exercise of any rights under or in respect of such encumbrances or the use of the Lands pursuant thereto shall not constitute a breach or a default on the part of the Transferor or give rise to any right of action on the part of the Transferee as against Transferor, notwithstanding the effect of such exercise or use on the Transferee's rights hereunder in respect of the Lands or otherwise howsoever.

59. The Transferee agrees with the Transferor that this Agreement shall be construed in accordance with, and be governed by, the laws of the Province of British Columbia and the laws of Canada applicable thereto.

60. The headings in this Agreement form no part of the conditions and shall be deemed to have been inserted for convenience only.

61. Time is of the essence of this Agreement.

62. This Agreement is the complete and exclusive agreement between the parties and it supersedes all other agreements whether oral or written, including any renewals and extensions and restatements and any prescriptive rights the Transferee may have or may acquire by operation of law (*can include a list of previous agreements that this one supersedes*).

SECTION III - OPTIONAL CLAUSES

Optional clauses for farmland trusts or others

DEFINITIONS AND INTERPRETATIONS

"Farm Business" means the business operated by the Transferee for the commercial production and sale of local food, including related operations such as, but not limited to, agri-tourism and production and sale of value-added products.

"Farm House" means the primary residence on the Lands, as identified in the Whole Farm Management Plan.

"Whole Farm Management Plan" means a plan developed in collaboration between TLC and the Transferee based on, but not limited to, sustainable land use planning and sets forth the natural characteristics of the Lands, pertinent ecological principles, activity zones (e.g. tilled areas, processing, natural areas etc) and provides plans for major construction/capital investment. (Schedule ___ of this Agreement)

TRANSFEREE OBLIGATIONS

The Transferee shall submit to the Transferor a ___ year business plan by _____ ___, 20__ to demonstrate the Farm Business is profitable. Subsequent business plans are to be submitted to the Transferor every ___ years for the duration of this Agreement.

The Transferee shall only construct housing at the direction of the Whole Farm Management Plan and with written agreement from the Transferor. All proposals for housing construction must be for the purposes of providing housing for those persons (including their spouses and children) actively farming the Lands, their labour being demonstrated in the Business Plan as necessary to the economic success of the farm business on the Lands and not less than 4 months full-time labour or is for an identified apprenticeship. Any housing construction must meet all federal, provincial and local government legislation and bylaws.

The Transferee shall use the Lands only for the primary purposes of farming legal commercial crops (*could add more specific description or add livestock*) for local food production over and above household self-sufficiency. The reasonable decision of the Transferor, informed by the Whole Farm Management Plan and the Business Plan, shall determine whether the Lands are being operated as aforesaid and such decision shall be binding upon the parties hereto.

The Transferor may enter the Lands during business hours where such will not unreasonably disturb or interfere with the Transferees use of the Land and operation of the Transferees business for the purposes of research, inventory and evaluation of natural systems, to view the state of repair, and for the purposes of public education.

The Transferee shall implement the Whole Farm Management Plan for the entire Lands. All operations shall be consistent with the Whole Farm Management Plan, including, but not limited to maintenance of the integrity of the landscape and soil of the Lands and shall utilize the Lands consistent with this responsibility;

The Transferee shall follow the most recent version of the "British Columbia Certified Organic Production Operation Policies and Management Standards" published by the Certified Organic Associations of British Columbia. Certification by the Transferee is not required. Exceptions to these policies and management standards must be included in the Whole Farm Management Plan and agreed to in writing between the Transferee and the Transferor.

The Transferee shall not cut down timber except either in an emergency situation or by approval of the Whole Farm Management Plan or by written agreement with the Transferor.

The Transferee shall follow the Whole Farm Management Plan in regards to any major improvement construction or major capital investment (over $_____). The Transferor will, within ____ days of being notified in writing, advice the Transferee to what extent, if any the Transferor will fund the undertaking. The Transferee shall first deliver plans and specifications to the Transferor and obtain the Transferor's written consent to construct or install these improvements.

The Transferee shall determine how to use the Lands' resources to fully develop an economically viable, environmentally responsible and community supportive Farm Business.

The Transferee shall maintain membership in _____ for the duration of this Agreement.

TRANSFEROR OBLIGATIONS

The Transferor shall ensure all Transferor contact with the Transferee will be only through _____.

The Transferor shall not sell the Lands nor use all or part of the Lands for activities outside of this Agreement.

The Transferor shall arrange public access to the Lands for Transferor organized public events (*can specify*). The Transferor will provide a minimum of ____ days written notice to request public access.

The Transferee, as stated in Sections ____, is in no way an agent or representative of the Transferor nor is in partnership with the Transferor and shall not be represented as such by either the Transferee or the Transferor;

a) the Transferee shall, beyond the normal activities (*can specify*), acquire written agreement from the Transferor prior to using the Transferor name and other Transferor representations, such as, but not limited to, logos, for marketing, promotion and other activities related to the Farm Business and the Lands;

b) the Transferor shall, beyond the normal activities(*can specify*), acquire written permission from the Transferee prior to using the Farm Business name or other representations of the Farm Business in public.

The Transferor and the Transferee shall work in collaboration to:

a) develop a Whole Farm Management Plan by _____ with the assistance of qualified professionals as necessary and appended to this Lease as Schedule _____. The Whole Farm Management Plan will be amended:
   (i) every ___ years from the Effective Date in collaboration between the Transferor and the Transferee with the help of qualified professionals as required; and
   (ii) when both the Transferor and the Transferee agree in writing and append any changes to the Whole Farm Management Plan.

General optional clauses

The Transferee shall not cut down timber except either in an emergency situation or by written approval of the Transferor.

The Transferee shall use the Lands for cottage industries only related to farm production in accordance with applicable laws and regulations.

The Transferee shall have the option of using farm structures for, but not limited to: storage, shelter for animals, growing of plants, value-added processing of farm raised products, and retail sales of farm-raised products as well as educational and community based activities including classes, meetings, agri-tourism and similar activities.

The Transferee and the Transferor, if deemed prudent or necessary by the Transferor or the Transferee, shall designate the boundaries of the Lands by notices, posted signs, fences or otherwise as agreed to.

The Transferee, by not later than 60 days after the expiry or the sooner termination of this Agreement, have removed, at the Transferee's expense, all improvements constructed prior to and after the Effective Date and shall restore the Lands to their original state unless the Transferor has elected to keep any of the improvements by written notice to Transferee prior to the expiry or the sooner termination of this Agreement, in which case the Transferor may re-enter and take possession of those specified improvements.

SAMPLE LICENSE

SECTION I – REQUIRED CLAUSES

THIS AGREEMENT made the ___ day of __, 20___ (in pursuance of the Land Transfer Form Act - Part 2), effective the ___ day of ____, 20____ (the "**Effective Date**").

BETWEEN:

_____ (Landlord/Landowner)
of _____ (address)
_____ (address)
("**Licensor**") - *could use name of Licensor or appropriate acronym*

AND:

_____ (Licensee/Tenant)
of _____ (address)
_____ (address)
("**Licensee**") – *could use name of Licensee, or appropriate acronym*

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

_____ (address)
_____ (PID) _____ (Lot) _____ (Block)
_____ (Section) _____ (District) _____(Plan)

consisting of ____ hectares. (*if required, describe any variations here e.g. area not included in this Agreement is the north west corner*) as shown on the map attached to this Agreement in Appendix A. ("**the Lands**")

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

GRANT OF LICENSE

63. Subject to Sections 2 and 3 and the rights of termination in Sections ___, ___ and __ in this Agreement, the Licensor grants a non-exlusive licence of occupation to the Licensee, Licensee to use the Lands for the Permitted Use for the period from June 1, 2007 to February 28, 2011.

(*following are optional clauses*)

64. The Licensee's right to use the Lands is subject to:

a) existing terms contained in any original grant or contained in any other disposition from the Crown with respect to the Lands;

b) any highway, or public right-of-way, watercourse, right of water or other public easement found on the Lands;

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

TERM OF LICENSE

65. The term of this Agreement shall be in effect for ___, starting on _____ (date) and ending on _____ (date);

(*the following is optional - omit or modify as required*)
every ___ years at:
_____ (date)
_____ (date)
_____ (date)

date, the contents of this Agreement, including License Fee, may be modified as mutually agreed upon by the Licensee and Licensor. If the parties are not able to come to a mutual agreement on changes to the Agreement within 60 days of the roll-over date the parties will use the Dispute Resolution process outlined in Section ___. If the parties are not able to come to a mutual agreement ____ days after the Dispute Resolution process the Agreement shall be terminated by the Licensor.

RENT PAYABLE

66. The Licensee shall pay to the Licensor a licence fee ("**License Fee**") of $_____ for use of the Lands.

License Fee is based on calculations in Schedule ___ appended to this Agreement;

a) Rent shall be due and payable as follows;

Due Date	Amount
_____	$_____
_____	$_____
_____	$_____
_____	$_____

b) License Fee will be paid to _____ on or before the due dates in this Agreement without invoice or other notice from the Licensor;

(*the following is optional – omit or modify as required*)

c) if the License Fee is not paid on or before the due dates in this Agreement, the Licensee agrees to pay interest on the amount of unpaid License Fee at the rate of Prime plus ____ %.

THE LICENSEE

_____
Signature

_____
Witness

_____
Print Name

_____
Print Name

_____
Date

Address

THE LICENSOR

_____
Signature

_____
Witness

_____
Print Name

_____
Print Name

_____
Date

Address

SECTION II – RECOMMENDED CLAUSES

Insert theses clauses into your agreement as required.

DEFINITIONS AND INTERPRETATIONS

67. (*use this section to define specific words or clauses used in the Agreement that you feel are important e.g.* "Farm House" means the primary residence on the Lands, as identified in the Whole Farm Management Plan appended to this Agreement)

TERMINATION

68. Without limiting any of its other rights or remedies, the Licensor may terminate the licence granted under this Agreement:

    (a) by giving the Licensee at least _____ days advance written notice;

    (b) without giving the Licensee any prior notice if the Licensee breaches any of the Licensee's obligations under this Agreement.

69. Notwithstanding the termination of the licence granted under this Agreement, the Licensee shall continue to be liable to the Licensor for all payments due and obligations assumed under this Agreement, including without limitation, sections _____ and __.

OWNERSHIP AND TRANSFER

70. 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.

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

LICENSEE OBLIGATIONS

72. The Licensee shall:

a) pay when due

(i) all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Lands, the improvements or both of them and which the Licensee is liable to pay under applicable laws;

(ii) all charges for electricity, gas, water and other utilities supplied to the Lands;

b) manage its farm operations in such a way that is respectful of the Licensor's mandate to protect important habitat for plants, animals, and natural communities on the Lands, as well as the ecosystems and processes that sustain them;

c) respect the natural values that exist on the Lands, and to practice due diligence in order to avoid contaminating the soil and water, and to take reasonable steps to avoid unnecessary harm to native plans and animals found on the Lands;

d) not use the Lands nor allow the Lands to be used for any purpose other than the Permitted Use;

e) not alter, improve, change, remodel, tear down or destroy any buildings erected upon the Lands without written agreement with the Licensor;

f) not cut down timber except either in an emergency situation or by approval of the Whole Farm Management Plan or by written agreement with the Licensor;

g) be entitled to construct and install on the Lands such temporary improvements as the Licensee considers necessary or desirable to enable Licensee to use the Lands for the Permitted Use provided that:

(i) no improvements shall be constructed or installed on the Lands unless Licensee shall have first delivered plans and specifications to the Licensor, and obtained the Licensor's written consent to construct or install these improvements;

(ii) all work associated with the temporary improvements shall be done in a good and workmanlike manner by qualified and experienced contractors, professionals or tradespeople.;

h) keep, at all times and at the Licensee's expense, the Lands and any improvements constructed on the Lands (whether or not such improvements were constructed by the Licensee) in good repair, including without limitation, the fences, gates, and roads;

i) not, at any time commit or suffer to be committed any waste upon the Lands. Licensee shall not keep, sell, use or handle any merchandise, goods or raw materials which are regulated under the Transportation of Dangerous Goods Act, 1992, Transport of Dangerous Goods Act, the Waste Management Act, the regulations promulgated under these Acts or any successor legislation or regulations replacing these Acts, unless the Licensee has first obtained the Licensor 's written permission;

j) ensure that in using the Lands for the Permitted Use, no act whatsoever shall be done or omitted to be done in or upon the Lands, which may result in nuisance, damage or disturbance to the occupiers or owners of any lands or premises adjoining the Lands or to the holders of any easement, right of way or other encumbrance charging the whole or part of the Lands;

k) if deemed prudent or necessary by the Licensor or the Licensee for the purposes of subsections ___ and ____ or otherwise,

(i) designate the boundaries of the Lands by notices, posted signs, fences or otherwise, as approved by the Licensor;

(ii) control, regulate and direct the movement, activities and the access and entry of all Licensee employees, agents, contractors, consultants, licencees or any other persons for whom Licensee is responsible to or on the Lands; and

(iii) regulate the use and movement of vehicles of all Licensee employees, agents, contractors, consultants, licencees or any other persons for whom Licensee is responsible to or on the Lands;

l) use the Licensee's best endeavours to ensure that no claim of lien shall be filed in respect of any work which may be carried out by it or on the Licensee's behalf on the Lands and, if a claim of lien shall be filed in respect of any such work, Licensee shall take all necessary steps to have the claim of lien cancelled and discharged from the Lands within ____ days of the date Licensee has notice of such filing. The Licensor, in addition to any other rights or remedy, may discharge any claim of lien from the Lands by paying the amount claimed to be due or by procuring a discharge of such liens by deposit of such amount in the appropriate court. In any such event Licensee shall forthwith pay to and reimburse the Licensor for all costs and expenses (including actual legal fees and disbursements expended) incurred by the Licensor;

m) comply with any law, statute, by-law, regulation or lawful requirements of any governmental authority or any public utility lawfully acting under statutory authority and all demands and written notices in pursuance thereof whether given to Licensee or the Licensor and in any manner or degree affecting the exercise or fulfilment of any right or obligation arising under or as a result of this Agreement or the use or occupancy of the Lands by Licensee. If a party receives any such demand or written notice, then that party shall forthwith deliver a copy thereof to the other party;

n) obtain and maintain, during the term of this Agreement:

(i) the requisite approvals and certificates to permit the Licensee to use the Lands for the Permitted Use; and

(ii) insurance coverage such as a reasonable and prudent licencee of lands would obtain, having regard to the obligations assumed by the Licensee under this Agreement and the activities conducted by the Licensee, the Licensee's agents and invitees on the Lands, including the construction and installation of temporary improvements and the Licensee's use and occupancy of the Lands;

o) not do or omit to do or permit to be done anything that will cause or shall have the effect of causing the cost of the Licensor's insurance in respect to the Lands to increase at anytime during the Agreement or any policy of insurance on or relating to the Lands be subject to cancellation;

p) indemnify and save harmless the Licensor, its guests, invitees and agents from any and all liabilities, expenses, charges, damages, costs, actions and proceedings arising from or as a result of any breach of or interference with the Licensee's rights under this Lease;

q) upon the signing of this License and each anniversary date thereafter, the Lessee will deliver to the Licensor a completed "Province of British Columbia Certificate of Insurance" as set out in Schedule "____";

r) by not later than 60 days after the expiry or the sooner termination of this Agreement, have removed, at the Licensee's expense, all personal property improvements constructed prior to and after the Effective Date.

73. If any party hereto is comprised of more than one person, all covenants and obligations of those persons shall be joint and several.

RIGHTS OF THE LICENSOR

74. the Licensor or its duly authorized employees, agents or contractors may:

a) enter upon the Lands for the purpose of examining the condition and state of repair of the Lands and the improvements, and if at any time as a result of its inspection, the Licensor gives to the Licensee notice of defect or want of repair, the Licensee shall cause the same to be repaired immediately at the expense of Licensee. the Licensor may only give such notice if the requested repairs are reasonably necessary and not of a purely cosmetic nature; and

b) enter the Lands and repair or maintain the same at the expense of Licensee if Licensee shall at any time default in the performance or observance of any of the covenants in this Agreement for or relating to the repair or maintenance of the Lands or the improvements, and in the Licensor 's opinion such default affects the safe or lawful use or operation of the Lands or the improvements or the Licensor's use of the the Licensor Enhancements or neighbouring lands.

c) in addition to any other right or remedy, shall have the right, but shall not be obliged, to post a Notice of Interest ("Notice") on the Lands pursuant to Section 3(2) of the Builders Lien Act and file the Notice in the Land Title Office.

LICENSOR OBLIGATIONS

75. the Licensor shall

a) not interfere with the personal lives, associations, expressions or actions of the Licensee, except insofar as they involve the terms and conditions of this Agreement; and

b) not use the property in a manner that would derogate from the Licensee's rights under this Agreement.

DISPUTE RESOLUTION

76. If a breach of this Agreement occurs or is threatened, or if there is disagreement as to the meaning of this Agreement, either the Licensor or the Lessee may give notice to the other parties requiring a meeting of all parties within ___ Business Days of receipt of the notice.

77. All activities giving rise to breach or threatening a breach of this Agreement, or giving rise to a disagreement as to the meaning of this Agreement must immediately cease upon receipt of the notice.

78. The parties must attempt to resolve the matter, acting reasonably and in good faith, within ___ Business Days of receipt of the notice.

79. If the parties are not able to resolve the matter within that time, the parties may appoint a mutually acceptable person to mediate the matter. If the parties are unable to agree on the appointment of a mediator within 15 days after the mediation process is invoked, any party may apply to the British Columbia Mediator Roster Society, or its successor, or such other organization or person agreed to by the parties in writing, for appointment of a mediator. The parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within ___ days after the mediator is appointed.

80. The cost of the mediation will be borne equally between the parties, which costs will not include costs incurred by a party for representation by counsel at the mediation.

NON-WAIVER

81. The failure of the Licensor to insist upon strict performance of any condition in this License or to exercise the right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such condition or option and no waiver shall be inferred from or implied by any thing done or omitted by the Licensor, save only express waiver in writing. The acceptance of any rent or performance of any obligation hereunder by a person other than the Licensee shall not be construed as an admission by the Licensor of any right, title or interest of any such persons as a sub-tenant, assignee, transferee or otherwise in place and stead of the Licensee.

INDEPENDENT CONTRACTOR

82. Licensee enters into this Agreement as an independent contractor and in no sense is the Licensee or any of the Licensee's employees, invitees or agents to be considered an agent of or under the control of the Licensor. No inspection undertaken by the Licensor, granting of a consent by the Licensor, delivery of plans, specifications or other information to the Licensor nor Licensee's compliance with any orders or directions given by the Licensor shall relieve Licensee from complying with, or derogate from Licensee's obligations to comply with, the Licensee's obligations under this Agreement. Without limiting the foregoing, the Licensor is under no obligation to review any plans or specifications delivered by Licensee to the Licensor pursuant to section ____ to inspect, repair or maintain the Lands or any improvements under section ____, nor insure any improvements made or installed by or on behalf of Licensee.

INDEMNITY AND RELEASE

83. The Licensee shall indemnify and save harmless the Licensor, its directors, officers, employees and agents from all claims, demands, losses, costs and expenses (including actual legal costs and disbursements expended) and damages based upon, arising out of or connected with the use of the Lands by the Licensee or for any action taken or things done or maintained in connection with this Agreement, the intent being that the Licensor shall be at no expense, or loss, to which it would not have been put but for this Agreement.

84. The Licensee shall not hold the Licensor liable for any injury or damage to any person or property on, in or about the Lands, howsoever such damage may be occasioned. All risks of any such injury being assumed by the Lessee, who shall hold the Licensor harmless and indemnified therefrom.

NOTICE

85. Wherever any notice is required to be given to either party under the terms of this Agreement, the notice shall be in writing and shall be deemed to be sufficiently given if forwarded by registered mail addressed as follows:

If to the Lessor:
_____ (Name)
_____ (address)

If to the Licensee:
_____ (Name)
_____ (address)

Each party agrees to immediately give notice to the other of any change in its address from that set out above.

GENERAL

86. If the Licensee is comprised of more than one person, is a female party or other legal entity all covenants and obligations of the Licensee shall be joint and several.

87. Amendments and alterations to this Agreement shall be in writing, shall be signed by both the Licensee and the Licensor and shall be appended to this Agreement.

88. Licensee is not to assign or sell in whole or in part this Agreement without the Licensor's prior consent in writing.

89. The headings in this Agreement form no part hereof and shall be deemed to have been inserted for convenience only.

90. Time is of the essence of this Agreement.

91. This Agreement is the complete and exclusive agreement between the parties and it supercedes all other agreements whether oral or written, including without limitation,_____ (*description of any previous agreements*) and any prescriptive rights the Licensee may have or may acquire by operation of law.

SECTION III - OPTIONAL CLAUSES

Optional clauses for farmland trusts or others

The Licensee agrees to work cooperatively with the Licensor towards a satisfactory management regime as recorded in the Whole Farm Management Plan (Schedule ___).

The Licensee shall allow access for the Licensor public use of the Lands, including Licensor led public events (can specify details), subject to_____ (e.g. ___ days of written notice from the Licensor).

The Licensee shall maintain membership in _____ for the duration of this Agreement.

General optional clauses

The Licensee shall follow the most recent version of the "British Columbia Certified Organic Production Operation Policies and Management Standards" published by the Certified Organic Associations of British Columbia. Certification by the Licensee is not required. Exceptions to these policies and management standards must be agreed to in writing between the Licensee and the Licensor and appended to this Agreement.

The Licensee, as stated in Section ___ is in no way an agent or representative of the Licensor nor is in partnership with the Licensor and shall not be represented as such by either the Licensee or the Licensor;

a) The Licensee shall, beyond the normal activities of the _____, acquire written agreement from the Licensor prior to using the Licensor's name and other the Licensor representations, such as, but not limited to, logos, for marketing, promotion and other activities related to the Farm Business and the Lands;

b) the Licensor shall, beyond the normal activities of the _____, acquire written permission from the Licensee prior to using the Farm Business name or other representations of the Farm Business in public.

Appendix B — Farmland Trusts and Farmland Access Agreements

WHEN A FARMLAND TRUST MAKES LAND AVAILABLE to farmers for farming, the land is held in trust and will not be sold. This is in contrast to most other farmland access agreement situations where the land may be sold at the landowner's discretion.

Since the land is held in trust, farmland trusts can use this opportunity to provide farmers with land in a way that is similar to land ownership. Two key components of land ownership that differ from renting land are: the ability to stay on the land for the long term (10 plus years); and when the farmer leaves the land, their investment (equity) is compensated through sale of the land.

If, as a farmland trust, you want to make land accessible to farmers in a way that is similar to land ownership, you should consider the following when designing access agreements:

- provide for long-term tenure (10 years or more),
- include a clause stipulating the land will not be sold, and
- account for equity by providing a means to buy out the farm business and improvements when the farmer leaves the land.

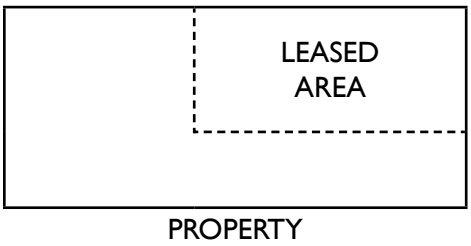
You may also want to include a means of encouraging, supporting and requiring sustainable farming practices in your agreement.

As a farmland trust, you may think you should be giving farmers "a deal" on land rental rates to encourage and support farming in your community. However, this may create resentment in neighbouring farmers and may lead to unfair business competition. To help business competition to remain equitable in your community and to prevent hard feelings, you should be familiar with the standard rental rates for farmland in your area and keep your rental rates in line with those values.

Appendix C — Enforcement of Long-term Leases and Subdivision[30]

Leasing and subdivision

UNDER CANADIAN LAW, a lease on part of a property is considered a type of subdivision when the lease is for a term longer than 3 years. For example, if a landowner leases a specific area of his property to a farmer for 12 years, the property is considered subdivided for 12 years.



The *Land Title Act*, section 73 states that when part of property is leased for longer than three years, the property must go through the subdivision requirements outlined in section 7 of the *Act*. The subdivision must be approved by an approving officer, and this approval only carries for the term of that particular lease. When the lease terminates, so does the subdivision. The subdivided areas cannot be transferred separately under this approval (e.g., the owner cannot sell the leased area as a separate lot from the original property). In 2007, the legislature amended section 73 to clarify that leases longer than three years that do not meet the subdivision requirements are not unenforceable

Land Title Act prior to 2007	Land Title Act with 2007 amendment
73(1) Except on compliance with this Part, a person must not subdivide land into smaller parcels than those of which the person is the owner for the purpose of (a) transferring it, or (b) leasing it, or agreeing to lease it, for life or for a term exceeding 3 years.	73.1(1) Except on compliance with this Part, a person must not subdivide land into smaller parcels than those of which the person is the owner for the purpose of (a) transferring it, or (b) leasing it, or agreeing to lease it, for life or for a term exceeding 3 years. 73.1(1) A lease or an agreement for lease of a part of a parcel of land is not unenforceable between the parties to the lease or agreement for lease by reason only that: (a) the lease or agreement for lease does not comply with this Part, or (b) an application for the registration of the lease or agreement for lease may be refused or rejected.

Implications

A NEWS RELEASE from the BC Ministry of Agriculture and Lands on June 23, 2007, "Amendments Enhance Opportunities for Farmers" (2007AL0030-000849), states the change to the *Land Title Act* will "ensure that long-term agreements to lease unsubdivided land are enforceable between the parties even if the leases do not comply with the subdivision and registration requirements set out in the Act."

30 Information from Johnson, P. 2007. Subdivision Requirements And The Enforcement Of Long Term Leases. Staples, McDannold, Stewart Barristers and Solicitors. http://sms.bc.ca/logo/2008/winter/winter2007-4.html

However, it is important to keep in mind that the *Land Title Act* still requires subdivision of land into smaller parcels for leases longer than three years. While ignoring the subdivision requirements will not result in charges against you, and the 2007 amendment provides that leases longer than three years are not unenforceable regardless if the subdivision requirements are met, you should consider the following points before deciding to enter into a long-term lease agreement without following the subdivision requirements:

- Long-term leases may be unrecognized violation of local government zoning bylaws (e.g., minimum parcel size)[31];
- It is unknown at this time how much protection the courts will give the interests of parties who have not followed the subdivision requirements, especially if there are conflicts with local government regulations; and
- An unregistered lease may be treated in law as a valid agreement between the parties, but an unregistered lease may not convey an interest in land, as per section 20 of the *Land Title Act*.

It is up to the landowner and the potential lessee to decide what degree of certainty they want in how enforceable their lease agreement it.

31 A lease on a part of a property is still considered a subdivision even if the approval process is not followed and related regulations still apply (e.g, lot size, number of buildings allowed on lot etc.).

Appendix D — General Agreement Completion Checklist[32]

THE PURPOSE OF THIS CHECKLIST is to ensure your agreement contains all the required clauses, as well as to help you evaluate the types of clauses that are recommended or optional. Note that the lease (see Sample Lease in Appendix A) is used as a basis for this checklist, but the checklist can be applied to profits à prendre, licences, and memoranda of understanding as well.

Required clauses

- *Names and Addresses* of the parties entering into the agreement
- *Description of the Property*, including the common legal description (e.g., Address, Property Identifier (PID), Lot, Section, District), specifies any areas or buildings excluded/included and states that the person providing the lease is the registered owner of the land.
- *Grant of Lease* grants the lease to the lessee. If necessary, can include provisions to the grant (e.g., subject to any public right of way, watercourse or public easement on the land).
- *Term of Lease* states when the lease starts and how long it lasts. Although not required, it is recommended that this section address renewal/review of the lease, if that is a consideration, and state when and how such a renewal would happen.
- *Rent Payable* states what the amount of the rent is, how it is calculated, when it is to be paid and to whom.

Recommended clauses

Note that these recommended clauses are based on both a general perspective of "this is what is good to have in an agreement" and the desire to have long-term agreements that encourage sustainable farm management practices.

- *Definitions and Interpretations* provides definitions of terms and phrases used in the lease (e.g., "Farm House" means the primary residence on the lands, as identified in the Whole Farm Management Plan)
- *Termination of the Lease* describes how the lease will be terminated. This can include expiry of the lease, the lessee defaulting on the lease or either party wanting to break the lease.
- *Ownership and Transfer* details who owns improvements and property when the lease terminates.
- *Subordination, Non-disturbance and Attornment* details if the lease takes priority over the mortgage if the landowner defaults on their mortgage, if the lessee will be required to vacate if the mortgage is defaulted on and if the lessee will accept the party taking over the land as the new landlord.
- *Insurance* lays out who is responsible for insurance coverage and that the coverage is adequate (e.g., occupiers liability insurance and fire insurance). Includes release of the landowner from liability related to activities on the property.
- *Right to Assign or Sublet Lease* specifies when the tenant can assign or sublet the lease. If this is not specified, the tenant can assign or sublet the lease without the landowner's permission. If the landowner allows assignment or sublet with written permission, they cannot unreasonably withhold permission.
- *Utilities and Taxes* assigns responsibility for utilities and taxes associated with the property (e.g., lessee is responsible for water and electricity).
- *Dispute Resolution* provides a formal mechanism for dealing with disputes between landowner and tenant. This may reduce the possibility of long and expensive court proceedings.
- *Non-waiver* explains that if the landowner does not enforce the conditions in the lease on the lessee, the conditions still hold and inaction by the landlord is not a waiver of the terms of the lease.
- *Independent Contractor* lays out that the lease or parties associated with the lease are not in partnership and actions the landowner takes do not take away from the lessee's obligations to comply with the terms of the lease.
- *Notice* describes how notice is to be given to either party and provides the appropriate contact information (e.g., written notice through registered mail).

32 Modified and expanded from Gamble, R.W. October 2001. Land lease arrangements. Ontario Ministry of Agriculture, Food and Rural Affairs, AG-DEX 812.

- *Privacy* stipulates that the landowner will not interfere with the privacy of the tenant.
- *Land Use* states how the tenant is going to use the land and can include stipulation of farming practices (e.g., normal farming practices or organic standards). A clause on what condition the land is to be left in after the lease terminates should be included. If buildings are present, stipulate how they can be used and what condition they need to be left in.
- *Maintenance* assigns responsibility and costs for upkeep of the lands and associated buildings, including reimbursing the landowner if the lessee does not carry out reasonably requested repairs.
- *Environmental Matters* covers environmental responsibilities and policies. If there is an environmental problem, the landowner is ultimately responsible for activities on the land; hence, the tenant should agree that as the user of the land they will adhere to relevant legislation and farm practices. The tenant should be held responsible for any costs incurred in an environmental cleanup/remediation.
- *Right of Inspection* gives the landowner permission to enter the property under described circumstances.
- *Right of Removal of Crops* gives the tenant the right to complete the harvesting of their crop after the termination of the lease or be compensated for the loss of that crop.
- *Relations* specify the tenant will use the property in a socially responsible manner and not annoy the neighbours.
- *Binding on Legal Representatives* means the terms of the agreement will be binding on heirs, executors, administrators, successors and assigns of the parties entering into the agreement.
- *Amendments and Alterations* enables the parties to make changes to the lease.
- *Acknowledgement of Encumbrances* is where the tenant acknowledges that their interest in the land comes with encumbrances under the lease.
- *Agreement of Governance* states that the lessee and landowner agree the lease is in accordance with and governed by BC and Canadian law.
- *Headings* stipulate that any headings used in the lease do not form part of the lease and are only for making the reading of the lease easier.
- *Complete and Exclusive Agreement* states that the lease supersedes any other agreements between the parties and any rights the lessee may have through law.

Optional clauses

Where the land is owned privately, by a company or by a community organization

- *Transfer of Property* provides an agreement that balances the landowner's desire to sell and the tenant's desire to have the lease unaffected, if the property can be sold (e.g., it is not held in perpetuity by a land trust).
- *Right of First Refusal* gives tenants the first option to purchase the property if the landowner offers it for sale.
- *Notice of Interest under the Builders Lien Act* gives the landlord the option of posting a Notice of Interest on the land for the purposes of the *Builders Lien Act*.

Where the land is owned in perpetuity by a land trust

- *Land Security* addresses the landowner's responsibility not to sell the land or use if for other activities outside of the lease.
- *Ownership and Transfer* specify items such as who owns the improvements, right of first refusal for the farm business and compensation for capital invested by the tenant. It is standard in leases that improvements deemed to be real property (affixed to the land) stay with the land when the lease is terminated without compensation to the tenant unless specified. This section should include how the parties will calculate the value of compensation for improvements.
- *New Construction and Major Capital Investment* provides an option for the landowner to help fund major improvements to the property.
- *Whole Farm Management Plan* requires the landowner and tenant to work in collaboration to develop and keep up to date a general management plan for the property.
- *Public Access* describes how public access to the land will be arranged between the farmer and the landowner.
- *Public Representation* outlines when and how the landowner and the farmer will represent each other in public.
- *Membership* stipulates that the lessee must maintain a membership in the land trust that owns the land.

Housing

- *Housing* provides how the housing (if present) is to be used (e.g., only for housing the farmer and family) and if additional housing can be constructed.

Where more than one legal entity is signing the lease as the lessee

- *Memorandum of Understanding* refers to the parties making up the lessee entering into a requested MOU and the MOU being appended to the lease and provided to the landowner. The clauses stipulate that debts will be pursued from all members of the MOU and that the landowner is not responsible for the relations between those signing the MOU. Finally, it clarifies how debts and equity will be handled in relation to the members of the MOU.

Appendix E — Leases and Easements

BEFORE THE 2007 AMENDMENT TO THE *LAND TITLE ACT* addressing leases longer than three years (See Enforcement of Long-Term Leases and Subdivision on page **), parties seeking greater security for landowners and those leasing the land explored other types of agreements. Using an easement with a lease is one means of providing access to part of a parcel of land without needing to go through the subdivision process.

What is an easement?

AN EASEMENT GIVES ACCESS TO or use of another's land or waterway. It is an interest in land, but unlike a lease, it does not include the right to exclusive possession. If it does grant exclusive possession, courts may interpret the agreement as a lease. Easements can grant exclusive occupation.

Each easement has a servient and a dominant tenement. The servient tenement is the land that has the easement on it. The dominant tenement is the land that benefits from or holds the easement. For example, an easement such as a right-of-way across one property (servient tenement) provides access to a tree lot on another property (dominant tenement). This requirement for two parcels of land makes using an easement with a lease impractical for many farmers securing access to land because these farmers may not have land adjacent to the parcel for which access is sought that can act as the dominant tenement.

While easements can be affirmative (allowing the person benefiting from the easement to do certain things) or negative (preventing the person using the easement from doing certain things), it cannot impose positive obligations on the person using the easement. For example, the person using the land covered by the easement cannot be bound to maintain, repair or improve the land and buildings covered by the easement.

As an interest in land, an easement can be registered on title with the BC Land Title and Survey Authority.

Using an easement with a lease[33]

A LANDOWNER CAN LEASE TO A FARMER all or part of a building on their land and then grant an easement appurtenant[34] to the lease over the part of the land the farmer is to use. The *Land Title Act*, s. 3(3) states that the general prohibition against leasing a portion of a parcel of land does not apply to buildings or part of a building. Hence the building lease and the easement do not require approval from an approving officer. Note that, for the agreements to be registered, the Land Title Office will require a plan clearly identifying which building is being leased and may challenge the definition of building. Sometimes utility huts and accessory structures can be considered buildings.

REQUIREMENTS FOR A VALID EASEMENT[35,36]

- A dominant and servient tenement are required. This means the farmer must have access to two adjoining parcels of land. Since a lease is an interest in land, an easement can be appurtenant to a lease.
- The easement has to be for the use and benefit of the dominant tenement.

33 Wilson, E. (2006). Easements in lieu of subdivision. Lawson Lundell LLP.

34 "Something that, although detached, stands as part of another thing. An attachment or appendage to something else." Duhaime.org Legal Dictionary. (2008) Appurtenance. Retrieved July 16, 2008 from www.duhaime.org/LegalDictionary/A/Appurtenance.aspx

35 Wilson, E. (2006). Easements in lieu of subdivision. Lawson Lundell LLP.

36 Little, D.W., MacInnis, A. & Mullen, M. (2004). Easements, covenants and similar rights in British Columbia: An overview. Fasken Martineau DuMoulin LLP.

- Under common law, the dominant and servient owners have to be different people. For example, since a landowner already has the right to cross over their land, they could not give themselves further right to do so through an easement. However, in BC, section 18(5) of the *Property Law Act* allows parties to grant themselves an easement.
- The easement needs to be capable of forming the subject matter of a grant:

    a. The right(s) granted must be fairly specific;

    b. The easement cannot grant exclusive and unrestricted use of land;

    c. The grantee must be a specific "person" and must have an interest in the dominant tenement at the time of the grant; and

    d. There must be a grantor capable of granting the right.