Appendix 1: Community Financing Theory

By Ben Waterman, New Farmer Project, University of Vermont Extension Center for Sustainable Agriculture

The Role of Patient Capital in Sustainable Agriculture

Many farmers in the Northeast aspire to expand or establish new business segments that, by nature of the start-up period involved, don't generate ***immediate*** cash flow. Take, for example, a livestock farmer reclaiming exhausted fallow land for grazing beef cattle. She needs to contribute capital towards considerable investments in soil rehabilitation, pasture establishment, and fencing installation. These practices are critical to the enterprise's long-term success, but might not produce positive cash flow for the first three years.[46]

Take another small fruits grower, for example, who is expanding into apple orchards at the request of u-pick customers in the community. He needs to make significant capital outlays in order to create soil and water conserving terraces for the orchard, complete the planting, install irrigation, and care for the trees in early stages of growth. For this enterprise, he won't see a penny in sales for at least the first five years. Taking out a conventional loan during this period might significantly detract from his family's quality of life, assuming the grower will have to reduce his pay to finance the debt. It might require that profits from other farm enterprises be devoted to service the debt, thereby decreasing whole-farm short-term profitability.

The farmer might not want to take on debt without the capacity of the particular business segment to immediately fund its own repayment. However, in the above example, the community would garner a benefit from the presence of U-pick expansion. This particular farmer may not have had plans on making more investment into the property or he may not be in a financial position to finance this expansion with conventional debt finance options, but this is a perfect case where community investors may decide to provide capital on more favorable terms to the business to facilitate a project that community members would benefit from. Overall, a community financing arrangement might speed up the orchard's potential for becoming a thriving hallmark of the community.

Agricultural service providers in the Northeast generally agree that there is no shortage of financing for agricultural development.[47] What is needed, however, is for financing to be more aligned with the longer-term nature of many types of farm enterprises. What is needed is ***patient capital***, money that can be invested or loaned to the business owner, when appropriate, on terms allowing for deferred repayment of principal. **Terms to deploy and repay patient capital can be customized according to the capacity of the farm enterprise to generate cash flow for repayment of the obligation, or to provide other benefits to the lender and community.**[48]

Typically, lending institutions are inherently limited in their ability to provide the farmer with patient financing for improvements that don't generate immediate cash flow. They are also limited to making loans that are based on collateral and credit history. But, in many cases, the farmer does not have the required collateral, matching equity, or credit history. Although alternative lending institutions such as Municipal Loan Funds and Community Development Financial Institutions (CDFIs) have less stringent credit and collateral requirements, they still maintain certain minimum requirements for securing each loan. In some cases, agricultural lenders, such as FSA or Farm Credit, are flexible and can provide interest-only repayment periods or loans that take an honest look at the farmer's character, but for the most part, they are not in a financial position to take on the risk necessary to provide "patient" financial products. For the time being, community financing for farms can fill this gap.

The role of patient capital in sustainable agriculture can support the "three-legged stool of sustainability," providing economic resources, as well as environmental and social support. Community members can often provide flexible financing and payback arrangements, such as deferred principal repayment, revenue-based repayment or lower interest rates that provide a financial cushion for the farmer to implement environmental conservation or soil fertility building practices as first order of business.[49] "Repayment" can be specified to include certain social and environmental improvements as "returns" (see below, "Rethinking Profit and Return on Investment"); **theoretically, patient capital (by nature) waits for these longer-term social or environmental improvements to "pay back" an investment over time.**

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46 While this example is not specific to new farmers, it is common to many new farmers (using the USDA definition of "new farmer" as an operator with between zero and ten years of experience managing their own enterprise(s)). Many new farm operations are under-capitalized, and new farmers often do not possess the equity position to finance start-up or use as collateral to obtain loans. Various community financing mechanisms detailed in this guide might be appropriate for farmers who do not have the credit history or collateral to source capital through other means.

47 Anecdotal evidence based on the author's numerous conversations in 2010-2011 with Cooperative Extension agricultural educators and other agricultural service providers.

48 Historically, farm families have employed various mechanisms for the transfer of "patient capital" from the senior to junior generations. For more information and resources on farm transfer planning and family farm succession, visit http://www.uvm.edu/farmtransfer/.

49 It is important to note that historically and currently, USDA NRCS (using taxpayer dollars) has been the primary "investor" in environmental conservation on farms across the United States. Farmers should contact local NRCS offices for more information on programs that share the costs for farmers to implement environmentally sound practices. Theoretically, community financing can be used to complement existing NRCS conservation funding or in cases when farmers are not eligible for enrollment in NRCS programs for various reasons.

Economists studying the "multiplier effect" know that money spent locally stays local, and recirculating exchange of local capital spreads the benefits of any one sale. The same holds true for money invested locally. Currency circulating through local economies has a human face, amplifying values of the community.[50]

Rethinking Profit and Return on Investment

This guide provides options and considerations for crafting funding agreements with flexible terms. In the process, it might also challenge readers to expand their understanding of several core concepts in economics and financing: profit and return on investment.

Profit

What do you think of first when you think of profit?
The Merriam-Webster[51] online dictionary defines profit as:

1. a valuable return or gain
2. the excess of returns over expenditure in a transaction or series of transactions; especially: the excess of the selling price of goods over their cost

The first definition of profit, according to this dictionary, does not include any specific mention of financial gain. It is more broadly defined as something, or anything that represents a benefit or gain. The second definition pertains strictly to economics and finance.

Farm Financial Statements

In typical farm business management planning exercises, farmers are encouraged to produce enterprise budgets that detail income and expenses for a particular segment of the farm operation. Cash flow is projected, based on production expenses and sales history during different times of year. Lenders look at these income and cash flow projections along with other financial statements, such as balance sheets to assess a farm's track record and future potential. Financial statement line items contain dollar number ($) figures.

Community financing begs the question: If profit is considered any "valuable return or gain," and not just financial gains, do environmental/social costs and gains deserve line items in farm enterprise budgets? Do positive environmental and social impacts improve a farmer's bottom line? Can they be considered returns for a community investor?

Needless to say, accounting for non-cash profits or gains can get a bit complicated. Imagine if "income" line items in the enterprise budget included "% soil organic matter increased" or "tons of carbon offset" or "number of smiles put on customers' faces." Or if capital asset line items in the balance sheet included "topsoil that is X inches deep" or "pasture that sequestered X tons/acre of carbon last year" or "farm workers who are acquiring X number of new skills and abilities per year." Yet along with economic contributions, these are the types of community capital that farms have the potential to build.

The fact is that farm-supported community members might share returns from community supported farms in some way or another, and communities will naturally want to preserve this ability to benefit moving forward. It can be useful for farmers to engage in social and environmental accounting, in order to justify both private and public support. Anyone with a vested interest in building community capital will seek to identify farms as key partners in cases where they do not expend significant social and environmental resources, but actually preserve or improve them through production practices. Can farmers or other research institutions measure the beneficial impacts that result from socially and environmentally-conscious agricultural practices? Yes, if they use measures that anyone can understand. Once community members discover businesses that enhance the community's social, environmental and financial bottom lines, they might voice recognition with their wallets, with customer loyalty, or with other support for these businesses in times of unique need.

Return on Investment

The Two-dimensional Analysis: Risk and Return

The traditional debt and equity financing paradigm is a cash-in, cash-out equation. Risks are weighed against financial rewards. A loan or investment is made by tying up money; financial returns are expected to outweigh the risk of losing money, and to offset the inflation of currencies as time passes.

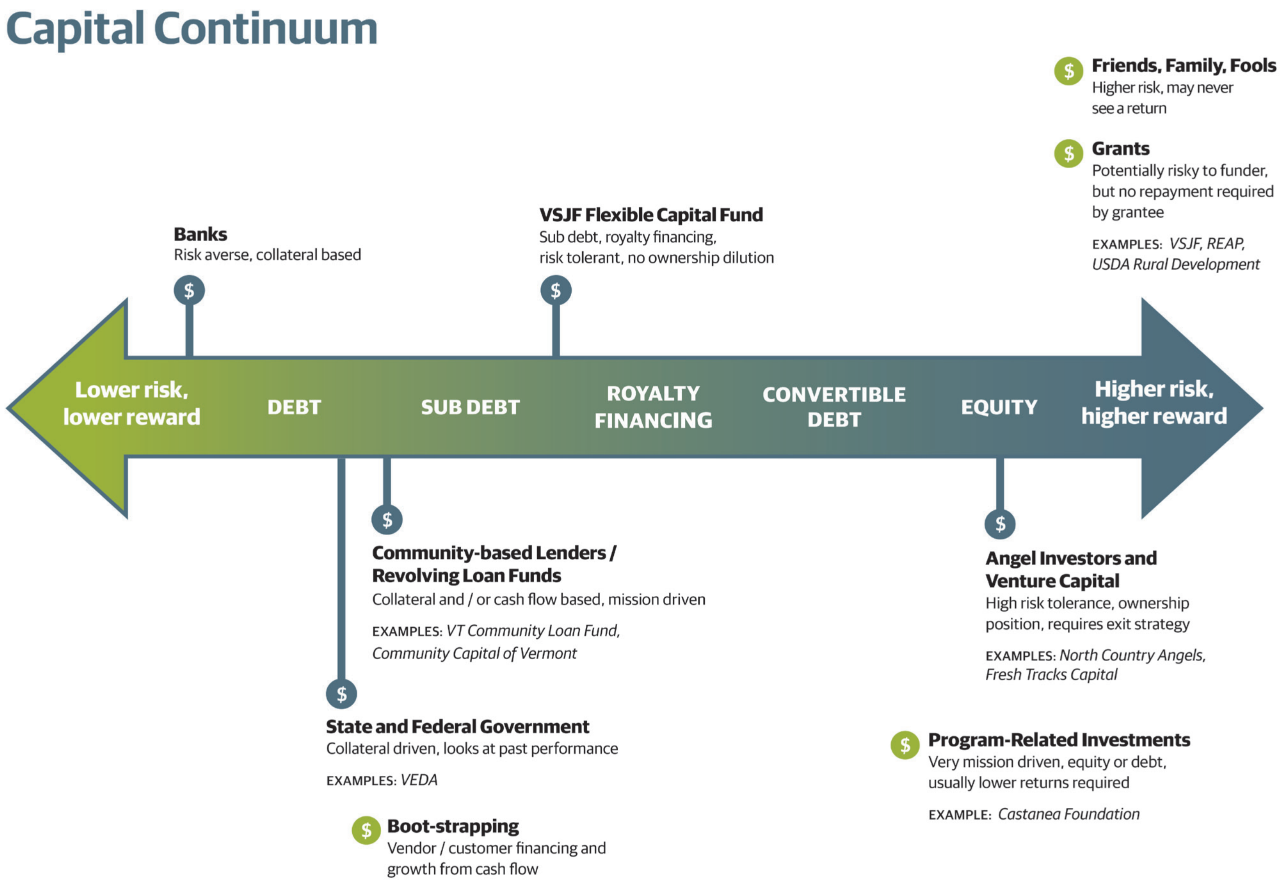
The Vermont Sustainable Jobs Fund, in its Vermont Farm to Plate Investment Program Strategic Plan[52], describes a "Capital Continuum," in which ways to finance agricultural and food businesses are categorized along a spectrum of low risk

50 At the time of this writing, crowdfunding was emerging as a new approach to raising capital for local business start-ups, creative projects, and more. Rather than reaching out to a few sources of capital for relatively large sums of money as in traditional fundraising, crowdfunding works by pooling small amounts of capital from a relatively large number of sources. In so doing, the entrepreneur or project owner not only have their capital needs met, but they also build a supportive community around their initiative. Online crowdfunding platforms such as kickstarter.com, kiva.com and crowdcube.com have been emerging around the world. Some platforms wholly dedicated to farm and food businesses are being developed. Crowdfunding in some forms has raised legal issues. At the time of this writing, several bills were being considered in congress to make it easier for some forms of crowdfunding to be recognized as exempt from securities regulations.

51 The Merriam-Webster online dictionary can be found at http://www.merriam-webster.com/. (accessed online on 1/5/12)

52 10 Vermont Statutes Annotated §330. In 2009 the State of Vermont passed into law the creation of the Vermont Farm-to-Plate investment Program, appropriating initially $100,000 to fulfill the goals of increasing economic development in Vermont's food and farm sector, creating jobs in the food and farm economy, and improving access to healthy local foods. As part of the program, the Vermont Sustainable Jobs Fund was tasked with facilitating the creation of a ten-year strategic plan for agricultural economic development. For more information, visit www.vsjf.org.

to high risk. Rewards or returns are usually proportionate to the level of risk involved in the deal (granted, unique combinations of risk and reward exist). A low-risk bank loan, for example, would typically have limited returns for the lender, while a higher-risk equity investment might have the potential to generate double or triple-digit percentage returns. The analysis typically factors in risk and return from a financial point of view.



The many faces of finance along the spectrum from low risk/return to high risk/return. Image used with permission of the Vermont Sustainable Jobs Fund. From Chapter 4.5, "Financing the Food System" of the Vermont Farm to Plate Investment Program Strategic Plan. The full strategic plan can be accessed online at http://www.vsjf.org.

The Three Dimensional Analysis: Risk, Return and Impact

Brian Dunn, Founder and CEO of Growth Capital Services, Inc., in his 2006 presentation to investors entitled, "Modern Portfolio Theory With a Twist,"[53] explained a framework for adding a third dimension, "impact" to the basic variables in investment theory, risk and return. Dunn describes impact as "the benefits one can receive when investing in the social good."

Community financing arrangements can be crafted based on the concept that impact is factored into return on investment. In other words, returns can be generated in the form of dollars and cents in the same manner as they can be generated in fresh and nutritious food, open space conservation, water quality improvements, recreational opportunities, wildlife enhancement, soil fertility improvements, carbon sequestration or other ecosystem services, rural economic development, enhanced community relations, improved quality of family life, and other social and environmental benefits, etc.

To conclude, lenders or investors might be more willing to transfer capital or creatively rearrange repayment terms if there is a clear potential for positive impact beyond financial rewards.[54] Two loans with the same risk/reward profile can be, in fact, different when impact is factored into the mix. In cases where they are measurable and meaningful, projections for

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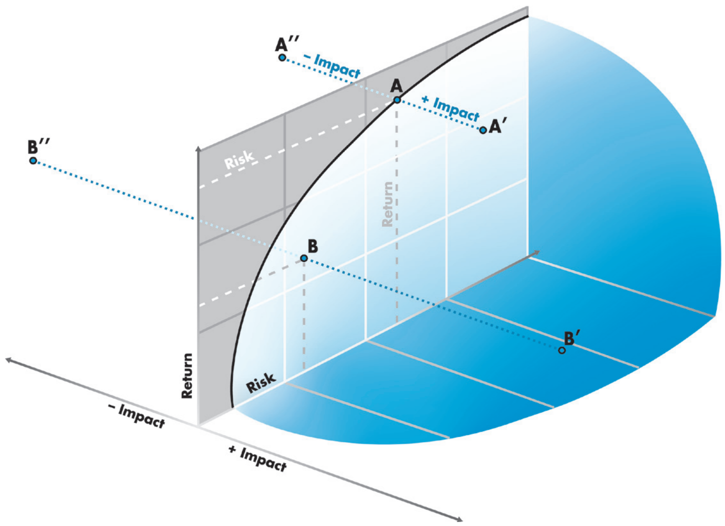
53 "Modern Portfolio Theory with a Twist, The New Efficient Frontier." White paper, by Brian Dunn, 2006. Accessed online 2/10/10, at http://www.americansforcommunitydevelopment.org/downloads/NewEfficientFrontier.pdf

54 Both public and private entities can invest in education. While it might be challenging to model how financial investments result in quantifiable environmental or beneficial "ecosystem services," another solution is to invest in education and information on sustainable farming methods. This can often provide the most environmental benefit for the least amount of financial investment, while building human and social capital at the same time.

positive impact can come in handy as background for crafting arrangements with lenders or investors.[55] Even from a purely financial point of view, "socially responsible investing" has historically outperformed major indexes, as sustainability practices are linked to sound management, robust and long lasting business models.[56]

The inner workings of how to craft creative community financing arrangements are covered in the preceding chapters of this guide.



This three-dimensional view incorporates "impact" into the basis for making potential investment decisions. As the image implies, investments with similar financial risk vs. reward profiles can be different when "impact" is considered. While they are difficult to quantify, examples of impact could be social ramifications or environmental effects of the investment. Image used with the permission of Brian Dunn, Growth Capital Services, Inc.

Image used with permission of Corie Pierce

55 Measuring external benefits of agricultural activity is not easy, which is why it is often left out of the equation or left to economists, agencies, governments and research institutions to sort out. It may be too much to ask of the individual farmer or community member to measure "externalities" or positive/negative impacts of agricultural practices.

56 Strategies for "Socially Responsible Investing" (SRI) include screening out companies that promote addictive substances (alcohol, tobacco, gambling) or targeting companies that promote clean energy or other environmentally-sound practices. According to the investor association, the Forum for Sustainable and Responsible Investment, "The longest-running SRI index, the FTSE KLD 400, was started in 1990. Since that time, it has continued to perform competitively — the FTSE KLD 400 with returns of 9.51 percent from inception through December 31, 2009, compared with 8.66 percent for the S&P 500 over the same period." (For more information visit http://ussif.org/resources/performance.cfm. Accessed online 1/23/2012. Other studies have found there is "a positive association between corporate social performance and corporate financial performance." See Orlitzky, Marc, Frank L. Schmidt, and Sara L. Rynes. "Corporate social and financial performance: A meta-analysis." Organization Studies, 24, 2003.

Appendix 2: Profit vs. Non-Profit and Different Ways of Raising Capital

By Erin Roche, Research Specialist, University of Vermont Center for Rural Studies

Following this short essay, the author has included a full detailed comparison of business structures. There are many considerations to take into account when structuring a business, and the entity's ability to raise capital should not be the only one. Set-up costs, liability, number and involvement of owners, typical duration of the entity, taxes, raising capital, distributing profits, accountability and reporting are all axis on which organizational structure differs. Refer to the chart following "Profit vs. Non-Profit" for more information on these differences.

The following addresses a common question posed by farmers exploring community financing and ways in which businesses can be structured to raise capital.

"Profit or non-profit?" that is the question.

Actually, the first question should be "What is the primary goal of my business or organization?" If the answer is "Making money," then you want to operate under a for-profit model. If your answer is "To do 'good' in the world," then a non-profit might be what you want. This is a broad generalization; there are many different business entities and governance structures along the spectrum between profit and non-profit, and **there are many more factors to consider when choosing a business entity.**[57] For detailed explanations of considerations in choosing a business entity, see Chapter 1 in the Legal Guide to the Business of Farming in Vermont.[58]

You can make a living operating a non-profit, but your salary, goals, purchases, mission, etc. are all determined and controlled by a Board of Directors; even if you are the founder and executive director of the non-profit, you do not have full control over it. With a non-profit comes access to certain types of funding and capital not available to for-profit companies, such as donations and grants. In addition, so long as you keep to the identified mission, a non-profit pays little to no tax. There are no owners or shareholders of a non-profit.

On the other hand, a for-profit structure affords the owner or partners direct control over most aspects of the business – what to do with the profits, how much to charge for a product or service, what markets to go after, etc.[59] A for-profit company also has access to certain types of funding not readily available to non-profits – venture capital, bank loans, stocks, etc. Which type of for-profit structure used will determine the type and level of taxes owed.

So what happens if you want to make money and do good? Can you start a for-profit business and spin-off a non-profit entity? The simple answer is "Yes." But a more relevant question is "Why?" Occasionally, non-profits spin-off a for-profit company for certain legal and tax reasons, and use the profits generated to fund the non-profit. Similarly, large corporations will create non-profit foundations in order to create a non-profit entity. But neither of these examples is typical. In all cases, the non-profit and the for-profit are distinctly separate entities, with contracts being the primary means of determining how the two entities do business with one another.

If you currently operate under for-profit business structure and are considering creating a non-profit entity, you need to be clear on your motivation. One thing to seriously consider is there can be significant costs associated with setting up and maintaining a non-profit with 501(c)(3) tax status. Legally and for tax/accounting purposes, the non-profit and for-profit will function independently. You may also consider bringing in other like-minded businesses and people to jointly create the new non-profit in order to expand its reach and goals. Or you might find an existing non-profit with similar interests and consider donating time, money or resources – either as a business or individual.

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57 There are many different business entities and governance structures along the spectrum between profit and non-profit. The L3C, Cooperatives, B-Corps, Stewardship Councils are examples. See Appendix 1: Comparison of Business Structure, in this guide for a comparison of the characteristics of various traditional and emerging agricultural business ownership structures. The author acknowledges that the comparison of profit with non-profit is by no means all-inclusive, and other business structures might be better aligned with the enterprise.

58 Higby, Annette. Legal Guide to the Business of Farming in Vermont. UVM Center for Sustainable Agriculture, University of Vermont Extension, 2006. Available online at http://www.uvm.edu/farmtransfer/?Page=legalguide.html. Accessed online 2/15/12.

59 Depending on the type of for-profit entity, execution of plan and strategy is in the control of the management, but the "Board" can be the group with control over the plan approval and hiring/firing executives, and functions to represent the best interests of the shareholders.

Traditional Agricultural Ownership Structures

	Sole Proprietor	General Partnership (GP)	Corporation (General, S or C)
Set up costs	Least expensive	Requires agreement b/w partners, otherwise like sole proprietor	Filing fees; more expensive that other forms of organization
Ongoing costs	Cost of employee benefits not deductible from business income	Agreement needs updating/amending or it could expire	More expensive than other orgs
Duration	Owner's life or until sold or closed	5 years	Unlimited
Liability	Unlimited liability, personally responsible for all debts	Liability shared by partners according to agreement	Shareholders (owners) have limited liability
Tax	Form 1040, etc. - profits are only taxed as owner's income	Form 1040, etc. for all partners, profits are taxed as each partner's income, profits can be distributed according to partner agreement	S & C have different tax structures; Corporations can deduct cost of employee benefits from taxes; taxed as separate entity; may result in higher taxes
Ownership	Complete control by single owner	Owned by all partners according to agreement, good for 5 years but can be amended	Stockholders
Raising capital	Limited to personal funds, some loans	Limited as w/ sole proprietor, though add'l partners could mean add'l investors	Can raise additional funds through sale of shares of the company; S corp not ideal for raising VC or angel money; C-corp. is probably necessary if getting money from institutional investors (like VCs)
Flexibility	Very flexible for owner, but not to change owners, raise capital,etc.	Not flexible unless agreement is amended, but agreements are easy to change	S-corp more flexible (like partnership)
Reporting and Auditing	Profits flow directly to owner's income, informal	Partnership agreement: name of partnership, names/contact for all partners, registered agent, signatures, notarized, Profits flow directly to partner's income	Monitored by federal, state, local agencies - often more compliance paperwork; annual reports
Structure	Easiest to start & end	Similar to sole proprietor except everything is shared by more than 1 owner	Individual entity created via statute and law.

Emerging Agricultural Enterprise Ownership Structures

	Limited Liability Partnership or Limited Partnership (LLP or LP)	Limited Liability Company (LLC)	Low-profit Limited Liability Company (L3C)	Cooperative	Not for profit
Set up costs	determined by statute; registration form filing fee.	Filing fees, amendments, agent requirements	Same as LLC	Filing fees	Filing fees, amendments, agent requirements
Ongoing costs	lowest ongoing costs; taxes determined by statute, annual report filing fees	Taxes determined by statute, annual report filing fees	Same as LLC	Annual report filing fees, taxes, annual dividends distributed to shareholders.	biennial report fees
Duration	Determined in filing	Determined in filing	Same as LLC	Determined in filing	Ongoing unless failure to comply with regulations occurs
Liability	General partner is liable as with partnership, while limited partner is only limited to amount invested in enterprise	Liability as corporation	Same as LLC	Managerial members can be liable if their practices are questionable but liability is protected for all under normal circumstances.	Board of Directors can be liable if their practices are questionable
Tax	Taxed as a separate entity	Same as partnership; may have to file corporation papers if displays more than 2 of the 4 corp characteristics	Does **not** qualify for 501c3 tax status	Taxed only on income kept within the co-op for investment or reserve purposes. Members responsible for taxes on dividends paid to them.	501(c)(3) are tax exempt. 501(c)(4) may be exempt depending on the organization's mission. Contributions to (c)(4)'s are not deductible.
Ownership	At least 1 general partner and 1 limited partner – Created by statute and can override a partnership agreement	Owners = members; this structure works well for limited number of owners, but S Corp better for unlimited owners	Same as LLC	Co-op members	Not "owned." Nonprofit corporation is considered to be a "person" and decisions to buy property, manage bank accounts, and page wages are made by the board of directors.
Raising capital	Frequently used as vehicle for raising capital	Frequently used as vehicle for raising capital	L3C status may make foundations or other charitable donors more amendable to investment	Membership fees, fund raising, sale of goods/services,	Donations, grants, fund-raising
Flexibility	Typically for "project-driven" organizations	Same as partnership; formation is more complex and formal than GP, though	Can't have political/legislative purpose; can't produce income or appreciate property; must further charitable or educational purpose	Based on the charter	Non-profit must be solely dedicated to its exempt purposes. Control through Board of Trustees; all assets and profits belong to the non-profit and must be used for or funneled back into the exempt purpose. 501(c)(3)'s are prohibited from political activities.
Reporting and Auditing	Must obtain the business licenses and permits. No state filing is required.	Annual report filing; more complex & formal than partnership	Similar to LLC	Annual report to members	IRS Form 990; Overseen by State AG Office
Structure	Can offer shares to more limited partners w/o them needing to invest capital or take liability	No more than 2 of 4 of: limited liability (extent of assets), continuity of life, central management, or free transfer of ownership interest. Will be treated as corporation if exceeds more than 2 of 4	Cross between non-profit and corporation - low profit with charitable or educational goals - same as LLC but foundations and donors may be more willing to make program related investments	Membership with Board of Trustees	Does not mean "no profits"; pursue public benefit purposes; must have mission which is primarily not for profit; no person can own shares in the company; profits, income never distributed to owners but are invested in the organization's mission and activities

APPENDIX 3: Contract Basics

By Anthony Iarrapino, Staff Attorney, Conservation Law Foundation

The Basics of a Contract

A contract is simply an enforceable agreement between two or more persons. Contracts can cover everything from delivery of an animal to buying or selling machinery to employing workers.
The basic contract elements are straightforward. They can be expressed as this simple equation:

Offer + Acceptance + Consideration = Contract

An **Offer** is simply words or conduct that a reasonable person would view as intention to enter into a contract. To determine whether there is an offer, it is helpful to look at whether the words or conduct involved are those of commitment.

An **Acceptance** is an agreement to the terms of the offer. A contract may not be created if the acceptance does not agree to the exact terms of the offer, instead a counteroffer may be created. In other words, there must be a "meeting of the minds" on all terms of the contract before it can be created.

Contracts also require **Consideration**. Consideration in a contract is created when the parties exchange something of value, including goods or services. For example, when two parties agree to exchange cash for the purchase of a tractor both the cash and the tractor are valuable consideration. If only one party receives something of value in the exchange it is not a contract, but rather a gift. For example, if your uncle promises to give you money but requires nothing of you in return then there is no enforceable contract.

An oral agreement between the parties involved can form a contract. In certain situations, however, contracts need to be in writing and signed by both parties. Some contracts that must be in writing include: transfers of interest in real estate, sale of goods (tangible objects like machinery) for $500 or more, lease of goods for $1,000 or more, and a guarantee to pay for another person's debts if that person cannot pay.

A final point about contracts: if you spend more than five minutes questioning whether you need a contract, then from a legal standpoint you probably do!

Image used with permission of Rachel Schattman

APPENDIX 4: Sample Promissory Notes

Sample Promissory Note #1

This document is to be used as a guideline for educational purposes only. Samples are not to be construed as legal advice.

Borrower Information:	
Name:	Date:
Street Address:	Date of Birth:
City:	Area code/Telephone number:
State:	Driver's License Number:
Zip:	Social Security Number:

Lender Information:	
Name:	Area code/Telephone number:
Street Address:	If paying by check, make check payable to: Send payments to:
City:	
State:	
Zip:	

Loan Information:	
Loan Amount:	Loan Period:
Interest Rate:	Payment Schedule:

1. **Promise to Pay**. For value received, ___________________ (Borrower) promises to pay ___________________ (Lender) $__________ and interest at the yearly rate of ____% on the unpaid balance as specified below.

2. **Installments**.

☐ Borrower will pay ______ payments of $_____ each at monthly/yearly/_________ intervals on the _____ day of the month.

☐ Borrower will pay one lump payment on _____________ date.

☐ Borrower will pay ______ payments of $_____ each at monthly/yearly/_________ intervals with a final balloon payment of ___________ at the end of the loan term on ________ date.

3. **Application of Payments**. Payments will be applied first to interest and then to principal.

4. **Prepayment**. Borrower may prepay all or any part of the principal without penalty.

5. **Loan Acceleration**. If Borrower is more than _______ days late in making any payment, Lender may declare that the entire balance of unpaid principal is due immediately, together with the interest that has accrued.

7. **Security**

☐ This is an unsecured note.

☐ Borrower agrees that until the principal and interest owed under this promissory note are paid in full, this note will be secured by a security agreement and Uniform Commercial Code Financing statement giving Lender a security interest in the equipment, fixtures, inventory and accounts receivable of the business known as ____.

☐ Borrower agrees that until the principal and interest owed under this promissory note are paid in full, this note will be secured by the

☐ mortgage
☐ deed of trust covering the real estate commonly known as ________________
and more fully described as follows: _________________________________

8. **Collection Costs**. If Lender prevails in a lawsuit to collect on this note, Borrower will pay Lender's costs and lawyer's fees in an amount the court finds to be reasonable.

The undersigned and all other parties to this note, whether as endorsers, guarantors or sureties, agree to remain fully bound until this note shall be fully paid and waive demand, presentment and protest and all notices hereto and further agree to remain bound notwithstanding any extension, modification, waiver, or other indulgence or discharge or release of any obligor hereunder or exchange, substitution, or release of any collateral granted as security for this note. No modification or indulgence by any holder hereof shall be binding unless in writing; and any indulgence on any one occasion shall not be an indulgence for any other or future occasion. Any modification or change in terms, hereunder granted by any holder hereof, shall be valid and binding upon each of the undersigned, notwithstanding the acknowledgement of any of the undersigned, and each of the undersigned does hereby irrevocably grant to each of the others a power of attorney to enter into any such modification on their behalf. The rights of any holder hereof shall be cumulative and not necessarily successive. This note shall take effect as a sealed instrument and shall be construed, governed and enforced in accordance with the laws of the State of ________________.

Borrower: ______________________ Date: _____________

______________________ (print name)

Lender: ______________________ Date: _____________

______________________ (print name)

Witnessed: ______________________ Date: _____________

______________________ (print name)

Witnessed: ______________________ Date: _____________

______________________ (print name)

Sample Promissory Note #2

This document is to be used as a guideline for educational purposes only.
Samples are not to be construed as legal advice.

PROMISSORY NOTE

Principal Amount $___________________

__________________(Town), __________(State) ________________(Date) , 20__

For value received the undersigned (hereinafter "Maker") promises to pay to the order of ____________ (hereinafter "Holder"), the principal sum of __________ Dollars ($__________), together with interest from the date hereof until paid on all sums which are and which may become owing hereon from time to time, all as hereinafter provided and upon the following terms and conditions:

4

Interest. Unless there shall be a default, interest shall accrue from the date hereof and be paid at the rate of ___ percent (___%) per annum; provided, however, that in the event of any default, as hereinafter defined, all sums then and thereafter owing hereon, at the option of the Holder, shall bear interest at the rate of percent (___%) per annum (the "Default Rate").

Payments. Maker shall pay this note in ___________ equal installments on or before the _____ day of __________ (month) until it has been paid in full. Each payment made on this note shall be applied first to interest accrued to date of payment and then to principal.

Late Payment Charge. If any installment is not paid within ___________ (___) days after it becomes due, then the Maker agrees to pay a late charge equal to ____ percent (__ %) of the delinquent installment to cover the extra expense involved in handling delinquent payments. This is in addition to and not in lieu of any other rights or remedies the Holder may have by virtue of any breach or default.

The Deed of Trust. This Note and the sums evidenced hereby are secured by a deed of trust (the "Deed of Trust") of even date herewith, executed and delivered by, or caused to be executed and delivered by the Maker to the original Holder hereof. The Maker agrees to perform and comply with, or to cause to be performed and complied with, all of the terms and conditions of the Deed of Trust.

Default; Attorneys' Fees and Other Costs and Expenses. In the event of any default, all sums owing and to become owing hereon, at the option of the Holder, shall become immediately due and payable and shall bear interest thereafter at the Default Rate per annum. The Maker agrees to pay all costs and expenses which the Holder may incur by reason of any default, including without limitation reasonable attorneys' fees with respect to legal services relating to any default or to a determination of any rights or remedies of the Holder under this Note and reasonable attorneys' fees relating to any actions or proceedings which the Holder may institute or in which the Holder may appear or participate and in any appeals therefrom. Any judgment recovered by the Holder hereof shall bear interest at the Default Rate per annum, not to exceed however the highest rate then permitted by law on such judgment. The venue of any action hereon may be laid in the ________ Judicial District, State of ________, at the option of the Holder.

Liability. The Maker hereby waives demand, presentment for payment, protest, and notice of protest and of nonpayment.

Maximum Interest. Notwithstanding any other provision of this Note or of the Deed of Trust of interest, fees and charges payable by reason of the indebtedness evidenced hereby shall not exceed the maximum, if any, permitted by any governing law.

Applicable Law. This Note shall be construed according to the laws of the State of ____________.

______________________________ ______________
(Signature of Maker) (Date)

____
(Printed Name of Maker)

____
____
(Address of Maker)

______________________________ ______________
(Signature of Holder) (Date)

____
(Printed Name of Holder)

____
____
(Address of Maker)

______________________________ ______________
(Signature of Witness) (Date)

____
(Printed Name of Witness)