



# Leasing Land to Farmers:

A Handbook for New England  
Land Trusts, Municipalities  
and Institutions



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# Introduction

Land is an essential element of farming. After a century of significant farmland loss throughout New England, access to affordable, productive farmland is one of the greatest challenges that our region’s farmers face. Farmland owned by municipalities, institutions and land trusts represents an important source of land for farmers. Whether there are two acres or 100 acres available, a community, land trust or institution willing to lease land to a farmer can make an important contribution toward growing New England’s farms, food and economy.

This handbook is intended to help land trusts, municipalities and institutions such as schools, churches and nonprofit organizations that own farmland to keep that land in production — or bring it into production — by leasing it to farmers. If you are part of such an organization, making your land available to a farmer can be a win-win strategy if you do it in a well-planned fashion. Leasing your land can bring multiple benefits to your organization and community while also helping your organization meet its stewardship and conservation goals. The resources in this handbook will help municipalities, land trusts and both public and private institutions consider options and find ways to structure successful tenancy arrangements with farmers.



## The Farmland Challenge: The Growing Importance of Leased Land

Agriculture is a growth sector in New England's economy. The past decade has brought a welcome resurgence of support for New England farms as demand for locally grown farm products has skyrocketed. People new to agriculture are starting farms and experienced farmers are expanding their operations.

Whether a farmer is starting out, expanding or relocating, access to land is one of his or her biggest challenges. Young farmers in particular have difficulty purchasing farmland. With few capital or other assets, young farmers typically cannot afford New England's high farmland prices. Agricultural values for an acre of land in parts of New England can be more than \$12,000 per acre, 10 times the national average. Our culture encourages land ownership, and that is the ultimate goal of many (but not all) farmers. The U.S. Department of Agriculture's Farm Service Agency, for example, offers loans to help beginning and socially disadvantaged farmers

purchase farms. However, the maximum loan amounts may be below the purchase cost of most farms, particularly those that include a residence.

Sometimes farmers can reduce the cost of a farm or a farmland parcel by simultaneously purchasing the farm and selling an agricultural conservation easement or restriction on the land, a process described as extinguishing the land's development rights. This is not always an option, however. The parcel may not qualify for federal or state farmland protection programs, a conservation program may not have the resources to pay to acquire the development rights, particularly where the value of the development rights is high, such as in more populated areas

Renting land has always been an important strategy for farmers across the country. According to the USDA, approximately 25 percent of farmers in New England rely in part or entirely on leased farmland.<sup>1</sup>

While leased land has grown in importance to new and current farmers alike, good lease arrangements can be hard to find. They may be quite informal and unstable. Leased land may be a considerable distance from the farmer's residence or home farm. In some cases, the lease actually discourages improvements to the soil and limits investments in farm infrastructure that would allow a farm business to grow. In the case of new farmers, landowners may be unwilling to take a risk on leasing to a grower without any or much experience.



<sup>1</sup> *USDA Census of Agriculture, 2007*

## Why Lease? Many Benefits!

The following are some of the reasons why a municipality, land trust or institution that owns farmland might decide to lease land to a farmer.

**Mission and goals.** Many organizations have missions or goals that include: supporting local agriculture and working farms; increasing the availability of locally grown food; increasing the agriculture industry's contribution to the local economy, particularly through employment, production and sales; maintaining the community's historic, cultural and scenic character; and preventing sprawling development and its accompanying traffic and costs for municipal services.

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*Leasing your land for agriculture can help your organization meet its stewardship goals and keep down its property management costs.*

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**Stewardship for your land and fiscal advantages.** Maintaining land can be time-intensive and costly, especially if you are trying to keep it open, prevent regeneration of brush and forests, and minimize encroachment by invasive plant species. Leasing your land for agriculture can help your organization meet its stewardship goals and keep down its property management costs. The terms of a lease agreement can guide the way the land and other natural resources of the property such as bird and animal habitat, water or scenic views are managed. You can also structure your lease to provide non-cash rent in the form of services that your organization might otherwise need to pay for, such as mowing and field improvements, fence maintenance, invasive species control, snowplowing and brush clearing.

**Economic growth.** Leasing farmland is good for the local economy. Leasing fosters new and expanding agricultural enterprises that provide jobs and additional economic return to a community. Some of New England's large vegetable farmers, who generate a significant amount of economic activity through farm stands and wholesale operations, rely on leased parcels to increase their production. New farmers

growing vegetables often start businesses with fewer than five acres of land in production. Dairy farms, which are also local economic engines, often use leased land for a significant portion of their hay, corn and pasture needs. Lease agreements for pasture are important to the growing number of beef and sheep producers in New England. Leased land is often the way community-supported agriculture (CSA) farms get a start. They tend to employ at least one or two full-time farmers plus additional seasonal help to produce vegetables and other products for local consumers.

**Quality of life.** Farmers' markets, CSAs and community gardens help build the social fabric of a community. When a municipality, land trust or institution makes land available for farming, it opens many pathways to connect with town residents or a membership base. Many community residents, for example, visit farmers' markets to socialize and network with neighbors. A community or land trust-owned farm might also provide opportunities for adults and children to garden and learn about agriculture and food production. Or it might provide healthy foods to local schools and to food banks and pantries.

Leasing land for agriculture can be especially attractive to a town or community if it means hosting a showpiece farm operation that features high-quality products or agri-tourism opportunities unique to our New England culture, such as pick-your-own pumpkins, corn mazes or farm-to-table events. A hayfield or pasture can offer scenic vistas that attract tourists and recreational enthusiasts like cyclists or hikers. Hay and pasture leases are also important to the horseback riding community. Many important historical resources such as buildings, cemeteries, stonewalls and Native American sites are on or near agricultural landscapes. Communities will often support the preservation of these cultural artifacts. In addition, working landscapes and access to local food add to our quality of life, attracting non-agricultural businesses that value those attributes for their employees. Helping leaders in your town or neighborhood understand these direct and indirect benefits of having a farm in your community can make it easier to garner their support.



## Lease Considerations: Before You Start

**Before starting to locate a farming tenant, your organization should consider several crucial questions, including:**

1. Have you inventoried your land and assessed the various agricultural uses it might support?
2. What are your stewardship objectives for the specific farmland parcel(s) you want to lease? Are those stewardship objectives currently, or can they be made to be, compatible with certain kinds of farm production?
3. What are the financial needs and goals of your organization? Are you interested in leasing to generate income for your organization? If so, is your expectation for leasing income realistic?
4. Does your organization prefer to lease to a beginning farmer (defined by USDA as a farmer with 10 or less years of experience) or a more experienced one?

### A. AGRICULTURAL LEASING CHECKLIST

Before you start the process of looking for a farming tenant, you may want to examine the Checklist for Land Trusts, Institutions and Municipalities ([Appendix 2 in this handbook](#)). The checklist asks basic starting questions such as:

- What land do you own that could be used for agriculture?
- How suitable is the site for farming?
- How will your organization maintain good communication with interested parties?
- What are your organization's interests, reasons and goals for leasing your land for farming?

### B. PRACTICALLY SPEAKING: THINKING REALISTICALLY ABOUT A FARMING LEASE

**What is the land's physical suitability for farming?**

Each property is unique and has different potential for agricultural uses based on its soil, landscape setting and characteristics, climate conditions, history and vegetation. The location and physical properties of the farm parcel will influence the type of tenant and farm operation your organization may be able to attract. Some properties are not suited for any type of farming activity. Information about soils, tillage and chemical-use history, land characteristics, water availability, and agricultural infrastructure, such as barns, fencing and outbuildings, will be important to any future farm tenant.

Keep in mind that the way the land has been used in the past is not necessarily its most suitable use. What was suitable or profitable on a parcel of farmland years ago may no longer be pertinent. New uses might be more appropriate.

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Your organization should conduct an analysis of the site's suitability to agriculture. Below are some points to consider. These are not necessarily requirements for leased parcels.

- Does the land have prime agricultural soils? Is it steeply sloped, wet or stony?
- What is the current vegetation cover?
- Will the land need to be cleared or soil need to be improved for good agriculture?
- Can the soil be tilled?
- How is the land oriented to the sun and prevailing winds?
- Is the property susceptible to early or late frosts, fog or other local and micro-climate conditions that could affect crops?
- Is there water accessible for crops or animals?
- Are there buildings on the property for equipment, animal shelter or a farmer's residence?
- Is there good access to the land for farm equipment?
- Is the property vulnerable to vandalism?

A site suitability analysis should also consider the property's non-agricultural resources that could be compatible or incompatible with certain agricultural operations. For example, is it important bird habitat? Is the parcel home to wetlands, vernal pools or endangered species? Is the public accustomed to using the parcel for recreation and, if so, can that use be

continued without compromising the safety of the farm operation or the public? If not, can public use be effectively limited?

The surrounding neighborhood and community also have an impact on your property's suitability for farming. If there are other farm properties around, it's likely that the neighborhood appreciates or at least tolerates farming activity. If the property is a smaller parcel in a more developed area, neighbors may not be familiar with farming realities. However, a well-run farm enterprise can be harmonious with most neighborhoods and can provide multiple benefits and rewards.



You can find information about a site's suitability for agricultural use in a variety of places. A town's master plan or comprehensive plan is a great place to start, as it may identify important assets such as public water supply watersheds, greenways and historic districts. Soil maps and interpretive data are available through the NRCS Web Soil Survey at <http://websoilsurvey.nrcs.usda.gov>.

For more detailed information specific to your parcel, it is good to do a suitability analysis of the land. A professional soil scientist can perform an on-site investigation to evaluate the land's appropriateness for farming and find locations where soils have been disturbed. Sometimes other experienced farmers can help with a suitability analysis. If you are planning to clear some land, have an NRCS agent make sure that the proposed activity will not affect wetlands and that slopes will be managed for erosion. Clearing lands incorrectly can disqualify a farmer from participating in USDA farm conservation cost-share programs, and when wetlands are involved, the unapproved clearing may also result in regulatory action. Always check local and state regulations early in the process.

### Nutrient Soil Tests

Soil tests serve as a basis for the application of fertilizers and soil amendments that may be part of a conservation plan. In urban areas, near highways, reclaimed or disturbed soil areas, and places that were once in orchard, greenhouse, or industrial use, soil tests can help identify the presence of toxins such as lead, arsenic or DDT that may present important health concerns.

To find out more about the soil, consider having the soil tested. Basic nutrient soil tests are done by:

- Cornell University  
<http://soilhealth.cals.cornell.edu/extension/test.htm>  
Cornell uses a soil health test that is more expensive but more complete than others. In addition to nutrient analysis, Cornell's test includes soil aggregation, compaction and biology. Using the Cornell test once every three to five years can help you and your farmer keep tabs on overall soil health.
- University of Connecticut [www.soiltest.uconn.edu](http://www.soiltest.uconn.edu)
- University of Maine <http://anlab.umesci.maine.edu>  
The University of Maine uses the new Solvita test to determine actual nitrogen potential.
- University of Massachusetts  
[www.umass.edu/soiltest](http://www.umass.edu/soiltest)

**Mission and objectives.** As mentioned above, your organization or municipality needs to assess the compatibility of certain agricultural activities with its mission and goals before deciding to lease land for farming. You also need to determine whether agricultural uses are compatible with your reasons for acquiring and owning the property and with any mandates or legal requirements for the property.

Further, your organization needs to clearly define its goals and reasons for leasing land for farming. Perhaps your organization wants to reduce stewardship costs and improve land management. Or your top priority may be to maintain the visual appearance of the property as working farmland. Other objectives include interest in sustaining local agriculture and increasing the availability of locally grown food that is fresh and safe; and helping new farmers get started or supporting the viability and expansion of existing farm operations. Note that leasing to new farmers can involve different risks and greater uncertainty than leasing to established farmers.

Before leasing farmland, your organization may want to consider adopting a formal policy or acknowledgement stating that active agriculture is within its mission and priorities. That will help community members understand that land devoted to raising crops or livestock may need limitations on its use for other purposes, such as public access, recreation or wildlife habitat. Ensuring that there has been a thoughtful discussion about farming and an adoption of a supportive policy toward agriculture can prevent community members from having unrealistic management expectations for the land and avoid an impractical lease arrangement that unduly constrains the farmer tenant.



**In considering such a policy, here are some specific points to keep in mind:**

Land Trusts

Land trusts that are willing to lease protected land for agriculture but don't yet specify that in their mission can adopt a statement or policy that highlights the importance of working agricultural lands as well as scenic open space and environmental assets. New England land trusts whose missions already include protecting farmland can easily develop leasing programs as a component of their farmland preservation efforts. For example, Rhode Island's Little Compton Agricultural Conservancy Trust and South Kingstown Land

Trust lease portions of properties with agricultural land to local farmers for growing hay, corn, vegetables and fruit and for grazing cattle. Roxbury Land Trust in Connecticut leases more than 450 acres of agricultural land on which local farmers grow hay, corn and pumpkins and graze cattle.

**Public Education and Awareness**

When a land trust, municipality or other institution decides to lease a property to a farmer for agricultural use, preemptive public education can be helpful. While many residents support the idea of a farm in their neighborhood, they may not be prepared for its reality. Activities and conditions such as noise from a tractor working in the field early in the morning, manure storage and spreading, pesticide use, truck traffic, odors, dust, composting, and spraying may be unwelcome to some, particularly if they aren't prepared. Getting the municipality to appoint a local agricultural commission can help educate residents about common farming practices. Your organization may find it fruitful to host a meet and greet with the farm tenant to give neighbors and community members a chance to learn how the farm parcel will be used. Establishing and maintaining strong communication between the farmer, your organization, the municipal government and neighboring landowners will build understanding and strong support for farming activities.

Municipalities

Municipalities should have policies that guide decisions about the appropriateness of leasing for agricultural use. Long-range, open space, comprehensive or master plans are good places to demonstrate a commitment to agriculture that can be used to justify leasing town-owned parcels. Each state has different land-use plan requirements. In Rhode Island, for example, legislation requires municipalities to prepare comprehensive land-use plans that include maps of agricultural land and prime agricultural soils, along with municipal goals and policies for agriculture. Often, to qualify for certain funding programs, town plans must include agriculture as a priority.

### Potential Restrictions on Leasing Town Property

Each town typically has its own process and specific requirements for authorizing and entering into leases of town property. Most towns require competitive bidding or other public advertising of the availability of the property. Below are some common legal and procedural questions that may arise during the process. This list is not exhaustive.

- Does your town's charter include restrictions on leasing property, such as requiring town meeting approval for leases longer than one year? If your town does not have a charter, is it customary to get town meeting approval for property leases with terms longer than one year?
- Does your town have a charter provision, ordinance or policy that requires competitive bidding or RFPs for the leasing of town property?
- Did the town acquire the property by way of a deed or gift that restricts its use?
- Did the town acquire the property using tax-exempt bond financing, a state or federal grant, or a grant from a partner organization such as the Nature Conservancy or other land trust that may restrict the use of the property or the ability of the town to charge a monetary rent under the lease?

### Farming activities acceptable to your organization.

Farming can include a wide continuum of management activities. It is important for your organization to consider various options and decide what is acceptable for your land, goals and mission. Below are some questions to consider:

- Would it be acceptable for the farmer to grow crops that require plowing and cultivating the ground on a regular basis?
- Do you prefer or require that the land not be plowed?
- What is your organization's opinion about animals? Would you prefer that the property be managed as pasture for grazing sheep or cattle? Are certain animals less desirable or not permitted?
- Would your organization consider or prefer crops such as berries, fruit trees and nut trees that have long life cycles and require a long-term commitment but require little soil disturbance for cultivation?

- Would your organization permit a farmer to install fencing to keep animals in or to keep wildlife away from crops?
- What are your stewardship and public-use goals and policies for the property? For example, is your goal to have the property open to the public for hiking on trails and/or visiting the farm, or is public access restricted? Can access and farming be combined?
- Do you want the property to be used for education or outdoor recreation? This might conflict with a farmer's ability to run a viable farming operation and could create a larger liability burden for the land trust or organization.
- Are there important or sensitive natural resources that you are protecting? Can those protections be accommodated by farming, or does farming need to be confined to certain areas of the property?

To help address the stewardship objectives your organization may have for the farm parcel, you may want to work with the farm tenant and with the USDA Natural Resources Conservation Service (NRCS) to develop a farm conservation plan. Such plans provide field-specific, best management practices that will protect and enhance natural resources, while maintaining agricultural viability. Farming activity that integrates conservation practices can help control invasive plants and provide habitat needs for species such as raptors, pollinators and ground nesting birds.

By leasing land for farming, your organization can build a strong landowner-farmer relationship based on shared values and good communication. However, your organization's goals for recreation, aesthetics, habitat, certain kinds of farming and access by your staff or by the public might not fit well with some farmers' needs, preferences and expectations. In some cases, the differences are irreconcilable and it is better to end the prospective relationship before making any commitments. For example, if your organization is adamant about certified organic management, then farmers who don't have or will not seek certification are not a good fit.

In many cases, though, the involved parties can resolve their differences. Both your organization and the farmer should be flexible in order to avoid potential conflicts and set precedents for problem solving down the road. The important ingredient in managing different goals is openness to the other's point of view.

### **Restricting a Lease to Certified Organic Production**

An organization that wants a tenant to use only certified organic farming methods should be aware of the implications of that restriction on the farmer and the land. Depending on the past use of the property, USDA organic certification can take three years or more to achieve. There are second- and third-party organic farming certification options that fall outside the USDA National Organic Program, but all tend to require a multi-year transition period before the land can be certified. A common misperception is that organic farming methods are naturally simple or unmanaged; in fact, they tend to be sophisticated systems that combine biology and modern technology. Organic methods can work on parcels of any size and can be applied to most farm enterprises, although it is more challenging to farm organically with some crops than others. By restricting the tenant to using certified organic methods only, your organization effectively limits the potential pool of farmers that are eligible to lease. It is worth noting that many farmers use organic methods but do not seek certification. Therefore, if your organization wants your land to be tended organically, you should be clear about what exactly that means to you, and whether organic certification is a firm requirement.

### **What constraints limit leasing your organization's land for farming?**

Your organization may have legal, cultural or management constraints that limit its ability to lease the land or limit farming activities on the land. For example, conservation easements and deed restrictions may constrain the way a property can be managed and may regulate agricultural practices such as installing fencing, constructing buildings, drilling wells, creating water facilities for livestock, tilling soil, and using pesticides.

Labor capacity may also limit whether you are able to rent your land to a farmer. Though having a farmer take care of the land can bring many financial benefits, being a good landlord also requires an investment of staff or volunteer time. For example, the responsibility of maintaining infrastructure on the property may fall to the landlord. Organizations and municipalities need to assess their ability to take on additional management burdens before making a commitment to a farmer.

Municipal zoning may also restrict farming activities on the property or require a permit for farm activities. For example,

municipal zoning may regulate practices such as keeping livestock; on-farm sales and farm stands; and public access, including parking, for pick-your-own operations, corn mazes and events like harvest fairs.



In addition, provisions in some land management plans may conflict with certain agricultural activities. For example, your organization's stewardship goals or land management plans may require specific activities or give priority to non-agricultural uses such as water quality protection, public recreation, historic preservation, habitat protection or management to support particular species. Those provisions may conflict with agricultural activities.

It is also important to consider the opinions of neighboring property owners and the way they are using their land. Are the neighbors other farmers or residents who understand farming activities, or are they suburban residents who might object to the farmer and his or her activities? Are the neighbors using the land adjacent to your property in a way that will conflict with farming? Often, neighbors' concerns can be relieved with good preparation and communications.

There may also be resistance from other neighboring farmers who feel that land trusts and municipalities give the new farmer an unfair advantage by offering low- or no-cost lease arrangements. Finally, it is important to consider whether managing your land for agriculture will create opposition or political challenges within or outside of your organization.

### **The role of your organization or municipality.**

There is a full continuum of potential roles for your organization in a farming operation. On one end, your organization could own and run the farm operation. In Massachusetts, The Trustees of Reservations hires staff to farm its properties and run CSAs on them. On the other end, your organization can take a hands-off approach by leasing your land to a farmer and relying on the farmer to run his or her own business and manage the property.

Most organizations take a hands-off approach toward the farming operation and charge a flat cash rent, which minimizes their risk. They expect the tenant to meet the terms of the lease, but they should inspect the property and meet with the tenant at least annually. Some landowning organizations may have specific responsibilities spelled out in the lease, such as maintaining and repairing structures.

It is important for your organization to decide how involved you want to be and then to pursue an agreement with the tenant farmer that meets that desire. Unless there is a formal agreement that gives your organization a role in the business of the farm, once your land is leased, you are not involved in operational or management decisions.

### **C. TO WHOM? CONSIDERATIONS IN FINDING A FARMER**

A lease is a formal business agreement, so it is perfectly reasonable to choose a farmer based on credentials not unlike those required for a job. The farmer's experience, reputation, business plan and vision are important selection criteria. It is also valid to select a farmer based on his or her farming methods. Keep in mind that farms are businesses and farmer tenants will be looking to optimize the use of the farmland they lease. A skilled grower can farm using methods that are environmentally sound while producing quality food and other agricultural products. If your organization is able to be flexible, a farmer tenant may be willing to transition over time to specific farming practices that you prefer. For example, you may work with your tenant to have him or her shift from conventional tilling to reduced tilling practices. You may also work with your tenant to have him or her use fewer, or eliminate altogether the use of, herbicides and pesticides.

#### **Below are some additional points to consider when looking for a farmer tenant:**

- Do you prefer a local farmer?
- Does the farmer need to live on or near the property? What kinds of living arrangements are available?

- Do you prefer or require that the farmer produce food (as opposed to non-food) crops?
- Do you prefer or require that the farmer market his or her products in a particular way, such as on-site, off-site, to a food bank, etc.?
- Are you interested in offering opportunities to beginning, immigrant, minority, women or other under-served farmers? *For further discussion, see the [Helping New Farmers section on page 13](#).*
- Would you lease the property to multiple tenants, or to a farming group?
- Will the farmer or type of operation compete with — or be perceived as competing with — other nearby agricultural operations?
- Are you prepared to accommodate a short-term or longer-term lease?

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### **D. LEASING PROCEDURES**

It is important to adopt a consistent process for the farmer selection as well as for monitoring the lease arrangement. Here are some procedures to consider:

**The offering.** Farmers won't know what to apply for unless you present a clear description of what is being offered. It is important to give enough information to get the kinds of responses you want. You should therefore consider thoroughly describing the property, the opportunity and any requirements or constraints. You might also include the following information in the offering:

- Property location
- Aerial photo or locator map with boundaries
- Soils map
- Available infrastructure (buildings, water, electricity, fencing, etc.)

**The application.** Municipalities and land trusts frequently use a request for proposal (RFP) process to lease farmland. The RFP process is used to ensure that the process is fair, and to make sure it complies with formal official policies and procedures for leasing. While the RFP process may be time-consuming, it also provides clarity, transparency and fairness.

The process and basis for selection of a farmer tenant should be clearly outlined in the RFP. For example, the landowner may choose to stipulate a lease price and select a tenant based on specific criteria. Or the organization may ask prospective tenants to bid for the lease. Bid requirements and selection criteria will depend on the organization's objectives and priorities, as well as any legal requirements related to the land parcel or institution.

Information you compiled about the property's characteristics also help to create a strong framework for an RFP. Your organization may want to include the following requirements in the proposal:

- A vision statement for the property and the business.
- A business plan, business "concept" or the equivalent. Keep in mind that some parts of business plans are proprietary and not necessarily relevant to the qualifications of the farmer. Also, it may not make sense to require a business plan for land with which the farmer is unfamiliar.
- A land management plan, including particulars to address specific conservation concerns such as sensitive areas and bird and animal habitat.
- An outline of intended land uses.
- Compatibility with town plans.

Finally, a municipality or land trust should decide on key lease provisions such as the lease term, rental rate, and payment for improvements and/or repairs before the RFP goes out, so that those details can be included. Some provisions may remain open to negotiation, but it can be much easier and more time effective to negotiate the lease if some of the key terms are stipulated ahead of time.

### **Leasing Lands Under Agricultural or Conservation Easements**

Each New England state has a state agricultural easement program that protects farmland from development. Some of this protected acreage is or may become available for leasing. Easements acquired by towns and land trusts, sometimes in collaboration with state funding programs, may also be appropriately leased out for production agriculture. In order to ensure that agriculture is allowed on these lands, it is important to check: the language of the easement; the requirements of the funding programs; the intent behind the acquisition of the easement; and the terms of any management plan that may have been required for the subject parcels. During this process you should also check whether there are any restrictions in the easement regarding farming or specific agricultural practices.

**Site visits and meetings.** Consider holding an optional site visit for interested parties to inspect the premises before submitting a proposal. Have someone present who can answer farmers' questions.

**A designated person.** Your organization should have a designated person, usually a staff, board or committee member or, for municipalities, a commission member, as the primary contact throughout the selection and leasing process. This person needs to be responsible for dealing efficiently with lease applications and responding to lease issues and disputes.

Your organization should also have staff, a committee or a commission that is responsible for managing the entire lease process. Too many layers of decision-makers can create problems for a farmer tenant, causing critical delays during growing and harvesting season.

**Time frame.** The RFP process should allow a reasonable amount of time for farmers to submit an application. The process should also conclude no later than January of each year, giving the farmer time to negotiate details of the lease and plan for that year's growing season. The ideal time of year for farmers to secure a lease agreement is in the late fall or early winter.

### Designating a Town Committee to Administer Farmland Leases

The Town of Wallingford, Connecticut, currently leases 35 fields with a total of 385 acres. With many properties to manage, Wallingford has established a Farmland Lease Program Committee that is a subcommittee of the Wallingford Conservation Commission. The committee's responsibilities include advising on land use, evaluating bids for leasing, making recommendations to the town for five-year lease agreements, and monitoring lease agreements.

**Looking for a farmer.** You have several options for letting prospective tenants know about your property. There are "farm link" programs in the region that allow you to post your offering. A new farm property clearinghouse site is being developed by the Land Access Project that is responsible for this handbook. Some farm support organizations, from the Farm Bureau to groups that promote local agriculture, have newsletters with classified sections. Local newspapers, food co-op bulletin boards, farm trade groups, extension offices, USDA offices and similar outlets are also good ways to get the word out.

**Determining and collecting lease fees.** One of the questions landlords and tenants ask most often has to do with rental or lease fees. There are several ways to determine the rent, and several possibilities for the form of payment.

Rental values vary depending on soil quality, intended use and location, including proximity to roads and markets. Land capable of supporting high-value yields such as nursery crops can command a higher rent per acre than land suited for feed corn or hay.

Often a farm property contains land that is not farmable but is integral to the operation and is contained within the leasehold. This "necessary and related" land can include farm roads, buffer zones, wooded areas, gravel pits and the like. These areas should be assessed separately from farm fields.

It's even trickier to determine the rental rate for buildings and other structures. There is no straightforward formula or approach. Sometimes rent is calculated on square footage or on the number of stalls. The condition of the structure and the usefulness of its features to the enterprise also play into the calculation.

### Below are several factors to consider when determining the rent:

- 1. Market rental rates.** Determine the market rental rate in the area for comparable land. Talk to local farmers as well as county or state extension agents.
- 2. USDA county average rental rate.** The National Agricultural Statistical Service provides data on cash rents in many, but not, all U.S. counties.
- 3. Landowner fixed or carrying costs.** The primary objective of some landowners is meeting the costs associated with owning the property. Typically, these fixed costs include the "DIRTI-5":
  - Depreciation
  - Insurance
  - Repairs
  - Taxes
  - Interest

However, it's important to note that the total of these carrying costs may exceed what would be reasonable for a farmer to pay in rent. In most states, landowners receive a property tax advantage by enrolling their farmed acreage in their state's preferential tax program, thereby reducing that fixed cost.

- 4. Resource capacity.** Rental rates may be calculated as a function of the soil type and condition, size of the parcel, and other factors that can vary from state to state, farm to farm, and even within the same field. The soils in most New England counties have been mapped by the NRCS. Some states have classified these soils further into prime and important agricultural soils. Ask the NRCS agent in your area for a copy of your county's soil survey or get it online. It carries a great deal of information about the farm's soil properties and capabilities with respect to crop production, pasture, woodlot production, and even wildlife habitat. Rental rates for a barn or other structure are harder to determine. They sometimes are based on the number of livestock the facility can house. Dairy barn rental, for example, is sometimes calculated on a per-stall or per-head basis. Rent can also be determined by square foot, condition of the structure, or type of use.
- 5. Social goals.** Some organizations accept a lower than average rental amount because of they value the social benefits of local food production or providing an opportunity to a beginning farmer. They may choose to subsidize the farmer with a below-market rent or by asking for non-monetary rent such as clearing trails. Some landlords give their tenants credit for improving

the soil or facilities. Organizational landlords may accept a lower rent if the farming operation demonstrates or otherwise furthers the organization's mission. These non-market factors can be difficult to measure in setting the rent. Tenants should maintain appropriate accounting practices for tax purposes, and organizations need to protect their Internal Revenue Service tax-exempt status.

**6. Nonprofit status.** Leasing land at a free or discounted rate to an individual may not be legal for a nonprofit organization. Nonprofits must avoid giving private benefit to an individual.

**Forms of payment.** Agricultural leases are often categorized by the form of payment. The most common forms are cash rent, flexible cash rent, and crop-share leases. Some rental agreements, however, see little or no money exchange hands. Both the organization and tenant who have a non-cash or below-market rental agreement should consult their respective advisers about tax considerations associated with the arrangement.

- 1. Cash rent** is rent paid in cash on a regular basis, usually each month or annually. The payment of a set cash amount for rent places all of the risk associated with the farm operation on the tenant. The tenant pays the set amount regardless of what happens on the farm. Landowners have a predictable rent check. Cash leases are the most common.
- 2. Sliding scales** can allow the farmer to keep his or her costs low initially and then pay more in rent once the farming operation is more stable. Typically in these arrangements the rent increases over the course of the lease. Starting at a low rental rate will enable the farmer to get a good start with the operation and will give him or her a better chance of putting available funds into initial capital and operating improvements. As the farm operation becomes more self-sustaining, it becomes more valuable, so the rental rate should increase. This works best if the sliding rate is clearly defined at the outset.
- 3. Share leases** are set up so the tenant and landlord share contributions and risks. The landlord contributes the land and sometimes equipment, improvements and even labor or management. The value of contributions made by the landlord and tenant is computed and the landlord receives rent in proportion to his or her contribution. The rent can be paid as a cash-equivalent share of the crop or livestock produced on the property. A share lease splits production costs and crop or livestock profits between the landowner and the tenant. The actual proportion is a matter of negotiation. Crop or livestock share leases are more common in the Midwest but their

advantages, especially to tenants, apply in New England. They allow a tenant to significantly reduce his or her cash outlay in rent, interest and production expenses. They also require that the landowner take on a share of the production expenses as well as the financial risks and rewards of the operation.

Flexible share leases are a hybrid of a cash and share lease. A "floor" or base rent below market rate is established along with a percentage of the profits. In a good year, the tenant pays the floor rent plus the profit percentage. In a bad year, the landlord still receives the base rent.

- 4. In-kind rent** is an exchange of value based on service or other non-cash contribution. An organization with a small staff, for example, may want to consider compensation in the form of services such as plowing, maintaining fences, or mowing. For your organization, payment in the form of maintenance services can be a relief from finding and hiring someone else to handle those responsibilities. You still need to track the value of the non-cash exchange.



### Helping New Farmers

Some landowners are especially motivated by offering an opportunity to a beginning farmer, usually defined as someone with 10 years or less of farming experience. What new farmers most often lack is capital to purchase land, equipment and livestock, in addition to enough operating funds to start farming. Leasing can offer a way to gain access to land without the heavy upfront and ongoing capital requirements of a purchase. In addition, new farmers learn valuable lessons about running a farming operation, while they put capital toward operating needs and eventually buying land.

Unlike most established farmers who may own land as well as rent land from other landowners, a new farmer may depend completely on access to leased farmland. Therefore, tenure security is crucial to his or her ability to access capital and purchase needed equipment and supplies. Secure tenure can mean a lease term long enough that the tenant is not worried about next year. Your organization might also consider including in the lease agreement an option to purchase the parcel or a right of first refusal clause.

#### **Below are other ways you might be able to help a beginning farmer tenant:**

- Charge a graduated rent, so that the rent is initially below market rate but gradually increases. For instance, the rent might be reduced by 20 percent the first year, 15 percent the second year, and so forth until your tenant is paying full rent in the fifth year.
- Share equipment or other production expenses with the tenant. Sharing expenses, particularly in a crop-share lease arrangement, may have tax and Social Security implications.
- Lease a small portion of your property. A new farmer may want to rent only a few acres to develop a small operation. In that case you could rent the remainder of your land to another farmer.

### **E. PROPERTY TAX ASSESSMENT**

Town-owned land is exempt from local property taxes. A farmer on town-owned land will likely be subject to personal property tax and/or farm excise tax on any animals or equipment that he or she owns. An exemption from personal property tax for farm equipment can be approved by a town vote. If so voted, the exemption applies to all farms in the town.

If the farm parcel is owned by a land trust that is legally recognized as a charitable organization, it may be exempt from real estate taxes. Land trusts should be mindful, though, that if the property is leased for monetary consideration or for a commercial venture, the town's assessor may challenge the exemption and determine that the property is taxable. This depends on a number of complicated arrangements including what the income to the charitable land trust is used for. Moreover, the community may also object to the land trust or other charitable organization's failure to make a contribution to the tax base.

Under current-use taxation, the municipal assessor should take into account the agricultural use and productivity of the land. In Massachusetts, for example, assuming that the land is not tax-exempt per se, the owner must file a Chapter 61A/B application to be eligible for those use rates. If the property owned by a land trust has a restriction that prevents development, it can be taxed only as unbuildable, which may be an amount more or less than certain agricultural use rates, depending on the town and the use. All buildings on land owned by a land trust that does pay taxes are subject to taxation at fair market value for each structure, including the lot value if there is a dwelling on the property.

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*A multiple-year lease creates longer-term relationships between the tenant and landowner, which helps to build trust and ease of communication.*

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### **F. FOR HOW LONG?**

In considering the length of the lease term, both parties should take into account their goals and needs, plus transaction costs and the social capital or goodwill that the term might reflect. A year-to-year lease requires annual renegotiation. This can range from a simple extension or renewal to issuing a yearly notice to terminate or a more complicated recalculation of fees. A multiple-year lease can include built-in adjustments for rent, eliminating the need for renegotiation. It also creates longer-term relationships between the tenant and landowner, which helps to build trust and ease of communication.

The term of the lease can have a significant impact on what practices the farmer may reasonably employ. Many production and resource conservation practices, such as improving the soil's organic matter and establishing riparian buffers, can be time-consuming and costly to a farmer. Plus, the return to the farmer can be negligible or only realized in the longer term. Integrating the farm's varied systems in a way that balances income and other needs with conservation goals is an ideal that can take years to achieve. A lease term of several years, therefore, gives the tenant a longer planning horizon and incentive to care for and improve the farm's resources. A longer-term lease can trigger worry for landowners, and some farmers may prefer the flexibility of an annual lease. A long-term lease, while binding the parties to the terms of the agreement for a longer period of time, can also be modified at any time.

Although the most common farmland leasing practice in the Northeast is a yearly cash rent agreement, municipalities, institutions and land trusts can consider a variety of other arrangements, each of which are described below.

- 1. Short-term leases.** A one- or two-year lease gives both parties flexibility. A farm tenant gets an adequate trial period while limiting risk to the municipality or land trust. It also gives both parties a chance to build trust while determining whether the tenant, particularly a beginning farmer, is interested in a longer-term commitment to farming or to the specific property. On the other hand, with a one-year lease a tenant may be less willing to make significant decisions or investments such as installing fencing or irrigation systems, planting berries, tree crops and other perennials, or applying cover crops.
- 2. Long-term leases.** A lease of five years or more can be more appealing to most farmers, especially those seeking to grow their farm businesses or put down roots on a particular property. A farmer looking to grow grapes or fruit trees would likely need a lease of 20 years or more in order to begin. A long-term lease can give farmers looking to make expensive capital improvements the land security they feel they need. A long-term lease also allows a farmer to rotate crops, which can improve soil fertility, pest control and crop yields. A farmer with a long-term lease is more likely to re-seed and fertilize hayfields, build soil fertility, trim hedgerows and maintain fences and access points such as lanes and gates.

For the landlord, the risk of making a long-term commitment to a tenant farmer must be weighed against the gain

of more reliable land stewardship. Long-term agreements tend to be more complex and need to be carefully drafted in order to remain flexible and reasonable for both parties. For municipalities, long-term arrangements may also require the town and the farmer to go through a more formal approval process. There should always be reasonable exit provisions in the lease for both parties.

- 3. Rolling leases.** Rolling leases automatically renew themselves each year. For example, a rolling five-year lease will renew annually for another five years, so that at the beginning of each year the tenant knows that he or she has at least five years to continue farming the parcel.
- 4. Ground leases.** A ground lease allows the tenant to lease the land (ground) and own some or all of the improvements on it. They are often written for 99-year terms and may be renewable upon the expiration of that term, so they can provide very long-term, multigenerational land tenure for farm families. An organization might enter into a ground lease wherein the tenant purchases the house or a barn on the property or builds a new structure. When the lease terminates (at the end of the term or for other reasons), the tenant may sell the asset and thereby recoup his or her equity. He or she can sell to the next tenant or back to the landlord, depending on the terms of the lease. Often the sale is subject to affordability provisions such that the improvement remains affordable to the next tenant. For example, a young farm couple could secure a long-term lease on 50 acres of land. They purchase the existing house located on the leased "ground." They build and own a barn. When it comes time to leave, they have equity in both structures.

A sample ground lease and corresponding explanations are available from Equity Trust, an organization that has developed pioneering solutions to address the cost and equity issues that accompany farmland leases. Ground leases are fairly complex. For more information on these models, visit [www.equitytrust.org](http://www.equitytrust.org).

- 5. Licensing.** A license is a permission to use property, rather than formal interest in the land. A license is usually revocable and limited in time. Licensing may be an option in situations where use of the land is temporary and lease approval is not economically or politically feasible. Some states and towns use licenses instead of leases.

### **Funding Eligibility for Conservation on Leased Land**

Conservation practices can be expensive to design and install, but NRCS staff can help farmers identify and secure funds from USDA agencies or state funding sources. NRCS offers farmers cost-share payments of up to 90 percent to begin conservation practices and improve natural resource management. Practices range from integrated pest management to water systems and livestock fencing. Leased land is eligible if the farmer can show through a letter or copy of the lease that he or she has control of the land for the duration of the NRCS contact, typically two to 10 years.

### **Sustainable Agriculture and Rented Land**

In a 2001 study conducted in Iowa, researchers examined the relationship between farm practices and renting farmland. They concluded that farming on rented land “often presented additional barriers to the adoption of sustainable agriculture.” Not surprisingly, sustainable agriculture was defined in various ways, but a common denominator was a set of management practices that limit resource depletion or that preserve the resources.

## **G. CHALLENGES THAT MIGHT ARISE FROM A LEASE AGREEMENT**

Because farmland leases are complex transactions with economic, environmental, personal and community components, they have the potential to present many challenges. Below are some of the most common challenges in farmland leasing scenarios:

### **Land Trust/Municipal Landlord Concerns**

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- Tenant fails to pay rent on time.
- Farmer-tenant who lives outside the community fails to monitor his or her leased property regularly.
- Tenant fails to comply with conservation requirements and maintains inadequate stewardship practices.
- Tenant fails to maintain structures.
- Farmer-tenant underutilizes fields for agricultural purposes, resulting in overgrown vegetation.

### **Farmer-Tenant Concerns**

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- Staff representing the landlord is not familiar with agricultural practices.
- Landlord fails to designate a person or commission with the authority to make decisions quickly about lease-related issues.
- Landlord fails to respond to maintenance issues in a timely manner.
- Town maintenance crews cause damage during road, utility or similar work.
- Vandals or poachers damage the farm operation.



## **Farming on Leased Land in Connecticut By Paul Buccigalia**

*Paul Buccigalia is the sole proprietor of Fort Hill Farm in New Milford, Connecticut, which relies on 20 acres of farmland leased from Sunny Valley Preserve, owned by the Nature Conservancy. Paul grows certified organic vegetables, herbs, flowers and small fruit for 400 household members of a CSA program. Paul also sells in a farmers' market in Westport, Connecticut, and maintains a small number of wholesale accounts.*

Like many small-scale, direct-market farmers, I did not grow up on a farm. I studied agriculture and plant biology, and in the late 1990s I started working closely with a good friend of mine in the Midwest who had bought some land and was in the early stages of developing what would become a very successful CSA farm. I liked the large diversity of crops on his farm, and especially enjoyed working with cover crops and compost. A few years later I moved back to New England and apprenticed for a season at a CSA farm in Massachusetts. This was a critical year, because I learned many of the skills I would need to run a profitable, mechanized, organic vegetable farm. The combination of biology-based agriculture, a sound business plan and a rapidly increasing demand for local, organic food, convinced me I could run my own farm. However, I was still hesitant to start my own business.

When an opportunity emerged to run Holcomb Farm CSA in Granby, Connecticut, I jumped. At the time, Holcomb Farm CSA was a project of the Hartford Food System. It's the largest CSA in Connecticut and offered me a steep learning curve. I made my share of mistakes, but on the whole had two successful seasons. I felt ready to start my own business and had a pretty clear vision of what my farm would look like. I had about \$20,000 of start-up capital saved, had purchased some *very* used farm equipment, and just needed that last magic ingredient: high quality farmland. At the time it seemed crazy to even think about buying farmland, and renting was the only reasonable option. Looking back I sometimes wonder if that was true. But fate intervened, and I was introduced to the director of Sunny Valley Preserve. She mentioned she had a large hayfield of flat, well-drained, stone-free, sandy loam — with a house to boot — that she was looking to rent to an organic farmer. It was an almost ideal situation. In the fall of 2002 I moved to New Milford, and plowed the first four acres of what would become Fort Hill Farm.

Starting a new farm business comes with huge challenges: securing capital funding, establishing new markets, developing infrastructure, acquiring equipment, improving soils and managing people. But starting a farm on rented ground includes some additional trials. One big concern for me was who would own capital improvements on the property. Farming 20 acres of vegetables can generate far more revenue than 20 acres of hay can, but the capital and operational costs of a vegetable farm are also greater. How landlords and tenants handle this issue can make or break a new operation. Landlords can be reluctant to fund capital improvements for tenants. Often funds are not available, or the landlord fears the improvements may not be useful to the next tenant. Farmers are reluctant to finance capital improvements that they cannot own, sell or move to another farm. This can paralyze a developing farm business.

Over time, Sunny Valley Preserve and I have established an informal, piecemeal approach to developing the farm. They have paid for some capital improvements — including building a pole barn, hauling road gravel, repairing and upgrading the house — and I have paid for some capital improvements — including those more directly related to the farm business, such as machinery and produce processing sheds, barn doors, concrete floors, coolers and greenhouses. Key to the farm's accelerated development were several grants from the Natural Resources Conservation Service — which paid for irrigation wells, an underground pipeline and permanent deer fence — and from the Connecticut Department of Agriculture — which paid for field and greenhouse equipment. These grants helped smooth over my lack of ownership equity in capital improvements, and provided me with some needed resources. I am very grateful for both of these funding sources.

Lease tenure is another concern confronting a tenant farmer. I started in 2002 with a five-year lease. In year three of that first lease it occurred to me that I only had a two-year lease, which made me very uncomfortable. Organic agriculture requires a great deal of long-term preparation, such as adding compost, rock minerals and cover crop residues to fields to make sure that the soil is in top condition. Additionally, if I was unable to keep the lease on my current farm, I would have very little time to locate new land and develop a new farm base. Working with Sunny Valley Preserve, I was able to develop a five-year rolling lease, so that each year I start a new five-year lease.

*Continued on next page*

I am incredibly fortunate to have had the use of this farm for the last 10 years. I am also grateful for the support I have received from Sunny Valley Preserve staff. And the best news from a farmland preservation perspective is that when I move or retire, the land and its infrastructure will be available to another grower. Like any decision, renting land has had both positive and negative consequences. I have been able to build a successful business in an area with high demand for fresh, organic produce. There is no other way I could have afforded land in Litchfield County. And just the fact that this is still working farmland is a testament to the wisdom of the original land donor and the forward thinking of the conservation organization.

But not owning land has consequences that I did not fully understand when I built my business on rented ground. For example, if things don't work out with a lease, a farmer can move to another farm, but it is not always possible to also move a loyal customer base. Building market relationships takes a lot of time and effort, so while moving to a new farm may seem as simple as packing up your tractors on a flat bed, the economic costs of doing so are high. When making capital investment decisions, leasing land puts you in a difficult spot if you have no recourse to recover those costs should you have to leave before they are fully depreciated. This can be managed by amortizing the costs of an improvement over a short time span, such as five years, but it still makes investing money in the farm a scary prospect. And probably the biggest uncertainty with renting a farm lies somewhere down the road, at retirement. Farmers have historically retired off the sale of the farm business or the land. That option is not available to me. I manage it by budgeting "retirement" as a cost into our farm's accounting each year.

Looking into the future, I see many experienced, hard working, young farmers with the knowledge, skills and intestinal fortitude to start their own farm business. In southern New England, leasing land is the only viable option available to them. I applaud land trusts and other organizations that look to make farmland available to young farmers. Developing mechanisms to manage the capital and lease tenure needs of a growing farm business will go a long way to ensure the success of these sorely needed new farms, keep working lands in production, and provide more local food to people increasingly aware of and interested in the source of their food.

## H. LEGAL CONSIDERATIONS

Each state may have specific laws and regulations regarding farmland leases and the leasing process. They vary in maximum term length, whether it is necessary to record a lease, provisions for residential leases and tenant rights, and other particulars. We recommend that you consult with legal counsel in your state to be sure you are up-to-date on relevant legal requirements.

## I. ISSUES TO DISCUSS WHEN NEGOTIATING A LEASE

When discussing the lease terms, both parties should cover the following items to make sure that each has a good understanding of the new working relationship and feels the lease agreement serves each of them well.

- Nature of the farming business
- Noises, smells and other so-called nuisance vectors anticipated
- Best times and ways to contact each other
- What happens in case of an emergency, such as the cows getting out
- Where the will farmer enter the parcel and how often will he or she need access
- Potential hazards, such as electric fences, chemicals and animals
- Expected working hours and level of activity by season



## Elements of a Good Lease

Leases can be relatively simple or quite complex. Most public entities, institutions and organizations will need more detail than the five elements listed below which are sufficient for a basic legal lease contract:

1. Names of the parties, including both the landlord and the tenant
2. Identification of the property
3. Lease term, with start and end dates
4. Fees (could be zero)
5. Signatures of the involved parties

More comprehensive leases include many, if not all, of the sections briefly described below. It is helpful to look at lease examples and templates to make sure you have included everything, and to get ideas about how best to structure your arrangement. A lease should always be reviewed, and in many cases drafted, by an attorney.

### 1. Preamble

This is not a legal requirement, but an opening statement about the goals and vision shared by the parties can be valuable in setting the context and tone for the legalities to follow.

### 2. Identification of the parties

Be clear about the identities of the landlord and the tenant. For instance, the landlord must be the property owner (person or entity), although a representative, agency or commission may have monitoring or enforcement powers under the lease.

### 3. Description of the property

The description should be sufficient to allow a stranger to identify the location of the property. Ideally the description will include a map, address and specifics as to which parcel(s) is/are being leased (if not the entire property). A legal description is particularly important where only part of the property

is leased or where the lease agreement contains an option to purchase or a right of first refusal clause.

A statement describing the initial condition of the premises is a good idea to include here as well. If a dwelling is included in the leased premises, various statutory provisions apply to the landlord-tenant relationship, including a requirement that the residence be habitable. (It is good practice to have a separate lease for a residence.) If there are buildings or improvements that are excluded from the lease, those should be noted. Remember that equipment can be rented, too. If included in the lease, it should be described as well. Some advisers urge the parties to reference an attachment that has details about the property, including descriptions of baseline conditions, photos and other notations.

### 4. Duration of the lease

This should include start and end dates and any options and procedures for extension or renewal. (Extension means extending the lease by rolling forward the end date. Renewal means starting a new lease.) The lease may specify a rolling term. The lease can start with a short term and renew for a longer term. It can include provisions for options to purchase.



## 5. Rent or other payment

Payment type, amount and schedule must be specified, even if it is a non-cash agreement. The payments may be a fixed amount or a fixed amount plus a percentage of the gross or net profit. Separate payments for use of buildings and machinery may also be included. If it is a non-cash agreement, then the type and frequency of services or the crop-share amount should be specified. Some advisors urge the parties to quantify non-cash exchanges in a separate agreement. If there are penalties such as for a late payment, those should be specified as well.

## 6. Taxes

If the leased premises are subject to real estate taxes, the party responsible for those payments should be specified. Most typically, it is the landowner.

## 7. Utilities

The lease should specify who is responsible for which utility costs and what entity will be named on the utility account.

## 8. Uses of the property

The lease should clearly define the permitted and prohibited uses of the property, including uses that pertain to farm-related education or non-agricultural uses, such as recreation. The lease should also specify whether and to what extent the tenant's right to the property is exclusive. Is public access allowed over certain areas or for certain purposes, such as passive recreation? Note that unless there is a specific requirement covering public access from other agreements, a lease in itself does not allow public access. In addition, the lease should specify uses that are prohibited on the property, such as storing non-farm vehicles or fuel and removing trees, buffers, gravel, topsoil or stonewalls. It is important that all activities and uses be in compliance with the terms of the conservation easement, if one is in place.

## 9. Additional limits or restrictions on farm practices

The lease should specify any limitations or prohibitions on farming practices or on crops or livestock that can be raised. The lease may specify the number and type of animals that may be located on the property, whether the tenant has the right to develop water sources such as farm ponds, create new or different access roads over the property, or work in wetlands or regulated buffer areas. The lease may prohibit planting invasive species. Keep in mind that being overly prescriptive about farming practices can create difficulties

for farmers and affect their bottom line. It can also be a monitoring challenge for the landlord organization. If your organization has a conservation plan for the property, refer to it for guidance on allowed practices and give the farmer flexibility in implementing the plan.

## 10. Entry

The lease should specify whether the landlord has permission to enter the property and if there are limitations to such entry. For example, must the landlord give advance notice? Is landlord entry limited to certain times of the day or week? Most tenants prefer some boundaries to appearances by the landlord, but they welcome communication and interest. The lease should also specify whether and to what extent the tenant's right to the property is exclusive. For instance, is the public allowed?

## 11. Maintenance and repairs

The lease should specify who is responsible for maintaining the property and making repairs on the land, structures and any equipment that are included in the lease. These include fences, buildings, storage facilities, roads and drainage and irrigation systems. In addition, the lease should state who is responsible for keeping the premises and all its fixtures in a clean and safe condition. The distinction between maintenance and repairs, as well as any monetary limits to these expenditures and other distinctions pertaining to "major" or "minor" and interior and exterior repairs, should be stated.

Typically, in practice and in common law, the tenant is responsible for the expenses and labor associated with repairs that do not require skilled labor and the routine maintenance needed to prevent the deterioration of the facilities. This can include tasks such as annual servicing and repainting or staining.

The landlord is usually responsible for major repairs, rehabilitation and replacement of farm structures or systems such as:

- Structural components, including barns and fences
- Exterior siding
- Roofing
- Water supply systems
- Waste treatment systems
- Heating and ventilating systems

Generally, landowners contribute more to the expense and management of the farm operation with a crop-share lease than with a cash rent lease. However, it is important to specify the contributions of each party regardless of the lease type. This not only ensures that the parties understand their respective responsibilities, but also holds the parties accountable for those contributions.

Repairs and maintenance are fertile ground for disagreements and disappointments between landlord and tenant. The organization or municipality wants the property to remain in good repair, but a tenant with a short-term lease may less motivated to make investments that will primarily benefit the owner. An annual walk around with a checklist, and an annual limit on the expenditures expected of the farm tenant can minimize problems that might arise in this area.

### **12. Alterations and improvements**

The lease should specify what sort of capital improvements the municipality, institution or land trust will allow on the property and who will pay for them. The lease also should specify the approval process, if needed, for alterations or improvements. Improvements can mean enhancing existing features, building new structures (for example buildings, farm access roads, water systems, fencing), or clearing land. The document should give clear guidance on whether improvements are considered permanent fixtures, who owns them, or whether they may or must be removed by the tenant at the end of the term. This section could also address whether conservation practices such as building long-term soil fertility are compensated. The duration of the lease is a factor in how those costs are shared, if at all, considering the short- and long-term beneficiary of any improvements.

### **13. Stewardship guidelines**

Consider including a clause that requires the farmer tenant to “use good stewardship practices” to protect the long-term productivity of the farm. A lease may require the development of a conservation, nutrient or habitat management plan, or the equivalent. Organic certification, Holistic Management and other farm management regimes may also satisfy the landlord’s interest in stewardship. The lease may require that the tenant farm in compliance with such plans. Often the lease will refer to the actual plans, which can be appended as attachments to the lease document. The advantage of the attachment is that it can more easily be modified. *For a list of suggested sustainable conservation practices, see [Appendix 3 in this handbook](#).*

### **14. Subletting**

The lease may specify whether subletting is permitted and under what conditions.

### **15. Termination and default**

The lease should spell out the conditions under which each party may terminate the lease. Both need to feel comfortable with the “escape clause.” That said, the farmer’s security hangs on how easy it is for the landlord to terminate. It is not a secure 10-year lease if the landlord can terminate at any time for any reason.

Typical defaults under a lease involve failure to pay rent, failure to maintain liability or casualty insurance, and failure to comply with state and local regulations. Default may also involve failure to keep the property in good repair or engaging in a use prohibited by the lease. You may include a provision that the lease automatically ends if the property has been “abandoned” by the tenant for a significant period of time.

The lease should specify what constitutes default by either party. The remedies should be tailored to the default. The lease should also provide specific time periods for the parties to remedy the default. For example, a tenant who misses a rental payment is given notice and a 30-day period to make the payment.

A landowner may also default under a lease. For example, an organization or municipality that fails to meet obligations under the lease with respect to repairs and maintenance is in default. In the case of landowner default, the lease may give the tenant the right to withhold rent or to pay the cost of providing the repair and deduct that cost from the rent. If the problem persists, the lease may allow the tenant to give notice of intent to terminate.

If either party fails to cure a default and all attempts to resolve the matter fail, the defaulting tenant can be given notice of termination of the lease and a period of time in which to leave the property or, in the case of a landowner’s default, the time when the tenant will vacate the property. The notice should specify the default, describe the steps taken to resolve the matter, and address any issues regarding damages resulting from the default.

## **16. Security deposit**

The lease may require a security deposit from the tenant. This money is reserved for paying to repair any damage done by the tenant or to undertake corrective action, if necessary, to restore the property to its pre-existing condition.

## **17. Monitoring and reporting**

The lease should specify how monitoring will be handled and whether there must be reporting between the farmer and landowner. If the landowner requires written reports, this should be spelled out. There may be a schedule of monitoring visits. Monitoring should be handled by individuals who are familiar with farming. They can interpret farming activity to the landlord and recognize violations.

It is crucial that both parties meet regularly. Your organization can specify in the lease that you and the tenant will communicate at regular intervals, such as before planting, after harvest, or at special occasions like holidays. It is also important to consider the content of the required communications. For instance, requiring a report on conservation or nutrient management can emphasize to the tenant the importance of those matters while keeping your organization informed about the state of its land.

Regular meetings between the tenant and the landowner or landowner's representative are important and can avoid many headaches down the road. Annual farm visits and review of last year's and the coming year's plans are essential.

## **18. Insurance and liability**

The lease should specify whether the tenant must carry liability insurance. Most towns, institutions and land trusts will likely require this as a matter of policy. This part of the lease should consider the liability needs of the farm business, including whether the public will visit the farm to purchase from a farm stand, pick up a CSA share, attend events or access a recreational trail, for example. Property or buildings that are being leased should also be adequately insured. The lease should require the tenant to indemnify the municipality, institution or land trust from claims or liability arising from the tenant's use of the property, his or her operations, and any acts or omissions by the tenant's employees, agents, business invitees and independent contractors.

## **19. Condemnation and casualty loss**

The lease should specify what would happen in the event the property is condemned or destroyed by fire or other casualty. For example, will the landowner reserve the right to terminate the lease? Will the proceeds of a condemnation or insurance award be shared? The lease may also provide that the landowner or tenant has a certain period of time to decide whether it is feasible to continue the operation and to rebuild or restore any buildings or other property destroyed by fire or other casualty.

## **20. Modifications**

The parties should try to address all possible situations that could arise under the lease arrangement. Nonetheless, modifications are common, and the lease should describe the process for making changes to any of its provisions. Any modifications to the lease terms should be documented in writing and signed by both parties.

## Assisting Others with the Lease Process

If your organization is not ready or able to lease, there may still be opportunities to increase the availability of local farmland for leasing. Below are some strategies to consider:

- Facilitate outreach to non-farming landowners who may be willing to lease to a farmer, thereby getting underutilized land back into agricultural production.
- Work to change town zoning to ensure that publicly owned property may be used for active agriculture.
- Consider putting a restrictive covenant or conservation easement or restriction on town-owned land to limit its sale for non-agricultural use.<sup>2</sup>
- Work toward assigning a designated contact as well as an official town commission or board to be an advocate for agriculture.
- Encourage older farmers to prepare a transition plan for their farm.

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<sup>2</sup> A land trust may grant such an easement or restriction to the town in which the property is located, assuming the town is willing to accept it. Because an easement generally must be granted to and enforced by an entity other than the property owner, it may be more effective for a town to take formal action to place a restrictive covenant on its property to ensure that if it is sold, it may only be used for agricultural purposes.



Photo courtesy of Alicia Ghio

## Community Farms

Towns and land trusts might also consider creating a community farm, which typically grows out of efforts to protect a local farm or farm parcel from development. Community farms are sometimes owned and managed by a land trust or by a municipality and managed by a nonprofit organization created expressly for this purpose.

Community farms can serve multiple purposes, including public education around farming and food production, opportunities for work and service learning, and food production. Many donate or sell a portion of the food raised or produced there to local schools or food pantries. In some cases, community farms might look similar to community gardens. There could be a substantial emphasis on teaching children or training young adults about growing food and raising animals. There are also models that focus on improving low-income families' household food security. Many community farms have also incorporated a CSA operation into their activities. Those can be helpful as a way to raise income to fund other activities and to build public support for the farm's work. Some of the most successful and recent examples of community farms have thrived on the vision and enthusiasm of volunteers, transforming a town-owned parcel into an integral part of the community's identity.

### Organizational structure

A community farm can be structured in many ways. In some cases the nonprofit community farm includes an agricultural component such as a CSA and hires staff members to serve as the farm manager and farmworkers. In other cases the farm may lease a portion of the land to a separate farm business such as an independent CSA. In this case the CSA farmer may own the farm business and might not be an employee of the community farm organization.

### Nonprofit status

A nonprofit community farm may appear to enjoy a degree of financial security and might not be regarded by the agriculture community as a "real" farm. In addition, if resident support and goodwill directed toward a community farm fail to benefit local farm businesses that are growing crops for income, there may be resentment. A municipality or land trust interested in creating a community farm or leasing property for such a farm should think carefully about this dynamic and work to boost

support in general for local farms in order to minimize any perception of competition for customers or political support from town hall.

### Financial stability

A community farm, like other farms, needs to maintain farm buildings, repair equipment and make routine property improvements. Without a stewardship endowment fund or a lease agreement that stipulates that another party such as the municipality or land trust will bear this responsibility, a community farm can face increasingly unmanageable and unpredictable annual fundraising targets. Alternatively, the community farm may consider a for-profit component such as a CSA or farmstand to generate revenue for ongoing maintenance costs.

### Housing and payroll

As with any farm, there is a need for affordable housing on or near the property. On the other hand, providing housing for farm staff can open up a number of regulatory requirements from the local health district to the federal Department of Labor. Compensating farm labor with food or housing can also potentially violate IRS payroll tax requirements. It is important that the lessor and lessee of a community farm clearly understand these legal guidelines.



## Alterations and Capital Improvements

Farm tenants continually struggle with whether and how much to invest in the long-term productivity of a leased property. Many farm tenants express frustration that their contributions toward improving or sustaining the long-term productivity of the farm's soil go unrecognized. Landowners, on the other hand, sometimes express frustration with their tenants' lack of concern over erosion, water quality, wildlife habitat and the consequences to the soil of planting the same crop in the same field year after year. Investing in environmental quality is often considered a capital improvement, and financial considerations in the lease should take that into account.

The Internal Revenue Service has a useful test to help you decide whether an expenditure is a repair or a capital improvement. Generally, a repair is an expenditure that keeps the property in its ordinary, efficient, operating condition or restores the property to its original operating condition. Repair generally includes painting, replacing broken windows, fixing the plumbing or the wiring, replacing belts or other equipment parts, repairing feeders or waterers, replacing fence posts, and mending fences. A capital improvement, on the other hand, materially enhances the value of the property or substantially prolongs its useful life. Adapting a property to a new or different use is also considered a capital improvement.

Capital improvements include everything from constructing or renovating permanent farm structures, installing soil conservation structures, erecting permanent fencing and tiling fields to practices or soil amendments that build long-term soil fertility. These improvements can provide significant benefits for the tenant. However, they can also require considerable capital to complete, and the full benefits may not be realized during the term of the lease. Deciding who bears the costs of capital improvements usually factors in the length of the lease and whether the tenant or the landowner will be the primary beneficiary.

A tenant should never undertake a capital improvement without the consent of the landowner. Ideally, the tenant and landowner should discuss annually any planned capital improvements, as well as necessary repairs and maintenance. The farmer should describe the improvement, including its location, construction methods, and other important factors in writing and ask the landowner to sign this document to indicate agreement.

### **Capital Improvement: Ownership and Investment**

According to common law, any structure on the property, regardless of who bears its construction costs, belongs to the landowner at the termination of the lease. Provisions that name the tenant as owner of the structures and permit the tenant to remove them typically require that the tenant bear the costs of removal and restoration of the land to its former condition. The lease may also provide that instead of removal, the tenant has the right to sell the structure to the subsequent tenant. For more permanent structures that cannot be removed, the landowner might be willing to pay for construction because it will increase the value of his or her property. A tenant may be more willing to pay for construction if the lease commits the owner to pay the tenant the depreciated value of the structure at the end of the lease period. The lease may also provide that in the event the landowner sells the land to the tenant, the depreciated value of the structure or other capital improvements must be deducted from the purchase price. You can use the applicable IRS depreciation rate for the particular kind of property or devise your own rate based on the property's useful life.

It is important that the lease address the landowner's consent to the tenant's making improvements; the contributions of both parties in completing improvements; the tenant's ability to remove mobile improvements at the end of the lease; and reimbursement for the remaining value of improvements left on the property at the end of the lease. Typically, a short-term lease provides that improvements become the property of the landowner at termination of the lease, but you and your tenant may make different arrangements.

### **Reimbursement for Improvements**

A tenant is unlikely to invest in improvements that will not show a return before the lease terminates, but a provision requiring reimbursement for approved improvements can change this. In the absence of a long-term lease, providing reimbursement for the unused portion of a tenant's investment in the land can increase a tenant's motivation to invest in the land even. If your organization values environmental conservation or sustainable agriculture, it will be important to recognize in the lease not only structural improvements that the tenant may make to the soil and other aspects of the farm, but also benefits accrued through sustainable farming practices. You might consider providing credit for a tenant's expenses related to crop rotations and green manure crops that add nutrients to the soil after the lease terminates. In considering reimbursement for improvements, it is important that you discuss and put in writing what improvements are needed, the costs of improvements, and the expenses to be contributed by each party.



## A Checklist for Land Trusts, Institutions and Municipalities

From the time your institution or municipality first considers leasing land for agricultural use to the time you sign a lease with a farmer, there are many important details to consider. These details are compiled in a convenient list format here, to help you keep track of each step on your way to a successful contract.

### ASSESSING YOUR LAND

Identify the parcel(s) available and suitable for agriculture. Be creative! Land for farming can have diverse characteristics. Maybe a property is well suited for bee hives. Maybe it is a forest that would provide the perfect location for a mushroom grower to place cultivation logs. The following points will help you identify the land's valuable agricultural features:

#### A. What is the suitability of the property you are considering leasing?

- Soils (prime farmland with no or few constraints, or soils with significant constraints such as wetlands, drainage problems, stoniness, ledge)
- Topography (level, moderate or steep slopes)
- Land orientation and micro-climates, such as frost pockets
- Current management (open fields mowed, recently tilled, hay, pasture, orchard, tree farm, forested)
- Invasive species or other aggressive vegetation that creates management issues
- Water source (existing supply, spring or creek that could be developed)
- Existing fences and stone walls
- Existing buildings and their condition (barn, house, storage facility)
- Access for the farmer (good road, driveway, unimpeded, or with constraints)
- Neighbors (farmers or suburban residents, how many, how supportive of agriculture)
- History of public access or use for recreation
- Non-agricultural resources (wildlife habitat, wetlands, vernal pools, drinking water supplies) and their compatibility with agriculture
- Other land uses such as hiking, biking, skiing, hunting or swimming

#### B. Are there legal constraints to leasing your property for agriculture?

- Conservation easement that restricts some uses and activities
- If the property was donated, does the donor's intent restrict some uses and activities?
- Deed restrictions on uses and activities
- Restrictions created by the funding used to acquire the property, such as a bond's purpose, grant provisions or federal funding purposes
- Zoning limitations and restrictions
- Municipal leasing process and requirements (for municipalities)

### C. Who needs to be involved in the decision to lease your land?

- Land trust or institution executive director/town manager
- Board of directors or town or city council
- Legal counsel for your organization
- Committees, commissions or boards, such as a land trust's property or stewardship committee; or the municipal conservation, agricultural, parks, or open space commission or committee

## ASSESSING YOUR ORGANIZATION

### A. What are your organization's interests, purpose and goals for leasing your land for farming?

- Advancing your organization's mission
  - Sustaining agriculture and working farms in your community
  - Addressing stewardship for your property
  - Promoting and increasing sustainability in your community
  - Protecting the environment including water quality, natural habitat, etc.
  - Providing outdoor recreation opportunities and encouraging agritourism
  - Providing educational opportunities
  - Engaging the community or your members
  - Protecting and improving the scenic character of your community or specific vistas
  - Protecting an historic or culturally important landscape
  - Supporting developing your community's agricultural economy
  - Maintaining or increasing local food production
  - Encouraging, assisting or supporting beginning farmers
  - Helping an existing farmer expand his or her operation
  - Partnering with a well-established farmer with a good reputation
  - Maintaining or improving your organization's relationship with your community's farmers
  - Maintaining or enhancing the quality of life in your community
  - Growing food for food bank or schools
  - Other
- 
- Other
- 

### B. What level of agricultural activity do you want on your property?

Agriculture is a diverse industry and various crops require land with different characteristics. Intensity of agricultural management or cultivation varies from minimal to significant and has correspondingly diverse impacts on land and the visual landscape. For example, mature forest may provide the shade needed for a mushroom farmer who locates cultivation logs; fields of wildflowers provide locations for honeybee farmers to sit their hives; long-term and perennial crops such as nut trees and highbush blueberries may require minimal cultivation once they are planted; fields may

be used for pasture or hay; vegetables and row crops require annual tilling and continuous cultivation until harvest; and farmers can extend their growing season with high tunnels or hoop houses that permit cultivation earlier and later in the year than would be possible in an unprotected field.

- Decide what level of cultivation and intensity of agricultural management and activity your organization wants on its property.
- Are you willing to permit a farmer to raise animals on the property? If so, what types (e.g. chickens, turkeys, sheep, cattle, pigs, etc.) and how many?
- What is your organization's perspective or preference for organic farming practices, including the use of fertilizers and pesticides?
- Can the farmer bring the public onto the property as part of a CSA, pick-your-own operation or farmstand?

**C. What compensation does your institution or municipality want for leasing the farmland?**

- Cash payment
- Share of produce
- In-kind exchange for stewardship activities such as mowing fields, maintaining fences, managing invasive species or conducting programs for the public

**D. What is the length of term for the lease?**

- Annual renewal
- Short-term, two to five years with provisions for renewal
- Rolling lease
- Long-term \_\_\_\_ years
- Very long-term ground lease

**INVOLVING THE STAKEHOLDERS**

**A. Who needs to be informed and/or consulted about the plan, process and decision to lease your land to a farmer?**

- Boards or committees not already involved in the initial discussions
- Organization(s) holding the conservation easement, if any
- Neighbors
- Land trust members or town residents

**B. What is the process for involving them?**

- How are decisions at your organization made and recorded? Do they need to be made at public meetings?

**C. How will your organization maintain communications with the interested committees, organizations and neighbors?**

- How will information related to the selection be shared?
- What is the process for input and feedback if appropriate?

## **FINDING AND WORKING WITH A FARMER**

### **A. How will you find and select a farmer for your property?**

- Clear and transparent process for farmer selection
- Legal requirements met
- Request for proposals drafted and distributed. What information should be in the proposals?  
How will you distribute the request for proposals?
- Selection criteria clearly established based on your organization's interests and goals
- Opportunity for prospective farmers to visit the property and ask questions
- Follow-up meeting with top prospects. Do you understand the farmer's perspective?  
What are his or her needs, interests and plans for farming?

### **B. How will you communicate with the farmer?**

- Determine the primary contact from your organization for monitoring the lease, addressing issues and questions, and solving problems
- Determine the process for routine communication
- Determine the process be for emergencies

### **C. Can the farmer improve the property?**

You also should consider the extent to which your organization is comfortable allowing a tenant farmer to use, improve or change your property. Below are some important points to keep in mind.

- Fencing to keep animals in and/or to protect crops from predators or wildlife damage
- Water (well, spring development, other)
- Temporary structures, including hoop houses and high tunnels to extend the growing season, or animal shelters such as chicken coops
- Planting perennial or long life cycle crops (nut trees, fruit trees, berries)
- Soil improvements (fertilizer, lime, other)
- Drainage improvements
- Are you able and willing to share the costs of improvements?
- Do you want to provide the farmer with some equity if he or she makes improvements to the property?

### **D. What role does your organization want to play in the farming operation?**

There are many variations and options, including:

- Leasing the land to a farmer and remaining uninvolved in the farming operation
- Leasing the land to a farmer with provisions for your organization to run events or educational programs related to the farming operation
- Establishing a community farm or community gardens
- Hiring a farmer and working with him or her on the farming operation

### **Draft a written lease that is reviewed and signed by both parties.**

A comprehensive list of important items to consider including in your lease is available in the Elements of a Good Lease section, starting on [page 18 of this handbook](#).

## Typical Conservation Provisions

### Conservation and land stewardship provisions commonly found in lease agreements include:

- Keep the lease premises neat and orderly.
- Prevent noxious weeds from going to seed on said premises, destroy the same and keep the weeds and grass cut.
- Prevent all unnecessary waste, loss and/or damage to the property of the landlord.
- Keep the buildings, fences and other improvements in as good repair and condition as they are when the tenant takes possession or in as good repair and condition as they may be put by the landlord during the term of the lease, ordinary wear, loss by fire or unavoidable destruction excepted.
- Comply with pollution control and environmental protection requirements as required by local, state and federal agencies.
- Implement water conservation and soil erosion control practices to comply with the soil loss standards mandated by local, state and federal agencies.
- Generally follow NRCS and Farm Service Agency recommendations and maintain all other requirements necessary to qualify current and future farm operators for participation in federal farm programs.
- Haul and spread manure on appropriate fields at times and in quantities consistent with environmental protection requirements.
- Take proper care of all trees, vines and shrubs, and prevent injury to the same.
- Do not plow permanent pasture or meadowland unless otherwise permitted.
- Protect waterways, water bodies and riparian areas.

*Adopted from The Drake University Landowners Guide to Sustainable Farm Leasing.*

*Note: These provisions do not address forestry operations, which may also be part of the farm's operations if forestland is included in the lease.*

### Other Sample Conservation Provisions

In addition to the standard conservation provisions listed above, this is a list of some sample provisions that you might find useful to include in your lease:

- Tenant will not burn or remove any crop residue, including but not limited to cornstalks, corncobs, leaves, straw and stubble, without the written consent of the landlord.
- Tenant shall not establish or maintain a commercial feedlot, which is defined for the purposes of this lease as a confined area or facility within which the land is not grazed or cropped at least annually, and which is used primarily to receive and hold livestock that has been raised off the premises.
- Tenant shall carefully control livestock access to surface water, including rivers, streams, lakes and ponds other than those constructed for the purpose of livestock watering.
- The landlord and tenant recognize the possibility that weeds may result from certain practices that promote the conservation and long-term productivity of the lease premises and will take this into account in maintaining the attractive appearance of the farm.
- Tenant will use mechanical and non-chemical means as primary methods of controlling weeds on crop ground.

- Tenant agrees to minimize use of herbicides by employing integrated weed strategies as the primary means of weed control.
- Tenant will mow road ditches and field edges in accordance with local, state and federal law and will not mow ditches, field edges, grass waterways, set-aside acres and other areas of vegetation until after the nesting period for game birds and songbirds has passed.
- Tenant will employ contour farming on any slopes that will experience soil erosion if farmed another way, even if classified as non-highly erodible land.
- If fieldwork is done in the fall, at least two-thirds of the soil will be left covered with crop residue.
- Tenant will leave a vegetative buffer \_\_\_\_\_ yards from any watercourse, stream or river.
- Tenant agrees to implement a haying and/or grazing plan approved by NRCS or the landowner.
- Tenant agrees to test the soil periodically for residual nitrogen and phosphorus.
- Tenant will compute credits for manure and previous legume crops before applying additional nutrients.
- Tenant agrees to minimize the use of insecticides by employing pest management strategies as the primary means of pest control.
- Fields shall be conservation tilled and planted on the contour or no-tilled on erodible ground.
- A cover crop shall be seeded on corn ground harvested for silage.
- Tenant will not plant genetically modified crops on any of the lease premises.



# Sample Request for Proposals

ADAPTED FROM THE TOWN OF AMHERST, MA, 2012

The Town of Amherst Conservation Commission (the Commission) invites proposals to obtain licenses to conduct agricultural activities on certain parcels in the Town under the care and control of the Commission. Proposals must be made in accordance with all applicable federal, state, and local laws and regulations, and comply with the instructions, conditions, specifications, and other requirements set forth in this Advertisement [RFP]. Hard copies may be obtained from the Amherst Conservation Department, or by going to the Town of Amherst website.

## **SECTION 1: BACKGROUND**

One goal of the [Conservation Commission] policy is to provide equitable access to agricultural opportunities on Conservation Land. The opportunity to conduct agricultural activities on Amherst Conservation Land also represents an effort by the Conservation Commission to make farmland available to farmers and to further promote sustainable agriculture practices. Finally, with regard to the parcels selected as part of this Advertisement, the Commission seeks to maintain and improve the soil fertility of the land, retain and maintain wildlife habitat, and preserve open spaces and vistas important to the aesthetic rural scenery and character of the area, and promote organic agriculture.

Accordingly, through this Advertisement, the Commission is seeking proposals from farmers wishing to obtain a license to conduct agricultural activities on certain Amherst Conservation parcels. This Advertisement is being issued in March 2012 for agricultural activities to commence in Spring/Summer 2012. Additional parcels will be made available through a similar process soon.

## **SECTION 2: PARCELS**

The following parcels are included as part of this Advertisement: (See attached maps)

- Parcel 1 [Amethyst Brook Conservation Area, Pelham Road, 1.4 acres]
- Parcel 2 [Haskins Meadow Conservation Area, East Leverett Road, 1.9 acres]
- Parcel 3 [Mt. Pollux Conservation Area, South East Street, 2.6 acres]

Additional information about parcels included in this advertisement, terms of license for each parcel, and any relevant restrictions regarding operations is provided in Attachment B. The Commission may select other parcels in the future for additional agricultural license opportunities. Applicants may propose farming operations at one or more of the parcels listed above.

The license fee for all parcels will be \$125/acre on an annual basis. License holders are required to hold a \$1,000,000 liability insurance policy to conduct agricultural activities on Amherst Conservation Land that names the Town of Amherst as an additional insured.

## **SECTION 3: PROPOSAL SUBMISSION DETAILS**

Proposals in response to this Advertisement will be accepted until 4:30 p.m. on Wednesday, April 11. Responses submitted after this deadline will not be reviewed. Questions regarding the Advertisement may be submitted via email to [Director], Conservation and Development, or in writing to the Conservation Department at the address below until Friday, April 6.

Responses to the Advertisement will be reviewed by Conservation members and staff. Applicants may be interviewed for further discussion of application materials. The Conservation Commission anticipates that selected candidates

will be notified on or about April 27. Following selection of a candidate for each parcel, the Conservation Department will work with that party to execute a mutually satisfactory agricultural license. The license will include provisions on operations on the premises, maintenance, reporting, insurance requirements and other matters. The terms and conditions of the licenses will be specific to each parcel and the operations proposed thereon; however the licenses will be informed by the Conservation Commission's Recommendations for Agricultural Use of Conservation Land in Attachment A.

**Responses to the advertisement should be submitted to:**

Amherst Conservation Department Town Hall  
Amherst, MA 01002  
Telephone: 413-259-3045

Please submit two hard copies of the proposal or one electronic copy. The Town reserves the right to reject any incomplete submission packages. Awards are made solely at the discretion of the Commission and the Commission reserves the right not to award a license if, in the Commission's sole discretion, no acceptable response has been received or if the Commission should decide to leave a parcel fallow for a period.

**SECTION 4: PROPOSAL SUBMISSION CONTENT**

Applicants should provide the following information in their proposal:

**A. Personal and Professional Information:**

- Name(s) of Applicant, Address, Telephone, Email
- Business Information (If this Applicant operates a farm business): Legal Name of Business, Tax Operating Status, Tax I.D. Number, Date Established, Type of Business, Owner
- Current Employer (If Applicant is currently employed)
- Description of the Applicant's farming experience.
- Resume of Applicant as well as any other parties to be involved in the farming operation
- Three names of references
- Identify which of the parcels the applicant wishes to license (farmers may seek licenses for more than 1 parcel)
- Other relevant documentation the applicant wishes to include

**B. Proposed Farming Operation (Submit separate information for each parcel if necessary):**

- Description of the proposed farming operation. Include a description of crop(s) and livestock, if any, and include a planting/growing/harvesting schedule.
- Where will the agricultural products be sold?
- Description of how the proposed farming operation will comply with the requirements of the Amherst Conservation Commission Land Use Policy for Agricultural activities on Conservation land (Attachment A). Please be specific.
- Description of any and all infrastructure (temporary or permanent structures, fencing, utilities, irrigation, etc.) that is requested for the proposed operations.
- Length of license requested.
- Any further information the Commission should consider with regard to the application.

## **SECTION 5: SELECTION CRITERIA**

The Conservation Commission will select proposals that best fit each location based on the following criteria:

- The farming enterprise described in the proposal should:
  - a) be well suited to the size, soils, and configuration of the parcel
  - b) contribute to the local farm economy
  - c) be economically feasible
  - d) promote sustainable agricultural practices
  - e) preference will be given to plantings that produce food, fiber, and/or energy, and that serve conservation interests
  - f) that are not detrimental to rare or endangered species, if any, wetlands function and natural resource quality
- The Applicant should have sufficient qualifications to execute the proposed farming operation, as demonstrated through past experience and references.
- Preference may be given to Amherst farmers and those living within 20 miles of town. The ability to respond in a reasonable timeframe to emergencies will be considered as part of the proposal.



## Sample Lease

### TOWN OF SIMSBURY, CT, TO COMMUNITY FARM OF SIMSBURY, INC.

**THIS FARM LEASE** (this “**Lease**”), is made and entered as of July \_\_, 2009 by and between the TOWN OF SIMSBURY, a municipal corporation having its principal address at 933 Hopmeadow Street, Simsbury, Connecticut 06070 (the “**Lessor**”), and COMMUNITY FARM OF SIMSBURY, INC., a Connecticut not for profit corporation with an address at 230 Bushy Hill Road, Simsbury, Connecticut 06067 (the “**Lessee**,” together with the Lessor collectively referred to herein as the “**Parties**,” and, individually, alternately referred to as “**Party**”).

#### **WITNESSETH:**

That for and in consideration of the rents, covenants and agreements hereinafter reserved and contained, the Lessor and Lessee hereby agree as follows:

#### **1. Demise of Leased Premises.**

Lessor does hereby demise and lease to the Lessee, and the Lessee does hereby lease and hire from the Lessor, the farm land consisting of seventy-seven (77) acres, more or less, described on Schedule A and depicted as Areas A, B, C and H on Schedule A-1, each attached hereto and made a part hereof (the “**Land**”), together with the barn, farm store adjacent to the Eno Farmhouse (defined below), the equipment storage facility located in Area A on Schedule A-1, and any other improvements located on the Land after the date hereof and constructed for use by Lessee (collectively, the “**Farm Buildings**”), the dwelling located in Area A on the Land, with an address at 73 Wolcott Road, Simsbury, Connecticut (the “**Eno Farmhouse**”; together with the Farm Buildings and any other improvements located on the Land and constructed for use by Lessee, collectively referred to as, the “**Buildings**”). The Land and Buildings are collectively referred to as the “**Leased Premises**.” Notwithstanding the foregoing, expressly excluded from the Buildings is the one (1) residential, multi-family duplex located on the Land.

#### **2. Title and Condition.**

Lessor warrants to Lessee that Lessor is well seized and possessed of the Leased Premises and has a good and lawful right to enter into this Lease subject only to the terms and restrictions of the Will of Amos Eno (“**Eno Will**”). A copy of the Eno Will is attached hereto as Schedule B. The Lessor covenants with the Lessee that the Lessee, upon paying the rent in the manner specified and performing the covenants and agreements herein contained, shall be entitled to use and enjoy the Leased Premises for the Term (as defined below). Lessor also represents that the Leased Premises and the Permitted Use (as defined below) are permitted under all certificates of occupancy and zoning rules and regulations of the Town of Simsbury.

#### **3. Use and Occupancy of Leased Premises.**

a. Lessee shall use and occupy the Leased Premises (i) to engage in farming, community, educational and charitable activities in accordance with that certain Town Farm Plan of Use, Submitted by Community Farm of Simsbury Inc. and dated July 16, 2009 (the “**Plan**”); (ii) to engage in agricultural activities in general and specifically to engage a farmer(s) in farming the Land, including the cultivation of fruits, vegetables, flowers and field crops; (iii) to engage in the public retail sale of products directly related to the Permitted Use (as defined below); and (iv) such other activities as may be in furtherance of the foregoing uses and/or the Plan (collectively, the “**Permitted Use of Land**”). In carrying out the Permitted Use of the Land, Lessee agrees that it will maintain or cause the maintenance of organic certification (as defined by the United States Department of Agriculture) of the Land. Lessee acknowledges that the charitable and educational activities described under the “**Educational Activities**” and “**Community Services and Food to the Poor**” Sections in the Plan are valuable consideration to be received by the Lessor in exchange for its agreement to let the Leased Premises as set forth in this Lease and accordingly, Lessee agrees that it shall not materially alter or amend either of those sections of the Plan without the prior approval of the Lessor.

b. Lessee shall use the Buildings exclusively in connection with and in furtherance of the Permitted Use of Land and shall use the Eno Farmhouse in addition, to occasionally house workers engaged by Lessee to assist in the Permitted Use of the Land (collectively, the **"Permitted Use of Buildings"**; together with the Permitted Use of Land collectively referred to herein as the **"Permitted Use"**). Lessee agrees not to keep livestock on the Leased Premises, except for farm animals kept for the Lessee's educational programs.

#### **4. Maintenance and Repair; Construction of Improvements.**

a. During the Term, Lessee will maintain the non-structural portions of the Buildings in good condition, reasonable wear and tear and casualty damage excepted, but excluding any items which are the responsibility of Lessor pursuant to this Section 4.b. below.

b. Lessor's Agreements and Obligations:

i. During the Term, Lessor shall maintain, in good operating condition and repair, the structural elements of the Buildings and all Building systems (including, but not limited to, the foundations, exterior walls, roof, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, fire hydrants, parking lots, walkways, parkways, driveways, signs and utility systems). Lessor shall repair any defect in the above within a reasonable period of time after receipt of written notice from Lessee describing such defect, unless the defect constitutes an emergency or materially interferes with the day to day Permitted Use ("Emergency Repair"), in which case Lessor shall cure the defect as quickly as possible, but not later than thirty (30) days after receipt of notice. If Lessor fails to make such Emergency Repair, Lessee may do so, and the cost thereof shall be payable by Lessor to Lessee. In the event of an imminent emergency, Lessee, at its option, may make such repairs at Lessor's expense, before giving any written notice, but Lessee shall notify Lessor in writing within three (3) business days following such emergency.

ii. Without limiting the generality of the obligations set forth in the preceding subsection b.i., Lessor further agrees to demolish the existing 6 bay equipment storage facility that comprises one of the Buildings, and to construct a new equipment facility, of size and functionality substantially similar to the existing equipment storage facility, fit for the intended use of farm equipment storage ("**Equipment Facility Construction**"). Lessor agrees to commence demolition of the existing facility and the Equipment Facility Construction, subject to appropriated funds by Lessor, as soon as is reasonably feasible after the mutual execution and delivery of this Lease and shall use its best efforts to complete said demolition and Construction by December 1, 2009. The Equipment Facility Construction shall be done at Lessor's sole cost and expense. Notwithstanding any term to the contrary contained here, Lessor shall provide for adequate premises and personal liability as well as workers' compensation insurance from the commencement of and during the continuation of the Equipment Facility Construction. Lessor shall indemnify, save harmless and defend Lessee from any and all claims, demands, damages, fines, penalties, suits, causes of action and losses resulting from the implementation of the Equipment Facility Construction and due to acts or omissions or parties other than the Lessee, its servants, agents and assigns.

iii. Any entry by Lessor on the Leased Premises for any repair, maintenance or inspection described in this Lease, including, without limitation, the Equipment Facility Construction ("**Lessor's Work**") shall be upon prior notice to Lessee, except that no prior notice shall be required in the event of an emergency. In conducting Lessor's Work, Lessor shall take care to not disturb the Buildings, Land or any shrubs, trees, vegetation, crops growing thereon, or any farm animals, or interfere with Lessee's Permitted Use, except to the extent necessary to conduct such Lessor's Work. If Lessor's Work will necessitate any such disturbance or interference which cannot be avoided, Lessor shall notify Lessee in advance of the nature of the anticipated disturbance. Lessor shall remove any debris or refuse, whether natural or man made, resulting from Lessor's Work and restore the Land to the condition existing as of the commencement of Lessor's Work.

c. Lessee's Obligations and Agreements:

- i. Lessee agrees that it will not erect any non-removable improvements on the Land or make any improvements to the Buildings which require a building permit, without prior written approval of Lessor, such approval not to be unreasonably withheld, conditioned or delayed.
- ii. The Lessee shall be responsible for all aspects of cultivating the Land and the operation of a farm thereon, including without limitation, fertilization, seeding, growing crops, controlling soil erosion and noxious weeds as completely as practicable and, at the end of each growing season, leaving the Land in good productivity, seeded with a cover crop. Lessee agrees that as regards its organic cultivation responsibilities at the Land, it shall comply or cause compliance with the United States Department of Agriculture (USDA) Organic Farming Standards and the Northeast Organic Farming Association Best Practices. Lessor may enter the Land at any reasonable time, upon prior notice and without interruption of Lessee's Permitted Use, for inspection and to conduct soil tests, make surveys to ensure compliance with erosion control requirements, and environmental regulations.
- iii. Lessee agrees that it will maintain all Buildings, in a clean, safe and sanitary condition, and shall maintain the yard surrounding the Eno Farmhouse in a neat and orderly manner.

**5. Compliance with Environmental Law, Regulations and Ordinances.**

a. Definitions:

- i. **"Regulated Substances"** means any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "regulated substances," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant hereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, 49 U.S.C. Sec. 9601, et seq.; the Hazardous Materials Transportation Act, as amended from time to time, 49 U.S.C. Sec. 1801, et seq.; the Resource Conservation and Recovery Act, as amended from time to time, 42 U.S.C. Sec. 6901, et seq. the Federal Water Pollution Control Act as amended from time to time, 33 U.S.C. Sec. 1251, et seq. Chapter 445 of the Connecticut General Statutes, Revision of 1958, as amended from time to time, C.G.S. §22a-114, et seq ; Chapter 446k of the Connecticut General Statutes, Revision of 1958, as amended from time to time, C.G.S. §22a-416 et seq ; C.G.S. §22a-134 through 22a-134d, as amended from time to time; and the Regulations of Connecticut State Agencies promulgated under Title 22a, Environmental Protection, of the Connecticut General Statutes, as amended from time to time. Without limiting the generality of the foregoing, the term **"Regulated Substances"** includes (a) any oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials or pollutants that (i) pose a hazard to the Leased Premises or (ii) cause the Leased Premises to be in violation of any Regulated Substance Laws; (b) asbestos in any form which is or could become friable; (c) urea formaldehyde foam insulation; (d) transformers or other equipment which contain polychlorinated biphenyls; and (e) Radon gas in amounts which will cause buildings erected on the Leased Premises to exceed 45 pico curies. The term **"Regulated Substances"** also includes any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Leased Premises.
- ii. **"Environmental Enforcement Action"** means, any and all enforcement, clean-up, removal, remediation or other governmental or regulatory actions or orders instituted or completed pursuant to any Regulated Substance Law, together with all claims made or threatened by any third party against Lessee or the Lessor or the Leased Premises relating to damage, contribution, cost recovery, compensation, loss or injury to the Leased Premises arising solely or resulting from an act of Lessee, its agents or servants from and after the Commencement Date.

- iii. **“Regulated Substance Law”** means any federal, state or local law, ordinance, regulation, or policy relating to any Regulated Substances (including, without limitation, the use, handling, transportation, production, disposal, discharge, removal remediation, or storage thereof).
- b. The Lessee will comply with, and shall cause the Leased Premises and all occupants thereof to comply with, all Regulated Substance Laws and all Environmental Enforcement Actions.
- c. The Lessee will give Lessor prompt written notice of any actually known Environmental Enforcement Action instituted or threatened with respect to the Leased Premises.
- d. The Lessee will give Lessor immediate written notice of any condition or occurrence on the Leased Premises which, to Lessee’s actual knowledge, constitutes a violation of a Regulated Substance Law or would justify a demand for removal or remediation under any Regulated Substance Law.
- e. Lessee shall take any and all remedial action and will indemnify, save harmless and defend Lessor from any and all claims, demands, damages, fines, penalties, suits, causes of action and losses resulting from the contamination of the Leased Premises by the acts or omissions of Lessee, its agents or servants from and after the Commencement Date (defined below) or mandated by or required under any Environmental Enforcement Action. Any remedial action taken with respect to any Regulated Substances on, under, or about the Leased Premises shall be conducted and completed in accordance with all applicable Regulated Substance Laws.
- f. Lessor shall indemnify, save harmless and defend Lessee from any and all claims, demands, damages, fines, penalties, suits, causes of action and losses resulting from the contamination of the Leased Premises by any Regulated Substances or the violation of any Regulated Substance Law which affects the Leased Premises and the Lessee’s Permitted Use due to acts or omissions or parties other than the Lessee, its servants, agents and assigns.

**6. Term and Option to Extend or Renew.**

- a. The **“Commencement Date”** of this Lease shall be July \_\_\_\_, 2009.
- b. The **“Initial Term”** of this Lease shall be five (5) years and shall end on June 30, 2014, unless sooner terminated as provided herein.
- c. Lessee shall have one (1) option (**“Option”**) to renew this Lease for one (1) additional term of four (4) years (the **“Option Term”**). Lessee shall exercise an Option, if it so chooses, by providing Lessor with written notice at least six (6) months prior to the end of the Initial Term. Upon Lessee’s exercise of the Option, Lessor shall have the right to either accept or reject the Option Term, in its sole but reasonable discretion, and shall notify the Lessee of its decision within two (2) months of Lessee’s exercise of the Option. In the event the Option is exercised and the Option Term accepted by Lessor, Lessor and Lessee will mutually agree to the amount of rent for the Option Term. The parties’ rights and obligations for the Option Term shall be governed and construed in accordance with the terms of this Lease with the exception of any amendment to this Lease made to reflect the dates of the Option Term and the new rent.
- d. **“Term”** shall mean and refer to the Initial Term together with the Option Term, if any.
- e. Lessee shall vacate the Leased Premises upon the expiration of the Term.

## **7. Rent.**

- a. The annual rent (the “**Rent**”) for the Initial Term of this Lease shall be One Dollar (\$1.00), payable in one installment, contemporaneous with the execution and delivery of this Lease.
- b. On or before the Commencement Date, Lessee shall furnish the following to Lessor:
  - i. The Plan;
  - ii. A proposed draft of the sublease of the Land and the Farm Buildings to be entered into by and between Lessee as sublessor and Lessee’s proposed sublessee(s) who will engage in farming the Land in accordance with the terms hereof, and the Plan, which sublease shall be subject to Lessor’s prior approval, not to be unreasonably withheld, conditioned or delayed.

## **8. Taxes and Utilities.**

- a. Except as set forth in Section 8.b. below, Lessor shall pay all property taxes, assessments, sewer use charges, rates and other utility charges, general and special, ordinary and extraordinary, of any kind and nature which may be assessed on the Leased Premises.
- b. Lessee shall make its own contracts and pay all charges for water, gas, electricity, heat, telephone or other communication services, office cleaning services, refuse removal and other utilities used, rented or supplied upon or in connection with the Permitted Use of the Leased Premises.
- c. Lessee shall be responsible for and shall pay or cause the payment of all taxes and assessments on its and its sublessee(s) business and trade fixtures, machinery, equipment and all personal property.

## **9. Compliance with Law.**

Lessor shall, during the term hereof, comply with and shall cause the Leased Premises to comply with all local, state and federal laws, regulations, ordinances and restrictions. If the Lessee plans to operate the Leased Premises as a tax exempt entity, it shall provide the Lessor with the applicable IRS 501(c)(3) designation letter issued by the United States Internal Revenue Service.

## **10. Liens.**

Neither Lessee nor Lessor will suffer or permit any mechanics’, vendors’, laborers’ or materialmen’s statutory or similar liens to be filed against the Lease Premises (“**Mechanics’ Liens**”), by reason of work, labor, services or materials supplied or claimed to have been supplied to anyone holding any interest in the Leased Premises. If any Mechanics’ Lien shall be filed, the Party who engaged the lienor shall, within thirty (3) days after notice of the filing, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise; provided that such party shall have the right to contest, with due diligence, the validity or amount of any such claimed lien.

## **11. Termination.**

- a. The Lessor may unilaterally terminate this Lease upon sixty (60) days advance written notice to Lessee, but only by reason of a receipt by Lessor of an adverse ruling or order issued by the Attorney General of the State of Connecticut stating that the terms of this Lease violate the restrictions of the Eno Will. Should the Lessor unilaterally terminate this Lease during the growing season of April 1 to November 1, Lessee shall be entitled to reasonable compensation for any seed and/or crops that Lessee has or has caused to be applied to/planted at the Leased Premises together with materials and supplies purchased by the Lessee and the Sublessee for purposes of farming operations at the Leased Premises, for the balance of the Term, in an amount reasonably computed to compensate Lessee and its sublessee(s) for such expenditures (“**Termination Compensation**”).

b. Lessee shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of this Lease, remove or cause the removal of any removable improvements installed by it or its sublessee(s) on the Leased Premises, its and its sublessee's business and trade fixtures, machinery, equipment, furniture, furnishings, and all personal property (collectively, "**Lessee's Property**") and restore the Leased Premises to its original condition, reasonable wear and tear and casualty damage excepted. Except as otherwise provided herein, Lessee's Property, whether or not attached to the Leased Premises, which are installed by or for the account of Lessee or its Sublessee(s), and can be removed without permanent damage to the Leased Premises, shall be and shall remain Lessee's and sublessee's property and may be removed by Lessee or sublessee prior to the expiration of the Term whether or not said items are considered fixtures and attachments to real property under applicable laws; provided, however that if any of Lessee's Property is removed, Lessee shall repair, cause to be repaired, or pay the cost of repairing any damage to the Leased Premises resulting from such removal.

## **12. Condemnation; Damage or Destruction.**

- a. If there shall occur a total taking or a Constructive Total Taking (defined below) of the fee title to the Leased Premises in condemnation proceedings or under the power of eminent domain, this Lease shall terminate as of the later of (i) the date when title to the Leased Premises is acquired by the condemning authority, and (ii) the date when all condemnation payment proceeds have been awarded. The Rent and any other charges payable by Lessee under this Lease shall be apportioned and paid to the date when title is acquired by the condemning authority. "**Constructive Total Taking**" shall mean a taking of such scope, such that the portion of the Leased Premises not taken is insufficient for Lessee to conduct the Permitted Use on the Leased Premises not taken. If less than a Constructive Total Taking occurs in condemnation proceedings or under the power of eminent domain, this Lease shall nevertheless continue, unabated, under the terms and conditions hereof as to that portion of the Leased Premises not taken by the condemning authority.
- b. If this Lease is terminated due to a total taking or a Constructive Total Taking hereunder, out of the award(s) for such taking, Lessee shall be entitled to Termination Compensation (as defined in Section 11 above) and any amounts allocated for Lessee's loss of business, good will, and depreciation or injury to and cost of removal of the Lessee's Property, but only if such award or compensation shall be made by the condemning authority in addition to the award or compensation made by it to Lessor.
- c. If the Buildings or any parts thereof shall be damaged by fire or other casualty, during the Term of this Lease:
- i. in part, but not in whole, Lessor shall, with reasonable diligence, repair, restore, replace or rebuild the same as nearly as may be practicable to its condition and character immediately prior to such damage or destruction. Lessor shall have no obligation to restore or replace Lessee's Property. Lessee agrees to notify the Lessor promptly after becoming aware of the occurrence of any damage to the Leased Premises. Lessor shall repair the damage promptly and diligently, but in any event within ninety (90) days of such damage. If Lessor shall not have repaired such damage within such 90-day period, Lessee shall have the option of either Y) terminating this Lease; or Z) granting the Lessor an additional period in which to complete such repairs.
  - ii. in whole, such that the Leased Premises shall be wholly untenable or unfit for occupancy for the Permitted Use, and is not capable of restoration within one hundred and eighty (180) days of damage or destruction ("**Total Destruction**"), this Lease may be terminated by either Lessor or Lessee upon thirty (30) days advance written notice sent within ten (10) business days of receipt of notice of Total Destruction. In the event of termination pursuant to this subsection, this Lease shall, except for the resolution and settlement of any insurance claims resulting from such Total Destruction, terminate as of the date set forth in the written notice.

### **13. Insurance and Indemnification.**

- a. The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Leased Premises resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation.
- b. Lessor and Lessee each agree that at its own cost and expense, each will maintain liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. Lessor and Lessee each agree that it will include the other Party as an additional insured.
- c. In addition, Lessor shall obtain and keep in force during the Term a policy or policies insuring against loss or damage to the Buildings at full replacement cost, as the same shall exist from time to time without a coinsurance feature. Lessor's policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and earthquake unless required by a lender or included in the base premium), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Buildings required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered loss, but not including plate glass insurance.
- d. Subject to subsection e. below, each Party shall indemnify and hold the other, together with their respective agents, officers and employees, harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.
- e. In no event will either Party be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of rights or services, incidental, punitive, indirect, special or consequential damages, interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.
- f. Either Party may carry such insurance under a blanket policy provided an endorsement naming the other Party as an additional insured is attached thereto. Insurance shall be issued by an insurance company licensed to conduct business in the State of Connecticut which has at least an "A-VIII" policy holders rating according to Best Publications latest edition Key Rating Guide.
- g. Each Party shall be required to furnish a Certificate of Insurance evidencing the insurance coverages as a condition to the effectiveness of this Lease. All policy forms shall be on the occurrence form. Exceptions must be authorized by the Lessor unless the coverage is for Professional Liability where the common form is claims made. All renewal certificates shall be furnished at least 10 days prior to policy expiration. Each party shall endeavor to cause each Certificate to contain a 30 day notice of cancellation.
- h. Each Party shall provide to the other proof of such insurance in a form conforming with the terms of this Lease no later than commencement of the Initial Term for the Initial Term and April 1 of each subsequent year of the Term, or whenever a Party's insurance coverage changes, including a change of carrier or agent. Proof of insurance shall be sent to each Party at their address first set forth above.

#### **14. Subletting; Successors and Assigns.**

Lessee may not sublet the Leased Premises or mortgage, sell, assign or transfer its rights pursuant to this Lease without the written consent of Lessor, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Lessor acknowledges that Lessee intends to sublet the Land to sublessee(s) for farming purposes. Lessee will submit its proposed form of farming sublease to Lessor for its prior consent, such consent not to be unreasonably withheld, conditioned or delayed.

#### **15. Default.**

- a. Any of the following occurrences or acts, inclusive of the expiry of any applicable grace or notice periods, shall constitute an “**Event of Default**” hereunder:
  - i. Failure to make any Rent payment within ten (10) days of when due.
  - ii. Failure of either Party to keep and perform any of its respective agreements or obligations hereunder, including, without limitation, operating the Leased Premises in accordance with the Permitted Use, as described in Section 3 above, after the expiration of any notice or grace periods, if any.
  - iii. A determination by the Attorney General as provided in Section 11.a. above.
- b. If there is an Event of Default by either of the Parties, the non defaulting Party shall give the defaulting Party written notice of such Event of Default. After receipt of such written notice, the defaulting Party shall have thirty (30) days in which to cure any such Event of Default, provided that such cure period shall be extended beyond thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days, the defaulting Party commences cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Neither Party may maintain any action or effect any remedies for an Event of Default against the other Party unless and until the defaulting Party has failed to cure the breach within the time periods provided in this subsection b.
- c. After the expiry of all applicable grace and cure periods, either Party may, at its option:
  - i. proceed by appropriate legal proceedings to enforce performance of the applicable provisions of this Lease or to recover damages for the breach thereof; and/or
  - ii. Give the defaulting Party written notice of intention to terminate this Lease on a date so specified, which shall be not less than fifteen (15) days after the giving of such written notice, and upon the date so specified the Lease shall terminate and all rights of the defaulting Party shall expire, unless before such date all Events of Default shall have been fully cured.
- d. In the event of termination as set forth in Section 15.c.ii. above by Lessor, Lessor may re-enter and take possession of the Leased Premises and may re-let the same upon such terms as it deems advisable. No termination of this Lease and no re-entry by Lessor shall prevent Lessor from recovering damages for Lessee’s Event of Default. No re-entry by Lessor shall be considered a termination of the Lease unless written notice of such intention to terminate shall have been given to Lessee.

#### **16. Fences, Crops and Trees.**

- a. The Lessee agrees that it shall construct and maintain any fences it deems necessary or desired in connection with its Permitted Use and shall maintain any existing fences within or on the Leased Premises. Upon termination of this Lease, the Lessee may remove any fences that it has installed, provided that Lessee must repair any damage caused by removal of such fences.
- b. All crops produced by the Lessee or any of its sublessee(s) on the Leased Premises shall be the property of the Lessee.

**17. Notice and Demand.**

All notices or demands required or permitted hereunder or under any statute shall be in writing and hand delivered or sent, postage prepaid, by either overnight courier or first-class mail to:

a. Lessor: Town of Simsbury  
933 Hopmeadow Street  
P.O. Box 495  
Simsbury, Connecticut 06070  
Attn: First Selectman

b. Lessee: Community Farm of Simsbury, Inc.  
230 Bushy Hill Road  
Simsbury, Connecticut 06067  
Attention: Elizabeth Speers

or at such other address as the parties hereto shall designate in writing in manner above provided.

**18. Use of Rental Income.**

The Lessor shall dedicate all net income from this Lease to the social services (or equivalent) portion of the Lessor’s annual Town budget. Lessee shall dedicate all net income it receives as a result of its operations at the Leased Premises, if any, in accordance with the rules and regulations applicable to 501(c)(3) corporations and agrees to submit its Form 990 to Lessor on an annual basis.

**19. Miscellaneous.**

The paragraph headings contained in this Lease are for reference purposes only and shall not control or affect its scope or interpretation in any respect. This Lease and its interpretation shall be governed by the laws of the State of Connecticut. The rights and obligations of the Parties hereto shall inure to the benefit of, and be binding upon, their respective heirs, successors and assigns.

**20. Notice of Lease.**

This Lease shall not be recorded in the Simsbury Land Records. Each Party shall execute a Notice of Lease, in recordable form, satisfying the requirements of Section 47-19 of the Connecticut General Statutes, Rev. 1958, as amended. The Parties shall also enter into recordable supplementary notices setting forth, among other proper matters, the extension or termination of this Lease.

*[Signature Pages Follows]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease this \_\_\_\_\_ day of July, 2009.

Signed, sealed and delivered in the presence of:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

**LESSOR: TOWN OF SIMSBURY**

a Connecticut municipal corporation

By

Name: Mary A. Glassman

Title: First Selectman

**LESSEE: COMMUNITY FARM OF SIMSBURY, INC.**

a Connecticut not for profit corporation

By

Name: Elizabeth A. Speers

Title: \_\_\_\_\_

(STATE OF CONNECTICUT)

ss: July \_\_\_\_, 2009

(COUNTY OF HARTFORD)

On this date, before me, the undersigned officer, personally appeared Mary A. Glassman, First Selectman of the Town of Simsbury, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same in the capacity therein stated for the purposes therein contained.

Name:  
Commissioner of the Superior Court/  
Notary Public

(STATE OF CONNECTICUT)

ss: July \_\_\_\_, 2009

(COUNTY OF HARTFORD)

On this date, before me, the undersigned officer, personally appeared Elizabeth A. Speers, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

Name:  
Commissioner of the Superior Court/  
Notary Public

### **Schedule A**

Legal Description  
**Schedule A-1**

Depiction of Leased Premises

See Attached Site Plan for Eno Properties Dated December 1, 2004 as revised June 1, 2009 prepared by the Town of Simsbury Engineering Department and drawn by James H. Richardson.

### **Schedule B**

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info@landforgood.org • www.landforgood.org

*Land For Good is a nonprofit organization. Our mission is to support the farmers, landowners and communities that keep New England's agricultural lands working. We help people get onto, care for and pass on farms and other farm properties.*