





Land For Good

A Landowner's Guide to Leasing Land for Farming



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USDA United States Department of Agriculture National Institute of Food and Agriculture

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CHAPTER I

Introduction

This handbook is intended to assist landowners in making land available for farming by others. If you have property that could be used for agriculture, this guide will help you through the steps.

In this guide, people who own land that has been or could be farmed but don't intend to farm it themselves are referred to as "non-farming landowners." Perhaps you inherited a farm, own a primary or secondary residence with farmable acreage, invested in farmland, or retired from actively farming your property. You may or may not live on the farm. In fact, nationally, farm landlords live increasingly farther away from their farm properties.

Why have your land farmed? As Will Rogers famously said, "They ain't making any more of it." Good farmland is increasingly difficult for farmers to access — especially new farmers. Purchasing land is prohibitively expensive in many parts of New England, and sometimes even rental rates are out of reach. Substantial amounts of good farmland are sold for development and lost forever. Yet there are many eager farmers looking for land to farm. By making your land available to them to farm, you will be helping them contribute to the local food and farm economy.

Just as importantly, having your land in farming can benefit you, too. For example, there are property tax advantages to having your land in agricultural use. In addition, a farm tenant can share the burden of property maintenance and contribute desired improvements. Having your land farmed can also be aesthetically pleasing, can discourage vandalism, and can offer passive recreation possibilities. Finally, active farm management is often much better for the land itself than letting it sit idle or leaving it to weeds and scrub.

By leasing your land for farming, you can enjoy benefits such as:

- Land management that meets your stewardship goals.
- A regular revenue stream.
- Increased local food production.
- Offering an important opportunity to a new farmer or farm family.
- Keeping your working landscape open and in production.

Land tenure refers to how the farmer holds the land. It is one of the biggest challenges for farmers of all types in our region. Farmers in the Northeast have two basic options: **own land or lease land**. Leasing property is defined as renting it under a contract that gives the tenant or lessee use and possession of the property for a specified time, with specified payments and a specified payment schedule. There are many variables in a leasing arrangement. This handbook describes the basic features of and options for farmland leases, from the items that are included in a lease to ways of determining the rent.

Not all properties are suitable for farming, but even smaller parcels, those in more developed suburban areas, land with poorer soils and steeper slopes, or wooded acreages can be workable, depending on the operation and the farmer's goals. Whatever the circumstance, making your land available to a farmer can be a win-win strategy if you do it thoughtfully. If your goal is to put your farmland to work by leasing it to competent farmers, this handbook will help you meet that goal.

The handbook describes a number of options to make your land available for farming. While each landowner's goals and objectives are unique, this handbook emphasizes several common goals. One is to maximize security for farmers on the land. Another is to make land affordable for farmers while meeting the landowner's financial objectives. Just as important is stewardship of the land, with landowner and tenant both caring for the property's agricultural and other natural resources. Addressing those themes will improve life for farmers and landowners, especially if care is taken to avoid pitfalls and misconceptions related to the leasing process.

This handbook examines leasing procedures, zoning, environmental and stewardship considerations, agricultural easements, insurance and liability, finding a tenant, working with beginning farmers, and legal issues. You will find many resources throughout that should help with the process.



CHAPTER II

Landowners: Welcoming Farmers on Your Land

A. LANDOWNER GOALS

In planning to make your land available for agriculture, it is important to make sure that it will fit in with your personal and family goals. You and your family should be clear about your land use goals and your financial objectives. In addition, you may have concerns that have to do with recreational uses of the land, aesthetics, historic preservation, or natural conservation. You may also have specific "sustainability" preferences.

As a family, determine how you will arrive at a shared vision for the future of your property. In talking with your family members, remember that the vision you create for the farming future of the property must be grounded in reality. For example, a family that inherited a 20-acre parcel of open land might imagine a pastoral scene of grazing cattle on a hillside, as well as associated property tax advantages. However, if the land has poor vehicle access, no water source and animals can't be adequately secured, the family will not easily achieve its picturesque goal.[1]

Determining goals is often the most challenging step in arranging a tenure agreement. To help you craft a coherent vision, you might think in terms of short-term, intermediate and long-term goals. Sometimes decision-makers do not agree on goals, and sometimes there are outright conflicts in values. Those must be addressed by the landowner before a realistic tenure agreement can be negotiated.[2]

When articulating the goals for your land, here are some points to consider:

- Where do you and others involved in decision-making about the farm property stand on land ownership and the division of rights and responsibilities?
- Do you need to derive net income from the use of the property or just cover costs?
- Do the decision-makers value supporting beginning farmers in particular?
- What are your feelings about natural resource stewardship and responsibility to the community?

Helping new farmers. Some landowners are motivated by the idea of offering an opportunity to a beginning farmer, usually meaning a farmer who is just starting out or has fewer than 10 years of farming experience.

One of the biggest challenges new farmers face is securing the capital to start farming. Leasing can not only provide access to land and allow the farmer to learn about running a farm operation, but can also free up limited capital to allow him or her to buy essential equipment and other working assets. By leasing, a tenant can save enough to become a landowner down the road.

Helping a beginning farmer can contribute to sustainability in several ways. It can help pass the art of farming to a new generation; revitalize the rural economy and social structure; provide a more flexible tenant willing to provide customized stewardship for the land; and produce economic returns through diverse markets and government programs.[3]

Secure land tenure is usually quite important to a new farmer. Unlike an established farmer who may own land in addition to renting from other landowners, a new farmer may depend completely on access to leased farmland. Sometimes an annual lease is adequate, and that kind of lease gives the farmer and the landowner an opportunity to try the new arrangement. But an annual lease has its drawbacks. A longer term means that the tenant need not worry about next year.

Depending on your circumstances, you might also consider building in options for a tenant to purchase the property at some point in the future. If so, it is especially important to get all the legal aspects of your lease right.[4]



Other ways you can help a beginning farmer tenant include:

- Graduated rent is rent that is initially low 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 the tenant is paying full rent in the fifth year. Reducing the rent, at least initially, is an obvious way to help a new farmer who lacks capital.
- Sharing production expenses or sharing your equipment with the tenant can also help a new farmer. Be aware that shared expenses, particularly in a share-lease arrangement, may have tax and Social Security implications. *For further discussion of share leases, see the Financial Considerations: Types of Lease Payments section in Chapter VII of this handbook.*
- Consider leasing a small portion of your property. Some new farmers may want to rent only a few acres to establish a small operation. The remainder of your land can then be rented to another farmer or held for the possible future use of the new farmer as his or her operation expands.[5]

B. FARMER-LANDOWNER RELATIONS

A strong landowner-farmer relationship is built on shared values and good communication. Landowner goals for recreation, aesthetics, habitat, certain kinds of farming practices, and access might not fit with some farmers' needs, preferences and expectations. In some cases, the differences are irreconcilable and the prospective relationship is best ended before commitments are made. If the landlord is adamant about certified organic management, for example, then farmers who don't have or are not willing to seek certification will not be a good fit.

In many cases, the differences can be worked out. Willingness by both parties to be flexible can solve current problems and set an example for problem solving down the road. The important ingredient in managing different goals is openness to the other's point of view. Recognize that a city-based landlord may not totally appreciate a young farmer's need, for example, to stockpile plastic mulch near an active field. Both parties should agree on where farm equipment will be stored so as to minimize the effects on a certain view.

According to a Drake University website for farm landlords, "Duties and responsibilities regarding the stewardship of agricultural land can be complex. The issue, however, becomes more complex in the context of a farm lease arrangement. While landowners and tenants may sometimes have different views, values, or goals in relation to the property, cooperation is critical to the promotion of a sustainable farm operation. To promote sustainability through a joint effort, landowners must first understand their role in the landlord-tenant relationship and their duty to the land; both subjects may be confusing to new landowners or those separated from the land geographically or culturally. A landowner may grant tenant operators the right to use the land, but the landowner retains the greatest long-term interest in the land."[6]

To establish a successful relationship, both parties must recognize different values — aesthetic versus financial, for example — that the land and its uses hold for the other.

Landowners often fear what happens when there are problems or when the farmer doesn't work out. As with any relationship, there may be disagreements and rocky patches. With a strong foundation and good communications, though, a landlord-tenant relationship can survive such periods. Ultimately, if it's not working, a good lease will be clear about how to terminate the relationship. Often, leases are designed so the parties can grow into them. For example, a lease can start out on an annual, trial basis for the first one to three years and then convert to a five- or ten-year term.

C. FROM THE FARMER'S PERSPECTIVE

Each farmer brings his or her own vision, goals and objectives to the business of farming. Understanding how a prospective tenant's farming goals and activities may relate to your preferences and restrictions for your land is critical for both you and the farmer. Remember that farms are businesses and that land is an integral part of those businesses. Spreading manure may seem unpleasant to you, but to many farmers it's one of the most efficient means of improving soil fertility. To establish a successful relationship, both parties must recognize different values — aesthetic versus financial, for example — that the land and its uses hold for the other. Those issues should be discussed before you enter into an agreement with a farmer.[7]

The following are details that a prospective farming tenant will want to know about your property. This list was adopted from the University of Vermont's "Farm Rental Assessment Checklist."

Access: How will the farmer access the property? Does the site have adequate entry and exit for necessary equipment in every season and time of day during which someone will be farming? Might access be blocked at any time?

Agricultural support services: How far from the property are hardware stores, feed suppliers, mechanics, hired equipment operators or other support businesses or services?

Equipment usage: Is equipment included in the lease agreement? Might the landowner do custom work with his own equipment? Where can equipment be stored?

Housing: Is housing included in the lease agreement? Is building a residence an option? Is there housing nearby?

Infrastructure: What agricultural infrastructure, such as barns, sheds, fencing, irrigation lines or coolers, is on site that could be available to the farm operation? How will infrastructure maintenance, repairs and improvements be handled between the two parties? If the farmer will be investing in improvements, will he or she be compensated?

Property boundaries: What land is included? How will the boundaries be defined and monitored?

Restrictions/restricted areas: Are there sensitive areas such as wetlands and water bodies within the property? Are there areas of the property where the farmer will not be allowed to operate?

Water resources: All potential sources of water for farm operations should be identified, including those currently used or those that could be developed. For example, a hillside seep could be improved as a spring, a river or stream, a well, or a hookup to a public utility and should be identified from the outset.

D. ROLE OF THE LANDOWNER

There is a full range of possible roles for the landowner in a tenant's farming operation. One possibility is that the landlord co-owns the farm business. At the other end of the spectrum, the landlord receives the rent and never visits the property. What is most important is for the landowner to decide how involved he or she wants to be and pursue an agreement that meets that desire.

Typically, landowners have a mostly hands-off attitude toward the farming operation and the rent is a flat cash amount, which minimizes the risk to the landowner. Still, it is wise for the landowner to maintain some regular contact with the tenant. For example, the landowner should inspect the property and meet with the tenant at least annually. In addition, landowners may have specific responsibilities spelled out in the lease, such as maintenance and repair of structures.

Unless there is a formal agreement that gives the landowner a role in the business of the farm, he or she will not be involved in operational or management decisions. He or she may give advice if it is solicited, but the farmer may not be interested in the landowner's opinions about how the farm is being run. This is difficult for some landowners. As the landlord, you want to make sure the farmer meets your expectations as spelled out in the lease agreement. But that does not usually include influencing the farmer's business decisions and details. You need to know that the farmer can pay the rent, not whether the farmer is meeting his or her cash flow projections.

Some landowners want more involvement. That can mean offering volunteer or paid labor, lending equipment, or taking on more risk with a share lease or flexible cash rent. A landowner could also invest in the farm business. Some landowners envision eventual transfer of the property to the tenant, so the relationship could include shared ownership through an LLC or lease-to-own arrangement.

The level of involvement by an owner can influence the owner's tax liability. If a landowner materially participates in the production of crops or the management of the farming operation, he or she must include the rental income in earnings that are subject to self-employment taxes. Landowners who do not materially participate in the operation pay no self-employment taxes. For more information about material participation, see the Taxation of Rental Income section in Chapter VIII of this handbook.

Landowners who provide production financing or a significant percentage of the tenant's equipment and who periodically inspect the property to ensure that agreed-upon farming practices are being followed are likely to be considered material participants.[8]

E. NEIGHBORHOOD AND COMMUNITY

Your property's suitability for farming also will be influenced by your neighborhood and community. 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. Informing them of your plans can avoid complaints about the new activity. A well-run farm enterprise

can be harmonious with most neighborhoods and can provide multiple benefits and rewards.

Is your town farm friendly? Farmers want to feel welcome and supported in their community, not isolated and scrutinized. Are there other farms in town? Are there farmers' markets or processing businesses? Do stores promote buying food that was locally raised? Are there farm suppliers or service establishments? Those can be positive selling points. Many communities have lost those support services or have not made special efforts to foster farming and buying local food, but can still be good places to farm. The more you know about the broader environment for agriculture in your neighborhood, town and the surrounding region, the better chance you'll have of attracting potential farming tenants. *See the Resources section of this handbook for a link to a farm-friendly checklist.*

A well-run farm enterprise can be harmonious with most neighborhoods and can provide multiple benefits and rewards.

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 agritourism 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.[9]



Photo courtesy of Kate Smith

[1] *Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship, New England Small Farm Institute*

[2] *Holding Ground*

[3] *Sustainable Farm Lease, Drake University and Drake University Law School*

[4] *Drake University*

[5] *Drake University*

[6] *Drake University*

[7] *Holding Ground*

[8] *A Legal Guide to the Business of Farming in Vermont, University of Vermont Extension*

[9] *Farmland ConneCTions: A Guide for Connecticut Towns, Institutions and Land Trusts Using or Leasing Farmland, American Farmland Trust and University of Connecticut Extension*

CHAPTER III

Understanding Your Land

A. NATURAL FEATURES

The first step in selecting a management strategy and tenure relationship is taking stock. Look at what you have to offer. Determine the amount and quality of land and facilities. Remember that farmland will vary throughout the region and even within a single property. Few parcels of land are "ideal." Size, soil quality, slope, access, location, micro-climate and other factors contribute to the picture of what you can offer a farmer or farmers. Some parcels may be too difficult to farm. The fact that land is "open" or has been farmed in the past does not mean that farmers will line up at your door to farm it today. Your local county conservation district and field office of the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) can help you assemble a portrait of the natural features and farming history of your property. Information about potential markets and local agricultural services adds to the picture.

These natural features may include:

- Soils and their suitability for farming.
- Wetlands, streams, ponds or riparian areas.
- Wooded areas.
- Special species' habitat.

A map or aerial photo of your property will help your conversation with a prospective tenant. Private consultants could help sketch out possible farming scenarios. For example, perhaps you have 40 acres of land with different types of soils and some wetlands. Workable options might include 10 acres of market vegetables, an eight-acre orchard on the hillside, a small chicken yard, and a fenced-off wet area. An alternative scenario for the same property might be a herd of sheep on pasture.



Other natural features on your property may figure into its farming potential. Historic stone walls, unique plantings or scenic vistas may preclude certain farming activities.

B. PRODUCTION POTENTIAL

Each parcel of land is unique and will have different production potential based on soil, land and water qualities. The NRCS has mapped the soils in most counties in the Northeast. Some states have classified those soils further into prime and important agricultural soils. Ask the NRCS agent in your area for a copy of your county's soil survey, which carries a great deal of information about the farm's soil and its properties and capabilities for crop or woodlot production, pasture and wildlife habitat. You can also find information about your land's soil by using the Web Soil Survey from the NRCS and plotting the boundaries of the land of interest.

The availability of buildings, particularly housing, is critical for many farmers, and affordability often is as crucial as availability.

C. INFRASTRUCTURE

The availability of buildings, particularly housing, is critical for many farmers. Landowners often overlook this factor. Affordability often is as crucial as availability. If housing and/or farm structures do not exist on or near the farm, it might be possible to allow permanent buildings or temporary structures such as moveable greenhouses and residential trailers.

In addition, the potential of a specific piece of land is determined partly by infrastructure that already exists on site. Irrigation, storage facilities or livestock housing make certain types of agriculture more viable on a given piece of land. Rental rates can be calculated for farm structures.[1]

[1] *Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship, New England Small Farm Institute*

CHAPTER IV

Types of Farming Endeavors

Agricultural operations are as diverse as the types of food we eat. Some farms are set up to grow only a few crops, some to raise animals, and others to produce a variety of products. Some farms grow Christmas trees, berries or sugar maples. Each business is different and is run differently. Some farming businesses are private, some are nonprofit organizations, and others are run as cooperatives. Some farms market their products directly to consumers, while others sell their goods through wholesale channels. With the wide variety of possible New England farm operations, it's important to be open to, and understand, the most appropriate options for your property.

Here are sample types of farm operations:

Animal production, particularly of sheep, goats, beef or dairy cattle, horses, or alpacas, requires a reliable source of water, adequate fencing, shelter such as open-sided sheds or closed barns, and an area of non-wetland pasture adequate to maintain the animals without soil deterioration. You will need to take precautions to ensure the animals stay in good health, are prevented from straying onto roads or neighboring property, and are safe from marauding dogs or coyotes. Poultry for meat or eggs has some of the same requirements as livestock.

Dairy farms that are already set up for dairy production can use lease arrangements to continue the operation. Dairy production requires climate-controlled milking parlors, suitable fenced pasture and paddock space, barn space for hay storage, and a water supply. It is unlikely that a renter could start a dairy operation from scratch, but if the finances and capital plant are in place, a new farmer might be able to start a successful milk setup.

Diverse farms are operations that grow plant crops and raise animals. As the sustainable farming movement continues to expand, these kinds of farms are becoming more common. With an integrated system, farmers rotate animals and plant crops to take advantage of the way both can complement each other and the land. Diverse farms count on multiple crops, often in combination with animals, and sometimes include value-added aspects such as on-farm processing (for example, berries to jam). Some diverse farms conduct educational programming or agritourism activities.

Greenhouse production, whether in the form of hoop-house structures or temporary or permanent greenhouses, can allow farmers to extend their season or possibly grow vegetables or flowers year-round. You will need to agree with the tenant on the exact location of the structures, make sure that they are in compliance with local codes, and work with the tenant to provide adequate heat and drainage for these facilities.

Hay or grain production requires fields with good access for tractors and other equipment. In particular, if the field's vegetative cover has reverted to weeds or goldenrods, or if lime and manure have not been applied regularly, it may need rehabilitation and re-seeding. Grain production requires reasonably level terrain and somewhat better soils than hay fields.



Tree/perennial production, including growing tree fruit, berries and Christmas trees, requires a long-term commitment. With most fruit trees or shrubs, it will be several years after planting before the first crop can be harvested. Provision will need to be made to keep trees or shrubs from growing up to brush and possibly to remove them when they reach the end of their productive life.

Vegetable and flower production normally requires better soil than hay or pasture. Even a small acreage can produce a high volume of produce or plants for the fresh market. Marketing vegetables and flowers can be done through an on- or off-site farmstand (if you — and zoning — allow retail sales at your property), a local farmers' market, a community-supported agriculture operation (CSA), or off-site retail or wholesale sales. Fencing and/or other deterrents may be needed to prevent crop destruction by deer, raccoons, crows or other pests.

CHAPTER V

Finding Your Farmer

There are several important steps to consider in placing a tenant on your property, and some situations are more complicated than others. For example, if you decide to rent your land to a nearby farmer for an annual hay crop, there may be no search involved. The rental agreement is simple and straightforward. On the other hand, if you envision a farming family obtaining long-term security, living on your land, and developing a farm business, more thought and steps are involved.

You may want professional assistance to help at various points in the process. Organizations in New England that can help with this process are listed in the Resources section at the end of this handbook.

Here are the basic steps:

- Research: do your homework!
- Clarify your goals and objectives.
- Complete your offering.
- Determine criteria and qualifications for applicants.
- Conduct the search.
- Select the tenant and negotiate the agreement.

Research: do your homework! You'll run into trouble down the road if you don't. Know what you have, what's possible, and what's essential to have in your agreement, whether simple or more complicated. Check with your attorney and financial advisers. Understand the true costs and benefits of having your land farmed.

For example, how will you address liability? Will you seek a property tax adjustment for having land in active agricultural use? What zoning and other regulations might affect potential farming endeavors on your property?

You also need to understand what the agreement must include and how you can terminate a lease if something goes wrong. There are many lease examples that can help guide your decision.

One of the most common complaints from farming tenants is that their landlords don't understand farming. If your image of farming is a spotless, weed-free field, and your tenant's weed management scheme doesn't match your image, you are in for problems. You might talk with other farm landlords, visit farms, read about farming or talk to extension service educators to understand and appreciate farming realities better. For example, when the harvest is delayed by weather and cash is tight, you may need to be more understanding and flexible about rent. Or, if you are in favor of compost but are turned off by an unsightly compost pile, you might want to become more sensitive to the site requirements and daily realities of making good compost.

Clarify your goals and objectives. The importance of this step cannot be overstated. Write down your overall vision as well as your short- and long-term goals. What will be your role? Will other family members be involved? How? What is most important for you in having your land farmed? What are the areas where you may be more or less flexible? For example, you may absolutely not want cattle on your land or you may be open to placing temporary hoop houses but not permanent structures. How important are aesthetics? Will it be OK for a tenant to leave equipment that might mar your view?

Complete your offering. Here you describe what you are making available for a farming tenant. It could be simple, such as a 10-acre hayfield. Or it could be more complicated,



such as various fields, buildings, fencing, potential to place additional structures, and equipment. If the desired type of operation requires the farmer to live nearby, housing is a critical concern. If a residence is not part of the lease, you will need to describe other housing options.

The offering is where you describe your property and your desires. It can be quite specific (e.g. five acres of prime soil, well and barn, no housing, suitable for vegetables) or more open-ended (e.g. 50-acre parcel, mixed soil types, landowner open to various enterprises, housing possible, may lead to eventual ownership).

With the offering step you also articulate conditions of the agreement such as length of the lease term, preferred start date, any special arrangements about fees, improvements, building equity and other considerations that will be important to prospective tenants.

The offering is your summary of what you have and what you want. Depending on how you choose to find a tenant, the offering statement that you make public can be tailored. For example, a classified ad will be limited to a very concise description, leaving out many details. A poster or listing on an online farm searching website may be more comprehensive.

Determine criteria and qualifications for applicants. This is where you decide what you are looking for in a tenant, including personal qualities and professional profile. It's important to note that farmers' businesses vary significantly. For some, the farm operation is full-time and supports at least one family and/or several employees. For others, it's a part-time endeavor with a financial goal of breaking even.

In the past, landowners and potential tenants were likely to be familiar with one another, sometimes coming from the same community or family. It is now more common, however, for landowners to engage tenants with whom they have had few or no previous interactions. Under such circumstances, the landowner must find other ways to check the tenant's ability to deliver on his or her lease obligations, as well as his or her reputation as a farmer and tenant.

Of course, it will be important to find someone who can meet your rental and other financial requirements, but there are other factors you might also consider. Some of the most important considerations are harder to specify. Good communication and trust are essential. Honesty and integrity are qualities in a tenant that are just as important as sound financial records. Parties should also discuss expectations regarding the farm operation and how the farmer's performance will be measured. For instance, many tenants fear that their landlords will see the appearance of weeds on the property as an indication of poor farming skills or a lazy tenant.

Desirable characteristics also depend on the type of lease you decide to enter. For instance, if you want to help a beginning farmer, you should look for evidence that he or she has an achievable business plan even though he or she might not have the financial resources or equipment of a more established operator. It is always important to look for good references. No matter what type of lease you enter into, the importance of a tenant's character and ease of communications with the tenant should not be superseded by a tenant who promises "top dollar" but cannot meet your other desires, thereby threatening your long-term investment in the property.

What should you ask for? At a minimum, you should require a résumé and references, particularly from past landlords or employers. You should also ask for evidence that the farmer will be able to meet his or her lease obligations. This does not mean that you insist on going through the prospect's business plan. Farmers differ widely on their businesses, as well as on what they have in the way of a business plan. You want to make sure the farmer is business-like in his or her commitments. But that doesn't mean requiring the details of their business. You want them to be successful. You need them to meet the terms of your agreement.[1]

Conduct the search (locate a farmer). There are various strategies for locating a farmer. At minimum, word of mouth in your community might do the trick. However, a more systematic and comprehensive approach is often warranted. Designing the search strategy can lend structure to your efforts. Here are some tips to help you organize your search:

1. Decide what you want to say and ask for in your public offering statement.
2. Identify the best ways and places to advertise, post and promote your offering.
3. Write effective ads, postings and fliers based on your offering.
4. Organize a system for tracking your outreach. For example, will an ad or posting expire? Could you post your flier at an upcoming conference?

The good news is that there are many farmers in New England who are looking for farms or farmland and will be interested in a variety of tenure relationships. In this region, there are more than half a dozen "farm link" programs that specialize in connecting people who are looking for farms and farmland with owners and managers of agricultural properties. Some of these linking programs offer additional support and information. See the Resources section in this handbook for a listing of farm link and other programs that help farmland owners and farm seekers.

Strategies for locating a farmer include:

- List with a farm link program and/or other farm property lists. Most of these are online. See, for example, www.newenglandfarmlandfinder.org.
- Place an ad in an agricultural publication and/or local newspaper.
- Post a notice at agricultural events, supply stores and equipment dealerships.
- Talk with people in the agricultural community such as extension staff, agricultural service providers, county conservation district officers and farm organization personnel.
- Let local land trusts, agricultural commissions and local agricultural organizations know about your offering.
- Work with a realtor. Your realtor may list your property on New England Farmland Finder and/or through a farm link program.

Once you've gone through those steps, you will have a list of interested prospects. Now what? With or without professional assistance, you will need to design your interview and selection process. Here are some tips:

1. Create a system to organize the information you receive. If you were clear enough in your offering, you should have what you need to take the next step.
2. Eliminate any applicants that are clearly not a good fit.
3. Determine whether you need further information at this point.
4. Prioritize the applicants according to your criteria.
5. Contact those you wish to pursue. At this stage, it would be important to give prospects the opportunity to visit the property if they have not already done so. No thoughtful tenant would proceed without a good sense of the leasehold.
6. Interview the applicants. Determine in advance who needs to be at the interview; how you will conduct it; whether you will take notes, tape the interview, have a list of specific questions, etc.
7. Check references.
8. Allow promising applicants to visit the property a second time, if needed.

Select the tenant. Once you have considered all relevant information, you should be in a good position to decide on the tenant. You will want to notify your chosen farmer, proceed to draw up the lease documents with the appropriate technical and legal assistance, and arrange for a starting date.

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[1] *Farmland ConneCTions: A Guide for Connecticut Towns, Institutions and Land Trusts Using or Leasing Farmland, American Farmland Trust and University of Connecticut Extension*

CHAPTER VI

Successful Landowner-Tenant Relations

Communicating effectively with your tenant is critical for several reasons. It is crucial in developing a mutually agreeable lease and in ensuring the continuation of a productive and sustainable landlord-tenant relationship. Good communication at the outset of the relationship is critical to ensure that the goals and priorities of each party are understood and addressed in the lease agreement.

Communication is also important during the lease term to build a solid relationship, to boost the tenant's confidence in the landowner's commitment to his or her tenure, and to ensure that both parties are aware of potential modifications to the lease arrangement. Remember, a lease is beneficial only as long as it meets the needs of both parties.



In order to communicate effectively with your tenant, it is necessary to speak the same language. This requires gaining an understanding of, or at least knowing where to get information about, certain agricultural terms and concepts. While it is not necessary to become an expert on agriculture and farmland leasing before talking to your tenant, it is important to know where to look for additional information.

There are a variety of resources that provide in-depth information on specific agricultural topics. Some can be found under the Reference and Glossaries tabs of the Sustainable Agriculture Land Tenure Initiative's website, www.sustainablefarmlease.org. You may also find it helpful to be informed about agricultural policy and the economics of farming, including land values, rental rates, crop prices, and the cost of items like seed, fuel and fertilizer.[1]

There are several things that can be done to help ensure the lease arrangement succeeds and to further improve the landlord-tenant relationship. The following items not only enhance the sustainability of the farm but also reduce transaction costs related to time, money and reputation.

Maintain communication throughout the lease term. You can specify in the lease that you and your tenant will communicate at regular intervals, such as before planting, after harvest, or at special occasions like holidays or family gatherings. 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 you informed about the state of your land.

Remain open to modifications. The parties should try to address all possible situations that could arise under the lease arrangement. It is important to remain flexible in the lease negotiations so as to allow the tenant to accomplish his or her objectives in a manner favorable to his or her particular circumstances. One should remain open to re-negotiations on matters that were not addressed in the initial lease or matters that arise from changed circumstances. You, as the landowner, are ultimately responsible for your land, and adjustments must be weighed in relationship to your priorities. Any modifications to the lease terms should be documented in writing and signed by both parties.

Allow for the correction of mistakes without destroying the relationship. If the tenant is farming in a manner not allowed by the lease arrangement or otherwise not meeting your expectations or lease terms, you should work with him or her to solve the problem together. A default provision in the lease agreement gives you the right to terminate the lease under certain circumstances. Likewise, providing a window of opportunity for your tenant to fix any breaches protects the land while promoting tenure security and an enduring landlord-tenant relationship.[2]

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[1] *Sustainable Farm Lease, Drake University and Drake University Law School*

[2] *Drake University*

CHAPTER VII

Lease Agreements

A. GET IT IN WRITING

Farm leases create rights and obligations relating to economic and other interests. Though oral leases are still in use, there are several reasons, both legal and practical, to put the lease agreement in writing. A written contract is an essential business practice when leasing farm property. A written document forces detailed consideration, communication and understanding by both parties. It also serves as a handy reference in case details are forgotten or there is a death of the tenant or landlord. Lease arrangements may continue for several years without renegotiating of the terms, and if the agreement is not specified in writing, the parties may simply forget what the terms were. A lease also acts as a reference should the interest of either party be transferred to someone who was not present when the agreement was originally entered. This reference helps ensure that the provisions of the lease are honored and allows a new landlord or tenant to check the terms of the agreement without having to confront the other party.

Putting the agreement in writing also helps ensure from the outset that both parties understand the terms of the lease. A written document allows the parties to examine each provision together and address misunderstandings or concerns over particular terms. It is also worth including a clause requiring that further agreements or modifications to the lease arrangement be made in writing.

A written lease may also be needed in order to supply documentation to third parties. For instance, a lease document can be used to assess tax liability or enter government farm programs.

Perhaps most importantly, though, nearly every state has adopted a statute of frauds requiring that certain kinds of agreements be in writing. Most states include agreements involving transfers of land — including leases — in their statute of frauds. These statutes require that lease agreements be in writing and be signed by the parties who must hold to the agreement.

To be a legal contract, at a minimum a lease needs to include the following:

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.

Types of Land-Use Agreements

Type of agreement	Brief description	Advantages	Disadvantages
Oral agreement	Also known as a handshake agreement, this is an oral contract between two parties.	Easy to set up.	If either party backs out, the agreement may not be enforceable.
Letter of agreement	A letter from the farmer to the landowner that describes the operation, plans for the land in question, and terms of the lease.	Fairly quick and easy to set up.	If signed by only one party, it may be not be enforceable against the other.
Memorandum of understanding	A letter signed by both parties outlining the terms of the agreement.	Fairly quick and easy to set up, no need for an attorney.	It is not a legal document and may not be enforceable.
Lease agreement	A formal description of the land, identity of parties and their signatures, terms and length of lease and any special provisions. It is often witnessed, notarized and recorded.	Written record of exact terms and conditions agreed upon by both parties, effective against third parties, if recorded.	More costly for initial setup, as attorneys should be involved.

B. ISSUES TO DISCUSS IN NEGOTIATING A GOOD LEASE

When negotiating the lease, both parties should discuss the following items to make sure that each understands the new working relationship and feels the lease agreement will serve his or her needs:

- Nature of the farming business.
- Anticipated so-called nuisances such as noises and smells.
- Best times and ways to contact each other, such as cell phone or email.
- What happens in case of an emergency such as the cows getting out.
- Where the farmer will access the parcel.
- Potential hazards (e.g. electric fences, chemicals and animals).
- Liability and other insurance requirements.
- Expected working hours.
- Plan for needed improvements.
- How can the parties terminate the lease.
- How will maintenance, repairs and improvements be handled.
- What conservation practices will be required or permitted.

C. ELEMENTS OF A GOOD LEASE

1. 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 corporation), although an agency or commission may have monitoring or enforcement powers under the lease. The lease should specify whether the tenant is an individual, a corporation or some other entity.[1]

2. 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 may be included here as well. If a residential 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.[2]

3. Duration of the lease. This should include start and end dates and any options for extension or renewal. However, the lease may specify a rolling term. (See the Rolling Leases section on page 19.) A long-term lease should include permission for either party to review the lease periodically. You may want to 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 also state whether it stays with the property if property ownership transfers due to sale or settling an estate.

There are many practices that do not fall within traditional definitions of farming, so you and your tenant should come to an agreement regarding what will be considered "agricultural" use.

4. Rent or payment. Payment must be specified, even if it is no-cost. The payments may be a fixed amount or a fixed amount plus a percentage of the gross or net profit. (See Financial Considerations: Types of Lease Payments, in Chapter VII of this handbook.) 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. If there are penalties such as for a late payment, those should be specified as well.

5. Taxes. If the leased premises are subject to real estate or personal property taxes, the party responsible for those payments should be specified.

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

7. 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 or prohibit public access.

There are many practices that do not fall within traditional definitions of farming, so you and your tenant should come to an agreement regarding what will be considered "agricultural" use. For example, would a cordwood operation qualify? What about commercial composting, a corn maze or aquaculture? It is also particularly important to address uses other than agricultural production, such as a farmstand. Clear communication allows both parties to agree on uses at the outset and as they change over time. Tenants may want to share portions of their business plan with the landowner so that both parties understand the goals and intended uses for the property.

Landowners may want to specify further whether the land is to be limited to certain types of production, e.g. only pasture or hay land, or to other uses appropriate to the soils or topography of the farm. The lease should specify any limits on certain parts of the property, such as the prohibition of row crop production on highly erodible land. It is appropriate to attach a map to the lease indicating where certain practices are allowed or prohibited.

A landowner may also prohibit certain practices and activities, such as removing trees or gravel. Most leases, in fact, reserve the right to remove minerals or oil deposits for the landowner. But a lease may allow tree or gravel removal with prior permission, provided that such activities are for agricultural uses on the premises and the practice is not prohibited by state regulation.

A landowner may want to specify whether and where farm machinery may be stored on the property, especially if he or she is concerned with appearance. It's important to strike the right balance between your own preferences and requirements for the land and the attractiveness of the agreement to the farmer. The more prohibitions there are, the more burdensome the lease might be to a tenant who wants maximum flexibility to farm.

8. Unharvested crops. The lease should also address the tenant's rights to unharvested crops in the event the lease is terminated earlier than expected. A lease may include a provision that allows the tenant to re-enter the property to tend or harvest growing crops, as well as to remove harvested and stored crops. Some states recognize the common law "doctrine of emblements" that gives a tenant rights to an "away-going (annual) crop" that matures after the termination date. A lease should also address orchard fruits and other unharvested perennial crops. Ordinarily, lease terms for such enterprises are long enough to ensure that the tenant reaps the full rewards of his or her investment. The lease should provide for compensation to the tenant for the value of the crop in the event of early termination. Either the tenant can receive this compensation from the landowner, who will recover its value from the next tenant, or the farmer could sell the crop directly to the next tenant.[3]

Typically, the tenant is responsible for routine maintenance needed to prevent the deterioration of the facilities. The landlord is responsible for major repairs, rehabilitation and replacement of farm structures.

9. Entry. The lease should specify whether the landowner has permission to enter the property, and if there are limitations to such entry. The lease might require the landowner to give 24 hours notice before a visit. 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? Can the tenant's family members walk or picnic on the leased property?

10. Maintenance and repairs. The lease should specify who is responsible for maintaining and making repairs to the land and any structures that are included in the lease, such as fences, buildings, storage structures, roads 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 landowner and farm tenant. The landowner wants the property to remain in good repair, but the tenant with a short-term lease may not be motivated to make investments that will primarily benefit the landowner. A longer lease, an annual walk around with a checklist, and an annual limit on the expenditures expected of the farm tenant can minimize problems that arise in this area.[4 & 5]

Repairs and Improvements: What's the Difference?

The Internal Revenue Service has a useful test to help you decide whether an expenditure is a deductible 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. 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. The tenant can deduct the cost of repairs from annual income when calculating taxes. In contrast, the landowner's expenditures for capital improvements add to his or her tax basis in the property. 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. Capital improvements (see next section below) include replacing an engine, installing new plumbing or wiring, removing and replacing asphalt roofing shingles, installing fencing, or original painting of a property.[6]

Alterations and Improvements to Site

The lease should specify the process by which any alterations or improvements, if sought, will be approved. The lease should also specify what sort of capital improvements the owner will allow on the property and who pays for those improvements. This section should cover the addition of new equipment and new permanent structures, including fencing. There should be clear guidance as to whether such improvements are considered permanent fixtures and become the property of the lessor or whether they may be removed by the lessee at the end of the term. This section may also refer to conservation practices or soil applications aimed at building long-term soil fertility. The duration of the lease should guide in determining how those costs are shared, if at all, and the short- and long-term beneficiary of any improvements.

Capital Improvements: Ownership and Investment

In 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 and also permit the tenant to remove the structure typically require that the tenant bear the costs of removal as well as restoring 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 the construction because it will increase the value of the property and the long-term financial return is primarily his or hers. 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 will be deducted from the purchase price. You can use the applicable IRS depreciation rate for the particular kind of property or devise your own based on the property's useful life.[7]

It is important that the lease include language acknowledging the landowner's consent to the tenant making improvements on the property; 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. The typical short-term lease provides that any improvements become the property of the landowner at the termination of the lease.[8]

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 object to their tenants' apparent 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.

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 make the tenant more motivated to invest in the land and structures on the property. In attempting to promote the sustainability of the soil, as well as other aspects of the farm, it is important to recognize not only structural improvements, but also benefits accrued through sustainable practices. You might consider providing credit for a tenant's expenses for crop rotations and green manure crops that add nutrients to the soil after the lease ends. In considering reimbursement for improvements, it is important that you discuss and put in writing the improvements that are needed, the costs of those required improvements, and expenses to be contributed by each party.[9]

It is important that you discuss and put in writing the improvements that are needed, the costs of those improvements, and expenses to be contributed by each party.

Other Advice on Capital Improvements

Tenants should not undertake capital improvements without the consent of the landowner. Ideally, capital improvements, repairs and maintenance should be discussed annually. Farmers should describe the improvement — its location, construction methods and other important factors — in writing and ask the landowner to sign the document to indicate agreement. Where the tenant wants to build a temporary structure such as a greenhouse, the lease can allow the tenant to remove the structure at the end of the lease period. The lease should designate the party who is assigned ownership of the structure.

Beware of properties that require significant capital investment before profitable farming can begin. Farmland or farm buildings left idle for long periods of time often require a significant investment of labor and money to bring them back into productive and profitable use. Those are the properties most commonly available to beginning farmers. Starting farmers, many of whom are so excited about their first opportunity to farm that they can't wait to "improve the place," need to realistically assess the economics of farming

a property that requires a significant investment of human or financial capital.[10]

11. Stewardship guidelines. Consider including a clause that requires the tenant farmer to "use good stewardship practices" to protect the long-term productivity of the farm. A lease may also specifically ask for a conservation management plan, a waste management plan, or a grassland habitat management plan. If any of those already exists, it is reasonable to require the tenant farmer to comply with them. (See Chapter IX: Stewardship Guidelines, beginning on page 32.)

12. Additional limits or restrictions on farm practices. The lease should include prohibitions on how the land and facilities in the leasehold can be used, including the types of crops or production methods that are not allowed. Such restrictions might include prohibitions on planting invasive species, limits to livestock numbers, timing of hay cuttings, and the timing or frequency of applications of fertilizers, herbicides or pesticides. However, be careful to not be overly specific about farming practices in a lease, as that can reduce the attractiveness of the lease to the farmer.

13. Subletting. The lease may specify whether subletting is permitted and under what conditions. Farm leases typically do not allow a subletting right. Usually landowners want control over who is going to be farming their land. A lease could allow subleasing (wherein the farming tenant establishes a sublease with someone else for a portion or specific use of the property in his or her leasehold) with the landlord's prior permission and approval of both the sub-agreement and the sub-tenant.

14. Termination. The manner and time in which notice of termination by either party must be given are also important. This may be six months prior to the expiration date or by a specified date, for example. Notice of termination procedures must comply with any applicable state law. In a state that does not have mandatory farm lease termination procedures that include required notice, the lease should state the consequences of failing to provide such notice, typically an automatic renewal of the lease for an additional year or for another term of years. If no notice is required, the parties may agree to other procedures for renewal, such as requiring the tenant to contact the landlord to renegotiate a renewal by a certain time. Notice and renewal procedures can affect tenure stability and the adoption of sustainable practices.

In some cases, early lease termination is a friendly matter. If the tenant decides to move to another state or the landowner unexpectedly needs to sell the property (and the lease is not written to stay with the property's new owners), the terms of termination are a matter of re-negotiation that can be handled formally through a written amendment to the lease or informally with a handshake.[11]

15. Default provisions. Default means that one of the parties to the lease has violated a term by failing to do something or by doing something not permitted by the lease. 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.

The lease should specify what constitutes default by either the tenant or the landowner. The remedies should be tailored to the default. The lease should also provide cure periods for defaults that the parties believe can be remedied. For example, a tenant who misses a rental payment is given notice and a 30-day period to make the payment.

A lease may provide one or more options for dealing with a default. It may allow the landowner to draw from a pre-paid deposit or to bill the tenant for hiring someone to do the work or repair the problem. The lease may also provide that if the problem persists, the landowner may give notice of intent not to renew the lease.

A landowner may also default under a lease. For example, a landowner's failure to meet obligations under the lease with respect to repairs and maintenance is a 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 provide that at the beginning of the lease term, the tenant must deposit some relatively minimal amount of money with the landlord as a

security deposit. 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, and what form such reporting would take. There may be a schedule of monitoring visits. As a non-farming landowner, you may want to ask someone familiar with farming to do the monitoring — a farming friend or a professional, for example.

18. Insurance and liability. The lease should specify whether the tenant must carry liability insurance. This part of the lease needs to consider the liability needs of the farm business, covering whether the public will visit the farm to purchase from a farmstand, pick up a CSA share, attend events or access a recreational trail, for example. The lease should also require the tenant to indemnify the landowner 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. *For more discussion, see Insurance and Liability for the Private Non-Farming Landowner, in Chapter VIII of this handbook.*

19. Condemnation and casualty loss. The lease should specify what will happen in the event the property is condemned or destroyed by fire or other casualty, whether the landowner reserves the right to terminate the lease, and whether the proceeds of a condemnation or insurance award will 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.[12]

20. Dispute resolution. A lease may also describe a process for settling disagreements. Approaches range from a shared commitment to negotiate differences at regular meetings between the parties, to a facilitated conflict resolution process, to more formal mediation or arbitration. Because of the time and expense associated with contract disputes, most commercial leases now contain a clause that allows the parties to mediate the dispute prior to litigation.[13]

21. Recording of a lease. A written lease can be recorded, and sometimes must be recorded, in order to protect the tenant against subsequent claims to the property. Recording a lease means that it is submitted to the public record for third party verification. If the landlord sells the property during the lease term, a recorded lease helps ensure that the new owner adheres to the lease agreement (if that is stipulated in the lease). The recording statutes for some states may be found online; search for "tenancy law."

D. TYPES OF LEASES

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 good will 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. A term of several years gives the tenant a longer planning horizon and more incentive to care for and improve the farm's resources. It also, of course, binds the parties to the terms of the lease for a longer period of time, which can be a matter of worry for landowners.[14] *For further discussion, see Chapter IX of this handbook.*

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.[15]

1. Short-term leases. The majority of agricultural leases are for short — one- to three-year — periods. Many are from year to year and can be renewed or terminated annually. Farmers and landowners often treat leases casually, with an oral or handshake agreement and an informal joint understanding of flexible terms based on the particular situation. As long as a positive personal relationship underlies the business transaction, informal leasing arrangements can serve the mutual interest of both parties. Business is business, however, and every farmer knows at least one story of a lease gone sour. A bad lease or a lease cut short can be

expensive.[16] Short-term leases can evolve into longer terms, or into other forms of tenure. A short-term lease is often a good place for both parties to start.

Advantages

Some landowners favor short-term leases because they want flexibility in the way their land is used and are unwilling to tie it up for long periods of time. Some farmers like short-term leases because they provide the opportunity to experiment with new enterprises or locations without requiring a long-term commitment. This flexibility is particularly useful for beginning farmers. A short-term lease can allow a tenant a trial period to see if his or her farm plans are financially feasible. A short-term lease also allows the tenant to limit his or her financial risk. Finally, a short-term lease allows both parties to get to know each other and decide whether a longer-term arrangement would be beneficial.

Disadvantages

Short-term leases have disadvantages, too. Financial flexibility can bring financial uncertainty, which can result in difficulty making long-term business plans or personal decisions. Lenders may balk at financing long-term assets such as equipment or livestock if the borrower does not have a written lease covering the loan period. By both instinct and necessity, many farmers operating under a short-term lease farm that land differently than they do land that they own or land that they are leasing for a long period. They have less financial incentive to rotate crops, invest in perennial crops or permanent structures, and install conservation structures.[17] It is important to note that this is not always true, however. Research shows that the relationship between stewardship and tenure is very complicated.

2. Long-term leases. While most leases are short-term arrangements, a long-term lease can produce some very different outcomes for both the farmer tenant and the landlord. Long-term leases of five to 99 years enable the tenant to justify investments to improve the property, although the lease itself may not require or reward such improvements.

Advantages

A lease of several years provides tenure security for the tenant, which can encourage the adoption of long-term conservation practices that decrease soil erosion, build soil nutrients and maintain farm structures. A longer tenure can also increase the farm operator's connection to neighbors and the surrounding community. Longer terms enable the farmer to build the enterprise, markets, relationships with suppliers, and familiarity with the farm's natural features.

Disadvantages

A long-term lease binds the parties to the conditions of the lease for a longer period of time. This can be a concern for landowners who want flexibility in managing their land. It can also be detrimental to farmers who are still exploring what they want from a farm business. A good lease will address exit strategies for both parties.[18]

3. Rolling leases. Rolling leases automatically renew themselves each year. For example, a rolling five-year lease will renew itself at the end of each year, so that at the beginning of each year the tenant knows that he or she has at least five more years to continue farming the parcel. Depending on the length of the rolling lease, this type of arrangement can give the farmer tenant a longer-term commitment to the property. With a rolling lease, the landowner must notify the tenant of his or her intent to exit the agreement at the end of the time remaining in the lease.[19]

4. Ground leases. A ground lease, not common with private landowners, allows the tenant to lease the land or ground and own the improvements on it. A landowner 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.

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 and involve both leasing and selling property. For more information on these models, visit www.equitytrust.org.

5. Leases with the option to purchase. A lease with an option to purchase gives the tenant the opportunity to buy the property after a specified period. There are two common forms of this kind of option: a "straight" option and a "right of first refusal" option. Each exists only through specific language in the lease. When either option is exercised, the lease ends and the parties enter a seller-buyer relationship.

With a straight option, the tenant can compel the owner to sell at a fixed or determinable price during any point in the lease. If the lease does not limit the period during which the

option can be exercised, the option runs for the period of the lease and any extensions to it. The terms of sale must be stated with the same specificity as the terms of a purchase and sale agreement.

A right of first refusal prevents the owner from selling the property to a third party without first offering it to the tenant, usually at the same price the third party has offered.[20] In either case, the lease payments are not part of the consideration of the purchase price of the property unless specifically stated in the lease.

Advantages

Because the buyer already farms the land through the lease agreement, the timing of the transition can be more flexible than if you were selling to an outside buyer. In addition, the purchase price can be fixed over time, or a portion of the lease may be convertible to credit on the purchase price.

Disadvantages

From the farmer's perspective, there may be a few downsides to entering into this kind of lease. For example, the landowner may charge a higher rent in order to cover the value of the option to purchase agreement. In addition, the term of the lease may be constricted, since the owner is planning on selling the land. Finally, if the farmer's ultimate goal is to own land, entering into this kind of lease will delay the transfer of ownership. Another possible disadvantage to both the landowner and the farmer is that the value of the property may fluctuate over the lease term.[21]

E. FINANCIAL CONSIDERATIONS: DETERMINING THE RENT

It can be difficult to determine a fair rental rate. Location, soil quality, the forces of supply and demand, and personal goals all play roles in determining an appropriate price. In some cases, you may not want to charge the farmer at all for farming your land. For example, if your goal is to keep the back pasture open, yet you don't want to pay someone to brush-hog it, it may make sense to invite a farmer to hay it at no charge.

Many lease fees are calculated based on a per-acre per-year basis. In other words, both parties agree up front on a price for the whole parcel based on a per-acre charge for the year. In Vermont, for example, land rents can range from $0 to $150 or more per acre each year. Typically, land suited for vegetables is worth more than land that will be used to grow corn. Likewise, land used for corn is more valuable than that used for pasture or hay. Sugarbush is often rented



by the tap at a range of 50 cents to $1 per tap. Determining the rental price requires the landowner and tenant to be creative and communicate mutual goals effectively.[22]

Most landowners like to cover property taxes with the rental fee, but even that is sometimes unrealistic from a farmer's point of view. In fact, to attract a farmer, landowners sometimes pay a portion of the yearly maintenance costs, such as liming and fertilizing fields. Bartering is another option. "Payment" for using the land can be anything from plowing your driveway in the winter to giving you mulch hay or products such as cheese or vegetables. It comes down to open communication regarding each party's goals and creativity in coming up with a payment on which both parties can agree.[23]

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. Residential value plus land costs. Some agricultural lease charges are based primarily on the fair market rental value of the home on the farm plus an additional amount that reflects the productive value of the farm or an amount that covers other land costs. If the farmland has little productive value because of disuse or abuse, some landowners allow tenants to use it without charge in exchange for "rehabilitating" the farm.

5. 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.



6. Costs of production. Farmers' business plans can show actual costs of production, including projected reasonable cost of land. If the lease imposes stewardship requirements that will affect the tenant's costs of production, they should be factored into the rent amount.

7. Social goals. Some landlords accept a lower than average rental amount because of their belief in the social benefits of local food production or in the importance of providing an opportunity to a beginning farmer. Those non-market factors can be difficult to measure in setting the rent. Tenants also need to maintain appropriate accounting practices for tax purposes.[24]

F. FINANCIAL CONSIDERATIONS: TYPES OF LEASE PAYMENTS

Agricultural leases are often categorized by the form of payment. The most common forms are cash rent, flexible cash rent, and crop- or livestock-share leases. Some rental agreements, however, see little or no money exchange hands. Both the landowner and tenant who have a non-cash or below-market rental agreement should consult their respective advisors about tax considerations associated with the arrangement.[25]

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.

Sliding pay 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 rental pay scale changes during 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.

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.

A flexible, or adjustable, cash lease is a hybrid between cash rent and a share lease. The landowner and the tenant set a cash "base" rent that is lower than straight cash rent. The landowner is paid the cash base plus a share of the actual returns to the farmer from the crop. If production and prices exceed the base, the landowner is paid a share of the increase. In a poor year, the landowner is guaranteed at least the base. The base rent can be just enough to cover the landowner's fixed costs or the fixed costs plus a nominal return. Flexible cash rent reduces for the tenant some of the risk of a bad year and rewards the landowner in good years.

In-kind rent is an exchange of value based on service or other non-cash contribution. In some cases, you may not want to charge the farmer at all for farming your land. A lease agreement can provide for payment in the form of non-cash equivalents such as a CSA share or property maintenance and improvements (not required by the lease anyway). Cash payments may generate a small amount of income that could cover costs such as insurance and maintenance, could be added to a fund for future land acquisitions, or could be put toward a stewardship endowment.

G. HOUSING

Finding appropriate housing for a farm family can be a bigger challenge than finding farmland. Where land values are high, the cost of a home can be prohibitive if it will be financed by farm profits. In suburban communities with good markets for high-value farm products, modest homes can cost upward of $300,000, with rents comparably steep. Even if appropriate farmland is available, nearby housing may not be. A farm property that includes housing for the farmer and possibly farm labor also is particularly appealing to potential tenants. In some situations, it may be possible for the farmer to use or bring temporary housing such, as a mobile home or yurt. Sometimes, nearby rental housing units will suffice. Farm viability and family lifestyle will be significantly affected by whether the farmer lives on the farm or at some distance. Many beginning farmers report that availability and cost of housing is the factor that limits their ability to operate a viable farm or ranch.

A farm property that includes housing for the farmer and possibly farm labor also is particularly appealing to potential tenants.

When a residence is available along with farmable land, it may be part of the lease or covered under a separate rental agreement. If included in the rental agreement, a farm lease takes on both commercial and residential elements. Landord-tenant and public health laws in each New England state regulate residential rental agreements to ensure safe and habitable living conditions for tenants. Residential rental agreement statutes set certain minimum standards that cannot be modified by a lease. Such laws require that the premises be safe, clean and fit for human habitation. For example, residences must have adequate heat and hot and cold running water and must comply with applicable building housing and health regulations. By the terms of those statutes, a lease that tries to avoid this duty shall be unenforceable and void. Farm leases are not exempt from complying with this statute. Farm tenants, therefore, have the same rights to safety and habitability as residential renters.[26]

For these legal reasons, it is often advisable to develop a residential lease that is separate from the farm lease. In some situations, though, the whole farm can be leased under one lease agreement.

1 *Sustainable Farm Lease, Drake University and Drake University Law School*
2 *Drake University*
3 *Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship, New England Small Farm Institute*
4 *Drake University*
5 *A Legal Guide to the Business of Farming in Vermont, University of Vermont Extension*
6 *Holding Ground*
7 *Holding Ground*
8 *Drake University*
9 *Drake University*
10 *Farming in Vermont*
11 *Holding Ground*
12 *Farmland ConneCTions: A Guide for Connecticut Towns, Institutions and Land Trusts Using or Leasing Farmland, American Farmland Trust and University of Connecticut Extension*
13 *Farming in Vermont*
14 *Drake University*
15 *Holding Ground*
16 *Holding Ground*
17 *Holding Ground*
18 *Drake University*
19 *Farmland ConneCTions*
20 *Holding Ground*
21 *Holding Ground*
22 *Farming in Vermont*
23 *Holding Ground*
24 *Holding Ground*
25 *Farmland ConneCTions*
26 *Farming in Vermont*

CHAPTER VIII

Tax and Legal Considerations

A. TAXATION OF RENTAL INCOME

The IRS treats farmland rental income differently than it does other kinds of rental income. Landowners who materially participate in the production of farm crops or in the management of the farming operation must include the rental income in their earnings that are subject to self-employment tax. However, landowners who do not materially participate in farm management or production do not have to pay a self-employment tax on that rental income. Payments that a landowner receives as a result of a tenant's participation in a government program may also have to be included in self-employment income.

"Material Participation" Defined

According to the 2002 IRS Farmer's Tax Guide, a landlord materially participates if the arrangement with a tenant specifies the landlord's participation and he or she meets at least one of the following tests:

1. The landlord does any three of the following:
    a. Pays, using cash or credit, at least half of the direct costs of producing the crop or livestock.
    b. Furnishes at least half the tools, equipment and livestock used in the production activities.
    c. Advises or consults with the tenant.
    d. Inspects the production activities periodically.
2. The landlord regularly and frequently makes, or plays an important part in making, management decisions that substantially contribute to or affect the success of the enterprise.
3. The landlord works 100 hours or more, spread over a period of five weeks or more, in activities connected with agricultural production on the rental property.
4. The landlord does things that, considered in their totality, show that he or she is materially and significantly involved in the production of farm commodities on the rental property. It is likely that merely setting and monitoring stewardship standards for the purpose of protecting or enhancing the underlying resource — as opposed to enhancing production and farm income — are not considered material participation. Landowners are more likely to be considered material participants if they provide production financing or a significant percentage of the tenant's equipment, or periodically inspect the property to ensure that stewardship standards are being met.[1]

B. PROPERTY TAX BENEFITS: USE-VALUE TAXATION PROGRAMS

Many states, including all six New England states, have "use-value" property taxation programs that tax a property based on the value of its current use. For property tax determinations, states provide that the value of enrolled lands will be based on their use for agricultural and forestry purposes, not the "highest and best use," which is frequently considered the potential development value. The net result is usually a significant property tax savings for the property owner. The programs in all of the New England states allow non-farming landowners to enroll their land in these programs as long as the land is in active agricultural and forestry use and meet other program criteria. Some states also provide for enrolling non-productive conservation land.

Recognizing the risk of landowners using the program as a means of reducing property taxes while waiting for the right opportunity to develop the land, all the states also have penalties in their programs for development as a deterrent to land speculation. Property owners may choose to enroll all their land or hold out certain portions that they may be thinking about developing. Most programs also require that a certain amount of land around existing houses — usually half an acre per house — also be excluded from the program. This excluded land is then taxed at its full value.

While the basics of each state's current-use or use-value program are quite similar, they vary significantly in structure, criteria and requirements, so it is important to learn about the specifics of the program in the state where the land will be enrolled. For instance, the way these programs address agricultural buildings on the property varies greatly. Also, some states have specific requirements for land leased to farmers by non-farming landowners. Some states have annual enrollment deadlines. Here are some specifics about each New England state's use-value assessment programs:

Connecticut

Public Act 490 assesses farmland and forest land at its current-use value. The state law sets no minimum acreage but some towns have their own minimum acreage requirements. Land taken out of farm classification may be subject to a conveyance tax penalty, especially if it is within 10 years of the initial date of classification. Applications to the program must be submitted between September 1 and October 31. Municipalities in Connecticut are also given the option of

providing property tax relief on agricultural buildings, including farm labor housing.

A fully detailed description of the program can be found in "Public Act 490: A Practical Guide and Overview for Landowners, Assessors and Government Officials," published by the Connecticut Farm Bureau and available online at www.ct.gov/doag/lib/doag/marketing_files/complete_490guide_cfba.pdf. Information on requirements for leased land is on page 12 of that publication.

Maine

Maine has current-use assessment programs that offer owners reductions in their assessed value for tree growth, farmland, open space and working waterfront. Applications must be filed on or before April 1 of each year. In the farmland program, the property owner is required to have at least five contiguous acres used for agriculture or horticulture, and that land must provide at least $2,000 gross income from farming activities each year. Municipalities assess enrolled land based on Department of Agriculture guidelines. If the property no longer qualifies as a farmland tract, a penalty will be assessed. The penalty is an amount equal to the taxes that would have been paid in the last five years if the land had not been in the program, less the taxes that were originally assessed, plus any interest on that balance.

For more information on Maine's current-use assessment programs, visit www.maine.gov/revenue/propertytax/propertytaxbenefits/CurrentUseLandPrograms.htm.

Maine's current-use regulations do not address agricultural buildings. However, Maine municipalities can provide tax relief on farm buildings when the town and the farms are enrolled in the Voluntary Municipal Farm Support Program. More information about that program is available here http://tinyurl.com/cjaozxj.

Massachusetts

To qualify for a lower taxation rate based on current use under Massachusetts General Laws Chapter 61A (Chapter 61 for forest land), land must be in active agricultural use as defined by the statute, be at least five acres, and generate $500 a year of gross income for the first five acres and $5 per acre for each additional acre. Chapter 61 also provides criteria for forestry, recreation and open land. However, if the land is no longer used for agriculture, forestry or open space and is converted to other uses, it may be subject to roll-back taxes determined by the assessor based on several factors. Applications for consideration under Chapter 61A must be submitted annually. Massachusetts current-use laws do not address taxes on agricultural buildings.

For more information about Massachusetts' current-use law, visit: http://masswoods.net/index.php/landowner-programs/ch61programs. Another good source of information is the "Conservation and Land Use Planning under Massachusetts Chapter 61 Laws," published by the Mount Grace Land Trust and found online at http://masswoods.net/images/stories/pdf/Mount_Grace_Ch61_Info.pdf.



New Hampshire

The current-use assessment regulations in New Hampshire (RSA 79-A) assess land at its use value if it is actively devoted to growing agricultural or horticultural crops and totals 10 or more acres OR brings in at least $2,500 annual gross income from the sale of crops. When the land's use is changed to a non-qualifying use, a one-time land-use-change tax applies at a rate of 10 percent of the full fair market value of the land. New Hampshire's current-use law also has provisions for forestland, unproductive land and wetlands. It does not include agricultural buildings, and the land under the footprint of permanent agricultural buildings must also be excluded from the program. Land under temporary agricultural structures, including horticultural high tunnels without permanent

foundations, can be included in the program land. New Hampshire does have a separate program for tax adjustments for historic barns.

For more information about New Hampshire's current-use program, see "Overview of Current Use Assessment RSA 79-A," published by the University of New Hampshire's Cooperative Extension and available online at http://extension.unh.edu/resources/files/Resource000976_Rep1099.pdf.

In addition, answers to frequently asked questions about New Hampshire's program are available here: www.nhspace.org/faq.shtml. Another helpful publication is "A Layperson's Guide to New Hampshire Current Use," available from the Statewide Program to Conserve Our Environment at www.nhspace.org/downloads/SPACE_Laypersons_Guide_07.pdf. Finally, for information about New Hampshire's barn tax-relief program, visit www.nh.gov/nhdhr/programs/barn_property_tax.html.

Rhode Island

Property enrolled in the Farm, Forest, and Open Space Act is assessed at current-use value according to categories set by Rhode Island's Farm, Forest and Open Space Land Value Subcommittee. To qualify, you must have at least five acres actively devoted to agricultural and horticultural use. Through normally accepted practices, the land must have produced at least $2,500 in gross income from the sale of its farm products in one of the last two years. Also eligible is land that is actively devoted to agricultural use by a subsistence farmer who derives his or her primary means of sustenance from the consumption of agricultural products grown on the land. In addition, land that meets the requirements for a government set-aside or land that has a combination of income, crop and acreage that qualifies it for inclusion. For continued eligibility, the property owner must submit a certificate to the tax assessor each year confirming the land is still in agricultural use. Property sold or changed in use is subject to the land-use-change tax, which equals 10 percent of the fair market value if the use is changed or classification is withdrawn during the first year of classification, and decreasing one percent per year until the 10th year.

The property owner must have or have applied for a written conservation plan outlining best management practices recommended by USDA and approved by the district. Rhode Island's current-use law does not address agricultural buildings.

For more information about Rhode Island's regulations, see "A Citizen's Guide to the Farm, Forest and Open Space Act," published by the Rhode Island Department of Environmental Management and available at www.dem.ri.gov/programs/bnatres/forest/pdf/citgui03.pdf.

Vermont

To qualify for Vermont's current-use assessment program, agricultural land exclusive of a two-acre home site must be at least 25 acres in size, with exceptions described below, and must be in active agricultural use. The land is presumed to be in agricultural use if it is owned by a farmer or is leased to a farmer under a three-year lease, including parcels smaller than 25 acres. A farmer is defined as anyone who earns at least 50 percent of his or her gross income from farming.

Farmland, including parcels less than 25 acres, may qualify under an income test as well. Smaller parcels that produced an annual gross income of at least $2,000 from the sale of farm crops in at least one of the last five calendar years can qualify. Parcels larger than 25 acres must generate an additional $75 per acre for each acre over 25, or a total of $5,000, whichever is less.

In recent years, the legislature has amended the current-use statute to include a broader definition of "farmer" and "farm crops." The statute now provides that a farmer is one who produces crops that are processed on the farm and whose gross income from the sale of processed products, when added to other gross farm income, is at least half of all his or her gross annual income. Seventy-five percent of the processed product must be produced on enrolled land. Farm crops now include animal fiber, cider, wine and cheese processed from products produced on the farm, as well as the more traditional crops of hay, cultivated vegetables, fruit and flowers, pastured livestock and maple syrup.

Eligible farm buildings enrolled in the farm use-value program are exempt from all property taxes. Eligible farm buildings include all farm buildings and other farm improvements that are actively used by a farmer as a part of a farming operation, are owned by a farmer or leased to a farmer under written lease for a term of three years or more, and are situated on land that is enrolled in the use-value program or on a house site adjoining enrolled land. The definition of farm buildings now includes not just those structures actively being used in the farming operation, but up to $100,000 in value of any of the farm's facilities that are used for processing crops, provided at least 75 percent of the crop is produced on the farm.

All or a portion of the land may be withdrawn by the owner. If the withdrawn land is not developed, a land-use-change

tax will not be due. However, the land-use-change tax would be due if the land is ever developed in the future. The tax would be calculated as 10 percent or 20 percent of the fair market value of the developed portion on the date the land was withdrawn from the program. If the land has been enrolled for 10 years or less, the penalty will be 20 percent. At the time of publication of this handbook, the Vermont legislature was considering changes to the penalties and other aspects of the program. Be certain to check the most recent regulations.

The Vermont current-use program also provides for enrollment of forest and conservation lands.

The application for Vermont's current-use program, available through the state's Department of Taxes, provides all the current, pertinent information. It is available online at www.state.vt.us/tax/pdf.word.excel/pvr/CU%20Appraisal%20Standards.pdf

C. INSURANCE AND LIABILITY FOR THE PRIVATE NON-FARMING LANDOWNER

When leasing property to a farmer, private landowners often worry about liability and insurance. While landowners are correct to have this concern, they should take comfort knowing that there are established mechanisms to protect farm property owners and to minimize risk. This should not be an impediment to leasing to a farmer.

For general information on insurance and liability, refer to the resources listed on page 29. To dig a bit deeper, the following sections discuss the types of insurance that should be considered, and who usually pays for them.

Farm Liability and Commercial Liability Insurance

It is important to understand that once commercial farming activities start taking place on the property of a private landowner, a typical, standard homeowner's insurance policy will NOT cover these activities or liability related to commercial farming. This is why it is essential that the landowner require the tenant farmer to present him or her with a certificate of insurance from a farm insurance agent, naming the landowner as an "additional insured" on the tenant's farm liability insurance policy, and specifying the location and description of the insured property. If there are multiple properties involved, each of these should be named in the policy. This should be a requirement of any farm lease.

By naming the landowner on the tenant's farm insurance, the farmer is essentially sharing his or her insurance with the property owner. In addition, when the landowner is named as an additional insured on the farmer's insurance, the landowner will be notified directly by the insurance company if there is a non-payment of premiums or the insurance is terminated and no longer enforced.

An insurance professional should be consulted to determine the levels of liability insurance that should be required of the farmer. At the time this handbook was published, a common level required was a minimum of $1 million per occurrence and $2 million aggregate coverage.

It is acceptable for the property owner to ask for a copy of the farm liability policy and to make sure that he or she understands what is and is not covered. As mentioned in "Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship," it is important to make sure that the farmer's insurance policy covers activities on the farm that are not specifically farming, such as the production of value-added products, food processing, agritourism and direct marketing ventures like a farmstand. The definition of farming for insurance purposes is generally limited to the raising of crops and farm animals, and often does not include those additional activities. If these other such activities, not covered by the farm liability policy, will take place on the leased property, the farmer also needs to provide for additional coverage for these activities. In some cases, the farmer can purchase additional business liability coverage as a part of his or her farm liability policy to address this issue. In other cases, the farmer may need to purchase a separate commercial liability policy that covers these specific activities. In a commercial liability policy, the tenant farmer will need to name the property owner as an additional insured.

Landlord Liability Insurance

In many cases, the landowner is considered adequately insured for liability by being named as additional insured on the farmer's liability policy, provided that the landowner also maintains his or her standard homeowner policy. However, since the homeowner's insurance will not cover any farm-related claims, some insurance agents feel that it is important that property owners also maintain their own separate farm liability coverage in addition to being named on the farmer's liability policy. Both parties maintaining this coverage provides for broader coverage, and increases the dollar amount of the coverage available in the event of a claim since the parties are not sharing one limit for coverage. There are generally three ways landowners can obtain this coverage:

1. In some cases, it may be possible to add an "incidental farm and animal liability endorsement" to the landowner's

standard homeowner policy by request, and at a (usually small) additional cost. This is usually the least-cost option. However, these endorsements are frequently not available, and still may not address all of the landowner's liability protection needs. If this option is available, the landowner should discuss it with the insurance agent to clearly understand what this rider will and will not cover.

2. Property owners may replace their homeowner's insurance policy with their own farm liability policy. This option would also make sense if the landowner is either partnering with the tenant-farmer in some way, or decides to engage in his or her own farming enterprise.
3. The landowner keeps his or her homeowner policy but then adds a commercial liability policy which covers "lessor's risk." This is also known as landlord liability insurance.

Property owners should consult with their insurance agent, and possibly their attorney, to determine if they should have coverage in addition to being named additional insured by the farmer tenant. If so, which approach makes the most sense for his or her circumstances. If the property owner does incur an increase in his or her insurance as a result of engaging in a farm lease, he or she might consider factoring this additional cost into the lease fee paid by the farmer.



There are also special considerations if a residence is included as a part of the farm rental. *For more details on insuring a residence on the leased land, see the section on* *Insurance When the Lease Includes a Residence on page 28.*

Automobile Liability

It is also often recommended that the farmer's policy include an endorsement for "hired and non-owned vehicles." This endorsement would cover liability for actions related to rented or borrowed automobiles or to the automobiles of employees or venders. This would also cover the farmer's personal vehicles that are not owned by the farm business, such as a pickup truck registered to the individual rather than to the business. This coverage is relatively inexpensive, but not standard in a farm policy, and needs to be requested.

If the tenant has commercial vehicles owned by the farm business, the farmer should also be required to carry commercial automobile liability coverage in his or her farm liability policy. This coverage will provide liability protection in the case of an accident involving the farmer's commercial vehicle(s) while in use on the farm property, and usually also elsewhere.

Borrowed or Hired Equipment Belonging to the Property Owner

If the farmer will be borrowing or leasing equipment from the property owner, the property owner should consider also requiring the farmer to carry coverage for "hired or borrowed equipment" in his or her farm policy. This provides coverage for damage to the equipment itself and is not related to liability. The level of coverage will be based on the value and amount of equipment to be covered. This type of coverage is relatively inexpensive, but not standard on a farm policy. It must be requested. In cases where the use of equipment will be more than incidental and over extended periods of time, it sometimes is recommended that the tenant include the specific leased equipment directly on his or her primary farm insurance policy instead of, or in addition to, having the "hired or borrowed equipment" endorsement.

Workers' Compensation

If the farmer has employees, including interns, he or she is required by state law to carry a certain level of workers' compensation insurance. These laws also specify the difference between an employee and a contractor. If there is an accident on the farm involving a farm employee and he or she takes legal action for compensation against the farmer, the farm liability policy will not cover the farmer if he or she has not provided for workers' compensation insurance to the level required by state law. Therefore, some farm leases will include a requirement that the farmer carry workers' compensation "at least to the minimum limits imposed" by the state where the farm is located to reduce the risk of an injured employee seeking compensation from the landowner when it is unavailable from the farmer.

Pollution and Environmental Liability

Coverage for pollution and environmental liability is generally included in standard farm liability policies. However, it is usually limited in scope, and the policy is likely to include specific exclusions. While additional pollution and environmental liability is available, it can be extremely expensive. Generally, most farmers do not carry this additional coverage, and it usually is not necessary. The landowner should discuss this issue with a farm insurance professional within the context

of the type of farming by the tenant and the coverage available under that farmer's general farm liability policy. It is quite possible that the coverage in the general farm liability policy will be sufficient.

Property Loss

As with liability insurance, a standard homeowner policy will not cover for property loss from fire or other damages to buildings on the farm property once commercial activity takes place. There are two options to remedy this:

1. The property owner changes from a standard homeowner policy to a farm owner policy AND requires the tenant farmer to carry fire-legal liability insurance in case of fire damage to farm property. The tenant must also name the property owner as an additional insured on that policy, which will cover damages only if the farmer is found to be negligent and, therefore, legally responsible for a fire or other damages to the property. In the event of property loss due to other sources not related to the farmer's negligence, such as electrical wires, lightening, snow load or flooding, it will be the property owner's farm owner policy that will cover these losses.

   While the fire-legal liability insurance in case of fire damage to farm property is relatively inexpensive, typically farm owner policies have premiums 30 percent higher than a standard homeowner policy. If the property owner incurs an increase in his or her insurance as a result of engaging in a farm lease, he or she might consider factoring this additional cost into the lease fee paid by the farmer.

   Most insurance carriers stay away from farm owner insurance policies. However, there are a number of insurance companies in the region that specialize in farming and agriculture. A list of those companies can be found on page 29.

2. The farmer includes property loss insurance on his or her farm policy and names the property owner as an additional insured and "loss payee" on the farm policy. In this case, the property owner would need to continue to carry his or her standard homeowner policy, but the farmer would NOT need to carry the additional fire-legal liability insurance in case of fire damage to farm property because the farmer would be providing insurance through their farm policy.

The latter of these options is the least expensive approach. However, there are reasons why a property owner would choose the first approach, such as if he or she also decides to become involved in commercial farming activities. Ultimately, these options should be discussed with an insurance professional within the context of the particular lease to decide which option will be best for that situation.

In either scenario, it is important that the property owner understand what hazards, or "peril groups" beyond fire damage are covered, and under what circumstance coverage would apply. For instance, not all policies will cover wind damage under all circumstance, and most do not cover flooding. Whether property loss is covered by the insurance of the tenant or of the property owner, the property owner should make sure that they are aware of what "peril groups" are covered and that the insurance adequately protects their property.

Levels of Property Loss Insurance

If the farmer will carry the property loss insurance, there should be an agreement between the property owner and the farmer regarding the level of coverage to be carried, specifically on the farm buildings. In some cases, this will not be straightforward since, for example, the full replacement cost of an antique barn may be substantially different from the cost of rebuilding a barn that would serve the same utility purpose. It will be important to consult with insurance professionals to determine the most appropriate level of coverage. For examples of coverage levels, visit the Maine Bureau of Insurance website, www.maine.gov/pfr/insurance.

Insurance When the Lease Includes a Residence — Liability and Property Loss

When the farm lease includes a residence used by the farmer, the following circumstances apply:

- When the farmer is naming the property owner on the farm general liability policy as described above, the property owner still needs to carry a standard homeowner policy, but generally does not need to carry additional lessor liability insurance. The property owner generally also needs to carry additional property loss insurance on the residence, since the standard homeowner policy will not cover commercial use of the building.
- If the property owner has a farm owner policy instead of a homeowner policy, the property owner will need additional lessor liability insurance and property loss insurance for the residence, even when the farmer has named the property owner on his or her farm policy.

When the Property Owner and Farmer Have the Same Insurance Company

There is a substantial advantage to both the property owner and the farmer having the same insurance company, since

in the event of a claim, there will be no dispute over which insurance company is responsible for paying the claim. Further, if the same agent is involved in determining the insurance for both parties, the agent will be responsible for making sure that all insurance issues are covered and addressed by either one party or the other. In theory, this makes it less likely that some coverage issues will be missed.

Farm Insurance Resources

- "Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship" pages 43–44
- "A Legal Guide to the Business of Farming in Vermont" Chapter 7, page 77, found online at www.uvm.edu/farmtransfer/?Page=legalguide.html.
- For information on typical farm insurance coverage, including determining the appropriate level of property loss insurance for your farm, visit www.maine.gov/pfr/insurance/consumer/Farmowners_Brochure.htm.

New England Farm Insurance Companies

The following insurance carriers specialize in agriculture and farm insurance. Visit their websites to find an insurance agent in your area.

- Farm Family Insurance (all of New England), www.farmfamily.com
- Co-operative Insurance Companies (Vermont and New Hampshire only), www.co-opinsurance.com
- Maine Mutual Group Insurance (VT, NH and ME only), www.mainemutual.com
- Nationwide Agribusiness (all of New England except Massachusetts), www.nationwide.com/agribusiness.jsp
- Acadia Insurance (all of New England), http://acadiainsurance.com
- Countryway Insurance (all of New England except Rhode Island), www.countryway.com

D. AGRICULTURAL EASEMENTS OR AGRICULTURAL RESTRICTIONS

Some landowners are interested in protecting their land from development. The typical mechanism to do this is called a conservation easement, agricultural easement or conservation restriction. Basically, you can sell or donate the rights associated with developing your property in exchange for income and/or property tax advantages. If the easement allows, you can lease your conserved property. If you are interested in leasing your land to a farmer, the language of the easement with respect to farming is important. It should permit farming and not be overly restrictive about farming activities. Some easements address multiple values such as water quality or scenic views as well as agriculture, so the language may balance or prioritize these. Be aware that most easements are "perpetual" — meaning forever!

It is important that the tenant understand the terms and conditions of the easement and is willing to comply with them. If you have a tenant prior to negotiating an easement, you might consider having the tenant provide input into the language of the agricultural or conservation easement. This should facilitate understanding of the easement's terms and conditions and give the tenant a chance to express concerns about how the easement might affect his or her agricultural operations. It is better to address those concerns prior to entering the agreement, when terms and conditions can still be adjusted, than to wait until disagreements result in argument or litigation.[2]

E. STATE REGULATIONS

Many federal, state and local laws govern agricultural activities. These laws specify which practices require permitting and what agencies are responsible for reviewing permit applications and enforcing the regulations. It is beyond the scope of this handbook to provide a detailed description of each law at all levels of government.[3] However, the laws can be grouped into several areas of relevance to a non-farming landowner. Ultimate responsibility to stay in compliance with these laws may reside with the landowner, so it is of utmost importance to make sure that farming tenants are operating within the bounds of the law. Lease agreements should specify that tenants are responsible for following all local, state and federal environmental regulations.

Surface and groundwater quality protection is regulated by the U.S. Environmental Protection Agency and state departments of agriculture and/or environmental management. For example, livestock operations may need to file a permit and/or nutrient management plan, depending on the number of animals present. Contact your state's department of environmental protection to determine whether a permit is required. In the case of groundwater protection, no specific national permits are required but non-degradation standards are specified by state environmental protection statutes. Farmers are required by law to abide by basic minimum standards such as Best Management Practices (BMPs) or Accepted Agricultural Practices (AAPs).[4]

Wetlands and water resources are generally regulated when it comes to agricultural production. State and federal agencies, such as the U.S. Army Corps of Engineers, determine whether an area constitutes a wetland and under what circumstances the land can be used. New drilled water wells may require that drillers be licensed or registered.

Air pollution can be of concern in agricultural operations. In many cases, burning substances and using facilities that emit unusual levels of pollutants are unlawful or must be permitted by state environmental agencies. On the other hand, agricultural practices that produce pollutants common to all farming operations, such as odor, noise, dust or flies, are allowed by all states. In fact, all New England states have specific right-to-farm statutes that safeguard farm operations from nuisance lawsuits related to complaints from surrounding landowners.

Each state's right-to-farm law specifies certain conditions that must be satisfied for the farm operation to qualify for blanket legal protection from nuisance complaints.[5] For example, Connecticut and New Hampshire require that the operation be running for at least one year prior to becoming immune from nuisance complaints. Vermont and Maine specify that the operation must have existed before any surrounding non-agricultural activities became established and started to consider the agricultural operation a nuisance. In other words, in those states, if the agricultural operation is new to the area, it could be subject to nuisance complaints. Non-farming landowners hosting new farm operations should proceed with caution and be sensitive to surrounding landowners' perceptions about the agricultural operation's effect on the environment. A few short conversations with neighbors prior to establishing the farm operation can go a long way in preventing disputes.

No state's right-to-farm law provides protection to the farm operation if it is a danger to public health or if the farmer engages in clearly negligent behavior. The agricultural operation is presumed to be immune only if it follows all other local, state and federal environmental protection laws.

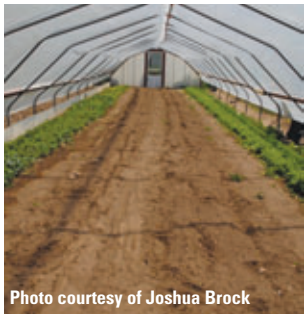
Solid and hazardous waste disposal can be another area of concern for non-farming landowners hosting agricultural operations. In cases where the landowner allows the farmer to dispose of hazardous or solid waste on site, a permit is almost always required by state and federal agencies. Composting of manures, carcasses and other farm wastes is treated somewhat differently. Those activities might not require a permit, depending on the type and size of the composting operation. For example, Maine exempts facilities that compost fewer than 10 cubic yards per month of leaf litter and wood chips, five cubic yards per month of kitchen waste and vegetable residuals, three cubic yards per month of blood and fish waste, 20 cubic yards per month of animal carcasses, and fewer than 10,000 cubic yards per year of animal manures.[6] All other operations would require a permit certifying that composting is conducted according to environmental protection standards.

Pesticide application is another relevant regulatory topic. The Federal Insecticide, Fungicide and Rodenticide Act establishes minimum national standards for the use of chemicals and grants states the power to enforce and further restrict their use.[7] Pesticides must be registered with both the EPA and state regulatory authorities, and it is unlawful for any person to use or dispose of a registered chemical in any manner inconsistent with its labeling.

Pesticides are classified into two groups, restricted and non-restricted, based on their toxicity and persistence in the environment. Non-restricted chemicals do not require a certification or license and can be applied by anyone, whereas restricted chemicals require certification or application under the supervision of a certified applicator. Restricted pesticides also require that applicators follow strict record-keeping protocols.

All farmworkers who handle pesticides are protected by the federal EPA's Worker Protection Standard for Agricultural Pesticides.[8] Farm employers are required to abide by the standard by providing safety training for employees, notifying workers of pesticide applications, providing personal protective equipment, determining restricted-entry intervals after pesticide application, and supplying decontamination materials and emergency medical assistance.

Non-farming landowners should take note! Neither the EPA nor state authorities mandate a similar non-farming landowner protection standard. Application of non-restricted pesticides is assumed to be a normal practice under many states' right-to-farm laws. If the farmer intends to use pesticides, it is suggested that the farmer and landowner agree on specific applicable precautionary standards in a lease or other contractual agreement at the outset of


Photo courtesy of Joshua Brock

any tenure arrangement. For example, the landowner could require the tenant to give notification a certain number of days prior to pesticide application and keep close records tracking which chemicals are used where.

Zoning regulations dictating what kind of structures are allowed on any given parcel of land do not necessarily exempt agricultural activities. Zoning is usually determined on a town-by-town or municipality-by-municipality basis. It is therefore wise to research zoning ordinances by visiting your local city or town office before any farm tenure arrangement is made. Both non-farming landowners and prospective farmers should be aware of applicable regulations that have implications for what kinds of agricultural structures, such as greenhouses, temporary worker housing, or farmstands are permissible. Town and city offices will also have information on the process, if any, for getting these structures permitted and approved, and what design guidelines must be used in order to stay in compliance with local ordinances.

While legal advice is often sought in order to enforce the rights of a party after a dispute has arisen, it can be beneficial in terms of finances, good will and the well-being of the land to seek counsel prior to entering an agreement.

For more information about specific state and local regulations relevant to initiating or maintaining agricultural operations on your property, consult a licensed attorney familiar with the issues in your area.

F. CONSULTING AN ATTORNEY

There are at least three instances in which both parties should consult an attorney. First, to review the lease before it is signed. Second, to explain your legal rights and responsibilities in the event of a default and the initiation of an alternative dispute resolution process. Finally, for assistance if the relationship breaks down and eviction is initiated. Legal fees vary a great deal by state. It is usually best to find an attorney who specializes in agriculture, real estate or commercial leases.[9]

Farm lease templates and samples are instructive, and advisers can educate landlords and tenants about good leases. Your attorney can work from your drafts to finalize a legally sound document. While legal advice is often sought in order to enforce the rights of a party after a dispute has arisen, it can be beneficial in terms of finances, good will and the well-being of the land to seek counsel prior to entering an agreement. A farm lease is a legally binding contract that creates important rights and obligations for both parties. However, landowners often enter oral lease agreements or simply fill in the blanks of form leases without an adequate understanding of the terms and conditions. Attorneys can assist in explaining the rights and duties that arise from such contracts and can help negotiate the terms of the lease agreement to ensure that the landowner's priorities and the sustainability of the farm are protected. The legal ramifications of a farm lease can also extend beyond the duties and responsibilities of the lease contract itself. For example, there are issues involving taxes, Social Security, estate planning and the availability and distribution of benefits from government farm programs, to name a few. An attorney can assist in explaining and planning for these additional consequences.[2]

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[1] *Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship, New England Small Farm Institute*

[2] *Sustainable Farm Lease, Drake University and Drake University Law School*

[3] *The National Association of State Departments of Agriculture has compiled a thorough summary of environmental laws specific to each state, available at www.nasda.org/nasda/nasda/foundation/state/states.htm.*

[4] *BMPs are outlined by the Department of Energy and Environmental Protection in Connecticut, the Department of Environmental Protection in Massachusetts, the Department of Environmental Services in New Hampshire, and the Department of Environmental Management in Rhode Island. AAPs are outlined as minimum standards by the Agency of Agriculture, Food and Markets in Vermont.*

[5] *Below is a list of each New England state's right-to-farm statutes:*
Connecticut: Conn. Ge. Stat. § 19a-341
Maine: Me. Rev. Stat. Ann. Tit. 7 §§ 151 to 161
Massachusetts: Mass. Gen Laws ch 243 § 6, Mass. Gen Laws ch 128, §1A
New Hampshire: N.H. Rev. Stat. Ann. §§ 432:32 to 432:35
Rhode Island: R.I. Gen. Laws §§ 2-23-1 to 2-23-7
Vermont: Vt. Stat. Ann. Tit. 12, §§ 5751 to 5754
For information about each state's right-to-farm statutes, visit the National Agricultural Law Center online at www.nationalaglawcenter.org/assets/righttofarm.

[6] *"Summary of Composting Regulations — Maine," available online at www.anr.state.vt.us/dec/wastediv/solid/pubs/Work_Groups/Compost/ME.Composting.Regs.summary.pdf*

[7] *The Federal Insecticide, Fungicide and Rodenticide Act is available online at www.epa.gov/oecaagct/lfra.html.*

[8] *The EPA's Worker Protection Standard for Agricultural Pesticides is available online at www.epa.gov/agriculture/twor.html.*

[9] *Holding Ground*

CHAPTER IX

Stewardship Guidelines

Land stewardship values deserve special attention when developing an agricultural lease. If you are concerned with conservation and stewardship of your property's natural resources, it may make sense to adopt a lease that encourages "sustainable" practices or sets threshold requirements, rather than mandating specific practices. Doing so can allow the farm operator greater flexibility and creativity to promote the sustainability of the farm in a manner that minimizes his or her costs and risks.[1]

It should be noted that certain practices serve different purposes. For example, composting, crop rotation and the application of specific minerals will build soil fertility gradually. Chemical fertilizers add nutrients for the crop but don't build the soil. Generally, the longer the lease term, the greater the incentive a farmer has to manage the land for the long haul in a "sustainable" manner. It takes time for a farmer to benefit financially from investments such as building soil fertility.

A lease can be broad in how it addresses farming practices. For example, it can require "generally accepted agricultural practices" or NRCS best management practices. The lease could also be more specific by requiring organic certification or biodynamic management. Provisions mandating specific conservation practices can be useful, though it is necessary to take practical considerations into account before developing such a lease. Certain practices may require special skills, additional labor or specialized equipment. They may require additional discussion with the tenant and modifications to the lease terms.[2]

Environmental Factors

Below are some of the specific environmental factors that should be considered when entering into a lease agreement.

Soil Conservation

Soil is the principal resource for the farm operation, and it is essential to the sustainability of your land. Practices and improvements that prevent runoff and erosion maintain the long-term productivity of the land.

Water Access, Quality and Management

Improving water quality by minimizing sediment and nutrient runoff protects drinking water, habitat and biodiversity, as well as recreational resources.

Flood Damage

Certain conservation practices, including conservation tillage, cover crops, buffer strips and wetlands restoration reduce the amount of runoff from rainfall. This decreases erosion on the farm and decreases water velocity and damage downstream.

Air Quality

Minimizing the release of particulates and noxious odors improves the health and quality of life in the surrounding community and encourages a more vibrant social and economic setting.

Wildlife Habitat

Certain farming activities can improve biodiversity, wildlife habitat and recreational opportunities both on the farm and off.

Waste and Nutrient Management

Proper storage and re-use of manure and other farm waste is an important part of any animal-based farm operation.

Leases often incorporate by reference statutory or regulatory prohibitions of certain farm practices. For example, leases typically require the tenant to adhere to any management practices dictated by a state's environmental agencies. A lease for land that has been conserved, or protected by an easement or conservation restriction, is likely to include a provision requiring the tenant to comply with the terms of the easement. Landowners may also require compliance with NRCS farm conservation plans or those of another USDA program. Leases for farms enrolled in any real estate tax abatement programs typically require that the tenant refrain from any practice that would jeopardize eligibility for the program.[3]

Addressing Non-Point Source Pollution in Vermont

Vermont has adopted a set of accepted agricultural practices to address non-point source pollution. When farmers follow these practices there is a presumption that they are in compliance with the Clean Water Act. A Vermont farm lease that requires tenants to follow accepted agricultural practices would, among other things:

- Prohibit the tenant from making any direct discharge of a pollutant into surface or groundwater.
- Require that barnyard, manure storage lagoons or animal holding areas be managed to avoid discharge of manure runoff into watercourses.

- Require that manure, fertilizers and pesticides not be stored in areas at risk for flooding.
- Prohibit spreading manure on fields between December 15 and April 1 without a special exemption from the commissioner of agriculture.
- Require that cropland be cultivated in a manner that results in an average soil loss less than or equal to two times the soil loss tolerance level.
- Require that agricultural waste be properly stored, handled and disposed of to avoid discharge of waste into waters of the state.
- Require a 25-foot buffer zone of perennial vegetation between row crop land and stream banks.

Find out about the regulatory scheme for reducing agricultural non-point source pollution in your state and determine whether liability for failure to comply lies with the landowner or the farm operator. If your state does not regulate agricultural non-point source pollution, you could incorporate or adapt another state's regulations into your lease.[4]

Conservation Plans

One of the simplest ways to include conservation practices in a lease is to incorporate an NRCS conservation plan. Conservation plans are sometimes required for participation in certain farm programs, but NRCS staff members are available to assist landowners who wish to develop a plan. These plans can be used to address soil erosion, nutrient depletion, pollution from runoff, and water use and control. Benefits of these programs include cost-sharing for conservation improvements, payments for providing environmental benefits, technical assistance, no-interest loans, rental payments, and purchases of conservation easements. There is no set plan that works for every piece of land; a conservation plan should be based on the circumstances of the land and the farm operation. Eligibility requirements and available incentives vary from program to program. A plan will prove most useful when it is developed with input from the landowner, tenant and NRCS staff. Contact your local NRCS office to find out more about the conservation programs and what is possible for your land.[5]

Other types of farm conservation plans may be developed by independent farm consultants. Such plans might be based on organic certification standards, holistic management or other approaches.

Land-Use Provisions

In a farm lease, the tenant is normally granted the right to use the land for agricultural purposes as he or she sees fit unless the landowner places restrictions on that right. Land-use provisions specify which fields are available for cultivation, what crops can be planted on cultivated fields, the maximum number of acres that can be planted to a specific crop, and the crop rotations the tenant is expected to follow. Such provisions can also be addressed by a conservation plan.[6]

Conservation plans can be used to address soil erosion, nutrient depletion, pollution from runoff, and water use and control. There is no set plan that works for every piece of land; a conservation plan should be based on the circumstances of the land and the farm operation.

Typical Conservation Provisions

Conservation provisions commonly found in long-term 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.[7]

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.
- Tenant will keep the lease premises neat and orderly. The landlord and tenant recognize the possibility that an abundance of 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 field work 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.

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1 *Sustainable Farm Lease, Drake University and Drake University Law School*

2 *Drake University*

3 *Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship, New England Small Farm Institute*

4 *Holding Ground*

5 *Drake University*

6 *Drake University*

7 *Drake University*

CHAPTER X

Landowner Checklist

From the time you first consider leasing your 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 your 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 your 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

_____ 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, swimming

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

_____ Conservation easement that restricts some uses and activities

_____ Zoning limitations and restrictions

_____ Liens, rights-of-way, easements

Identifying Your Interests, Purposes and Goals

Just as you need to determine your land's potential agricultural uses, you also need to decide what you and your family want from the land and from a potential farm operation on the property. Considering the following common landowner goals should help you establish your reasons for and interests in leasing your land. Some blank spaces are available at the bottom for you to name some of your own unique goals and interests.

_____ Addressing stewardship for your property

_____ Regular flow of income from your land

_____ Protecting the environment, including water quality, natural habitat, etc.

_____ Protecting or improving the scenic character of your property

_____ Partnering with a well-established, knowledgeable farmer with a good reputation so as to minimize potential problems.

_____

_____

_____

_____

_____

_____

A. 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 on your property; 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 you want on your property.

_____ Are you willing to permit a farmer to raise animals on your property? If so, what types (e.g. chickens, turkeys, sheep, cattle, pigs, etc.) and how many?

_____ What is your perspective or preference for organic farming practices, including the use of fertilizers and pesticides?

_____ Can the farmer bring the public onto your property as part of a CSA, pick-your-own operation or farmstand?

B. Can the farmer improve the property?

You also should consider the extent to which you are 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, high tunnels to extend the growing season, or animal shelters such as chicken coops

_____ Planting perennial or long lifecycle 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 makesimprovements to your property?

C. What role do you 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

_____ Establishing a community farm or community gardens

_____ Hiring a farmer and working with him or her on the farming operation

D. What compensation do you 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

E. 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

F. How will you find and select a farmer for your property?

_____ Initial search by word-of-mouth and contact with land linking organizations.

_____ Selection criteria clearly established

_____ 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?

G. 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 13 of this handbook.

RESOURCES

THIS PUBLICATION DREW UPON THE FOLLOWING RESOURCES WITH PERMISSION:

Farm Rental Assessment Checklist, University of Vermont Extension
www.uvm.edu/newfarmer/land/checklist.pdf

Farmland ConneCTions: A Guide for Connecticut Towns, Institutions and Land Trusts Using or Leasing Farmland, American Farmland Trust and University of Connecticut Extension
www.farmland.org/documents/FINAL_AFTFarmlandConneCTions_lo.pdf

Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship, New England Small Farm Institute
www.smallfarm.org/main/bookstore/publications/

A Legal Guide to the Business of Farming in Vermont, University of Vermont Extension
www.uvm.edu/farmtransfer/?Page=legalguide.html

Sustainable Farm Lease, Drake University and Drake University Law School
http://sustainablefarmlease.org/the-landowners-guide-to-sustainable-farm-leases/

THE FOLLOWING ORGANIZATIONS AND WEBSITES CAN HELP LANDOWNERS AS THEY CONSIDER LEASING THEIR LAND FOR AGRICULTURAL PURPOSES:

Connecticut FarmLink
www.farmlink.uconn.edu

Land For Good
www.landforgood.org

Maine FarmLink
www.mainefarmlink.org

New England Farmland Finder
www.newenglandfarmlandfinder.org

New England Landlink
www.smallfarm.org/main/for_new_farmers/new_england_landlink

New Entry Sustainable Farming Project Matching Service
http://nesfp.nutrition.tufts.edu/resources/matching.html

APPENDIX

Sample Leases

Two sample leases are included here. Each contains the basic, required elements of a farm lease. The second example has greater detail. Looking through these examples, landowners can get an idea of lease language and components, and see how leases can vary. Some leases are shorter, some considerably longer and more comprehensive.

These lease samples are for informational purposes. They can serve as a starting template and to stimulate planning and conversation. As with all legal documents, landowners should obtain professional consultation in executing lease agreements.

SAMPLE LEASE AGREEMENT
SOURCE: LAND FOR GOOD

SAMPLE LEASE AGREEMENT
SOURCE: VERMONT LAW GUIDE

Sample Lease Agreement

SOURCE: LAND FOR GOOD

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

1. The parcel(s) contained in this agreement are is/described as follows: [parcel location, acreage, bounds, features, condition, etc.]
2. The term of this lease shall be from _____ to _____ except as terminated earlier according to the provisions below.
3. The tenant agrees to pay a lease fee to the landowner of $_____ per acre or $_____ total, per year. The tenant agrees to pay such sum at the beginning of the lease term and on the anniversary thereof unless otherwise mutually agreed. A late penalty of up to [ ]%/month may be assessed on all late payments. This lease fee may be renegotiated annually.
4. Permitted Uses: The tenant is permitted all normal activities associated with the above purposes, including but not limited to: The tenant agrees to employ standard best management practices. It shall not be considered a default of this Lease if weather or other circumstance prevents timely practices or harvesting.
5. Prohibited Uses: The tenant shall not, unless by mutual agreement to the contrary, engage in any of the following activities on said parcel(s):

   _____

   _____

   _____

   _____

   _____

   _____

6. The tenant agrees to prepare an annual management plan for review by the landlord, complete annual soil testing, and apply amendments as indicated at his/her own expense. The tenant agrees to proper disposal of trash and waste. The tenant further agrees:

   _____

   _____

   _____

   _____

   _____

   _____

7. The [landowner/tenant] agrees to pay all taxes and assessments associated with this parcel.
8. The farmer agrees to provide the landowner with evidence of liability insurance coverage.

9. Either party may terminate this lease at any time with _____ month notice to the other party. The tenant agrees not to assign or sublease his/her interest.
10. The terms of this lease may be amended by mutual consent.
11. A default in any of these provisions by either party may be cured upon written notice by the other party within ____ days of receipt of such notice. Any disputes occurring from this lease may be resolved by standard mediation practices, if necessary.
12. Landowner retains his/her right to access the parcel(s) for the purposes of inspection with prior notification to the tenant.
13. Other special terms and conditions in this lease:

_____

_____

_____

_____

_____

_____

_____ _____

LANDOWNER SIGNATURE **DATE**

_____ _____

TENANT SIGNATURE **DATE**

Attachments may include: Plan of land • NRCS or other Farm Conservation Plan • Proof of insurance • Other documents as mutually agreed

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Sample Lease Agreement

SOURCE: VERMONT LAW GUIDE

Preamble and Statement of Purpose

THIS AGREEMENT ("Agreement") is made this _____day of _____, 20___, effective as of _____day of _____, 20___, between [Landowner], with a business address of _____ _____ and [Farmer], with a business address of _____ _____, to lease certain parcels of agricultural land for the purpose of farming activity as described more fully in this lease.

NOW, THEREFORE for good and valuable consideration stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Agreement to Lease.
[Landowner] agrees to lease to [Farmer] , and [Farmer] agrees to rent from [Landowner] the Premises (as defined in Section 2) on the terms and conditions stated in this Agreement and the attached Exhibits.

II. Description of Premises.
Certain real and personal property in [Town, State] commonly known as _____, consisting of the following:

_____

_____

_____

III. Lease Term, Renewal, and Termination.
The term of this lease shall run for a period of _____ years beginning on _____day of _____, 20___, and ending on _____day of _____, 20___.

Optional Renewal provision:
The parties shall have the option of renewing the lease for an additional _____ -year period. Renewal shall occur only upon [Farmer's] delivery to [Landowner] by _____day of _____, 20___, of a written request to renew the lease for the additional period. Upon said delivery, Landlord shall have until _____day of _____, 20___, to provide written notice of its acceptance or rejection of [Farmer's] renewal offer. If [Farmer] fails to deliver such renewal notice, the lease shall terminate at the end of the initial term; conversely, if [Landowner] fails to notify [Farmer] in writing of its decision, the lease shall automatically renew for the additional _____-year period.

IV. Permitted Uses.

A. [Landowner] permits, authorizes, and consents to [Farmer's] undertaking all activities incident to agricultural uses of the Premises, including:

(i) _____

(ii) _____

(iii) _____

(iv) _____

B. [Farmer] agrees to comply with [State's] "Accepted Agricultural Practices," which are incorporated herein by reference. [Farmer] and [Landowner] shall work cooperatively with the Natural Resources Conservation Service to develop a conservation plan for the farm. [Farmer] agrees to adopt all best management practices recommended by NRCS within a reasonable time frame identified in the conservation plan. The conservation plan shall be periodically reviewed by [Landowner] and [Farmer] to ensure compliance.

C. [Farmer] agrees to comply with all federal, state, and local laws, regulations, ordinances, decrees, and rulings in connection with the use of the premises and any agricultural or other activities conducted thereon, including but not limited to any and all regulations, directives, and procedures necessary to ensure that [Landowner] continues to qualify for Current Use status under the State's tax code.

D. [Farmer] may use the Farmhouse as a primary residence so long as this lease is in force. The rental of the dwelling shall be governed by a separate residential lease and both [Farmer] and [Landowner] agree that state law regarding residential rental agreements shall govern. Use of the residence is subject to the following conditions: [to be completed by parties]

(i) _____

(ii) _____

(iii) _____

(iv) _____

V. Prohibited Uses.

A. [Farmer] shall not, without the prior written consent of [Landowner] engage in any of the following activities on said parcels: [to be completed by parties]

(i) _____

(ii) _____

(iii) _____

(iv) _____

B. Consent to engage in prohibited uses, or to engage in uses not clearly permitted shall be obtained by submitting a written description of the proposed use including the location and scope of the proposed use. [Landowner] may approve, disapprove, require more information, or require certain modifications to the proposed improvement. [Farmer's] final written proposal including a clear indication of [Landowner's] assent and signed by [Landowner] shall constitute written consent of [Landowner].

VI. Rent and Taxes.

A. [Farmer] shall pay to [Landowner] without demand, rent in the amount of _____ per month (the "Rent"). [Farmer] shall deliver the rent by the first day of each month at the address specified in the Preamble. A late penalty of _____ [e.g., 5%] per month will be assessed on all late payments. [Farmer] agrees and acknowledges that the late penalty is necessary to compensate [Landowner] for lost interest, the opportunity cost of renting the property, and any legal fees or expenses incurred in enforcing its rights pursuant to this Agreement.

B. Prior to taking possession of the property, [Farmer] shall deliver to [Landowner] a security deposit of $_____.

Alternative Provisions
Crop share:

A. All costs and returns shall be divided between [Landowner] and [Farmer] as provided below.

(a) The [Farmer] shall pay as rent the shares or quantities of crops as indicated below:

Crop Acres Share paid as rent Place of Sale or Delivery

1. _____/_____/_____/_____
2. _____/_____/_____/_____
3. _____/_____/_____/_____
4. _____/_____/_____/_____

(b) [Farmer] shall consult with [Landowner] regarding the time, price, and other manner of sale of crops prior to any sale.

(c) [Landowner] shall pay the following share or quantities of expenses as indicated below:

Expense Share or Amount Date of Payment
Paid to [Farmer]

1. _____/_____/_____
2. _____/_____/_____
3. _____/_____/_____
4. _____/_____/_____

(d) [Farmer] shall consult with [Landowner] regarding any shared expenditure which exceeds $_____.

B. [Landowner] shall pay for all taxes and assessments on the Premises, with the exception of those taxes that are directly attributable to agricultural or other production- and sales-based activities being conducted by [Farmer] on the Premises.

C. If [Landowner] accepts an offer for a renewal term, the annual rent for the renewal term shall be adjusted using the CPI for the New England region in [year of renewal] as an index and the [first year of lease] as a base year (as set forth by the Government of the United States, Base Year = 1982–1984). The rent shall not decrease during the renewal term.

VII. Utilities

[Farmer] agrees to pay in a timely manner any and all utilities for use of the Premises, including, without limitation, electricity, fuel oil, gas services, telephone, trash collection, snow plowing, lawn mowing, water, sewer service, cable or satellite television reception, internet connection fees, and any other such services associated with the [Farmer's] use of the Premises and the Farmhouse.

VIII. Repairs, Maintenance, and Replacement

A. [Landowner] shall be responsible for major rehabilitation, repair, or replacement of the structural components and operating systems upon the premises which are pre-existing assets of [Landowner] and which are not short-term or cyclical consumables. [Landowner] shall not be responsible for minor or routine repairs or replacements. [Landowner's] responsibilities shall be understood to include, but are not limited to, the following:

(a) Structural component — Repair/replacement of all structural systems — foundations, floors, walls, and roof systems.

(b) Exterior fabric — General replacement of siding, trim, porches, and steps.

(c) Roofing — General replacement of shingles, flashing, gutters, downspouts.

(d) Water supply systems (household) — Replacement or major repair to wells or cisterns, replacement of non-repairable pumps.

(e) Waste treatment — Replacement or major repairs to toilets, holding tanks, leach fields.

(f) Heating, ventilating, and air conditioning — Replacement of major system components.

B. [Farmer] shall be responsible for all general maintenance and minor repairs of the buildings and their operating systems. Should [Farmer] and [Farmer's] agents or repair persons determine that a component or system is no longer able to be repaired and should [Landowner] concur in that judgment, [Landowner] will fulfill its responsibility to replace such a component or system. Short of the need for such replacement, [Farmer's] repair and maintenance responsibilities include, but are not limited to:

(a) Structural components — Diligent prevention or removal of any and all deteriorating conditions or factors.

(b) Exterior fabric — Minor or localized repairs, such as window glazing, glass replacement, or periodic repainting/staining.

(c) Roofing — Localized minor repairs/replacement of shingles, flashing, or gutters.

(d) Water systems (household) — All servicing and repair of pumps, water lines, fixtures, and the repair of water tanks and water heaters.

(e) Waste treatment — Unblocking/repair of toilets or sewage lines, cyclical and emergency septic pumping.

(f) Heating, ventilating, air conditioning — All filters, servicing, adjustments or repair.

C. Residential Grounds Maintenance — [Farmer] shall be responsible for maintaining residential grounds in an aesthetically pleasing manner at [Farmer's] sole expense. Aesthetically pleasing is understood to include, but is not limited to, regularly mowed and managed lawns and ornamental plantings and avoidance or removal of unsightly storage or parking of materials, equipment, and vehicles. [Farmer] is responsible for all aesthetic/utilitarian snow removal.

D. On or before January 31 of each year, [Landowner] and [Farmer] shall complete and sign a "repairs, maintenance, and replacement worksheet" indicating the repair and replacement work to be completed for that year; the estimated cost of each project; the share of the cost to be contributed by each; any labor to be contributed to the work by [Farmer]; and the date by which the work is to be completed. The total cost for repairs and maintenance, including the value of [Farmer's] labor in any given year, shall not exceed _____. The total cost of replacements in any given year shall not exceed_____.

IX. Improvements

A. [Farmer] shall not make alterations or improvements to the Premises without the written consent of [Landowner]. Consent shall be obtained by submitting a written description to [Landowner] of the proposed improvement, including its location, size, proposed use, and whether the improvement is to be severed from the property at the termination of the lease or is to be left on the property, and any other information that may be required by the landowner. [Landowner] may approve, disapprove, require more information, or require certain modifications to the proposed improvement. [Farmer's] final written proposal including a clear indication of [Landowner's] assent and signed by [Landowner] shall constitute written consent of [Landowner]. [Unless otherwise agreed by both parties, approved improvements shall be at the sole expense of [Farmer].

B. Maintenance and repair of [Farmer's] improvements — [Farmer] shall be responsible for all major and minor maintenance, repairs, or replacement of any and all alterations or improvements to the premises made under paragraph 9.1.

C. Improvements made under paragraph 9.2 that are capable of severance may be removed by [Farmer] at any time or within 30 days after termination of the lease even though they may be fixtures, provided that [Farmer] leaves in good condition that part of the farm from which such improvements are removed.

D. Improvements not capable of severance shall become the property of [Landowner] at termination of the lease without compensation to the farmer

Alternative to D: [Landowner] shall pay [Farmer] the depreciated value of any non-removable improvements at the termination of this lease, provided the initial cost of such improvement exceeds _____. Depreciation will be determined on the basis of the useful life of the improvement.

X. Successors and Assigns

This Agreement is binding on all persons who may succeed to the rights of [Landowner] including but not limited to heirs, executors, assigns, and purchasers, as applicable, and in accordance with this Agreement.

[Farmer] may not assign this Lease Agreement and the lease interest in the Premises represented herein, sublet all or any part of the Premises, or allow any person to occupy the Premises for an extended period without, in each instance, [Landowner's] express written permission.

XI. No Partnership Created

This lease shall not be deemed to give rise to a partnership relationship and neither party shall have authority to obligate the other without written consent, except as specifically provided in this lease.

XII. Insurance

A. [Farmer] will maintain general liability insurance policy with coverage of _____ and naming [Landowner] as an additional insured during the period of the lease. [Landowner] will maintain fire and extended casualty insurance coverage on the Premises in a sum of not less than _____. Evidence of insurance shall be provided to the other party.

B. [Landowner] agrees to maintain fire and extended insurance coverage adequate to replace or repair the dwelling or any other farm building or equipment regularly used by [Farmer] that may be destroyed by fire, flood, or other casualty loss and to replace or repair such structures in the event of loss as soon as practicable.

XIII. Default

A. The following events shall constitute default under this Agreement (for example): [to be completed by parties]

(i) _____

(ii) _____

(iii) _____

(iv) _____

B. A default under any of the provisions of this Agreement by either party may be cured by the defaulting party within 30 days of receipt of a notice of default. Failure to cure shall constitute grounds for termination of the lease or withholding of rent at the election of the non-defaulting party.

C. In the event the Lease is terminated due to the default of [Farmer]:

(i) All obligations of [Landowner] under this Agreement shall cease. [Landowner] shall take reasonable measures to lease the Premises to another tenant for a comparable term and rent.

(ii) Until [Landowner] enters into a new lease [Farmer] shall continue to pay the applicable rent until the end of the Lease Term. [Landowner] may retain a portion of the security deposit to cover his costs of re-letting the premises.

(iii) Rental payments received by [Landowner] from a new tenant will reduce the amount for which [Farmer] is liable to [Landowner].

(iv) Upon termination, [Farmer] agrees to yield possession of the premises within 90 days of the date of notice of default, reserving the right to re-enter the premises solely to harvest any crops that are the personal property of [Farmer} and are growing at the time of default.

D. In the event the Lease is terminated due to the default of [Landowner].

(i) All obligations undertaken by [Farmer] under this Agreement including the obligation to pay rent shall cease.

(ii) Upon termination, [Farmer] shall yield possession of the premises in a timely manner, reserving the right to re-enter the premises solely to harvest any crops that are the personal property of [Farmer} and are growing at the time of default. [Landowner] shall remit an amount equal to two times the [Farmer's] security deposit as liquidated damages and here agrees that such an amount is a reasonable approximation of the costs incident to moving a farming operation.

XIV. Dispute Resolution

A. Prior to taking any action in a court of law, the parties to this agreement agree to endeavor in good faith to appoint a dispute resolution committee to evaluate the dispute and make recommendations for its resolution. The Dispute Resolution Committee shall consist of the following three persons: (1) One adult person appointed by [Farmer] who is not a member, partner, director, or employee of [Farmer] nor an immediate family member; (2) One adult person appointed by [Landowner] who is not a director, officer, employee, or shareholder of [Landowner] or its directors; and (3) a neutral individual with expertise in farm-related matters, to be agreed upon by both parties after a good faith evaluation. The Dispute Resolution Committee shall, within 90 days of its formation and after reviewing written submissions and any supporting evidence submitted by both parties, make findings of fact and suggestions for resolving the dispute to be delivered to the parties in writing. The parties may accept the resolution recommended by the committee or propose an alternative resolution. The parties, however, hereto agree and acknowledge that the Dispute Resolution Committee's findings of fact shall be presumptively valid with the burden resting on the complainant in any legal proceeding to demonstrate otherwise. [Farmer] and [Landowner] each agree to assume 50% of the costs of the Evaluation Committee in the event such Dispute Resolution Committee is resorted to.

XV. Right of Entry

[Landowner] may enter the Premises at reasonable times in order to examine the Premises, inspect repairs or alterations, and replace mechanical or other systems. [Landowner] will give [Farmer] 48 hours prior notice of such entry. In the event of an actual or apparent emergency, [Landowner] may enter the Premises at any time without notice. [Farmer] will not change any lock or install additional locks without [Landowner's] prior written consent and without providing [Landowner] a copy of all keys. Keys must be provided on the date the lock(s) are added or/and changed.

XVI. Severability

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

XVII. Merger

This Agreement represents the entire agreement between the parties. [Landowner] has made no representations other than what is contained in this Agreement.

XVIII. Amendments

No change in this Agreement shall be effective unless it is in writing and is signed by both [Landowner] and [Farmer].

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

[Landowner]
By: _____
[LANDOWNER] WITNESS

[Farmer]
By: _____
[FARMER] WITNESS

STATE OF VERMONT

_____ COUNTY, SS.

At _____ in said County this _____day of _____, 20___, _____ [Landowner] _____ personally appeared, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of _____.

Before me, _____

Notary Public

[SEAL] My commission expires: _____

STATE OF VERMONT

_____ COUNTY, SS.

At _____ in said County this _____day of _____, 20___, _____ [Farmer] _____ personally appeared, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of _____.

Before me, _____

Notary Public

[SEAL] My commission expires: _____



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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.