



Holding Ground:

A Guide to Northeast Farmland Tenure and Stewardship

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THE NEW ENGLAND



SMALL FARM INSTITUTE

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Preface And Acknowledgements

A serious exploration of alternative ways to structure farmland tenure in the Northeast began during the last decade when the first “farm linking” programs were established in New England, New York, Pennsylvania, and Vermont. Initially, these programs simply linked farm owners and farm seekers. However, staff of the various farm linking programs quickly recognized that simply matching appropriate parties didn’t ensure successful transfers. They also realized that the traditional outright sale model was not the only—and certainly not always the best—method to transfer farms. In 1999, the New England Small Farm Institute (NESFI), sponsor of New England Land Link, published *Farmland Transfer and Protection in New England: A Guide for Entering and Exiting Farmers*. This guide addressed issues arising from alternative tenure models. Other organizations, including Equity Trust, the E.F. Schumacher Society and the Institute for Community Economics were simultaneously investigating non-traditional land tenure.

During that same time period, organizations such as the Intervale Foundation in VT, and NESFI in MA, developed secure tenure arrangements and stewardship standards for farmers on land that each organization managed. Farmers and landowners began to ask these organizations about tenure and transfer options and requested lease models and templates. Other land-based organizations expressed interest in making land available to farmers without the costs or risks associated with ownership. These organizations realized that the legalities and logistics surrounding non-ownership tenure models are formidable.

Clearly, there was a need for further work on this topic. With grant support from the U.S. Environmental Protection Agency, Region I, and the Growing New Farmers Project, funded by USDA, the Intervale Foundation and NESFI have developed this guide. For the Intervale Foundation, this was an opportunity to further develop its on-site demonstration model of farm tenancy, farm

incubation, and land stewardship. For NESFI, the research involved helped shape its long-term lease with the Commonwealth of Massachusetts and its sub-lease agreements with the farm partners on its 400-acre site. For both organizations, this guide is a rich resource for working with farm seekers and landowners throughout the region.

The sponsoring organizations worked with fifteen contributing authors. Annette Higby, an attorney specializing in agricultural law and land tenure, served as lead author of several chapters and legal researcher for the project. Other professionals provided specialized expertise. In their case studies, farmers, private landowners, and land trust representatives offered rich and often poignant personal accounts of their experiences in this relatively uncharted territory of non-traditional farmland tenure.

In addition to conducting a thorough review of the resources on this topic, the authors were careful to remain grounded in real-life experiences. They conducted focus groups with farmers who had non-ownership tenure agreements, as well as private and organizational landowners who were committed to exploring non-ownership tenure. Drafts of the guide were reviewed by over a dozen farmers, landowners, and service providers.

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KZR: I am grateful to all the farm seekers, owners and managers with whom I have considered the challenges and solutions to farmland tenure in the Northeast and beyond. Thanks to Annette and Andrea for their patience and creativity, and to the Intervale Foundation and the New England Small Farm Institute for their vision. Special thanks to the farm link programs, and to those who have shared their resources and supported this work: Mike Bell, Judy Gillan, Liz Henderson, Warren Hubley, Joy Johnson, Steve Richards, Matt Rulevich, Miranda Smith, and G.W. Stevenson.

AW: When I began to develop the concept for this guide, I was working for the Intervale Foundation as the Director of Programs. It was there that I learned of the enormous need for farmers to find secure access to land in order to fulfill their farm dreams. I am very grateful to Kathy Ruhf for her collaboration and for providing the necessary structure and background to make the vision a reality. I also want to thank Annette Higby for her endurance and outstanding attention to detail on a project that became larger than any of us had imagined. I acknowledge with appreciation all the contributors to this publication. Without their efforts and the shared belief that this work is an important piece of a strategy to save farms in the Northeast, this project never would have happened. Finally, I want to thank my husband, Simon, for his constant support and good advice.

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About the Sponsoring Organizations

The Intervale Foundation The Intervale is an innovative community of farms and land-based ventures located within the city limits of Burlington, Vermont. The Intervale is home to more than a dozen independent, organic farms, a composting operation, and a conservation nursery. This historic 700-acre site is a working laboratory that links farming's past, present, and future. To learn more, visit www.Intervale.org.

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The New England Small Farm Institute (NESFI) was founded in 1978 to promote the viability of our region's small farms. It develops and delivers innovative, farmer-guided programs and resources, provides direct assistance to aspiring, new, and developing farmers, and advocates for new farmers and sustainable, small-scale agriculture. New England Land Link, a NESFI program, assists farm seekers and farm owners with farm access, tenure, and transfer. NESFI manages over 400 acres of public land as a small farm demonstration and training center, and leases parcels to several independent farms.

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Holding Ground: A Guide To Northeast Farmland Tenure And Stewardship

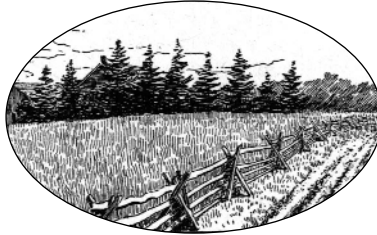
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Introduction



Equitable partition of land is the necessary basis of all self-sustaining agriculture. This partition and use of land may be in the form of ownership or in the form of right to hold the land for a specified time. The ownership may be of different degrees: the owner may have unlimited right to sell and to bequeath, or he may be bound by certain statutory restrictions. Likewise, the rental of land may be of different degrees and kinds, and in some cases it may amount to practical ownership. These varying forms of land partition have arisen with the evolution of society.

LIBERTY HYDE BAILEY
CYCLOPEDIA OF AMERICAN AGRICULTURE
VOLUME IV FARM AND COMMUNITY
CHAPTER V LAND AND LABOR
1909

Setting the Context

Nearly a century ago, the famous horticulturist, Liberty Hyde Bailey, captured the essence of agricultural land tenure in the above quote. Today, as in 1909, farmland ownership and tenancy are complex issues, laden with cultural, political, economic and emotional "baggage." To ensure a viable future for farming, communities must address these issues head-on.

It is increasingly difficult and often impossible for people who want to farm to purchase the land to do so. Traditional methods of farm succession are

no longer adequate to address contemporary legal and financial complexities. In many cases, exiting farm owners cannot afford to pass the farm to the next generation in a way that will ensure that it is farmed. In one study, 27% of farmers report that they do not intend to retire!¹ Without adequate retirement plans, the future of the farm is threatened.

Part of the problem is the long-term trend of declining farm profitability. Fifty years ago, margins in farming ranged between 30% and 40%. Interest rates for farm purchase loans were low. The result was that one could borrow money, purchase a farm,

and repay the loan in as little as three years. Today's lower margins and higher interest rates make it virtually impossible to repay a farm purchase loan in thirty years.

Particularly in the Northeast U.S., farm succession and secure land tenure are additionally challenged by the high price of good farmland—some of the highest farmland values in the country. And there is additional pressure on good farmland. Development is converting precious farmland to non-farm uses at an alarming rate. The percentage of farmland lost in the twelve Northeast states was 55% higher from 1992-1997 than from 1987-1992. When farmland is lost, we lose more than our capacity to produce food and fiber; we also lose many environmental, social, cultural, aesthetic, economic, and quality-of-life features that accompany working landscapes.

Competition for good farmland makes it difficult to own, and it also makes it difficult to rent. Rental land is less and less available, and in some areas, rental rates have sky-rocketed. But even more problematic is the insecurity inherent in most farmland rental arrangements. With the typical annual, hand-shake rental agreement, farmers are less likely to invest in the land, grow their enterprises, or contribute to the community.

Despite the obstacles, there are many people who want to farm. Increasingly, new farmers are coming from non-farm backgrounds. This means they do not have farms to go back to or inherit. New farmers of all backgrounds need access to adequate farmland and they need secure tenure. They don't necessarily need to own the land to begin with, or ever.

Along with farm families, there are non-farming owners of agricultural land. They may be heirs of a family farm. They may be private landowners, conservation organizations, governments, or public agencies. Some of these landowners do not want to sell the land but want, for various reasons, to see it

used productively. They have very few options to meet their objectives.

Landowners and land users need tenure agreements that address their values and goals regarding the care of the farm. Non-ownership tenure should not be an obstacle to long-term stewardship of the resource—the agricultural soils, water, vegetation, and other natural features of the farm property.

As a society, we need to rethink farmland tenure. We need a new ethic that fosters farmland access, security, affordability, and investment. We need models that enable secure tenure for those who do not choose to purchase farmland. As important, we need models that encourage and reward stewardship on all farmlands, regardless of tenure. We need to create the tools for these arrangements and build the skills of professionals who help people to negotiate such agreements.

New approaches and tools can help to save agriculture and foster farming in our region in several ways. First, alternatives to

buying land offer economic security to new and developing farmers. Eliminating substantial down-payment requirements and enormous debt can make developing farm operations more economically viable. Providing alternative ways for farmers to acquire land can help preserve the working landscape and associated amenities. Secure tenure agreements can foster long-term stewardship of the natural resources of the farmed property. Lastly, alternative tenure arrangements can make it easier for tenant farmers to become established and eventually purchase land in communities that are familiar with them and their products.

Using this Guide

The purpose of this guide is to promote models and mechanisms, other than outright ownership, for secure tenure on Northeast farmland.



It is intended for farmers who are looking to get onto farmland, owners and managers of agricultural properties, and service providers who assist with farmland acquisition and transfer. The guide is meant to be practical. It provides simple explanations of various models and includes useful worksheets and insightful case studies to bring the concepts to life. Readers will come away with new ideas and many of the ingredients to shape a successful tenure agreement.

Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship contains a lot of material. Some of it is hard to digest. It is not likely that you will read through from cover to cover. Please use this guide as a resource; go to the sections that interest you, and make notes in the margins. The worksheets and lease templates are practical tools to help all parties come to a successful tenure agreement. Feel free to copy any worksheets you might find useful in working with service providers or clients.

The beginning of each chapter highlights its contents, so you can get a sense of what's ahead. Certain topics are cross-referenced to other chapters, and the resources mentioned in the text can be found in the Selected Resources section in the Appendix.

Chapter II sets the context for our exploration of non-ownership tenure. It examines the history of farmland tenure in the U.S. and opens a discussion about some of the complex ethical and political issues surrounding land use and ownership.

Chapter III looks at many of the issues and considerations surrounding non-traditional land tenure from the point of view of the landowner and the farmer. This chapter is a good doorway into the more technical nature of subsequent chapters. You will find helpful worksheets and checklists to get started.

Chapters IV and V go into detail about short-term and long-term leasing. Each contains a dis-

cussion of advantages and disadvantages of the lease model as well as technical material about the contents of a lease document. There are several case studies and worksheets.

Chapter VI investigates the ways that farmers can work toward land ownership. It includes information about the use of leases in gradual transfers of property and in succession planning. You will find case studies and a worksheet.

Chapter VII focuses on farmland stewardship and the relationship between land tenure and land management. The ways that owners and users of agricultural land negotiate the expectations and standards for land management are important aspects of farmland tenure. Landowners and farmers will find material in this chapter that is both useful and challenging.

Chapter VIII further explores many of the practicalities that surround these kinds of tenure agreements. You will read about how to negotiate

an agreement and about monitoring and enforcement issues.

In the **Appendix** section, you will find useful templates for a short-term lease and a long-term lease. There are also sample stewardship standards. Finally, there is a selected list of resources—written materials and organizations—divided by topic.

What is Non-Ownership Tenure?

The word tenure comes from the Latin *tenir*, which means "to hold." There are many ways to hold land. The most common form in many cultures, including our own, is private ownership. Land-use scholars talk about property ownership as a bundle of rights. You have many rights associated with ownership—cutting down the trees, erecting structures, extracting minerals, hunting and fishing, and so on. However, there are limitations to that bundle;

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laws and regulations, such as zoning restrictions and eminent domain, limit the landowner's use.

Among the rights associated with property ownership is the right to let others use it. This right enables those who do not own the property to obtain certain rights to its use. Consequently, a tenure relationship has more to do with assigning rights than actual ownership.

Non-ownership tenure is not a new concept. In the U.S., about half of farmland is rented. This guide examines this traditional form of non-ownership farmland tenure—short-term, unwritten rental agreements. It also invites readers to consider less traditional forms of non-ownership tenure such as long-term leases.

Non-ownership tenure models are built on the assumption that one does not need to own the property in order to use it, care for it, and benefit from it. This is the central thesis of non-ownership tenure and of this guide. This does not imply that ownership is bad; on the contrary, land ownership is a value and a goal for most farmers. However, it is not a goal for all farmers. Nor is it a reality for many farmers, particularly as they begin their farm operations.

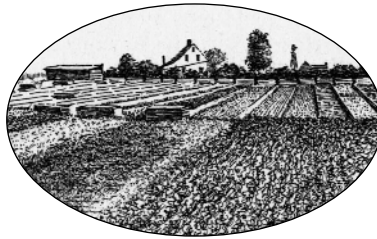
Conversely, there are many people (and some organizations) that own land that they do not or will not farm. Yet, they have a desire to see the land used for productive agriculture. For them, it makes sense to assign the rights out of their "bundle of land uses" to another party.

Dividing the rights and responsibilities of land use becomes more important than who owns the title. This Guide explores *how* to divide those rights and responsibilities in ways that meet the needs of both parties to the agreement—as well as the needs of the productive natural resource.

Endnotes: Chapter 1

1. Baker, John and Duffy, Michael, "Farm Succession in Iowa," Iowa State University 2003.

Principles and Challenges of Farmland Tenure



This chapter sets the historical and policy context for our exploration of non-ownership tenure. In this chapter you will find:

- ▶ *Information about the history of farmland tenure and policy in the U.S.*
 - ▶ *Current trends in farmland ownership in the Northeast.*
 - ▶ *Discussion about many of the barriers to acquiring farmland.*
- ▶ *Discussion about the need for a new ethic of land ownership to ensure access, affordability, security of tenure, and stewardship.*

A Brief History of Farmland Tenure

The Early Colonists

Native Americans living in what is now New England thrived under a complex system of land use based on hunting, fishing, gathering, and farming. Their land boundaries were dictated by the change of seasons, movement of game, and a need to move on once their agricultural plots became worn out. The early colonists did not understand or respect the Native Americans' mobility and uninterest in acquiring possessions. To the colonists, Native Americans appeared lazy and undeserving of the

great abundance of this land. They failed to recognize or appreciate that the stewardship practices of the Native Americans were an important factor in sustaining such bounty.

The early colonists believed that private ownership was the best way to make sure that land would be improved and used fully. The land under grant from the Crown to the Massachusetts Bay Company, for example, was first distributed to groups of individuals who formed towns and then to individuals who were granted the right to use the land for a particular economic purpose. That purpose was a function of the land's best use and the

size of the grant was a function of the recipient's capacity to work it. "Land was allocated to inhabitants using the same biblical philosophy that had justified taking it from the Native Americans in the first place: individuals should only possess as much land as they were able to subdue and make productive."¹

Later, the Colonists developed a system of legal description for land and a recording system that made it possible to buy and sell real estate. Once land could be traded like any other commodity, it could also be used to store and accumulate wealth. And that, as they say, has made all the difference. The value of farmland as an appreciable asset, quite apart from its productive value, has—more than any other factor—dictated who owns it, who works it, and who inherits it.

The Jeffersonian Ideal of Land Ownership

Agricultural and tenure patterns in the United States—who owns and controls our productive land base—have shaped our economic, social, and political history—even our landscape. Our Constitution, laws, and public policies have long favored, though not always successfully fostered, the Jeffersonian ideal of widely dispersed ownership of farmland by family farmers. Jefferson saw this model of ownership as essential to democracy. He believed that only with security of tenure and the economic security that it provided could there be freedom to speak one's mind.

If dispersed ownership was the ideal, concentration of land ownership was its evil antithesis. The founders of this new democracy were determined to avoid the poverty and political oppression they had experienced under a landed aristocracy in Europe. Many of the English legal strictures that allowed land to stay in the hands of a few wealthy families in perpetuity were outlawed. These "rules against perpetuities" are still in force in most states and in some cases, are enshrined in the state's constitution.

The Homestead Act

Beliefs about the importance of private ownership of property had an indelible impact on the nation's settlement policies. The Homestead Acts are probably the most significant example of a public policy favoring dispersed ownership. The first of these was

passed in 1862 and promised 160 acres of public land free to any family willing to live on it for five years and improve it. The Homestead Acts settled 250 million acres of the United States until the last of the public land was withdrawn from its reach in 1935.

While our public policies have fostered the freedom to own land, they do not guarantee freedom from debt and foreclosure. By the late 1930s, the Jeffersonian ideal was in serious trouble. In 1937, a report by the Roosevelt administration on farm tenancy² graphically documented the displacement, landlessness, and poverty among the nation's small farmers as well as the environmental degradation, evidenced by the dust bowl, that drought and high levels of absentee ownership had combined to create.

By 1940, tenant farmers, rather than landowners, tilled nearly 40% of the nation's farmland. Roosevelt's Committee on Farm Tenancy blamed a host of environmental and social evils on absentee ownership and the prevalence of landless farm families. In 1947, an anthropologist named Walter Goldschmidt³ documented a lack of public participation and consequent weaker public institutions in towns with a high percentage of tenant farmers compared to those characterized by dispersed ownership and small family farmers. Goldschmidt found that tenants were less likely to contribute time and energy to community institutions, and as a result, the communities were not as economically or socially vibrant as those where land ownership was the norm. Many states responded to such high rates of tenancy by passing laws that favored land ownership over leasing, including a ban on long-term leases in some states. Policy makers restricted a landowner's right to lease land for a long term to encourage them to sell it instead.

Policy makers also responded to the dust bowl by developing a series of federal programs intended to help tenant farmers purchase a farm of their own. The programs were intended to help resettle farm families who had lost their farms through foreclosure. Changing land tenure patterns were considered as important as soil conservation programs in stopping the serious rates of soil erosion. In the late 1930s, the federal Farm Security Administration, under the Tenant Purchase Program, put 12,000 landless families onto a farm

of their own.⁴

Today's Farm Services Agency, which provides agricultural credit and credit guarantees, is the modern-day offspring of the Resettlement Administration. The Resettlement Administration was renamed the Farm Security Administration in 1937, the Farmer's Home Administration in 1946, and the Farm Services Agency in 1991. Whatever the name, its role has been the social and economic rehabilitation of the rural poor by providing economic opportunity and entry into agriculture. Land ownership, as the best way to conserve agricultural resources and promote economic democracy, has always been the heart of its mission.

Land Values and Land Tenure in the Northeast U.S.

Farmland is, indeed, a terrific investment, with a rate of return rivaling any stock in the S and P 500. Farmland and farm building values in Vermont, for example, rose nearly 600% from 1969 through 1997, without accounting for inflation. It isn't any wonder that farmland is also the farmer's retirement plan, or that non-farm heirs expect a share of what is quite probably the family's largest asset. And non-farmers also invest in farmland to enjoy the appreciation in the land's value.

Only about a quarter of the farmers in the Northeast own all the land they farm. Nearly two-thirds farm land they rent along with land they own. Eleven per cent of farmers in the Northeast are tenant farmers who do not own any farmland.⁵

Escalating farmland prices coupled with a lack of access to the capital necessary to purchase farm assets and declining farm profitability are the biggest barriers to land ownership in the Northeast.

Young farmers have always been a minority, but the trend is worsening. The average age of farmers in the Northeast (as nationally) is 55, and there are twice as many farmers over the age of 65 as under the age of 35. USDA estimates that nearly 70% of the farms in the U.S. will transition over the next 15 years, and some 400 million acres of farmland will change hands in the next 20 years.⁶ If current trends in the Northeast are any indication, this

FSA's "Experiment"

FSA goals and public purposes have fostered a family farm system of agriculture based on the Jeffersonian ideal of widely dispersed private ownership of farmland. However, the FSA experimented with other forms of land tenure in the late 1930s and early 1940s. FSA, then called the Resettlement Administration, leased nearly 150 government-owned farms to family-sized operations. Another 15 "large scale" and government-owned farms were operated as corporate-cooperative farms that employed 300 low-income farm families. The farmers received a wage and a share of the annual profits based on labor contributed. Ten of these cooperative farms enjoyed 99-year leases. The agency explained the experiment as a way for small farmers to enjoy the advantages of a large-scale operation without having to accumulate debt. The experiment led to a congressional investigation that threatened FSA's existence and a report that described the farms as collective, communistic, and un-American and recommended that the program be abandoned. Legislation in 1944 prohibited FSA from continuing the experiment and reaffirmed the policy goal of widely dispersed, fee simple ownership.

land is less and less likely to end up in the hands of farmer owner-operators.

While fewer next-generation farmers are able to acquire good farmland, a significant and growing percentage of the productive agricultural capacity of the Northeast is owned by those who do not farm it.

- The number of acres owned by "non-operators" has nearly doubled over the last decade. The 1987 Agricultural Census reported that non-operators owned 5.6 million acres; by 1997, that figure had risen to 10.2 million acres.
- 44% of the landowners controlling 38% of the productive cropland, orchard, pasture, and woodland in the Northeast are not involved in their day-to-day operation.

- These non-operators own the most valuable land with an average value per acre of \$3,805—17% higher than land owned by “operators.”

In 1997, nearly 60% of the land owned by non-operators was leased. Who are these “non-operators?” Many of them are retired farmers no longer actively engaged in farming. But we also know from national data that an increasing percentage of these landowners are people who have never had any personal or professional connection to farming. New farmers must compete with established farmers and non-farming land purchasers for farmland. Giving them a “leg up” in this contest has always required a public commitment to lend the capital and bear the risks inherent in serving new and beginning farmers. Previous generations who were unable to obtain credit through commercial sources had access to low-interest direct loans and management assistance through the FSA.

FSA still tries to serve the needs of new farmers. It has no fewer than 6 programs or priorities aimed specifically at beginning farmers and has earmarked 70% of its direct farm ownership funds and 35% of its direct operating loan funds to beginning farmers. But FSA’s overall role in direct farm lending has dwindled to such an extent that today’s beginning farmers have decidedly less opportunity and public support than previous generations. In 1987, FSA held 14.8% of all operator debt in the Northeast. By 1997, FSA’s share dropped to just 6.7%—not much ahead of implement dealers as a source of credit.

What long-term social, environmental, and economic consequences can we expect from these farm tenancy and ownership trends? Prime farmland left idle tends to slowly revert to forestland or be converted to non-farm uses such as residential and commercial development that creates its own set of environmental and economic consequences. Many environmental organizations view farm conservation and viability efforts as essential tools in the fight against sprawl. As a region, our potential agricultural production will decline as the already limited agricultural land base is lost forever. Rural and peri-urban communities that depend on agriculture for their economies as well as such non-market goods as open space, wildlife habitat, recreation, scenic amenity, and cultural richness that

Trends in Value of Farm Land and Buildings per Acre in the Northeast

	(\$) 1969	(\$) 1997	% Increase
United States	194	933	381%
Connecticut	921	5,949	546%
Delaware	499	2,660	433%
Maine	161	1,190	639%
Maryland	640	3,176	396%
Massachusetts	565	5,207	822%
New Hampshire	239	2,250	841%
New Jersey	1,092	6,642	508%
New York	273	1,284	370%
Pennsylvania	373	2,390	541%
Rhode Island	734	5,885	702%
Vermont	224	1,520	579%

USDA, NASS

contribute to a desirable quality of life will irreversibly decline. Such decline is reported and documented throughout the country.

Today, the Jeffersonian ideal of widely dispersed ownership of farmland by family farmers is profoundly threatened. Concentration of land ownership is increasing, as is absentee and non-farmer ownership. In many parts of the Northeast, the price of farmland is far beyond what an aspiring or developing farmer can afford. To Jefferson, and to most of us in this culture, ownership is the most secure form of tenure. In contrast, farm tenancy is insecure for a majority of farmers who rent land. Most farm tenancy agreements are oral and can be terminated at the will—even the whim—of the

landowner in most instances. Verbal agreements will not bind heirs upon the death of the landowner—and stories of evictions by heirs abound. Many landowners holding farmland for its development potential are unwilling to enter into a long-term arrangement with a farmer. This lack of security can have serious consequences for the farm business, the community, and the land itself.

Most agricultural leases in the Northeast, as in the rest of the United States, are short-term, year-to-year, and verbal. Short-term tenants have few incentives to rotate crops, plant green manures, consciously build soils, or implement other conservation measures. In fact, they feel pressure to mine the land to maximize a quick return. Tenants with a year-to-year lease on a barn or other farm structure aren't likely to repair or maintain it unless it will make a difference in their short-term income stream. Even farm heirs farm differently depending on whether there is a clear farm business succession plan or estate plan. And most lease agreements, if written at all, are silent on the subject of how to treat the land.

There are indeed some advantages to well-designed and well-written shorter-term lease agreements. These types of arrangements have long been used to advantage by farmers expanding or starting an operation with minimal capital investment. A good short-term agreement can also enhance good stewardship.

But at what point and in what ways do the broader trends in land tenure discussed in this chapter begin to concern us on a public policy level? In the 1930s and 40s, farm tenancy rates of 40% were recognized as a social, economic, and environmental crisis. Today, nearly 40% of our productive agricultural capacity in the Northeast is owned by those who do not farm it. How can we adapt to these ownership trends in ways that increase opportunity in agriculture and provide equitable, secure, and affordable access to farmland?

A New Ethic – New Models and Partners

Individuals, organizations, and public and private landowners are beginning to respond to these challenges in some very positive ways. Private landowners can substantially increase opportunities for both short- and long-term access to farmland by leasing their land to new farmers. Landowners willing to

enter into short- or long-term leases on parcels large or small can play a significant role in the creation of successful new farmers. Owners of prime farmland can benefit their land and the entire community by providing economic opportunity, increasing local food production, and contributing to regional food self sufficiency.

Public education plus financial and tax incentives which reward landowners for leasing to new farmers can help to further this ethic. Nebraska, for example, provides an income tax credit for landowners who lease to quali-

fied beginning farmers. Vermont requires that non-farm landowners who participate in the current use real estate tax reduction program for working agricultural lands have a three-year written lease with a farmer.

Farm linking programs in the Northeast connect farming and non-farming landowners with farm seekers, assisting parties to negotiate a variety of tenure arrangements. Organizations such as the Intervale Foundation (IF) in Vermont and the New England Small Farm Institute (NESFI) in Massachusetts are pioneering non-traditional tenure models. As landlords, they provide affordable access to land, equipment, and mentoring to beginning and developing farmers. For example, NESFI has a long-term lease from the state to manage public land which they in turn sub-lease to farmers. Such efforts have provided a model for other organizations. The Northeast Organic Farming Association of New Jersey is considering

**HOW CAN WE
INCREASE OPPORTUNITY
IN AGRICULTURE AND
PROVIDE EQUITABLE,
SECURE, AND AFFORDABLE
ACCESS TO FARMLAND?**

developing a similar program.

Institutional landowners can also play a role in fostering new farm enterprises. Towns, universities, religious organizations, and other public and private entities with control over agricultural resources can re-evaluate current uses in light of this perspective. Middlebury College, with significant land holdings in Vermont, developed a policy to guide access to and use of its agricultural lands. The Conservation Commission of Lincoln, Massachusetts, developed guidelines to ensure good stewardship of town-owned agricultural land that is rented to farmers. National Park Service land in the Cuyahoga Valley (Ohio) is being offered to farm families with 50-year leases in an effort to re-establish and rehabilitate a working agricultural landscape. We have included many of their innovative lease provisions in this publication. (See for example, Appendix C.) Increasingly, land trusts are playing an important role in providing more affordable access to farmland, either as holders of easements or as landowners leasing to farmers.

Many people involved in agriculture, including many non-farming owners of agricultural land in the Northeast, are also looking for, or already experimenting with, new tenure models that sustain the health and integrity of the natural resource base by avoiding the economic, social, and environmental consequences of insecure tenure. They are looking for tenure tools that foster successful farm succession within or outside the family. In the Northeast, long-term leases and other non-traditional tenure arrangements are being used to keep land in active agricultural production on terms that provide both economic opportunity and security of tenure.

Most of these models seek to mimic many of the benefits of fee simple ownership by giving the farmer long-term control over the resource. And many, such as the community land trust (CLT) model, also try to limit some of the more potentially detrimental aspects of fee simple ownership, most notably tendencies to treat land as a commodity by using it to store wealth or rely upon its appreciation to build wealth. For example, conservation easements, which are increasingly common, limit a landowner's development rights. Long-term ground easements under CLT model may also limit or re-capture appreciation in improvements as a

way to assure long-term affordability, although there are many, many variations on the CLT theme.

These “new” models emulate the values reflected in the Homestead Act and other public policies that were designed to give the people who work the land control of it while providing economic opportunity, fostering long-term and secure land tenure, and encouraging good land stewardship. These same community values can be embedded in most farm tenure relationships and tools.

A new ethic for agricultural land tenure would address:

- Access
- Affordability
- Security
- Stewardship

Access to Farmland

Rising land values, lack of capital, and declining farm profitability have all conspired to keep farmland out of the hands of many new farmers. It hasn't stopped them from seeking the opportunity to farm, however. In fact, for most land linking programs in the Northeast—programs that try to link landless farm seekers with retiring, exiting, or non-farming landowners—the farm seekers significantly outnumber the landowners. If conventional landownership isn't a likely option for those who have the desire, training, and skill to farm, we need to find other types of tenure to give these people access to farmland.

Security of Tenure

Security of tenure—short or long—is essential to good stewardship and good business. A lease doesn't have to be book-length to provide this kind of security, but it does need to be in writing. Our cultural preference for unwritten, year-to-year leases must give way to carefully negotiated, well-written and well-understood legal documents that give land owners and land users legally enforceable rights. Through education or legal requirements, we can foster understanding of the importance of a written lease.

Long-term security of tenure benefits farmers in many ways. It lengthens the horizon for both business and resource planning because it allows the farmer to capture the benefits of good steward-

Common Ownership: Back to the Commons

The relationship of the community to the land is the defining characteristic of many contemporary non-ownership arrangements. Freyfolge, for example, argues that, “Private property is an evolving and changeable cultural creation ... and as a form of state-sanctioned power is justifiable only so long as it contributes to our overall well-being.”⁷ Proponents of the community land trust (CLT) model firmly believe that land should belong to the community, and they have developed models that place land in common ownership while fostering social and/or environmental goals. Long used in the affordable housing realm, ownership of the land and improvements are split, with the homeowner paying a ground rent to the community land trust, which retains ownership of the land. In the Northeast and elsewhere, several examples and variations of the community land trust model are being used in the context of agriculture.

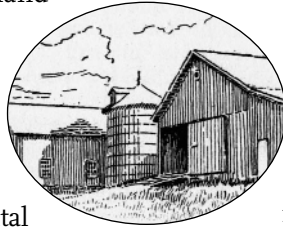
Under the CLT model, the “community” owns and democratically controls how and by whom the land may be used. The ground lease typically puts limits on the resale price of the home to ensure affordability for the next owner/occupier. Members of the community govern together as owners in common. Members usually include the land users and other members of the community who have a stake in how the land is used. “Community” can be defined geographically, as in a town or region, or on the basis of common values and goals.

Proponents of private property ownership argue that common ownership leads to the “tragedy of the commons,” a notion popularized in a 1968 article by Garret Hardin. Hardin’s article, a treatise on the evils of overpopulation, uses an example of a herdsman using the community commons for grazing to

illustrate his point. “...the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.”⁸

Common ownership does present challenges related to our inherent tendency to act in our own self-interest. A land resource owned by all may be cared for by no one. And a land resource that is owned by all is likely to be overused by some. In *Governing the Commons, The Evolution of Institutions for Collective Action*⁹, Elinor Ostrom examines the conditions under which entities can most effectively steward so-called “common pool resources” when all “face temptations to free-ride, shirk, or otherwise act opportunistically.” A set of simple rules governing access and use of the resource, agreed to by all and easily communicated to new members, is essential. Ironically enough, another key ingredient Ostrom identifies is that each member of the community has mutually and legally enforceable *property rights* in the common resource. The model CLT ground lease and by-laws are not simple, but they do define the rights of community members in the land.¹⁰

We’re a long way, legally and culturally, from having a common understanding of the how best to define rights and responsibilities under common ownership. The concept, however, may represent the “new frontier” in addressing many of the social and environmental shortcomings of private property.



ship and to enjoy the full useful life of investments in infrastructure. It can also serve as a legacy to the next generation. A 99-year lease that is renewable and inheritable by the next generation allows a family an intergenerational planning horizon and something of value to leave to their children. It also gives a farm family a compelling incentive to contribute to the broader health of the community by fully participating in community life and community institutions.

We can foster these kinds of relationships by educating farm seekers and landowners about available models and by providing the resources necessary to crafting good agreements. We can also make changes in state laws that clarify the legality of such long-term and renewable leases that are not favored by current statute or common law. As discussed in Chapter IV, some states limit lease terms.

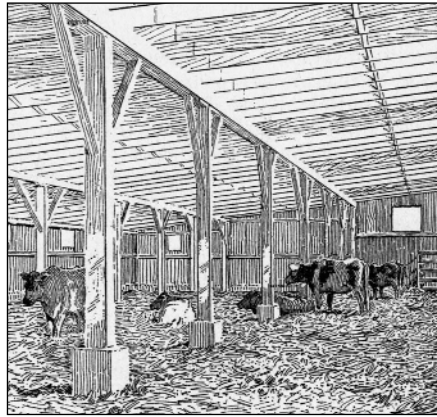
Long-term Affordability

Many mechanisms that make farmland more affordable in the Northeast will fail to reach beyond the current generation. The purchase of development rights, for example, may provide a one-time infusion of capital that makes an intergenerational transfer possible. But the value of that farm 6 decades—or even 6 months—after the sale of development rights may still be much more than a working farmer can afford, at least if she wants to pay for it with income from farming. A new ethic would seek mechanisms or would strengthen current mechanisms to ensure that the considerable public investments we have made in farmland conservation provide lasting farmland affordability.

One key to this is harnessing or otherwise controlling appreciation in land or improvements or both to ensure that public investments made in farmland affordability are available to future generations. Easements used by the Massachusetts purchase of development rights (PDR) program, for example, now restrict future resale of conserved property to its

agricultural value. Vermont is cautiously offering a similar option to landowners. Many CLT-modeled ground leases also limit re-sale values of improvements and/or keep ownership of the land in trust. Shared appreciation agreements which split the appreciated value between the landowner and the land trust upon resale are also used.

For farmers who have traditionally looked to the appreciation of farmland to fund their retirement or as a means to pass on wealth to the next generation, this may be the most difficult “ethic” to accept. To gain acceptance, it will require a broader definition of affordability, one that provides access to land on terms and conditions generous enough to allow a farm family to accumulate savings for retirement. Adequate retirement funding should be as relevant as real estate taxes in the negotiation of a



rental rate. We could also look at the sorts of public mechanisms that many European countries have adopted to provide retirement benefits for farmers.

The European Union has implemented an Early Retirement System for farmers. The program as implemented in Ireland, for example, offers a pension to retiring farmers between the ages of 55 and 66 if their farm is transferred by gift, sale, or lease to another capable farmer under the age of 50.¹¹ The program has been very well received by farmers. Between 1994 and 1998, it resulted in 8,322 farm transfers affecting 7.7% of all farms in Ireland. The majority of these transfers were made under a lease, some as short as 5 years. While we would advocate a much longer lease term and lower age target for the new farmer, we think similar schemes should be explored in the United States.

Stewardship of the Resource

Security of tenure is essential to good stewardship but it doesn't guarantee good stewardship. Legal models and mechanisms offer additional tools to ensure long-term productivity of the resource base for future generations. These instruments can foster a wide range of environmental benefits. A good

lease, for example, can consider everything from soil conservation and water quality to establishing and maintaining wildlife habitat.

Leases can also offer incentives to land users to adopt certain resource-conserving farm practices. The incentive can serve as a reward to farmers who bring special stewardship or management skills to the property or to compensate for practices that might reduce overall farm income.

Public policy reform and innovation can also lead to greater access to farmland, greater security, and more compelling direction and incentives to steward the land. Policies can also ameliorate the adverse affects of treating land as a commodity by fostering tenure relationships that offer both the land-user and the landowner options for meeting their needs. These options would strengthen the partnership between owner and user while addressing the needs of a third partner—the land.

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CASE STUDY:

The Possibility of a Farm

My husband and I decided that after years of dreaming about living on and operating a farm, we would take the leap into the unknown and let our dreams begin. We were living in Portland, Oregon. We owned a house with a standard 50' x 100' lot. On that lot, we kept three laying hens as well as berries, fruit trees, and a sizeable vegetable garden. Unlike all of our neighbors, we had no lawn to speak of. We found a farmers' market in our neighborhood and began selling all our extra produce. It was great fun and we made some money. We were urban farmers.

We decided to take the next step and look for a larger tract of land in Vermont that we could call our own. My husband went to college in Vermont and the romantic notion of living in a rural and agricultural community there was very appealing. We searched for a farm in a week-long trip that we made from Portland with our 18-month-old son in tow. We were hooked. We believed that with a little gumption and hard work, we could make our farm dream a reality. We found 20 acres in Eden, Vermont, on the edge of the Northeast Kingdom. It was affordable, and we thought, a mostly risk-free endeavor. We sold our home in Portland and moved our family to Eden.

Nearly three years later we have learned many life lessons that we will not soon forget. The most important lesson for us was that buying land to start a farm, anywhere, before living (i.e., *renting*) in the community for at least a year is a huge mistake. There are many good reasons not to buy land right away. Our biggest mistake was sinking all of our available resources into the investment of land and a home, not the least of which, by the way, is the home. While we have an investment that *may* provide us a return in the future, we do not have an operating farm. Furthermore, we will not have an operating farm anywhere in the near future.

What we do have is a small house on 20 acres in an area of the country that is so economically depressed that we cannot find jobs that will pay enough cover our basic living expenses, not to men-

tion support development of our farm business. We have lost thousands of dollars that we thought we could easily earn back by selling our vegetables, flowers, and eggs in our first year of operation. In all of our number crunching and business planning, we did not plan for the unusual and devastating weather conditions we have encountered.

Today, our farm is too small to recover a profit and we are too poor to invest the resources that might make it large enough to become profitable. If we had decided to wait to buy and had leased land, even for a short amount of time, we'd probably be making a living as farmers today. However, at the time we bought, we believed that for the future of ourselves and of our son, we needed to own land and a home. Now, we believe differently.

The capital required to move across country, purchase land and a home, and then to finance a farm is so much more than we had figured in all of our planning. We naively thought that since we planned to farm without purchasing large equipment such as tractors, that we wouldn't need to spend a lot to build our business. We expected that with a modestly sized Community Supported Agriculture farm as well as a roadside stand and possibly selling at one farmers' market, we would recover any modest sums of money that we put into the farm each year and that we could eventually build our markets and start to turn a profit.

During the first year on our land, we decided to learn how to adjust our growing methods to the cold climate and short growing season of Northern Vermont. We were not counting on selling anything that we grew, just in case. We planted a large "garden" that provided plenty of food for ourselves and our neighbors. The success we had growing vegetables and flowers in our first year gave us the feeling that we would be able to expand our operation for the following year and begin to market our produce.

The second year, we bought pigs to till our fields and used them to create nearly an acre of vegetable beds. We also hired a neighbor to plow another acre for flowers. We were off to a good start with hun-

dreds of seedlings looking healthy in the greenhouse and nicely plowed and fertile fields, compliments of our pigs. What we did not know was that occasionally, the land we were on flooded severely, leaving hundreds of vegetables to rot in the field. An unusually wet spring and early summer, created soil conditions on our lower fields that were too wet to support the vegetable seedlings that I planted and replanted. We lost thousands of dollars and countless hours of time.

If we had decided to rent land in the area, before we bought a place, we would have been able to withstand the lost crops and move forward with a new plan and revised growing techniques. Plus, we would have learned about the land and about our capabilities and farming preferences. As it is, there is no way that we can afford to spend as much time and energy as we should to grow the amount of produce that we need to recover our losses. What would really give our farm a boost would be to expand our chicken operation to include pastured meat birds in addition to our laying hens. Unfortunately, that would require more fencing and more housing,

which we can no longer afford. What we really need to make the farm profitable is to invest some money in a bit of new equipment and some labor and to cut back on the amount of work we need to do outside the home to support our family. This will not be happening anytime soon. Therefore, our farm will not be happening anytime soon.

If we were able to go back three years and do it all over again, we would be looking at areas that we really liked where we could find better off-farm jobs and we would be establishing a farm business there on leased land. We would save ourselves the headache of owning land and a house, which requires so much more capital than we could have ever imagined. We would let the burden of keeping up a home and the responsibility of capitalizing the land belong to someone else. If we had done this from the beginning, the amount of time and money that we currently put into maintaining our home and managing the land would instead go into a farm business that would satisfy our dreams.

Andrea Woloschuk

CASE STUDY:

Experience of a Landless New Farmer

Introduction: the Landless New Farmer Dilemma

In 1989, at age 20, after two years at Rutgers University studying environmental science, I worked on the campus livestock farm. I had thought that I'd had my share of shoveling manure, growing up on my family's part-time livestock operation, but the more time I spent on the farm, the more I realized that I actually enjoyed the work. From that summer forward, I became determined to pursue farming as my vocation. For the next 8 years, I increased both my academic agricultural knowledge and my practical farming skills. Along the way, I met Margo, who eventually became my wife. Together, we have been working hard to build a viable business and find a place where we can secure long-term farm tenure so we can invest in our future.

To start out, we rented a farm that was set up to be a highly specialized sheep dairy and cheese-making operation. We lived and worked there for four years and came within two weeks of closing on an agreement to purchase that farm, only to find ourselves having to leave it altogether a few months later. Since then, we have downsized our operation and now rent a farm four miles from an apartment we rent. We have no intention to buy either the farm or the apartment. Along the way, our difficulties in securing ownership have led us to consider a number of other options and alternatives to securing long-term tenure.

Many, if not most, young and new farmers want to "own" their own farm. For some, owning their own farm is an even more important goal than having a successful business that supports it. As my wife and I began planning our farm, we were determined to own from the very beginning. With the high cost of farms in Vermont and the Northeast in general, this was an unrealistic, even naïve, goal. Some argue that the costs of ownership are actually a drag on capital investment in the farm business itself. But this is often hard for the new, landless farmer to hear, and even harder to accept.

It's important to understand why many farmers aspire to traditional farm ownership and see it as an

imperative. If alternative tenure options are going to work, many of the same benefits of ownership need to be integrated or addressed, otherwise these options are neither practical nor attractive.

Ownership, Investment, and a Connection to Place

Home ownership is the "American Dream." It gives us more options, freedoms, and rights than renting, making the extra responsibilities worthwhile. Of course, you don't have to own a farm to own a home. However, there is also the ideal of "living where you work." One of the attractions of farming is that farmers don't have to commute to their jobs as most other Americans do. The paybacks for the long hours of farming are to "be home" on the farm and to intertwine family and worklife.

"Living where you farm" also increases levels of efficiency, security, and management. Like most livestock and dairy farmers in similar positions, we are often uncomfortable because we cannot monitor our stock as closely as we could if we lived on the farm. We are also less likely to know about fires, escaped livestock, and other problems. Not living where we farm also reduces our efficiency because our farm office is in our house, not on the farm itself.

One of the hardest things for us when we left our first rental was breaking the bond with the land and the community where we lived. Even though we moved to the next town, moving altered many of our associations and civic activities. Whether through ownership or through another long-term tenure mechanism, we very much want a situation where we can "sink down some roots" and establish deep connections to a place and a community.

A farmer once told me that his farm was the best investment that he ever made because everything else that farmers spend money on will "rot, rust, or depreciate." Only the real estate will appreciate, even if it is minimally maintained and updated. Ownership also allows farmers to get the full useful life out of other investments. While many invest-

ments will rust, rot, or have to be replaced, farmers want to know that they are going to have sufficient tenure to see investments such as fencing, maple sugar lines, and food processing facilities at least pay for themselves. When we left our first rental, I was glad that I had not put in permanent fence there. But at the same time, relying on temporary fence makes our farm inefficient. Thus, our experiences have made us feel that we need to have long-term tenure in order to justify long-term investments.

Farmers often use their equity in real estate to support financing for farm and personal needs. When a farmer “owns” his property, he has more financial options. Even more importantly, as farmers make mortgage payments, they are investing in something rather than “throwing away their money on rent.” As any farmer can tell you, farmers often rely heavily on their farm’s value for retirement. Even if they don’t initially sell their farm for retirement money, they have the security of knowing that they have a home in which to live.

In the end, the expenses involved in other tenure models must allow enough savings to make it possible to save for retirement. Otherwise, the country needs to consider “farmer pension plans,” such as those currently being implemented in the European Union.

Ideals and Realities

During 1996, we spent a great deal of time planning our sheep dairy. Through a computer model used by an Extension Specialist, it became clear that we were in no position to own a farm. We had no equity and no money for a down payment or closing costs. We had no track record to demonstrate that we could generate the farm income needed to make the payments or the level of “off-farm income” that would have offered lenders security. With the other start-up capital investments we needed to make in livestock and equipment, it was clear that we would be taking on far too much debt if we bought a farm at the same time we were starting our operation. We needed to start out by renting first, much to our disappointment.

In our first short-term rental situation, we spent almost a month hashing out a lease with the landowner. We took a template from the Extension Service and modified it to our specific situation. We

also consulted a local lawyer. We wanted to make sure that the rights and responsibilities of each party were clearly spelled out and that the lease would hold up legally. In hindsight, this proved essential when issues arose, although we ended up finding areas where we should have been even more specific.

Addressing improvements to the farm, especially those necessitated by past abuses or neglect can be difficult. This is particularly so when it comes to improvements in soil fertility and controlling soil erosion because our society has very little recognition of the value of a tenant farmer’s stewardship. Even for the most well-intentioned steward, it’s a challenge for a time- and cash-strapped new farmer to make improvements to someone else’s property without assurance of a financial return or other compensation.

In our current situation, the owners recognize that the farm has been long abused and neglected. The fields are full of weeds including multi-flora rose, and the barn is in disrepair. As a result, we currently rent the land for no cost and pay only a marginal annual fee for the use of the barn. This has allowed us to put some capital into the farm without worrying about the financial implications.

Ownership: Affordability and Easements

Three years of sheep dairying and cheesemaking and running our own business taught us more than any of our previous experiences about farming, finances, and management. During that time, we also developed a maple syrup enterprise, lamb and wool markets, and expanded into free-range broiler chickens, heifer cows, and to some degree, horticulture. By our third year, it was clear that we needed to have more “control” over our farm than a conventional lease would allow. Our long-term goals were not necessarily those of the landowner. We needed to know that we could make significant capital investments in the farm to grow our business—capital investments that would take years to pay off or yield a return. We also wanted to be able to take advantage of USDA cost-share programs that would allow us to make our farm more efficient. Help for fencing, watering systems, laneways, and nutrient management plans was there if we applied and if the landowner agreed to sign the long-term mainte-

nance agreements.

So, in 2000, we and another couple decided to buy the rental farm. We had an appraisal done; the price for the farm was \$340,000. When the current owners bought the farm in 1995, they did so with the help of the Vermont Land Trust and a conservation easement sale that brought their purchase price down to \$252,000 from an original appraisal of \$415,000. The 35% increase in the farm's price between 1995 and 2000 was partially due to renovation of one of the houses on the property. However, the greatest influence was the local real estate market. The appraisal noted that real estate values in the area had grown by 20% in the previous five years.

So we learned first-hand that unless an easement is specifically designed to maintain affordability, it can only address protection against development, not appreciation. This is especially true in terms of housing because rural residential housing costs will continue to grow dramatically.

Because we planned to buy only part of the farm, we thought we could do it for about \$207,000. If we had tried to get a conventional mortgage with the usual interest rate and down payment, we would not have been able to consider it. However, we had talked to the USDA Farm Service Agency and believed that we could get a 40-year loan for their maximum amount, \$200,000, at five percent. FSA's \$200,000 limit meant that we could not have bought the whole farm for \$340,000, even with rental income from two apartments on the property. Because most farms in the Northeast cost more than \$200,000, this cap seemed low to us.

Ultimately, our plans unraveled over the issue of subdivision of the farm under the terms of the easement. The owners of the farm ultimately decided that the whole process was too complicated and that they would keep the farm and use it for their own operation, leaving us out of the picture.

As we look for a farm to buy, we always keep the option of selling the development rights and the criteria for an easement in mind. Unfortunately, we have yet to find a suitable candidate in our region. Some of the farms that we have considered haven't had enough acreage or good enough agricultural soils to be competitive. The VLT and State of VT understandably want to prioritize their limited funds for the best soils and for projects that will con-

serve the largest blocks of land. But the result is that farmers interested in preserving smaller parcels are less able to use conservation easements; conservation staff often discourage them from applying to easement programs.

Long-Term Leases and Land-Holding Trusts

In 2002, we gave up the dairy aspect of our farm. After much searching, we found another short-term situation at a semi-abandoned farm four miles from where we currently live. We are operating a much smaller flock and are looking at de-emphasizing the role that sheep play in our diversified operation. We have put our farm business development and expansion on hold while we struggle to find a place that will meet our long-term needs.

Recently, we have been more willing to look at long-term lease and lease-to-own options. When we approach landowners, we ask about their long-term goals and the role they see a tenant farmer taking in meeting those goals. We ask for the owner's thoughts about legal protections for tenant farmers should they or their heirs change their goals or liquidate the property. Most landowners are receptive to this concept but have not thought much about the issue. They are often hesitant to give up too much control of their property rights.

Ultimately, the financial and equity aspects of a long-term lease will determine if this option will work for us. The lease cost must be significantly lower than ownership cost to trump the value of building up equity in the real estate. Some non-farmer landowners have bought their properties thinking that they could lease them for enough to "cover their costs." But if we could afford to "cover their costs," we could buy a place of our own instead of throwing money away on rent.

At one point, the landowner of our first farm considered selling the farm to the nearby Earthbridge Land Trust. Earthbridge is a land-owning cooperative that is dedicated to affordable farming and affordable housing options. After several meetings with the supportive Earthbridge Board, we asked the farm owner to hold off on further discussions because we had many concerns, including some about our business viability. Our major concern was with certain logistical issues with that farm. We were also skeptical about the whole

approach of a “land-holding trust.” But now that we are more familiar with Earthbridge and land-holding trusts in general, we have grown interested in that approach. We have now looked into three land-holding trusts in Vermont.

Members of these trusts/cooperatives each own their own home, often building on designated parts of the property. They also own the “improvements,” such as greenhouses and barns. However, the land, often including the land under the houses and other improvements, is owned by the trust. Those living on and farming the land pay annual lease fees for it. The trust determines the fee amounts and the members usually have long-term or lifetime leases. This arrangement allows the members to own and build equity in their homes and gives them ownership security. They can also maintain more control over barns and other improvements than other lease scenarios typically provide. Even more importantly, the farmers can maintain an ownership stake in the land without having to bear the sole burden for its upkeep because the fees are kept to a minimum to make it possible to farm.

This arrangement is not without drawbacks. Without some sort of subsidy, such as an easement sale, grants, or a strategy of spreading the costs among multiple households, the buy-in costs are not always more affordable than other options. At least one of the trusts we researched restricted the growth in the value of the housing in order to ensure perpetual affordability. It can also be difficult to get financing for the house and other improvements because lenders are wary about loaning money for an asset that is on land that is not a part of the collateral. However, some lenders are becoming less concerned about this, and other land trusts are structured so that the farmer owns the land under the house and/or farm structures with covenants that restrict sale and use of that land. As with any leasing situation, legal agreements about land use, improvements, and equity are necessary to protect

everyone’s interests, especially in the event that one of the parties wants to terminate the agreement.

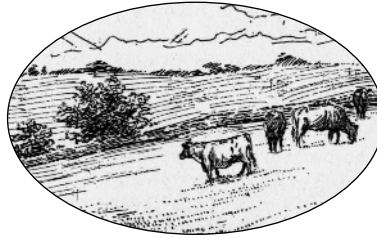
Leasing farmers must work within the group dynamic—communication and compatibility with multiple owners becomes necessary. But the farmer has a vote or a veto in a consensus process, which is different from renting from a private landowner or an institution. The multiple-owner situation can also be turned to a plus because the members often have a vested interest in working together on cooperative projects and improvements and also in providing neighborly assistance.

Conclusion—Avoiding a Modern Serfdom

At heart, I agree with the belief that no one really owns land; they provide stewardship while it is in their control. But I am also pragmatic about the political and economic system in which we live. Thus, while I applaud creative efforts to make it possible for more people to make a living from farming the land as conscientious stewards, I also feel that farmers should not become modern serfs or crofters working the property of the “landed gentry.” To truly be sustainable, we cannot simply provide cheap places for people to do battle against the cheap food system and cheap food mentality like modern day Don Quixotes. We must develop a system that allows farmers to build up economic security for themselves and their families. While it’s only one piece of that puzzle, long-term access to land for farmers is a key part of developing a sustainable future for an agricultural model that more resembles Jeffersonian democracy than the European feudal system. It is important, in our present and future models of land tenure, that farmers do not seem more like “occupants,” “employees,” or “serfs” than like “stewards.” I have hope that we can move towards the direction of stewardship tenure.

Mike Ghia

For the Landowner, for the Farmer



This chapter is designed to help landowners and farmers think about the various issues and concerns associated with non-ownership tenure arrangements. In this chapter you will find:

- ▶ *Information about selecting the right tenure arrangement.*
 - ▶ *Information about finding the right farmer.*
- ▶ *Discussion about management considerations for private landowners.*
- ▶ *Discussion about management considerations for land trusts and other land-holding organizations.*
 - ▶ *Information about farming on public land.*
 - ▶ *Information about finding the right farm.*
- ▶ *Hints for farmers and landowners for working together.*

Landowner Choices

As an owner or manager of agricultural property, you have responsibility for a precious asset: beautiful, productive farmland. The property may include improvements such as buildings or a well. Whether or not you are farming the land, you care about it and want it to be managed to meet personal and family or organizational goals. Your goals and values will shape your vision for the use of the property, and your vision will guide your choice of tenure option.

1. What is the property?



2. What are your goals and values?



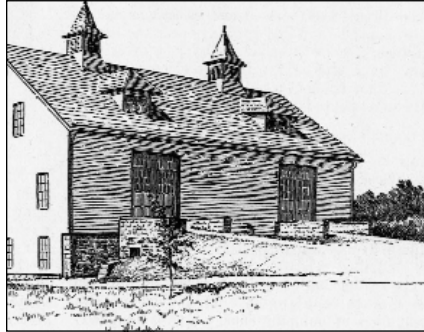
3. What is your vision for the property?



4. What are your options?

1. What is the property?

The first step in selecting a management strategy and tenure relationship is taking stock. Take a look at what you have to offer. Determine the amount and quality of land and facilities. Remember that not all farmland is created equal; it is variable throughout every region, and very few parcels of land are “ideal.” Size, soil quality, slope, access, location, climate, micro-climates, and other factors contribute to the picture of what you could offer a farmer or farmers. In some cases, the property may consist of more than one parcel, sometimes in different locations. Some parcels may be too difficult to farm. Just because 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 USDA Natural Resources Conservation Service (See Appendix D, Selected Resources.) can help you assemble a portrait of the natural features and farming history of your property. Someone interested in farming the land might want to know about family or local history and information about the community. Information about potential markets and local agricultural services add to the picture.

The availability of buildings, particularly housing, is critical for many farmers. This factor is often overlooked by landowners and managers. Depending on the nature of the farming operation, living on or very near the land could make the difference between the farmland being viable or not. Affordability is as crucial a consideration 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 placing structures such as moveable greenhouses and residential trailers.

2. What are your goals and values?

Where do you and others involved in decision-making about the farm property stand on issues such as land ownership and the division of rights and responsibilities? Is it a goal to derive an income from the use of the property? Do the decision-makers

value supporting beginning farmers? What are your feelings about natural resource stewardship and sense of responsibility to the community? Think in terms of short-term, intermediate-term, and long-term goals. It is not uncommon for this to be the most challenging step in arranging a tenure agreement. Sometimes decision-makers do not agree on goals. Sometimes there are outright conflicts in values. These must be addressed before any realistic tenure agreement can be negotiated.

3. What is your vision for the property?

As a family, how will you arrive at a shared vision? If you represent an organization, what is its mission, and how does the organization’s relationship to the property advance that mission?

How will the goals and values you have articulated jell into a unified and achievable vision for the future of the property?

Your vision for the farming future of the property must be grounded in reality. For example, a family that inherited a twenty-acre parcel of open land could envision a pastoral scene of grazing cattle on a hillside as well as property tax advantages that could come along with that. However, what if there was poor access, no water source, and issues about security? Could they achieve their vision?

4. What are your options?

In terms of tenure choices, there is one critical question: do you intend to transfer title now, at some point, or never? Your answer to this question will determine your options. There are other important considerations:

- Do you need income from the property? How much? When?
- Will you want certain restrictions on the use of the property? What about alterations to the land, or practices that might disturb certain features?
- What kind of involvement do you want with the

property? Will you share in any investment in improvements to the property?

- Does the length of the lease foster the kind of land management you desire? See the worksheets at the end of this chapter for help in thinking about your options.

Finding a Farmer

Many farmers in the Northeast are looking for farms and are interested in a variety of tenure relationships. In this region, there are over a half-dozen “farm link” programs that specialize in connecting people who are looking for farms and farmland with owners and managers of agricultural properties. Often the landowners are retiring farmers, but they can be non-farming landowners as well. Farm link programs are a good resource for locating a farmer. (See Resources, Appendix D.)

Other strategies to locate a farmer include:

- Placing an ad in an agricultural publication or local newspaper.
- Posting your offer at agricultural events, supply stores, and equipment dealerships.
- Advertising on a word-of-mouth basis with people in the agricultural community—extension agents, other service providers, county conservation district officers, and personnel at farming organizations.

Developing a tenure relationship with a farmer tenant is different from renting an apartment to a residential tenant. Typically, there is a lot more “emotion” tied to the land, the transaction, and the ensuing relationship. For the farmer, the leased premises aren’t simply a place to live—they are a source of livelihood. You want the user (tenant) to be responsible, of course, but there’s more. You want the farmer(s) to have sufficient expertise and resources to operate a successful farm operation and to meet the terms of the lease. Definitions of success vary, but lease terms should reflect mutually agreed-upon expectations about how the opera-

tion will be run.

There is relationship chemistry at work in finding a farmer and transacting a tenure agreement. If styles and values are too dissonant, the relationship won’t work. Many landowners lament that the prospective tenant had “stars in his eyes and his head in the clouds.” Landowners need evidence that the tenant has what it takes to manage the property according to the tenure terms. It is not unreasonable to ask for a resume, references, and in some cases, a farm plan, business plan, or written business concept. You may want to visit the prospective tenant’s current farm, if appropriate.

At the same time, the tenant must feel free to operate the farm without undue constraint. Mutual trust and open communication are of utmost importance. Most unsuccessful farm tenure relationships unravel because of failed communication, not failed farming.

Farmer Choices

For farmers, decisions about land tenure are among the most critical and complex. Unless you own land outright, you need to find, evaluate, obtain (under one or more tenure arrangements), and pay for, the land that you farm. For many farmers, owning the farm is a high priority. They cherish the values associated with ownership of land. Other farmers don’t feel it is important to own the land they farm, or have beliefs that make them seek non-ownership arrangements. Your preferences about land tenure, your farming situation, and economics combine to shape your tenure decisions. Where do you fall? Check the Farmer “Decision Tree” worksheet (p. 30). Remember that you can hold different parcels in more than one form at the same time (e.g., own some, rent some) and that your tenure status can, and most likely will, change over time (e.g., for now, rent with a short-term lease and later, purchase).

Some farmers pursue very creative tenure arrangements. For example, several farmers might lease or purchase a single farm property and farm it together. Others are employed by Community Supported Agriculture (CSA) farms that are owned by the shareholders. Farmers in several states farm on public land, sometimes in exchange for provid-

ing services such as education or property maintenance. Although there are landowners who are thinking “outside the box” about farmland tenure, farmers are more likely to be the ones exploring non-traditional tenure models. Their courage and creativity are paving the way for the next farming generation to find secure tenure.

You don’t have to own farmland to farm it. Many non-ownership options provide security, are affordable, make business sense, offer ways for you to redeem your investment, and can pave the way for future ownership if you so choose.

Finding a Farm

How do you know a property is right for you? First, be clear about what you need. Do a careful assessment, identify your priorities, and think about which attributes of a property are: 1) necessary; 2) desirable; or 3) optional. For example, it may be *necessary* to have well-drained and relatively flat soils because you will be growing vegetables. Steeply sloped ground won’t do. It may be *desirable* to locate within a twenty-minute drive of a certain town because your spouse has a steady job there, although she could settle for a forty-minute drive. And it may be *optional* that the property already has a garage or an equipment shed. It’s important not to buy that “dream farm” in a remote rural setting and then discover that you want to have a farm stand that requires a visible, roadside location. (See the worksheet, “Farm Evaluation Checklist” on pg. 31.)

Where can you look for a farm?

- Realtors can help you find a farm to buy, although those with a specialty or special interest in agricultural properties are not common, especially in more developed areas.
- Farm link programs manage lists of available farm properties. These programs also provide a variety of related essential services. (See Selected Resources, Appendix D.)
- Agricultural publications are a good source of information about farm properties. Check

the classifieds of farming journals, commodity newsletters, and state department of agriculture newsletters. Some of these publications are on-line.

- Go to conferences, “twilight” producer meetings, extension workshops and anywhere else that farmers congregate. Network! Some conferences have bulletin boards where you can post your “wanted” flyer.
- Check farm supply stores for postings of available rental land or farms for sale.
- Ask other farmers!
- Drive around. If you have a good sense of where you want to farm, a windshield investigation of the community may yield results. You can get information from the town assessors (also known as listers) office.
- Knock on the door. But do your homework first. Learn about the property and its owners. It might be appropriate to approach a farmer and express an interest in the future of his or her farm, but it’s also possible to put your foot in your mouth by doing so. Some elderly farmers welcome talking to someone who is passionate and knowledgeable about farming and admiring of their beautiful farm, and some consider it invasive.

Private Landowners: Management Considerations

Learning about a prospective tenant’s farming activities and understanding how they relate to your preferences and restrictions for your land is valuable for both you and the farmer—before you enter into an agreement. Remember that farms are businesses and that the land is an integral part of that business. Spreading manure may seem unpleasant to you, but to the farmer it’s an efficient means of improving soil fertility. To establish a successful relationship, both parties must recognize the different values—aesthetic versus financial, for exam-

ple—that the land and its uses hold for the other.

It's also essential to consider exposure to liability. Your homeowner's insurance policy may protect you from liability risks, but it's best to check. (See Chapter IV, p.43.) Also, make sure that the farmer(s) who use your land carry their own liability insurance and workers' compensation coverage to protect you from any liability caused by normal farm operations.

It can be difficult to determine a fair rental rate. Location, soil quality, the forces of supply and demand, and your 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.

Most landowners like to cover property taxes with a rental fee, but even this is sometimes unrealistic from a farmer's point of view. In fact, to attract a farmer, landowners sometimes have to pay a portion of the yearly maintenance costs—liming and fertilizing fields, for example. (For more considerations and worksheets on establishing rental values, see Chapters IV and V.)

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.

The following chapters provide more "food for thought" regarding the full range of landowner considerations.

Land Trusts: Management Considerations

Some conservation land trusts are increasing their participation in farm and farmland protection. When your trust decides to protect a farm, it's crucial to be clear about what you are trying to preserve. The trust's mission may answer this question; if not, it's important to bring members to a shared vision.



1. Organization's vision for the property

What is the trust interested in protecting, and why? Is it productive agriculture or another value, such as open space, scenic vistas, an image of an agricultural heritage, public access, educational opportunities, or an ecological attribute? Perhaps it is a combination. How do members imagine the farm being used in 10 or 20 years? Knowing why you are protecting a farm and what your priorities are for its use will influence the trust's role in taking care of it. Is the trust's exclusive focus on farmland? The goals and management responsibilities for a viable farm unit with buildings and other improvements are very different from those for open land.

2. Relationship to the property

Does the trust own the property or does it have a role in overseeing an easement on property owned by another entity? What are the trust's legal responsibilities regarding the property? What is the nature of the oversight, and what are the resources available to implement oversight responsibilities?

3. Management options

The choice of management strategy will be influenced by the long-term goals for the farm, the degree of involvement the trust wants to retain, and the financial, human, and other resources available for the original transaction and ongoing oversight.

There are five management strategies that reflect a trust's role and help meet its organizational goals. The role of a trust is defined according to the amount of control and responsibility it holds. *These strategies are presented in order of decreasing control for the trust:*

1) *Owner-Operator*: A land trust acquires a farm and assumes direct management responsibility. It employs farming staff or contracts with a farm manager. The trust's oversight work and related costs become part of its overall farm management. This strategy requires the most management since it is not shared with anyone.

2) *Co-operative Owner-Operator*: A government entity, another trust, or a farmer works in partnership with the trust to own and manage the farm. Together, they share the costs of acquisition, farm operation, and stewardship.

3) *Owner of a Farm Leased to a Farmer*: The trust retains ownership of the farm but leases all or part of it to a farmer operator. Leasing allows the trust substantial control of land-use practices and care of the facilities. Expectations and restrictions are defined in the lease and its attachments. For more on leasing see Chapters IV and V.

4) *Owner of property only*: The trust owns the land and negotiates a long-term ground lease. It sells the improvements on the land—the house, barns, wells, and so on—to the farmer at farm-value and permanently limits the resale price of those improvements to farm value. The trust might assist the farmer to secure financing for the purchase of the improvements with the long-term lease serving as collateral. In this scenario, this trust or a second trust may place an easement, also known as a conservation restriction, on the land. The easement removes the development rights and may also include additional prohibited and/or required uses. For more on this type of model see Chapter V.

5) *Owner of an easement on land owned and operated by a farmer*: The farmer has all claims to ownership and all management responsibility except for the requirements and restrictions set forth in the easement. The trust has responsibility for overseeing

the terms of the easement and enforcing them if necessary. In this strategy, the trust has the least direct management obligations, but monitoring easement terms can be burdensome. For more information about monitoring and enforcement, see Chapter VIII, pages 116-117.

Farming on Public Land

**SOMETIMES, MUNICIPAL
OR STATE GOVERNMENTS
MAKE LAND THAT THEY HOLD
AVAILABLE FOR FARMING.
THESE ARRANGEMENTS CAN
OFFER WIN-WIN SOLUTIONS.**

Sometimes, municipal or state governments make land that they hold available for farming. These arrangements can offer win-win solutions for farmers and public land managers. Many government entities, from local conservation boards to state agriculture and environmental agencies, have acquired open space to preserve it for its public values such as wildlife habitat, water quality, scenic amenity, and recreation. Some parcels are acquired and protected specifically for their value as working agricultural and

forested landscapes.

Often, the responsibility for managing public land can be shared through an agricultural tenure arrangement. The public benefits from having the land actively stewarded, the land is productively maintained, vandalism and dumping are virtually eliminated, and the costs associated with management are dramatically reduced. At the same time, while a farmer on protected public land will never own the land, she can reap all the benefits of a secure tenure arrangement. In addition, the parties to such an agreement can divide rights and responsibilities to meet their unique interests. For example, a municipality may be willing to reduce cash rent in exchange for the farmer's maintaining abutting recreational trails. Tenure agreements can also stipulate stewardship requirements. Public agencies can restrict, for example, certain agricultural practices in riparian buffer areas.

Most of the considerations in this guide can apply to agreements between farmers and man-

agers of public land. However, both parties need to proceed with caution. First of all, various aspects of such agreements—length of term, for example—may be limited by law. Second, liability issues are a priority concern. Farmers also need to be cautious. Sometimes, public land managers do not have a realistic or favorable attitude toward farming. Another factor is that a complicated bureaucracy is likely to weigh in on decisions, as will interested townspeople. But with patience and vision, it's possible to successfully negotiate an annual rental of a conserved acre or two in town or a longer-term lease for a town-owned dairy farm.

Farmers and Landowners Working with Each Other

Finding each other and negotiating a successful tenure agreement is a strange type of courtship! Maintaining a tenure arrangement over time, whether short-term or over many decades, requires patience, trust, and skill, in the same way that all meaningful relationships do. The process is fraught with emotional, communication, legal, financial, and logistical challenges. Chapter VIII delves into these issues in depth, but the following “helpful hints” give an overview.

First and foremost, landowners must have assurance that the farmer they choose is competent. If a farmer can demonstrate competence along with respect for the landowner's goals and preferences for the property, the two are likely to develop a successful tenure relationship. In return, farmers must have assurance that they and their farming operation will be treated with respect and that they will be given appropriate control over uses of the property required to perform necessary farming tasks.

While the farmer should not have to explain or reveal every farm business decision, the more information about the operation that the landowner has, the higher her comfort level will be about having a farmer on the land. How much the farmer shares depends on the tenure arrangement. Share leasing and work-to-own relationships require more communication about the business than does a simple cash rental agreement. But farmers are wise to explain what they are doing and let landlords know about any problems they are facing. Most landowners who are not farmers will appreciate learning about the farming operation and how it affects the property. For example, a landlord will appreciate knowing that the delay in getting that cover crop planted was caused by bad weather or machinery breakdown rather than poor planning.

Private landowners and owner organizations must balance their need for control and information with the farmer's right to privacy and freedom to operate a viable farm business. The more the landowner understands about the realities of farming, the more legitimate their inquiries and requests will seem to the farmer. The need for information and involvement varies depending on the type of tenure agreement and, in some cases, over time.

Ultimately, the success of any tenure arrangement rests on the relationship. Shared visions and values about the farm property and good communication skills are essential. Both parties require a clear delineation of rights and responsibilities. Keep your own written records. Meet to revisit your agreements on a regular basis. Bring concerns to the table, and seek productive ways to resolve differences. With the right chemistry, commitment, and a little luck, you will find many rewards and benefits to your tenure partnership.

CASE STUDY:

One Landowner's Perspective

My family has stewarded 112 agricultural acres of Connecticut River uplands and floodplain through many generations. The land is held in trust and shared among several branches of the family. The Trustee authorized me to search for a new farmer when the tenant farmer of the past forty years retired. This gave me the opportunity to think about the tenure relationship between the family's trust and the new farmer.

I think a detailed long-term leasing arrangement can serve our goals and those of a lessee. I think of a lease as a tool that lays out a list of required and prohibited actions; activities which are neither required nor prohibited are thereby permitted. There are environmental, economic, aesthetic, and cultural advantages to leasing our land to a farmer. Agriculture is a practical way to preserve open space and pastoral vistas. We do benefit from current use tax evaluation. In fact, we may choose to pass on the benefit to a farmer by lowering lease fees. I try to let town officials know about the economic studies that have documented agriculture as one of the lowest use costs for municipalities, requiring the fewest services per capita in exchange.

I also believe that agricultural use of our land contributes to food security and strengthens the local food web. Active agriculture on our land will enhance community values by supporting the local agricultural infrastructure and combating sprawl. An important motivation to me is my regard for the resource base itself. Some farming practices can actually enhance and build soil fertility, which in turn can be viewed as money in the bank. Wise landowners value the soil bank. I think it is a worthy exchange to charge a reduced lease fee for the first few years in exchange for the farmer's initially higher, long-term investment in the soil bank.

I have made it a point to be clear on my own objectives and values and to obtain sufficient knowledge about various agricultural approaches to know what I am looking for in a farmer. I prefer an experienced, self-reliant, and self-financing manager, but other landowners might prefer more involvement.

The landowner must be careful not to micromanage the farmer's business. I know that residing on the farm represents a strong quality-of-life issue for many farmers and simplifies livestock management, so I feel that providing a residence on or adjacent to the property is a priority.

I am exploring the option of transitioning our land to certified organic, biodynamic, or another sustainable non-conventional production system because I believe that this would offer many environmental and financial advantages that a landowner is well advised to consider before committing to a farmer. I want to be flexible in discussing incentives if I find a farmer who will assist through the minimum 3-year period of transition to certified organic fields. These incentives might include extending lease security, lowered or no transition lease fees to compensate for additional soil amendments, or other options that the farmer might suggest. A landowner who offers long-term lease security to a farmer and reduced or no lease fees for an initial period of time can reasonably request more in additional soil inputs or infrastructural improvements beyond what's needed for one year's harvest.

I know that designing mutually agreeable, objective stewardship standards for practices such as erosion control or nutrient management can be challenging. I also know that clarity in the beginning can minimize later tensions. The process of agreeing on a standard works to the landowner's advantage by educating both the landowner and the farmer about their individual and collective purposes and goals.

A conservation plan designed by the Natural Resource Conservation Service, through the local Conservation Districts, is a valuable tool for setting baseline stewardship standards. This NRCS conservation plan qualifies the land for many voluntary governmental cost-share programs, such as keeping nutrients or livestock from contaminating streams and groundwater, or keeping fields open for wildlife. These programs frequently have equal value to both the farmer and landowner.

There are challenges, to be sure. Because I am so interested in my ancestral land, issues about control, independence, micromanaging will undoubtedly surface. Ideally, I will strive for broad delegation and trust within specified parameters. Finding the right match is a sensitive, sometimes time-consuming process. Ultimately, the landowner retains control of the land. The farmer's life and livelihood is thus inherently insecure in a conventional lease model. Although not an option for our trust property, I am interested in the potential offered by a 99-year lease, renewable by inheritance, or the community land trust model, which offers many of the advantages of ownership without the financial burdens.

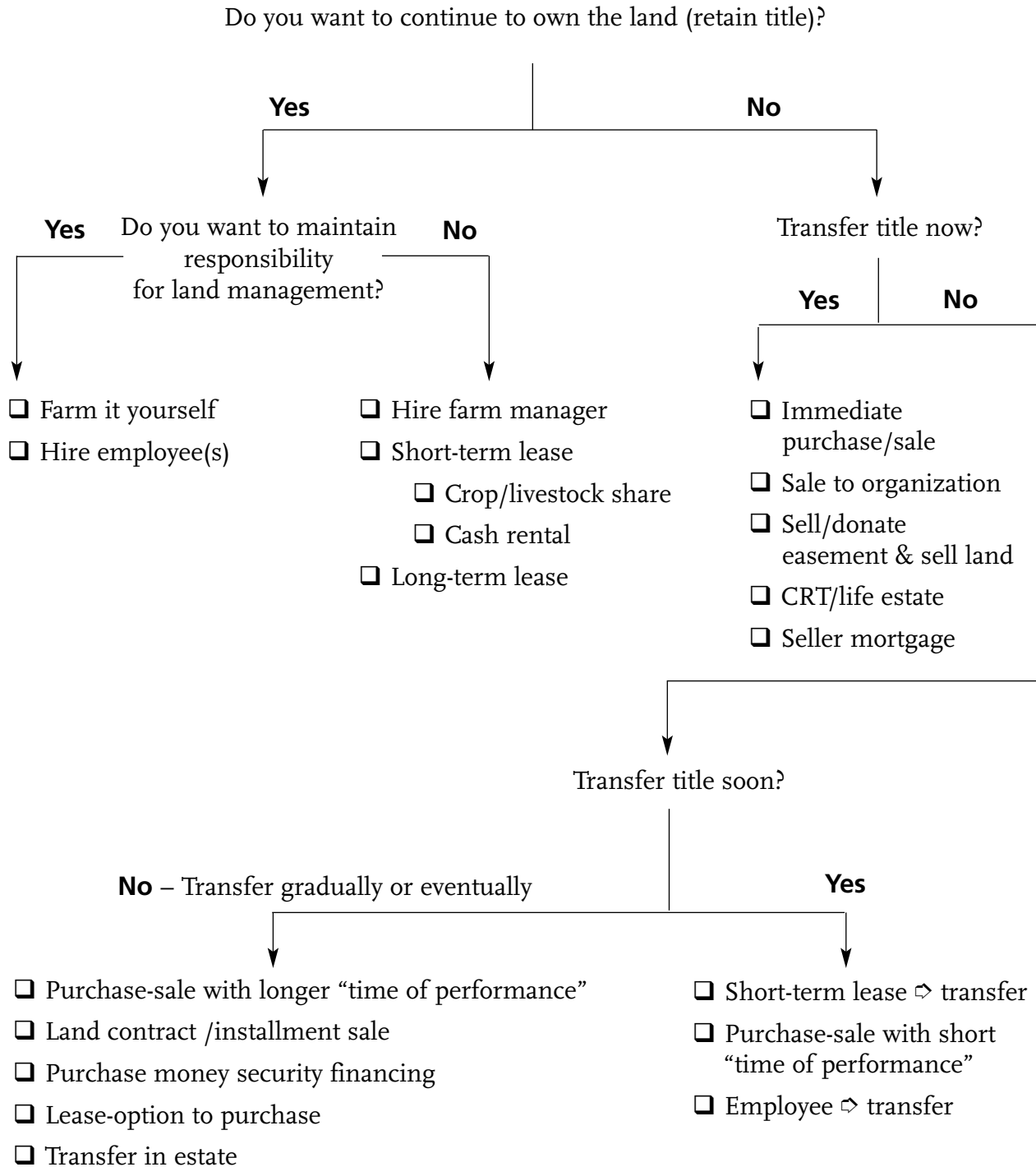
In terms of communication, the most important thing to me is a detailed, written lease. The work of advance clarification can save trouble later on. Optimally, the landowner and farmer should each make a proposed list of required and prohibited activities and then work to synthesize them. If difficult situations arise later, the farmer and the

landowner will have developed trust in a working business-like arrangement. At the very least, it is essential that the landowner not micromanage the farmer's business practices. Therefore, the thoughtful landowner will research in advance the broad acceptable and unacceptable lease terms and options. Networking with agricultural extension educators, other landowners, farmers, and at conferences may introduce the landowner to unfamiliar aspects of lease arrangements and will prove to be useful during lease discussions with potential lessees.

To me and my family, a mutually respectful stewardship of the land is a precious balance that is to be cherished and carefully nurtured. Patient, thoughtful preparation increases the opportunity to find the right match. As a steward wishing to pass on this resource to future generations, this preparation and patience is well worth the effort.

Nelia Sargent

Tenure Options: A “Decision Tree” for Landowners



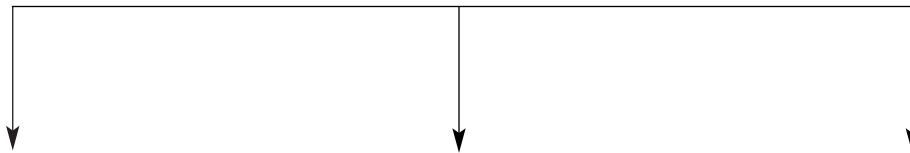
Tenure Options: A “Decision Tree” for Farmers

Do you want to own farmland...

Now? **Yes/No** ⇔

At some point? **Yes/No** ⇔

Never



Your Options:

- outright purchase (with or without conventional financing)
- seller financing

Your Options:

- short-term lease:
- crop/livestock share
- cash
- long-term lease
- lease-to-own
- contract/installment sale

Your Options:

- short-term lease
- long-term lease
- manager/employee
- partner/other business relationship

Farm Evaluation Checklist

Instructions: When you evaluate a farm property, use this checklist to compare the farm's features to what you consider **necessary**, **desirable** or **optional**. For example, it may be necessary to have the farm property be visible on a main road because you plan to have a farm stand, but it is optional whether the house has one bathroom or two. Check off each item as you have completed your information gathering and evaluation. Not all items will apply to your situation.

I. Location

- Access
- Visibility
- Neighborhood and neighbors
- Community environment
- Community services
- Ag supports
 - services (supply, repair)
 - distance to markets
- Local by-laws

II. Land Base

- Acreage
- Topography
- Soils (type, fertility)
- Water and wetlands
- Other sensitive features
- Farm lay-out
- Field size and shape
- Access
- Carrying capacity
- Weeds, invasive species
- Timber?

III. Climate

- Precipitation
- Length of season
- Micro-climates
- Growing degree days

IV. Infrastructure

- Farm roads
- Water supplies
- Electricity
- Barns/outbuildings
 - present use
 - condition/appearance
 - suitability
 - adaptability
- Equipment?
- Fencing
- New installations permitted?

V. Housing

- Available?
- Build new?
- Trailer or other structure permitted?
- Condition
- Suitability
- Off-site options
- Other features

VI. History

- Chemical use
- Storage tanks
- Accident history
- Soil history
- Prior uses
- Non-farm uses
- Liens and encumbrances

Land Trust Stewardship Obligations

Instructions: Stewardship, or monitoring, responsibilities vary depending on the management strategy of the trust. This chart describes the relationship among three factors: the amount of stewardship obligations and costs, the amount of land use control, and the cost of acquisition. In the following checklist of responsibilities, the numbers in parentheses refer to this chart and the applicable management strategies described in this chapter. Find your tenure strategy in the chart, and then check off the applicable responsibilities.



- _____ Create a stewardship budget with short- and long-term estimates. (1-5)
- _____ In a written document—be it a farm operating plan (1), partnership letter of agreement (2), lease (3, 4), or easement (4, 5)—clearly divide the rights, restrictions, and responsibilities for the farm and state how the parties will address problems of noncompliance.
- _____ Build and maintain a relationship with the farmer. Problems between the trust and the farmer can be minimized by spending the time in the beginning to clarify goals and responsibilities. (3, 4, 5)
- _____ Inspect the land on an annual basis (1-5). Look for changes and ask questions. Take notes and compare them to the baseline data. To organize the information you gather, make a standardized form. (1, 2, 3)
- _____ Make visits to residences and other buildings owned by the trust. Even if the tenant is responsible for doing the maintenance, the trust needs to see that it is being done. (1, 2, 3) If the trust is responsible for buildings, notify the tenant that representatives of the trust will be entering the building; this is especially important for a leased residence. (3)
- _____ Ask for or do soil tests every few years to monitor soil quality. Unless trust staff is familiar with farming, invite an NRCS field professional or other agricultural land use planner to inspect agricultural features and comment on compliance with any required farm conservation plans. (1-5)
- _____ Plan for repairs and maintenance and develop a schedule for capital improvements so that the trust does not suddenly need to replace a house roof, well pump, and barn wall sill at the same time. Schedule repairs at a convenient time for the trust and the farmer. (1, 2, 3)
- _____ If your trust is responsible for building repair and maintenance, develop a reliable system to track jobs, including scheduled timing, costs, and the person or contractor who will do the work. With multiple leases, this juggling can become a big issue. (3)

Short-Term Leases



This chapter addresses many legal and practical issues surrounding short-term agricultural leases. In this chapter you will find:

- ▶ *Information on some of the essential elements of a good lease.*
- ▶ *Suggestions for setting an appropriate rent.*
- ▶ *Advice on dividing responsibilities for repairs and maintenance.*
- ▶ *Information about insurance, landowner liability, and tax considerations.*

Introduction to Short-Term Leases: Advantages and Disadvantages

The majority of agricultural leases are for short—one to three year—periods. In fact, most are from year to year and can be renewed or terminated on an annual basis. Farmers and landowners often treat leases casually, with a verbal agreement and an understanding of flexible terms based upon 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.

Advantages and Disadvantages of Short-Term Leases

Some landowners favor short-term leases because they want to control how their land is used and are also unwilling to tie it up for long periods of time. Farmers who favor short-term arrangements like the opportunity they give to experiment with new enterprises or locations without requiring a long-term commitment. This flexibility is particularly useful for start-up farmers. A short-term lease can allow a tenant a trial period to see if farm plans are financially feasible. A short-term lease also allows the tenant to limit financial risk. In contrast, a long-term lease obligates the tenant to pay rent regardless of the success of the operation. And finally, a short-term lease allows both parties to get to know each other and decide if a longer-term

arrangement would be beneficial.

Short-term leases have disadvantages, too. Financial flexibility can bring financial uncertainty and consequent difficulty in making long-term business plans or personal decisions. Lenders may balk at financing long-term assets such as equipment or livestock if the lender does not have a written lease covering the loan period. Both by instinct and necessity, many farmers who are operating under a short-term lease farm that land differently than they do land that they own. They have less financial incentive to rotate crops, invest in perennial crops or permanent structures, and install conservation structures. (See Chapter VII, Farmland Stewardship.)

The Legalities of Short-Term Leases

Because agricultural leases are governed by state law, they vary from state to state. Some states,

mostly in the Midwest, have statutes governing almost every particular of agricultural leases. Other states, mostly in the Northeast, have farm landlord-tenant laws based on a body of court decisions. This so-called “common law” is the judge-made law found in written decisions. In settling a dispute under a lease, a judge considers both the common law of real estate and the law of contracts. In all regions, most states also have statutes that address questions about determining whether a lease is legally enforceable and whether and where it must be recorded. You can find many state codes on the internet. Check with your Extension Service for information on your state laws.

Oral Leases

In spite of their prevalence, oral leases have very few advantages. The tradition of oral leases is rooted in the culture of tightly knit rural communities where there are serious social and economic, if not legal, consequences for renegeing on a handshake

Advantages and Disadvantages of Short-Term Leases

Advantages for the landowner

- Receives a cash return on land.
- Retains the asset while land is being used.
- Can take advantage of tax benefits.
- Can enjoy the aesthetic values of managed land.
- Can control stewardship practices.
- Property is occupied.

Advantages for the tenant

- Can have lower costs than purchasing would entail.
- Can take tax deductions for leasing costs.
- Has termination rights.
- Can save or invest in short-term capital needs.
- Can test enterprises, locations, and markets without committing to them.

Disadvantages for the landowner

- Can have limited cash returns.
- Cannot personally use land.

- Can miss the higher returns other uses might give.
- Can experience farming sights, noises, and odors.
- Tenant can contaminate waterways and soils.
- Can lose capital on improvements.

Disadvantages for the tenant

- Cannot recover lease costs as equity in land.
- Can experience lease costs as a reduction in net income.
- Cannot benefit from appreciation of land.
- Can have limited control over land.
- Can suffer serious inconveniences and inefficiencies if landowner is unwilling to cover maintenance.
- Can lose lease.
- May be unable to get credit from lenders who require security of tenure.
- Can lose investments in infrastructure and land if lease is terminated.

deal. In small rural communities, people generally trust one another and the terms of the lease are dictated by long-held local practices that are simply “understood.” However, in many instances, an oral lease is simply the result of a lack of bargaining power.

In most states, an oral lease is treated as a “tenancy at will” because it can be terminated at “will” or by the death of the landowner. If a farmer has occupied a property for some time under an oral agreement, a court may find that the tenancy at will has evolved into a month-to-month or a year-to-year tenancy, meaning that the lease requires “adequate notice” before it can be terminated. In these cases, courts have judged that the agricultural lease was a year-to-year tenancy that required at least a 6-month notice of termination. And in rare and extreme instances, courts have enforced an oral agreement regarding real estate because they judged that fairness demanded it.

Getting It in Writing

Nearly every state has adopted a “statute of frauds”¹ requiring that certain kinds of agreements be in writing. Most states include any agreement involving a transfer of land—including leases—in their statute of frauds. These statutes require that lease agreements: (1) be in writing, and (2) be signed by the parties who must hold to the agreement. If the tenant sends a letter to the landowner setting out the basic terms of their agreement, signs it at the bottom, and sends it off at the beginning of each year, he is legally obligated to pay rent and otherwise abide by the terms of the letter. The landowner could enforce that agreement in court. But if the landowner has not signed the letter, he is not obligated and a court of law would not force him to abide by its terms.

Courts have also held that to comply with the statute of frauds, the lease must adequately describe the land. General contract law also requires that you include enough of the essential terms in your writing to indicate that there really was an agreement. Essential terms include *the description of the property* and the *rental rate*. You don’t need a full-blown legal description, but a stranger to the property should be able to tell what property you’re talking about just by reading your letter or the lease.

Legally Enforceable Agreements Include a Written Agreement that Contains:

- ▶ **Description of the property.**
- ▶ **Rental rate.**
- ▶ **Identification of the parties.**
- ▶ **Signatures of both parties.**

Amendments to the lease should also be in writing and signed by both parties. Amendments include material changes to the agreement such as rental rates or renewal rights. Sometimes leases include “addendums” or “attachments” that set out, for example, a resource management plan that the tenant has agreed to follow. Addendums and attachments allow some flexibility for aspects of the agreement that may change frequently because they allow changes to be made without redoing the entire lease. The original lease, however, must specify how an addendum is to be agreed upon. Additionally, the addendum or attachment must be in writing and be signed by both parties.

The Practicalities: What’s in a Lease?

Practically speaking, it is worth the effort to put together a written agreement that goes well beyond the bare legal minimum. Whether the arrangement involves parties inside or outside the family, communication is key to a successful agreement. In addition to the four elements listed above, address the following topics:

1. The involved parties

The lease must bind the actual owner of the property. If the owner is a corporation, the person who signs the lease should have written authorization to do so from the corporation’s board of directors. If the owner is a trust, the trust instrument must authorize the signing trustee to lease the trust’s property. Tenants can ask for a “certificate of trust authority” which lists all the powers of the trustee. If the agreement is signed by the wrong person, the true owner can void the lease and terminate a farmer’s tenancy. To learn whether the correct per-

son is signing the lease, check with the land records in the town offices.

The lease must also identify the actual tenant. Is it a farm partnership, a limited liability company, or a sole proprietorship? Landowners can check with the Secretary of State's office for any business filings. However, a partnership can exist with or without filing documents with the Secretary of State. Consequently, a landowner may want to bind each partner individually and personally if the leasing entity is a farm partnership, limited liability company (LLC), or some other entity.

2. The lease term and lease renewal

The lease should clearly specify when it begins and when it will end. A farmer should consider what sort of term is necessary to succeed with a farm business plan, and landowners should take possible tax benefits into account. Written and multi-year leases are often eligible for tax benefits that do not apply to one-year or oral agreements. For example, some real estate tax abatement programs require at least a three-year lease.

Leases can also specify that the rental term may be terminated "at will," or at the option of either party. It's important that such leases include an adequate notice period for both parties. In some states, the common law requires six months notice of intent to terminate; however, this may not be enough time for a tenant to find a new leasehold and move an active farming operation. A year's notice before termination is not unreasonable. We know of one lease agreement that provides for a 5-year notice of termination.

If the parties to the lease wish to provide an option to renew, the lease should include a clear description of how, when, and under what terms a renewal can take place. A lease may require that the tenant send a letter requesting a renewal to the landowner, for example, or state that a renewal will be automatically given if the landowner fails to notify the tenant that the lease will not be renewed within a certain amount of time before its term expires. Tenants may want to ask for a 6-month or more notice of intent not to renew. A renewable lease should also specify the terms under which the rental rate can be renegotiated or reset based on an inflation adjuster. (See also p. 60.)

3. Describe the property

The lease must identify the land, buildings, animals, equipment, and/or existent crops on the property as well as the intended use(s) of the premises. Any fixtures or improvements installed by the tenant must be identified, together with rights to remove and/or indemnify them at the end of the term. (See more on ownership and disposition of improvements in Chapter V, page 61.) This agreed-upon description of the premises—including "fixtures" and "improvements" on the land—can serve as a baseline for monitoring, ownership, possible default, and future negotiations. In some situations, it is advisable to include a more formal description of the property, such as the description on the deed with the book and page number from the book of deeds in the town land records. A tax assessor's map or a map of the farm provided by the Natural Resources Conservation Service can also be a useful attachment. Access should be spelled out, especially if it involves crossing a right of way involving other property interests, private ways, or bridges that may need repair. The lease should also specify the party responsible for maintaining those rights of way.

4. Specify the rent

The lease should specify the rental rate, the payee, the due date, and where or how the rent is to be delivered. It should also describe any deposits, acceptable uses for these funds, and necessary procedures for their return. If any of the rent is in a form other than cash, that form must be clearly specified, along with the value ascribed to it. For example, the tenant may perform certain tasks, such as keeping trails near the farmed fields clear, as a specified percentage of the rent. Be clear about the rent value of this activity.

For some landowners, the financial benefits of leasing are not the highest priority. Many seek farming tenants who can help them meet various goals for the land such as maintaining open vistas or protecting wildlife habitat, water quality, or soil health. Institutional landowners may have research and demonstration goals or a mission to keep conserved lands in agricultural production. If the farmer is expected to participate in fundraising activities or to provide farm produce for public

meetings, these extra responsibilities should be spelled out in the lease along with provisions to fairly compensate the farmer for these activities and products. For the sake of creating and maintaining a relationship that contributes to the long-term strength of a lease, include an agreement that if the farmer “donates” such services, the landlord will document their value so that the farmer can deduct them as a charitable contribution.

When fixing the rental rate, consider the landowner’s fixed and variable costs, such as taxes, insurance, depreciation, repair, and building maintenance, as well as the tenant’s operating expenses and return on labor. Factor in any real estate or other tax abatement measures for keeping land in agricultural production and account for costs incurred by adhering to required farm practices or any other specific obligations. For example, some

agreements require the tenant to contribute substantial management skills and services that contribute to the long-term productivity of the land. The rental rate must allow both parties to meet their financial and other goals, or it won’t last long. For suggestions on the many factors to consider see the Rent Determination Chart, page 55. You can use this worksheet to organize both your preparation for negotiating a rental rate and also as an outline for that discussion. Landowners should also consider the income tax consequences of farm rental income.

Setting Rental Rates

In the Northeast, rental rates and the basis for setting them are every bit as varied as landowner motivations. The following are among the many possible approaches:

Taxation of Rental Income

The IRS treats rental income from farmland differently than it does other kinds of rental income. The difference is that landowners who *materially participate* in the production of crops or the management of the farming operation must include the rental income in earnings subject to self-employment tax.² However, landowners who do not materially participate do not have to pay a self-employment tax on that rental income. Government 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.³

Definition of Material Participation

According to the IRS 2002 “Farmer’s Tax Guide,” a landlord materially participates if the arrangement with a tenant specifies the landlord’s participation and he or she meets 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 takes 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 5 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 the 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 as material participation. But landowners who provide production financing or a significant percentage of the tenant’s equipment and who periodically inspect the property to ensure that stewardship standards are being met are more likely to be considered material participants.

- Market rental rates: Determine the market rental rate in the area for comparable land. Talk to local farmers as well as County Extension agents.
- USDA county average rental rate: The agricultural census provides data on cash rents in your county⁴ and the USDA Farm Service Agency publishes an annual listing by county of average rental rates for crop and pastureland based on reports by farmers and landowners.
- Landowner fixed or carrying costs: The primary objective for some landowners is meeting the costs associated with owning the property. Typically, these fixed costs include the “DIRTI-5”: depreciation, insurance, repairs, taxes, and interest. Many private farmland owners enroll their properties in their state’s preferential tax program, thereby deriving a substantial tax reduction as long as the property is in active agriculture.
- Residential value plus land costs: Some agricultural leases are based primarily upon 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 are willing to allow tenants to use it without charge in exchange for “rehabilitating” the farm. But if the farm has little productive value, the tenant may not be getting a good deal.
- 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 a great deal from state to state, farm to farm, and even within the same field. The soils in most counties in the Northeast were mapped by the Natural Resources Conservation Service. Some states have classified these soils further into prime and important agricultural soils. Ask NRCS in your area for a copy of your county’s soil survey; it carries a great deal of information about the farm’s soil and its properties and capabilities with respect to crop production, pasture, woodlot production, and even wildlife habitat.

Rental rates for a barn or other structure are often 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.
- Costs of production: If the lease imposes stewardship requirements that will affect the tenant’s costs of production, reflect these costs when calculating the rent.
- Social goals: Some landlords accept a lower than average rental amount because of their belief in the social benefits of local food production or providing an opportunity to a beginning farmer. Others accept a lower rent if the farming operation demonstrates or otherwise furthers the organization’s mission. These non-market factors can be difficult to measure and take into consideration in setting a rent. Tenants need to maintain appropriate accounting practices for tax purposes, and organizations need to protect their IR tax-exempt status. (See nonprofit organizations and subsidies to for-profit enterprises, page 39.)

Types of lease payments

- Cash Rent: In return for a cash payment, the tenant has possession of the asset for a specified use and fixed period of time. This form of lease places the financial risks on the side of the tenant. The landowner is insulated from production and/or market failure, because the rent must be paid regardless of conditions
- Crop/livestock Share Rent: A tenant can also pay rent by giving the landowner a share of the crop or livestock produced on the property, or more accurately, the value of a predetermined share of the year’s production. A share lease may split production costs and crop/livestock profits 50/50 between the landowner and the tenant although it doesn’t have to be an equal

Nonprofit Organizations and Subsidies to For-Profit Enterprises

Nonprofit entities that lease farm assets at a subsidized rental value to farmers must be cautious. Organizations that have been given 501(c)(3) status by the IRS enjoy tax exempt status, and donations to the organizations may be deductible. A 501(c)(3) organization's purposes must be charitable, religious, educational, or scientific. Assets or earnings of the entity may not be used in a manner that "benefits private individuals." Tax-exempt organizations that rent assets of the organization to private individuals at less than fair-market value, therefore, need to be cautious about protecting their 501(c)(3) status. There are several considerations to keep in mind if you want to serve new farmers without jeopardizing your tax exempt status.

Your activities—in this case renting to farmers—must serve or further your exempt purposes. The affordable housing field offers some guidance in this area. Community land trusts, most of which qualify under IRS rules as charitable organizations, have successfully defended providing subsidized housing to low-income tenants as being in furtherance of their charitable purposes.

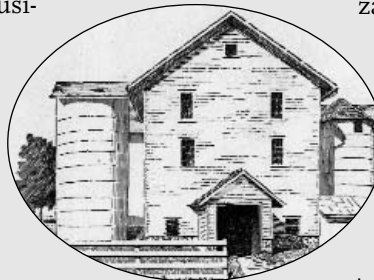
The IRS has also developed clear guidelines for housing advocates that allow a combination of low-, very-low, and moderate-income housing subsidies

while recognizing a broader range of activities and purposes designed to "combat community deterioration" as in furtherance of their charitable purposes. No such clear guidelines exist in an agricultural context, although the body of affordable housing case law and revenue rulings has many parallels and is arguably applicable.⁵ Organizations can request a revenue ruling from the IRS that will tell them how a particular activity will affect their tax-exempt status.⁶

If an organization receives less rent than rents for comparable properties in the area because the tenant brings special skills or is undertaking certain conservation practices on the property, document this in case you'll need it for the IRS. If the rent is lower than usual because the farmer is expected to participate in fundraising activities or provide produce for meetings, document this as well. The Countryside Initiative lease, for example, states that their rental rates recognize, among other factors, the stewardship requirements for the land, the requirement to forgo conventional agricultural fertilizers and chemicals, the lessees' costs related to wildlife predation, and the expectation that tenants will be welcoming to park visitors.⁷ (See Appendix B.)

Nonprofit Rental Income and the Unrelated Business Income Tax

Exempt organizations must also be aware that earnings derived from renting farm assets may be subject to the "unrelated business income" tax.⁸ Business income from a trade or business that is regularly carried on and related to the organization's exempt purposes may be subject to taxation at the regular corporate tax rates. This issue is arising more often as nonprofits become more entrepreneurial in their activities and their fundraising. Many of the cases, for example, involve nonprofit organizations renting their mailing lists and using the earnings to



fund their charitable work. State and local tax issues also arise in these cases. Some organizations have set up separate 501(c)(2) organizations to own the land and rent it to the nonprofit to avoid having to pay UBIT. A 501(c)(2) is a tax exempt entity defined as a title holding corporation. It is controlled by the 501(c)(3) and turns rental income from the property over to its controlling 501(c)(3). This is an evolving and complex area of the law and you should check with your tax advisor about the many strategies for addressing it.

split. It's a matter of negotiation. Crop or livestock share leases are more common in the Midwest but their advantages, especially to tenants, apply in the Northeast. They allow a tenant to significantly reduce his cash outlays in cash rent, interest, and production expenses. They also require that the landowner be willing to take on a share of the production expenses and the financial risks and rewards of the operation. The sample short-term lease in Appendix A includes some sample crop and livestock share provisions.

- **Flexible Cash Rents:** Flexible cash rents are a hybrid between cash rent and a share lease. The landowner and the tenant set a cash “base” rent that assumes low production and a low commodity price. If actual production and prices exceed the base, the landowner is paid a share of the increase. 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 some of the risk to the tenant of a bad year and rewards the landowner in good years.
- **Net share leases:** In a net share lease the landowner receives a specified share of the farmer’s crop as rent—one third, for example. If the farmer has a good year, so does the landowner. In this type of lease, the farmer bears all the costs of production and harvest.

5. When the property includes a residence

A farm lease is a commercial lease, not a residential lease. If a house is included in the lease, the lease should include elements of a conventional residential lease. State law often regulates residential leases to ensure safe and habitable living conditions. These statutory schemes dictate tenants’ rights with respect to condition of the dwelling, notice of termination, notice of entry by the landowner, and other aspects of the landlord-tenant relationship. Quite often, the law states that a lease cannot modify these minimum requirements. Farm tenants are due the same rights to safety and habitability as other tenants, and in fact, could probably hold a landowner to them in court

if the farm lease includes a dwelling. If appropriate, consider writing separate leases for the farm and the residence.

6. Allowable and prohibited uses of the property

Most farm leases limit use of the property to “agricultural uses” including uses incident to their farming operation. 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 restrictions or requirements regarding uses appropriate to the soils or topography of the farm. It’s appropriate to attach a map to the lease indicating where certain practices are allowed or prohibited or indicating a preferred crop rotation.

The landlord and tenant should discuss any uses or practices that may not be commonly understood as agricultural. For example, is making and selling commercial compost from the property an agricultural use? Is using the farm pond for freshwater fish aquaculture an agricultural use? 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.

A landowner may also prohibit certain practices, improvements, and activities, for example, removing trees or gravel. Most leases, in fact, reserve ownership and a right to remove any minerals or oil deposits to the landowner. But a lease may allow tree or gravel removal with prior permission, provided, for example, that they 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 if aesthetics are a concern. As a landowner, 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, the more burdensome the lease might be to a tenant who wants maximum flexibility to farm.

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 USDA/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.

7. Repairs and maintenance

The lease should clearly indicate landowner and tenant responsibilities for routine repairs and

maintenance as well as replacement. Repairs and maintenance cover such things as fences, roads, barns and other structures, equipment, and utilities. Tenants and landowners are wise to discuss and budget for these items on an annual basis to ensure that routine maintenance matters don't fall through the cracks. The sample short-term lease in Appendix A provides an example of a process for discussing maintenance needs on the farm. We've also developed an annual checklist to help facilitate this process. (See Repairs and Maintenance Checklist, page 57.)

In practice and at common law, the farm tenant is most often held responsible for routine repairs and maintenance. The landowner, however, is often responsible for major repairs, rehabilita-

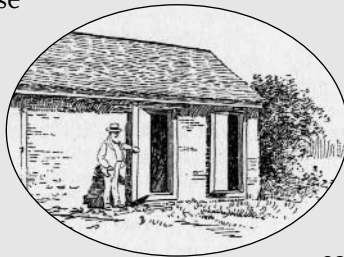
Land Use Restrictions

Special legal characteristics of a property may affect its use. If these characteristics affect the tenant's capacity to use the land or the landowner's obligation to a taxing or other authority, these features should be referenced in the lease document. The following are common examples:

Zoning: Many states exempt certain agricultural practices from local zoning restrictions. Vermont, for example, doesn't allow local zoning authorities to restrict "accepted agricultural or farming practices" as defined by the Vermont Secretary of Agriculture.⁹ Check to ensure your business plan falls within your states' exemptions. .

Easements and rights of way: Other parties may have legal rights to use the property or portions of the property that transcend the rights given under the lease. These rights could interfere with operations. For example, a property might contain an easement that allows recreational use of a trail alongside a farm field. The tenant may not welcome off-road vehicles

passing through or the potential for vandalism or theft.



Deed restrictions or conservation easements:

In the Northeast, thousands of acres of agricultural land are protected from conversion to development by covenants or special use easements. These "development rights" are held by the State or non-profit organizations. Both tenant and landowner must understand the meaning of relevant provisions of these restrictions as well as how to interact with the organization or government entity that holds the easement. An attorney can review the easement in light of the farm's business plan since it will affect permitted uses of the property.

Creditor's liens: If the landowner has signed a mortgage or given some other interest in the land to another party prior to the lease, the farmers' rights will be "subordinate" to those interests. Clarify whether the property is mortgaged or otherwise encumbered. Land records will include this information and an attorney can provide a title opinion.

tion, or 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

Repairs vs. Capital Improvements

—according to the IRS

How do you distinguish repairs from capital improvements? And why bother? Because it will affect annual taxes.

The IRS has a useful test to help you decide if 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.¹¹ The tenant can deduct the cost of repairs from annual income when calculating taxes. In contrast, the landowner's costs for any capital improvements are added 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 include: replacing an engine, installing new plumbing or wiring, removing and replacing asphalt roofing shingles, installing fencing, or original painting of a property.

The tenant is frequently responsible for the routine maintenance and repair of systems necessary to prevent deterioration, such as annual servicing of these systems or repainting or staining.¹⁰

If the tenant is using the landowner's equipment, it's advisable that she keep maintenance and hourly use records and review them annually with the landowner. Routine maintenance and repair and any annual servicing necessary to prevent corrosion will most often be the responsibility of the renter. The lease should also make clear who will be responsible for replacing the equipment when it eventually wears out.

8. Capital improvements

Capital improvements include everything from constructing new permanent structures to installing soil conservation structures, tiling fields, or practices or applications that build long-term soil fertility. Deciding who bears the costs of capital improvements usually factors in the length of the lease and whether the tenant or the landowner will be the primary beneficiary.

The lease should identify any improvement—for example, a new structure, a well, permanent fencing—that the tenant may place, and specify the rights and procedures, if any, to remove them or provisions for compensation when the lease ends, especially if the lease ends early and the tenant has not enjoyed the full useful life of the investment. The typical short-term lease provides that any improvements become the property of the landowner at termination of the lease, but it can be handled differently. These issues are more substantial in longer-term leases. (See Chapter V.)

Tenants should never undertake a capital improvement without the consent of the landowner. Ideally, capital improvements should be discussed on an annual basis along with repairs and maintenance. Farmers should describe the improvement—its location, construction methods, and other important factors—in writing and ask the landowner to sign this document to indicate agreement. The sample short-term lease in the Appendix A suggests one method for an annual review of capital expenditures.

In instances where the tenant wants to con-

struct a removable structure such as a greenhouse, the lease can allow the tenant to remove the structure at the end of the lease period. But the lease should be specific about the party who is assigned ownership of the structure. At 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 them typically require that the tenant bear the costs of removal and 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 his property and the long-term financial return is primarily his. 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 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.

9. Continuation/termination in event of sale of property, foreclosure, or death of landowner

A lease should specify whether it is binding on the landowner's "heirs and assigns" or subsequent purchasers of the land. If it is not binding, it will terminate when the landowner sells the land or dies. Leases that bind heirs give tenants a great benefit: security.

Many states also require that in order to bind an heir or someone who purchases the property from the landowner, the lease or a memorandum of the lease must be "recorded" by filing a copy with the other land records. Recording the lease or a brief description of the lease called a "memorandum of lease" is a good idea. This puts heirs and successive purchasers on notice that a tenant has rights in the property. Filing a memorandum of lease will also protect farmers' rights against cred-

itors whose mortgages or judgment liens were filed subsequent to the lease agreement.¹²

10. Insurance and liability issues

The rules governing the landowner's and the land occupier's responsibilities to third parties are complex and vary substantially from state to state. Generally, the law imposes liability on the "possessor" of the land, or the party who occupies or controls its use and maintenance. In farm lease situations, the tenant is usually in control of the premises. If the tenant is keeping livestock and is responsible for maintaining the fences, he will be held responsible should the fences fail and damage result. In some cases, however, landowners have been held liable if they agree in the lease to keep the premises in good repair, and the tenants or guests suffered injury as a result of the landowners' failure to competently honor that commitment. Most often, however, owners have been held liable in a residential rather than farm lease situation. Landowners have also been held responsible for common areas that are under their control and are used by all tenants. Landowners who lease buildings or production facilities to several farmers should be aware of their responsibility to keep these areas safe. But in reality, both landowner and tenant need to exercise reasonable care.

Liability insurance is a business necessity. In most instances, it makes the most sense for the tenant to obtain insurance. But where a landowner is providing production facilities to a number of incubator farms or is otherwise in control of common areas, the landowner should obtain liability insurance, as well.

The lease should clearly specify the party responsible for obtaining and maintaining insurance: premises liability, building and equipment casualty, and crop losses (growing and stored), and at what level. Often, the landowner requires evidence of the tenant's insurance coverage as well as that those policies "indemnify" the landowner for any losses he or she might suffer. By the terms of the lease, a failure to carry such coverage would most often be considered a default and grounds for termination.

In shopping for insurance, discuss the standard farm policy with agents from several insur-

Reasonable Care—An Example

If a part of the farm is open to the public, say as a farm stand or a community supported agriculture farm pick-up point, customers expect that the farmers have taken steps to ensure that the farm is a safe place.¹³ Tenants have a duty to inspect the property and warn customers of any hidden or non-obvious dangers. If it is reasonably foreseeable that children will wander away from the farm stand to pet livestock or play on equipment, the tenant has a duty to take the steps necessary to ensure their safety. The tenant must also be concerned about the actions of other customers.¹⁴ Tenants are responsible for seeing that the parking area is designed for safety, is properly lit, and that its traffic pattern is safe. In short, the tenant is responsible for keeping the property in a reasonably safe condition in view of all circumstances, including the likelihood of injury to others, the seriousness of the injury, and the difficulty or expense of eliminating the risk.

ance companies. Identify areas of concern that are not covered by the standard farm policy. If the agent says, for example, that a farm stand is covered by the standard farm policy, ask him to put it in writing. This is important because insurance policies are notoriously difficult to comprehend; an agent's opinion in writing will make the intent of the policy clear to a court.

If an operation includes an enterprise that is not ordinarily covered by a standard farm policy, say food processing, a rider or another type of insurance for that enterprise is appropriate. In the case of a special rider, it pays to shop around, because insurance actuaries' opinions on risk vary widely.

The lease must also specify the party responsible for carrying fire or other casualty loss insurance on the property. Typically, the landowner insures the farm structures but the lease can require a tenant to do so. The lease may also require the landowner to use insurance proceeds to rebuild in the event that a structure essential to the farming operation is destroyed by fire or other casualty loss.

11. Default provisions in a lease

A lease should spell out what constitutes default and the consequences of default on the part of either the tenant or the landowner. Default means that one of the parties to the lease has violated a term, either by failing to do something or by doing something wrong. Default does not necessarily mean that the lease terminates automatically, nor

does it necessarily imply legal action.

In a lease, default provisions typically trigger a process of recognizing and addressing the violation. Most leases provide that the one in default must first be given notice of the default and a chance to "cure" (remedy the default) within a particular time frame. For example, a tenant who misses a payment is given notice and a thirty-day period to make the payment.

There are some standard "events" included in many leases as defaults by the landlord or tenant.

Recreational Uses

In order to encourage landowners to allow the public access to their property for recreational uses, nearly every state in the Northeast has limited landowner liability for no-fee use of their property for recreational purposes. The New Hampshire statute is typical; it provides that a landowner who, without charge, permits any person to use land for recreational purposes shall not be liable for personal injury or property damage in the absence of intentionally caused injury or damage.¹⁵

Typically, these include failure to pay rent, maintain liability or casualty insurance, comply with state and local regulations, and pay real estate taxes. Other behaviors identified in leases as defaults include failure to keep the property in good repair, performing a prohibited activity, and/or not complying with regulations.

A lease might provide that if the problem is not remedied, the landowner may draw from a pre-paid deposit or may 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 or to simply terminate it.

Landowner defaults should also be specified in the lease. For example, the lease may provide that the landowner is responsible for providing water to the barn and that she is in default if she fails to do so. The lease may give the tenant the right to withhold rent or to pay the cost of providing water and deduct that cost from the rent. And again, if the problem persists, the lease may allow the tenant to give notice of intent to terminate.

Certain “defaults,” particularly regarding stewardship standards, may not lend themselves to the traditional default mechanisms of notice, right to cure, and termination. Enforcing stewardship standards may require another approach with respect to default. For certain defaults, such as activities that cost the farm its organic certification or violate state laws protecting water quality, the traditional notice, right to cure and termination scheme may be appropriate. But different treatment may be more suitable when treating shortfalls such as failing to plant a cover crop in the required timely fashion, particularly when the shortfall is due to circumstances beyond the farmer’s control. An alternative strategy for landowners who provide incentive-based rewards for stewardship practices could be to withhold those rewards if the farmer defaults. Landowners who take an income-based approach to rewarding stewardship could increase their share of income as a penalty.

A lease should also include a dispute resolution process that can be followed in the event of a default. Approaches to resolve disputes include a shared commitment to negotiate differences at regular meetings between the parties to more for-

mal mediation or arbitration. An example of a dispute resolution process is included in the sample short-term lease in Appendix A. In general, the more complex the lease, the more formal the dispute resolution process.

Because of the time and expense associated with contract disputes, most commercial leases now contain a clause to allow the parties to arbitrate the dispute, short of litigation. Arbitration can be binding or non-binding, mandatory or non-mandatory. The lease should specify a mechanism for selecting the arbitrator(s) as well as responsibility for costs. Some state mediation services are gaining experience with agricultural issues; check with your state department of agriculture for recommendations.

12. Defaults at common law

Certain defaults that breach the lease contract are recognized at common law as grounds for relieving the other party from all duties under the lease. “Constructive eviction,” for example, involves actions the landlord takes that deprive the tenant of the use and enjoyment of the lease property either in whole or in part. Changing the locks to a dwelling is an obvious example, but constructive eviction can be more subtle. For example, a landlord can interfere with a tenant’s use of the property so substantially that the tenant can not use or enjoy the property. In many states, constructive eviction can be used as a defense to a suit for unpaid rent or a claim for damages. However, common law varies from state to state and it may be necessary to consult an attorney. Disputes are easier to settle if the lease spells out the rights of each party in the event of default.

13. Lease termination issues

If either party fails to cure a default and alternative dispute resolution fails, the defaulting party can be given notice of termination of the lease along with 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. This notice should specify the default, describe the steps taken to resolve the matter, and also address any issues regarding damages resulting from the default.

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, the terms of termination are a matter of re-negotiation between the parties which can be handled formally through a written amendment to the lease or informally with a handshake.

14. Eviction and ejection

If tenants “hold over,” meaning that they stay beyond the lease term, or if they stop paying the rent or have otherwise committed a serious breach of the agreement and will not quit the property, most states allow the landowner to use a summary eviction process. Each state’s process is different, but most try to provide a landowner with a quick and easy means of regaining possession of the property. The process requires a service of notice upon the tenant, a hearing before the court, and the court’s judgment.

Farmers have certain defenses to an action for eviction. For example, if the landowner long acquiesced to a practice he now claims is a default, the farmer can argue that the landowner waived his objection and can’t assert now it as a basis for eviction.

Even if there is a judgment of eviction, the owner must obtain the services of the sheriff to actually remove the tenant. Eviction is generally a separate process from a suit for damages, although states vary. Again, consult an attorney for advice and information.

15. When to engage an attorney

There are at least three instances in which both parties should consult an attorney. First, ask an attorney to review the lease before it is signed. Second, in the event of a default and the initiation of an alternative dispute resolution process, it is a good idea to go into the process knowing your legal rights and responsibilities. Finally, if the relationship breaks down and eviction is initiated, consult an attorney. Legal fees vary a great deal by state. In Vermont, the average attorney fee is \$125 an hour. Try to find an attorney who specializes in real estate or commercial leases.

16. Unharvested crops

The lease should also address the tenant’s rights

Withholding Rent

If a tenant believes that the landowner has seriously breached an agreement, she may consider withholding rent. But the lease must allow the tenant to withhold. If not, the tenant needs to determine whether state law—either a statute or its common law—gives the right to withhold rent as a consequence of the landowner’s actions. Some residential landlord tenant statutes allow a tenant to withhold rent under certain circumstances, and some courts recognize constructive eviction and other kinds of breach as instances that justify withholding rent. But these laws vary from state to state and it’s important to consult an attorney. Rent withheld should always be set aside for payment once the default is cured.

regarding 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 to tend or harvest any growing crops as well as remove any harvested and stored crops. Some states recognize the common law “doctrine of emblements” that gives the tenant rights to an “away-going crop” that matures after the termination date. The doctrine of emblements applies only to annual crops.

A lease should also address orchards and other unharvested perennial crops. Ordinarily, lease terms for these kinds of enterprises are long enough to ensure that the tenant reaps the full rewards of his investment. Should the lease be terminated early, however, it should provide for some sort of compensation to the tenant for the value of the crop. The tenant could 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.

17. Liquidated damages provisions

A lease may also specify what damages each party

can expect if the lease is breached. A “remedies” or “liquidated damages” clause identifies specific remedies for breach—usually a monetary figure. The amount must be reasonable and it must bear some relation to the actual damages such as an estimate of the costs of moving the farm business, expected expenses in lost rent, or the possible costs of finding a new tenant and negotiating a new lease.

A liquidated damages clause limits costs for a tenant who breaches an agreement, helps plan options in the case of a landlord breach, and spares the cost of litigating the issue of damages in court. These provisions may also include the right to recover attorney fees—a big help if litigation is necessary. The lease may also require each party to “mitigate” or lessen his damages. For example, the lease may require a landlord to seek a new tenant who will pay the rent on the same terms as the breaching tenant.

18. Crop liens

Some Midwestern states give a landowner an automatic lien against the tenant’s crop as security for the rent. A lease may also do this. Landowners who take such a lien must make the language in the lease explicit and must take additional steps to “perfect” the lien, such as filing a UCC financing statement to put other creditors on notice of your interest. A perfected lien provides greater protection in the event that the tenant files bankruptcy. Consult an attorney to develop the lien structure.

In the absence of an automatic lien by statute or a lien specified in the lease, most courts hold that the crop is the personal property of the tenant and that the landlord has no interest or right to the crop for non-payment of rent. If the lessor does not have a lien, the usual remedy for unpaid rent is to go to court for an ejectment and a judgment against the tenant for the amount of rent in arrears.

19. Subleasing and assignments

At common law, leases are assignable to others and capable of further subletting. Usually, written leases prohibit these rights to the tenant. However, a tenant can consider asking for them if there is any question of losing the capacity to carry out the

lease. Substituting another party to finish the lease could protect the tenant from financial harm. Similarly, landowners can benefit if the farmer takes responsibility for finding a new tenant and the rental payments continue uninterrupted. The lease may also provide the landowner with the power to veto any new tenant for good cause.

20. Contamination, storage facilities

Ultimately, the property owner is responsible for remediation of hazardous substance contamination and the condition of fixtures that store potentially harmful substances. However, this does not relieve a tenant of potential liability if he or she contributes to contamination or is in control of the fixtures at the time they fail. These concepts are open to interpretation and government agencies are likely to look at all potentially liable parties in the event contamination occurs. Tenants should inspect the property to be rented, identify any potential contamination, and clearly identify responsibility for maintenance of vulnerable fixtures such as fuel tanks, manure pits, storage bunkers, earthen dams, and so on in the lease. If a site has the potential to be contaminated, the tenant can obtain a “hold harmless” agreement from the landowner.

Conclusion

If most short-term leases are oral and work most of the time, why is it so important to write a detailed lease? More than any other factor, societal changes make it necessary. Increasingly, much of the land leased by farmers is owned by people with little or no connection to farming as a business. Even conservation trusts with missions friendly to farming are often controlled by directors with limited familiarity with farming practices. A lease can specify issues, activities, and concerns that might seem obvious to farmers but are not to those who aren’t in the profession. Leases can also protect landowners in the event that they rent to first-time farmers who inadvertently commit management errors that have serious and long-term ramifications.

To the benefit of both parties, complete and clear lease agreements lessen the possibility that an event will cause a misunderstanding and sour a

relationship. And finally, both a landowner and a tenant can use a detailed written lease to develop a shared understanding and set of goals for the farm.

References: Chapter IV

Adjusting Farm Tenancy Practices to Support Sustainable Agriculture, Neil D. Hamilton 12 *Journal of Agricultural Taxation and Law* 226 (1990)

Soil Survey of Orange County Vermont. USDA Soil Conservation Service in cooperation with the Vermont Agency of Environmental Conservation and the Vermont Agricultural Experiment Station. June 1978.

Guide to Planning the Farm Estate with Checklists and Forms, Second edition, Paul Douglass, Institute for Business Planning, Inc. 1979

Restatement of Torts, 2nd §328E through 387.

The Legal Guide for Direct Farm Marketing, Neil D. Hamilton, Drake University Agricultural Law Center, 1999.

Farmland Leasing 2002, Steven D. Johnson, University Extension, Iowa State University, 2002

Improving Your Farm Lease Contract, Cooperative Extension Service, Iowa State University, revised June 1984

Endnotes: Chapter IV

1. For example, the Connecticut Statute of frauds (Sec. 52-550) provides: (a) No civil action may be maintained in the following cases unless the agreement, or a memorandum of the agreement, is made in writing and signed by the party, or the agent of the party, to be charged:...(4) upon any agreement for the sale of real property or any interest in or concerning real property. The Massachusetts Statute of frauds provides at Chapter 259: Section 1. Actionable contracts; necessity of writing; No action shall be brought: ...Fourth, Upon a contract for the sale of lands, tenements or hereditaments or of any interest in or concerning them...
2. Self employment tax is paid at a rate of 15.3% on income up to \$84,900 (2002). Farmers fought for this treatment to increase their self-employment earnings and thereby increase their social security benefits.
3. This issue has been litigated since 1995 in a line of cases beginning with *Mizell v. Commissioner*, T.C. Memo 1995-571. See also *McNamara v. Commissioner*, 236 F.3d 410 (8th Cir. 200) and *Hennen v. Comm'r*, T.C. Docket No. 7535-98 (July, 10, 2002) The 8th circuit may well decide that a fair market value rent is simply ordinary income not subject to self employment tax....should stand on its own - ...stay tuned.
4. See, for example, 1997 Census of Agriculture, Volume 1, Part 45, Chapter 2, Table 3 Farm Production Expenses: 1997 1992 Vermont County Level Data
5. See generally, *Community Land Trust Legal Manual*, Part II, Chapter 6, Tax Exempt Status for Community Land Trusts. Institute for Community Economics, 2002. www.iceclt.org
6. For procedures for requesting a revenue ruling see Rev. Proc 2003-4, 2003-1 I.R.B.123.
7. Countryside lease page 13, See Appendix B.
8. 26 U.S.C §511, et seq.
9. See 24 V.S.A. §4495(b).
10. Adapted from Countryside Initiative Lease.
11. Philip Harris, Zoel Daughtrey, *Agricultural Tax Issues and Form Preparation*, Agricultural Tax Issues School, June 5-6, 2001 page 95.
12. See for example, 27 V.S. A. § 341(c).
13. Two states, New Hampshire and Massachusetts shield operators of pick-your-own types of operations from liability for personal injury or property damage to their customers as long as there was no wilful, wanton or reckless conduct on the part of the New Hampshire RSA 52:508:14 and in Mass. G.L.c.128, : Sec.2E.
14. See New Hampshire RSA 52 § 508:14; in Vermont see 12 V.S.A. Sec. 5791 et seq.; In Connecticut see General Statutes §52 557(g), in Rhode Island see G.L. §32-6-3; and in Massachusetts see G.L.c.21 Sec.17C.
15. Restatement of Torts (2d) Section 344, provides that: "A possessor of land who holds it open to the public for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentional harmful acts by third persons or animals, or by the failure of the possessor to exercise care to (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise protect them against it."

CASE STUDY:

Intervale Foundation

The Intervale Foundation (IF) was organized in the late 1980s to recover and restore 325 acres of land located in the city of Burlington, Vermont. Known to the community as the Intervale, the property's agricultural use dates back to the early Native American Abenaki Tribes. But by the late 1980s, a great deal of the Intervale's area had become a local dumpsite and landfill. Until 1996, one area of the land housed the last operating dairy farm in Burlington.

IF leases this acreage from several landowners. In 1990, IF established the Incubator and Enterprise Farm Program (Farm Program) as a way of restoring the Intervale's cultural farming history and also of managing the land with sustainable practices. Today, the Farm Program leases nearly 100 acres to eighteen farmers on eleven farms. These farmers currently produce an estimated 5% of Burlington's fresh produce, along with cut flowers, herbs, and pastured poultry.

In addition to leasing land, IF leases farm equipment, storage, cooler, and greenhouse space to the farmers. The Farm Program allows people to begin farming without the large capital costs traditionally associated with farm start-ups. Farmers in the Farm Program sign a lease agreement that sets the standards for land use. Under this agreement, farmers are required to use sustainable growing practices. For IF, these practices are in accordance with the national organic standards and are detailed in each farmer's contract.

The Farm Program operates in two tiers. Farmers in their first three years of operation at IF are known as Incubator Farmers and have a one-

year lease. They pay slightly less in fees, rent for land, and equipment during this time.

After three years as an Incubator farmer, new farmers become Enterprise farmers. Enterprise farmers pay slightly higher fees and rental rates and have a five-year lease. Several farms in the Intervale have operated there for over eleven years. Generally, the five-year leases are readily renewed because experienced Enterprise farmers are an asset to IF and to the community. They are often available as mentors to the newer Incubator farmers because they share their knowledge and experience of farming.

Some of the farmers in the Intervale are interested in short-term situations as a way to establish their farm businesses and build up capital before they buy or lease other land with housing and/or other accommodations. One of the Farm Program's strongest assets is the opportunity it gives start-up farmers to learn the basics of farm management without having to spend large amounts of capital to get started.

But some of the farmers at IF would like to build a business at the Intervale and keep it there. For example, one of the newer farmers has begun to plant an orchard. Her five-year lease poses uncertainty, so she would like a long-term lease. But IF does not offer longer-term leases. If one of the landowners who leases land to IF decides not to renew, then the farmer(s) on that land could lose the Intervale as a location for their farm. This is a risk that both IF and the farmers in the Intervale take.

Andrea Woloschuk

CASE STUDY:

Problems For “Sam Jones”

Sam Jones has a replacement heifer operation. He rents a 100-acre farm that includes tilled land, pasture, and service buildings. His verbal lease is year-to-year and renewable annually in April. His rental payments are \$150 per month. The landlord is an older farmer who retired in ill health. In December, a person purporting to be the property’s trustee comes to the farm and says that unless Sam starts paying \$1000 per month, he must leave within 30 days. The animals are sheltered in the barn, and Sam has 700 tons of silage in a pile on the farm. He continues to pay the rent at \$150 per month and receives a written notice to quit. Does he have a right to continue to pay \$150 per month? Does he have a right to stay?

Upon investigation, Sam discovers that the ownership of the farm is in a trust, and that the older farmer is not the trustee. The trustee, exerting control, has decided that \$150 per month return is too little and demands a rent based upon a rate of return closer to the property value.

Sam does not have an enforceable lease. In his state, under statutory law an oral lease creates only a tenancy at will. The term of that tenancy is its periodic frequency, monthly in this case. A month-to-month lease can be terminated by either party upon 30 days notice. The lease was terminated and reestablished at \$1000/month. The trustee does not have to allow an opportunity to cure, can evict, and can hold Jones liable for the new rate until he quits. A written lease would have protected the lower rental rate and a term until the end of April.

Sam Jones moves to another farm, one with a written lease but with inadequate tillage area. He must enter into short-term cropland leases. One of the parcels he now farms is owned by a couple who

lives in another state; they do not come around much. The agreement was made over the phone, with few details.

Sam establishes the crop. He accesses the field over a stream and culvert. A summer hurricane with severe rains takes out the culvert. He cannot access the crop unless the culvert is repaired. The owners now say they are in the middle of a divorce and do not have insurance to cover this damage, and also that they believe taking care of the land is his problem. Can he get someone else to pay for fixing this bridge?

Sam does not have a good case to make the landlord responsible, because the lease was verbal and did not assign responsibility for property maintenance. Because Sam initiated the lease arrangement, any ambiguity in the agreement will be held against him. He will have to pay to fit this culvert. Sometimes, USDA emergency cost-sharing programs are available to assist tenants for storm damage, such as this, but Sam needs to show a written lease to qualify. No lease, no help. What if he goes ahead and fixes the culvert? Apart from any state and local regulations regarding the watercourse, the owners may have an action against him for poor workmanship, because he assumes responsibility once work is undertaken.

With a written lease, assignment of responsibility for maintenance can be clearly addressed, as well as who will carry what kinds and amounts of insurance. Property casualty responsibility should not be taken for granted, or unexpected costs and disputes will occur.

Dan Beaudette

CASE STUDY:

Cedar Hill Farm

Cedar Hill Farm is located in Pownal, Vermont, in the southwest corner of the state. The 250-acre farm was a working dairy farm until 1967, when several of the barns were renovated for horse boarding for a nearby racetrack. In 1975, Sally Dodge Mole, a daughter in the family corporation that owns the property, moved to the farm to raise beefalo, sheep and maple products. They worked the farm until 1986, at which time the farmland was rented out to neighboring dairy farmers. Sally acts as farm manager. In 1999, Sally enrolled the farm in the Land Link Vermont Matching Service, which makes connections among farm seekers and farming opportunities. After several contacts with farm seekers, Sally met Mitch Hunt and Heidi Eames.

Mitch grew up on a dairy farm in Hartland, Vermont. He and Heidi worked as farm managers at the Farm and Wilderness Foundation, a non-profit educational organization. They enrolled in the Land Link Vermont Matching Service in 2000 and started to look for a farm of their own, while Heidi started to pursue her interest in medicinal herbs and a degree in nursing.

Today, Cedar Hill Farm is leased to three parties. Some of the land is leased by two neighboring dairy farmers for cropping, haying and maple sugaring. The house, barns and surrounding farmland is leased by Mitch and Heidi and two friends for organic vegetable and herb businesses as well as small livestock production.

Sally's vision for Cedar Hill Farm is that it will remain open and productive. She'd like it to continue to be a working farm using sustainable farm management practices. Cedar Hill Farm is owned by a family corporation, and the Dodge family is not interested in selling the farm in the near future. However, both parties were interested in creating a long-term farming opportunity for Mitch and Heidi, as well as providing sound management for the land and buildings through a lease agreement.

The lease planning process started when Mitch and Heidi met Sally in the Autumn of 2001. In August, 2002, the lease agreement was signed. The

initial term was three years. Each party hired an attorney to negotiate the lease agreement. The lease includes details such as a cost-of-living increase in the lease fee after the third year, as well as specifics on the differences between capital improvements and routine maintenance. After three years, the lease provides for a renewal term of five years.

Every situation has its own unique interpersonal issues. In the case of Cedar Hill Farm, there were three to consider: neighboring farmers-new farmers; tenant-landlord relations; and the family corporation. Sally was proactive about informing the current farm tenants—the neighboring dairy farmers who had been farming there for several decades—about the new tenants. Sally also addressed concerns the neighbors expressed and assured them that the new farmers would not be displacing them. Mitch also made a concerted effort to meet the neighboring farmers before he relocated there. In addition, Sally made some land-use changes to prepare for the new farmers. Specifically, she had the current farmers stop applying synthetic amendments to the soils designated for the new farmers, to start transitioning that piece to organic management.

Tenant-landlord relations went smoothly through the lease negotiation process, owing in large part to each party's willingness to be open, flexible and communicative. Sally had a unique role in the process, as she represented the needs of the family corporation while also advocating for the new farmers.

Because the farm is held as a family corporation, all members of the Dodge family have a say in the lease. Sally said, "My father has an emotional investment in his view which overlooks the farm and all family members are emotionally tied to the farm." Although all family members see the farm as a wonderful asset, there are different opinions about the farm's management. For example, Sally said that she and her father have different views on forest management on the farm—her father allows only the lightest of cutting, "because dad never cuts trees," while Sally would like to see active

forest management.

Land Link Vermont provided information and referrals to each party. Both parties found the sample lease agreements to be particularly useful. Also both found the attorney who represented Heidi and Mitch to be very helpful in the process. In addition, Sally consulted land trust staff, who were helpful in providing her with suggestions about lease pricing. For both parties, creating a lease agreement that satisfied everyone was somewhat challenging. For example, they sought to charge a reasonable rent while supporting the tenants' start-up businesses. Sally said, "We want to be as supportive as we can without losing money to lease the farm."

"Success," said Sally, "is having these guys on the farm—they're wonderful to work with. I love their energy and expertise." She feels that Mitch and Heidi's operation is a good fit with the farm and will have a positive effect on the local community. She said, "These young farmers are really making a big difference in strengthening agriculture here—it's neat to see." For Heidi and Mitch, success was negotiating a lease agreement that felt fair without having to compromise their farm goals. "Our vision hasn't changed from start to finish," Mitch said. "We

have a lease that makes us as farmers feel protected," said Heidi. "That serves the land and serves the people."

Advice that both parties would give others considering a similar lease situation includes the following.

- "Communicate, communicate, communicate!" said Heidi. "Allow time for both parties to share dreams and visions. And be very clear what page everyone is on from the start."
- "You shouldn't feel afraid to back out if it doesn't feel right," said Mitch. "It's too important a decision and if it's not right for you, someone else could be farming it. You need to meet in person and on the land—I drove to the farm five times."
- Sally said, "People need to know that it takes hard work to hammer out a lease that works for everyone. Be open to what's going to be good for everybody in the end."

Deb Heleba

Short-Term Lease Checklist

Instructions: *Both parties may use this checklist to make sure key issues are addressed in the lease agreement. Simply check each item off when you are satisfied that it is clearly included in the lease. Use the space between items to keep notes on outstanding issues.*

- ___1. Who are the parties? Do you have evidence of ownership and authority to act if the landowner is an entity other than an individual? Is the tenant an individual or an entity? Will the lease also bind the “heirs and assigns” of both parties?
- ___2. What will be the lease term? Will it terminate on a specific date or at the will of either party? How much notice will be given to the other party?
- ___3. Will the lease be renewable? Will both parties have the option to renew or not renew? What will be the procedure for renewing the lease?
- ___4. Do you have an adequate description of the property to be leased – land, boundaries, farm structures, residence, equipment and livestock?
- ___5. How much and what type of rent will be paid? How and when must it be paid?
- ___6. If the agreement includes a residence, will there be a separate residential lease?
- ___7. What will be the allowable and prohibited uses of the property under the lease?
- ___8. How will the landowner and the tenant allocate responsibility for repairs and maintenance of the property?
- ___9. How will the landowner and tenant allocate responsibility for capital improvements? If the tenant invests in capital improvements, how will s/he be compensated at the end of the lease?
- ___10. Who will be responsible for obtaining and maintaining insurance—liability, casualty and other (e.g., crop insurance)?
- ___11. What actions by either party will constitute a default under the lease? Will the non-defaulting party have the right to terminate the lease or withhold rent until the default is cured? Will the lease include procedure for dispute resolution?

W O R K S H E E T

Rent Determination Chart ¹

Instructions: Fill in the blanks! This chart will help you analyze farm operating and land ownership costs. Knowing these costs and how they are allocated can help a landowner and a tenant arrive at a rental rate that is fair and advantageous to both. This chart will be useful in determining your “bottom line” rental rate. Consider using it as a negotiating tool.

Item of expense	Total Value Of Asset (\$)	Interest Rate %	Estimated Annual Expense		
			Whole Farm (\$)	Landowner Share (\$)	Tenant's Share (\$)
I. Fixed expenses:					
A. Fixed investment					
Expenses:					
1. Land					
2. Farm Buildings					
3. Farm Vehicles					
4. Machinery and Equip					
5. Breeding Stock					
6. Dwelling					
7. _____					
8. _____					
9. TOTAL SECTION A					
B. Fixed operating expenses:					
10. Labor					
a. Tenant's					
b. Unpaid family					
c. Landowner					
d. Hired					
11. Depreciation					
a. Buildings, fences and other farm structures					
b. Farm machinery and equipment					
c. Farm vehicles					
12. Repairs					
a. Buildings, fences and other farm structures					
b. Farm machinery and equipment					
13. Real estate and other taxes					
14. Insurance –					
a. Liability					
b. Casualty					
c. Crop					
15. Soil amendments					
16. Conservation measures					
17. _____					
18. _____					
19. TOTAL SECTION B					
20. TOTAL SECTION I					

Variable Expenses	Estimated Annual Expense		
	Whole Farm (\$)	Landowner Share (\$)	Tenant's Share (\$)
III. Item of Variable Expenses:			
21. Cash farm operating expenses:			
a. Livestock breeding			
b. Hired labor			
c. Conservation expense			
d. Fertilizer/ lime			
e. Fuel			
f. Seeds/plants			
g. Utilities			
h. Veterinary expense			
i. Farmer Training and Development			
j. Cash Rent _____			
k. Machinery expense _____			
l. Marketing expense			
m. Trucking expense			
n. _____			
o. _____			
p. _____			
q. _____			
22. Cash family living expenses			
23. IRA or other retirement funding			
24. _____			
25. TOTAL VARIABLE EXPENSES			
Farm Receipts and Expenses	Estimated Annual Expense		
	Whole Farm (\$)	Landowner Share (\$)	Tenant's Share (\$)
IV. Annual Farm Receipts			
a. crop sales _____			
b. livestock sales _____			
c. other _____			
26. TOTAL FARM RECEIPTS			
V. Summary Expenses			
a. TOTAL FIXED EXPENSES (#20)			
b. TOTAL VARIABLE EXPENSES (#25)			
27. TOTAL EXPENSES			
VI. Receipts less total expenses: (#26 minus #27)			

i. Adapted from worksheets prepared by the VT-NH ag business management course and USDA table found in Guide to Planning the Farm Estate, Paul Douglass, Institute for Business Planning (1978)

W O R K S H E E T

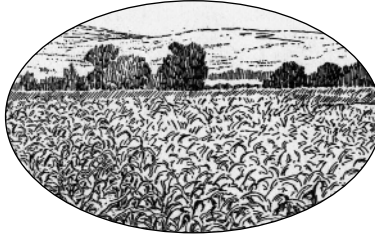
Repairs and Maintenance Checklist¹

Instructions: *This chart can be completed on an annual basis by landowner and tenant to record planned repairs and replacement of various farm fixtures and systems. It can be used to prioritize repairs and replacement and to appropriately allocate costs including a tenant's labor.*

	Repair or Replacement to be Undertaken	Date to be Completed	Estimated Cost Materials and Labor	% of Cost Contributed by Landowner and Tenant				Total Dollars Contributed Toward Repair		Value of Labor	
				Materials		Labor		L	T	L	T
				L	T	L	T				
	Structures: Exterior siding/ Windows/ Roofing										
	Fences										
	Barn Equipment										
	Water, Heating, Ventilating Systems										
	Waste Management Systems										
	Conser- vation Structures										
	TOTAL										

1. Adapted from USDA form AD 562(Mar 1960)

Long-Term Leases and Other Non-Traditional Tenure Models



This chapter focuses on long-term leasing models and introduces other farmland tenure options. In this chapter you will find:

- ▶ *Information about long-term leases, including specific factors to consider in a long-term lease agreement.*
- ▶ *Information about using conservation easements.*
- ▶ *Discussion about community land trusts as a means of achieving long-term and affordable farmland tenure.*

Introduction to Long-Term Leases: Advantages and Disadvantages

Increasingly, farm seekers, private landowners, and nonprofit organizations such as land trusts are searching for non-ownership tenure models that provide long-term tenure. Because of the substantial barriers to outright ownership of farmland, farm families are looking for new ways to have long-term, secure tenure without the costs of outright ownership. A long-term lease is one option that more and more farmers and landowners are using. These longer-term arrangements add significant dimensions beyond those of a short-term

lease agreement.

For the tenant, long-term leases can mimic a number of the environmental, social, and economic benefits of outright ownership. By lengthening the planning horizon, a long-term lease gives the farmer time to develop and implement a more comprehensive, whole-farm planning approach and capture the benefits of investments in soil productivity and farm structures.

If the lease runs for long enough and is renewable and inheritable, it allows a farm family multi-generational use and enjoyment as well as an opportunity to leave something of value to their heirs. Long-term leases also provide an opportunity

for the farm family to sink deep roots in the community. With a multi-generational time frame, long-term tenant families are more likely to participate in and contribute to community institutions.

As a disadvantage for the tenant, lease payments result in a reduction of net income without contributing to any long-term accumulation of wealth in the property. The tenant must find means other than land appreciation to fund retirement. Issues posed by a long-term lease may also lead to greater complexity in the lease document and therefore higher legal costs. A typical long-term lease can run anywhere from 10 to 40 pages of legalese.

The landowner may experience tax advantages

from a long-term lease. Selling a highly appreciated asset can generate both federal and state taxable capital gains. Generally, when you sell real estate you have to pay a “capital gain” tax on an amount equal to the difference between its sale price and the price you paid for it. A lease may avoid this by transferring the right to long-term use without selling the asset. Keeping land in agricultural production may also result in real estate tax reduction under one of the many state programs that offer tax abatement if land is kept open and in active agricultural use. On the other hand, rental income will also have income tax consequences for the landowner. See taxation of rental income in Chapter IV, page 37.

Advantages and Disadvantages of Long-Term Leases

Advantages for the tenant:

- Lengthens a farmer’s planning horizon.
- Allows for long-term business and resource stewardship planning.
- Allows the farmer to capture the long-term benefits of good stewardship and to enjoy the full useful life of investments made in the farm’s infrastructure.
- Can serve as a legacy to the next generation if it is renewable and inheritable.
- Can allow a family an intergenerational planning horizon if it is renewable and inheritable.
- Gives a farm family a compelling incentive to fully participate in community life and community institutions.
- May increase borrowing capacity when the value of the lease is used for security along with tenant-owned improvements on the property.

Advantages for the landowner:

- Can result in better stewardship of the farm.
- Can provide income in retirement.

- Can avoid the tax consequences of a sale of the property.
- Can result in a reduction of real estate taxes.
- Can allow the land to remain an inheritable asset in the family.

Disadvantages for the tenant:

- Reduces net income without contributing to long-term accumulation of wealth in property.
- Prevents relying on land appreciation as a retirement fund.
- May entail complex legal documents and consequently higher legal costs.
- Can make loans more difficult or impossible to get. The land is not available to serve as security for a loan. Consequently, getting credit to fund other assets may become more complicated.

Disadvantages for the landowner:

- Ties up land for a long time and prevents it being put to a higher economic use.
- Rental income has tax consequences.¹

The Legalities of Long-Term Leases

For the purposes of this guide, a long-term lease is one with a term between 6 and 99 years. A long-term lease includes many of the provisions already discussed in Chapter IV, but must also cover factors that have no bearing on a short-term lease. Rental rates, repairs, and maintenance may be treated differently, and it may be necessary to separate ownership of the land from the improvements so that the tenant owns and pays for constructing improvements but the landowner retains ownership of the land on which they are built. This split ownership can add another layer of complexity to the lease.

Some states, primarily in the Midwest, limit the length of the term of agricultural leases by statute.² While statutory limits don't appear to be common in the Northeast, check your local law. However, many states in the Northeast have statutes that limit the lease term for state-owned land. For example, Massachusetts limits leases for agricultural purposes on land owned by the Commonwealth to no more than 5 years, and towns may lease land they own for no more than 10 years.³ In Vermont, the term limit for leases on state-owned land is 10 years.⁴

Even if there are no statutory restrictions on a lease term, the common law as recognized in your state may limit the lease term. The general common law rule, in fact, is that leases that convey a right to use and occupy real estate for more than 99 years or forever aren't leaseholds at all. They are considered outright transfers of ownership and leave no right for the "seller" to take back the property under any circumstances.

For example, in New Hampshire, the courts have said that a lease of "perpetual continuance" is not a lease but a transfer of the land outright, in "fee simple."⁵ In Vermont, on the other hand, leases of town or school lands for "as long as grass grows or water runs" were found to be a lease.⁶ It isn't clear that this kind of lease between a private landowner

and a private tenant would be recognized as valid in Vermont, however.

Leases that provide for perpetual renewal can also run afoul of the common law rules, although this is not universally true. In Connecticut, the courts won't enforce perpetual renewal unless the language in the lease is so plain that it leaves no doubt that the parties intended to provide for this.⁷

Clearly, if renewable, long-term, and perpetual leases are to be used with confidence that the intent of the parties will be upheld, state legislatures in the Northeast will have to clear the way by authorizing them in statute. Similar steps were taken in state law to authorize conservation easements, which also last into perpetuity and are not favored by the common law. With a rolling lease term, both parties agree annually to renew for the full term of the lease, for

**LANDLORDS CAN
CHOOSE FROM MANY
APPROACHES TO
DETERMINE A LONG-TERM
RENTAL RATE.**

example 10 years.

In the interim, parties must structure their leases to fall within the rules followed in their states. An 89-year lease that may be renewed once, for example, should survive many of these old common law restrictions.

The Practicalities: What's in a Long-term Lease?

1. Setting the rent

Landlords can choose from many approaches to determine a long-term rental rate. The most basic methods are described in Chapter III. The following discussion covers more complicated approaches.

Approximating a land payment

If farmland affordability is a key aim, the parties can set the rent at a level reflecting the farm's "agricultural use value." Land is often appraised for its income potential as well as what other buyers are paying for comparable properties in the area. An agricultural use valuation would give special weight to the farm income potential of the farm – the value

should approximate what you could pay for the farm with farm earnings. This value can then be “amortized” much like a mortgage payment to determine the annual rent.

The federal estate tax provides a formula to determine a farm’s agricultural use value under the rules regarding “special use valuation.”⁸ The rules allow a farm family to value the farm at its use value rather than its fair market value for estate tax purposes.

Under the special use rules, agricultural use value is determined by taking:

- 1) the average annual gross cash rental for comparable land used for farming purposes that’s located in the same locality; 2) minus the average annual real estate taxes for such comparable land; 3) divided by the average annual effective interest rate for all new Federal Land Bank loans for the District in which the farm is located.⁹

If the farm’s agricultural use value was \$150,000, for example, this amount can be amortized (calculating an equal annual payment of principle and interest) over a typical real estate loan term. The annual amortized payment can serve as the rental payment. Once the agricultural use value is fully paid, the rent is considered “paid up.”

The Earth Bridge Community Land Trust, for example, which offers an 89-year renewable and inheritable ground lease, sets the ground rent at a level that approximates an affordable sale price for the farm. Once all payments have been made, they collect no more rent. The tenant, however, remains responsible for real estate taxes and other fees associated with maintaining common areas.

Covering costs and adding the residential use value

The Community Land Trust in the Southern Berkshires of Massachusetts uses a formula that includes the taxes on the land and improvements plus an administrative fee to cover the land trust’s management costs and a land-use fee based on a fair market value rent of the dwelling with an inflation adjuster. (See Sample Long-Term Lease Provisions, Appendix B for the details of their formula.)

Private land owners might want to consider a formula that covers their costs of owning the property. Typically, these fixed costs include the “DIRTI-5”: depreciation, insurance, repairs, taxes, and interest. This amount can then be adjusted periodically to account for inflation.

Fair rental value with an inflation adjuster

Rental rates in some long-term leases are based on a fair market value as determined by the amounts that other farmers in the area pay for comparable farms and that also include an inflation adjustment every five years. (See the sidebar, Using the Consumer Price Index as an Inflation Adjuster, Page 62.)

Rent as a percentage of gross farm revenue

A primary purpose of the Countryside Initiative lease is to bring farms back into agricultural production. Its rent formula includes both a residential component and a productive land-value component that is tied to the farm’s gross farm revenue. Farmers are expected to use sustainable farming practices, and the rental fee includes an incentive for achieving organic certification. The full provision is included in the sample long-term lease provisions in Appendix B.

2. Real Estate Taxes

Long-term leases frequently require the tenant to pay real estate taxes, but give the landowner the right to step in and make a payment when necessary to avoid a tax foreclosure sale in the event of default. This amount can be treated as delinquent rent and added to the lease payments or can result in a lien against the value of the lessee’s improvements under the terms of the long-term lease.

3. Separating Ownership of Land and Improvements

Under many long-term leases, tenants commonly own buildings and other improvements on land they lease. This type of tenure arrangement is often called a “ground lease.” because the occupant owns the improvements but leases the ground underneath them. At the end of the lease term, neither party should have doubts about what can or cannot be sold or removed. A lease must define “improve-

Using the Consumer Price Index as an Inflation Adjuster

The U.S. Department of Labor, Bureau of Labor Statistics compiles the Consumer Price Index (CPI) to measure the changes over time in prices for a “market basket” of consumer goods. The CPI is calculated on a national and regional basis. Landowners can use the CPI for New England when making adjustments for inflation to rental rates.

The CPI is available on the Department of Labor website as a series of annual indexes. For example, the New England CPI for 1995 was 159.1, and the New England CPI for 2000 was 179.4. If an annual rent was \$1000 in 1995, the following formula adjusts the rental payment for inflation in 2000:

$$\text{Original Rent} \times \frac{\text{CPI Current Year}}{\text{CPI Starting Year}} = \text{Current Rent}$$

In our example:

$$\$1,000 \quad \times \quad \frac{179.4}{159.1} \quad = \quad \$1127.59$$

You can find an example of an inflation adjustment provision in the long-term lease sample provisions in Appendix B.

ments” carefully. Some improvements will be considered “fixtures”—legally defined as items permanently affixed to the land with an intention to make them part of the premises. The lease must also specifically address items that may not fit neatly into this definition.

Separating ownership of land from ownership of improvements is legally permissible. However, there are inherent conflicts between the owner of the land and the owner of the improvements because the rights to use either are inextricably intertwined. To manage these conflicts, a ground lease ordinarily requires the landowner’s prior approval of any new construction and also

specifies the timing and rights to remove or sell the improvements.

The landowner may want the right to buy the improvements at the end of the term, in which case the lease should specify a method for arriving at a value. Some landowners with a goal of farmland or housing affordability may want to limit the resale value of the improvements. The lease may also govern rights to pledge the improvements as collateral for a loan. Some examples of these kinds of provisions can be found in the long-term lease sample provisions in Appendix B and are discussed further below.

Under common law, any improvements still attached to the property at the termination of the leasehold are considered forfeited by the tenant, even if he or she technically “owns” them by virtue of having paid for them. A lease must specifically state that the ground tenant is the owner of the improvements and has the right to sell or sever them within a reasonable time after the lease terminates.

Leases may allow the owner of the improvements to sever them from the property—either to move them to a new operation or sell them to another person—provided that he repairs any damage done as a result of severance and leaves the land in the same condition as it was before the placement of the improvement.

When selling an improvement does not involve severing the structure because the buyer intends to use it in place, a landlord may reserve the right to purchase the improvement first at the fair market value, the depreciated value, or at the replacement cost less depreciation and damage. This right gives the landowner control over who can own the improvements on his land. Sales without severing the improvement typically require that notice is given to the landowner and are subject to the successful negotiation of a new lease between the landowner and the buyer.

Some community land trust ground leases attempt to capture some or all of any appreciation of the improvements by capping the resale price or requiring the lessee/improvement owner to remit any excess over a capped price to the landowner. There are examples of these provisions in the long-term lease sample provisions in Appendix B.

4. Obtaining Financing

Tenants with long-term leases that allow ownership of improvements should have no difficulty pledging crops, livestock, and equipment as security for a farm operating loan, provided the remaining lease term exceeds the term of the loan. Getting a loan that uses permanent improvements and/or the value of a long-term lease as collateral may be more of a challenge, however—but not impossible.

A lender will want to evaluate the lease to ensure that it complies with state law, that it authorizes the borrower to pledge improvements and/or the leasehold as collateral, and that the remaining lease term exceeds the proposed term of the loan. The lender will also evaluate any basis for termination of the land lease and may ask the landowner for notice of any default by the farmer or even for the right to step into the shoes of the farmer to cure a possible default and protect the lender's interest in the improvement property.

Ordinarily, lenders insist that the lease allow the lender to foreclose on the improvements if the tenant defaults on his payments. This includes a right to sell the property to recover the money owed. Restrictions on resale of the improvements such as caps on resale value or restrictions on who may repurchase the property may have to be waived for the lender in order to get a loan. A lender will also be interested in the landowner's right to increase the rent and will want to ensure that any potential increase will not significantly interfere with the farmer's ability to make payments on his debt.

In some cases, a lender will use the value of the ground lease to the tenant as "security" for the loan. This is sometimes referred to as a "mortgageable leasehold." Banks will usually treat commercial ground leases as mortgageable leaseholds for long-term financing for real estate improvements. Their use in the farm context is more problematic. To have value as security, these mortgageable leaseholds must be immediately salable—someone must be willing to buy the leasehold interest so the lender

can recover on its note. Ground leases are still fairly uncommon in agriculture and therefore their resale value is hard to gauge.

The USDA Farm Service Agency (FSA) has developed a process for evaluating the worth of such leases as security for farm loans in much the same way that the Rural Housing Service has in the context of affordable housing. There are few "comparables" however, and FSA is taking a risk that they will never recover their loan. FSA's acceptance of these assets as security for direct and guaranteed agricultural loans may pave the way for private lenders to do the same.

Landowners may also want to use the underlying land as collateral for a loan. Unless the lease requires it, they do not need the tenant's permission to take out a mortgage on the land. If they subsequently fail to pay the mortgage, the lender/bank

can foreclose. Unless the ground lease provides otherwise, the new landowner, whether it is the lender/bank or another party, is able to terminate the lease. Leases that bind the Landowner's "heirs and assigns," and which are properly recorded, on the other hand, can protect the Tenant from early termination.

The tenant can also gain some added protection by insisting on a "non-disturbance" agreement as an addendum to the lease. The mortgagee, or lender/bank, signs this agreement, which prevents the mortgagee from disturbing the tenancy for the term of the lease. If there is a subsequent foreclosure and sale of the land to a new landowner, the new owner is bound by the agreement, and the tenant can continue the lease.

The tenant should also ensure that the land isn't subject to any prior existing liens and as already noted should take care to record the lease. (See Chapter IV, page 43.) Recording a lease in the land records puts all subsequent interests—including the landowner's creditors—on notice and protects the tenant from all who may try to claim an interest in the property after the lease is filed.

IN SOME CASES, A LENDER
WILL USE THE VALUE OF
THE GROUND LEASE TO
THE TENANT AS "SECURITY"
FOR THE LOAN

Some Loan Terms

Amortized payment: An equal annual payment of principal and interest over a specified loan period.

Collateral: Property pledged to the lender by the borrower in the event of default on a loan.

Comparables: Sales of comparable property used to estimate a fair market value.

Foreclosure: When a creditor terminates all rights of the borrower in the property and sells the property to recover his loan.

Ground lease: Lease of real estate where improvements are owned by the tenant.

Mortgage: An interest in real estate given to a lender that allows the lender to foreclose the property in order to satisfy the loan.

Security interest: An interest in property that allows a creditor to sell the property if the borrower fails to repay the loan.

Prior existing liens: A mortgage or other security interests entered into by the landowner prior to the ground lease.

Evolving Tenure Tools and Models

Attorneys and legal scholars describe property ownership not as a single, all-inclusive right but as a “bundle of rights” that can be—and in fact often are—separated. Water rights, mineral rights, timber rights, and development rights are examples of specific property rights that are often conveyed separately from the other rights relating to a particular piece of property.

Here are some examples of the many ways the bundle of rights may be split:

1. *Transferring rights.* Someone who owns a more or less full bundle of rights related to a particular piece of property is said to own the property “in fee simple.” The fee simple owner can also transfer specific rights to another party while retaining the underlying “fee interest” in the property. For instance, in return for a loan, an owner may transfer certain rights to the lender by giving the lender a mortgage. The owner may give up a variety of other rights including the right to use and possess the property for a specified period of time to another under a long- or short-term lease.

A fee simple owner may also transfer his rights to develop the property by granting a conservation

easement. In the case of agricultural land, conservation easements (also known as restrictions on development rights) are legal structures that separate the development rights of a farm property from the rights of its agricultural use. They can be sold or given to an appropriate receiving entity such as a specific government body or qualifying private land trust. In the Northeast, farmers have become familiar with conservation easements; they have served as an important tool to transfer farmland to the next generation or keep it open and active.

2. *Cooperative ownership.* Land ownership is transferred to a cooperative corporation and members of that cooperative own shares in the property. State law governs the creation of the cooperative. Its by-laws govern land management and members’ rights and can also be changed according to rules set forth in the by-laws. By-laws can also include stewardship standards. There is a rich history of cooperative ownership of production or marketing facilities in agriculture but it is less commonly used as a means of holding farmland.

3. *The Community Land Trust (CLT) model* – ground leases. In this model, a tenant owns a house and/or other improvements on land owned by a commu-

nity land trust. Ground leases are used by a growing number of nonprofit CLTs in the U.S. as a way of making land available to members of the local community while giving the community as a whole a degree of control over the long-term allocation and use of the land.

All of these examples represent various ways to allocate the rights to own, develop, and/or use farmland. Farmers are most familiar with fee simple ownership, but there is also a long tradition in agriculture of cooperative ownership of production and processing facilities. Community land trusts that own farmland and lease it to farmers under a long-term ground lease are also becoming more common in the Northeast. While there are some community land trust “models,” the reality is that the CLT ground leases vary a great deal.

Consider tenure models in terms of how effectively they address these issues:

- **Access to farmland**
- **Security**
- **Long-term affordability**
- **Stewardship of the resource**

Conservation Easements and Farmland Affordability

The Northeast has a wealth of experience with conservation easements as a tool to protect farmland from development. Retiring farmers can fund their retirements by selling the development rights to their property. In theory, the restricted property is then more affordable to the succeeding generation. It is becoming increasingly clear, however, that this tool does not necessarily guarantee long-term affordability of the conserved farm. In fact, the value of conserved property often increases as a potential “estate” for non-farming landowners because there is no restriction on the resale price of the property. Conservation easements represent a tremendous investment of public and private money. There is a growing desire among land conservation organizations and farm advocates to

refine and improve this tool in ways that benefit not just the current generation of farmers, but the next generation as well.

Traditional conservation easements contain language that grants the holder of the easement a right of first refusal, meaning that if a conserved property is to be sold, the land trust has the right to purchase it first. The right of first refusal has offered land trusts some control over “estate” sales. They have stepped in and bought the land, preventing it from being sold for non-agricultural uses. After purchasing the property, the land trust can then sell the land to another farmer. In some cases, the land is sold to another farmer at a value that reflects what other farmers in the area are paying for comparable land.

The Massachusetts Agricultural Preservation Restriction Program (APR) now adds an “option to purchase at agricultural value” to its easements. This option allows the program to step in and purchase the property at its agricultural value. It then can sell the property to another farmer at agricultural value. According to the managers of the program, just having the language in the easement has discouraged estate sales. In Vermont, land trusts have begun to offer a similar option in their easements and to look for other tools beyond easements to improve access and affordability.

Conservation Easements and Stewardship

In practice, “stewardship” in the context of conservation easements refers to enforcing the easement, i.e., restricting development. While the easement sometimes requires a management plan, these plans rarely dictate particular farm practices or stewardship principles. In the 2002 federal farm bill, however, monies from the federal Farm and Ranch Lands Protection Program (FRPP) for conservation easements require that, like farmers who benefit from other federal farm programs, farmers who receive FRPP funds develop a conservation plan with the assistance of NRCS. (See Chapter VII, page 106.)

The Community Land Trust Model and Farmland Affordability

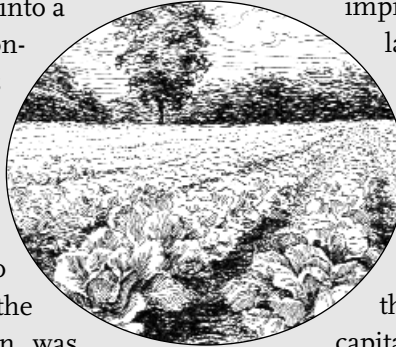
Most contemporary uses of the CLT model address affordable housing. The model works to preserve

The Community Land Trust Model

Bob Swann, founder of the E.F. Schumacher Society, saw the community land trust (CLT) as a practical way to take land off the market and place it into a system of trusteeship on a region-by-region basis. In Swann's vision, the potential for speculative gain inherent in the present system of private land ownership places tremendous pressure on the landowner to maximize the dollar value of the land by developing it. Swann was inspired by the Gramdan movement in India in which the village held donated land and leased it to those capable of working it. The first CLT in this country allowed African-American farmers in the rural south to gain access to farmland and work it with security.

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

A CLT acquires land by gift or purchase. It develops a land-use plan for the parcel and leases sites for the agreed-upon purposes. The



lease runs for 99 years and is inheritable and renewable on the original terms. The leaseholder owns the buildings and any agricultural improvements on the land, but not the land itself. Upon resale, leaseholders are restricted to selling their buildings and improvements at current replacement cost, excluding the land's market value from the transfer.

The resale restriction ensures that the land will never again be capitalized and will be affordable to future generations. The land use plan serves as a covenant that ensures that the resource base is maintained and enriched.

The CLT is an innovative landholding concept when compared to contemporary patterns of landholding. But its roots go back to the New England settlers who brought the practice of the "commons" with them. The CLT is a flexible civic tool for removing land from the market and holding it on a democratic basis for the common good while facilitating private ownership of structures and improvements. The CLT is not simply a method of holding land in common, it also allows a community to hold land for the common good.

Susan Witt

housing affordability for a mix of income levels and seeks to maximize the public investments made in creating affordable housing while allowing some measure of "wealth creation" for lower income households. Many of the basic tenets and tools can be, and have been, applied to agricultural leases.

In this model, ownership (the fee) is held by a CLT that leases either the existing housing or the "ground" to a low-income family that will build a house on the property. If the development is multi-family, the housing stock may also be owned as a coop or condo unit by the ground lease tenants.

Most CLTs are private, non-profit entities typi-

cally governed by a board that includes member homeowners as well as members from the community. The governing structure strives to give voice to both the homeowner's interests and the public interests. Community can be defined geographically or by some other common interest.

A CLT ground lease is most often renewable and inheritable, but it prohibits absentee ownership or subleasing. A ground lease ordinarily caps the resale price on homes to a "fair return" in order to foster long-term affordability. The fair return can include the value of any improvements the homeowner may have made but does not include any

The Vermont Land Trust

Since its beginnings in 1977, the Vermont Land Trust (VLT) has conserved more than 350 operating farms containing a total of over 110,000 acres. As a conservation land trust, its primary focus is on the conservation of open lands, including working agricultural landscapes. As part of its work, VLT secures conservation easements on Vermont farms. It funds its farm projects with grant money from foundations, by fund-raising on a local level, and grants from the Vermont Housing & Conservation Board that are matched by federal funds. VLT works with Land Link Vermont, the Vermont Agency of Agriculture, and other organizations to support new and existing agriculture.

The sizes and enterprise types of VLT-conserved farms vary from a small, thriving vegetable operation close to town, to a big dairy surrounded by other farms. In selecting farms to conserve, VLT asks, “How likely is this farmland to stay in

production into the future?” Farms are evaluated using the following four criteria, listed in priority order: land and soil resource, location, farm infrastructure, and management.

About one third of VLT’s farm projects involve a transfer of ownership. At the time of sale, VLT steps in to purchase the development rights. This lowers the sale price of the farm to an affordable level for a new farmer. These farm transfers are frequently to family members, with an older generation selling the farm to younger relatives. However, VLT has completed many farm conservation projects where unrelated parties have purchased the conserved farm. In almost all these instances, the buyers have a strong background in agriculture and a viable business plan, and are able to obtain the financing necessary to buy the conserved farm and start up their operation.

Kathy O’Dell

“unearned” appreciation. The CLT captures this appreciation to ensure affordability to the next family who will buy the home. Other resale formulas involve a cap on resale at a price designed to be affordable for a median income for that area or at a level that approximates an affordable monthly land payment. Or they may “share” appreciation with the homeowner or allow the homeowner to take away appreciation equal to the rate of inflation during their occupancy. Homeowners whose rents have been stabilized are expected to accumulate savings rather than rely on their home’s appreciation to accumulate wealth. Resale restrictions may also dictate the income level of the new purchaser to ensure its availability to low income residents.

Ground lease resale restrictions present particular problems for homeowners trying to obtain financing for home construction. Some lenders balk at any impediments to realizing the full value of the security in the event of default and foreclosure. Consequently, many CLTs have had to waive these restrictions with respect to lenders so their tenants could get a mortgage using the home and

the leasehold interest as security.

The CLT ground lease typically includes the standards necessary for a “permitted mortgage” upon improvements. CLTs must be willing to take financial risk. They may find themselves hard pressed to protect their interests in times of widespread economic distress, and can end up in a difficult debtor/creditor relationship with a member. (See Wisconsin Farmland Conservancy, page 68.)

Many variations on the CLT model are currently in use in agriculture, and several are represented in the long-term lease template. (See Appendix B.) Many of the legal issues faced by housing advocates are analogous to those faced by farmers and landowners who are forging new tenure structures. Many of the CLTs that focus on farming have drawn heavily on the work of The Institute for Community Economics (ICE). ICE has been a pioneer in providing permanently affordable, owner-occupied housing since the 1980s and has helped to establish 100 such CLTs nationwide. But they have also modified these materials according a number of objectives:

- Making farmland affordable
- Improving stewardship
- Keeping land undeveloped and/or open
- Providing economic opportunity for new farmers
- Fostering local food production and keeping land in agricultural production

These models try to address the advantages of long-term, secure tenure—social, economic, and environmental—while also attempting to avoid aspects of fee simple ownership that undermine economic opportunity or social justice. These latter aims are accomplished through restricting the resale value of improvements as well as limiting use of the property to agriculture and requiring residence on the property.

Alternative Tenure Models and Farmer Retirement

It's often said that farmers are cash poor and land rich—or that they live poor and die rich. The farm's land base has historically been the farmer's primary retirement plan. Many farmers pay very little self-employment tax because their net farm income is quite low; as a result, they receive little in the form

of social security benefits. The value of the farmland, which includes not just the increase in value resulting from improvements and husbandry but also its speculative or investment value, may be a farmer's only asset at the time of retirement.

Under a long-term lease and specifically with the CLT model, the farmer never owns the land, so its appreciation is not available to fund retirement. Many CLT ground leases also limit the appreciation that a farmer can realize on the sale of improvements in order to assure that the asset is affordable to the next owner. If long-term leasing is to become useful in agriculture, the farmer/tenant must be able to accumulate savings to fund retirement or be able to rely on alternative publicly-or privately-sponsored retirement planning options. Ground rents must be set at levels that allow a farmer to invest in an IRA or other traditional retirement investment account, for example. Another option is to write shared-appreciation agreements that allocate a portion of the land and/or improvement's appreciation over the term of the lease to the farmer, but this option has a negative impact on future affordability. Setting a portion of the rental payment into a retirement account is another option, and public accounts could be funded by a tax on farm rental income.

The Wisconsin Farmland Conservancy

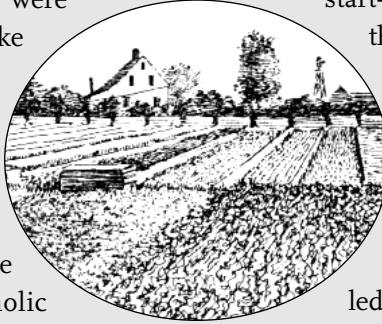
The Wisconsin Farmland Conservancy (WFC) experimented with the CLT model in 1988 in an effort to address family farm loss and the environmental damage associated with conventional agriculture. They were trying to use the model to make farmland available to low-income and low-equity farmers, preserve farmland from development, and foster sustainable farming practices.

Their first funding came from a grant from the Catholic Campaign for Human Development and a \$2 million loan from the Institute for Community Economics. Membership in the Conservancy was open to anyone in the state but was concentrated in three northeast counties; the first members were farmers and non-farmers who shared the goals of the Conservancy. Four farmer-tenants and non-farmers who brought expertise in financing or legal matters sat on the board.

The Conservancy intended to offer life-long, transferable leases to farmers; split ownership of the land and the improvements, which would be owned by the farmer; provide technical assistance in obtaining and keeping credit; hold the farmer to a conservation plan; and give the farmer the right to sell the improvements. WFC also had a first option to purchase.

The WFC eventually bought four farms. They purchased the first from a financially-distressed farm family and leased it back to them. They bought the remaining three farms from retiring farm families and leased them to beginning farm families. All of the trust farmers were low-income and low-equity farmers who would not have been able to continue or start farming without WFC's involvement.

Contrary to their first intentions, the Conservancy decided to own the improve-



ments and lease them to the trust farmers because none of the families was able to generate enough farm income to purchase them. The farmers also had difficulty financing other start-up costs. By the mid-1990s, all of the farmers were deeply indebted to WFC. WFC found itself in the position of both champion and commercial lender for these farmers, but they needed the lease payments to meet their own obligations. This situation led WFC to provide costly management assistance on almost a day-to-day basis. Two of the farms eventually failed and were put up for sale on the open market.

WFC staff has said that two of the largest obstacles to the use of the CLT model in agriculture related to the cultural attitudes of the particular farmers toward land ownership. They were uncomfortable with split ownership of land and improvements because they felt that "farmland and farm buildings are interrelated, integrated components of a complete farm business, whereas with residential housing, the land is really little more than the surface upon which the home rests."¹⁴ The second obstacle was related to the loss of the "farmland pension" in a profession that "offers little in the way of annual income or employee benefits."¹⁵

WFC has since initiated "The Next Generation Project," which seeks to match retiring farmers with beginning new farmers. The project asks retiring farmers to donate the portion of the farm's value that would otherwise be lost to capital gains and estate taxes to the Conservancy. The value of this donation is used to subsidize the purchase of the farm by a beginning farmer. The Conservancy also retains an "equity share" based on the value of the original subsidy. This equity share is to be used to reduce the cost to the next purchaser.

Endnotes: Chapter V

1. Rental income from farmland is treated differently by the IRS than income from other kinds of rental properties. The difference is that landowners who *materially participate* in the production of crops or management of the farming operation must include the rental income in earnings subject to self-employment tax. Government payments that a landowner might receive as a result of his tenant's participation in a government program might also have to be included in self-employment income. For more information see "Taxation of Rental Income" in Chapter IV.
2. 51 C.J.S. Landlord Tenant §227.
3. Mass G.L.C. 7, Sec. 40F and G.L.C. 40, Sec. 40.3.
4. 29 V.S.A. §104(a) .
5. Piper v. Meredith, 138 A 303, 83 N.H. 107(1927).
6. University of Vermont and State Agricultural College v. Ward, 104 Vt. 239(1932).
7. Lonergan v. Conn Food Store, 168 Conn. 122 (1975) A similar rule is followed in Vermont. See Rutland Amusement Co. v. Seward, 248 A2d 731, 127 Vt.324 (1968).
8. 26 U.S.C. §2036A.
9. These rates are published annually by the IRS.
10. Generally, the value of the leasehold interest is determined by taking the value of the land in fee simple, less the value of the present value of the income stream that the landowner will receive as a ground rent, plus any reversionary value of the landowner upon termination. Given the length of the leasehold this reversionary value is usually zero. For more on this, see the ICE Legal Manual.
11. Rural Development regulations at, 7 C.F.R. §3550.72 and RHS Handbook 1-3550, Chapter 9, pp. 9-12.
12. A donation of a conservation easement may also yield considerable tax benefits. In addition to a charitable deduction the tax code also allows a generous estate tax exclusion of up to 40% of the value of land subject to a "qualified conservation easement" not to exceed \$500,000. For the considerable devil in these details, see 42 U.S.C. §2031(c).
13. Community Land Trust Legal Manual, Institute for Community Economics, 2002. www.iceclt.org.
14. The Community Land Trust Model Applied to Farmland: A Case Study of the Wisconsin Farmland Conservancy. Greg Lawless, Masters Thesis, University of Wisconsin-Madison, 1994. Chapter V page 9.
15. Ibid.

CASE STUDY:

Caretaker Farm

“Agrarianism, broadly conceived, reaches beyond food production and rural living to include a wide constellation of ideas, loyalties, sentiments, and hopes. It is a temperament and a moral orientation as well as a suite of economic practices, all arising out of the insistent truth that people everywhere are part of the land community, just as dependent as other life on the land’s fertility and just as shaped by its mysteries and possibilities. Agrarian comes from the Latin word agrarius, “pertaining to land,” and it is the land—as place, home, and living community—that anchors the agrarian scale of values.”

— Eric Freyfogle¹

Sometime in the beginning of the twentieth century, agrarianism began a precipitous, seemingly irreversible decline. I want to explore the role of farmers in creating a “new agrarianism,” in which farmers have two central tasks: restoring the land and producing food. But farmers cannot take on this redemptive burden alone. One way or another, the whole community must share this responsibility.

Farmland tenure is critical factor if these roles are to be fulfilled. The quality of tenure—its degree of permanence and security—determines whether a farmer can reasonably act to restore the land. As a result, communities face the challenge of developing and supporting the highest, most enduring levels of tenure for their farmers.

Practically, we must decide what form tenure will take and how to provide it. In my opinion, tenure will be most secure under a system of long-term leases on land over which the wider community—through such arrangements as a community land trust (CLT)—holds sovereign control in perpetuity. The possibility that this model of land tenure will succeed when all others, including private landownership, have failed will ultimately depend on its openness to justice, fairness, and oversight.

The idea of private ownership of land is a very recent phenomenon. But it’s not land *ownership* that matters, it’s secure, long-term tenure. The primary reason that even the most idealistic and conservation-minded agrarians have so fervently supported

private landownership is that they saw it as the only available option for preserving the land’s integrity. The irony of this system is that it makes what I valued and yearned for—secure tenure in the land in order to care for it, enjoy it, and belong to it—irredeemably vulnerable. It allows land to be treated as a commodity that can be used up and discarded. It means that the land is often deprived of accountable human caretakers and inhabited by the dispossessed, instead.

As a society, we face the twin challenges of promoting good land stewardship as well as the long-term tenure that will foster that care. I believe that we can do this only through non-ownership. This certainty is based on my reflections and experience in the following three areas: working the land; my beliefs about apostles of community and abiding continuities; and becoming a “community supported farm”.

My ideas about land tenure began to change in 1969 when my wife, Elizabeth, and I sold our small house in the center Williamstown, Massachusetts, and moved our young family to an old, run-down 35-acre dairy farm seven miles south of town. We named it Caretaker Farm. In the following years, Elizabeth and I taught ourselves to be as good farmers as we possibly could. In 1990, we became a Community Supported Agriculture (CSA) farm.

Our CSA farm is now fourteen years old and a vibrant community of over two hundred households who not only share in the farm’s production but who also use it as a place to meet and socialize with others, relax with their children, help out, and in the years since September 11, 2001, look to for peace and renewal. Caretaker Farm also has trained over 100 apprentices in the last 30 years—many of whom have gone on to establish their own farms.

Though we’re both in excellent health, I’ll be 69 next year and Elizabeth 67. Before we “retire” (after which it may be too late) we and others who are intimately related to the land have to respond to some deep questions about the future of the land, a future that is more important than our own. If our

presence meant something to the land, what was it, and how do we preserve it? Have we not endowed it with something more than it had before we came? Can this endowment be secured in perpetuity, or is it subject to decay and dissolution? These are the questions that moved us to place Caretaker Farm within the embrace of a community land trust. The farm's lease is a response to these questions, in that they reflect certain values and beliefs essential to serving the land and community. These values include:

- Non-ownership tenure is the ethical norm for inhabiting the earth.
- Tenure should be long-term and inheritable.
- All persons—if they wish—must be able to acquire tenure for the purpose of working the land through an apprenticeship program supported by the community.
- Tenure in all its forms (both urban and rural) is the sacred responsibility of the members of the whole community regardless of their occupation or practical, day-to-day relationship to the land.
- The land must be held and its integrity guaranteed in perpetuity by a legal entity that is trusted to represent the highest moral values of society.
- Non-ownership tenure is the best way for farmers to get together with other people in the community “to recognize how their fates are intermingled and how the fate of humankind is linked with that of the land.”²

Working with The E. F. Schumacher Society, Equity Trust, and the Williamstown Rural Lands Foundation: A Conservation and Community Land Trust (the CLT), Elizabeth and I set a framework for the future of Caretaker Farm. In essence:

1. We sold the farm's development rights to the Commonwealth of Massachusetts.
2. We donated our remaining equity in all the land, including the land under the buildings, to the CLT.
3. We also donated approximately half of our equity in our home and the entire farm's infrastructure (barn, sheds, greenhouses, a second home, and various other improvements) to the CLT. The CLT's

equity in both the buildings and the land will never be sold.

4. While we retained the other half of our equity in the buildings and improvements, we gave the CLT a first option to purchase our one-half equity interest*. Except for an annual adjustment based on the CPI and farm-related improvements allowed by the CLT, the subsidized purchase option price will also apply to future farmers and will never increase. This assures the farm's affordability as a working farm in perpetuity.

5. Until we decide to pass on the farm to a younger farm family, we will hold a 99-year renewable ground lease from the CLT as well as retain our one-half interest in buildings and improvements.

6. After we pass on the farm, we will re-imagine our work and support ourselves financially with funds from the following sources: a) sale of the development rights to the state; b) sale of our retained equity in the buildings and improvements to the next farmer; and c) fund raising from the community to reimburse us for some portion of the value in land and buildings donated by us.

**Note: The full equity (both the half donated and the half retained) in buildings and improvements was determined at their appraised replacement cost adjusted for deterioration and obsolescence. However, it is important to note that the purchase option price is equal to the appraised Farm Value of the Buildings and Improvements (approximately fifty percent of the replacement cost) rather than their full replacement cost.*

Following is my commentary on excerpts from the lease that governs Caretaker Farm.

Caretaker Farm Agricultural Ground Lease

ARTICLE (1) The Recitals

This lease reflects the shared values and purposes of the Lessor and the Lessees regarding the long-term status of a certain property, known widely as “Caretaker Farm.” These values and purposes, briefly identified in the following recitals, form the basis for the future character of Caretaker Farm, for its own sake and as an expression of a clearer vision of how people fit together with the rest of nature.

WHEREAS, the Lessor is a not-for-profit corpo-

ration organized exclusively for charitable purposes, including the preservation and enhancement of land in its natural, open or forested and agricultural condition for scientific, charitable and educational purposes;

WHEREAS, it is also a purpose of the Lessor to ensure that existing agricultural land and improvements be preserved as working farms and that access to the same be kept affordable for future as well as present farmers;

WHEREAS, the Leased Premises described in this Lease have been acquired and are being leased by the Lessor in furtherance of these charitable purposes;

WHEREAS, the Lessee shares the purposes and goals of the Lessor and has agreed to enter into this Lease not only to obtain those benefits to which the Lessee is entitled under this Lease, but also to further the charitable purposes of the Lessor with regard to the Leased Premises;

WHEREAS, Lessor and Lessee recognize the special nature of the terms and conditions of this Lease, and each of them, with the independent and informed advice of legal counsel, freely accepts these terms and conditions, including those terms and conditions stated in the Rules and Restrictions and those terms and conditions that may affect the marketing and resale price of any Improvements on the Leased Premises; and

WHEREAS, it is mutually understood and accepted by Lessor and Lessee that the terms and conditions of this Lease further their shared goals over an extended period of time and through a succession of owners;

NOW THEREFORE, in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

• • •

And so begins a document that encapsulates one of the most important events of my wife's and my life. It symbolizes an event that falls into the same profound personal categories as birth, marriage, children, and death. Even though the act of letting go of ownership

may engender grief, I suspect that the grief has more to do with living through the process than with the outcome. At the end of the process, I will be more deeply related to the land and the whole of creation than when the land was "mine."

ARTICLE (2) The Premises

RESERVATION OF MINERAL RIGHTS: Lessor reserves to itself all ...minerals, including water, upon, in and under the Leased Premises. This reservation shall not diminish the right of the Lessee under this Lease to occupy and freely use the Leased Premises... Notwithstanding this reservation of mineral rights by Lessor, Lessee shall have the right to draw upon such quantity of water from the Leased Premises as may be reasonably necessary for use by the Lessees on the Leased Premises.

Further, the Lessor, in furtherance of its purpose of improving soil quality, reserves to itself all of the soil on the Leased premises; however, the Lessor shall not have the right to extract or remove such soil. The Lessor recognizes that any improvements of such soil made by Lessee during the term of the Lease are part of Lessee's equity and that Lessee shall have the right to transfer such equity to a new Lessee under terms stated later in this Lease.

This section addresses several important concepts. It acknowledges the value of mineral rights and the conventional legal principle that the Lessor owns those rights. It goes on to say that under principles of land stewardship, the protection of the health of the land trumps conventional landownership principles. Significantly, it recognizes the value of improvements to the soil as equity. Assigning a value to that improvement will be a challenge.

ARTICLE (3) Duration of Lease

PRINCIPAL TERM AND LESSEE'S OPTION TO EXTEND: The term of this Lease shall be 99 years, ... unless terminated sooner or extended as provided below. Lessee may extend the principal term of this Lease for one (1) additional period of 99 years, subject to all of the provisions of this Lease, ...

CHANGE OF LESSOR; LESSEE'S RIGHT TO TENURE: In the event that ownership of the Leased Premises is conveyed or transferred (whether voluntarily or involuntarily) by Lessor to any other person

or entity, this Lease shall not cease, but shall remain binding and unaffected.

These terms protect the farmer from being arbitrarily severed from the land even if the land trust goes out of business.

ARTICLE (4) Use of Leased Premises

PERMITTED USE: The Leased Premises shall be used only for residential, agricultural or educational purposes and such other purposes as are supportive of or... incidental to these uses. All use of the Leased Premises shall be consistent with the values and purposes stated in the Preamble and Recitals of this lease.

AGRICULTURAL INCOME REQUIREMENT: Lessees' use of the Premises for agricultural purposes shall result in at least the minimum agricultural income for the Lessees (or for a Lessee Partnership) as such minimum agricultural income is defined in Exhibit E. The parties agree that the purpose of this requirement is to promote the continued agricultural use of the Premises by persons whose primary work is farming.

This section protects the land from abandonment. The land without an experienced caretaker would be just as injured as a farmer without possession of the land. The CLT is responsible for assuring that the land continues in active agricultural use.

OCCUPANCY: Lessee shall occupy the Leased Premises for at least ten (10) months of each year of this Lease, unless otherwise agreed by Lessor. Occupancy by children or other immediate family members or dependents of the Lessee shall be considered occupancy by Lessee.

WRITTEN CONSENT FOR OTHER USES: The Lessee must secure written consent from the Lessor for any uses of the Leased Premises which are not consistent with the terms of this Lease or about which there may be reasonable doubt as to their consistency with the terms of this Lease.

LESSEE'S RIGHT TO PEACEFUL ENJOYMENT: Lessee has the right to undisturbed enjoyment of the Leased Premises, and Lessor has no desire or intention to interfere with the personal lives, associations, expressions, or actions of Lessee, subject to the provisions of this Lease.

Under a CLT, the Trust is the "owner" of the land.

Nonetheless, the Lessee possesses universally cherished rights—including nourishment, shelter, health, pursuit of happiness, and privacy—usually associated with private ownership. There's a strong argument that a 99-year, renewable lease under the CLT provides greater creative freedom than private ownership. Under a permanent land trust, farming decisions are more likely to be determined by considerations of land health and crop/animal diversity than by economic necessity. Under a land trust, a farmer will be strongly motivated to follow creative stewardship practices with the assurance that they will accrue to the benefit of his/her family, the local human community, the health of the land, and all future generations—who in turn, will be motivated to maintain these practices in perpetuity.

Somewhat paradoxically, a CLT lease also provides greater tenure protection than does private ownership tenure. In the case of private ownership, the farmer is always alone, always subject to the fearful reality of being displaced by economic and political forces. But under the umbrella of a land trust, the farmer's tenure is strengthened by the fact that the farmer and the community possess the land in common. In this context, the inevitable forces of displacement have to contend with both the farmer and the community before the farmer can be separated from the land. Thus, a lease with rights of inheritance is a more secure way of possessing land than private ownership would be. In summary, Articles (3) and (4) are powerful instruments for protecting land tenure and making agrarian reform a desirable community and political goal.

ARTICLE (5) Ground Lease Fee

CALCULATION OF GROUND LEASE FEE: Calculation of the "Ground Lease Fee" is based on the recognition ...that use of the Leased Premises is restricted by the Lease in ways that may reduce the fair market value, and that Lessee will be providing certain other benefits to Lessor as more particularly set forth as Exhibit F.

The calculation of the ground lease fee rightfully recognizes the contribution the tenant (the good farmer) makes to the landlord (the social and natural community represented by the CLT). If a farmer farms in the spirit of Aldo Leopold's land ethic,—“a thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community.” (A Sand County Almanac, Oxford (1949), 224-225)—then the ground

lease fee should be determined accordingly rather than according to the more common practice wherein farmland leases fail to carry sufficient conditions for good stewardship. The interests of the community and land stewardship organization, as the "landowners," are enhanced by requirements and responsibilities that the ground lease has placed on the shoulders of the farmer.

ARTICLES (7) and (10) Ownership and Disposition of Improvements

OWNERSHIP: It is agreed that all buildings, structures, fixtures, and other improvements purchased by the Lessee or constructed or placed by the Lessee on any part of the Leased Premises at any time during the term of this Lease shall be property of the Lessee.... However, Lessee's exercise of the rights of ownership is subject to the provisions of this Lease, including ... disposition of Improvements by the Lessee and the Lessor's option to purchase the Improvements.

DISPOSITION OF IMPROVEMENTS UPON EXPIRATION OF LEASE TERM: Upon the expiration of the term of this Lease ... or as sooner terminated in accordance with this Lease, Lessee shall surrender the Improvements together with the Leased Premises to the Lessor. Ownership of the Improvements shall thereupon revert to Lessor, provided, however, that Lessor shall promptly pay to Lessee as consideration for the Improvements an amount equal to Lessor's Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership.

INTENT: It is ... intended ... that the Land will continue to be used for appropriate agricultural purposes by resident farmers and that access to the land and improvements will continue to be affordable for farmers who might otherwise be unable to gain access to appropriate land for their agricultural purposes.

TRANSFERS TO QUALIFIED PERSONS: Lessee may transfer its interest in the Leased Premises or the Improvements only to the Lessor or to a Qualified Person as defined below... "Qualified Person" shall mean a person or group of persons who have demonstrated to Lessor's express satisfaction that s/he or they have the ability to abide by the Rules and Restrictions as set forth in Exhibit F hereto, and the other requirements of this Lease, on a

sustainable basis over time. Prospective transferees are required to... submit to the Lessor (a) a description of the prospective transferee's training and experience indicating that the prospective transferee has the skills and knowledge needed to abide by the Rules and Restrictions and (b) an accounting of financial assets and capital goods (including relevant equipment, supplies, livestock and other physical items) commanded by the prospective transferee and giving the prospective transferee the ability to maintain the Land and the Leased Premises in accordance with the Rules and Restrictions and the other terms and conditions of this Lease (including, but not limited to, the requirement that at least fifty percent (50%) of the Lessee's gross income must be derived from the sale of agricultural commodities.)

TRANSFER TO LESSEE'S HEIRS: ... Lessor shall, unless for good cause shown, consent to a transfer of the Improvements and an assumption of this Lease to and by one or more of the possible heirs of Lessee.

LESSOR'S PURCHASE OPTION: Upon receipt of an Intent-to-Sell Notice from Lessee and upon the completion of the Appraisal, Lessor shall have the option to purchase the Improvements and Lessee's interest in this Lease at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Improvements for succeeding Qualified Persons while taking fair account of the investment by the Lessee.

SUMMARY OF PURCHASE OPTION PRICE: The Purchase Option Price equals the appraised Farm Value of the Improvements plus Lessee's Share of Increase in Farm Value of the Land.

The above articles (see especially the paragraphs beginning with the words INTENT and TRANSFERS TO QUALIFIED PERSONS) encapsulate the primary purposes of Elizabeth's and my decision to deed Caretaker Farm to a community land trust. These purposes are threefold. First, the Land will continue to be farmed according to the highest principles of land stewardship. Second, the land will be preserved as a working farm forever in order to restore community food security and food sovereignty. In this regard, it is our deepest hope that communities everywhere will unite with farmers to know and be responsible for the land that provides

them with their daily bread. Third, the land and improvements will be affordable for farmers who might otherwise be unable to gain access to land.

Underlying this specific purpose is the broader purpose of agrarian reform as expressed by many down through the centuries including the prophet Isaiah (Isaiah 65:22) who wrote that there should be no separation between those who hold the land and those who farm it or between those who plant and those who get to eat. In other words, there should not be any economic, political, or social impediments put in the way of those who would, with the active support and oversight of the community, serve and preserve the land.

• • •

The greater purpose of the above lease governing the transformation of Caretaker Farm into a CLT, is agrarian reform—resettling the land so that people everywhere may regain their human calling as caretakers. For Elizabeth and me, the CLT model appeared to be the best available social and legal vehicle for making both the well being of the land as farmland and the secure tenure for the farmer a communal concern and responsibility in perpetuity.

In ethical and social terms, community land trusts may be the best and highest form of land tenure and agrarian reform available, but this structure still leads to questions. If one deeds the farm as a working farm to the community, in part through a gift by the original farmer and others, does it matter to the community? Will the community care? And in the future, will the social fabric of the community continue to remain strong enough to be able to care? We place our faith in the community to grapple with these questions.

Samuel Wood Smith

1. Eric T. Freyfogle, ed., *The New Agrarianism* (Island Press, Washington, 2001), xiii

2. Freyfogle, *op. cit.*, xv.

CASE STUDY:

Nesenkeag Farm

During the growing season, in my weekly customer newsletter, I often refer to myself as a “postmodern farmer.” I use unconventional methods to maintain a hold on my fields and to secure support from my urban customers and respect from my elder farmer-neighbors. I am a farmer who doesn’t own his land, but who has good farmland to work. The land is secured by a 99-year lease, with a modest lease fee, and is protected by covenants. This is a story about Nesenkeag Coop Farm (NCF) and how an unconventional group of people pioneered complex strategies to protect it from development and secure it for other “postmodern farmers” who choose to farm into the future.

NCF has survived as a working farm since the early 1700’s. Today Nesenkeag Farm holds a Historical Farm status from the federal government as an acknowledgement of its long history of agricultural activity.

Bill McElwain bought the farm property in 1948. First, he tried to make a living as a farmer. After he moved from the farm, he envisioned using it to get farm-grown produce to inner-city residents and using the farmland as an educational and recreational resource. Bill placed two separate agricultural conservation easements to preserve his best fields from future development and reduce his tax liabilities. As with similar easements, the land can be used only for agriculture. Farmstand structures, family and employee housing and buildings for agricultural purposes are permitted, but must be approved by the holder(s) of the easement (state and town). Generally, the conservation restriction protects the land for “its natural, scenic, or open” condition, allowing, however, agricultural or forestry activity in accordance with “sound, generally accepted practices.” The Conservation Restriction did not grant access or rights of use for the general public, but it did include a “right to take water” from Nesenkeag Brook for agricultural purposes in the contiguous fields.

Bill created an innovative farm entity that would carry forward a social mission grounded in agricul-

tural activities. A charitable and educational farm, Nesenkeag Co-op Farm, Inc., was created in 1982. The farm was to provide practical educational opportunities for both urban and rural residents of moderate- and low-income means to acquire skills in the areas of farming, food production, nutrition, resource management, land conservation, and self-reliance.

Within a couple of years, the farm marketed farm-grown produce to eight urban farmstands located in low-income housing projects, and run by Boston Urban Gardeners. Grants supported the costs of administering the urban farmstands, as well as subsidizing the distribution and production costs to the farm of delivering to these farmstands. At this point, the land hosted three separate farming enterprises and realizing very little rental income from any of them. Nesenkeag Farm learned that foundation support for its charitable projects could not be guaranteed year to year. It was not a sustainable scenario for the fledgling nonprofit farm.

Nesenkeag was challenged to find new charitable avenues for its produce. In 1987 I became the fourth Nesenkeag Co-op Farm manager. I advocated building diversified farm sales as the best path to viability and economic security. I made other fundamental changes during the first couple of years of my tenure, too, one of which was to replace the volunteer labor program with paid seasonal workers. We developed relationships with the Lowell (MA) Cambodian community, and sold produce directly to a few Cambodian stores and restaurants. Thereafter, NCF leased two fields to low-income Cambodia families for Asian market garden production.

Bill believed that a separate entity should hold title to the land, independent of the nonprofit farm corporation, to ensure that, in the case that the nonprofit farm failed, that entity would find an appropriate tenant for the farm. He wanted to find another patron who would further capitalize necessary farm improvements. In addition to the significant financial and volunteer contributions he had made, he had also provided the farm its mandate for non-

profit educational and charitable work.

The NCF Board of Directors sought an entity that had a complementary agenda for the use of the farmland and farm staff. They looked for an organization that could hold title to the land but would not impose any new agenda for its use. In essence, Nesenkeag chose the path of independence over financial subsidization. Monadnock Community Land Trust (MCLT) had formed to save a significant part of a beautiful old New England farm in Wilton, NH. MCLT saw NCF as another opportunity for the land trust model to protect and preserve farmland. Working with Nesenkeag Farm, MCLT could advance its mission by providing support to a working farm. If NCF were to fail, MCLT had the commitment to see that Nesenkeag land would continue to be farmed.

Over the course of a year, MCLT and the NCF Board of Directors met regularly to define the terms of a lease. Bill wanted to ensure that the land would never be sold, but could only be transferred to another entity with a mission compatible with the goals of the farm. MCLT wanted to ensure that the land would be farmed under appropriate organic or sustainable methods. NCF wanted to ensure that the nonprofit farm corporation could operate with support, not interference, from the titleholder.

A long-term lease of 99 years was created to guarantee secure tenure for Nesenkeag Farm. The rights of the farm to make improvements were clearly defined, including the construction and ownership of farm buildings and housing for farm personnel. Bill and MCLT agreed that the farmland could not be encumbered as security for borrowing.

Among the important elements of the lease are the following:

- The lease is held by NCF for 99 years with an option for renewal.
- Policies regarding public access are jointly agreed upon.
- The lease does not cease if ownership is transferred to another titleholder.
- Clearly defined steps for resolving conflict are included.
- NCF can finance, build, and own structures necessary to farm operations, including personnel

housing, sheds, workshops, greenhouses, a septic system, and a well.

- MCLT must approve all site and building plans.
- Terms of the sale of farm-owned improvements are clearly defined, based on different scenarios.
- No organization, including Nesenkeag and MCLT, can encumber the land in any way as security for borrowing.
- Farming on the land is limited to organic or biodynamic practices.

The lease fee originally covered the cost of liability insurance and real estate taxes, plus a 5% administrative fee. In practice, it's better for the farm to work directly with the insurance company in order to keep the coverage updated in regards to equipment or building changes. The land trust is held free from liability.

Regarding buildings or other improvements on the leased property, the tenant must submit a building plan to the landlord, keeping in mind that improvements must "support" agricultural operations. Accurate records of all costs associated with tenant improvements, including receipts for materials and labor costs, must be kept in order to provide a basis of assigned value for determining tenant equity.

As tenant, I have the option to sell my farm improvements by physically removing them, as long as their removal does not damage farm property. The lease details procedures to follow in the event that the tenant terminated his lease and wanted to sell his improvements. The landlord retains a first option to purchase any improvements or buildings that are not removed from the leased land. The tenant must inform the landlord if he intends to sell any improvements. After the lessee has given this written notification, the landlord has 60 days to accept the offer, make a counter-offer, or release the purchase option.

The lease is not clear on how to determine the value of farm improvements; local replacement costs of agricultural buildings, as determined by an appraiser, doesn't necessarily give the same result as using the recorded receipts and labor costs would yield. The sale of improvements on a farm is a complicated process in that most scenarios require the

successful transfer of the lease to the party purchasing the improvements. If a buyer for the improvements is not found two years after the lease is terminated, the landlord would assume ownership.

I don't have strong feelings or significant insights on how the lease can be improved or done differently. I think it works because we have avoided trouble. Lease fee payments have been timely and we have been responsible with payment of our farm improvement loans. Potential problems could arise were the farm to fail; the task of finding a new tenant could fall heavily on the Land Trust. The "organic or biodynamic" requirement could make it more difficult to find a new tenant.

Among the many benefits NCF derives from this arrangement is the absence of property taxes or mortgage costs. Ninety-nine years is a lot of security when thoughts turn to farm improvements. If any equity is left out of the lease, it is the improved value of soils under an organic farming system. This makes a significant improvement to the overall biology of the farm enterprise, one that comes from annual farm practices, but is not rewarded through the lease document.

Cash flow was a particularly challenging consideration. Foundation grants that supported the farm did not follow the seasonal cash flow needs of farming. NCF was realizing the limits of its ability to significantly grow without solving its need for cash within the traditional cycle of New England vegetable farmers.

We soon learned that one of the greatest challenges for NCF was securing credit. NCF approached banks and traditional farm credit institutions. But NCF's nonprofit status was an unexpected obstacle for qualifying for traditional loan programs available to farmers. NCF was also considered a lending liability because it had been in operation for nearly 10 years without establishing any credit beyond short-term credit at the local seed and farm supply merchants. The fact that NCF did not own its farmland and was unable to use the land as collateral made conventional access to credit nearly impossible.

NCF turned for assistance to the New Hampshire Community Loan Fund, an alternative lending organization created to assist undercapital-

ized organizations to establish credit. The NHCLF had considerable experience working with nonprofits, particularly with low-income housing associations. NCF was its first nonprofit farm client. As an alternative to encumbering the farm, NHCLF created an escrow account for the sum of the loan. A \$3000 annual cash flow loan was secured with Bill and a successful alternatively-minded, NH-based food business as backers of the loan. NCF paid 10% interest and repaid the loan annually for the next three years. With a newly established credit history in hand, NCF was able to approach a conventional lender, who could then fulfill the cash-flow needs as operations grew.

We constructed new barns by pulling together support from the Community Loan and two individuals. We collateralized the NHCLF loan with a lien on farm equipment. Our previous efforts to establish credit allowed us to continue with the cash-flow loan through the local bank and, independently, we pursued a different financing process to build our barn.

The farm has a diverse marketing strategy linking it to nearly 30 restaurant and retail store accounts as well as a co-op farmer CSA and a traditional wholesaler. Educational programs continue to evolve at the farm. As economic and cultural changes affect the region, we have a deep reserve of regional support that allows the farm organization to continue.

Most of the original individuals and institutions who initially contributed to the farm are no longer part of the farm's organization. However, the core values of Bill's vision continue. The farmland is protected and in active use, and Bill's charitable and educational goals for the farm continue. Benefits of the farm extend from local Litchfield residents to nearby low-income urban residents and the broader agricultural community of New England.

Stewardship of the farm's soil remains the foundation for the farm's future. The nonprofit organization serves primarily farm-related issues. With long-term, secure tenure and supportive relationships with the partners involved, NCF can faithfully nurture Nesenkeag's soils, its community, and Bill's dream.

Eero Ruuttila

CASE STUDY:

Indian Line Farm

Indian Line Farm is located in southwestern Massachusetts, in the town of Egremont. The farm comprises just over 17 acres, five of which are tillable. There property contains a farmhouse, mobile home, barn, and various accessory buildings. It abuts a fen marsh, which is considered critical and rare habitat by local environmental scientists.

Indian Line Farm is the home of the first Community Supported Agriculture (CSA) project in the United States, which began in the mid-1980s under the direction of Robyn Van En, Jan Vandertuin, and others. In 1997, Robyn, the farm owner, died at the age of 49. Her son David inherited the farm and friends, relatives, and stunned members of the community wondered what would happen to it. Coincidentally, Elizabeth and I had completed training as apprentices on a nearby CSA farm and were considering our next steps. For the following two summers, we rented the farm from David and continued the CSA operation.

David recalled that his mother had sold some acreage to The Nature Conservancy (TNC). He approached TNC to see whether it would be interested in purchasing an additional portion of the farm. At that time, TNC was in the midst of a major conservation campaign to protect nearby Karner Brook watershed; staff members were interested. Coincidentally, the nearby E.F. Schumacher Society was developing model legal documents for long-term leasing of farmland. The Society wanted to expand their work by implementing the lease model on a working farm. Using the Society's lease model and technical assistance from them, the Community Land Trust in the Southern Berkshires, Inc. (CLT), an organization committed to issues such as affordable housing, agreed to act as lessor and fee holder of the land.

Thus, three major entities emerged to create an innovative land-holding and tenure arrangement: (1) the farmers, (2) the conservation organization (TNC), and (3) the land trust (CLT). These entities shared a desire to preserve Indian Line Farm as a working farm, yet each came to the effort from a dif-

ferent perspective. Using a long-term lease as well as a conservation restriction, the three entities were able to meet their respective needs.

In 1999, the CLT purchased the farm for \$155,000. The purchase price was determined by an appraisal and reflected the rundown and neglected condition of the property. Following the purchase by the CLT, TNC purchased a conservation restriction on the majority of the undeveloped property for \$50,000. Then, the CLT sold the buildings to us, the farmers, for \$55,000, and simultaneously gave us a long-term lease on the entire farm.

An intensive community fundraising effort conducted by TNC and the CLT focused on a number of compelling values, most notably (a) the history and importance of the CSA movement and specifically the work of Robyn Van En, (b) the ecology of adjacent wetlands, (c) the community benefits of preserving Indian Line Farm as a working farm, and (d) the economy of Indian Line Farm as a small regional enterprise. The fundraising campaign sought support from a wide segment of the community. Tax-deductible contributions were directed to TNC and were transferred to the CLT, a 501(c)(2) land-holding, non-profit corporation.

The tax status of the organizations was significant. CLT's organizational status enabled it to transfer property to farmers rather than exclusively to groups with charitable, educational, or scientific purposes. And the status of TNC allowed it to transfer funds to another non-profit corporation while still fulfilling its legal obligations.

Two influential documents emerged from the purchase scenario described above: the Lease Agreement and the conservation restriction.

The Lease Agreement is a contract between the CLT, the lessor, and us, the lessees. It is a 99-year renewable lease to utilize the farm property within certain prescribed limits and conditions. The Lease Agreement includes several attachments, including the Land Management Plan. The conservation restriction, on the other hand, is essentially a deed, with the CLT as the Grantor and TNC as the

Grantee. It allows certain acts and uses to take place on the property, but prohibits virtually all others.

We want to share some of our thoughts about the legal and other aspects of this tenure arrangement.

- Parties to a lease can agree to just about anything. If you retain only one concept from reading our case study, choose this one. Agreements, or contracts, can be a vehicle for applying creative energy to negotiations. Spend whatever time it takes to think through the ramifications of the lease language. If the language is not clear, rewrite it until it is. Do not accept vague terms.

- Valid, enforceable agreements, known as contracts, protect both landowners and farmers. Contracts—such as leases—are most likely to be successful when all parties are satisfied. Leases don't have to be fair to be enforceable. But an unfair lease can cause dissatisfaction on the part of either the landlord or the tenant and can create ugly situations. To prevent this, both parties must anticipate their needs and negotiate a lease that is equitable.

- Coming to this point is perhaps the most difficult task of all, because the interests of one party may be directly antagonistic to the needs of the other. At the very least, tensions are likely to arise during the negotiating process. These tensions were considerable during the negotiating process at Indian Line Farm because each party came to the negotiating table with strong convictions about ecological and land conservation interests, community interests, and the farmers' interest in the long-term commercial viability of the farm. At the same time, we were all willing to hear the goals of the other parties. The negotiating process continued for nearly two years.

- Post a notice of the lease at the Registry of Deeds, or whatever civil offices carry out such purposes in your state. Posting the lease protects the tenant farmer in cases where the landlord sells or otherwise transfers interest in the property. If the notice of lease is posted at the public record hall, any subsequent owner is reasonably likely to be aware of the lease, even if the prior owner did not disclose it. Failure to post notice could result in termination.

- For us, it was essential to retain the right to make business decisions independently of the landlord's oversight. Therefore, with a few minor exceptions, no terms within the Lease Agreement give the landlord the right to oversee our decisions as farmers.

- Our lease provides for renewal by the tenants at the time of its expiration, on the same terms. Without this renewal feature, the amount of time left on the lease would have continuously declined, meaning that the lease would have had less value with time and our equity in buildings and other improvements would have been in jeopardy.

- The lease includes provisions to transfer ownership of the buildings and other improvements. The CLT is given a first option to purchase the improvements from us at an adjusted sale value (ASV) equal to the replacement value less depreciation, obsolescence, and damage. This ASV is to be determined at the time of sale by an average of three appraisals that do not consider the value of the land or any lease requirements. If the CLT fails to exercise its option, we may find another buyer. In this case, the sale value is not limited to the ASV, but any difference beyond the ASV is returned to the CLT at the time of sale. The CLT is obligated to negotiate a lease with the buyer that is identical in all respects, except the name and date, to the lease in effect prior to the sale.

- The lessee must occupy the leasehold. Without this requirement, the lessees could live elsewhere and sub-lease (rent) the residential dwellings at a considerable value. Not only does this term ensure that the leasehold is being used appropriately, it also helped CLT, the landowner, make a case for community support for the project.

- The lease specifies organic practices. To avoid relying on a term with a fluid meaning, all parties agreed on a specific definition of "organic" as published by the Northeast Organic Farming Association/Massachusetts Chapter, Inc. in 1997. The lease specifically does not require organic certification by NOFA or that we meet its requirements for product labeling. Nor does it prevent us from being certified by NOFA-MA nor any other agency. The lease merely ensures that a minimum standard

is met. Considering that the term “organic” has changed substantially since the adoption of the lease, we were wise to agree on a specific definition.

An attachment to the Lease, the Land Management Plan, addresses the community’s interests by providing additional minimum use standards. The Land Management Plan includes minimum use standards such as: (1) one acre of land must be used for crops suitable for commercial sale; (2) one additional acre of land must be used for soil improvement; (3) the annual gross sales, adjusted per CPI, must be no less than \$3,500.00; and (4) no more than eight animal units (8,000 lbs. of live-stock live weight) can be raised on the property at any one time. In the event that we fail to meet the above minimum standards for three consecutive years, the CLT has the right to terminate the lease. This ensures that the farm is actively utilized, but allows for temporary situations that require us, the farmers, to take one or two years off.

The limitation on animal units was a substantial sticking point during the negotiating process. We did not want to limit our ability to raise animals, yet it was clear that too many might jeopardize adjacent natural plant and animal communities. We ultimately compromised by agreeing to a limit of the number of animal units. This allows us to have animals but prevents excessive nutrient loading to the land.

- The lease sets a method to determine ground rent and other fees. In concept, our land-use fee is the estimated value for fair market land rent. The CLT incurs expenses for administering the lease, educating members of the community, and acquiring new projects, so the amount must include a management fee. We agreed to pay a land-use fee of \$75.00 per month, adjusted by CPI and effective ten years from the date of the lease’s execution, a management fee of \$20.00 per month, adjusted by CPI, and a CLT organization fee of \$5.00 per month, fixed.

- What about taxes? We agreed that Indian Line Farm would pay the taxes on both the buildings and the land. If the CLT paid the taxes on the land, they would charge a fee to cover that cost. Although Massachusetts law exempts nonprofit corporations

from property taxes, we recognized that this was essentially unfair because we are private tenants who use town services. We should be responsible for all the taxes as if the real estate were privately held. This avoids our receiving any public subsidy.

- One difficult situation emerged as we were purchasing the improvements—obtaining a mortgage. Banks typically give mortgages on buildings owned by the same party that owns the land under them. In the event of default, the lender can take and sell the whole property. However, we had difficulty obtaining a mortgage because of the ownership pattern. We solved this problem with an addendum to the Lease that gives the lending institution(s) certain releases that allow it to remedy the default. But even with the addendum, we had difficulty obtaining a mortgage. Two banks declined to give a mortgage, but a third approved the application.

- For us, negotiating the conservation restriction (CR) was very different from negotiating the lease. While TNC purchased the CR from the CLT prior to our purchasing the buildings and signing the lease, we had to approve the language in the CR prior to its adoption. All parties made sure that the language in the lease was consistent with the language in the CR and that it gave an appropriate level of permissible acts and uses to the farmer while providing adequate protection of ecological values for the holder of the CR.

The operating structure of the CR is rather simple. First, it prohibits virtually all conceivable acts and uses. It then excepts certain acts and uses. If an act or use is not itemized in the list of prohibited uses and is not specifically excepted from the prohibited list, it is permissible. From our point of view, the permissible uses had to address: (1) agricultural activities, (2) maintenance, improvement, and replacement of existing structures but no expansion of building footprints—with the exception of greenhouses, (3) construction of new greenhouses, sheds, and other outbuildings, with the above-mentioned limitation on new footprints, (4) building fences, farm lanes, and utilities, (5) use of vehicles, and (6) such other activities as hunting. Note that the limitations on the total square footage of new structures

(impervious surfaces) were designed to protect the adjacent ecological community. The CR does not apply to the residential area.

Eventually, we discovered that even this level of detail does not prevent tricky issues from arising. After two seasons, we realized that we needed to construct a driveway and parking area for our CSA customers. The permitting requirements from the Town conflicted with the restrictions in the CR. To resolve this, TNC agreed to a “discretionary consent” which allowed a paved drive, part of which fell inside a designated protected buffer area. It worked out in the end but shows why it is so important to be as clear as possible in all lease documents.

In summary, we are quite satisfied with our land tenure situation, and find it to be an encouraging and replicable model. For us, it provided affordable access to farmland, which was a key factor enabling our ability to farm this land. Our ability to gain equity, though limited, is fair considering the benefits involved. We feel protected, not only by the terms of our lease, but also by the overall structure and management of the CLT. We trust and hope that our situation will continue to be satisfying, and also might serve as a model for others as they consider entering into similar arrangements.

Alex Thorp and Elizabeth Keen

Paths to Ownership



This chapter explores various ways that a non-ownership tenure arrangement can lead to farm ownership. In this chapter you will find:

- ▶ *Information about transferring farm properties or assets through leases.*
- ▶ *Suitable legal and business arrangements to use when transferring ownership.*
- ▶ *Information about retirement, estate planning, and farm transfer issues.*

Some farmers choose to purchase land early in their farming careers. For others, short-term and long-term leasing can offer satisfying permanent alternatives to farmland ownership. However, many farmers who lease land desire at some point to own some or all of the land that they farm. Several tenure arrangements can pave the path to eventual ownership, either because they legally bind the parties to an eventual transfer of title or because a farm family uses them as a tool to transfer ownership to a succeeding generation.

Leases in Farm Succession

Good farm business succession planning involves a systematic transfer of the income, managerial control, and assets of a farm business from one generation to the next. The next generation may be a fam-

ily member or someone outside the family. More and more farm transfers are occurring between unrelated parties. Just as each farm business, farm family, and farm business successor is unique, so are farm business succession plans. There is no “one best way” to transfer a farm business from one generation to the next.

However, all farm succession plans have one thing in common: a desire to see the farm continue. Unfortunately, the odds for this are not favorable unless the parties plan carefully and use appropriate succession tools. Farm business successions have become increasingly difficult, partially due to declining farm profitability and partially because many aging farmers do not understand farm succession planning. Exiting farmers are often reluctant and/or financially unable to retire. On the other side, a successor may not be able to repay the debts incurred by buying the farm or upgrading its equipment and

infrastructure. Although the older farmer may not be ready to retire, he or she is better off in the long run recognizing the need to begin the process of transferring assets, income, and managerial control to the next generation. Both parties must work to structure a successful transfer of ownership.

Often, the best succession plans provide for a gradual transfer of assets. Leasing is an excellent tenure tool to enable a successful, gradual transfer because it can enable possession and control of land, buildings, machinery and equipment, or livestock without purchasing them outright. Instead, it allows a gradual transfer of management and ownership from the farmer to the successor, giving both parties substantial financial advantages and also allowing the owner to mentor the successor.

When used in conjunction with an asset replacement plan, a lease can transfer use and possession of short-, intermediate-, or long-term assets to the successor generation. This approach minimizes the need for borrowing while gradually transferring the asset. It also spreads the owner's income tax consequences over several years and reduces the successor's risk of failure because of an inability to repay a debt.

Short-term assets are assets that can be readily converted into cash, are consumed in the production process, or are sold during the normal operation of the farm during one production year. An example of a short-term asset is livestock. Intermediate assets are assets that are not consumed in a single production year but are generally held for less than ten years. Examples of intermediate-term assets include farm equipment and machinery, livestock facilities and equipment, breeding livestock, and shop tools. Long-term assets are permanent assets used to produce income for the farm business but that are not normally sold or converted during the life of the business. Examples of long-term assets are land, buildings and land improvements (e.g., wells, tiling, fencing).

The cost of assets and their profit-making ability (rate of return) are important considerations in

farm business succession planning. Long-term assets have the highest costs and the lowest rates of return. Intermediate assets have a lower cost and a higher rate of return. Finally, short-term assets have the lowest costs and the highest rates of return.

Therefore, a wise order of acquisition of assets for a beginning farmer is first, short-term assets, then intermediate-term assets, and finally, long-term assets. Short-term assets generate the income

for the successor to cover living expenses and begin the acquisition of intermediate assets. The intermediate-term assets, once acquired, may be used to generate additional income and may also be used as collateral to borrow to acquire additional assets. For the exiting farmer, this order is also advantageous. The cost of transfer is least for short-term assets and greatest for long-term assets.

Short-term assets should be leased for one year or less.

Intermediate-term assets should be leased for a longer time period, but in no event should the period of the lease be longer than the successor's need for the asset. Generally, intermediate-term leases do not last longer than five years. Long-term assets may be leased for much longer periods of time. In some cases, long-term leases of land may last many decades and may even be passed through an estate to an heir. (See Chapter V.)

Transferring managerial authority from the older farmer to the successor is probably the most difficult part of a business succession plan. As the successor assumes increased managerial control over assets and ultimately the entire farm business, conflicts may arise. This possibility highlights the need for leases to be a part of an overarching farm-business-succession plan that is understood, agreed upon, and implemented by all of the involved parties, including the non-farm business heirs.

A farm business succession plan must contain a mutually-agreed-upon schedule for the gradual transfer of managerial control. For example, a plan can require the successor to be the junior partner in

**LEASING
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TENURE TOOL TO ENABLE
A SUCCESSFUL,
GRADUAL TRANSFER
OF FARM ASSETS.**

Advantages and Disadvantages of Leases in Succession Plans

Advantages for the lessor

- Lessor creates a stream of periodic payments for retirement income.
- Lessor preserves ownership of assets. Increases in the value of the assets accrue to the owner and may be passed to the heirs.
- Lessor minimizes taxes—inheritance and estate taxes may be significantly less than the capital gains tax on the sale of highly-appreciated assets, and certain types of leases may eliminate self employment taxes on the lease income received by the landlord.
- Lessor gains flexibility regarding taxes because income can be increased or decreased as necessary.
- Lessor receives income for assets that might generate very little income if sold.
- Lessor may trade existing equipment for new equipment to be leased to the tenant. This avoids the capital gains tax and depreciation recapture that would result if the equipment were sold. It also provides the lessee with access to new equipment without the need to incur debt for its purchase.

Disadvantages for the lessor

- Lessor continues to carry costs associated with ownership of the asset, i.e., depreciation, interest, repair, taxes, and insurance.

- Lessor maintains responsibility for ownership of the asset.
- Lessor must negotiate and monitor the lease.
- Lessor assumes the risks associated with nonpayment of lease payments.
- Lessor must pay social security taxes on certain types of lease income.

Advantages for the tenant

- Tenant incurs less debt to acquire the asset.
- Tenant controls the asset without the costs of ownership.
- Tenant can deduct lease payments as a business expense.
- Tenant gains increased business planning flexibility through the use of debt to acquire the most profitable mix of assets.
- The duration of the lease can be proportional to the length of time the asset is needed in the business.

Disadvantages for the tenant

- Tenant may face restrictions on the use of assets.
- Tenant may be limited in managerial decisions by certain lease provisions.
- Tenant is unable to build equity in the asset.
- Tenant does not have collateral for needed loans.

the business for the first five years. The successor will then be an equal partner for 5 years and, finally, the senior partner for the last five years. After fifteen years, the existing farmer will retire from the management of the farm business but will remain available for consultation and may or may not be available to provide needed labor on a periodic basis.

Types of Leases in Farm Succession Planning

Farm business succession plans generally employ leases in one of two ways: either as a *whole farm lease* or a *lease of a particular asset or set of assets used in a farm enterprise*.

Whole Farm Leases. When a whole farm lease is used, all the assets of the farm business are leased using one lease document. Whole farm leases are used when the lessor wants to or has to transfer managerial control of the farm business to a successor. As a result, a whole farm lease is not the most common form of lease used in farm business succession plans.

Advantages of whole farm leases

- All of the assets and conditions of the lease are negotiated at one time and committed to writing in a single document.

- A single payment is used to lease all assets.
- The payment can be arranged to coincide with the needs of the lessor or with the income cycle of the successor.
- By leasing the machinery and the real estate together, social security tax on the payment may be eliminated.
- It may be easier to obtain the necessary financing by having all assets under the possession and control of the successor.

Disadvantages of whole farm leases

- Because all lease conditions pertaining to all assets are contained in a single document, the lease may be complex and lengthy.
- Accommodating the different characteristics of short-, intermediate- and long-term assets in the language of a single document may be difficult.
- Negotiations between the owner and the successor may be complex.
- If the lease requires a large single payment, both the successor and the lessor may have difficulty obtaining financing for such a payment. If the payment is not properly timed, it may adversely affect the cash flow of the farm business.

Multiple Leases. Multiple leases are more typically used as part of a master plan to gradually transfer the managerial control, income, and certain assets to a successor. One reason for this approach is that many farmers are not yet ready to retire but would like to transfer certain tasks and/or enterprises to the successor. It is not uncommon for older farmers to want to reduce their need to provide labor by either eliminating labor-intensive enterprises from the mix of farm enterprises or by transferring the labor-intensive enterprises to the successor.

Multiple leases offer advantages to both the current farmer and the successor. Farm business successors usually have neither assets nor capital to contribute to the farm business; however, due to their age, they can provide labor. Therefore, as the older farmer relinquishes managerial control of the labor-intensive enterprises, the successor assumes mana-

gerial control under the provisions of a series of leases. Short- and intermediate-term assets are usually the bulk of the assets in labor-intensive enterprises. And labor-intensive enterprises usually have the lowest costs and the highest rates of return, thus generating the necessary income for the successor to cover living expenses and invest in the farm.

Under this arrangement, each lease term is normally the length of time required to replace the leased asset. If the leased asset is livestock, it is the cull cycle; if the asset is machinery, facilities, or equipment, it's the useful life or the depreciation schedule. The successor gradually assumes ownership as he replaces the assets. The successor also pays all operating costs and receives the income generated by the replacement asset. The owner pays the operating costs for, and receives the income from, assets that he retains. Additionally, the owner receives any salvage income or, in the case of livestock, any income from the sale of culled animals.

Advantages of multiple leases

- An individual lease may be modified without the necessity to modify the entire plan.
- Additional leases may be added as more managerial control and assets or enterprises are transferred to the successor.
- A lease may be terminated as needed without terminating the entire plan.
- Lease payments can be adjusted to reflect the transfer of managerial control to the successor. As the managerial control by the successor increases, the income to the successor increases.
- Payment can be synchronized to coincide with the income stream generated by each asset or enterprise.
- Successors need to incur less debt in order to buy assets.
- A single lease may be modified to respond to crop and/or market conditions.
- Share-leases lessen the need for the successor to finance the lease.

Disadvantages of multiple leases

- The main disadvantage encountered in using multiple leases is the need to continually monitor each lease. Monitoring can be time consuming and requires the attention of both parties. If the leases are not monitored and modified according to a master plan, there is a very real possibility that the terms and conditions contained in the leases will become outdated. For example, if the lease payment and the income provided by the assets or enterprises are not adjusted as the successor increases managerial control and/or ownership of the assets through either gift or purchase, one party may be either over- or under-compensated.

Leases Used to Transfer Assets

The process for creating a lease used to transfer assets begins with the inventory and appraisal of the asset to be leased. The appraisal must be unbiased because the appraised value will be used to calculate annual ownership costs and establish a fair market price if the asset is to be sold to the successor. The next step is determining the salvage or cull

value of the asset. Establish this by surveying prices for used equipment and/or for culled animals. Determine an interest rate and include it in the annual ownership cost. For most farm businesses, the interest rate will be the rate charged by commercial lenders on loans used to purchase the asset being leased.

Determine other costs such as insurance, depreciation, and taxes for equipment, machinery, and facilities, as well as for livestock veterinary and health costs. In short, include every cost associated with owning the asset, whether it is fixed or variable, in the lease price to prevent the owner from being underpaid or the successor from being overcharged.

Base the term of the lease on the replacement cycle for the asset. In the case of machinery and equipment, you can use the depreciation schedule. If the asset is livestock, use the cull or replacement cycle. In the case of intermediate assets such as buildings and facilities, the depreciation schedule may be very long—longer than either party wants for the duration of a lease. In this situation, the parties can lease the asset for a fixed period of years with the lease price being adjusted as the successor assumes increased managerial control and increased income.

Advantages of Multiple Leases for Farm Succession Planning

For the lessor, multiple leases:

- Satisfy the goal of transferring the farm business to the next generation while allowing the owner to remain active in the operation of the farm business.
- Liquidate assets in an advantageous manner.
- Spread income from the sale of assets over several tax years.
- Allow the owner to retain an ownership interest in the farm business and receive income from it.
- Provide another source of farm labor.
- Give the satisfaction of helping the successor begin farming.
- Give the satisfaction of knowing that the farm business will continue.

For the successor, multiple leases:

- Lessen or eliminate the need to borrow in order to acquire assets.
- Improve the successor's cash flow.
- Lessen the successor's risk by dividing yield and market risk between the owner and successor.
- Provide time for the successor to develop managerial skills.
- Allow the successor to be mentored by the owner.
- Make lease payments deductible because they are treated as business expenses.
- Allow the successor to leave the arrangement with his/her acquired assets if the farm business succession plan does not work.

The parties can also consider a lease-purchase agreement or a lease with an option to buy—with the price fixed at the commencement of the lease. These arrangements are appropriate for buildings, equipment, and livestock as well as land. However, this approach does have several drawbacks for both the lessor and the tenant. For the lessor, if the asset is a depreciable asset and is not sold for the fair market value at the end of the lease, the IRS may treat the lease as a contract sale. This means that the transaction will be subject to capital gains tax or depreciation recapture. Those tax rates may be higher than the tax rate for a lease payment that would be treated as ordinary income.

For the tenant, a lease purchase agreement may result in buying an obsolete or worn-out asset. Further, the tenant does not receive the benefit of the depreciation schedule that would be available under a purchase agreement. The depreciation expense may be of greater value for tax-planning purposes than a deduction for the lease payment as a business expense.

A lease with an option to buy is useful when transferring land because it allows the tenant to postpone purchasing the land to a later date. This allows the tenant time to acquire the short- and intermediate-term assets that will generate the income to pay for the land. The purchase price, or a formula to establish it, may be set at the beginning of the lease. The advantage to the tenant is that the sale price is known in advance or can be estimated via a formula; the tenant can build this amount into the farm's business plan.

Tools to Transfer Ownership

When the goal of the tenure arrangement is the eventual transfer of ownership of farm assets, the parties can turn to any of several tools. Each transaction requires careful consideration and legal guidance.

Purchase and Sale Agreement. The most common method of obtaining control of property is to purchase it. A purchase and sale agreement is a contract to buy a parcel(s) of real property. The agreement spells out the parties involved, price,

description of the property, time of performance, and all other conditions of the sale. Usually, a purchase and sale agreement leads to the actual purchase within a short period of time. However, the “time of performance” can be as long as the parties desire. The agreement can give the purchaser possession, which allows her to operate on the land subject to an extended performance date. The conditions of an agreement can be crafted to operate like a lease. The agreement sets out the responsibilities of the parties, based on a belief that performance will result in ownership. A purchase and sale agreement does not reference any specific method of payment or financing.

Advantages of Purchase and Sale Agreement

- The farm operator may possess and operate the property for a period without paying rent.
- If cause is found not to purchase the property, the agreement can be terminated.
- The transaction can end in ownership.

Disadvantages of Purchase and Sale Agreement

- Most owners (sellers) do not want to accept extended performance terms.
- Improvements made during the period are at risk if the transaction terminates.
- The buyer must be in a position to buy at the performance time.
- Failure to perform can subject the buyer to monetary damages.
- Lenders will not take such an agreement as collateral for a loan.

Land Contract. A land contract is a purchase and sale agreement made with an extended performance term. It serves double-duty: it's a way to transfer ownership while financing the purchase. The agreement depends on installment payments and sometimes a small down payment. The buyer has possession of the property while paying the contract, and the title remains with the seller until payment is complete. For example, the purchase price of a farm property is \$100,000. The payment is \$10,000 per year for ten years. When the final pay-

ment is made, the title passes from seller to buyer. The title remains with the seller until all payments are made. With a land contract, also referred to as a “contract for deed” or “installment land contract,” the owner retains possession and prior payments are considered compensation for breach of the agreement if the payments are not made.

Advantages of Land Contracts

- The buyer possesses and operates the land and can make alterations and improvements to property.
- The buyer can achieve ownership with limited capital and use that capital for operating purposes rather than for a down payment and mortgage financing.
- Financing is provided by the seller, easing credit requirements.
- The land contract can be used as collateral for a loan.
- For the seller, capital gains are spread over the period of the contract, usually resulting in significant tax savings.

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Disadvantages of Land Contracts

- If the buyer misses a timed payment, the agreement is terminated and payments made are usually lost.
- The principal and interest payments can be large.
- If the seller has the land mortgaged, the seller’s default will terminate buyer’s rights.
- The full price of the property is not immediately available to the seller for retirement or reinvestment.
- The buyer may default.
- Lenders are reluctant to finance improvements based upon land-contract collateral.

- The property cannot be sold and the agreement is usually not assignable.

Agricultural land contracts are not as common in the Northeast as they are in the Midwest, where they are used primarily for family sales. Parents can self-finance the next generation, taking the sales proceeds over time as a form of retirement, spreading out capital gains income for tax benefits, and still hold title. The last item appeals to parents because it allows them to regain control of the farm if the next generation does not do well.

Although lenders are reluctant to take a land contract as collateral for a loan to the buyer, it is an accepted banking practice. The bank considers the value of the land versus the amount still to be paid on the contract and establishes the net equity paid in. If the sum is significant, the bank can take a mortgage on the land contract that gives it the right to pay off the balance of the contract and take title if the buyer defaults. At that point, the bank would own the land and could resell it.

This borrowing power gives the buyer access to capital for farm operations and real estate improvements. However, if the seller has a personal attachment to the land, such as often occurs in a family situation, the seller may restrict the right of the buyer to encumber the land contract. This renders it valueless to a lender unless the seller consents to the bank mortgage. A restriction like this gives the seller a great deal of control over the buyer’s operation during the term of the agreement and, unless the seller in this situation is friendly, puts the buyer at a disadvantage.

Buyers using a land contract can structure it so they have a right to mortgage the contract as well as protect themselves in case of payment default. Consult with a lawyer to learn if your state has any laws to regulate these agreements and prevent inequitable outcomes.

Purchase Money Security Financing: Purchase money security financing arrangements are similar to land contracts in many respects, but they pass the title to the buyer, subject to a mortgage from the seller. The seller takes the place of a bank or other lender in providing the financing. Purchase money mortgages are often used in conjunction with bank financing. The bank provides a certain amount of

the financing and the seller provides part of the sales price as credit, financed by a promissory note and mortgage. Seller financing is often structured on payment terms more favorable than a bank, as an inducement to the sale. Motivated or friendly sellers can afford to structure the debt as they please. The structured payments allow the seller to take the sales proceeds over time, as a form of

Sharemilking

— From *Sharemilking in the Midwest*

In the dairy sector, sharemilking is a contractual arrangement between an owner and a tenant. It provides for gradual transfer of assets by assigning and adjusting contributions and returns between two parties. This model can be applied to other kinds of farms besides dairies.

Sharemilking arrangements are very common in New Zealand. They are being explored in several Midwest states.

“Sharemilking is a vital cog to our (New Zealand) dairy industry and it would be very difficult, if not impossible, for young farmers who are not farmers’ sons to achieve farm ownership without the benefit of a few years in this form of occupation. Not only does sharemilking provide a springboard (from working for a labor rate or percentage wage) directly into farm ownership, it also allows farm owners to semi-retire gracefully.”

Sharemilking combines land, management, labor, livestock and/or machinery within a dairy enterprise. Sharemilking arrangements can provide management expertise, economic incentives, and a systematic method of asset acquisition for new entrants. Initially, a full-time sharemilker (tenant) might contract on a 75-25 basis—the owner would receive 75% of the proceeds for his/her investment and the sharemilker would receive 25% for his/her labor. The percentages would increase as managerial skills, experience, and/or herd equity build. The purpose of the arrangement is for beginning sharemilkers to gain equity in cattle

along with experience. After a contract milking experience, one garners ownership in a herd through equity growth, financing, and/or leasing.

Sharemilking can be designed as a share lease arrangement or an employer-employee relationship. A sharemilking agreement is a legal document. An ideal document has two objectives: 1) attaining the maximum economic efficiency in resource use, and 2) allocating the returns between owner and sharemilker based on their respective contributions. Ideally, the lease arrangement stimulates the whole farm to achieve its total profit-maximizing potential while it still represents the individual parties to the lease. To be equitable, the lease must reward the suppliers of the inputs with outputs in the same proportions. In addition, the lease should provide a mechanism to respond to changing economic conditions.

In a sharemilking arrangement, income should be shared in about the same proportion as each contributes to the farm business. When the fixed contributions of each party have been agreed upon, the shares are determined. This is accomplished by dividing the total value of fixed contributions by each party by the sum of the contributions of both parties. Variable expenses as well as income can then be shared in that same proportion. Both parties must realize and share in an increase in herd growth over time.

Larry F. Tranel, University of Wisconsin, 1996

retirement, and spread out capital gains income for tax benefits. If the buyer defaults, the seller will foreclose; check with a lawyer to learn how your state handles such foreclosures.

Advantages of Purchase Money Security Financing

- The buyer possesses and operates the land and can make alterations and improvements to the property.
- Financing is provided by the seller, easing credit requirements.
- The buyer owns the property and can use it as collateral for a loan.

Disadvantages of Purchase Money Security Financing

- The seller is often more restrictive in mortgage terms and conditions than a conventional bank would be.
- If the buyer misses a timed payment, the seller can foreclose to regain possession or force the sale of the property.

Lease with Option to Purchase. In a lease with option to purchase, the lease grants the tenant an option to purchase the property. The price and the terms of the purchase must be set forth in the lease for the option to be valid. The option may run for the length of the lease or for only a portion of the lease period. The lease payments are not part of the consideration of the purchase price of the property unless the terms specifically allow for all or part of the lease payment to be a credit against the purchase price.

There are two common forms of option: the “straight option,” and the “right of first refusal.” Both forms exist only by specific language in the lease. When the option is exercised, the lease ends and the parties are in a seller-buyer relationship. In the straight option, the tenant can compel the owner to sell at a fixed or determinable price, either at any time of the lease or during a stated portion of it. If the lease does not limit the period when the option can be exercised, it runs for the period of the lease and any extensions to it. The terms of sale must be stated with the same particularity as the terms of a purchase and sale agreement. A right of

first refusal prevents the owner from selling the property to a third person without first offering it to the tenant, usually at the same price the third person has offered.

Advantages of Lease with Option to Purchase

- The buyer possesses and can purchase.
- Purchase performance is not required.
- The purchase price can be fixed over time.
- The timing of transition is flexible.
- A portion of the lease may be convertible to credit on the purchase price.

Disadvantages of Lease with Option to Purchase

- The owner may require a higher lease amount to cover the value of option.
- Transfer is delayed, if ownership is the goal.
- The lease term may be constricted if the owner is seeking sale.
- The value of the property may fluctuate over the lease term.

Retirement, Estate Planning and Farmland Transfer

Retirement and estate planning play a crucial role in effective farm and farmland transfer. Sound estate planning is essential for anyone, but particularly so for farm owners. According to the American Farmland Trust (see Selected Resources in the Appendix) and others, an estate plan should:

1. Address transfer of ownership and management of the farm business and other farm assets.
2. Avoid unnecessary transfer taxes (e.g., income, gift, and estate taxes).
3. Ensure financial security and peace of mind for all generations.
4. Address and nurture the management capacity of whoever will take over the farm.

This guide is not a primary resource for retirement and estate planning for farmland owners. There are many useful resources and service providers to help owners develop these plans. Successful estate planning requires effective communication and a team effort because it takes expertise in legal, financial, tax, land use, and farm management matters. The focus of this section is on ways to use retirement and estate planning to facilitate a transfer of farm assets to a successor.

There are several innovative estate planning tools for gradual or eventual transfer of the farm. Some require third parties, and some are more complicated than others. However, the tools described below have one thing in common: they help facilitate the transfer of a farm from the current owners to another farmer.

Life Estate. With a life estate, a property owner may donate the farm property to a charity or other suitable nonprofit organization and retain lifetime use of it without including it in the estate. When the holder of the life estate dies, possession goes to the holder of the title—in this case, the organization. The holder of a life estate can continue to farm the land or lease it to a farmer-tenant. When title is transferred to the organization, the organization can arrange a short-or long-term lease to the same or a new tenant, keeping the land in active farming. Or, it can sell the farm and use the proceeds toward its mission. If the property has a conservation easement, the farm will always be protected from development and available for farming, regardless of who owns it. You can arrange to place an easement as part of the negotiation. A life estate tool allows a farmer to support a favorite charitable organization and use an income tax deduction for the present value of the remainder interest in the farm. The farm will not be taxed as part of the estate, but the farmer can enjoy possessing it for the rest of his or her life, knowing that it will support a worthy cause in the future.

Life Insurance. Life insurance can be a creative and useful estate-planning and farm-transfer tool. Besides generating an inheritance, paying estate taxes, and providing financial security, life insurance can be used to fund a buy-sell agreement or other eventual purchase agreement. Life insurance can enable the designated recipient of the farm, whether or not he or she is a family member, to pay off the other non-farming heirs. An owner can create security for tenancy by purchasing life insurance and assigning benefits to another party. This can be in addition to insurance intended to care for family, to the limit of one's financial capacity. The policy can be paid for by the current farm owner, or by a tenant who is under an agreement to purchase the farm when the owner dies.

Charitable Gift Annuity (CGA). A CGA is, in essence, partly a charitable gift of an asset and partly a purchase of an annuity contract. The donor, or farm property owner, transfers the property to a charitable or non-profit organization. He or she receives an immediate income tax deduction and will receive fixed annuity payments for the rest of his or her life. Sometimes the annuity is good for the life of a spouse as well. The capital gains tax is considerably reduced and paid gradually over time. The organization is legally bound to make the agreed annuity payments. The contract is fairly easy to establish. The accepting organization may protect the property with a conservation easement. Then it may sell the property outright. However, it may also keep the property and lease it to a farmer. The lease payments would go toward the annuity payment as well as tax, insurance, and other property ownership expenses. The agreement between the organization and the tenant could result in eventual sale to the tenant.

CASE STUDY:

A Role for American Farmland Trust

The following case study describes a lease agreement with an option to purchase that allowed the purchasing farmer to incrementally acquire equity during the lease term. The American Farmland Trust (AFT) took the lead in developing this agreement. AFT is a national nonprofit land trust organization whose purpose is to stop the loss of productive farmland. Farm Credit of the Virginias ACA (FC) participated, and the University of Virginia Cooperative Extension Service (CES) developed cash flow projections and provided advice to the young farmer about both business structures and farming practices.

The farm is a 182-acre dairy and poultry operation in the historic Shenandoah Valley of Virginia. The property includes a residence, a residential trailer, a dairy barn complex, and assorted fencing, gates, drainage structures, and field improvements. Wes Kent was a tenant who leased the property from private owners and lived with his wife in the trailer as part of their lease.

Kent had a five-year lease which was renewable annually with a mutual six-month cancellation clause. The agreement included a right of first refusal to purchase the farm. The lease agreement referred to repairs and maintenance of the buildings and equipment with cost thresholds, but in practice did not clearly delineate responsibilities. Thus, it created a source of tension between the owner and tenant.

When AFT expressed an interest in purchasing the farm with the intent of conveying it to the Kents in the future, the farm owners gave Kent six months notice to vacate. While Kent retained his right of first refusal to purchase the property, it was unlikely he could qualify for a loan to exercise his option and the owners did not have an offer on the property.

AFT examined the financial feasibility of purchasing the farm, holding it for a period of time and then selling it to Kent. Because it was a dairy and poultry operation, the cash flow was sufficient to make monthly rental payments as well as cover the

carrying costs of the mortgage loan. This type of deal is much harder, or impossible, to structure with types of farming that do not produce sufficient cash flow.

AFT secured an agreement in principle with Kent and FC. Kent had a livestock loan with FC and they agreed to work with AFT and Kent to design a deal that protected their interests. An appraiser determined the current “market value” of the farm and also its value with an agricultural conservation easement. AFT hired an engineering firm to complete an environmental assessment of the property, determine the condition of the buildings on the farm, and estimate the costs of needed repairs. As with many dairy operations, the facilities were old and in need of constant maintenance and repair.

AFT approached the owner with an offer to purchase the farm at a “bargain sale” price—a discount from the market value and asking price. The owners’ first reaction to the discounted offer was that AFT was trying to cheat them, but their lawyer confirmed that a bargain sale to AFT would net the owner more money than a full market sale to someone else. Consequently, AFT purchased the farm at a bargain sale rate. As in many cases, the owners could deduct the amount of the “discount” for tax purposes because the sale was made to a qualified charitable organization. However, tax law prohibits a qualified organization from passing on the bargain to another party. The subsequent sale price to Kent had to be at the full market amount.

AFT wanted to assure that the farm would remain in farming, protected by an agricultural conservation easement. The parties agreed to a lease-option agreement in which Kent would lease the property with an option to purchase at a later date. It included an option for AFT to buy a conservation easement from Kent after he owned the farm. Note that, in states or counties with public programs, an easement would have been placed on the property before the sale, and that the arrangement Kent has created creates a higher mortgage payment than if an easement had been placed on the proper-

ty prior to the sale.

The next challenge was developing the lease-option agreement with Kent. FC's loan officer structured this deal. The bank provided credit and cash-flow analyses of the Kent operation, including projections of when he would be able to qualify for sufficient credit to purchase the entire property. FC and CES helped Kent develop a multi-part business plan for his business. Kent also examined cost-share programs for nutrient management, an alternate water source, and riparian protection.

AFT executed the lease-option agreement and sold Kent the dairy and poultry equipment. The bank viewed purchase of the equipment as a way for Kent to begin to immediately build equity in the property. With the bank's encouragement, the purchase of the equipment became part of the agreement and a formal step in the transition strategy.

Setting the lease amount was the next step. AFT could not set the price below market rate but wanted to leave Kent room for paying the purchase option and the principal payments, while still giving him the funds to build up cash for a down payment. AFT had to cover the costs of the mortgage loan. Kent had been paying lease rates at market value with the former owner, so the amount was increased to reflect the additional facilities available to him. It was a challenge to obtain reliable information on rental rates for poultry facilities; because of the vertical structure of the poultry industry, almost all operations are owned and not leased.

The bank advised Kent during the lease-option negotiations with an eye to maximizing his ability to build equity and reserve sufficient cash flow to insulate him from milk and poultry market fluctuations. Nine months after the purchase of the farm, the lease-option agreement was signed. At that closing, FC financed the outright purchase of the poultry and dairy equipment by Kent and coordinated that loan with his existing dairy herd loan. Those two loans were to

be paid off in about three years, giving Kent two years to build up cash for a sufficient down payment. Kent paid an annual amount for the purchase option and a monthly amount toward the principal that was to be refunded if he did not exercise the option.

The agreement also outlined property improvements Kent could make during the term of the lease and how they would be valued should he not exercise his purchase option. The lease required that AFT approve any significant improvements or changes to the property and denoted that the improvements would be refunded to Kent, less standard depreciation, if he were not to exercise the purchase option. This was done to protect Kent's family in case something happened that would prevent him from farming in the future. This also encouraged Kent to make necessary improvements to the farm because he was assured that he could recover the investment should the lease or purchase agreement be terminated.

This model fulfills the dual objectives of transferring a farm to the next generation and protecting it from future non-agricultural development. Communities, entering farmers, and retiring farmers can benefit from this strategy. Older farmers can take advantage of the tax benefits of selling their property at a reduced rate to a qualified organization. Communities have the opportunity to protect a vital industry and community character while keeping those parcels on the tax rolls to make continued contributions to the local economy and also guaranteeing a healthy future, both from a fiscal and conservation perspective. And finally, entering farmers reap the benefits of this arrangement. With an extended, stable lease, a long-term plan for the transition of the property, and an opportunity to purchase their own farm, in spite of having low equity, they receive the chance to build a viable future in agriculture.

Mary Heinrich and Alison Deets

CASE STUDY:

Coming Home to Farm

Amy and Terry Torea wanted to move back to Amy's home farm to raise their children. When Amy told her parents that they wanted to take over the family farm, her parents were happy to welcome them home. The younger couple's farming backgrounds gave them a step up, and the parents were ready to help. Amy's siblings were also supportive of the move. Fulfilling their long-time dream, Amy and Terry moved back to the Cayuga County, NY farm to begin farming in 1991.

The older couple turned the reins of the farm over to the young family and made an informal agreement that Amy and Terry were to purchase the cattle during the first five years of their tenure, followed by the equipment in the next five years. An independent appraiser established the value of both the cows and the equipment prior to the purchases. The parents financed the sales.

The final five-year phase—buying the land—began in 2001, the tenth year of the agreement. The purchase price was based on an appraised sale price, and they plan to finance this with a seller contract as well.

During the first year, the younger couple completely ran the dairy. From the start, all dairy expenses were theirs and were covered by income from the milk. Amy's father provided mentoring on a limited, on-call basis in the beginning. He remained active in crop production during the first two years, providing up to half of the labor while Terry concentrated on animal husbandry.

There have been only minor changes in the farm operation so far. The Toreas invested in a few additional pieces of equipment and have plans to expand the number of acres for grazing. Farm income to the parents is from wheat and oat sales on a crop-share basis, and cash rent on the corn and alfalfa acres. The older couple also receives regular income from cattle sales and charges enough rent on the facilities to cover taxes and insurance on the farm. Amy and Terry reimburse her parents for expenses related to crops and equipment repair. Lately, Amy's father has shifted his energy from farming to non-farm related jobs. Her mother continues to teach school and helps out on the farm by caring for Amy's children.

Amy and Terry's current debt-to-asset ratio, as well as other financial indicators, place them in the top level of farm operations. That's about to change as they move ahead with the land purchase. Maintaining low operating expenses would be a fiscal strength for the young couple during that transition. In addition, successfully implementing their plans to increase grazing could minimize expenses even more. Amy and Terry Torea are making great strides in building their dairy farm.

With permission from Profitable Practices & Strategies for a New Generation. This case study was prepared for the North Central Initiative for Small Farm Profitability by Joy Johnson, Center for Rural Affairs. Adapted from an article written by Rebecca S. Kilde.

CASE STUDY:

A Transfer between Unrelated Parties

Ed and Emily Newell purchased their NY dairy farm in 1963. By 1994, they had 220 cows. The Newell's tenure in farming was marked by innovative investments in their farm business.

Matt and Nancy Beckerink's life goal was to "own a modern dairy farm where they could earn a very comfortable standard of living." After graduating from Cornell, they leased a small dairy. The Newells sold surplus heifers to Matt and Nancy when they were getting started.

Meanwhile, the Newells wanted to work out of the dairy business so they could devote time and energy to racing horses. Because they wanted to find a suitable successor for their business, they started planning their exit as soon as they had made this decision. They also realized that they might have to go into debt and make some new investments in their farm to make it viable for a transfer.

One day, Ed indicated to Matt that he and Emily were looking for someone to phase into their farm business as they phased out over the next 5 to 10 years. At that time, Matt was planning to eventually farm with his dad. But the Newell farm offered superior resources. Matt and Nancy chose to make their future on the Newell's farm.

The Newells and Beckerinks developed a share lease agreement to change farm management and ownership. This structure allowed them to avoid creating a new business entity. The share lease also had the ability to be flexible in response to changing industry conditions. The share lease gave the Beckerinks a mechanism for gaining equity fairly quickly while minimizing interest costs. By working with an experienced farmer, Matt was able to develop his management skills over a number of years. This arrangement minimized the cash flow required for a more rapid asset transfer and provided for a smooth transition of management of the different enterprises involved in a dairy farm business.

The share lease provided a return to the equipment and real estate investment of each party based

on the market value of those assets at the beginning of each year. The Newells were responsible for the fixed costs of real estate ownership. The remaining revenue and variable expenses of operation were shared, based upon the percentage of total assets of each party. When the agreement started, Matt and Nancy owned 16 percent of the machinery and equipment and 12 percent of the livestock. Therefore, they received between 12 and 16 percent of the farm income and paid 12 percent of the variable expenses. The Beckerinks had responsibility to purchase or replace equipment.

Both families lived on the farm until Ed and Emily moved into town and Matt and Nancy moved into the main farmhouse. After 5 years, when the Beckerinks owned 48 percent of the machinery and equipment and 89 percent of the animals, the share lease was terminated and a cash lease was used until Matt and Nancy were ready to purchase the real estate. Each year during the agreement, Matt and Nancy borrowed money with the Newell's co-signature, purchased livestock from the Newells, and aggressively paid down debt. Seven years after the Beckerinks began purchasing the farm, they had paid for the major part of it and were renting an additional 200 acres with an option to buy. After another two years, the Beckerinks purchased this acreage, and the transfer was complete.

Keys to Success

Good communication and flexibility: The farmers had compatible ideas and a positive attitude toward innovation. In fact, they each took a personality test, administered by their consultant, to learn if they were compatible before entering into the agreement. They worked with Farm Credit to do a complete financial analysis to evaluate the viability of their plan and to make certain that the farm could generate enough income for both families to live and pay the farm expenses.

Shared management: Shared management between the couple phasing out and the couple phasing in is essential. In this situation, the management of the labor and the livestock were the first areas of management to change hands, based upon Matt's strengths in these areas. Nancy and Emily shared bookkeeping responsibilities. The cropping operation was the last area of management for the Beckerinks to phase into. Ed and Emily didn't always agree at first with Matt and Nancy's proposed changes, but the younger couple always backed up their proposals with sound research.

Commitment to building equity and paying down debt: At the beginning of the agreement, Matt and Nancy had a little bit of experience and very little equity. The Newells were financially secure with low debt. Because they were working toward retirement, they had deferred some maintenance around the farm. They committed to making some capital investments. During the transition years, tight cash flow was the greatest roadblock they encountered. Matt and Nancy found it necessary to increase the rate at which they were purchasing cows. This required a serious commitment

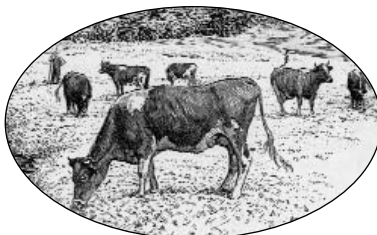
to rapid debt repayment and a willing co-signature from the Newells.

Written agreements: Both parties put all of their agreements in writing up front. The share lease, buy-sell, and option agreements were all reviewed by an attorney prior to execution.

Option Agreements lock in the price: Both parties signed option agreements that locked in the real estate price based upon an appraisal of the farm. These agreements gave the Beckerinks the right of first refusal to purchase the real estate at an agreed upon price. It was agreed that any real property improvements made during the share lease period would be priced at the undepreciated basis of the property at the time of the transfer. These agreements assured the younger couple that they would not end up "paying twice" for real estate improvements.

Adapted with permission from "Business Transfer Case Stories" by Steve Richards et al., NY FarmLink, Cornell University, 2003.

Farmland Stewardship



The purpose of this chapter is to present some tools to integrate natural resource stewardship interests into tenure agreements. In this chapter you will find:

- ▶ *A discussion about farm stewardship concepts and issues.*
- ▶ *Information about creating stewardship goals for the farm.*
- ▶ *Information about developing a stewardship plan as part of a tenure agreement.*
 - ▶ *A worksheet on developing a stewardship plan.*

What is Farmland Stewardship?

The stewardship section of a tenure agreement is one of the most important aspects of the document. When tenure agreements address stewardship goals and practices, the landowner and the tenant have the opportunity to work together as partners who share a common goal: the long-term health and productivity of the soils and other natural resources of the farm property.

According to *The American Heritage Dictionary*, “stewardship” is the “act of managing property for another.” Both farm tenants and landowners have stewardship responsibility. There are multiple benefits to both parties from developing and including stewardship goals in a lease agreement. These include reducing risks to human and environmental health, increased productivity of the natural resource base, and the long-term preservation of

the land for farm use. *Resource Stewardship* is the management, or care of, natural resources—soil, water, vegetation, and animals. Stewardship can also refer to the care of resources for cultural, aesthetic, and recreational benefits.

Neil Hamilton, Professor of Law and Director of the Agricultural Law Center, Drake University Law School, Des Moines, IA believes that “efforts to promote sustainability can be enhanced if language promoting sustainable practices, such as the provisions discussed [in this article] are incorporated into commonly used lease forms.” Professor Hamilton goes on to state that “the two provisions in a farm lease generally considered to be most important [when considering sustainable practices] are the term or length of the agreement and the method of payment.”¹

A comprehensive lease document includes a section on stewardship. The body of the lease may

include detailed stewardship requirements or a set of broadly defined stewardship goals. There may be attachments to the lease that detail required or prohibited practices. A stewardship plan provides the set of guidelines and directives to include in the tenure agreement. The following framework is a useful way to begin developing a stewardship plan.

Stewardship principles: Principles articulate the broad stewardship vision. They might include such things as prioritizing the long-term health of the natural resources, fostering wildlife, and respecting cultural and historical features of the farm property.

Stewardship goals: Goals articulate the ways to address stewardship principles. For example, to honor the principle of long-term health of the resource base, a goal could be to maintain or increase soil fertility and tilth or protect riparian corridors.

Stewardship practices: Practices are the specific activities that a farmer performs to manage soils, crops, field edges, livestock, forests, and bodies of water. For example, establishing a buffer strip is a practice designed to stabilize an eroding stream bank.

There is no commonly recognized “stewardship plan.” Not only do different people define stewardship differently, but particular farms and situations vary enough to warrant different treatment. Additionally, the stewardship plan must meet the economic, ecological, and aesthetic interests of both parties.

Protecting the Farm, Protecting the Community

Sound stewardship can protect the surrounding environment and safeguard human health. Communities benefit in many ways from farms managed with good stewardship practices. They have the assurance that productive soils and woodlands will be sustained into the future.

A farm contains many resources that are not directly related to farm production. There may be scenic areas or vistas, historic stone walls, recreational trails, wildlife habitat, wetlands, water bodies, meadows, and wooded areas. Healthy

natural resources such as these contribute to the health of all inhabitants of the farm land and its surroundings.

On the other hand, certain agricultural practices can pollute surface and groundwater on and off the farm. For example, adding fertilizers and pesticides to a field can lead to water pollution when rainwater washes excess nutrients and chemicals into surrounding water bodies. Nitrogen and phosphorus pollution in water bodies is an environmental problem of particular significance in the Northeast. Nitrogen and phosphorus contamination comes from many sources, including agricultural inputs. Since fertilizers and manure are water soluble, they can run off into unprotected waterways and cause negative impacts. Nitrates in drinking water have been shown to cause health problems including genetic defects, cancers and hypertension in children.

Pathogens contained in manures and sludges can be transported into surface and groundwater. Toxicants such as certain pesticides as well as fuels and metals can also impact water quality and wildlife habitat. Even normal application, if poorly timed or improperly handled can have significant negative impacts. Soil sediments from eroding fields can negatively affect water quality in several ways. Among these are impacts to water as a habitat, as well as impacts to the quality and safety of drinking water supplies. Good stewardship practices reduce or eliminate these negative environmental impacts.

Working With Laws and Regulations

Even if a tenure agreement is silent with respect to stewardship goals, common law in many states holds a tenant to a minimum standard of care of the property. The law is based on the “doctrine of waste” and imposes an implied duty to farm in a good and husbandlike manner.² Tenants who violate this duty can be held liable for “waste” or any damage they cause beyond ordinary wear and tear through unreasonable or improper use, abuse, or mismanagement. The courts have found waste where alfalfa was overgrazed and damaged,

water lines in the barn were left to freeze, equipment was not maintained, and fences were not kept in good repair.³

Certain environmental regulatory schemes or other private agreements may also dictate stewardship practices. Leases for farms enrolled in any real estate tax-abatement programs typically require the tenant to refrain from any practice that would jeopardize eligibility for the program. Land enrolled in some federal programs must conform to specific land use restrictions such as those known as “swampbuster” and “sodbuster,” which require the farmer to refrain from cropping particular wet or steeply sloped areas. A lease on land protected with a conservation easement, which is an enforceable contract, is likely to require the tenant to comply with the terms of the easement, including all specified stewardship practices.

Many states have their own agricultural regulations. Activities in or near wetlands, nutrient management, pesticide applicator requirements, and regulations regarding on-farm processing of agricultural products are generally regulated by state law. Check with your state Department of Agriculture to learn the specific regulations for your state.

The Federal Clean Water Act gives states a great deal of authority to control so-called “non-point source” water pollution. There is a great deal of variation among the states in how they have undertaken these duties. Some programs are voluntary, while others provide incentives. Some states take a regulatory approach. The regulations typically address the most common sources of non-point source pollution resulting from agricultural operations: sedimentation due to soil erosion, and manure and other nutrient and pesticide run-off into water courses.

Vermont, for example, 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 required tenants to follow the accepted agricultural practices would, among other things:

a. Prohibit the tenant from making any direct discharge of a pollutant into surface or groundwater.

b. Require that barnyard, manure storage lagoons or animal holding areas be managed to avoid discharge of manure run-off into watercourses.

c. Require that manure, fertilizers, and pesticides may not be stored in areas at risk for flooding.

d. Prohibit spreading manure on fields between December 15 and April 1 without a special exemption from the Commissioner of Agriculture.

e. Require that cropland be cultivated in such a manner that results in an average soil loss less than or equal to two times the soil loss tolerance level or “T”.

f. Require that agricultural waste be properly stored, handled, and disposed of to avoid discharge of waste into waters of the state.

g. 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 if 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.

Stewardship and Farm Tenure Agreements

Stewardship and Lease Length

The length of a farm’s lease affects how effective a stewardship plan can be. 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.”⁴ Not surprisingly, sustainable agriculture was defined in various ways, but a common denominator was a set of managerial practices to limit resource depletion or to preserve or sustain the resources.

In some cases, the landowner was reluctant to

consider practices such as reducing herbicide use because he wanted the land to look “neat and tidy” or he was worried about lower yields that would mean lower crop-share income or a crop failure and subsequent non-payment of rent.

On the tenants’ side, the prevalence of year-to-year, annual rentals posed the biggest barrier. The study noted, for example, that “sustainable techniques of production, such as conservation and organic methods, require long-term investments in management and sometimes equipment. The instability of tenure inherent in rental arrangements, communication issues, and conflicting goals for the land may lead to difficulties in adoption even when one or both parties in the landlord-farmer relationship wishes to implement sustainable techniques of production.”⁵

Many production and resource conservation practices, such as building the soil’s organic matter and establishing riparian buffers, can be time-consuming and costly to a farmer. It makes no sense for a tenant to invest in a practice that won’t show a return until after the agreement has ended. Most farm operations are a complex interaction of economic, environmental, and human systems. In many instances integrating these systems in a way that balances income and other needs with resource conservation goals is an ideal that can take years to achieve. The longer the agreement, the more incentive there is to perform “sustainable” practices or install conservation measures. The length of tenure for the farmer, then, is a significant aspect of the stewardship plan for the farm.

Stewardship and Farm Profitability

Anecdotally and from research, we know that tenants continually struggle with whether and how much to invest in the long-term productivity of a leased property. In discussions, they frequently expressed frustration with a failure to account for their contributions toward sustaining the long-term productivity of the farm, particularly with shorter-

term rental agreements. Landowners, on the other hand, sometimes expressed frustration with their tenants’ lack of concern over soil erosion, water quality, or wildlife habitat. For example, some landowners are concerned about continuous “mono-cropping,” planting the same crop in the same field year after year.

In Chapter IV, we discuss strategies for determining rent. An important point in that discussion is that if an agreement isn’t fair to both parties, it won’t last long. Landowners must recognize that stewardship practices will have impacts—some positive and some negative—on the farmer’s bottom line. Consider these impacts when formulating the rental rate.

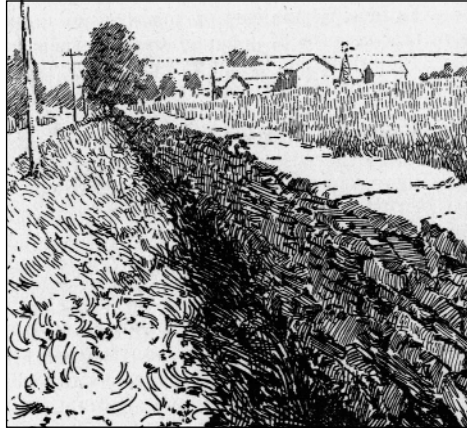
All farmers and landowners are concerned with the impact that regulations and

lease requirements might have on farm profitability. From the farmer’s point of view, regulations and requirements in a tenure agreement can impact the farmer’s bottom line. At the same time, farmers know that the quality of the resource base affects profitability.

For some farmers, farming practices that eliminate or minimize the use of chemicals on the farm and protect the natural resources lead to increased farm profitability. Other farmers, such as those with smaller-scale dairy operations, have found that grass-based livestock systems benefit the farm business as well as the resource base. Farms that are using organic methods are proving to be increasingly profitable and competitive, even on a small scale.

Incentives for Good Stewardship

In a perfect world, good stewardship is its own reward. However, tenants may not have adequate tenure to realize benefits that take some time to become operational. Nonetheless, some of these stewardship practices increase farmers’ costs as soon as they are instituted, long before they show benefits, so some landowners have devised incentives to encourage and reward certain practices.



Both parties to a tenure agreement must agree on what constitutes the stewardship “baseline.” What will the farmer be expected to do as part of the agreement without additional incentives? What is the economic impact to the farmer? Some practices directly increase efficiency and thereby increase profits as well. Even if a practice does not pay for itself immediately, it may improve yields in the longer term. Is it reasonable to expect a farmer to implement practices that negatively impact the bottom line?

The parties should distinguish between “maintenance” and “improvement.” Maintaining the resource base in the condition it was received might constitute the baseline, along with performing rou-

tine repairs, for example, of fencing. If the parties agree that the farmer will substantially improve the resource base, the landowner might reward the farmer for doing so, especially if the improvement is a cost to the farmer and there is no return to his bottom line within the term of tenure.

Developing a Stewardship Plan

There is no “one way” to manage a farm and protect the land. Each landowner and farmer must work to develop the plan that makes the most sense for the situation and the resource. Elements of agricultural stewardship plans can be found in farm and uni-

Income-Based and Incentive-Based Approaches

Income-Based Approach

Leases that set rigorous stewardship goals and then peg rental rates to farm income will reflect the income impacts, both positive and negative, of farm conservation practices. The Countryside Initiative Lease, for example, takes a pro rata, or proportional, share of the farmer’s gross farm income. The pro rata share increases over time as the farm productivity increases. In recognition of the time required to establish markets and build the income and productive capacity of the operation, the pro rata share rises by .5% over the course of the first 10 years of the lease. If the farmer achieves organic certification, the pro rata share paid to the landowner is reduced by 1%. Depending on what the farm is producing, it may make more sense to peg the rental rate to net farm income.

Incentive Based Approach

Another possible model for accounting for stewardship can be found in a new program in the 2002 Farm Bill called the Conservation Security Program (CSP). While not yet fully implemented by USDA it nevertheless demonstrates a possible framework for recognizing and rewarding good stewardship. The CSP will make payments to farmers who enter into 10-year contracts with NRCS to undertake certain resource-conserving

practices. The program also will provide payments to farmers who are already using these practices.

Depending on the type of contract, number of resource issues addressed and practices undertaken, the CSP program would pay farmers a certain percent of the average land rental rates for the county. The various levels of payments are identified as Tier I, Tier II and Tier III.

For example, a dairy farm in Vermont might receive a Tier I payment for using soil and manure testing to manage nutrients, adopting a rotational grazing system, or incorporating green manures to reduce the use of chemical fertilizers. Tier II payments to that farm might reward several Tier I practices plus adopting a resource conserving crop rotation, constructing diversion dams or grassed waterways, or permanently retiring land to establish or enhance wildlife habitat. The farmer would receive Tier III payments for adopting a comprehensive, whole farm resource management plan, or for an innovation such as installing wind turbines to power the farm.

Application of the CSP principles in a lease situation would work in reverse. The landowner and tenant could identify a set of practices that would yield a 5, 10 or 15% reduction in a “base” rental rate. Many resource-conserving practices are described in this chapter.

versity extension publications, in state and federal regulations governing organic standards, and laws addressing water quality, for example. Sometimes, stewardship standards are unwritten and even unspoken, things such as “what mom and dad always did with that field,” or “what all the farmers around here do.”

While particular practices can be articulated in the body of a lease, it is more typical for parties to agree to broad parameters—principles and goals—in the lease and let the farmer choose practices that meet these goals. Tenure agreements that dictate specific practices may lose the benefit of a farmer’s experience and creativity as well as constrain flexibility. For example, the landowner and tenant may agree that improving soil fertility is a shared goal. However, the landowner doesn’t need to dictate whether the farmer uses green manures, compost, crop rotations, or other practices. On the other hand, the landowner may want to specify a particular regime, for example rotational grazing, or waiting to hay until after grassland birds have hatched. This sort of requirement should be specified.

Once you have agreed on stewardship principles and goals, it’s time to develop a plan. Most stewardship plans work within one of the following three frameworks:

1. Management systems
2. Certification programs
3. Farm planning tools

The descriptions that follow are introductory. Check “Selected Resources,” Appendix D, for sources of additional information.

1. Management systems: A lease or other tenure agreement based on a management system, “sustainable agriculture,” for example, might state the basic tenets of such a system and ask the farmer to prepare a one- to five-year farm plan to implement those tenets. Both parties can then discuss the farm plan and mutually agree on modifications. The agreement may require that both parties annually review the farm plan and agree to changes in it.

Sustainable Agriculture: The term “sustainable agriculture” is used to describe a variety of practices that conserve and enhance the resource base.

Stewardship Goal Categories

Soil: protecting from erosion, nutrient depletion, and contamination; improving fertility, organic matter content, and drainage.

Water: protecting wetlands, preventing waterways and groundwater contamination from fertilizer and chemical runoff, and fencing stream banks and river banks from livestock.

Plants and vegetation: protecting areas with rich native vegetation from plowing, cropping, or development.

Animal health and wildlife habitat: maintaining humane and healthful livestock practices, protecting habitats for birds, mammals, and insects.

Developed resources: maintaining structures, fencing, stonewalls, and all systems such as those for water and power.

Aesthetic resources: protecting open spaces, scenic views, historic features.

Recreational resources: Allowing access for hiking; biking; cross-country skiing, picnic areas, fishing, and hunting.

Sustainable agriculture is constantly developing and evolving. At a minimum, a sustainable agriculture system of farm management will:

- Manage natural biological cycles to control pests and diseases.
- Improve soil fertility with organic matter.
- Utilize on-farm resources and recycle nutrients.
- Reduce the use of nonrenewable resources and purchased production inputs.
- Minimize negative agricultural impacts on human health, wildlife, and water whenever possible.

Sustainable agriculture addresses present and future economic and environmental farm viability. It describes a variety of practices that range from reducing chemical inputs to addressing conservation, financial, and quality of life concerns. All of

the management systems described here can be described as “sustainable agriculture.”

Organic agriculture: Organic farming systems are generally based on improving soil conditions; encouraging plant, animal, and microbial diversity; using cultural methods to prevent problems; and treating weeds, pests, and diseases with naturally occurring controls as much as possible. To be certified as organic, farmers must abide by certain management restrictions and use only approved inputs. The USDA now regulates the use of the word “organic” through a set of standards to which producers and/or manufacturers must adhere to label an agricultural crop or processed food as “organic.”

Incorporating organic management into a lease agreement can be done in several ways. Lease language can require that a farmer operate as a certified organic farm. (See “Selected Resources,” Appendix D to locate a certifying agent.) Mandating that a farmer be certified as organic automatically specifies certain stewardship standards. However, this is not always practical because some farmers’ marketing plans aren’t enhanced by certification.

Another other option is to incorporate some or all of the requirements for certification into a lease agreement. Alternatively, the lease can stipulate that the farm operation, or the land, as distinguished from livestock, be “certifiable,” without requiring actual certification. Requiring “certifiable” standards will provide some structure to the overall land management and farm practices as well as giving the farmer the choice to become certified or not. Farmers who do not need to label their products “organic” in order to market them but who are willing to follow organic methods often prefer this option.

Biodynamic agriculture: Biodynamic agricultural systems (BD) are similar to organic ones in that they use only fertilizers, pesticides, or herbicides derived from naturally occurring materials. However, BD is informed by a spiritual approach to feeding soils, animals, and plants and also works to create closed nutrient cycles on a farm. Biodynamic farmers work to create self-contained systems whereby seeds, fertility, and feed are produced for a diverse range of crops and animals. In addition,

biodynamic farms incorporate natural systems such as orchards, ponds, and hedges to attract birds, beneficial insects, and other forms of wildlife. Farmers who use biodynamic methods pay close attention to the cycles of nature including the change of the seasons and the cycles of the moon to determine the scheduling and timing for particular activities.

Biointensive methods: Biointensive farming and gardening practices are intended to produce maximum yields by depending on techniques such as double digging, composting, intensive planting, companion planting, carbon farming, calorie farming, and using open pollinated seeds. They have been used extensively in third world countries and other areas where natural and financial resources are limited. These techniques can considerably improve soil in areas where farming conditions are poor and are also used to gain higher yields in small areas. Biointensive farming must be practiced over time in order to achieve the desired results.

Permaculture: Permaculture regards a farm and homestead as a complete system. Farms of all sizes can utilize permaculture theory and practice, because they are based on an attempt to integrate in a holistic manner such things as transportation, fuel and energy sources, waste disposal, and other factors that impact the natural environment. People in diverse climatic and economic situations practice permaculture because it can help to overcome problems caused by a severe lack of resources, drought, and other poor farming conditions.

Integrated Pest Management (IPM): IPM is a pest management system rather than a production system. IPM farmers treat pest problems according to a hierarchy of controls, beginning with the least disruptive and ending with those that a conventional farmer might use. Similar to the systems listed above, prevention is the first line of defense. IPM farmers use biological controls, such as lady beetles, to destroy harmful insects and cultural controls, such as pheromone traps, for pests and covering crops with fabrics to exclude pest species.

2. Certification Programs: The food system uses three types of certification—certification of products; certification of competence, i.e. of the person; and certification of management systems. In each case, there must be specific, observable and, in many cases, measurable standards, and most certification programs require record-keeping systems.

Each type of certification has advantages and disadvantages for the parties in a tenure agreement. Decide what works best for your arrangement. Formal certification allows you to set standards that can be monitored by a third party inspector. However, you can do this on an informal basis, too. For example, a land trust and tenant could agree to certain observable stewardship standards and hire a third party to inspect and report back to both parties.

3. Farm Planning Tools: A farm plan can be valuable for both parties in a tenure arrangement because it can be used as an implementation map as well as an evaluation tool. A farm plan is a road map for the farming operation. Farmers typically assemble a farm plan with the help of agricultural service providers. Non-farming landowners may have differing levels of involvement in developing and implementing the plan. However, developing a plan together can give both parties an excellent communication tool. For example, working on a conservation plan together can allow changes to come at a pace that both reflects the tenant's skills and protects the farm income.

The plan should be an attachment to the lease and referenced in the body of the lease itself. The tenure agreement may provide that the owner and tenant review the farm plan annually or every 2 to 5 years to review progress and discuss any changes. In the case of NRCS conservation plans (see next paragraph), a landowner can get help with assessing progress with the plan from NRCS staff. Landowners may require compliance with USDA/NRCS farm conservation plans or a whole farm plan in the terms of the lease. Monitoring other types of farm plans are generally up to the landowner and the farmer.

NRCS Conservation Plans: The Natural Resources Conservation Service of the U.S. Department of

Three Ways to Certify

First party certification: The farmer “certifies” compliance. The Massachusetts “Partners with Nature” program uses this system. IPM farmers who claim to perform a certain number of practices and activities receive the “Partners with Nature” “certificate.” There is no inspection.

Second party certification: The certifying organization determines whether relevant standards are met. Some CSA farms use this system; shareholders set standards and determine the farmer's compliance.

Third party certification: The certifying organization hires a neutral, independent third party to inspect practices, competencies, or products according to a set of observable and/or measurable indicators. Organic certification of food products and SmartWood certification of sustainably produced wood products both rely on this system.

Agriculture designs farm conservation programs free of charge and on request or in conjunction with USDA-supported loans or price and income supports.

An NRCS conservation plan assists farmers in analyzing the resources of the entire farm, identifying any resource concerns such as excessive soil loss, and developing a plan to prevent resource degradation while sustaining productivity. For example, conservation plans for farms with highly erodible soils may call for strip-cropping, a soil-saving crop rotation, or other best management practices. The plans try to account for the complex human, economic, and natural resource systems on the farm and as a result, vary considerably. They typically call for a minimum level of conservation practices and installations such as watering systems, terraces, compost pads, or barn gutters, and require increasingly higher conservation levels as the farmer is able to meet these goals. To

facilitate communication, it's best if landowners and tenants work together with NRCS to develop a conservation plan.

Each state NRCS office has a collection of practices and measures, referred to as "best management practices" or "BMPs," that are "localized" to specific geographic regions. These practices are incorporated into a field office technical guide. The technical guide is built from the experience of NRCS personnel as well as other experts, and identifies on-farm practices that effectively treat resource problems common in your region. It contains a wealth of information about area resources including data about soils, climate, and watersheds. Skilled advisors can choose from the BMPs in these guides to select an appropriate suite for almost any farm situation. The guides include specifications for conservation practices that you may wish to include in a lease. BMPs are not "one-size-fits-all." They must be selected to suit the specific conditions of the farm and the needs of the farm operation. The field office technical guides are now available on line at www.nrcs.usda.gov/technical/efotg/. Some state forest management agencies and forest landowner organizations have forest management BMPs that may be used for any wooded portion of a leased property.

Whole Farm Planning: Whole farm planning ranges from plans that focus only on production practices to those that incorporate economic viability and social goals. However, all begin with an inventory of the farm resources. The best whole-farm plans also list goals, analyze management options, provide an action strategy, and often include monitoring and evaluation components. While not the same as a farm business plan, a whole farm plan can consider labor, markets, and profitability concerns as well as address relevant regulations.

Holistic Management: Holistic Management is a private sector program that describes farmers, their families, land community, and the farm business as one inseparable whole. The process begins by setting goals and articulating personal, economic, social, and environmental values. Management options are monitored and evaluated in terms of whether they bring the farm family closer to their

goals. Some of the key differences between holistic decision-making and conventional decision-making revolve around the holistic goal—testing decisions against that goal, making assumptions about available tools to reach it, and monitoring the results of all decisions in light of it.

Putting It All Together

Landowners and tenants can choose from a variety of approaches to construct a stewardship plan. Regardless of the approach, each plan should address the following questions:

- Which parties have a stake in the management of the property? Who will gather their input and what methods will be used?
- How detailed a set of goals does each party need?
- How will monitoring and inspection take place, and who will conduct each function?
- How flexible is the plan? How can changes be negotiated?

As described in this chapter, stewardship plans can be simple and broad or long and detailed. When you develop yours, include the appropriate components from this list:

- Water management (quality, conservation, systems)
- Soil management (fertility and conservation)
- Nutrient management (livestock manure)
- Pest management
- Habitat management
- Livestock management
- Sensitive area management (native vegetation and wildlife habitat)
- Pasture management (tillage, field edges, drainage)
- Conservation area management (forests, riparian buffers, and wetlands)

- Managing for aesthetics (e.g., views, special features)
- Managing for recreation (e.g., trails, picnic areas, fishing)
- Infrastructure management (e.g., roads, culverts, fencing, etc.)
- Structures (location, appearance, maintenance, and upkeep)
- Signage (location, appearance)
- Equipment and vehicles (access)

Talk it over. Look at the examples in Appendix C of this Guide. Use the worksheet on page 109 to develop an individualized plan. If you base the stewardship component of your tenure agreement on a shared commitment to preserving and enhancing the farm's many resources, you will succeed.

Chapter VII: Endotes

1. Hamilton, Neil D., "Adjusting Farm Tenancy Practices to Support Sustainable Agriculture", *Journal of Agricultural Law and Taxation*, V. 12, Fall, 1990.
2. The New Hampshire court in *Ayer v. Messer*, 59 N.H. 279 (1879) defined "bad husbandry": "...the only proper evidence is the custom of good farmers managing their own property. What a man of ordinary capacity will do with his own land, is the universal legal standard of what is reasonable."
3. See *Turgeon v. Schneider*, 150 Vt. 268 (1988). *Prevo v. Everts*, 146 Vt. 216 (1985).
4. Professional Development for the Adoption of Sustainable Agriculture on Rented Land. Final Research Report. Michael M. Bell, Michael S. Carolan, Department of Sociology, College of Agriculture, Iowa State University. Ames, Iowa. Nov. 19, 2002.
5. Bell, page 3

W O R K S H E E T

Developing a Stewardship Plan

Instructions: *Landowner and tenant should complete this worksheet together. Discuss the answers to each question and jot down answers in the spaces provided. For each resource listed in Part III, check the applicable resource concerns and brainstorm the management options. Write down your management agreements in each section. You may need to do some “homework” to explore options before you agree to certain approaches or specific practices. You can always amend your decisions.*

I. Gathering Information

A. What resources and features of the farm property will be addressed in the stewardship plan? (Make a rough sketch, use an aerial photo, refer to an existing farm plan and/or soil maps.)

B. Describe the farm operation (dairy, vegetable, diversified).

C. Describe the tenure agreement (length of lease, division of responsibilities).

II. Setting Stewardship Goals

A. What goals do you want to include in the stewardship plan? (Refer to page 109 and Appendix C.)

B. Prioritize the list from II.A, above:

C. Do the landowner and tenant have differences of opinion about any of these goals, and if so, what are they?

D. Do either or both parties need more information about stewardship goals and practices? If so, identify those areas and describe steps to obtain the information (e.g., contact NRCS, attend a class, read a publication).

II. Selecting Practices

A. SOIL

1. What are the types and condition of the soils? How will soils be monitored, maintained, and improved? (For example, required practices could include testing the soil regularly, applying compost or manure, and cover cropping to increase soil fertility and reduce chemical inputs.)

2. Where is erosion a concern and how will it be controlled? (For example, required practices could include fencing out grazing animals from stream and river banks, creating riparian buffers, and planting grass strips.)

3. What drainage improvements are needed? (For example, required practices could include seeding grass in waterways, creating diversions, chisel plowing, and planting deep-rooted crops.)

B. WATER

1. If there are surface waterways near or around the property, e.g. ponds, streams, or rivers, how will they be protected from negative impacts? Is it necessary to install or maintain riparian buffers? Does the plan include requirements to minimize run-off from spraying and fertilizing? (For example, by using IPM methods, timing spraying during dry weather, or spraying in strips rather than over an entire area.)

2. How will drinking water and ground water be protected? (For example, required practices could include locating storage tanks and manure pits away from areas where they can pollute surface water and ground water.)

3. Do ponds exist or need to be built for watering livestock or irrigating fields? Are there adequate water sources for livestock and other farm-related tasks?

C. LIVESTOCK

1. What is the condition of pastures and hayland? How will they be maintained or improved? (For example, required practices could include planned grazing patterns, installing proper fencing and restoring pasture plants by rejuvenation.)

2. How will livestock be managed? (For example, required practices could include loose confinement systems, adherence to humane treatment guidelines, giving livestock access to open air and pasture.)

3. How will manure be managed? (For example, required practices could include field application under specified circumstances or installing appropriately scaled and designed waste management systems.)

D. PEST AND DISEASE MANAGEMENT

1. How will pests be managed? (For example, required practices could include IPM, organic, or other systems that use biological, cultural, and physical controls such as trap crops, crop rotation, physical barriers, and use of natural enemies.)

2. How will chemical inputs be managed and stored? (For example, required practices could include proper application, storage, mixing and disposal of pesticide materials.)

E. WILDLIFE HABITAT

1. Do you want to protect sensitive habitat areas such as wetlands or areas that provide food, shelter, or water for wildlife? How will these be managed? (For example, required practices could include creating riparian buffers, fencing out grazing animals, and mowing open fields in 2-3 year cycles.)

2. What other natural features need to be protected?

F. BUILDINGS, AESTHETIC FEATURES, AND RECREATION

1. Will new structures be necessary? What are the building restrictions, if any? (For example, required practices could include developing a site plan, incorporating appropriate landscaping, using “green” building materials, and conserving energy by employing specified practices or installing certain types of technology.)

2. What aesthetic features of the property need to be considered? (For example, fencing, rock walls, signage, and buildings may require protection.)

3. How will field edges, buffers, farm roads, and other areas not in production be managed?

4. How will scenic areas be managed? (For example, are certain mowing schedules required? Does signage have to conform to certain standards? How are “unsightly” materials to be handled?)

5. How will recreational uses be managed? (For example, is there provision for community use of the property for activities such as hiking, cross-country skiing, picnicking, and other agri-tourism activities? Are there provisions to manage community use of snowmobiles and ATVs, both of which are frequently injurious to land and wildlife?)

Negotiating, Monitoring and Enforcing Agreements



This chapter describes methods for creating and maintaining a tenure arrangement. In this chapter you will find:

- ▶ *Information about negotiating a tenure agreement.*
- ▶ *Suggestions for successful negotiations.*
- ▶ *Information about finding a farmer or a farm property.*
- ▶ *Information about terminating and transferring leases.*
- ▶ *Hints for monitoring and enforcing the agreement.*
- ▶ *Suggestions for technical assistance.*

Understanding the Process

A farmland tenure agreement can be a simple one-page letter signed by two parties or a complex legal document running fifty pages or more. Regardless of length, it takes time to negotiate a good lease or any other type of agreement. Remember, a lease is based on a partnership. The process of negotiating an effective tenure agreement is complicated. Each party brings a combination of values, philosophies, emotions, and practical ideas to the table, all of which must be accounted for during the negotiation phase. But a carefully negotiated and written lease agreement gives both the tenant and the

landowner a solid foundation that can prevent misunderstandings and complications. Guidelines created in the negotiating process give the parties useful information about each other and the ways they can work together. The more time taken to develop a meaningful agreement, the better the landowner and farmer will understand and trust one another.

Steps in a successful negotiation:

1. *Know what you need and want.* Articulate your priorities in advance, before beginning to negotiate. Knowing what you need and want from the beginning will set a productive foundation for your negotiation.

2. *Do your homework before you approach the other party.* Do the necessary business planning, be clear about the resources you have to offer, and understand the relevant legal requirements and limitations.

3. *Begin discussions with the other party.* Discussions can be brief if the needs of both parties are simple. But sometimes the discussion phase can be lengthy and require several meetings.

4. *Put the agreed-upon terms into writing as a draft document.* To make this easier, refer to the examples in the Appendices.

5. *Review the written draft and consult with legal and financial advisors.* Propose revisions. Review all new language offered by each party. Repeat this process until both parties are satisfied.

6. *Sign the lease and meet all the associated legal requirements* such as recording the lease or providing copies of it to other interested parties.

7. *Celebrate!*

8. *Review the lease document at least annually and meet with the other party on a regular, agreed-upon basis.* Depending on circumstances, it can be useful to create a calendar to note important dates and deadlines that are stipulated in the lease.

9. *If you want to propose revisions to the lease or any of its attachments, follow the procedure outlined in the lease.* If no procedure is specified, notify the other party in writing of your interest in modifying an aspect of the agreement. Suggest new draft language, consult with advisors, and solicit feedback from the other party. When both parties are satisfied with the revision(s), sign an amended lease or initial and date the original document with the new language inserted.

A few suggestions to make your negotiation successful:

Outline your expectations before you begin to negotiate. Before sitting down with the other party, ask your-

self some basic questions. Have a clear idea of what you want the agreement to accomplish. Allow yourself to envision the ideal situation. If you and the other party have very different expectations, it may not be a good match. See the worksheet at the end of this chapter.

Develop your goals for resource stewardship, in writing, on your own. Refer to Chapter VII for ideas about stewardship standards. Take the time to delve into the various factors involved in land stewardship. Be prepared to respond to a potential landlord's or tenant's concerns about wildlife corridors, biodiversity, or water quality, for example.

Determine if there is compatibility. A successful agreement depends on a solid set of shared values, goals, and expectations. It is crucial to establish a good relationship from the beginning. If problems that arise in the negotiating process aren't worked out, they will persist for the life of the agreement. Do not enter into an agreement with someone with whom you do not feel compatible. Try a trial period of one to three years before entering a longer-term agreement.

Emphasize communication skills. A successful negotiation depends on effective communication. Good communication requires skill, and creating an interpersonal environment conducive to this kind of discussion is an art. There is no one right way to make initial contact or to broach a difficult subject, but there are plenty of wrong ways! Be honest with yourself about your communication abilities and don't be afraid to seek advice or to "practice" with friends or family. Sometimes there are benefits to having a third party facilitate communication, especially around difficult subjects or when there is conflict or the potential for conflict.

Agree on a decision-making and review process. Together, design a process for making decisions within the context of the lease agreement. Decide when to bring in a third party to help negotiate differences, which items to put in writing, the timing and frequency of your meetings, and how decisions will be recorded and shared. These processes can be relatively informal for simple, short-term agree-

ments. However, complicated, long-term lease agreements with multiple interested parties require a more formal arrangement. Don't be fooled—what seems simple can lead to misunderstandings down the road. For example, does “maintain the farm pond” entail clipping the grasses on the edges or dredging the bottom?

Some landowners and tenants pride themselves on the friendly nature of their relationship. “We don't need to write things down. We have shared values and we get along so well.” See this as a good foundation, but not as a good strategy for your tenure partnership. It is wise to anticipate the possibility of a disagreement or misunderstanding and set a negotiating process in place while you are friends.

Rely on a good lease template to establish a sound foundation. See Appendix A and B in this guide for examples of lease agreements. You can also find good examples through farmlink programs, Extension offices, and farm business specialists. Some agreements are very simple, and others cover the expectations of both parties in great detail. Don't forget to tailor it to your specific situation and include all the necessary details. Remember to consult with your advisors and with all interested parties—including family members.

Work with an attorney from the beginning. Attorneys can be expensive, but the cost is well worth it when you are constructing a lease agreement. In many cases, it's wise for both the landowner and the tenant to have their own attorney. Attorneys can draw up a lease, provide technical assistance in particular areas, or simply approve an agreement the two parties have drawn up. If a conflict or dispute becomes large enough to warrant a legal advice in the future, both parties have recourse to a professional who is familiar with the agreement.

Finding One Another and “Getting Engaged”

Unless the lease is between parent and offspring, finding and “courting” a prospective tenant or landowner may not be easy. What makes you an attractive candidate for a tenure partnership?

A farmer with an organized and well-developed

business plan, a written business concept and/or a preliminary farm plan is likely to attract a landowner more quickly than a farmer without one. A business plan can serve as a road map that lets a potential landlord understand how a farm business will grow. This can ease any reservations a landowner may have about the operation. Planning for the future of the farm with a business plan is one of the best ways to foster the success of the business. The tenant can also provide some farming creden-

tials—a resume or letters of reference. For new farmers, this is more difficult; the lack of a track record means that they may be perceived as higher risk tenants. Landowners are more likely to enter into an agreement with a tenant who demonstrates an appreciation for the landowner's goals and who also has a firm grasp of the realities of farming.

By the same token, a landowner who understands—and supports—the business of farming and who is willing to work with a tenant to keep the farm operation profitable is an attractive candidate. Prospective tenants shy away from landowners who impose restrictions that may cut into an operation's profitability. This does not mean that tenants will always balk at conservation or aesthetic goals. However, landowners with strict requirements on the upkeep of scenic vistas or historic stone walls may find that farmers are worried that they would have to spend too much time maintaining appearances and not enough on managing their farm operation.

Landowners face the challenge of balancing strict requirements with areas of flexibility. For

A SUCCESSFUL
TENURE RELATIONSHIP
DEPENDS ON BUY-IN
BY ALL THOSE LEGALLY,
FINANCIALLY AND
EMOTIONALLY INVESTED
IN THE PROPERTY.

Know Yourself

Know what you want and where you're willing to compromise. For example, you could be a farmer who has never practiced crop rotation. However, the farm you want to lease has a conservation plan that requires it. Are you willing to learn how to rotate crops? Can you take the time and find the resources to develop the knowledge and skills you'll need to do a good job of it? Be certain about this before you sign that lease.

example, they must decide if they will require organic certification or if simply prohibiting synthetic pesticides is adequate. Or they might have to compromise about the width of a riparian buffer that also forms the edges of valuable cropland. For land trusts, the locations and types of allowed farm structures can be one of the most difficult negotiating points. Many farm operations are substantially hindered without on-site storage, processing, and/or livestock facilities.

Monitoring and Modifying the Agreement

A good lease contains clear provisions for monitoring and enforcement. Monitoring is the backbone of the lease because it provides a process for seeing that agreements are carried out. Arrangements that lack a well-defined process for dealing with monitoring inevitably lead to conflict. More complex leases have provisions for default and its remedies. (See Chapter IV, page 44.) But a solid monitoring process can make default actions unnecessary by catching and solving problems before they become severe.

The simplest way to monitor or oversee a legal agreement is a regularly scheduled meeting between the landowner and tenant to review farm operations and agreements. In an informal setting, each party provides reports and feedback to the other. You may want to come to the meeting with a

list or a checklist of items to review. Even if you have a simple, informal monitoring process, write down areas of discussion, agreements, and assignments. For example: the landowner will repair a collapsed culvert by the end of the month; the tenant was reminded that the farm plan attached to the lease agreement stipulates mowing the back field edges before weeds go to seed.

Land trusts and other land-owning or managing organizations have more formal methods to monitor and enforce leases and conservation easements. Monitoring is an important aspect of a land trust's management responsibilities whether they own the land or an easement upon it, and they typically refer to their monitoring process as "stewardship." Sometimes land trusts have small endowments or other funds to implement monitoring. A thorough monitoring plan includes property inspections of fields and bounds. Monitors will look for signs of neglect and abuse as well as vandalism, trespass, and dumping, none of which may be caused by the tenant.

A thoughtful landowner uses the monitoring process to ask questions and learn about the farming operation. A wise tenant uses this process as an opportunity to inform the landowner about changes in the operation, concerns about the farm facilities, and the health of the farm business. Candor builds the best partnerships.

A signed lease agreement is not carved in stone; it is a living document. If necessary, the document can be amended. But as a rule, it is easier to change attachments or documents that are referenced in the lease than to change the body of the lease. For example, a lease might reference an NRCS conservation plan for the farm. Changing the conservation plan is not a legal undertaking. Similarly, an attached set of performance standards can be renegotiated. Adding an addendum to an agreement is a simple way to make changes to the lease agreement without redoing the entire document. Either party may draw up an addendum. After it is signed and dated by both parties, each of them must keep a copy and attach it to the original lease document.

Remember —

- Be prepared to negotiate; do your homework.
- Start with clear expectations.
- Write everything down.
- Get adequate and appropriate technical assistance.
- Communicate regularly.
- Don't be afraid to propose changes.

Enforcement and Dispute Resolution

Enforcement is a tricky issue. Usually, the landowner is the party who initiates enforcement procedures although legally a tenant also has the right to seek enforcement against the landlord. If the lease specifies provisions for default, it describes the conditions that constitute default, acceptable means to give notice to the other party, and procedures for curing the default.

Enforcement actions are always the last resort. Nonetheless, the landowner might have to take steps to enforce a particular provision of the lease. In extreme situations, the integrity of the farm property and/or a responsible organization might be at stake. Enforcement takes time and sometimes money. Such actions always need to be weighed against actual or potential damage to the farm and possible consequences to both parties. For example, if a farmer does not plant a cover crop in a timely fashion, as specified in the lease, the soil is exposed and vulnerable to erosion. What steps can the landowner take? If it's the first time this deadline has not been met or the failure to do so was caused by the weather, broken equipment, or a crisis in the farm business, it may be appropriate to do nothing except note the concern and discuss it with the farmer. But if the failure to plant a stipulated cover crop is chronic and part of a larger pattern of neglect, more aggressive consequences may be in order. In a well-crafted lease, enforcement protocols are spelled out in the section(s) on default. Most

landlords try to negotiate their way through the problem before resorting to legal measures.

If informal attempts to rectify the failure of either party to meet one or more terms of the agreement fail to produce results, a next step is a more formal process of dispute resolution. In fact, it is a good idea to include a clause in the tenure agreement specifying this procedure, including how the costs of such a procedure will be allocated. A professional mediator may be retained to resolve the issue. In some states, there are professionals trained in the area of agricultural mediation. Maryland, Massachusetts, New Jersey, and New York have USDA certified Agricultural Mediation Programs.

Business Plan? Yes!

Typically, lenders require a business plan before financing a business venture. The stronger your business plan, the more likely you are to secure a loan. You can also use a business plan as a tool to guide and direct the future growth of a venture. When you develop such a plan, you must research your proposed venture. You will need to learn about marketing the product and project its profitability. A good business plan lays out the growth potential and determines what form this growth will take in the future.

It's often a good idea to share this information with a potential landlord. That way, as the business expands and you need to build new buildings or structures or make other changes to the property, the landowner will be on board. From the landowner's point of view, it's reasonable to require a business plan from a prospective tenant. It tells the landowner that the farmer is serious and that he has a viable business, whether it is a full-time family dairy operation or a small-scale, part-time market garden. However, it may be unreasonable to ask for confidential, proprietary information. Landowners may request a tenant's credit history and/or references.

Technical Assistance

A few organizations are familiar with farm transfer and tenure issues and arrangements. They may be able to answer your questions about negotiating, monitoring, and enforcing tenure agreements or provide resources and referrals.

Land trusts. Some conservation land trusts in the Northeast focus on protecting farmland. A few land trusts specifically manage agricultural land and are familiar with the process of farmland leasing. Check Appendix D, Selected Resources.

Land Linking programs. Land linking programs help farmers and landowners find one another and also provide both education and assistance about farm transfer and tenure options. In the Northeast, linking programs cover CT, MA, ME, NH, NJ, NY, PA, RI, and VT. Each of these programs has substantial expertise in tenure issues, shelves of resource materials, and strong referral databases to help you find further assistance. (See Selected Resources in Appendix D for a list of land linking programs in the Northeast.)

Cooperative Extension. Some Northeast land grant universities have extension business management specialists. They have experience working with leased farms and lease agreements. In some cases, they can show you templates for lease agreements and also advise about land rental rates. Call your extension office to learn if these services are available.

Agricultural lenders. The USDA Farm Service Agency (FSA) and the Farm Credit System (FCS) specialize in agricultural lending. FCS also provides a range of business services such as tax preparation, business planning, and estate planning. Many FSA offices sponsor training courses for borrowers on the topics of business planning and management.

Other professionals. Both parties to a tenure arrangement will need professional assistance such as lawyers, accountants, and financial planners at some point. In some parts of the Northeast, it is hard to find legal and financial professionals with expertise in agricultural matters. Check with the providers mentioned above for a referral.

Appendix A(I): Annotated Sample Short-Term Lease

This sample lease provides some examples of ways to address many of the issues raised in Chapter IV. These are only examples and will not suit every situation or desire. It is NOT intended as a fill-in-the-blank lease. You may want to share these examples with your lawyer after you have worked through the short-term lease checklist. This template is probably more appropriate for a moderate-term lease of 5 to 7 years. For an annual ground lease you may prefer the simpler template at Appendix A(4).

Lease Agreement

Preamble and Statement of Purpose:

THIS AGREEMENT (“Agreement”) is made this ____ day of _____, 200__, effective as of _____, 200__, 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.

(Be sure to accurately identify the parties to the agreement. See Chapter IV.)

WHEREAS both parties share a mutual interest in the health and productivity of the agricultural lands forming the subject matter of this Agreement;

WHEREAS a lease provides the farmer with _____;

For example:

1. *the opportunity to undertake farming activities/operations, or*
2. *an increased likelihood of establishing a permanent farming operation.*

WHEREAS the landowner also benefits from such an agreement, insofar as the land is maintained in production and protected from conversion to non-agricultural uses;

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

1. 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.

2. Description of Premises.

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

- (i) _____
- (ii) _____
- (iii) _____

- (iv) _____
- (v) _____

(Adequately describe all the property you are leasing including any dwellings, farm structures, equipment and live-stock, as well as a good description of the land that includes number of acres, its current use, e.g., pasture, cropland, woodland, conservation land, access lanes, etc. and directional descriptions i.e. field south of dwelling. Include a description of the condition of the property, particularly structures at the commencement of the agreement. Reference one or more maps as attachments.)

3. Lease Term, Renewal, and Termination.

The term of this lease shall run for a period of _____ years beginning on _____, 200__, and ending on _____, 200__.

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 _____, 200__ of a written request to renew the lease for the additional period. Upon said delivery, Landlord shall have until _____, 200__ 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.

4. Permitted Uses.

4.1. [Landowner] permits, authorizes, and consents to [Farmer's] undertaking of all activities incident to agricultural uses of the Premises, including but not limited to:

- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____

(The following are some examples of the kinds of activities that could be listed. Be sure to include all permitted uses that may not be generally considered agricultural, such as food processing, educational activities or on-farm retail

- (i) Hay cutting;*
- (ii) Planting, cultivating and harvesting vegetables, fruit, trees (including Christmas trees and other fruit trees);*
- (iii) Raising livestock and poultry <<in barns and pastures; ?>>*
- (iv) Use, maintenance, and seasonal storage of the equipment*
- (v) Application of soil amendments and other inputs, including manures, organic amendments, and lime;*
- (vi) Reseeding and maintenance of pastures;*
- (vii) Erection and maintenance of both permanent and temporary fencing;*
- (viii) Removal of brush and dead trees.*

4.2. [Farmer] agrees to comply with [State's] "Accepted Agricultural Practices" which are incorporated herein by reference. [Farmer] and [Landowner] shall work cooperatively with the USDA Natural Resources Conservation Service to develop a conservation plan for the farm. [Farmer] agrees to adopt all best manage-

ment practices recommended by NRCS within a reasonable time frame identified in the conservation plan. The conservation plan shall be periodically reviewed by [Landowner], [Farmer] to ensure compliance.

(The above provision provides some basic examples of ways to incorporate stewardship goals into a lease. For more detailed provisions, see APPENDIX C.)

4.3. The [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 Current Use law.

4.4 [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) _____

5. Prohibited Uses.

5.1 [Farmer] shall not, without the prior written consent of [Landowner] engage in any of the following activities on said parcels:

- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____

Prohibited uses may include, for example:

- (i) Erection of permanent structures*
- (ii) Removal or remodeling of permanent structures*
- (iii) Removal of gravel, soil or subsurface oil or minerals*
- (iv) Cutting of trees, except for dead trees and brush*
- (v) Application of sludges*

5.2 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].

6. Rent and Taxes.

6.1 [Farmer] shall pay to [Landowner] without demand, rent in the amount of _____ per month [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.

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

Alternative provisions:

Crop share:

6.1 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 Paid to [Farmer]	Date of Payment
1.	_____ / _____	_____ / _____
2.	_____ / _____	_____ / _____
3.	_____ / _____	_____ / _____
4.	_____ / _____	_____ / _____

(Expenses to be shared might include costs of seed, fuel, machinery expenses and labor costs at harvest.)

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

6.2 [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.

6.3 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.

7. Utilities.

[Farmer] agrees to timely pay 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.

8. Repairs, Maintenance and Replacement

There are any number of ways to address repairs, maintenance and replacement issues. The following is just one example:

8.1 [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, 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.

8.2 [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, then [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, routine and emergency septic pumping.
- (f) Heating, ventilating, air conditioning – All filters, servicing, adjustments or repair.

8.3 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 lawn and any 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.

8.4 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 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_____.

9. Improvements.

9.1 [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].

(Improvements might include construction of a greenhouse, or a feed storage structure or the conversion of a corn crib to a grading//sorting shed. Improvements might also include a well, permanent fencing, or field drainage systems. See Chapter IV, Page 42 for distinction between repairs and capital improvements.)

9.2 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.

9.3 Improvements made under paragraph 9.1 which are approved for severance by the [Landowner] in the writing required under paragraph 9.1 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.

9.4 Improvements made under 9.1 and not approved for severance by [Landowner] shall become the property of [Landowner] at termination of the lease without compensation to the farmer.

In the alternative the lease may provide for compensation to the farmer for the depreciated value of the improvement as follows:

Alternative to 9.4. [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.

10. Successors and Assigns.

10.1 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.

10.2 [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.

11. 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.

(This is a standard lease provision that is quite important. A partnership relationship gives rise to certain duties between the parties – including personal liability for debts of the partnership. A partnership can be created by the way the parties behave toward one another and the impression they make with those with whom they do business. It's important that landowners avoid participating or controlling the conduct of the farm business to the extent of becoming a "partner.")

12. Insurance

12.1 [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.

12.2 [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.

13. Default

13.1. The following events shall constitute default under this Agreement (for example):

- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____

Some examples of default might include:

- (i) Nonpayment of rent by the fifteenth (15th) day of a new month;*
- (ii) Noncompliance with any municipal, state or federal law, or failure to act in a responsible manner in the neighborhood including failure to comply with the farm's NRCS conservation plan;*
- (iii) Committing waste;*
- (iv) Failure to maintain adequate liability or casualty insurance or to promptly rebuild or repair in the event of loss*

under paragraph 10.2.

(v) Failure to pay for all taxes and assessments on the Premises.

(vi) Failure to make adequate repairs, maintenance or replacements as required in paragraphs 8.1, 8.2, 8.3 and 8.4.

(vii) Substantial breach of any other material provisions in this Lease Agreement.

13.2 A default under any of the provisions of this Agreement by either party may be cured (= *remedied*) 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.

13.3 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 growing at the time of default and which are the personal property of [Farmer].

13.4 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 growing at the time of default and which are the personal property of the [Farmer]. [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.

14. Dispute resolution

14.1 Prior to taking any action in a court of law the parties to this agreement agree to endeavor in good faith to select and appoint a dispute resolution professional and to mutually abide by the process and outcome directed by the professional. The parties agree to divide the costs of retaining the dispute resolution professional.

Alternatively, the parties may 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 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.

15. 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.

16. Severability.

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

17. Merger.

This Agreement represents the entire agreement between the parties.

18. Amendments.

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

Paragraphs 16, 17 and 18 contain the “boiler plate” language that you will find in just about every contract – leases included. They refer to well-defined rules of contract interpretation, formation and amendment. Generally, it means that if a matter that was part of your negotiations isn't in the written agreement you can't claim it was “agreed to” and if you agree to amend the agreement it has to be in writing.

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 _____, 2002, [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 _____, 2002, [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: _____

Memorandum of Lease

This is an example of a form memorandum of lease. Filing a memorandum of lease puts others on notice that a tenant has rights in the property. For example, if the lease binds the “heirs and assigns” of the Landowner, then filing a Memorandum of Lease in the land records puts these parties on notice and protects the Farmer’s rights in the property. It also protects the Farmer from the claims of intervening creditors of the Landowner. With notice, these heirs’ or creditors’ rights are subordinate to those of the Farmer, which means that they will have to honor the lease.

KNOW ALL PERSONS BY THESE PRESENTS that Landowner and Lessee identified below are parties to a certain lease agreement dated _____, 200__ containing the following terms and conditions:

Lessor:

Lessor address:

Lessee:

Lessee address:

Leased property:

Date of execution: _____, 20__

Lease term:

Commencement date:

Expiration/termination:

Rights to extend or renew:

Rights to purchase:

Right of first refusal:

Assignment and Sublease:

This memorandum of lease will be recorded in the town of [_____] to provide notice of the lease pursuant to [27 V.S. A. § 341(c)]. The lease contains terms and conditions in addition to those set out here. This Memorandum of Lease is not intended to amend or modify the terms and conditions of the lease. To the extent that the terms and conditions of this Memorandum of Lease differ from the terms and conditions of the lease, the terms and conditions of the Lease shall govern and prevail.

Appendix A(2): Sample Lease Agreement

This agreement is between _____ (landowner) and _____, (tenant), for the lease of certain parcels of land for the purpose of _____ [e.g. growing and harvesting hay; establishing and cultivating an orchard, grazing livestock, erecting a greenhouse, etc.].

Whereas both parties share a mutual interest in the health and productivity of the agricultural lands described below, and whereas a multi-year lease agreement provides security for the farmer, enabling natural resource stewardship of the land, and whereas the landowner also benefits from such an agreement, and the land is maintained in production and protected from conversion to non-farm uses, the parties agree as follows:

1. The parcel(s) contained in this agreement are is/described as follows:

[describe parcel location, acreage, bounds, unique features, current condition, etc.]

2. The term of this lease shall be from _____ to _____ [a period of, for example, three, five, ten years] 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 of this date, for example] unless otherwise mutually agreed. A late penalty of up to 5%/month may be assessed on all late payments. This lease fee may be renegotiated annually.

The tenant and landowner may negotiate in-kind services in lieu of all or partial payment as follows: [e.g. removal of debris or limbs, clearing or keeping land cleared, mowing paths or trails, giving some hay, etc.]

4. Permitted Uses: the tenant is hereby permitted all normal activities associated with the above purposes, including but not limited to:

[e.g. up to three cuttings of hay per season; planting, cultivating and harvesting fruit trees; use and seasonal storage of equipment on said parcels; application of soil amendments including manures, fertilizers and lime; reseeding; erection and maintenance of fencing; pest management including the application of pesticides; burning brush; etc.]

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): [e.g. erection of permanent structures; changing oil; cutting trees; installing permanent fencing; storing vehicles; plowing of grazing or hayland; application of sludges; etc.]

6. The tenant agrees to prepare a Conservation Plan under the guidance of the NRCS or other agricultural technical assistance provider for said parcel(s), to complete annual soil testing and apply fertilizer and lime as indicated at his/her own expense. The tenant agrees to proper disposal of trash and waste. The tenant further agrees: [e.g. obtain organic certification, leave premises in cover crop at the end of the term; rotate crops, use conservation tillage, etc.]

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 his/her own liability insurance coverage.

9. By previous mutual agreement, the tenant may place improvements upon said parcel(s) at his/her own expense, and such improvements shall [remain/become] the property of the [tenant/ landowner]. Upon termination of this Lease, the tenant [may/shall] remove such improvements and return the property to its prior condition. [The tenant may sell the then current value of such improvements to the landowner/subsequent lessee.] [e.g. greenhouse, permanent fencing, well, storage shed, windmill, permanent culvert or stream crossing, livestock shed, watering facility, irrigation, etc.]

10. Either party may terminate this lease at any time with a [e.g. six month] notice to the other party. The tenant agrees not to assign or sublease his/her interest. In the case of the transfer of title of said parcels during the term of this lease, the lease shall transfer with the land; if such a transfer is not provided for, the tenant shall be compensated for the loss of his/her equity [e.g. established orchard, improved pasture, etc.] by the landowner.

11. The terms of this lease may be amended by mutual consent. A default in any of these provisions by either party may be cured upon written notice by the other party within [e.g. 60 days] of receipt of such notice. Any disputes occurring from this lease may be resolved by standard mediation practices, if necessary.

12. Landowner retains his/her right to access the parcel(s) for the purposes of inspection with prior notification to the tenant.

13. Other special terms and conditions in this lease:

signed: _____

date _____

date _____

Attachments may include:

- Plan of land
- NRCS Farm Conservation Plan
- Proof of insurance
- Other performance standards or rules referred to in the body of the agreement
- Any other documents referred to in the body of the agreement

© 1998. This sample lease was prepared by New England Land Link, a program of the New England Small Farm Institute.

Appendix A(3): Intervale Foundation's Enterprise Farm Agreement

This Agreement is made and entered into this _____ day of _____, 2001, by and between the *Intervale Foundation* "Intervale", organized and existing under the laws of the State of Vermont, and _____, "Farm."

WHEREAS, Intervale coordinates a small business Enterprise Farm Program in which the Farm is a participating member; and

WHEREAS, Intervale intends to lease farmland, storage space, farm equipment, greenhouses, water wells, water pumps and other farming tools to the Farm; and

WHEREAS, Intervale and the Farm wish to continue in this relationship for as long as Intervale has authority over the land, as long as they continue to share mutual goals; and

WHEREAS, Intervale seeks to restore the health of the land in Burlington's Intervale by supporting practitioners of sustainable agriculture, while simultaneously supporting the growth of economically viable small farming businesses,

NOW THEREFORE, the parties hereto agree as follows:

1. Lease/Land Rent. Intervale agrees to sublease a portion of the so-called *Moon Field, 5 acres and the Calkins West Field, 10 acres* as per the map on Attachment A, comprised of *fifteen acres*, to the Farm. The initial charge of \$126.00 per acre, for a total annual rent of \$1,890.00, is payable in five equal monthly installments due on the first day of June, July, August, September and October. This lease amount is subject to annual adjustments not to exceed a 5% increase per annum. The Farm will have the exclusive right to farm on this land.

Appendix E lists equipment and service fees. These fees are also subject to adjustments not to exceed 5% per annum. Refer to Appendix B for equipment use protocols.

This lease shall become effective on the first day of *January 2001* and shall terminate on the *31st day of December 2005*.

2. Renewal and Revisions. This lease is eligible for renewal for an additional five year period at the end of the fourth year. Intervale will review lease performance at this time and make any necessary changes, including the possibility of restructuring. The Farm must submit an updated business plan and a request for renewal no later than *December 1, 2005*. The Land Committee will review such documents and will evaluate them based on criteria stated in this Agreement. If the lease is not renewed, the Farm will surrender the leased acreage at the expiration of the term of the lease, or sooner, in good condition and to the satisfaction of Intervale's Executive Director. At this time all land leased by the Farm needs to be seeded down to a cover crop by the farmer(s).

Any revisions to this Agreement must be made in writing and signed by both parties. Revisions shall be attached and made part of this Agreement.

3. Liability and Indemnification. The Farm shall carry comprehensive liability insurance with a minimum coverage of \$500,000. The insurance will be in joint names of Intervale and the Farm and will cover the liability of either or both parties for accidents associated with the use of the above-described property. All equipment owned by Intervale shall be indemnified. The Farm shall hold Intervale harmless concerning the Farm's use, possession of and operation of the equipment as per the signed Indemnification Agreement, attached to and made a part of this Agreement in Appendix F.

4. Protocols Included in this Agreement. Both parties understand that the Farm will make improvements to the land covered by this Agreement and its yielding capacity by means of an appropriate cropping program and organic cultural practices. This shall continue on a long-term basis. The Farm agrees to follow all written protocols that are included as appendices to this Agreement. The Farm agrees that any employees of the Farm will also understand and adhere to each protocol. The attached protocols are as follows:

Land Use, Appendix A
Equipment Use, Appendix B
Greenhouse Use, Appendix C
Non-Financial Farm Responsibilities, Appendix D
Incubator Farm Fee Schedule, Appendix E
Indemnification, Appendix F

5. Financial Performance and Data Reporting. Enterprise Farms strive to meet specific standards of viability. Entrepreneurs who are developing their technical skills as businesspeople run Enterprise Farms. Enterprise farms are not hobby operations nor are they to provide sustenance solely for the farmer(s). They strive to provide the farmer(s) with their primary income during the growing season by selling what is grown.

Enterprise Farms are not provided subsidized fee rates. Each plans its development in concert with the environment and the community. Enterprise Farms work to actively support the mission of Intervale. Annual reporting and analysis of the growth of the Farm will provide material for business development of the Farm and Intervale.

The Farm will submit an annual report using the format provided by Intervale. The report will include financial statements, employee information, market development and land use records. The Farm will submit an annual report no later than December 31 of each year in operation. All information submitted is confidential. Annual reports are compiled with other information for Intervale fundraising, marketing and outreach.

6. Termination. Failure to follow the provisions of this Agreement or any of the Protocols listed can result in termination of this Agreement. Anyone who believes there is cause for termination must file a written statement with the Executive Director. The Land Committee will review the complaint. If the Land Committee determines that an infraction has occurred but is reversible and curable then the Farm will be issued a Notice of Default. The Farm will have a specified time, not to exceed six months, to cure the default. If the Farm fails to comply in that time, the Farm will be placed on probation for a period of time determined by the Land Committee. If the farm still fails to comply, the Land Committee can recommend termination to the Board of Directors. If the infraction is not reversible and curable, the Land Committee will recommend termination to the Board of Directors. The decision of the Board of Directors will be final.

7. Right to Assign or Sublet. This lease may not be assigned to any person or group, nor sublet in any part for any purpose without written consent from Intervale.

AGREED to this _____ day of _____, 20__

INTERVALE FOUNDATION

BY: _____, Executive Director

_____ FARM

BY: _____, Farm Owner

Appendix A(4): Simple Cash-Rent Lease¹

This lease is entered into this ____ day of ____, 200_, between _____ the Landowner, and _____, Tenant.

The landowner hereby leases to the Tenant to occupy and use for agricultural and related purposes the following described property, located in the town of _____, State of _____ .

The terms of this lease shall be for _____ year(s) from _____, 200_ to _____, 200_, and shall continue in effect upon the same terms and conditions as herein contained from year to year thereafter until written notice of termination is given by either party to the other at least 6 months prior to the expiration or this lease or any renewal.

The Tenant shall pay to the Landowner the sum of \$_____ annual rent for the above described property. This annual rent shall be paid in ____ installments due as follows:

It is further agreed:

Signatures:

Date: _____ Landowner: _____

Date: _____ Tenant: _____

1. Adapted from a lease prepared by Dwight K. Eddy, Extension Economist, University of Vermont.

Appendix B: Annotated Sample Long-Term Lease Provisions

NOTE: *This Appendix provides examples of ways to address some of the particular issues that can arise under a long-term lease. This is not a “template” of a complete long-term lease. A long-term lease must include many of the basic lease provisions found in the short-term lease samples found APPENDIX A. The examples are drawn from the many long-term leases we have reviewed, and are grouped in the following categories:*

- I. **Institutional Programmatic Purposes**
- II. **Permitted and Prohibited Uses**
- III. **Setting Rental Rates**
- IV. **Repairs and Maintenance of Premises**
- V. **Heirs and Assigns and Successors in Interest**
- VI. **Ownership of Improvements and Restrictions on their Resale**

I. Institutional Programmatic Purposes

The following are examples of a preamble for a nonprofit entity. This is an opportunity to link the organization's programmatic purpose to the individual lease agreement to ensure that everyone understands the broader public purposes involved. It is also a chance to set out the philosophical tenets that bind the organization. And finally it is a chance to link the lease to the purposes for which a tax-exempt status was granted.

Example 1:

WHEREAS [Landowner] coordinates a small business Incubator Farm Program in which the [Lessee Farm] is a participating member; and

WHEREAS [Landowner] intends to lease farmland, storage space, farm equipment, greenhouses, water wells, water pumps and other farming tools to the Farm; and

WHEREAS [Landowner] and the [Lessee Farm] wish to continue in this relationship for as long as [Landowner] has authority over the land, as long as they continue to share mutual goals; and

WHEREAS [Landowner] seeks to restore the health of the land in Burlington's Intervale by supporting practitioners of sustainable agriculture, while simultaneously supporting the growth of economically viable small farming businesses.

NOW THEREFORE, the parties hereto agree as follows: ...

Example 2:

Agricultural Purposes of the Lease – The Lessor is entering into this Lease to implement the particular and unique proposal contained in [attachment]: *Lessee's Agricultural Enterprise Plan*. The Lessee acknowledges that the overall success of the Lessor's Initiative depends on the Lessee and the Lessees of other farms implementing their respective agricultural enterprises for the full term of said Leases. The Lessee therefore acknowledges a responsibility to actively and affirmatively implement its proposal for the entire term of the Lease excepting such modifications as may be approved in writing by the Lessor in the course of approving

the Lessee's Annual Operating Proposal, or otherwise.

• • •

Limitation of Non-agricultural Business Activity – The Lessor and Lessee agree that they are entering into this Lease primarily for agricultural purposes described in this Lease and the Lessee's annual operating plan. Should such documents include, or should the Lessee otherwise desire to add or include any other commercial or business activity to their farming enterprise then the Lessor must approve such activity in writing prior to the Lessee undertaking such activity.

Example 3:

Introduction

Upon signing of the lease, [Lessee] enters with the Earth Bridge Community Land Trust into a legal contract reflecting substantial philosophical agreement on the property use of the land and the governing principles and spirit embodied in the Trust's By-laws and articles of Incorporation.

I recognize that my relationship to the Trust is not that of a conventional tenant to landlord. As a leaseholder I am, in a way, renting from myself; because by virtue of this lease I am also a member of the Trust. Given these shared interests, I will conduct all matters with other members of the Trust in good faith. In particular, I recognize and honor the rights and interests of the adjoining leaseholders.

I join the Trust in undertaking to be a responsible steward of the land.

II. Permitted and Prohibited Uses

What follows are some examples of lease provisions setting out permitted and prohibited uses of a farm property. These examples address agricultural uses as well as residential, commercial, and educational uses. They also address the construction of farm structures. The first example requires landowner permission for any activity for which there may be doubt whether a proposed use is permitted. The second example addresses the scale of the agricultural enterprises that are permitted. These provisions also sometimes restrict use of the residence as principal residence to discourage seasonal or second home seekers.

Example 1:

Purpose and Utilization of the Leasehold

The purpose of this lease agreement is to facilitate the possession and use of the Leasehold by the Lessee for the purpose of agriculture and/or horticulture. The leasehold shall be subject to all restrictions contained in the [conservation easement.] Subject also to appropriate local ordinance and Lessor's review with respect to architecture and location, the Lessee may construct farm buildings on the leased property to support the agricultural/horticultural operations, by way of example, but not limited to, packing/storage shed, equipment shed/workshop, farm personnel housing, greenhouse, septic system or well. Ownership of the above would reside with the Lessee. The Lessee shall not employ the Leasehold property for any purposes except those herein described.

• • •

The Lessee agrees to secure written consent from the Lessor for any use or uses of the Leasehold for the purposes which are not consistent with those described above, or about which there may be reasonable doubt as to their consistency with the stated purposes. The Lessee may make the initial determination whether a proposed use requires such consent. Should the Lessor differ with the Lessee's conclusion and notify the Lessee in writing of the non-consent the Lessee shall forthwith cease and desist from such use until such consent has been granted, and shall return the Leasehold property to its previous condition if consent is not hereafter granted by the Lessor. Any such request for consent to a particular use or for waiver of any restriction herein shall be either granted or refused by the Lessor within sixty (60) days after receipt thereof, and if not denied in said 60 days shall be deemed granted. Should a change in circumstances occur which in the sole judgment of the Lessor so justifies, the Lessee may receive consent for a use which is clearly consistent with those described above.

Example 2:

Intended Use:

The following small-scale agricultural enterprises may be pursued: maple sugaring; Christmas trees; laying poultry; pastured meat poultry; milk and milk products; cider/apples; fruits; vegetable seedling sales; vegetables; sheep and sheep products; fine and custom woodwork.

The following projects may be pursued on a homesteading scale: small grains for animals and humans; fruit; meat; eggs; milk; firewood; lumber; horsepower (transportation and hauling); solar/alternative power.

In pursuit of the above enterprises, the following buildings may be built or acquired: house; barn; animal sheds; chicken house; tool shed; greenhouse; equipment shed; garage; woodworking shop.

Example 3:

The lessees, during the term of this lease agreement, shall use or permit the use of the Leasehold property and any improvements hereto only for residential, agricultural and/or horticultural purposes, or uses ancillary and secondary to such purposes. It is understood that the residential use of the leasehold by the Lessees shall include the construction and/or occupation of dwellings on the premises by the Lessees as their usual year round dwelling (except as agreed upon in writing by the Land Trust), and not for investment resale or seasonal use. The Lessees reserve the right to sublease portions of the Leasehold for use by other residents of the Leasehold, provided that such use is entirely consistent with the provisions of this lease, and provided that the Lessees remain resident on the leasehold. Ancillary or secondary uses may include studios and/or workshops and other productive and creative work upon the Leasehold ...

In short, the Lessees shall use the Leasehold premises and Leasehold interest only as a homestead (except as agreed upon in writing by the Land Trust.) Use as a "homestead", in this context, shall mean use as a primary residence by the Lessees and other residents of the Leasehold and for related cottage industries including agriculture and/or horticulture and productive or creative work in the home, studio or workshop, conducted by or for residents of the Leasehold.

III. Setting Rental Rates

The following examples of provisions setting a rental rate run the gamut from complicated mathematical formulas to a simple crop share. There is an example of using the consumer price index to determine future rental rates. There are also examples of determining the fair rental value of the residence and the value of the farm property separately.

Example 1:

Fair Market Value Rent

Components of Rent – Fair Market Value Rent for the premises is comprised of two factors: a residential value component based on an adjusted appraisal and a productive value component based on the gross farm revenue derived from agricultural buildings, land and other factors.

Residential Value Component – The residential value component of rent for the premises shall be computed by first attaining a raw residential appraisal (RRA) prepared by a licensed professional appraiser. The Lessor will adjust the RRA to reflect several factors including but not limited to:

- A requirement to actively, affirmatively farm the premises according to the [stewardship] requirements and [agricultural use] covenants described in Article 2.
- A requirement to comply with all National Park Service archaeological and other resource guidelines, the National Historic Preservation Act, and the National Environmental Policy Act, as directed and guided by the Lessor;
- The Lessee's loss of privacy due to the residence's location in the park; and
- The Lessee's affirmative requirement to interact positively with park visitors as described in Article 2, and in Exhibit C.

The Lessor will discount the RRA value by 50% for non-historic residences and 60% for historic residences. The Lessor will base any annual increases for this adjusted appraisal on increases in the Consumer Price Index.

In the event the residential building(s) is totally destroyed by the elements, or from any other cause not resulting from the Lessee's neglect or fault, or so nearly destroyed as to require rebuilding, then the Lessee shall pay the residential rent up to the time of the destruction. The Lessee, thereafter, shall not be obligated to pay any residential rent until the residential building(s) is reconstructed and suitable for habitation.

Productive Value Component

The productive value component of fair market value rent shall be computed as a percentage of gross farm revenue derived from farming and related sources as defined in Article 1.15. Computing the productive component as a percentage of gross farm income allows Lessor and Lessee to share both risks and opportunities association with production and marketing. The factors determining the Lessee's share of gross farm revenue include, but are not limited to: the Lessee's stewardship requirements for the land, as described in Article 2 and Exhibit D; the Lessee's need to develop new markets; the requirement to forgo conventional agricultural fertilizers and chemical; the Lessee's costs related to wildlife predation; and the Lessor's expectation that the Lessee will encourage park visitors to visit and enjoy the agricultural activities occurring on the premises. For these and other considerations the Lessee shall retain 90% of gross farm revenue.

Recognizing the time required to achieve desired production levels while simultaneously enhancing the environment, by using the production methods required in Article 2 and Exhibit D, and recognizing the time required to establish new retail markets, the Lessee's productive value component of rent will be pro-rated for a period of 10 years. The Lessee shall pay 5% of gross farm revenue for year one of the Lease, and will increase payments by .5% per year until a full 10% rental rate is achieved in year ten.

The Lessee is encouraged to become a certified organic producer at the commencement of this Lease, or as soon thereafter as practicable. At such time as the Lessee obtains certification, the productive value component of rent shall be reduced by 1% of gross farm revenue.

In the event of a natural disaster that destroys growing crops or prevents the Lessee from farming part of the premises as contemplated by this Lease, the Lessor may, but need not, reduce the Lessee's obligation under the Productive Value Component for the year in which the natural disaster occurred.

Rent Computation Formula – Total fair market value rent for the use of the premises shall be computed using the applicable formula below (the second formula being for historic properties): where FMVR means Fair Market Value Rent; RRA means Raw Residential Appraisal; GFR means Gross Farm Revenue; CPI means Consumer Price Index; CO means certified organic; and 'xx means succeeding years after 2001.

$$\text{FMVR} = .5\left(\frac{\text{RRA} \times \text{CPI 1 Jan 'xx}}{\text{CPI 1 Jan '01}}\right) + .05(\text{GFR}) + (.005 \text{ GFR/yr for 10 yrs}) - (.01 \text{ GFR for CO})$$

$$\text{FMVR} = .4\left(\frac{\text{RRA} \times \text{CPI 1 Jan 'xx}}{\text{CPI 1 Jan '01}}\right) + .05(\text{GFR}) + (.005 \text{ GFR/yr for 10 yrs}) - (.01 \text{ GFR for CO})$$

Rent Payment Schedule – The Residential Value Component of Fair Market Value Rent is payable in twelve equal monthly installments due the first day of each month, and the Lessee may prepay this amount up to one year in advance. The Productive Value Component of Fair Market Value Rent is due on April 16 of each year following the tax year upon which the Productive Value Component is based.

Example 2:

If Landowner accepts an offer for a Renewal Term under Section 4, the annual rent for the Renewal Term shall be increased as follows: (a) the increased annual rent for the first three years of the renewal term shall be established based on the rent for the Initial Term, adjusted using the CPI for the New England region in 2005 as an index and the year 2004 as a base year (as set forth by the Government of the United States, Base Year = 1982-1984) (the "First Renewal Term Rent"); (b) the increased annual rent for the last two years of the renewal term shall be established based on the First Renewal Term Rent, adjusted using the CPI for the New England region in 2008 as an index and the year 2007 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.

Example 3:

An annual lease fee to the Lessor from the Lessee shall consist of:

A payment to be made in two installments, half on May 1 and half on November 1 of each year, which shall in any given year be equal to the real estate taxes on two acres of farm land in the Town of XXXXXX, and thirty (30) bushels of apples, or 20% of the apple crop from the trees designated on the attached [orchard

plan] , whichever is less, harvested, divided and delivered among the residents of the XXXXX House, ...which residents hold leases on Leaseholds adjacent to the Leasehold subject to this Lease Agreement.

Example 4:

Lease Fee Assessment

A lease fee to the Land Trust from the Lessees shall be paid monthly, or upon billing by the Land Trust, which monthly lease fee payment shall be calculated in a separate document drawn between the Land Trust and Lessees but in all cases that fee shall contain the following:

An assessment of the entire amount of real estate taxes assessed by the Town of XXXXX on the Leasehold property. The Lessees shall be responsible for payment of taxes, both taxes on the land (title to which is held by the Land Trust) and taxes on all improvements. An assessment for direct costs incurred by the Land Trust in managing the Leasehold, referred to as the Management Fee. This shall include, but not be limited to, liability insurance on the land, any mandatory assessments by the Town of XXXX against the Leasehold such as recycling fees, and a yearly contribution to the XXXX fire department. In the determination of the Management Fee the Land Trust's administrative fee for managing the Leasehold shall be limited to \$20 per month for the entire Leasehold, and shall be effective at the date of execution of this lease. The administrative portion of the lease fee may be reassessed by the Land Trust periodically in view of inflation. It is agreed that the rate of increase of the administrative fee shall not exceed the rate of increase of the Consumer Price Index established by the U.S. Department of Labor, Bureau of Labor Statistics, such index further defined by the subtitle "All Urban Consumers (CPI_U)" with a geographic coverage equal to "U.S. City Average" and an index component "All items" with the standard reference base period of "1982-84+100". The reference period from which changes in the price index will be measured shall be equal to the index for the month and year of the execution of this lease agreement.

Land Use Fee – The Land Use Fee is the estimated value for land rent in fair market rental rates for year round apartment and house rentals in the XXXXXX area. This portion of the Lease Fee shall be \$75 per month for the entire Leasehold, and shall be effective ten years from the date of execution of this lease. This portion of the lease fee may be reassessed by the Land Trust periodically in view of inflation and changes in fair market rentals for year round residents in the region. It is agreed that the rate of increase of the Land Use Fee shall not exceed the rate of increase of the Consumer Price Index, as defined in [previous section.] The reference period from which changes in the price index will be measured shall be equal to the index for the month and year of the execution of this lease agreement.

IV. Repairs and Maintenance of Premises

This is probably the most fertile ground for contention between farmers and landowners and quite often it's because the expectations of both parties are not clear at the outset. The following examples divide responsibilities for repairs and maintenance in clear terms.

Example 1:

Lessor's Rehabilitation and Replacement Responsibilities –

The Lessor shall be responsible for major rehabilitation, repair or replacement of the structural components and operating systems of those historical and non-historical buildings on the premises which are pre-existing assets of the Lessor, and which are not short-term or cyclical consumables. The Lessor shall not be

responsible for minor or routine repairs or replacements. The Lessor's responsibilities shall be understood to include, but are not limited to, the following:

- Structural component – Repair/replacement of all structural systems – foundations, floors, walls and roof systems.
- Exterior fabric – General replacement of siding, trim, porches, steps.
- Roofing – General replacement of shingles, flashing, gutters, downspouts.
- Water supply systems (household) – Replacement or major repair to wells or cisterns, replacement of non-repairable pumps.
- Waste treatment – Replacement or major repairs to toilets, holding tanks, leach/evapotranspiration fields.
- Heating, ventilating, and air conditioning – Replacement of major system components.

Lessee's Routine and Cyclical Maintenance Responsibilities –

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

- Structural components – Diligent prevention or removal of any and all deteriorating conditions or factors.
- Exterior fabric – Minor or localized repairs, such as window glazing, glass replacement, or periodic repainting/staining.
- Roofing – Localized minor repairs/replacement of shingles, flashing or gutters.
- Water systems (household) – All servicing and repair of pumps, water lines, fixtures, and the repair or replacement of water tanks and water heaters.
- Waste treatment – Unblocking/repair of toilets or sewage lines, cyclical and emergency septic pumping.
- Heating, ventilating, air conditioning – All filters, servicing, adjustments or repair.

Residential Grounds Maintenance –

The Lessee shall be responsible for maintaining residential grounds in an aesthetically pleasing and ecologically healthy manner at the Lessee's sole expense. Aesthetically pleasing is understood to include, but is not limited to, regularly mowed and managed lawn and any ornamental plantings, and avoidance or removal of unsightly storage or parking of materials equipment and vehicles. The Lessee is responsible for all aesthetic/utilitarian snow removal. Ecologically healthy maintenance of residential grounds means application of the same general ecological/biological principles described in [stewardship standards] for agricultural production practices.

Maintenance and repair of Lessee's Agricultural Improvements –

The Lessee shall be responsible for all major and minor maintenance, repairs, or replacement of any and all alterations or improvements to the premises made in the course of implementing the Lessee's agricultural and related enterprises described [herein.] This includes, but is not limited to:

- Approved agricultural or other buildings;
- Approved fences of all sorts;

- Approved water systems – wells, ponds, pumps; and
- Farm machinery and equipment of all sorts.

V. Heirs and Assigns and Successors in Interest

What follows are some examples of long-term lease provisions that address successors in interest and provide for the inheritance of the leasehold by the farmer's heirs.

Example 1:

Term of the lease

The term of this lease agreement shall be for a period of 99 (ninety-nine) years beginning at noon on the _____ day of _____, _____ and ending at noon on the ____ day of _____, _____. Unless sooner terminated as provided elsewhere in this lease.

Unless said term is sooner terminated, the Lessees shall have the option to renew this lease agreement upon these terms or upon such modification of these terms as may be mutually agreed upon by both parties.

Obligation of Successor Parties

In the event that ownership of, or title to, the Leasehold should be conveyed by the Land Trust to any other person or entity, this lease agreement shall not cease, but shall remain binding and unaffected.

The terms, rights and obligations of this lease agreement or of any renewal hereof, shall be binding upon the named parties, or upon any successor or successors to either.

Continuation of Lease on Death of Lessee

Upon the death of the last surviving Lessee, the Land Trust shall agree, upon request of an executor of the estate of the Lessees, to continue this Lease by assigning it on the same terms to one or more of the following:

- a. Heirs or beneficiary's of the Lessees; or
- b. The spouse of the Lessees; or
- c. The child or children of the Lessees; or
- d. Members of the Lessees' household or residential group who have resided upon the Leasehold for at least one year.

Example 2:

This lease shall be for a term of eighty-nine years from the date of signing and shall be renewable for another consecutive eighty-nine year term upon one year's notice in writing to the Lease Committee of the Land Owner. This lease is inheritable by the heirs and assigns of the Land User.

VI. Ownership of Improvements and Restrictions on their Resale

Below are some examples of provisions that split the ownership of land and improvements. These examples also try to maintain the affordability of the farm improvements by limiting the resale rights of the farmer. There is an example of a “shared appreciation” agreement as well as a more restrictive provision giving the landowner the option to purchase the improvements at their replacement cost. Examples of provisions which give the farmer the right to sever and remove improvements are also included.

Example 1:

All existing structures, additions to existing structures, and new structures placed upon the leasehold by the Land User are the property of the Land User. . . .

If the Land User decides to sell the improvements on this leasehold, the Land User must notify the Board of Directors of the Land Owner in writing. A market valuation of the improvements shall be performed by an appraiser who has been licensed or certified by the Vermont State Board of Real Estate Appraisers, and who is mutually acceptable to the Land User and Land Owner. The cost of such appraisal shall be borne equally by the Land User and the Land Owner. The Land User must sell the improvements for no more than 80% of the above-appraised value, excluding the contributory value of the land. The Land Owner shall have the option to purchase the improvements for no more than 80% of the above-described value, excluding the contributory value of the land. The Land Owner must exercise the foregoing option to purchase within ninety (90) days of its receipt of written notice from the Land User of the Land User’s desire to sell the improvements or its option will expire.

Example 2:

Improvements: Ownership, Transfer and Encumbrances

The Lessees shall own all buildings and improvements, including residential improvements as well as agricultural and or horticultural improvements, made to or on the Leasehold premises by them, at their expense or on their behalf, upon the conditions hereinafter provided. The Lessees shall bear full responsibility for any taxes due on buildings and improvements. . . .

The Lessees have the right to physically sever and remove any of their buildings or improvements at any time, provided such removal does no substantial harm to the Leasehold premises in the process and, should harm or damage be caused, it will be rectified, corrected or repaired to substantially the same condition as prior to such harm, and provided the Lessees are current in any payment owed by them to the Land Trust.

The Lessees shall have the right to mortgage, pledge, sell or transfer (hereinafter referred to as “transfer”) their title to any building and improvements made to or on the Leasehold, provided they are current in all assessments due to the Land Trust. Such transfer of title to buildings and improvements shall expressly not encumber the underlying land. If in arrears to the Land Trust, the Lessees shall secure written consent from the Land Trust prior to any such transfer. Such a transfer shall be conditional by its express written terms upon physical severance within two months thereof of such buildings and improvements that are severable without substantial damage to the Leasehold property unless transfer without severance is undertaken pursuant to the paragraph below. The Lessees are under obligation reasonably to inform all prospective transferees and creditors of this provision. If physical severance pursuant hereto shall not occur within two months of such transfer, the transfer shall become null and void as of that date. Lessees are entitled to mort-

gage their interest in buildings and improvements and to grant to such mortgage all of Lessees' rights in and to the Leasehold estate of the Lessees but shall expressly not include the underlying land: such entitlement of the Lessees shall include the right to sell, transfer or otherwise dispose of Lessee's interests to such mortgage in lieu of foreclosure; such transfer shall be subject to Land Trust's rights of first option as provided herein.

Such transfer need not be conditioned on physical severance of improvements under the following conditions:

A. First Option. The Land Trust shall retain a first option to purchase all buildings and improvements at their local replacement cost less depreciation, obsolescence and damage. The Lessee shall inform the Land Trust in writing of their intention to sell improvements without severance and shall state the terms and conditions of sale. Within 60 days of notification by Lessees, the Land Trust shall accept the offer, make a counter offer or release the option. The Lessees shall accept an offer from the Land Trust that equals the local replacement costs of improvements less depreciation, obsolescence and damage. For the purposes of determining this value the Lessees shall appoint an appraiser with at least five years of experience as a contractor, realtor or insurance agent. Within two weeks, the Land Trust will appoint two or more appraisers from each of the two other remaining fields with at least five years experience in the field. These three appraisers shall be instructed to prepare a written appraisal of the local replacement costs less depreciation, obsolescence and damage of the improvements for sale. The appraiser shall be instructed not to include the site value in their appraisal, nor any value (or lack thereof) of the requirements of the lease, but rather the value of the improvements alone independent of the site, and shall be instructed to return their written appraisal to the Land Trust within 30 days. The cost of the appraisals shall be borne by the Lessees and may be added to the sales costs. The average of the three appraisals shall constitute the adjusted sale value.

B. Should the Land Trust fail to exercise its option or fail to offer the adjusted sale value as determined above, the Lessees may find a buyer and the Land Trust shall negotiate a lease with the potential buyer, such lease being, in all respects, except the name of Lessee(s) and the date of execution thereof, identical to the then current lease. If the buyer offers the Lessees a price above the adjusted price as determined in 6.5A above, the Lessees, after obtaining written agreement from the Land Trust may sell the buildings and improvements at the offered price with the difference between the adjusted value and the sale price returning to the Land Trust at the time of sale.

Appendix C_(I): Lampson Brook Agricultural Reserve Stewardship Standards

*The New England Small Farm Institute
Lampson Brook Agricultural Reserve, Belchertown, MA*

Purpose: Stewardship Standards for this leasehold embody, in specific terms, the Lessor's commitment to the protecting and enhancing the natural and cultural resources of this National Historic Register "working agricultural landscape," and to fostering the humane treatment of farm animals. Lessor and Lessee will review and discuss these standards annually, with the understanding that their observance is a condition of this Lease.

Natural Resources:

1. Agricultural land (cropland, hayland, pasture, and field edges) will be managed in accordance with (specify appropriate management approach, certification program, farm plan, etc.), _____.

On this leasehold, the following agricultural land management practices will be observed.

a. Agricultural soils will be managed to assure their long-term productivity. On this leasehold, soil management practices will include:

b. Agricultural land will be managed to minimize pests and weeds. On this leasehold, pest and weed management practices will include:

c. Field edges will be managed to minimize weeds, pests, nuisance vegetation and encroachment, invasive species, and to promote biodiversity. On this leasehold, field edge management practices will include:

d. Field trash will be managed to minimize nuisance, visual blight, and disease. On this leasehold, field trash will be managed as follows (address burn piles, stockpiled materials, compostables, field residues, recyclables):

2. Forest resources will be managed in accordance with Lessor's approved forest management plan. On this leasehold, forest management practices will include:

3. Water resources will be managed to maximize conservation and quality of this resource and in accordance with state regulations. On this leasehold, water resources management practices will include:

4. Conservation areas, including wetlands and wildlife habitat, will be managed in accordance with clear guidelines established by Lessor, and in accordance with state regulations. On this leasehold, the management of conservation areas will include:

Livestock:

Livestock housed or grazed on this leasehold will be managed in accordance with Humane Society of the US (HSUS) Guidelines. On this leasehold, the following specific or additional guidelines apply:

Cultural Resources:

The historical, cultural and visual resources of this site, including its structures and landscape/ viewshed, will be respected. On this leasehold, management of and within these resources will be in accordance with the provisions of the Massachusetts Historical Commission's guidelines, the Lessor's master lease with the Commonwealth of Massachusetts, relevant local bylaws and state regulations, and will address:

1. using and maintaining leasehold structures and other infrastructure:
2. siting and maintaining new structures and heavy use areas, and storing large equipment:
3. collecting and disposing trash:
4. parking and storing vehicles:
5. storing supplies and equipment:
6. managing agricultural odors and noise:

Appendix C₍₂₎: Enterprise Farm Agreement Land Use Protocols

Intervale Foundation

All Intervale farms produce crops by following the organic standards set by the Vermont Organic Farmers (VOF) organization. The following land-use protocols are additional standards that all farms in the Intervale must comply with.

1. Cover Crops and Rotation. As the first step in the process of restoring the Intervale land, Intervale will cover crop newly acquired fields for the first 3 years or until management is assumed by a farmer(s). Farmers must cover and rotate crops once they acquire land as a standard practice to maintain soil tilth and health.

Farmers must lease enough land for proper crop rotation. Intervale recommends for all non-perennial farmers an equal number of acres in cover crops as in cash crops. A minimum of 2/3 tillable acreage in cash crop and 1/3 tillable acreage in cover crop is required. A winter cover crop on all parcels is required whenever possible. Lease agreements will be the same for cash crop and cover crop parcels.

Perennial crop farms do not need to maintain this ratio of cover crop land. However, farmers must rotate perennials when feasible. Perennial crops require extra attention to under-sowing and compost applications. Practicing interplanting and companion planting is required to avoid a monoculture. After moving perennials, different crops must be grown or a cover crop planted in the interim.

Any farmer(s) that require an exemption from these protocols must request so in writing. The Land Committee will review requests on a case by case basis.

2. Compost Application. Organic matter such as compost is a valuable addition to the Intervale soils where the percentage of organic matter is low. Annual soil tests, taken in the fall, will be used as a guide to determine the compost needs for each field.

Proper compost application and soil management is the responsibility of each farm.

Intervale is responsible for annual testing of the compost produced in its compost facility. These tests will reflect nutrient levels and will aid in determining any additional amendments useful for given crops.

Farmers must spread compost shortly before planting in a field or over cover crops. Once applied, farmers need to manage their fields properly to conserve nutrients and organic matter.

Compost may not be applied between December 15 and April 1. It is acceptable to apply organic mulches, which may include partially composted materials (not including manures), at any time.

3. Weed Management. Preventing weeds from reseeding and regenerating is essential to organic farm management. Acceptable means of controlling weeds are as follows: mulching, mowing, hoeing, cultivating and torching with flame weeders. Farmers may not use chemical substances to control weeds unless approved for organic use by VOF.

Farmers are responsible for making regular field inspections for weed growth. Fields, field edges, roadsides and around buildings are required to be regularly maintained. Areas determined mismanaged by Intervale staff will be subject to a written complaint submitted to the Land Committee.

4. Insect Management. Insect management requires attracting and encouraging beneficial insect populations as a means to balance populations of insect pests.

Farmers are required to understand current organic methods of control. They should be versed in IPM monitoring techniques such as scouting. All farmers must work cooperatively and with Intervale to discourage pests.

Chemical pesticides that are not approved and regulated by VOF are not allowed. If new organic products appear on the market that VOF has not certified, the farmer(s) must present the pesticide to VOF for review. If VOF approves the pesticide, the farmer(s) must also receive approval of the Land Committee before using it in the Intervale.

Farmers must keep records of all pest controls in a log from year to year. This log is subject to inspection by Intervale staff. Intervale may request this information for annual reporting.

5. Disease Management. Intervale does not allow the use chemicals, fungicides, or bactericides in Intervale operated land. Acceptable controls include: crop rotation, VOF-approved organic fungicides, diseased plant removal and disposal, tool sanitation, restriction of foot traffic, cleanliness, black plastic mulch use and/or drip irrigation or watering at ground level.

Farmers need to be familiar with plant diseases and be able to identify them when they appear. Resources for plant disease identification are available through Intervale staff, other farmers, VT Department of Agriculture, UVM Diagnostic Lab, outside labs and textbooks. Farmers must keep records of disease infections and controls to provide for the Intervale in annual reports.

6. Irrigation. Water is available from the drilled well near the pumphouse, the drilled well in the home garden area, a temporary pump at the river and from natural precipitation. Hauling water from a source outside the Intervale is acceptable as long as it comes from an approved and tested source. Intervale will conduct water tests annually on all water sources.

Intervale is responsible for making sure all wells and water sources are operable and set up to accommodate main line hook ups. If mainline equipment is not available on a given field, Intervale and the Farm will reach an agreement to accommodate water needs.

Farmers must present irrigation needs to Intervale staff. Intervale will devise an operating schedule based on the needs of every farm. Each farm is responsible for maintenance on their main line from pump to field.

7. Testing. Farmers must submit a yearly soil test during the first three Incubator years. Tests must include macronutrients, NPK, pH and CEC. Fields just coming into production must also include micronutrient testing. Yearly farmers must also test for organic matter content as specified in the Compost Applications section of this document.

8. End of Year Reports. Farmers are required to submit an end-of-year report each year as part of this agreement. A form for this report will be submitted at the beginning of each growing season so that farmers will know in advance information that must be tracked.

9. Buildings and Improvements. As the Intervale is situated on a flood plain, many legal restrictions apply to construction in the Intervale. Any land improvements (moving or altering of soil, building construction, fence construction, growing or removal of trees or any activity that could impact the topography of the land) are subject to formal approval by the Intervale. Overnight camping or structures intended for those purposes are not allowed.

Appendix C₍₃₎: Preferred Production Practices for Sustainable Agriculture

The Countryside Initiative

Cuyahoga Valley National Park, Ohio

Countryside Initiative farmers will be expected to possess substantial knowledge of sustainable production practices. Proposers must demonstrate awareness of preferred production practices in their RFP submission. Subsequently farm lessees will have to provide greater detail on expected production practices in annual operating proposals.

There is a wide range of practices which are acceptable for most enterprise types, and Initiative farmers will be free to choose whichever practices they prefer, provided they do not violate general principles of sustainability. The charts shown here suggest a spectrum of practices from less sustainable to more sustainable. Farming in the real world is not abstract; it involves specific conflicting circumstances and pressures which are not easy to balance. In general, however, Initiative farms must strike a balance which puts them clearly within the more sustainable parts of the spectrum.

Mind Set for Sustainable Agriculture*

Less Sustainable Thinking		More Sustainable Thinking	
Get through this year	Next few years make or break	Transfer farm to kids or to another good farmer	Stewardship for many generations

Production Practices for Sustainable Vegetable/Crop Enterprises*

Less Sustainable Thinking		More Sustainable Thinking	
Crop Rotation Monoculture (same crop in the same field each year)	Two years between the same crop planted in the same field	Three years between the same crop planted in the same field	Four years between the same crop planted in the same field
Organic Matter Maintenance Add crop residues only	Add animal manures & crop residues	Add cover crops, animal manures, & crop residues	Add compost, cover crops, & crop residues to soil
Nitrogen Fertilization Broadcast bagged fertilizer in fall	Broadcast bagged fertilizer in spring	Band and sidedress fertilizer to match timing of crop uptake	Rely on N from organic residues in addition to timely fertilization
Insect Management Calendar spray of insecticides (on predetermined schedule)	Scout for insect pests, then spray non-selective insecticide	Scout for insect pests, then spray selective, least-toxic pesticide	Use cultural practices and beneficial insects to control pests
Weed Management Apply herbicides as primary weed control tool	Apply reduced rates of herbicide and cultivate	Cultivate to remove weeds	Use allelopathy, smother crops, and mulches to suppress weeds
Disease Management Apply fungicide on a predetermined schedule (e.g. weekly)	Use disease modeling to time fungicide applications as needed	Employ cultural practices that prevent disease	Plant disease-resistant cultivars

* Adapted with permission from Sustainable Vegetable Production from Start-Up to Market, NRAES-104, by Vernon P. Grubinger, published by NRAES, the Natural Resource, Agriculture, and Engineering Service, Cooperative Extension, 152 Riley-Robb Hall, Ithaca, New York 14853-5701. (607) 255-7654.

Production Practices for Sustainable Livestock Enterprises

Like sustainable crop production, sustainable livestock production involves a wide range of production practices which are acceptable for Countryside Initiative farms. Initiative farmers are free to choose among literally hundreds of specific management options related to livestock species, breeds, genetics, facilities, feeds and feeding, grazing systems, health care, butchering and processing, marketing, and so forth - provided those choices result in humane care of all farm animals during the course of their lives, and provided that the environmental consequences of the livestock enterprise are positive.

Animal Welfare

Countryside Initiative livestock operations must use what are generally referred to as loose confinement systems. That is, poultry are not caged, swine are not tightly crated, beef cattle are not packed into feedlots, and dairy cattle are not confined to small exercise areas. All livestock must have regular access to open air and pasture. All livestock facilities must be properly ventilated and provide animals with clean, dry rest areas (sheltered from wind during cold weather). Each proposer/lessee is responsible for recommending specific livestock management practices for CCC/CVNP review and approval.

Grass-Based Livestock Production

In simplest terms, Countryside Initiative livestock enterprises are expected to be grass-based. Plant scientist and grazing researcher E. Ann Clark, University of Guelph (Ontario, Canada), describes certain recent concepts of grass-based farming as attempts to mimic or mirror natural processes. In nature, there is no waste, because the output of every process constitutes the inputs for other processes. In contrast, conventional livestock production systems (which depend on specialized crop production to support livestock fed in confinement) break many of the natural cycles that protect ecological systems.

Clark notes that properly managed grass-based livestock production will mimic nature in at least five key ways, which are described here in very simplified form. Fuller, technical discussions by Clark and others will be available in a forthcoming volume on sustainable livestock production being published by Natural Resource, Agriculture, and Engineering Services (NRAES), a consortium of the Cooperative Extension Services of thirteen eastern land grant universities and the United States Department of Agriculture.

Ground Cover. Perennial pasture provides year-round ground cover protecting bare soil from crusting, pore clogging, and the erosive effects of rainfall. Ground cover acts as a mulch, reducing moisture loss, stabilizing daily soil temperatures, and inhibiting weeds and insects associated with annual plowing (which are conventionally treated with biocides). Note: The sustainable crop production practices described in this appendix also ameliorate many of the problems related to conventional annual plowing.

Soil Conservation. Perennial pastures grow and contribute to soil organic matter from early spring to late fall. Moreover, uncultivated land promotes the accumulation of organic matter and nutrients frequently lost during conventional cultivation. This enhances a vigorous soil biotic community, and strong plant growth. In turn, that enhances water infiltration and reduces runoff, thereby reducing soil erosion and off-site contamination.

Nutrient Cycling. Perennial sods reduce the risk of off-site pollution through efficient nutrient cycling. They provide active nutrient uptake during high precipitation in early spring and late fall (in marked contrast to annual crops). Grassland impedes overland movement of water (hence the use of grass waterways). And deep-rooted pasture plants (like alfalfa) intercept and take up beneficial nutrients (which could become pollutants if they were to percolate past the plant root zone).

Manure. Livestock produce manure - a valued source of nutrients (in limited quantities) on a well-integrated farm. But manure is a huge waste/contamination problem for confinement feeding operations. In most large-scale livestock enterprises, where most of the livestock feed comes from off-site, there is little possibility that the site can absorb the manure generated. Initiative livestock enterprises will be expected to match livestock numbers to both the grazing capacity and the manure utilization capacity of a particular farm site. *Note: It is also assumed that properly managed grass-based farms do not allow livestock direct access to streams or ponds, thereby avoiding water pollution and bank collapse/erosion.*

Biocide Independence. Well-managed perennial pastures do not require any type of pesticide or herbicide. In short, properly managed grass-based livestock production removes several serious environmental harms which frequently result from conventional, grain-based, close-confinement systems. Grass-based systems are well suited to the type of small scale, diversified farming preferred for the Countryside Initiative. Proposers should be aware of two specific management practices commonly used in grass-based farming appropriate and preferred for Countryside Initiative enterprises - management intensive grazing and multi-species grazing.

Management Intensive Grazing. One of the key tools of grass-based livestock production is commonly termed management intensive grazing (MIG). The key word here is management: MIG is knowledge and labor intensive, not capital, chemical, or technology intensive. Indeed, some of today's finest graziers describe the management of soil, plants, livestock, weather, market demand, and other factors, as an art. That is an apt term for the depth of understanding, and creative adjustments, required to balance and guide so many subtle factors toward desirable ends.

Traditional/conventional pasture management in America has been anything but management intensive - or an art form. Traditional/conventional pasture management is often termed continuous grazing. The basic strategy here is to do nothing: Turn livestock into a pasture for the entire season, letting them pick and choose to eat whatever, and wherever they like. The many economic and ecological drawbacks to this practice need not be detailed here.

MIG systems operate at the opposite end of the sustainable grazing spectrum, using what is usually called rotational grazing or strip grazing. Here livestock are moved from one grazing paddock or area to another ever day or so (every few hours in some systems), depending on how a grazier chooses to balance the many factors involved. It is important to note that rotational grazing actually allows animal stocking rates from two to ten times as high per acre as continuous grazing - while avoiding the overgrazing problems commonly associated with continuous grazing.

Multi-species Grazing. The Initiative will encourage multi-species grazing in its various forms (grazing sheep, goats, cattle, and poultry sequentially or together). Multi-species grazing pushes pasture ecosystems toward diversity, complexity, and stability - while simultaneously reducing herd/flock disease and parasite pressure, and market cycle risks associated with single species production.

Appendix C(4): Good Conservation Practices for Leased Fields

Lincoln (MA) Conservation Commission

LINCOLN CONSERVATION COMMISSION, Lincoln, Massachusetts requires lease applicants to submit a proposal covering a five year period to include crop, fertilizer and pesticide use, and any cover crops, crop rotation, etc. The proposal must also address the following criteria set out in the Commission's approved practices for leased fields:

Adopted by the Lincoln (Mass.) Conservation Commission at its November 5, 1997 meeting

This document contains practices which the Conservation Commission expects all farmers to follow if they are interested in leasing Lincoln conservation land. The Commission will use the criteria in this document as a basis for evaluating all farmland proposals. The practices outlined in this document are based on existing Conservation Commission policies and recommendations from the Natural Resources Conservation Service (NRCS). This document was formally adopted by the Commission at its November 5, 1997 meeting.

1. Communication between Conservation Commission and farmer. A detailed five-year strategy for intended crops and land improvements is to be submitted to the Conservation Commission with the lease application. Prior to the first year's use of the field, baseline conditions for the health of the field shall be clearly established. The farmer shall conduct tests for soil pH, soil fertility, and organic matter. In addition any other factors effecting the health of the field should be detailed in writing to the Commission.

- Prior to the growing season, *annual plans* shall be submitted identifying pesticides proposed for use, any changes in the five-year planting plan, and any proposed alterations (tillage, reseeding, etc.) of delayed-cut areas.
- An *annual Integrated Pest Management (IPM) report* must be submitted covering last year's activities. For details see page 2 of Integrated Pest Management, Massachusetts Guidelines.

2. Increasing soil health

- *Organic matter replenishment* is required by using cover crops (especially legumes), crop rotation, manures, residue management, strip-cropping, and hay.
- Sound nutrient management shall be practiced, based on crop needs and current soil tests. Farmers are responsible for the proper nourishment and pH of the soil on any lands they lease.
- Farmers shall use appropriate amounts of fertilizer, lime, and other soil additives in accordance with soil test results and expected uptakes of nutrients, accounting for additional nitrogen supplied by organic matter, compost, manure, and cover crops.
- Winter cover crops or, with the Conservation Commission's permission, crop residue (60% coverage) shall be used on tilled cropland. Plant cover crops no later than October 15 of each growing season for which the farmer leases farmland. Preferably cover crops should be legumes or a grass-legume mix. (See Mass IPM Guidelines.) Consider varieties that are also useful for wildlife food. Specific recommendations for managing corn for winter residue are as follows: cover-crop the early-maturing blocks, knock down stalks on the mid-maturing blocks, and leave late-maturing stalks standing over the winter.

3. Pest management. Pesticide management following current Integrated Pest Management standards shall be practiced for all crops with specific standards such as corn, potatoes, squash, pumpkins, peppers, etc.

IPM is a systems approach to pest management that considers all factors affecting the crop health, including plant nutrition and horticultural practices, as well as elements of insect, disease and weed suppression. Pest control tactics may include biological, chemical, and cultural or mechanical methods.

- Crops must accumulate 70% of the total points from applicable practices. (See the IPM manual for an explanation of the point system.)
- For crops without Integrated Pest Management standards, the label instructions shall be strictly followed.
- In all cases use only those pesticides permitted by the Commission's Pesticide Policy and only for the uses and in the manner prescribed by the manufacturer.

4. Runoff and erosion. Farmers shall use all reasonable means to prevent erosion on leased lands such as berming, vegetated buffer strips, and cover crops.

- Water runoff shall be managed so that it does not flow directly into wetlands, trails, field roads, or other unprotected areas. Erosion shall be minimized by maintaining grass borders along trails.
- Crop rows should be planted across the slope. Unavoidable field runoff shall be directed to vegetated buffer strips.
- Compost/manure piles shall be located in areas that are drier and not prone to the effects of runoff .

5. Buffer strips along wetlands. An appropriately vegetated filter buffer strip shall be established or maintained between crop fields and waterways or wetlands. Buffers filter out eroded soil, fertilizers, and pesticides that run off fields, lessening their impact on wetlands.

- The filterstrip buffers shall never be fertilized or sprayed with pesticides. Their width and type of vegetative cover should depend on the sensitivity of the wetland, the erodability of the adjacent land and the nature of pesticides and fertilizers used.
- A fenced buffer shall prevent farm animals from getting into wetlands, especially vernal pools.
- A minimum buffer width of 50' shall be established for fields on which pesticides are not used and 75' to 100' for fields on which pesticides are used, or greater where otherwise indicated (e.g., for steeper slopes).

6. Well or water source. The installation of a well or use of any other permanent water source or pond must be reviewed and approved by the Conservation Commission. Any proposed well location must have no potential impact on vernal pools or other wetland resources on, or adjacent to, the site.

7. Adjacent trails. Public access to trails shall be maintained and the pesticide notification procedure of the Farmland Pesticide Policy shall be followed. Farmers shall keep peripheral trails free of furrows, agricultural products and wastes, and stone piles. Erosion shall be minimized by maintaining grass borders along trails. The Conservation Commission is responsible for maintaining these grass borders.

8. Wildlife enhancements. The Commission encourages farmers to undertake wildlife enhancement opportunities to the extent practicable. Irregular field edges provide more wood edge and diversity of wildlife habitat and food.

- A vegetated buffer between crop fields and weeds provide a diversity of habitat encouraging insects, butterflies, and small mammals.
- Hedgerows and brush piles should be established in appropriate locations as wildlife corridors and shelters.

- Farmers are encouraged, in cooperation with the Conservation Commission, to establish and maintain birdhouses for open land birds such as bluebirds, etc. Consideration should be given if pesticides are to be used nearby.

9. Protection of ground-nesting birds. The Conservation Commission encourages farmers to adopt practices, such as the planting of late-maturing warm season grasses, that may benefit ground-nesting birds. Species designated as endangered override all other concerns and may prevent farming in that specific location. A species of concern, or one which is not considered endangered, but which has experienced a reduction in population, shall be given careful consideration to encourage its proliferation.

- Certain fields or portions of fields are, or may be designated for, delayed cutting in order to protect the young of rare or declining grassland species of birds. Delaying the cutting of these fields gives ground nesting birds a chance to mature enough to leave their nests before the machines come through. The areas to be protected and the specific dates for delayed mowing are specified for each particular field and may vary from year to year but are about July 21.
- The boundaries of the delayed cut areas shall be staked prior to May 25 of each year.
- Because Bobolinks will not nest in newly-seeded hay fields, delayed-cut fields shall be reseeded by either phasing the tilling and reseeding over three years or avoiding tilling altogether by overplanting seed.
- To avoid nest destruction, fertilizers shall not be applied to delayed cut areas between May 15 and the cut date.

10. Evaluation of farming/conservation practices. The Conservation Commission will carefully evaluate the farming practices in each field during the 5-year lease cycle. It is important to the Commission that the farmer conduct sound farming practices, improve the overall health of the field, enhance the wildlife/natural resource values of the field, and keep the Commission informed of matters of concern. This evaluation will be carefully considered in awarding future leases.

11. Animal pests. Farmers shall submit plans for approval by the Conservation Commission of methods for dealing with animal pests that are causing crop damage (or serious damage to the land). These plans shall attempt to identify all potential wildlife conflicts with the proposed crops to be grown, thresholds of damage, and proposed actions to be taken when the thresholds are exceeded. Proposed actions shall be those that are the least invasive to wildlife.

12. Appearance of fields. Farmers shall keep leased lands free from litter, including, without limitation, containers and packaging for agricultural products, and free of farm equipment when not in use.

- Permanent structures such as sheds, greenhouses, farmstands, etc. are not allowed in the agricultural fields. However, a temporary structure may be permitted if the Commission determines it to be a necessary farm structure and does not negatively impact the conservation values, including aesthetics, of the field.

13. Stones in fields. Farmers shall remove stones from leased lands in accordance with sound agricultural practices and shall place them in stone dumps designated by the Commission.

Appendix D: Selected Resources

A. Tenure Agreements and Models

Organizations:

National Farm Transition Network offers links to all farm linking programs in the US.
www.extension.iastate.edu/nftn

New England Land Link
New England Small Farm Institute
(serves CT, MA, RI, NH)
413-323-4531
www.smallfarm.org

Land Link Vermont
Center for Sustainable Agriculture, University of Vermont
802-656-0233
www.uvm.edu/landlinkvt/

Pennsylvania Farm Link
717-664-7077
www.pafarmlink.org/

Maine Farmlink
207-382-3255
www.state.me.us/agriculture/mpd/farmlink/

New Jersey State Ag Development Committee
609-984-2504
www.state.nj.us/agriculture/sadc/farmlink

NY FarmLink
800-547-FARM
www.nyfarmlink.org

Publications:

Farmland Transfer and Protection in New England: A Guide for Entering and Exiting Farmers, New England Small Farm Institute, www.smallfarm.org or 413-323-4531.

Flexible-cash Crop Lease Agreements, Colorado State University Cooperative Extension, Agriculture & Business Management Notes.

Crop Share Lease Agreements, Colorado State University Cooperative Extension, Agriculture & Business Management Notes.

Farmland Leasing 2002, Steven D. Johnson, Iowa State University Extension, Des Moines IA 50313-2005.

A New Lease on Farmland: Assuring a Future for Farming in the Northeast, Susan Witt and Jay Rossier, 1990/2001 E.F. Schumacher Society, www.schumachersociety.org.

Handbook of Legal Documents for Forming a Community Land Trust, E.F. Schumacher Society, www.schumachersociety.org.

Model CLT Ground Lease in Community Land Trust Legal Manual, Institute for Community Economics, 2001. (413) 746-8660, or www.iceclt.org.

Assuring the Future of Farming: The Indian Line Farm Project, a Packet of Documents, E.F. Schumacher Society, www.schumachersociety.org.

A Lease Agreements Guide for Landowners and Farmers Land Link Vermont, Center for Sustainable Agriculture, University of Vermont, Burlington, VT. www.uvm.edu/landlinkvt.

Professional Development for the Adoption of Sustainable Agriculture on Rented Land, Michael Bell, et al., College of Agriculture, Iowa State University, Ames, IA, November 2001.

Adjusting Farm Tenancy Practices to Support Sustainable Agriculture, Neil D. Hamilton, Director, Agricultural Law Center, Drake University Law School, in *Journal of Ag Taxation and Law*, Fall, 1990.

Sharemilking in the Midwest, Larry Tranel, University of Wisconsin Cooperative Extension Publications, 630 Mifflin Street, Madison, WI 53703, # A3670.

From the Natural Resource, Agriculture and Engineering Service (NRAES), Ithaca, NY, www.nraes.org:

- Crop-Share or Crop-Share/Cash Rental Arrangements for Your Farm (NCR-105)
- Fixed and Flexible Cash Rental Arrangements for Your Farm (NCR-75)
- Irrigation Crop-Share and Cash Rental Arrangements for Your Farm (NCR-148)
- Long-Term Installment Land Contracts (NCR-56)
- Pasture Rental Arrangements for Your Farm (NCR-149)
- Purchasing and Leasing Farm Equipment (NCR-615)
- Rental Agreements for Farm Buildings and Livestock Facilities (NCR-214)

B. Farm Transfer

Organizations:

See Section A above, for land linking programs in the Northeast

American Farmland Trust
Northeast Regional Office
518-581-0078
neft@farmland.org

New England Field Office
413-586-9330
ccoffin@farmland.org

Bidwell Associates
413-584-2732
dbidwell@bidwellassociates.com

U.S. Department of Agriculture
Cooperative State Research, Education and Extension Service
Financial Security in Later Life Initiative
www.reeusda.gov/financialsecurity/

Publications:

Transferring Ownership of Farm Assets or Retiring from Farming, Dennis Kauppila, University of Vermont, UVM Extension SARE Bulletin #3, 1999.

Business Transfer Case Stories: Successes and Learning Experiences, Steve Richard, et al., NY Farm Link, Cornell University EB2003-03, April 2003.

Farm Savvy, John Baker, Iowa Concern Hotline, Iowa State University. A guide to farm business, retirement, transfer and estate planning.

Farm Transfer Guide, PA Farm Link, www.pafarmlink.org.

Farmland Transfer and Protection in New England: A Guide for Entering and Exiting Farmers, New England Small Farm Institute, www.smallfarm.org or 413-323-4531.

Successful Farm Business Transfers: Bringing the Next Generation into the Farm Business, NY Farm Link, Cornell University, www.nyfarmlink.org.

Your Land is Your Legacy: A Guide to Planning for the Future of Your Farm, J.P. Cosgrove and J. Freedgood, third edition 2002, American Farmland Trust, www.farmland.org.

Sharemilking in the Midwest, Larry Tranel, Farm Management Agent, University of Wisconsin Extension, 1996.

C. Stewardship

Conservation Planning

USDA Natural Resources Conservation Service (NRCS): information and technical assistance on conservation planning, federal conservation programs, and best management practices. To locate the Service Center nearest you, go to www.ea.nrcs.usda.gov.

USDA Natural Resources Conservation Service publications on a variety of conservation and conservation planning topics, go to www.nrcs.usda.gov.

On Farm Strategies to Protect Water Quality: An Assessment and Planning Tool for Best Management Practices, New England Small Farm Institute, 1996. www.smallfarm.org.

Nutrient and Pesticide Best Management Practices for Wisconsin Farmers, University of Wisconsin Extension and Wisconsin Dept. of Agriculture, Trade and Consumer Protection, Technical Bulletin ARM-1, 1989.

The Manual of Best Management Practices for Agriculture: Guidelines for Protecting Connecticut's Water Resources, CT Council on Soil and Water Conservation, 1992.

Conserving Grassland Birds: Managing Agricultural Lands Including Hayfields, Crop Fields and Pastures for Grassland Birds, MA Audubon Society, www.massaudubon.org.

Manual of Best Management Practices for Agriculture in NH, NH Department of Agriculture, 1993.

Riparian Buffer Management Fact Sheet Series # 724,726,727,728,729, University of Maryland Cooperative Extension Service.

Organic Certification

National Organic Program website: A complete list of certifying agents can be found at www.ams.usda.gov/nop/

Biodynamic Certification

The Biodynamic Agricultural Association (BDAA), U.K.

Tel/Fax: 01453 759501.

bdaa@biodynamic.freeserve.co.uk

Permaculture

For general information on permaculture, go to www.permaculture.net.

Permaculture: A Designers Manual, Bill Mollison. Tagari Publications, Reprint edition, October 1997.

Introduction to Permaculture, Bill Mollison. Tagari Publications, Revised edition, November 1997.

Permaculture: Principles and Pathways Beyond Sustainability, David Holmgren, Holmgren Design Services, Hepburn, Victoria, Canada 2002.

Sustainable Agriculture

Appropriate Technology Transfer for Rural Areas (ATTRA)

1-800-346-9140

www.attra.org

Sustainable Agriculture Network

301-504-6425

www.sare.org

Northeast Sustainable Agriculture Research and Education Program (USDA)

University of Vermont

802-656-0471

www.uvm.edu/~nesare

New England Small Farm Institute

413-3243-4531

www.smallfarm.org

UVM Center for Sustainable Agriculture

802-656-5459

<http://www.uvm.edu/~susagctr/>

Alternative Farming Systems Information Center

301-504-6559

www.nal.usda.gov/afsic/

The Landowner's Survival Guide: Resources for Agricultural Landowners in Maryland, Virginia and West Virginia, Future Harvest/Chesapeake Alliance for Sustainable Agriculture. www.futureharvestcasa.org, 2002.

The Real Dirt: Farmers Tell About Organic and Low-Input Practices in the Northeast, Miranda Smith, et al., 1994. www.sare.org/sourcebook/book/contacts/NESARE.html

Bio-Intensive

Ecology Action
707-459-0150

How to Grow More Vegetables than You Ever Thought Possible On Less Land Than You Can Imagine, John Jeavons. Ten Speed Press, 1995.

Holistic Management

The Allan Savory Center for Holistic Management
505-842-5252
www.holisticmanagement.org

Holistic Management: A New Framework for Decision Making, Allan Savory with Jody Butterfield, 1988.
www.holisticmanagement.org

Land Stewardship Project
651-653-0618
www.landstewardshipproject.org

Whole Farm Planning

Successful Whole Farm Planning, Loni Kemp, The Minnesota Project, 1996, www.mnproject.org

Whole Farm Planning at Work: Success Stories of 10 Farms by Jill MacKenzie and Loni Kemp, 1999, the Minnesota Project, www.mnproject.org

Integrated Pest Management

USDA Regional Pest Management Centers
www.ipmcenters.org

D. Land Trusts, Easements and Farmland Preservation

Land Trust Organizations:

Land Trust Alliance
202-638-4725
www.lta.org

American Farmland Trust
National Office
202-331-7300
www.farmland.org

Northeast Regional Office
518-581-0078

Mid-Atlantic Office
540-829-5220

Vermont Land Trust
802-223-5234
www.vlt.org

The Nature Conservancy/Sunny Valley Preserve (CT)
(860) 355-3716

The Connecticut Farmland Trust
860-296-9282
www.ctfarmland.org

The Maine Farmland Trust
207-469-6465
www.mltn.org/

Massachusetts Land Trust Coalition
978-897-0739
www.massland.org

Publications:

Operating Farm Easements: Guide to the Legal Document, Vermont Land Trust, Montpelier, VT
802-223-5234.

Your Land is Your Legacy: A Guide to Planning the Future of Your Farm, Jeremiah Cosgrove and
Julia Freedgood, American Farmland Trust 2002.

The Massachusetts Conservation Restriction Handbook, Executive Office of Environmental Affairs, MA, 1992.

Conservation Easements as Part of Intergenerational Farm Transfers: A Professional Development Workshop,
National Farm Transition Network and CA Farm Link, 2002, info@californiafarmlink.org.