

Leasing Farmland in New Jersey:

A Guide for Landowners and Farmers



N.J. State Agriculture Development Committee

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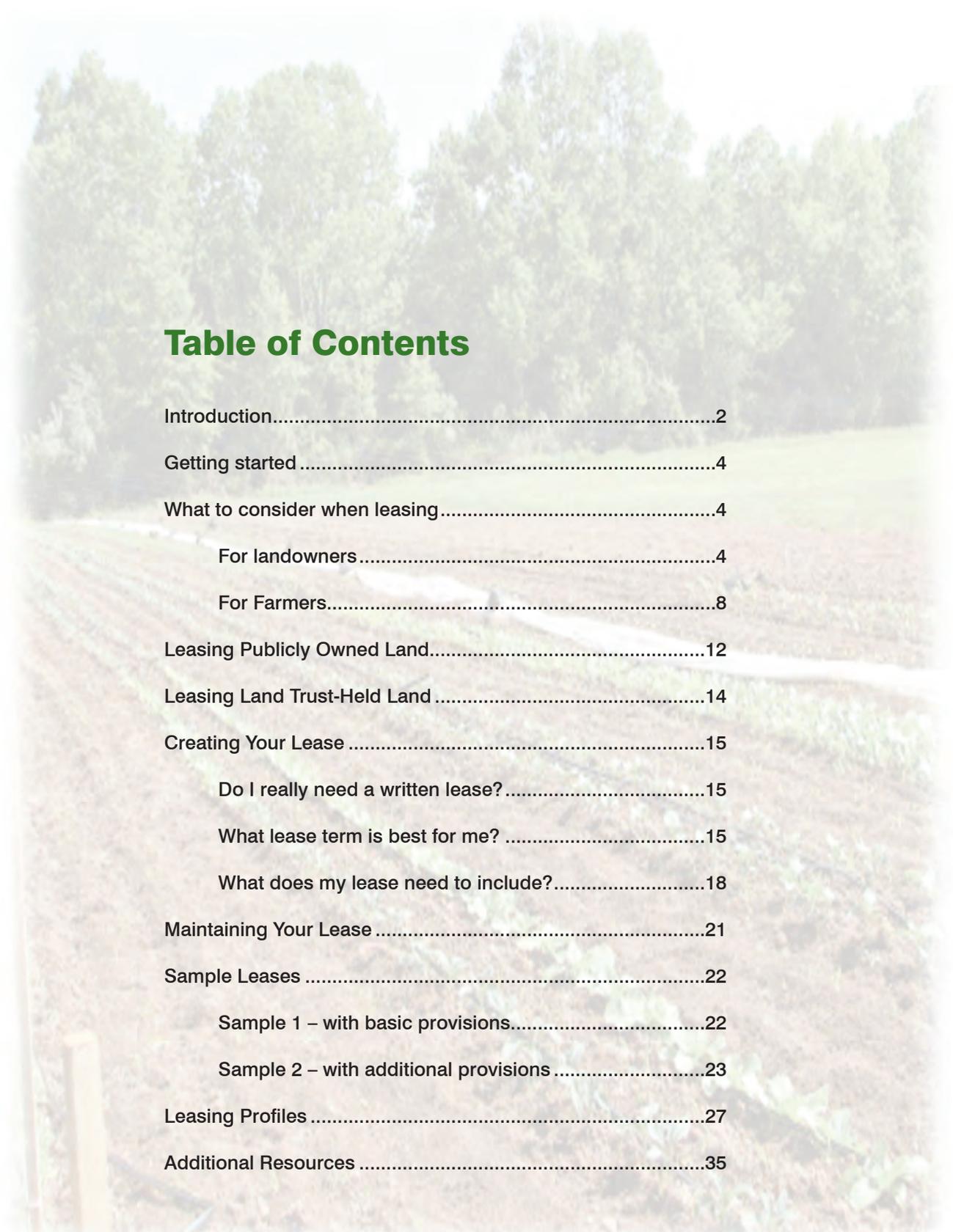


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Introduction

“I own some land and want to see it actively farmed. How do I go about creating a lease?”

- Landowner

“I’m looking for access to land to start a new farm operation (or expand an existing one). What do I need to consider when it comes to leasing?”

- Farmer

In New Jersey, landowners and farmers have the same questions when it comes to making their land available or seeking access to available land. What do I need to think about and consider? How long should the lease be? What provisions should it include? How much should the rental rate be? And what are the motivations and interests of the other party?

The purpose of this guide is to help address these and other questions and to help landowners and farmers begin the process of creating agreements and relationships that work for them. For landowners, making their land available may be important for any number of reasons: farming is the historical use of the land; having it actively farmed qualifies it for Farmland Assessment; providing access to their land can help beginning farmers get started or gain experience; and making the land available for a specific type of agriculture, such as for food production, livestock production, nursery crops, or any other product, fulfills a desire to support that particular aspect of agriculture and their community.

For farmers, finding access to tenure-secure land is important because without land, they cannot farm. In New Jersey, where agricultural land is among the highest priced in the nation, even preserved farmland can be expensive, and many farmers lease all or a portion of the land they farm. Close to 40 percent of the land farmed in New Jersey is farmed by someone who does not own it, which mirrors a national trend. Leasing farmland is also a cost-effective way for beginning farmers to get started and for established farmers to expand or relocate.

Whether your goal is to lease farmland or explore other ideas such as a partnership or farm manager position, this guide is designed to help you as you begin your process. There are many aspects to consider, assess, and discuss as you refine your vision and your plans for the farming opportunity you have available or are seeking. Use this guide as a resource, and also consult with professionals as well as other landowners and farmers.

Supporting Agriculture in the Garden State: Choosing to Make Your Land Available

Many non-farmer landowners choose to make their land available for farming for the following reasons:

- Agriculture is the historical and best use of their property. The landowner's parents or grandparents may have farmed the land before passing it down, and agriculture has always been the use.
- New Jersey's farmland tax assessment law provides for a lower property tax rate for land that is maintained in active agricultural production. If the land were assessed at a much higher, non-farm value, many landowners would not be able to afford to keep the land.
- Landowners may have a specific vision for their property that includes agriculture.

New Jersey is the Garden State, and landowners who choose to make their land available for farming play an important role in supporting the state's agricultural industry. According to the 2007 Census of Agriculture, the state has 733,450 acres in active farmland, and the annual market value of agricultural products sold exceeds \$985 million.

Your land can also play a critical role in retaining the agricultural nature of your community. It can help contribute to the local economy, provide a working landscape, contribute to the production of local food and other agricultural products, and provide needed land for an established farm operation or a good starting place for a beginning farmer.

Deciding to make your land available for farming can also help to maintain your land. Farmland that is left unmanaged will revert to forest land, slowly growing up into trees and shrubs. Such properties often become filled with invasive plants, overwhelming not only your property, but also neighboring ones as the new weed plants flourish. Leasing your land to a farmer, who could help manage the property, could help keep the land in agriculture now as well as allow for further agricultural opportunities later on.

Along with the leasing details discussed in this guide, there are many programs, organizations, and resources that can help you with the leasing process. See the resources section at the end of this guidebook for help with topics such as finding a farmer or doing research to better understand your property's capacity to support different types of agriculture.



Getting Started

When considering a lease agreement for your land or farm business, it is important at the beginning of the process to clearly define your goals and expectations. Thinking critically about your needs and wants before entering into an agreement can help you avoid problems later.

Remember also that a non-farming landowner and a farmer will typically evaluate a property from different perspectives. When looking at a potential lease opportunity or business venture, both parties will have certain lease elements that are important to them. A good lease will address as many of these interests and concerns as possible with the goal of defining a mutually beneficial relationship.

By doing research and spending time planning before entering into an agreement, you can help to ensure that your interests are well-represented in the lease.

What to Consider When Leasing

There is a lot to think about when it comes to leasing. Answering the following questions about your plans can help provide a framework for the type of agreement that you need and for the information that is important to include in your discussions with a potential lease partner.

Landowners:

- ❖ **Your reasons for leasing: Do you have a particular interest in seeing the land used for agriculture? If so, is there a specific type of agriculture you think is suitable for your farm? Are you less concerned with the specific use of the land so long as it is farmland tax assessed?**

As you begin thinking about your core motivations for leasing your land or for entering into a management contract with a farmer, it is important to answer these questions and to do some research. If you are interested in seeing active agriculture on your land, but are not interested in farming it yourself and do not have the benefit of a farming background, you may not be familiar with all of the aspects involved with running a farm business and growing agricultural products. Be cautious about making broad generalizations about different types of agriculture and what could fit on your land before actually investigating the realities of production.

Know your land. Having information about soil types and water availability on your farm, for instance, is invaluable for determining what types of agriculture your land can support. Also inventory your property's farm-related infrastructure – barns, fences, irrigation systems, and other structures – and research what this infrastructure could support. Once you know this information, consider the following question: Are your land's resources and the current infrastructure compatible with your ideas for the farm?

If you have a specific type of farming in mind for the property, have you also thought about what type of farmer you would like to see there? New and beginning farmers, who sometimes have trouble accessing farmland due to competition with established farm businesses, may require only a small amount of land to start – often 5 acres or less. If you own a larger parcel and were interested in promoting new farmers, you might be able to split your property into multiple leases to accomplish this goal.

See the Resources Section at the end of this guide for more information on Rutgers Cooperative Extension, the USDA Natural Resources Conservation Service (NRCS), Web Soil Survey, the Northeast Organic Farming Association of New Jersey (NOFA-NJ), the New Jersey Department of Agriculture, and other organizations that may be able to assist you in understanding the soil, water, and other natural resources on your land, as well as farm businesses and the agricultural industry in New Jersey.

If farmland tax assessment is your primary motivation and you do not have a specific vision for the type of agriculture you want on your property, don't be concerned. This simply means you have a broader pool of farmers from which to find a tenant.

- ❖ **Your vision for the property:** Think about both your short-term and long-term plans for your property. Do you plan to lease it out for many years, or do you have an interest in farming it yourself at some point? Is the farm preserved, and do you plan to sell the property in the future? What do you want the property to look like, and what types of agriculture fit into that vision? How important are land conservation practices?

Thinking about your short- and long-term plans for the property can help you begin to define your lease terms. What length of time are you willing to commit to a particular farmer?

Realize that certain types of agriculture may not be compatible with the lease structure you have in mind. For example, you might think your farm would make an excellent apple orchard, but if you are not willing to offer a lease term longer than two years, finding a farmer will be difficult. It is unlikely you would find a farmer willing to invest in establishing a productive orchard on a piece of land he or she may not have control of in the future.



If your farm is preserved and you are considering a specific use or activity, review the property's farmland preservation deed restrictions to make sure the activities are compatible with the deed of easement. Also discuss the

farm's preservation status and restrictions with potential tenants. If there are certain features of your landscape that are important to you, they should be defined in your lease agreement as well. If you want to be able to look out of your kitchen window and have an unobstructed view of the woods at the back of the farm, for instance, this is an interest you should identify and discuss with potential tenants. Likewise, if the maintenance of conservation practices on your land is important and something you would like tenants to be aware of, you should discuss it with prospective tenants and define it in the lease.

❖ **Your requirements of the property: Do you require a certain level of income from the land? When do you need to receive rental payments?**

Determining a reasonable rental rate for your land is another part of the leasing process that may require some research. Much of this research will have already been started if you have spent time getting to know the property, e.g., its soil types, water availability, infrastructure, and other features. According to the USDA's National Agricultural Statistics Service (NASS), the average cash rent per acre in New Jersey in 2012 was \$68. An average rate such as this, however, may not be an accurate reflection of the rental market in your area or what your land is worth. It is not uncommon to find rental rates ranging from \$0 per acre to well over \$100 per acre. There are also landowners in New Jersey who pay farmers to farm their land in order to secure farmland tax assessment.

If your property has an existing well, an irrigation system, or deer fencing, then your property is already more desirable to a farmer who may need these things. Perhaps you also have extra space in an existing barn that the tenant could utilize. All of these and other amenities combine to increase the attractiveness and value of your farmland.

As rental rates are predicated on the local market, it may be worthwhile to also ask other landowners in your area what they charge per acre. You can also find an average rental rate for your county or region through USDA NASS, http://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Cash_Rents_by_County/index.asp.

Once you have determined a fair rate for your land, think about when you expect to receive your rental payment. Some landowners choose to split the payment so that the farmer does not owe all of the rent at one time.

❖ **Your involvement with your farm property: Is your main interest in setting up a standard lease with a farmer, or do you have a further interest in being involved with the management of a farm business on your land? Also, how much do you want to be responsible for on the property – are there services you would like your tenant to do, e.g., property maintenance of buildings, fences, farm lanes, field edges, and waterways?**

Your overall involvement with your property can fall anywhere along a continuum from leasing it to a farmer for his or her own farm business, to farming and maintaining it all yourself. While leasing is the focus of this guidebook as leasing is what many landowners pursue, some landowners

also consider other options. Some establish their own farm businesses and hire a farm manager at a fixed salary to perform the day-to-day work of the business, and some choose to partner with a farmer on a business and share in the responsibilities, expenses, and potential profits or losses of a joint venture.

In deciding what is right for you, an important element to consider is your time. How much time and energy are you willing and able to commit to the farm? If you have another career that you are committed to that requires your time, think realistically about the additional time you may or may not have available. Most types of agriculture are very time intensive, particularly during certain critical periods of the year. A lack of adequate time or a lack of business and farming experience makes leasing an attractive option for many landowners.

Some farms may also be located far from a landowner's primary residence, and the farms themselves may not have an additional residence on them. The location of your farm property with respect to your primary residence is important to consider when deciding your involvement with the farm property. If you do not plan on making frequent visits to the farm, you may want to arrange for aspects of property maintenance to be handled by your tenant farmer. If you expect such maintenance, remember also that this is a demand on your tenant farmer's time and equipment. Many farmers are willing to barter their services for a reduction in rent.

- ❖ **Your property's farm-related infrastructure: What infrastructure and improvements does your land have now that would be attractive to a potential farmer? What could be added in the future by either yourself or a farmer, to fit a farm's needs?**

After you have inventoried your farm's existing infrastructure and considered the types of agriculture it could support, think about how additional improvements could be incorporated into the farm. If more infrastructure is needed – a barn for equipment storage; a greenhouse for starting crops early; a farm market for preparing (cleaning, packaging, and storing) the farm's products and for selling them; an irrigation system for growing crops; or fences for keeping livestock in or wildlife out – can these improvements be added to the farm? Also, who will be responsible for installing and paying for any infrastructure improvements? Will it be you or the farmer, and who will retain ownership of them at the end of the lease? It will be important to consider and discuss these infrastructure ideas with the farmer as you develop your lease.



Farmers:

As is true for landowners, there are many factors for farmers to consider when it comes to leasing. Answering the following questions about your plans can help provide a framework for the type of agreement that you need and for the information that is important to include in your discussions with a potential lease partner.

- ❖ **Your land and infrastructure requirements: What land characteristics are necessary for producing the crops you intend to grow? What infrastructure is needed for your farm business? Is irrigation needed, or do you require storage areas, livestock fencing, or deer fencing? What else will help your farm business succeed?**

When looking for land on which to start, expand, or relocate your farm business, it is important to remember that not every property is suited to every type of agriculture. Attempting a new farm venture on an inappropriate piece of land, or attempting it without access to basic crop or livestock requirements, will only ensure that your business will struggle.

Before looking at specific parcels of land, make a list of the land and infrastructure requirements for the crops you plan to grow or livestock you plan to raise.

Research and consider:

Soil Characteristics and Condition	<ul style="list-style-type: none"> • Texture • Organic matter • pH
Land Characteristics	<ul style="list-style-type: none"> • Acreage needed • Drainage • General topography (slope) • Proximity to residential subdivisions (potential for farm/non-farm conflicts)
Water Source and Availability	<ul style="list-style-type: none"> • Well water or surface water • Type of irrigation infrastructure
Utilities	<ul style="list-style-type: none"> • Electricity (e.g., to run irrigation pumps or greenhouse lights) • Gas or oil storage
Infrastructure	<ul style="list-style-type: none"> • Fencing for livestock • Fencing to exclude wildlife • Barns for storage or livestock • Greenhouses
Prior Land Uses	<ul style="list-style-type: none"> • What was the land used for previously, or how was it farmed? • Do you plan to grow organically? Are you looking for a property that is already certified or more easily transitioned?

- ❖ **Your marketing requirements: How do you plan to market your crops? Do you plan to sell them at an off-site location, or do you plan to direct-market them on the farm itself? How far are you willing to travel from the farm to an off-farm market, and will your housing arrangements add more commuting time? If on-farm direct marketing is your goal, is the landowner open to having a farm stand or market on the farm?**

Once you have determined the important land and infrastructure requirements for your farm business, you can begin to think about your marketing plans and the geographic area in which you would like to farm and market your products.

If your plan is to deliver your products to a specific market, you can limit your farmland search to a certain area around that market. If housing is not available on the properties you are looking at, also consider how far you will be willing to commute from your home. The type of agricultural business you plan to operate will also influence how far away from it you feel comfortable living. Most greenhouse, vegetable, and fruit crops require intensive management on a daily basis and also long



hours during critical crop periods. A long commute either to your home or your market may compromise your ability to effectively care for your crops. At the least, it will make it more difficult.

If you plan to market your products directly from the farm, analyze whether you can effectively do this on the properties you are considering. First, is the property owner willing to allow a farm market on the property? If so, consider the potential customer base for that location. Would your market be easy to get to and visible from a well-traveled road, and could the farm

become a destination for your target demographics? Also consider whether your new business would be in direct competition with any other, more established farm markets in the area.

A landowner who is comfortable with a small farm market on his or her property may or may not be comfortable with a future expansion of the market. Many farm markets in New Jersey have grown over time to become agritourism destinations, often having festivals, hayrides, corn mazes, animal display and petting areas, pick-your-own, and other activities that invite the public onto the property to enjoy the farm experience and market the farm's products. Are these activities part of the vision you have for your business? How well does this vision match up with the perspectives of potential landowners and with their properties? Answering and discussing questions such as these is important. If a farm you are considering leasing is preserved, it is also important to check that the activities you want to do are permitted under the property's farmland preservation deed restrictions.

If you find a landowner who is open to agritourism activities, also consider your comfort level with building such a business on a leased property, particularly if you do not have a long-term lease. If you lose control of the property, will you be able to move the business and your customer base to a new location? In working with a landowner to develop your lease, consider different terms and provisions that could help manage your risks as well as satisfy the interests of the landowner.

- ❖ **Your vision for the business relationship: What type of arrangement are you looking for? Are you looking to lease land for your own independent farm operation? Or are you looking to partner with a landowner in some way, such as working together on a joint farm business or working for a landowner as a farm manager? What types of opportunities are you ready for?**

There are many options for farmers to consider when it comes to access to land and farming opportunities. The option or options you pursue should depend on your goals, business plan, and general preparedness. What option is right for you, right now?

If your goal is to expand an established farm operation's acreage, you are probably looking for a landowner who is simply looking to lease his or her land. Similarly, if you are a newer farmer who has gained experience working on other farms and are looking to get started on your own, you are probably looking for a situation where you could lease some land and be responsible for your own farm business.

If you are a beginning farmer, you should evaluate how ready you are for being solely responsible for all aspects of a farm business. How will the new business be structured, how much experience do you have, and what resources do you have available to help you get started? In terms of experience, have you previously worked as an apprentice or a farm manager?

Many beginning farmers dream of running a farm operation that is entirely their own but do not initially have the experience or resources to achieve this goal. If you are committed to working in agriculture but are not yet ready to start your own operation, there are additional opportunities to consider. Some landowners are interested in starting their own farm businesses, but they lack a farming background and need a farmer partner or a farm manager to carry out their plans. A non-farming landowner might be looking to partner with or hire a farm manager, for instance, to grow the vegetables for a community supported agriculture (CSA) operation or for a restaurant the landowner owns. An established farmer who is expanding his or her farm business might also need a manager to carry out the farming responsibilities created by the expansion. These types of arrangements could be short- or long-term and could be stepping stones to operating your own farm business in the future. Since each situation is different, there is no standard structure for these arrangements – they are designed to fit the needs of parties involved.

❖ **Your business plan and the basic lease terms: How much does farmland rent for, and how much are you willing to pay in rent for the land you need? Are you willing to trade services with a landowner for an adjusted rental rate? What length of lease is ideal for your farm business?**

Farmland rental rates vary greatly depending on location, land quality, infrastructure, and other market conditions, as highlighted in this guide's earlier rental rate discussion for landowners (see page 6).

As a farmer, as you search for land to start or expand your business, have an idea of how much you will be able to pay in rent and what you really need from the land. The rental rate for farmland with existing irrigation infrastructure, for instance, will be higher than the rental rate for dry land. If your crops do not require irrigation, you may be able to rent land with fewer amenities and a correspondingly lower rental rate. Conversely, you should expect to pay more if the farmland you plan to rent already has everything you need to run your business.

Your seasonal cash flow is also something to consider. What time of the year would be best for you to pay your rent bill? Would it be better for you if the bill were split into two payments? Some landowners may be willing to work with you to meet your needs.

Some landowners may also be interested in having you perform some services in exchange for a reduced rental rate. These landowners might be looking for their tenants to do property maintenance on the farm, such as mowing certain areas or plowing snow in the winter. In some parts of the state, landowners might expect you to do some of these things without compensation; this varies by location and as the competition for land increases.

Additionally, think about your business plan and your ideal lease length. How long does your lease term need to be for you to adequately plan ahead? If you are working with a landowner who is just getting to know you or is hesitant about your business plan, you may not be able to secure a long-term lease at the beginning. As your relationship grows and your business proves itself viable, the landowner (and you) may become more comfortable with entering into more of a long-term lease.

Long-term business planning ideas may be difficult to conceptualize during the early stages of a business. Harder still may be discussing these ideas with a landowner you are just getting to know. Building a successful farmer-landowner relationship usually takes time, work, communication, and honesty. While a landowner may not agree to everything you are looking for in your first lease, being a responsible tenant can lead to more as the relationship grows. As one New Jersey farmer, who has several successful long-term leases, said, "You have to crawl before you walk." Proving yourself a good farmer and tenant can help the relationship grow.

Leasing Publicly Owned Land



Across New Jersey, there are thousands of acres of publicly owned farmland controlled by municipalities, counties, and the State. In some cases, this land was purchased to protect significant state environmental resources. In others, it was purchased with a future community purpose in mind, e.g., a soccer field, playground, or park. The good news for agriculture is that farming is often compatible with these other purposes and plans. Many parcels remain viable as farmland, and they are or could be leased to farmers and can continue to be agriculturally productive.

On many publicly owned farm parcels, agricultural activity can continue without posing a threat to the natural resources for which the land was protected. Keeping the land managed as a farm may also continue to provide for the specific land conditions, wildlife habitat, or something else desired by a public landowner. In some cases, such as with land held by the New Jersey Department of Environmental Protection (NJDEP) Division of Fish and Wildlife, the landholder may require that a new buffer area be established or a conservation practice be implemented in order to achieve certain natural resource goals, while still making the land available for agricultural production.

For farmland acquired as part of a community's master plan, it is possible that the community's non-agricultural plans for the land are far enough in the future that the land could continue to be farmed today. Some communities may also have acquired land for a specific agricultural purpose, such as for a community supported agriculture (CSA) operation or food-producing farm for the town, as retaining local agriculture may also be a community goal. Having publicly owned parcels managed in agriculture can also help communities save on maintenance costs. If such parcels are not managed by farmers, the responsibility and cost of property maintenance fall to the public.

For farmers interested in leasing publicly owned land, something to keep in mind is that these parcels sometimes have restrictions on the types of agriculture allowed. The lease documents used by NJDEP, county parks departments, and other government entities, for instance, may be multi-page documents and may have little room for flexibility for individual farmers. If your type of farm business does not fit with the specifications for a publicly owned parcel, it may be better to work with a private landowner instead, who may have more flexibility regarding farm uses and other details.

NJDEP-owned land – To make specific parcels available for farming, NJDEP holds a public auction, with the highest bidder getting the lease. NJDEP’s leases currently carry a five-year lease term with an option to renew for an additional five years. Some of these leases also include a requirement for in-kind services, such as for mowing, planting, or plowing a portion of the parcel or an adjacent parcel, which would result in a reduced rental rate. For each parcel being leased, NJDEP will typically post the following items online prior to the auction: site maps, soil maps, a sample lease, the bid information, and any information about in-kind service requirements. Visit http://www.state.nj.us/dep/parksandforests/parks/business_ops/leases.htm for more information on the NJDEP leasing process.

Municipally and county-owned land – When towns and counties make land available for farming, they similarly hold a public auction for each lease. Farmers are thus chosen through the competitive bid process. The basics of this process and any exceptions to it are outlined in the Local Lands and Buildings Law, N.J.S.A., 40A:12-1 et seq. Since many local government-owned farms are acquired with funding assistance from NJDEP, these parcels may be subject to the same rules and restrictions as NJDEP-owned land. Some local government landowners may also have their own policies about the use of the land and specific lease terms. For farmers interested in leasing land from a municipality or county, it is best to contact the person in charge of leasing for that entity. Often, land leasing is handled by a local parks department, facilities department, or planning division.

Leasing Land Trust-Held Land

Land trusts have historically played an important role in preserving open space and agricultural land in New Jersey. Some land trusts have sought for many years to maintain the agricultural nature of the parcels they preserved, while others are just beginning to consider various uses and to make their land available for production agriculture.

For land trusts, working with a farmer to farm the land can be beneficial in a number of ways. As with publicly held land, when the right farmer is found for a parcel, the farmer can manage the land to its full agricultural potential and can help reduce the land trust's property management responsibilities. This typically means savings in time and money for the land trust.

It is common for land trusts to lease a portion of a given parcel for agriculture while retaining other parts of the parcel for wildlife habitat or other environmental objectives. Often, as a part of the lease, the farmer may be asked to act as steward for these other areas and be compensated in some manner. A farmer might also be asked to help with the establishment of these areas.

Land trusts and nonprofit organizations sometimes also have purely agricultural goals in mind when they purchase and/or manage particular parcels. These entities might be interested in establishing an agricultural demonstration farm; bringing agriculture into more urban areas of the state; creating a farm incubator site for beginning farmers; or doing something else. To carry out these goals, these groups might hire a farmer to work on the land and manage the project.

If you are a farmer thinking of working with a land trust that has advertised a farming opportunity, you can assume that the trust has spent time thinking about the way in which agriculture fits with the organization's objectives. If the land trust is already making some of its land available, it also has probably thought about its goals for specific parcels. Organizations are often looking for a specific type of farmer or agriculture for their land. They are also probably more likely to offer longer-term leases if they acquired particular parcels with such goals in mind. To decide on a farmer, land trusts and other groups will often use a Request for Proposal (RFP) or interview process.

To learn more about local land trusts and possible farming opportunities on land they own, visit http://findalandtrust.org/states/newjersey34/land_trusts. Some of these trusts have also worked with the State Agriculture Development Committee (SADC) to protect farmland through the Farmland Preservation Program. A list of these land trusts is available on the SADC website, <http://nj.gov/agriculture/sadc/farmpreserve/contacts/>.

Creating Your Lease

Do I Really Need a Written Lease?

Since written leases provide security and clarity for both parties, you should have a written lease that addresses your concerns and what is important to you, and that includes at least the basic elements found in a typical lease.

Based on conversations with New Jersey farmers and landowners, however, many land leases in New Jersey appear to be short-term verbal leases. Such verbal leases are not the best tool for developing positive and potentially long-lasting farmer-landowner relationships. One reason verbal leases may have been used is that they can be implemented quickly and easily with little time spent planning. However, this type of lease can also terminate quickly and easily – and sometimes unexpectedly – in part because of that lack of planning.

Spending the time to plan and to develop a written lease agreement is to the benefit of both parties. Creating a written document will add clarity and help to ensure that each party's expectations are not misunderstood. A lease can also be tailored to address specific crop practices, conservation requirements, or any other issues a party has concerns about. Think of a written lease as your “joint vision” document and as you work to develop it, keep in mind the following ideas that can help foster a greater understanding between the parties:

- A non-farming landowner may not be familiar with typical farming practices or farm operations. It can be helpful for both parties to discuss, and specify in the lease, certain operations that may seem obvious to an experienced farmer but not necessarily to a landowner.
- A farmer who is new to a particular property may not be familiar with the property's existing ground conditions or everything that is important to the landowner.
- Not every farmer manages his or her crops and farm business the same way. If you are a landowner looking for an additional or different farmer, be careful not to assume that the new farmer will necessarily operate in the same way as your last tenant.

What Lease Term Is Best for Me?

Determining the lease length that is best for your situation depends on your goals and plans. As a landowner, what are your goals for the property? As a farmer, what are your goals for your farm business? Short- and long-term leases each have their advantages and disadvantages, but it may be difficult to determine which type of lease is best for you if you have not thought about your goals.

	Advantages	Disadvantages
Short-Term Lease (1-5 years)	<ul style="list-style-type: none"> • More flexible. Can be ended more quickly in the event of an unresolvable dispute • Can be used to provide a “trial period” for a new relationship or a new business venture; a long-term lease might follow later 	<ul style="list-style-type: none"> • Narrows the types of agriculture that the land is available for; no perennial crops • Discourages investment in the land and conservation • Makes it difficult to plan for future growing seasons • Leaves farmers unable to participate in certain USDA conservation programs
Long-Term Lease (longer than 5 years)	<ul style="list-style-type: none"> • More stable. Allows for a longer planning period for both the farmer and landowner • Encourages the farmer to work the land “like he or she owns it” and to potentially participate in USDA conservation programs, resulting in better land stewardship • Helps the farmer feel more comfortable making infrastructure improvements and other investments in the property • Opens the land up to more types of agriculture, e.g., fruit trees, nursery stock, wine grapes, and organic production, which require longer planning windows 	<ul style="list-style-type: none"> • Ties the land up for a longer period of time; more difficult to change to another type of operation if a new opportunity arises • May involve a more complex lease document

While year-to-year leases have some advantages, particularly for landowners who do not have long-term plans for their properties or who do not plan to keep the land in agriculture, it is clear that longer-term leases are better for farmers and for the land. Longer leases allow tenant farmers to invest in the land and the property. Even basic investments in soil fertility, such as liming to adjust soil pH, need multiple growing seasons before a benefit can be realized. If a farmer has no guarantee that he or she will be in control of the land for several years, it is less likely he or she will make investments to improve and maintain the quality of the land.

Longer-term leases can also be beneficial for the land by allowing tenant farmers to participate in USDA conservation programs. Such programs provide cost-share assistance for conservation practices, but farmers cannot access these programs unless they have a written lease with a term that is longer than the length of the USDA program contract. A longer and more stable lease allows a farmer to apply these practices and better take care of the rented ground.

Longer-term leases also broaden the range of crops a farmer can grow on the land. If you are a landowner and envision a multi-year crop on your land, such as peaches or nursery trees, then a long-term lease is critical to accomplishing this goal. Most farmers will not plant perennial or other long-term crops on rented land if all they have is a short-term lease. Further, even if they considered doing so, they would not be able to obtain financing to help cover the costs of establishing such crops. Agricultural lenders typically do not extend credit to long-term operations if their underlying land tenure is short term. It would not be unusual for a farmer, who is looking to make a significant long-term investment in his or her farm business, to request a 10-20 year lease with these ideas in mind. For landowners, benefits of a long-term lease include more time to plan for the farm's future, a greater likelihood that the tenant farmer will be a good steward of the land, and an opportunity to support the stability of a local farm business.

From a farmer's perspective, a long-term lease makes it easier to plan and invest in the land and the farm business. Farmers may be able to get by on short-term leases – there are farmers, for instance, who have been farming the same land for 10-20 years on year-to-year agreements – but these same farmers have expressed they would prefer to have at least 3-5 year agreements on these properties. With longer-term leases and tenure security, there is greater confidence and willingness to invest.

If as a landowner or a farmer you are not ready to commit to a long-term lease, but you want to add some stability to your lease agreement, you could consider using the concept of a “rolling renewal” agreement. In this type of agreement, at the end of each year the lease is automatically renewed for the length of the initial term, unless either the landowner or farmer decides that the current term will be last term. In this way, the parties can capture some of the benefits of both a short-term and a long-term lease.

For instance, if you had a 3-year lease with a rolling renewal provision, the lease would be renewed at the end of each year for another full 3-year term. This would allow the farmer to continue operating on a 3-year business plan each time the lease is renewed. If the landowner wished to pursue another opportunity, such as using the farm for another type of agriculture or selling the property, the landowner could choose to not renew the lease for another 3-year term. For the farmer, this would mean there would still be 2 years left on the final 3-year term, a fair amount of time for the farmer to plan ahead and seek another farming opportunity.

While a longer-term lease can be beneficial for both landowner and farmer, one or that both parties may be hesitant to “jump into” a long-term lease with a new partner. Consider testing the waters with a 1-year agreement that can then be renewed for a longer term.



Regardless of what type of lease you determine is best for you, keep in mind the importance of discussing renewal and termination plans with the other party. Not only is this a good idea when developing the lease agreement, it is also a good idea once the agreement is in place, i.e., before the lease term ends. If your lease runs from January to December, for instance, think about discussing lease renewal in August or September. If a farmer intends to plant a winter cover crop or a crop to be harvested the following year, this planting would need to be done during the fall. The fall is also when farmers begin planning for the next year. If they know how much acreage they will be farming, they can order the optimum amount of seeds, supplies, and other materials and prepare accordingly.

What Does My Lease Need to Include?

Once you have found the farmer or landowner you will be working with and have discussed what is important to one another, the next step is to draft your lease. The first thing to do is complete the basics. At a bare minimum, your lease should do the following:

- ❖ **Identify the Parties Entering Into the Lease**
 - o Make sure the names of the actual owner of the property and the actual tenant are used. Make sure the correct person or entity is identified, e.g., the specific land trust, corporation, partnership, or LLC.
- ❖ **Describe the Property**
 - o Completely identify the property to be leased, making sure to indicate any infrastructure included in the agreement. This description should be as complete as possible; if your farm lease includes the property's open fields but not the adjacent woodlands that are also part of the farm, for instance, this should be specified. If the description is complex, it may be helpful to include a map.
- ❖ **Specify the Rental Rate**
 - o The rental rate – as well as the due date, specific amount due, and to whom payments should be made – should all be specified. If the rental rate is to be adjusted by in-kind services, these services and the amount of the adjustment should also be specified. If payments will be made on multiple dates, include the additional dates and payment amounts.
- ❖ **Specify the Lease Term**
 - o The length of the lease, as well as any renewal provisions such as if your lease will include an option to renew or a rolling renewal, should be specified. It can also be helpful to specify the time at which renewal will be addressed.

If the items above are all you decide to include in your lease, the final step is to sign the document. Both parties need to sign the lease. If anyone is signing as a representative of an entity, for instance on behalf of a corporation or company, make sure that the correct person from the entity is signing. Knowing the business structure under which each party is operating will help you determine who has the authority to sign.

While the lease components listed on page 18 would provide for a basic lease, such a lease would be far from a document that fully reflects each party's visions for the property, the farm, and the farm business. In addition to these basic, bare-minimum requirements, your written lease should include some of the results from your thinking about the leasing considerations and planning questions discussed earlier in this guide. For a more complete lease, your lease should also cover the following:

❖ **Property Restrictions and Allowable Activities**

- If the use of the land is to be limited in any way, this should be reflected in the lease. This includes any limits on the types of crops to be grown; the types of allowable field operations, such as certain types of tillage; and the use of the farm for specific activities, e.g., having a farm market or offering other activities involving public access.
- Conversely, if certain activities are important to the tenant's farm business and are specifically allowed, these allowed activities should also be specified. Include a brief description of the tenant's operation as well.
- If there is something unique about the property that the landowner wishes to protect, identify it in the lease.
- If the tenant is prohibited from subletting the land, specify this condition.

❖ **Property Maintenance**

- If the tenant will be responsible for normal property maintenance, define what this is and what is expected.
- If buildings, barns, or other infrastructure is included in the lease, indicate who is responsible for maintenance of these facilities.
- If the property includes certain conservation practices such as ditches, waterways, or basins, indicate who is responsible for any special maintenance of them.
- Also consider maintenance specifics regarding the following: regular mowing of field edges or waterways; trimming of overhanging trees along field edges; fence repairs; and maintenance of farm roads.

❖ **Property Improvements**

- If the tenant is allowed to make improvements to the property over the term of the lease, then the lease should identify these types of improvements, who will pay for them, and who will have subsequent ownership of them.
- The lease should specify whether any improvements that are made become the property of the landowner or the farmer at the end of the lease, as well as if the tenant is required to remove them or if the tenant may be compensated for them.
- Common improvements made by farmer tenants often include the following: the installation of a well and irrigation equipment; the installation of fencing; and the creation or expansion of barns for storage and other purposes. Farmers looking to direct-market their products will also need some type of farm stand on the farm.

❖ **Additional Rights on the Property**

- o The lease should specify who holds the hunting rights on the property, as damage to crops from wildlife can often exceed tolerable levels. Hunting rights can be crucial to the profitability of a farm business, and some farmers in New Jersey will not lease land if crop damage concerns are not addressed.
- o If the property includes wooded land, the lease needs to specify whether the tenant has the right to harvest timber.

❖ **Insurance**

- o The lease should specify who is responsible for obtaining liability and casualty insurance and at what levels.

❖ **Lease Default or Termination Provisions**

- o Specify what actions or what lack of action would constitute a default of the lease, and what a default would mean for the lease agreement.
- o Detail the time period during which the lease will be reviewed and discussed for renewal or termination.
- o Specify the course of action to be taken in the event of a dispute. Will a mediation process be employed?
- o In the event that the lease agreement is terminated, indicate what actions need to be taken, even if it is a friendly termination.
- o Also address the tenant's rights regarding unharvested crops at the end of the lease.

The list above highlights a number of common elements to include in your lease. What else is important to you? Since every farm and the situation of every landowner and farmer is unique, each lease you develop might be different.

Remember also that developing a new tenant-landlord leasing relationship should be treated with the same care as any new relationship. It may take time to develop rapport and trust, and it may similarly take time to negotiate and develop the final draft of the written lease that each party is happy with and signs. Presenting a new or prospective partner right away with an overly complicated-looking document could make building this trust and creating the final lease more difficult. Ultimately, the goal should be to develop the simplest lease that addresses the most critical issues for both the landowner and farmer.

Maintaining Your Lease



Building and maintaining a successful relationship with a new farmer or landowner partner can take time and effort. If you have worked hard to find the right lease partner and construct a good joint lease agreement, it is certainly worth the time and investment to keep the agreement in place.

Good communication is typically the foundation of any successful business relationship. If the only interaction that your agreement specifies is a yearly discussion of lease renewal and rental payments, consider additional ways of working toward more frequent and open communication. Being a “good neighbor” can go a long way toward maintaining the stability of your lease. In this

way, if a situation or a conflict does arise, you will be more equipped and ready to discuss and resolve it before it becomes a major issue.

In the event of a dispute, there are also outside resources that can help you with reaching a resolution. One of these resources is the State Agriculture Development Committee’s free Agricultural Mediation Program. The program is set up to provide voluntary mediation, so mediation would be used only if each party voluntarily requests the program’s services. Each mediation session is facilitated by a trained, impartial mediator whose job is not to impose a solution but to rather facilitate a discussion. The mediator helps disputing parties examine their mutual problems, identify and consider options, and determine if they can agree on a solution. Because the mediator has no decision-making authority, successful mediation is based on the voluntary participation and cooperation of all the parties.

It is also common for landowners and farmers to seek the assistance of their Rutgers Cooperative Extension county agricultural agent when issues arise. Rutgers agricultural agents can be helpful during informal discussions about issues. As not every dispute can be resolved amicably or easily, another option is pursuing a formal legal path. Informal as well as formal conflict resolution paths can be specified in your lease.

Sample Leases

Included here are two sample lease templates for reference purposes only. Every farm and landlord-tenant relationship is different, and as with any legal document, you should consult with an attorney to address your specific needs. These forms are not intended to be comprehensive legal documents.

1. Simple lease

The following sample lease includes sections to address the important basic minimum details to include in a lease, as outlined on page 18.

This Lease Agreement is made _____ [Month/Day/Year] by and between

_____ (“Lessor”) and
_____ (“Lessee”)
for the purpose of _____

[describe the purpose of the lease, and describe the agricultural operation that will be using the land]

It is agreed that the Lessor does hereby lease to the Lessee the Premises located at _____
_____ [Street address and/or block and lot]. The Premises,
for the purposes of this lease agreement, consists of _____ acres of farmland, as depicted
and located on the map identified as Appendix “A” attached to this lease. The Premises shall also include

[describe any infrastructure or other components that will be part of the agreement, such as the use of barns, structures, an existing irrigation system, or some other resource], as further depicted and located in Appendix “A.”

It is further agreed that:

1. The term of this agreement shall be _____ year(s), commencing on _____
[Month/Day/Year] and ending on _____ [Month/Day/Year]. The option
to renew this lease shall be discussed by the Lessor and Lessee at least 3 months prior to the
aforementioned end-date.
2. The Lessee will pay the Lessor annual rent of _____ [\$ total] for leasing the
described Premises. This is equivalent to _____ [\$ amount] per acre for
the farmland and _____ for _____ [describe any \$ amounts
for additional lease components and/or credits for in-kind services].

a. The annual rent is due in _____ [specify whether in “total” or “installments”] by _____ [specify either a due date or a schedule for installment payments].

3. Other conditions:
[describe any additional conditions or provisions agreed upon]

Signed: _____
Lessor Date

Signed: _____
Lessee Date

Key leasing terms:

Lessor - means the landowner
Lessee - means the farmer

In the lease document you create for yourself, use as much space as you need for the details and other important information you decide to include.

2. Alternate lease form

This Lease Agreement is made _____ [Month/Day/Year] by and between _____ (“Lessor”) and _____ (“Lessee”) for the following agreed upon goals, purposes, and objectives: The Lessor desires to maintain the Premises as agricultural land and in agricultural production, and _____

[describe any other important objectives of the landowner]; and the Lessee desires to secure the use of the Premises for the purpose of _____

[describe the farmer’s objectives and his or her agricultural operation; include detail about the types of crops grown, the farm’s plan for marketing the crops such as having a farm market on site, and any other important elements]

In consideration of these objectives, it is agreed that:

1. The Lessor does hereby grant to the Lessee the use of the Premises, located at _____

_____ [Street address and/or block and lot].
The Premises, for the purposes of this lease agreement, consists of _____ acres of farmland, as depicted and located on the map identified as Appendix "A" attached to this lease. The Premises shall also include _____
_____ [describe any infrastructure or other components that will be part of the agreement, such as the use of barns, structures, an existing irrigation system, or some other resource], as further depicted and located in Appendix "A."
2. The term of this agreement shall be _____ year(s), commencing on _____
[Month/Day/Year] and ending on _____ [Month/Day/Year]. The option to renew this lease shall be discussed by the Lessor and Lessee at least 3 months prior to the aforementioned end-date. [Or alternatively if you have agreed on another renewal provision, such as a rolling renewal, include those details.]
3. The Lessee will pay the Lessor annual rent of _____ [\$ total] for leasing the described Premises. This is equivalent to _____ [\$ amount] per acre for the farmland and _____ for _____ [describe any \$ amounts for additional lease components and/or credits for in-kind services].
 - a. The annual rent is due in _____ [specify whether in "total" or "installments"] by _____ [specify either a due date or a schedule for installment payments].
4. The Lessee is permitted to perform all activities normally associated with the Lessee's agricultural operation, including, but not limited to: _____

_____ [describe the farmer's regular anticipated activities related to production, marketing, and other plans; include all activities that are important to the farm operation]
5. The Lessee, in order to maintain the Premises in accordance with the Lessor's objective(s) of _____, will [or will not] _____

_____ [describe any special circumstances that need to be maintained or implemented to meet the landowner's goals, such as continuing certain conservation practices or obtaining a farm conservation plan; also describe whether there are any prohibited uses of the property, such as growing a particular crop or conducting specific activities, like harvesting timber or pick-your-own activities, in specific areas]

6. The Lessee will not assign or sublet the Premises without prior permission of the Lessor.
7. Normal maintenance of the Premises, meaning and including _____

 is the responsibility of the _____ [Lessor/Lessee]. Maintenance of the Premises beyond that outlined in this agreement shall be performed by the Lessee and compensated by the Lessor through a reduction in the annual rent. Further details on the Lessee's performance of additional maintenance activities and how they will be compensated are as follows:

8. Hunting and trapping, for the purpose of controlling wildlife and protecting the agricultural investment and operation of the Lessee, is permitted on the Premises and is granted to _____ [Lessee and/or another entity].
9. With prior notice given to the Lessor, the Lessee may make improvements to the Premises, including: _____

 [describe the types of improvements allowed, e.g., the installation of an irrigation system; expansion of existing barns; building of a farm market; or installation of fencing] The Lessee is solely responsible for all maintenance of any improvements made to the Premises by the Lessee. At the conclusion of the lease agreement, _____

 [Describe what happens to improvements at the end of the lease. Do they become the property of the Lessor or Lessee? Is the Lessee required to remove them, and/or is the Lessor required to compensate the Lessee for the value of the improvements? Does it matter who paid for the improvements initially?]
10. The Lessee is required to obtain and maintain throughout the lease term general liability insurance naming the Lessor as an "additional insured," with policy limits of at least _____

- a. The Lessee will provide the Lessor with proof of insurance on a yearly basis.
 - b. The policy shall include a 30-day advance written notice of cancellation to the Lessor.
11. In the event that the Lessor or Lessee is found to be in default of any provision of this lease, the lease agreement may be terminated by mutual consent. If termination of the lease is not mutually agreed upon, or if another dispute arises, the Lessor and Lessee agree to first attempt to resolve the dispute by _____

 [describe what actions will be taken to resolve a dispute, e.g., using the agricultural mediation program, discussing the matter with a county agricultural agent, or another strategy]

Leasing Profiles

There are many examples of landowners and farmers partnering in New Jersey for leasing opportunities. Included here are profiles of four leasing situations. As you read them, think about your own situation and how it may be similar or different. Are there any important ideas, themes, or details in the profiles that could help you? Think about your own goals and plans, and as with the all of the information in this leasing guide, feel free to adapt and use what may work for you.

Peaceful Valley Orchards

Meredith and Jeremy Compton started and expanded their own farm business, Peaceful Valley Orchards, leasing land from two different private landowners, one after another.

In 2001, after several years of working on other farms, the Comptons found an opportunity in Pittstown, Hunterdon County, that would allow them to pursue their goal of starting their own fruit and vegetable operation – a retired farmer was willing to lease his 137-acre farm to help them get started. After an agreement was reached and a lease was signed, the Comptons worked hard to bring the property’s inactive fruit trees back into production. They also started growing vegetables and set up a farm stand. By the first summer, Peaceful Valley Orchards was able to welcome its first customers with peaches. The Comptons then established a larger farm market the following year.

While this initial lease helped Meredith and Jeremy get started and establish a customer base, they realized within a few years that the leasing situation wasn’t the best fit for all involved. The agreement was for a simple lease of the land so that the Comptons could run their own business themselves, but the retired farmer-landowner, who lived on the farm, wanted more involvement in the farm operation than the Comptons anticipated.

In light of this issue, the Comptons began searching for a different farm they could lease. They ultimately found a 150-acre preserved farm nearby that would allow them to move and expand, and they signed a 10-year lease with the new landlord. Now more than half-way through the lease, the farm has expanded to offer several pick-your-own crops and a community supported agriculture (CSA) produce club, in addition to its established farm market.

One of the things that attracted the Comptons to this second leasing opportunity was that the farm already had a lot of the basic infrastructure their operation needed. There was deer fencing, an irrigation system, and a large farm market building. The farm also had some already-established fruit trees. Overall, some of the main provisions of the Comptons’ current lease agreement include the following:



- Farm market use – The premises and farm store may be used for retail sales.
- Property maintenance – Peaceful Valley Orchards is responsible for property maintenance and keeping the property to a “reasonable farming standard.” The landlord, meanwhile, is responsible for any major repairs.
- Insurance – Peaceful Valley Orchards must maintain liability insurance on the property at defined levels.
- Lease termination – Either party can terminate the lease provided that a one-year notice is given to the other party.
- Future purchase – Peaceful Valley Orchards has a right of first refusal to purchase the property should an outside party offer to buy the property. In the event someone makes an offer, the Comptons have 15 days to match the purchase price.

While this current lease is a better fit for Peaceful Valley Orchards than the first lease, there are still some aspects that could be improved to help the farm operation. Since Peaceful Valley Orchards produces orchard crops and has made a long-term investment in the property by planting new fruit trees, the Comptons would prefer if the lease were 20 or 30 years long and had provisions that made the lease more secure. The landowner was not willing to go beyond 10 years, however, and because her overall goal with the property is to make a profit, the property is continually on the market and includes the early termination provision noted above. These conditions make the lease agreement feel much more insecure to the Comptons compared to how they would feel with a typical 10-year lease term.

While the lease would also allow them to match someone’s offer to buy the farm and thus keep their business intact, the Comptons have serious reservations about whether they could make the necessary arrangements within the 15-day time period provided by the lease. Ideally, they would like two months to be able to make a purchase decision and secure the necessary funding. The Comptons also have little or no communication with their landlord, as she is very hands-off and handles all of their communication indirectly through a land broker. From the Comptons’ perspective, this lack of involvement by the landowner is an improvement compared with the degree to which their first landlord was involved. At the same time, not communicating directly with the landowner has made it difficult to establish the best relationship.

Despite the aspects of their current lease that feel insecure, the Comptons have invested in several improvements to the property to support the growth of their farm business. They have installed more deer fencing, made infrastructure improvements to the farm store, and also installed a cooler. The Comptons are hopeful the lease will continue, but should the lease end or be terminated, most of these improvements would be lost to the business.

Chickadee Creek Farm



Jess Niederer was familiar with agriculture from an early age, having grown up on her family's 80-acre farm in Pennington, Mercer County, but it was not until she had finished college and was working on another farm nearby that she began thinking of starting her own farm business. To start Chickadee Creek Farm and make her vision a reality, i.e., develop an organic fruit and vegetable operation with a community supported agriculture (CSA) and direct market focus, she began looking for access to land.

Jess' first thoughts focused on leasing a portion of her family's land. Since her father was still actively farming the ground, however, and

needed the acreage for his business, this land was not immediately available. After a period of some planning and negotiation with her family, Jess was ultimately able to secure a 5-year, rolling renewal lease for 5 acres to get started. This later became 8 acres when Jess' father, following a major storm, agreed to include an additional 3 acres from an area with better drainage.

Since Jess had previously worked for an operation whose farm model was similar to the model she envisioned for Chickadee Creek Farm, she was familiar with the basic property setup she would need for her business and with some of the important things to address in the lease. She was able to negotiate that the lease include the following for her operation: access to water for irrigation; permission to install deer fencing to reduce wildlife damage to her crops; permission to build a greenhouse for propagating vegetable crops; the ability to use barn space for storage; and the ability to set up a CSA distribution area on the farm. Jess wanted to add a provision that would require the landowner (her family) to purchase any deer fencing she installed at her own expense should the lease be terminated. However, this was not included in the final lease agreement. Overall, Jess and her family signed a formal written lease outlining much of their agreement. A few provisions were also addressed by verbal agreement.

As Jess' farm business began to grow, with demand for Chickadee Creek Farm's CSA shares increasing and with more of the farm's produce being sold at local farmers' markets, Jess saw the need to secure more farmland to allow her business to keep expanding and have sufficient land for her cropping plan. Since her family's farm was limited in its ability to provide additional acreage, it became clear to Jess that she would need to look for additional land off the farm.

Around this time, a property owned by the Friends of Hopewell Valley Open Space, a local nonprofit land trust, became available. While the nonprofit's main goals focus on promoting conservation through open space preservation, informed land use, and wise stewardship, the land trust has also been motivated to

support local agriculture. When the trust acquired a 50-acre piece of land several years ago that had traditionally been farmed, it saw this as an opportunity to combine its conservation and agricultural goals. It decided to retain 17 acres of the property in agriculture while transitioning the remaining area to meadow habitat, forested land, and a public access walking trail. The nonprofit's Board of Directors also felt it was important for its goals that organic practices be used on the agricultural portion of the property. Beyond these provisions, the land trust felt that its experience with agriculture was limited and decided to rely more heavily on the input of its potential farmer tenants to develop leases that could address their farm business needs.

Friends of Hopewell Valley Open Space had previously leased the property to another farmer, and after that lease ended, the nonprofit connected with Jess and they agreed to a long-term, 15-year lease. The land trust's new lease with Jess included some changes to reflect the different needs of her operation. Among other provisions, the lease ultimately included the following elements to help satisfy the needs and interests of both parties:

- The ability for Jess to install and use an electric fence to exclude wildlife from her plots. The nonprofit required that the fence be set back at least 10 feet from its walking trails to ensure public safety.
- Permission for Jess to install a well and drip irrigation system on the property at her expense, should it be necessary for her production.
- A rental rate that is tied to the USDA-NASS average rental rate for that region of New Jersey.
- The opportunity for Chickadee Creek Farm to offset some of the rental cost by performing some maintenance in the meadow area of the property.
- Conservation requirements for the farm's use of the property, including using sustainable practices and developing a Farm Conservation Plan with the USDA Natural Resources Conservation Service (NRCS).

Overall, the addition of this lease to Chickadee Creek Farm's land base has allowed the business to grow. It also has allowed Jess and her family more time to develop a "lease-to-own" or some other farm property transfer plan for the portion of Jess' operation at the family farm. Friends of Hopewell Valley Open Space has found that leasing some of its land for agriculture has also been a positive experience, as the land trust has been able to achieve its goals of promoting local agriculture and preserving land.

Derwood Farms



Mark Kirby's interest in agriculture began in childhood. While he did not grow up on a farm, Mark began working in agriculture early on, milking cows and picking apples for the farms around him. In his early twenties while he was working for a large dairy farm, he decided to start his own farm business, Derwood Farms, raising replacement heifers for the dairy industry.

As a first generation farmer who did not have family land available, Mark knew that leasing land was the only way to get started. He began by leasing 5 acres from a private landowner for his dairy replacement heifers. He then slowly built up his land base, adding a few acres at a time, and also expanded and transitioned the

scope of his operation over time. Now, thirty years later, Derwood Farms is a 400-acre operation based in Somerset County that raises beef cows and grows grain, forage crops, hay, and also sunflowers for local birdseed. Mark leases all 400 acres, with approximately half of the acreage leased from Somerset and Hunterdon Counties through their county parks departments and the other half leased from private landowners.

For his leases with the counties, Mark participates in the competitive bidding process to obtain or renew each lease as it reaches the end of its term. Currently, these leases have 5-year terms and use the standard lease agreements developed by each county. The parcels he leases do not have public access, but some of the leases do include a requirement that buffer areas be maintained around the parcels for monitoring and emergency access by the county. Doing this maintenance work requires some effort and reduces the overall acreage available for farming, but Mark factors these and other considerations into his thought process when making his bids.

The county leases have worked well and provided a stable land base for his operation, but there are a few things Mark would change about the leases and lease process if he could. He would like the lease term to be longer, for instance, but the NJDEP Green Acres restrictions associated with many of the parcels won't allow for a term longer than 5 years. Mark also would like the counties to conduct the bidding process in the summer rather than toward the end of the year. An earlier bidding process allows him more time to plan, prepare the fields, and plant a crop for the following year if he obtains the lease. Somerset County has moved up its bidding process to the summer to accommodate farmer needs.

These leases have also been beneficial to Somerset and Hunterdon Counties. In addition to receiving rental income, the counties do not have to do regular maintenance such as mowing. This helps reduce maintenance costs and helps keep the land open for other uses in the future. In some cases, the counties had purchased and/or preserved the parcels with other needs or purposes in mind, such as future athletic fields or a park with passive recreation. The leases allow the parcels to be farmed in the meantime, while the counties consider whether to transition the land into parks or to continue their agricultural use on a longer-term basis.

Many of Mark's leases with private landowners have been one-year leases that were agreed to with just a handshake. While this model has generally worked for Mark over the years, he would prefer it if these leases had longer terms, for instance for 4-5 years. There also have been a few instances in which having a written lease could have fostered better communication between himself and the landlord and prevented some frustration.

In one case, Mark had planted hay, a multi-year crop, and had prepared the land for the coming years, but then he and the landowner did not renew the lease for the following season. This was due in part to a disagreement Mark had with the landowner regarding the property's tillable acreage; it turned out the actual acreage was substantially smaller than what he had paid the landowner to lease. Since Mark saw the potential for this lease relationship to be problematic for his farm business, he chose not to pay more for the lease the following year. The landowner, meanwhile, chose to lease the land to another farmer who offered more money. After losing the lease, Mark sought reimbursement from the landowner for the value of the crop he had already established on the land. During this process, Mark engaged the Rutgers Cooperative Extension county office to help determine the value of the crop and also to act as a mediator between himself and the landowner.

Addressing hunting rights in leases also has been important to Mark to help avoid excessive wildlife damage to crops. Some of his leases give the hunting and trapping rights to him, while with some of the others, the landowner might lease the hunting rights to a separate entity. While Mark would rather control the hunting on a property himself, what matters to him most is that someone is hunting the land. On parcels where he is not doing the hunting, Mark makes an effort to talk with the hunters. In these discussions, he always conveys how important it is to his business that the wildlife population be controlled. He also makes sure that any outside hunters are aware of the crops he might have in the field.

Overall, Mark has had very few problems with his leases over the years. He attributes this to his efforts at maintaining open communication with his lease partners and to his care for the properties that he leases. Mark makes a special effort to respect the landowners and their land, maintaining each parcel as if it were his own. In instances where he might have to cross a landowner's yard or lane with his equipment to access the farmland, he tries to ensure that no damage is done to the landowner's property. He also makes it a priority to maintain the land free of erosion and other nuisances.

Sandbrook Meadow Farm



For Alex Sawatzky, gaining access to land and getting started as a new farmer has involved more than basic land leasing. He has worked with a landowner couple, Brent and Deirdre Alderfer, to become not only the farm manager for a new community supported agriculture (CSA) operation, Sandbrook Meadow Farm, that the Alderfers were starting on their land in Sergeantsville, Hunterdon County, but also a business partner in the CSA.

Alex had been working in agriculture for a few years when he and the Alderfers connected. After getting interested in farming through a sustainable agriculture and permaculture program in Costa Rica, Alex had returned to the United States and was working on a CSA farm in Pennsylvania. The Alderfers, meanwhile, had purchased their Hunterdon County property more than 10 years ago after falling in love with the setting. As time went by, they had become interested in seeing a CSA on the property, both to become more engaged with the community and to use and conserve the land in a sustainable way.

Because the Alderfers were living out-of-state initially and did not have the benefit of a farming background, they knew they needed someone who could live near the farm and who had enough farming experience to manage the new operation. They knew Alex socially and approached him with the idea of building Sandbrook Meadow Farm together. While Alex was hesitant at first about diving into an independent start-up operation, the thorough agreements that he and the landowners developed helped create a more secure arrangement for all parties.

Under the arrangement, Alex became the farm manager, officially hired by Sandbrook Meadow Farm LLC, the formal entity the Alderfers had created to manage the farm operation. The arrangement also established Alex as owning a minority interest in the LLC, with the option to invest further. The Alderfers hold the majority interest. At the farm's inception, an additional farm manager was hired under the same provisions, but the other person recently left, leaving Alex now as the sole farm manager. Overall, the parties developed three separate documents to govern their relationships and the business:

- 1) An operating agreement that establishes Alex as the farm manager for the LLC and creates a pathway through which he can purchase further partnership interest in the LLC
- 2) A lease through which the LLC leases the land from the Alderfers (with a 10-year term)
- 3) A promissory note that establishes a schedule through which the LLC will pay back the start-up capital invested by the landowners

In addition to naming Alex as the farm manager, the operating agreement for Sandbrook Meadow Farm LLC lays out some basic provisions for how the business is to operate. It specifies, for instance, that the farm will operate using a CSA model, selling shares of produce by annual subscription. It also specifies that the farm manager will prepare an annual budget for the farm, with the budget approved and funded by the LLC each fall for the following year. Initially, the landowners may also provide some funding. Per the agreement, the farm manager is paid a monthly salary and is also entitled to an annual bonus based on the farm's net annual profits. The agreement also grants Alex the option to gradually purchase interest in the LLC over the term of his management contract; the purchase price, as well as a schedule for purchasing additional interest, are both laid out.

Under the lease agreement, through which the land is leased to Sandbrook Meadow Farm LLC by the Alderfers, the LLC has access to approximately 10 acres of land and can use the first floor of two separate barns. The rental rate for the land is specified separately from the rental rate for the barn space. The LLC was also given access to the well on the property for the farm's water needs, and the LLC is responsible for paying for any electricity usage at a pre-determined rate. Regarding the installation of improvements, the landlord is to install deer fencing around the perimeter of the property, and the tenant is not to construct new buildings or make permanent alterations to existing buildings without prior permission from the landlord. The use of signs, insurance requirements, and property maintenance is also outlined in the lease.

While the lease and other documents are somewhat detailed, it was important to Alex and the Alderfers to define the important components of the agreement and to establish the relationships between the parties. This level of planning allowed the Alderfers to invest in starting the business, as there was a previously determined plan for how their investment was to be paid back. The structure of the documents also allowed Alex to be a partner in the business. He did not have the resources to initially invest in the project, but as someone significantly responsible for the success or failure of the business and providing significant "sweat equity," he was provided a way to acquire actual equity in the business if he desired.

As Sandbrook Meadow Farm now moves forward with a single farm manager rather than two, the parties also probably will revisit the lease and other documents, adjusting them as necessary to ensure they reflect the current arrangements.

Additional Resources for Landowners and Farmers

As you continue to think about your goals and begin to develop a lease, the following additional resources may be helpful. See below for more information on organizations, programs, and additional leasing guides that may help you as you research land capabilities, production guidance, the agricultural industry, and lease ideas, and as you begin your search for a farmer or for land.

Resources Related to Land Characteristics and Production Agriculture

- ❖ **For assistance understanding soil, water, and other natural resources or land aspects, and understanding farm businesses and the agricultural industry**

New Jersey Agricultural Experiment Station

The New Jersey Agricultural Experiment Station (NJAES) is the research and outreach arm of Rutgers, The State University of New Jersey. NJAES operates as Rutgers Cooperative Extension (RCE) at the local level, with RCE county offices staffed by agricultural agents and specialists who can provide information and consultation on agricultural, natural resource, and other topics. Landowners and farmers can contact their RCE county office to speak with their county agricultural agent when they have questions about their farm or farm business. If you are not sure where to start, contact your RCE county office.

Some of the services offered by NJAES and RCE to assist landowners and farmers include the following: soil testing; pesticide applicator certification; twilight farmer meetings; and providing the latest research and findings on commercial agriculture topics, such as crop yields, production practice trials, marketing, farming on the urban fringe, energy management, and pest and wildlife control methods. Many of these resources, including several newsletters and blogs, are available on the NJAES website.

<http://njaes.rutgers.edu/> - NJAES homepage

<http://njaes.rutgers.edu/county/> - Contact information for RCE county offices

USDA Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS) provides assistance to farmers and landowners regarding the conservation and management of their soil, water, and other natural resources. This technical assistance is tailored to each customer's specific needs, is science-based, and typically includes the development of a farm conservation plan for the landowner or farmer. Financial assistance may also be available for the implementation of a farm conservation plan and other conservation practices through additional NRCS-administered programs. The NRCS New Jersey State Office is located in Somerset, and NRCS serves landowners and farmers statewide through a network of six regional service centers and three special project offices. For conservation-related questions and assistance, contact your local NRCS service center.

<http://www.nj.nrcs.usda.gov/>

Web Soil Survey

Another service offered by USDA NRCS is the Web Soil Survey (WSS), an online tool that provides soil data and information based on the National Cooperative Soil Survey. Through the WSS, landowners and farmers have access to the largest natural resource information system in the world. The system has soil maps and data available for more than 95 percent of the nation's counties and all of New Jersey. The WSS website includes information on how to use the online program to identify a farm property's soil types, perform soil mapping for the property, and access detailed information about soil types and their suitability for different uses.

<http://websoilsurvey.nrcs.usda.gov/>

Northeast Organic Farming Association of New Jersey

The Northeast Organic Farming Association of New Jersey (NOFA-NJ) is a membership-based, educational nonprofit organization that supports sustainable agriculture efforts in New Jersey. NOFA-NJ's focus includes supporting the production, preparation, and distribution of locally grown and sustainable foods in New Jersey. To assist new and established farmers, landowners, and other members, NOFA-NJ offers several educational workshops and courses such as the Exploring the Small Farm Dream course and the Tilling the Soil of Opportunity business planning course; sponsors twilight farmer meetings; coordinates an annual winter conference; provides farm business and natural resource consultation; has a section of online classifieds and technical resources; and coordinates a Beginning Farmer Program. NOFA-NJ staff also offers on-farm consultations on land suitability for organic production, and on NRCS conservation programs for organic and transitioning-to-organic farmers.

<http://www.nofanj.org/>

State Agriculture Development Committee

The State Agriculture Development Committee (SADC) is the state agency that leads in the preservation of New Jersey's farmland and works to help maintain a viable agricultural industry in New Jersey. The SADC coordinates the Farmland Preservation and Right to Farm Programs in partnership with local County Agriculture Development Boards (CADBs). The SADC also administers the Agricultural Mediation and Farm Link Programs.

The goal of the Farmland Preservation Program is to protect a permanent agricultural land base to support the State's agricultural industry. When a farm is preserved, an easement is placed on the property that ensures the land cannot be developed for anything but agriculture. Through the Right to Farm Act, responsible commercial farmers can receive protection from nuisance complaints and unduly restrictive local regulations. To be eligible for right-to-farm protection, farms must operate in accordance with generally accepted Agricultural Management Practices (AMPs), which are standards that the SADC has adopted statewide or that are considered generally accepted. Visit the SADC website for more information on Farmland Preservation, Right to Farm, and the SADC's other program areas.

<http://www.nj.gov/agriculture/sadc/>

Agricultural Mediation Program

One of the programs offered by the SADC is the Agricultural Mediation Program. Designed to help farmers, neighbors, and municipalities resolve Right to Farm related issues quickly, amicably, and informally, the program may also be used to help resolve issues between USDA agencies and farmers, and issues between landowners and tenant farmers. The program is voluntary and uses a roster of trained, impartial mediators whose job is not to impose a solution but rather to facilitate discussion. The mediator helps disputing parties examine their mutual problems, identify options, and determine if they can agree on a solution.

<http://www.nj.gov/agriculture/sadc/rtfprogram/conflictres/agmediation/>

County Agriculture Development Boards

County Agriculture Development Boards (CADBs) are county government entities and are the SADC's primary local partners in the Farmland Preservation and Right to Farm Programs. Most CADBs have adopted comprehensive farmland preservation plans that describe each county's agricultural land base and industry; land use planning context; farmland preservation details and goals; natural resource conservation programs; economic development plans; and agricultural industry sustainability, retention, and promotion strategies. For Right to Farm (RTF) questions and issues, the CADB is the primary local contact for landowners, farmers, residents, and municipal officials. CADBs are equipped to handle RTF complaints from neighbors and municipalities, as well as proactive RTF requests from farmers for site-specific agricultural management practice (AMP) determinations.

<http://www.nj.gov/agriculture/sadc/farmpreserve/contacts/cadbs.html>

County Boards of Agriculture

County Boards of Agriculture are local, non-government affiliated organizations comprised primarily of farmers that typically meet monthly to discuss agricultural issues of local interest and to filter agricultural policy positions up to the State Board of Agriculture and New Jersey Farm Bureau. Landowners and farmers can visit a County Board of Agriculture's monthly meeting to meet and introduce themselves to local farmers; learn about current issues; discuss farming opportunities they have available or are seeking; and get feedback and support on concerns, questions, or issues they may have. To learn more about your local board or when it meets, contact your Rutgers Cooperative Extension county agricultural agent or New Jersey Farm Bureau, or see the contact information for County Board of Agriculture board members in the linked directory below.

<http://www.nj.gov/agriculture/pdf/dirbook.pdf>

New Jersey Department of Agriculture

The New Jersey Department of Agriculture (NJDA) promotes and protects the state's agricultural industry. It is responsible for a variety of agricultural product, farm regulatory, plant and animal health, natural resource, and food assistance programs. A general reference page, "Topics A to Z," can be found on the Department's homepage with links to more information on NJDA's programs and on agriculture in New Jersey.

<http://www.nj.gov/agriculture/>

New Jersey Farm Bureau

New Jersey Farm Bureau (NJFB) is a membership-based organization that represents and lobbies on behalf of the agricultural community at the local, state, and national level. The Farm Bureau writes and circulates a weekly two-page newsletter, as well as a quarterly “Farm Bureau Update” publication, to keep its farmer and other members up to date on the farming industry around the state and nation. NJFB may also be familiar with attorneys and other professionals who may be able to help you as you develop a lease.

<http://www.njfb.org/>

USDA National Agricultural Statistics Service

The USDA National Agricultural Statistics Service (NASS) provides up-to-date statistics on U.S. agriculture. Landowners and farmers can learn more about New Jersey agriculture, including average rental rates for counties or regions, through the NASS website and the USDA NASS New Jersey Field Office.

http://www.nass.usda.gov/Statistics_by_State/New_Jersey/index.asp

http://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Cash_Rents_by_County/index.asp

Northeast Beginning Farmers Project

The Northeast Beginning Farmers Project is a program coordinated by the Cornell Small Farms Program to support new and aspiring farmers in the Northeast. The project offers a number of online courses, resource guides, publications, videos, and other information on its website. Course topics range from basic topics about starting a new farm operation to more specific topics such as business planning, marketing, and production guidance on specific crops. For landowners or farmers getting started and looking for more information, a good place to start on the project’s website is the “New Farmer Hub.”

<http://nebeginningfarmers.org/>

Start2Farm

Start2Farm is a project of the USDA National Agricultural Library in partnership with the American Farm Bureau Federation. Designed to be a clearinghouse of programs and resources for new and beginning farmers, the Start2Farm website organizes its resource links by different topics, such as learning how to farm; finding financing; locating production guidance and other services; and connecting with other people. Included on the Start2Farm website are resources from government agencies, educational institutions, nonprofits, and other organizations.

<http://www.start2farm.gov/>

Additional Leasing Guides and Leasing Resources

- ❖ For further assistance refining plans and reviewing leasing considerations, lease components, and lease templates

Land For Good

Land for Good is a Northeast-based nonprofit organization designed to help farm seekers gain access to land, farm families transfer their farms, and landowners make their land available for farming. On the Land for Good website, there are several online resources available to help landowners and farmers who are considering leasing. Some of these resources include the following:

“Making My Land Available for Farming: Where Do I Start?” - A worksheet for landowners who are thinking of making their land available

“Where do I Start? Acquiring Land to Farm” - A similar worksheet for farmers

“Is Farm Leasing Right for You?” - An online leasing tutorial for farmers

“Landowner’s Guide to Leasing Land for Farming” - A leasing guide for private landowners (see the third Land For Good link below)

“Leasing Land to Farmers: A Handbook for New England Land Trusts, Municipalities and Institutions” - A leasing guide for public-entity and land-trust landowners

Sample Leases - Samples of short-term, long-term on public land, and multi-year leases

<http://www.landforgood.org>

http://www.landforgood.org/land_leasing_materials.html

<http://www.landforgood.org/pdfs/LandownersGuidetoLeasingLand.pdf>

“A Lease Agreement Guide for Landowners and Farmers”

Available through the University of Vermont’s Center for Sustainable Agriculture, this leasing guide looks at the basic elements for landowners and farmers to consider when discussing or developing a lease agreement. Topics discussed include lease agreement types, determining a fair price, and approaches to consider if issues arise.

<http://www.uvm.edu/~susagctr/Documents/leaseagreementguide.pdf>

“Holding Ground: A Guide to Northeast Farmland Tenure and Stewardship”

“Holding Ground” is an in-depth farmland leasing guide that addresses farmland access, transfer, affordability, and stewardship topics. In focusing on leasing and other non-traditional tenure options, the guide includes sample lease templates with explanations; sample stewardship standards; and several worksheets and case studies. The guide is a publication of the Intervale Foundation and the New England Small Farm Institute (NESFI) and is available for purchase on the NESFI website.

<http://www.smallfarm.org/main/bookstore/publications/>

“Farmland ConneCTions: A Guide for Connecticut Towns, Institutions and Land Trusts Using or Leasing Farmland”

Developed by the University of Connecticut Cooperative Extension System and the American Farmland Trust, “Farmland Connections” is a farmland leasing guide for landowners and farmers that focuses on making publicly owned land or land trust-held land available for agriculture. The guide includes an in-depth discussion of the important components of a good lease as well as leasing profiles of farmers and landowners, and their lease agreements.

http://www.farmland.org/documents/FINAL_AFTFarmlandConneCTions_lo.pdf

Sustainable Farm Lease

Sustainable Farm Lease is a project of the Sustainable Agricultural Land Tenure Initiative coordinated by Drake University’s Agricultural Law Center and Iowa State University’s Leopold Center for Sustainable Agriculture. The project’s website includes a “Landowner’s Toolbox” with a leasing guide, documents to help landowners set priorities for their land, and reference materials and videos on tenure and stewardship issues. While these resources are targeted toward Iowa farms, some of the key issues and information presented may be applicable to New Jersey as well.

<http://sustainablefarmlease.org/>

<http://sustainablefarmlease.org/2011/02/assisting-beginning-farmers/>

National Agricultural Law Center

Administered by the University of Arkansas, the National Agricultural Law Center compiles electronic resources on agricultural and food law topics. The Center’s website organizes some of these resources into different “Reading Rooms,” including one on agricultural leases. The website also includes a compilation of some agricultural laws by state.

<http://www.nationalaglawcenter.org/readingrooms/agleases/>

Farm Linking Resources

❖ For assistance linking landowners and farmers

New Jersey Farm Link Program

The New Jersey Farm Link Program serves as a resource center for new farmers, farmers seeking access to land and farming opportunities, and landowners seeking farmers. To help landowners and farmers connect, the program offers a free online listing service. Landowners looking for farmers may post listings to advertise the farming opportunities they have available, such as land for lease (or partnership, farm manager, and other opportunities). Likewise, farmers may post listings of the farming opportunities they are seeking.

<http://www.nj.gov/agriculture/sadc/farmlink/> - Online Farming Opportunity Listings

Northeast Organic Farming Association of New Jersey

One of the services the Northeast Organic Farming Association of New Jersey (NOFA-NJ) provides on its website is agricultural classified listings. Through these online listings, landowners and farmers can post descriptions of the land and farming opportunities they have available or are seeking. NOFA-NJ also coordinates a Beginning Farmer Program to help new farmers gain experience and start their own farm businesses. Landowners may be interested in connecting with these farmers as they move through the Beginning Farmer Program.

<http://www.nofanj.org/classified-listings.html> – Online Agricultural Classified Listings

http://www.nofanj.org/programs_beginning-farmer-program – Beginning Farmer Program

Print Advertisements and Classifieds

In addition to posting listings online, some landowners and farmers advertise farming opportunities available/sought in print publications, such as agricultural or local newspapers. Two agricultural publications with print (and online) classifieds available are the New Jersey Farmer and Lancaster Farming newspapers.

<http://www.americanfarm.com/classifieds> – New Jersey Farmer classifieds

<http://www.lancasterfarming.com/classifieds/> – Lancaster Farming classifieds

New Farmer Development Project

The New Farmer Development Project is a program designed to help immigrants with agricultural experience establish their own sustainable small farm businesses in the New York City region. Coordinated by the nonprofit organization GrowNYC, the project provides its participants with agricultural industry education and training, marketing assistance, mentorship support, and assistance with identifying appropriate land to lease or purchase. Landowners in New Jersey may contact the New Farmer Development Project to learn about participating farmers who may be seeking access to land.

<http://www.grownyc.org/greenmarket/nfdp>

Additional linking strategies to consider

Speaking with other local landowners and farmers, and with local agricultural organizations, is also often an effective strategy for promoting and learning about farming opportunities. As you speak with people and as they become more aware of what you have available or are seeking, they may refer you to someone they know. Contacting your local Rutgers Cooperative Extension (RCE) county agricultural agent or attending a County Board of Agriculture monthly meeting, for instance, may help you with local word of mouth and introduce you to people who may be of assistance.

<http://njaes.rutgers.edu/county/> – Contact information for RCE county offices

<http://nj.gov/agriculture/pdf/dirbook.pdf> – Directory of New Jersey Agricultural Organizations

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State Agriculture Development Committee
www.nj.gov/agriculture/sadc

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