Overview of Farmland Leasing & Purchasing Arrangements

This table provides an overview of land leasing and purchasing arrangements, including arrangements that serve to preserve land for agriculutural use for generations. The glossary that follows explains the terms used in this table.

	LAND LEASE/RENTAL ARRANGEMENTS								LAND PURCHASE ARRANGEMENTS			
	Farmer does not own buildings							*Farmer owns buildings*	*Farmer owns buildings & land*			
	Farm incubator	**Lease from a land trust**	**Oral/ handshake agreement**	**Short-term cash lease**	**Long-term cash lease**	**Flexible ("flex") lease**	**Lease with "option to purchase" held by farmer**	**Ground lease from a land trust**	**Purchase subject to ag easment with OPAV* held by land trust**	**Purchase subject to ag easment without OPAV* held by land trust**	**Lease-to-own**	**Purchase**
Typical term length	1–3 years	3+ years	1–many years	1–3 years	3+ years	1–many years	Varies; often 8–20 years	Often 99 years; typically at least 30 years if farmer buys buildings. Maximum allowable lease term varies by state.	Indefinite	Indefinite	Varies; often 8–20 years	Indefinite
Control over infrastructure	Little to none	Moderate	Little to none	Moderate	Moderate	Moderate	Moderate to high; increases when farmer exercises their "option to purchase"	Moderate; developement restricted to certain places/ sizes/types of structures	Moderate; development restricted to certain places/sizes/ types of structures	Moderate; developement restricted to certain places/ sizes/types of structures	Moderate to high; increases when farmer purchases property	High
Equity gains in land and infrastructure investments	None	Little to none	Little to none	None	None	None	High	Moderate; equity gains in buildings only	Moderate	High; equity gains in land and buildings	Low to high; increases when farmer purchases property	High; equity gains in land and buildings
Upfront cost	Low	Low to moderate	Low to moderate	Low to moderate	Low to moderate	Varies; low to high	Moderate to high	Moderate	Moderate	Moderate to high	Moderate to high	High

* OPAV stands for "option to purchase at agricultural value." See glossary for definition.

This glossary defines the terms used in the table on page one. It also defines additional terms that are useful to know as you consider leasing, purchasing, or transitioning farmland.

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› **Cash lease:** As part of a *cash lease* agreement, a tenant usually pays a fixed dollar amount in rent, either on a per acre or whole farm basis. Cash leases may be modified depending on crop yield—for example, rent may increase in good years and decrease in bad years (see flex lease below). A cash lease can be short term (one to three years), or long term (three or more years). These leases may be renegotiated or ended at the conclusion of the lease term. Cash leases are also known as *cash-rent leases*.

› **Easement:** *Easements* give a person, company, or organization the right to use land they don't own for a specific purpose. (For example, utility companies may need to access telephone cables that are on someone's property.) Easements can also limit the ways in which land is used, such as by protecting its natural resources from commercial development. There are a wide variety of easements that can exist, and they can have implications for property taxes and property values. Here are some examples of easements that are relevant to land suitable for agricultural use:

- **Conservation easement:** *Conservation easements* are voluntary, legal agreements between a landowner and a public agency or qualified conservation organization, such as a land trust (see below). These agreements permanently limit how land is used in order to protect its natural resources. Landowners can either sell or donate the development or other rights associated with a conservation easement in exchange for monetary compensation or tax breaks.
- **Agricultural conservation easement:** Similar to conservation easements, *agricultural conservation easements* are voluntary agreements with a public agency or qualified conservation organization that limit how land is used. This kind of easement, however, is specifically designed to keep productive land available for farming.
- **Option to purchase at agricultural value (OPAV):** The *option to purchase at agricultural value*, or OPAV, is language included in, or added to, an agricultural conservation easement that says that in the event the landowner intends to sell to a buyer who is not a farmer, the option holder (or its assignee) has the right to purchase the protected farmland at its agricultural value. This provision can help ensure that conserved land remains affordable to, and owned by, farmers.
- **Preemptive purchase right (PPR):** Like OPAV (see above), *preemptive purchase right*, or PPR, is voluntary language that can be included in, or added to, an agricultural conservation easement. In practice, it has the same impact. In some states, such as New York, easement holders may decide to use the preemptive purchase right language over OPAV language because of legal technicalities that make it more defensible under the law if it were challenged.
- **Right of first refusal:** A *right of first refusal* is a contract that gives the holder the opportunity to intercede in a proposed sale to a prospective buyer, and purchase the property for the price the prospective buyer was willing to pay. A land trust can hold a right of first refusal on a farm property to help ensure that the property will not be sold to a buyer who will not keep the land in agricultural production. A farmer can hold a right of first refusal on a farm property that they are leasing, to give them a chance to purchase it (if they can match the prospective buyer's offer) before seeing it sold to a different buyer. When exercising right of first refusal, the holder is typically permitted to purchase the land directly, or assign its right to do so to a third party, but the price paid needs to match the original offer.
- **Affirmative farming requirements:** While standard agricultural conservation easements prohibit or restrict residential or commercial development on a piece of land, few of these easements require that the land be actively used for farming. Language adding an *affirmative farming requirement* to an agricultural easement defines agricultural use and establishes that the land must remain in agricultural use. The affirmative farming requirement also establishes remedies, then consequences, for

failure to comply. Affirmative agricultural easements usually lower the land's value because it can no longer be used for development, which can make it more affordable to farmers.

› **Equity:** *Equity* refers to the financial value that has accumulated over time in a property and/or its buildings. Equity in farmland and farm buildings can accumulate when farmers pay down their mortgage, when property values increase over time, or when valuable infrastructure is added to the land, such as barns, greenhouses, irrigation systems. It can also increase when natural resources are improved, such as soil health.

› **Farm incubator:** *Farm incubators* provide beginning farmers with access to low-cost land, infrastructure, equipment, and potentially other resources such as skills training, mentorship, or entry to established markets for a predetermined number of years. Several farm businesses often share the equipment and infrastructure on farm incubator sites. Farm incubators are typically operated by nonprofit organizations.

› **Flexible lease ("flex lease"):** Fluctuating markets and uncertain yields make it difficult to arrive at a fair cash rental rate in advance of each farming season. To address this problem, some owners and tenants develop *flexible lease* agreements in which the rent is determined after crops are harvested. The final rental rate is based on actual prices and/or yields obtained that year. In these types of agreements, risk and profit opportunities are shared by the owner and the tenant.

› **Ground lease:** An agricultural *ground lease* is a type of agreement that allows tenants to lease the land only, and permits the tenant to build and own structures on site. In ground lease arrangements, the land is typically owned by a land trust or another nonprofit organization, and the farmhouse and agricultural structures are owned by the farmer leasing the land. Secure land tenure is provided through a long-term (usually 99-year) lease that allows the farmer to obtain financing to construct or improve buildings on the site.

A ground lease typically requires owners to occupy the site, and has active farming requirements to guarantee the community a secure local source of food. Most agricultural ground leases are created to make land affordable to farmers, so they include resale restrictions to ensure the property will only transfer in the future to a working farmer for an affordable price.

› **Land trust:** *Land trusts* are typically nonprofit or volunteer-run organizations that work to protect land from development. Land trust employees or volunteers work cooperatively with landowners to conserve their land using a variety of methods. Land trusts also work to ensure that conserved land continues to be properly protected, and to resolve issues when conserved land is not being properly protected.

› **Lease-to-own:** The goal of *lease-to-own* agreements is to permanently transfer ownership of a farm over the long term. In a typical lease-to-own arrangement, the incoming (tenant) farmer pays rent to the landowner to allow the tenant farmer to start working on the land and to start investing in eventual ownership of the property. The landowner continues to own the land until certain payments have been made and/or other prerequisites are met, and then the tenant becomes the landowner. A lease-to-own scenario can be a good option for farmers who want to own property in the future, but cannot access sufficient financing now. These are usually complicated transactions that should involve legal assistance and guidance from a farm service provider familiar with lease-to-own transactions.

› **Oral contract ("handshake agreement"):** An *oral contract*, also referred to as a handshake agreement, is a legally binding spoken agreement between two or more individuals or groups. Because these agreements are not written down, it can be difficult to prove the existence and terms of oral contracts. Still, oral contracts are generally enforceable by law—individuals or groups that breach the contract can be held liable. To help prove that an agreement exists, the agreement should be made in the presence of a witness, if possible, and documented in some way.

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