

Hawai'i farm lease template: a resource for landowners and farmers

NOTE: This template is an educational tool based in significant part on lease templates developed by Land for Good (landforgood.org). Please consult with your advisors and attorney.

TO USE: Explanations (italicized red font) and examples (italicized green font) are provided below to aid in the creation of a farm lease. Delete this text when creating your unique lease.

Farm Lease Template

*[Note: *In Hawai'i, all county codes prohibit leasing a portion of a single parcel of land, that is, a portion of a property designated by a single tax map key (TMK) number). If the Lessee intends to use less than the entire parcel, it is a better practice to call the agreement a "license", rather than a "lease".]*

1. The Parties. This Lease Agreement is entered into on this ____ day of _____, 2019, between _____ ("Lessor") whose mailing address is _____, and _____ ("Lessee") whose mailing address is _____, for the Lease of certain land for agriculture.

[Note: The purpose of naming the Parties to a farm lease is to make sure that the proper individuals or entities are identified and responsible for the terms they agree to by virtue of signing the contract.

The Party to a lease contract is one who holds the obligations and receives the benefits of a legally binding agreement. When two Parties enter into an agreement, each accepts the benefits and obligations specified therein.

The Lessor is the person or entity who leases a property to another. Another term for this is Landlord. In farm leases, you may also see "Landowner" used.

The Lessee is the person or entity who holds the lease of a property. Another term for this is Tenant. In farm leases, you may also see "Farmer" used.

The Landowner may be an individual, or business such as a corporation or limited liability company. The Farmer may also be an individual, or business such as a corporation or limited liability company. Each entity (individual, corporation or limited liability company) has certain rights and responsibilities.]

2. Preamble and Statement of Purpose

Whereas the Parties hereto are committed to working together toward agricultural uses of the property described herein; and:

Whereas.....

[Note: The whereas clause sets the tone and lays out any overall shared goals and agreements between the parties, e.g., both parties share a commitment to caring for the property, the Lessor desires to provide an affordable farming opportunity, the parties agree to work together to provide food for the local community, etc. The Preamble is not legally required.]

The purpose of this section is to provide an opening statement about the vision and goals shared by the Parties. This section can state the “why” Landlord and Farmer are entering into this agreement. This can be useful in setting the context and tone for the legalities that follow. A Preamble is particularly valuable for stating specific objectives such as providing an opportunity to a beginning farmer, stewarding an historic site or providing food for underserved communities.]

[Examples:

....both parties share an interest in the long-term health and productivity of the agricultural lands and related features described below ...

... the Lessor wishes to offer a secure and affordable farming opportunity to the Lessee ...

... the Parties are committed to work together cooperatively towards establishing an agricultural operation on the Property, and eventual fee ownership of the Property by Lessee

...

... the Lessor wishes the property to be restored and maintained according to high standards of stewardship ...]

The parties agree as set forth below.

3. Description of Leased Premises

The Premises shall consist of lands, roads and/or structures located at the following address or location: _____, and more particularly described in Attachment A to include the following:

[Note: The Premises describes what is being leased. At minimum, this means the land, but can also include buildings and other infrastructure such as greenhouses, wells, and fencing. A “whole farm” lease could include a residence, tools, and even livestock as part of the Premises.

Any new structures or improvements to structures that are not included at the time of signing the lease are not part of the Premises. They are considered improvements to the Premises. This can be tricky, because sometimes existing infrastructure on the Premises can also be referred to as improvements. It is useful to list and describe all structures and improvements on the property at the time of the signing of the lease.

Sometimes the word “Property” is used instead of “Premises” in a lease. Usually this is fine. However, if the Landlord owns more property than the lease covers, this can get confusing. For example, a Landowner owns a 100-acre parcel. She is leasing 50 acres. The lease refers to the Tenant’s access to the property. The Parties need to state clearly whether the Tenant has the right to access any part of the Landlord’s property that is outside of the Premises.

The purpose of this section is to identify and describe what is being leased, so that the Parties to the lease (as well as a third party such as an appraiser, a judge, or subsequent owner) can easily identify it and understand its condition at the outset of the lease. A clear and thorough description of what is (and therefore, is not) being leased is paramount. The description of the leased Premises should include an address, a description of the boundaries, and a plot plan, aerial photo or diagram (which is typically attached as an appendix to the lease document). A tax map key map is usually attached to the lease, or a description of metes and bounds. More elaborate descriptions would include detailed baseline conditions, photographs, building inspection reports, etc.

It’s a good idea to note that the Tenant accepts the Premises in “as is” condition. In some cases, it is important to point out what is excluded from the leased Premises.]

[Examples:

The Premises shall consist of cropland and other land, the cottage on the property, the barn, the CSA shed, and all roads and structures including buildings thereon and all other improvements and appurtenances thereto, including, but not limited to, a parking lot, all driveways, and landscaping as more particularly described in Attachment A which includes a narrative and photos of the current condition of the structures and roads.

“As is” condition: Lessee agrees to accept the Leased Premises in “as is” condition and with all faults existing as of the date hereof. Lessee agrees that this Lease has been entered into after full investigation of the Premises, and without reliance upon any statement or representation by the Lessor unless expressly set forth in this Lease.]

4. Lease of Tools and Equipment

This lease also includes tools and equipment in their current condition as more particularly described in **Attachment B**.

[Note: Leased tools and equipment could be listed in this paragraph or in a separate lease.]

5. Lease Term and Renewal

- a) The term of this Lease shall be for a period of XX years (e.g., 5-25 years), commencing _____ and ending _____.
- b) The parties shall have the option to renew or extend this Lease according to the following provisions:
- c) Upon expiration or termination of the Lease, Lessee shall have the right to harvest the last crop(s) in the ground, or the fruits of any tree, bush, or grass that was growing in the for Leased Premises for a period not to exceed ____ months.

*[Note: The **Term** means the period of time the lease is in effect. It is typically defined by specific start (commencement) and end (termination) dates of the lease. **Extension** means moving the termination date of the current lease, typically for another full term. **Renewal** means starting a new lease upon the expiration of the current lease. **Lease-to-own** refers to methods by which a lessee can purchase the leased property.]*

This purpose of this section is to clearly state the period of time the lease is in effect. If the term is too vague (for example, "one year"), the lease can be deemed unenforceable and merely a "tenancy at will," which means that the lease is only valid from month to month, and can be terminated at any time.]

[Example Lease Renewal Provisions:

The Parties shall have the option to renew the Lease for an additional ____ year period. Tenant shall deliver to the Landlord a written request to renew the lease for the additional period. Landlord shall have 30 days to provide written notice of acceptance or rejection of the offer. If the Tenant fails to deliver said notice, the lease shall terminate at the end of the current term. Conversely, if the Landlord fails to notify the Tenant the lease shall automatically renew for the additional period.

Rolling lease term: This lease shall have a rolling renewal. This lease term shall run for three calendar years, commencing on January 1, _____. At the end of each calendar year, the lease term shall automatically extend for another year such that the term is always three calendar years, unless terminated under the provisions of this lease.

Evergreen lease term: The term of this lease shall be two (2) years, starting on the date hereof and ending on the two-year anniversary of that date. The term shall be automatically extended an additional two (2) years on the anniversary of the term; provided that neither Party has given written notice of termination to the other ninety (90) days prior to the annual extension pursuant to any provision herein.

Lessee may purchase all or part of the Premises according to either a separate or attached Option to Purchase agreement or Right of First Refusal agreement.]

6. Rent

a) Lessee agrees to pay Lessor the following rent:

[Note: Consideration is the exchange of value by both Parties to a contract. Rent is the “consideration” that a Tenant pays to a Landlord for the occupancy and use of the Premises. Money is the most common consideration, although the Parties may agree to rent payments in the form of goods or services. The purpose of this section is to clearly state the consideration and how it may be adjusted during the term. Stating the exchange of value by both Parties is essential element for a legal contract, even if the exchange is nominal.]

[Examples:

The Tenant agrees to pay to Landowner rent in the amount of \$200.00 per month payable on the ____ day of each month. Payments shall be mailed to the Landlord at the above noted address. Payments made after the ____ date shall be assessed a late payment fee of \$____. Payments are subject to General Excise Tax of 4.xx%.

The Tenant shall pay rent in the form of 2 full CSA shares per season, valued at \$____ per share.

Lessee shall perform certain caretaking duties equal to \$200/month, hereafter referred to as “Caretaker Labor”, and more particularly described in Attachment D as the consideration.]

Subject to the following conditions:

[Examples:

In consideration of the purposes of this Lease, the Landlord waives Tenant’s payment of Rent for the first term of this Lease.

Tenant shall deliver the rent by the first day of each month at the address specified herein.

A penalty of \$25 per month will be assessed on all late payments.]

b) The rent may be renegotiated for any Lease extension or renewal, according to the following formula and/or procedures:

[Examples:

If the Lease is renewed, the rent shall be adjusted at the beginning of each new term using the Consumer Price Index. The rent shall not decrease during the Lease Term as a result of the CPI computation.

The rent will increase by X% annually.

Not less than 6 months prior to renewal, the parties will renegotiate the rent which will not exceed 10% more than the current rent.]

c) Lessee is responsible for the following costs and charges:

[Examples: utilities, taxes, other fees. This can be deleted if covered by Section 10, below]

[OR] Lessee is not responsible for any other costs or charges.

7. Permitted Uses and Use Restrictions

*[Note: **Permitted uses** means allowed activities, which can be described generally or in more specific terms in the lease. A lease may broadly permit “normal agricultural activities” or it may have a list that “includes but is not limited to” certain activities. A permitted use may still require permission. For example, a Tenant may be permitted to remove trees, but only certain trees approved in advance by the Landlord. **Prohibited uses** are expressly not allowed, although a lease might prohibit an activity unless specific permission is granted. For example, it might say, “the Tenant may not alter the historic façade of the barn unless prior written permission from the Landlord is obtained.” **Restricted uses** are those limited or specified by the terms of the lease or by any applicable legality such as statutory, zoning or other regulatory requirements. For example, if the lease is subject to any agricultural conservation or other easement on the property which may limit activities or access.*

The purpose of this section is to clearly describe what the Tenant is and is not allowed to do on the Premises. The Landowner and Tenant have expectations for how the Premises will be used. Anticipating potential areas of conflict regarding the use of the Premises at the outset, and establishing clear guidelines to address them, will minimize disagreements during the term of the lease. In some instances, it might be helpful to include a provision in this section where the Landlord and Tenant meet periodically to discuss and agree on farm operations plans.

This section addresses farming practices and stewardship, land use, and any management or conservation plans. These terms refer to various formats for describing in detail how the land and other natural and built features of the Premises will be managed. Such plans are typically referred to in the lease and appended. Often, permitted activities are tied to a land management plan or conservation plan prepared by or for the Tenant.]

a) Lessee is hereby permitted all normal activities associated with agricultural purposes including but not limited to the following [OR Lessee is hereby permitted the following activities]:

[Examples:, planting, cultivating and harvesting of crops, including perennial crops; application of soil amendments; pest and weed management, erection and management of temporary structures such as greenhouses, hoop houses, temporary fencing, irrigation systems, livestock sheds etc.; use, routine maintenance and storage of tools and equipment; post-harvest washing, cooling, sorting, and packing; management of brush, field edges and roads; on-site sales of goods produced on the Premises; and related educational and other public programming on the Premises.]

b) Lessee agrees to prepare and comply with the following farm plans and/or practices:

[Examples:

NRCS Conservation Plan, organic certification, Holistic Management Plan, waste/nutrient management plan; crop rotation, habitat management, intensive grazing, etc.

Landowner/Lessor shall develop a Land Management Plan, attached as Attachment ___, which will address the natural characteristics of the land, outline pertinent ecological principles, and set out environmentally responsible farming practices that the Tenant shall implement throughout the Premises. The Parties shall cooperate to implement the plan and amend it from time to time as needed, with the help of mutually agreeable land use consultants where appropriate. Both the Tenant and the Landowner must agree in writing to any changes in the Plan before such changes take effect.

Lessee shall manage noxious weeds and invasive species according to best management practices.

Lessee agrees to comply with good husbandry practices. Lessee shall prepare, plant, cultivate, maintain, harvest, and replant the Leased Premises using methods and practices of good husbandry generally recognized as appropriate for the crop selected and planted, the climatic, soil and other environmental conditions of the Leased Premises. Lessee will keep the Leased Premises free of weeds and other noxious growth. Lessee shall comply with the grading codes and ordinances of the county in which the Leased Premises is located and will take all reasonable precautions to prevent or arrest loss of soil by erosion.]

c) Lessee shall not, unless by mutual agreement and prior approval to the contrary, engage in any of the following activities on the Premises:

[Examples:

Cutting trees; use of Round Up other inorganic chemicals or planting of GMO crops; erection of permanent fencing or structures; storing vehicles or farm equipment not essential to the farm operation; retail operations, except as provided herein; public events.

No Hazardous Substance may be brought upon, used, kept or stored in, on, about or under the Leased Premises or anywhere else in the Leased Premises by Lessee, its agents, representatives, employees, contractors, or invitees, without prior written consent of Lessor. As used in this Lease, the term "Hazardous Substance" shall mean any substance, material or matter (including, but not limited to petroleum, gasoline, crude oil or any products, by-products or fractions thereof) whose nature, quantity or manner of existence, use, management, control, handling, manufacture, or transportation (i) is or becomes injurious or potentially injurious to the environment, or to public health, safety or welfare, or (ii) is regulated or becomes regulated under any Federal, state, county, municipal or local laws, statutes, rules, regulations and ordinances either in existence as of the date hereof or enacted or promulgated after the date of this Lease, or (iii) may or does give rise to liability under any common law theory based on nuisance (private or public), waste, trespass, negligence, strict liability or tortious conduct.]

d) Lessee agrees to abide by all local, state and federal laws and regulations.

e) Lessor and Lessee shall conduct joint inspections of the Premises as follows:

f) Necessary permit application and fees shall be assigned as follows:

g) Lessor reserves the following rights:

[Examples: enter the property for inspection (how, when); use the barn, host events, access water, etc.]

8. Reserved Rights

*[Note: **Reserved rights** are certain rights to the Premises that the Landlord desires to keep or share – and are specified in the lease. Examples of reserved rights include the right of entry to the Premises for inspection or repair by the Landlord, any legal authorities, vendors, lenders, and/or prospective purchasers or Tenants. The Landlord may reserve the right to hold events on certain portions of the Premises or to traverse the premises for skiing, hiking, family picnics, weddings, etc. The Landlord may grant a non-exclusive use of a barn to the Tenant, meaning that the Landlord and/or other specified parties can also use the barn.]*

Notwithstanding a Landlord's reserved rights, the grant of a lease implies a guarantee to the Tenant of "quiet enjoyment" where the Landlord refrains from acts that substantially impair value of the leased Premises or the ability of the Tenant to engage in permitted activities.

The purpose of this section is to ensure that both Parties are clear in advance about the rights to the Premises that the Landowner wants to keep or share.]

a) Lessor and his/her assigns reserve the following rights:

[Examples:

Inspection. The Lessor reserves the right to enter the Premises for the purpose of inspection. S/he shall provide the Tenant with 24-hour advance notice via email or phone.

Crossing the property. The Lessee agrees to the Lessor's right to drive or walk at any time across Pasture B to access the woods and fishing stream at the south boundary, provided that no animals are grazing there at that time.

Limited use of infrastructure. The Lessor and his/her family may hold up to 3 events per year in the lower level of the barn provided advance notice is given to the Lessee and any furniture and other materials associated with the event are removed within 24 hours of each event.]

b) Quiet Enjoyment. The Lessee shall peaceably and quietly hold and enjoy the Premises and all rights and privileges thereto during the term of the Lease.

9. Liability and Insurance

*[Note: **Liability** means legal responsibility for one's acts or omissions, typically due to negligence, failure to perform a promised act, or the commission of a crime, for example. Typically, the Landlord wants assurance that s/he will not be held liable for any tenant transgression. Likewise, the Tenant wants to limit his or her exposure and keep the Landlord responsible for losses under certain circumstances.*

*Appropriate **insurance** coverage will prevent a significant economic loss for either the Landlord or the Tenant.*

*"To **indemnify**" another party is to compensate that party for loss or damage that has already occurred or to guarantee through a contractual agreement to repay another party for loss or damage that occurs in the future. Sometimes a Landlord will require being indemnified by the Tenant. A "hold harmless" provision means that the identified Party (again, generally the Landlord) is not liable for certain damages. Some courts distinguish "indemnification" and "hold harmless," while others do not.*

***Casualty insurance** refers to a broad category of coverage against loss of property, damage or other liabilities. Depending on how the policy is written, property insurance provides protection against most risks to property such as by fire, flood, earthquake, or lightning.*

The ownership, leasing, and occupancy of real estate involve several areas of potential risk and loss to the Landlord, Tenant, and third parties as a result of injury to persons or damage to property. The purpose of this section is to articulate the responsibilities of each Party regarding liability and requirements for insurance.]

a) The Lessee shall maintain insurance coverage according to these amounts and conditions:

[Examples:

Lessee is responsible for maintaining general liability insurance with coverage of _____ aggregate/ _____ per occurrence and naming Lessor as additional insured.

Indemnification: Lessee shall defend, indemnify and hold Lessor harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises. Lessee waives all claims against Lessor for such injury or damage. However, Lessor shall remain liable (and Lessee shall not indemnify and defend Lessor against such liability or waive such claims of liability) for injury or damage due to negligence or willful misconduct of Lessor or Lessor's agents or employees.]

b) The Lessor shall hold insurance coverage as follows:

[Examples:

Lessor will maintain fire and extended casualty insurance coverage on the premises of not less than \$500,000.

Lessor agrees to maintain fire and extended casualty insurance coverage adequate to replace or repair the dwelling or farm building used by the Lessee that may be destroyed or damaged by any cause

covered by the policy. Lessor shall use that coverage to replace the insured destroyed or damaged structure.]

c) Evidence of insurance shall be provided to the other party at the commencement of the Lease term and annually thereafter on the renewal date of such policies.

10. Transfer, Sale, Assignment and Sublease

[Note: Rights to property are sometimes described as a bundle of sticks. They can be shared, divided or transferred via several methods such as sale, assignment, bequest, gift, sublease, mortgage, or license of the leased Premises. What is allowed and how a transfer happens is explicitly set forth in the lease.

Assignment and sublease are terms for transferring the Tenant's leasehold interests to a third party. In assignment, the entire leasehold interest is transferred from the current Tenant to a new one. In a sublease, only a partial interest is transferred; in the case of a farm lease, this typically would be a portion of the property or a structure such as a hoop house.

The purpose of this section is to set forth the rights of each Party to transfer interests in the lease, and what happens if either Party dies or the property changes hands.]

a) Transfer or sale. In the event that ownership of all or part of the Premises is conveyed or transferred,

[Examples:

The terms of this Lease shall remain with the land; sale of the Premises or portions thereof shall not invalidate lease terms. Lessee agrees to abide by terms of any conservation or agricultural easement placed upon the Premises or portions thereof.

In the event that ownership of the land comprising the Leased Premises is conveyed or transferred (whether voluntarily or involuntarily) by the Lessor to any other person or entity, this Lease shall not cease, but shall remain binding and unaffected.

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

OR

Unless agreed otherwise in writing, this Lease terminates upon transfer of title to the Premises or any portion thereof from the Lessor to another party.]

b) Sublease or Assignment. Lessee [may/may not] sublease or assign the Lease without written consent of Lessor, according to the following conditions and procedures:

[Examples:

Lessor shall not unreasonably withhold consent to a sublease or assignment of the lease.

In the event of a sublease or assignment, Lessee shall/ shall not remain liable for the payment of all rent required to be paid under this Lease and for the performance of all terms, covenants, and conditions undertaken by Lessee.

Lessor has the right to increase the Rent, if applicable, upon subletting, and to condition their consent upon, without limitation, the reputation, quality, competency, and financial strength and ability of the sublessee or assignee.]

11. Financing

[Note: The purpose of this provision is to address any financing related to the land.]

[Examples:

Lessee may mortgage the Leased Premises and/or Improvements under this Lease with the prior written consent of Lessor.

Lessee shall be responsible for the payment of all costs associated with any such mortgage, including fees and costs for review, administration and recordation. Lessor, Lessee and the mortgagee shall enter into a separate, tri-party agreement in a form, and with content, acceptable to Lessor, to set forth the terms of the permitted mortgage.]

12. Taxes, Utilities and Fees

[Note: A landowner's basic "carrying costs" are sometimes described as the DIRT Five: Depreciation, Interest, Repairs, Taxes and Insurance. Costs can also include utility (electric, water, internet, phone, cellphone) services, trash and snow removal, capital improvements, and more.

The purpose of this section of a lease is to establish how the Landlord and Tenant allocate certain costs associated with operating and maintaining a property. A Landlord might calculate these costs and seek rent sufficient to cover them. But this might not be realistic. Allocation of costs is also addressed in the section on Maintenance, Repairs and Improvements.]

a) The parties shall be responsible for taxes, utilities and/or fees as follows:

[Examples:

The Lessor agrees to pay all taxes and assessments associated with this parcel. Lessee agrees to pay all taxes and assessments on tenant's personal property associated with the farming enterprise.

Lessee agrees to abide by all local, state and federal laws and regulations and to apply for all applicable permits at his expense unless otherwise agreed by both parties.

Lessee shall be responsible for payment of all taxes and governmental assessments that relate to the Leased Premises. Lessee shall also pay directly, when due, all other service bills, utilities charges, or other

governmental assessments charged against the Leased Premises upon presentation of the bill or assessment.]

13. Maintenance, Repairs and Improvements

*[Note: **Maintenance** typically refers to basic, routine upkeep to prevent the deterioration of the facilities, such as annual servicing or repainting. Generally, this is the Tenant's responsibility.]*

***Repairs** generally keep the property in its ordinary, efficient, operating condition or restore the property to its original operating condition. Routine repairs such as a leaky faucet or broken fence rail are typically the responsibility of the Tenant. Major repairs (including replacements) such as new siding or roofing, heating systems, or foundation repair are typically the responsibility of the Landlord, unless otherwise expressly assigned in the lease.*

***Improvements** can include new permanent structures, such as fencing or a barn, that materially enhance the value of the property or substantially prolong its useful life. A capital improvement can also be installing new plumbing or wiring, or an addition to an existing structure.*

Landlords of agricultural properties have fewer legal responsibilities than do Landlords of residential properties. A Tenant under a long-term lease may be held to greater maintenance, repair, and restoration responsibilities than a residential or shorter-term Tenant.

The purpose of this section is to agree on definitions, who is responsible for what, and any decision or approval processes.

This section of a farm lease can be challenging to write, and is subject to greater interpretation and potential for disagreement than most other lease provisions.]

a) The parties shall be responsible for normal maintenance and repairs of the Premises as follows:

[Examples:

Tenant shall keep the leased Premises clean and in good working order, reasonable wear and tear excepted. Landlord shall maintain all buildings in structurally sound and weather tight condition.

On or before January 1 of each year, the parties shall complete a "repairs, maintenance and replacement" worksheet indicating the work to be completed, the estimated cost and the share of the cost to be contributed by each, including any labor.

Tenant shall be responsible for all general non-structural repair and maintenance of Premises and for minor repairs of the buildings and their operating systems. Landowner shall not be responsible for minor or routine repairs or replacements.

Landowner and Tenant will together inspect the Premises at the beginning of the Lease in order to establish and document the baseline condition of the Premises. Any repairs and maintenance shall be agreed in writing between the parties and performed in a good and workmanlike manner. Lessee shall not allow any liens to be placed upon the property.]

b) The parties agree on major repairs, additions, alterations, replacements and improvements as follows:

[Examples:

Tenant shall not make alterations or improvements to the Premises without the written consent of the Landlord. Consent shall be obtained by submitting a written description to the Landlord of the proposed improvement including its location, proposed use, and whether the improvement is to be severed from the property at termination. Landlord shall not unreasonably withhold consent. Approved improvements shall be at the sole expense of the Tenant unless otherwise agreed in writing by both Parties.

Lessee shall not commence any improvements to the land in excess of \$_____, without the express written consent of the Lessor. Lessor shall not unreasonably withhold consent to the improvement so long the improvement is removed at the end of the tenancy or the parties come to an agreement regarding its removal or transfer to Landlord.

Lessee shall not cause any materialman's lien or other lien to be assessed against the property.

All improvements shall be in compliance with applicable County, State and Federal rules and regulations.

Lessee may erect non-permanent structures in compliance with the other provisions of this Lease. Lessee will own all non-permanent structures erected on the property and shall remove them upon termination.

Landowner shall be responsible for major repair, rehabilitation or replacement of the structural components and operating systems upon the Premises which are pre-existing assets of the Landowner.

Lessee must receive prior written approval from Lessor for the siting, construction, and permitting (if required) of new permanent buildings of any kind and for any modification of existing permanent buildings that expands or alters the exterior of such buildings. Lessee shall not commence construction or alteration of the property without the express written approval of the Lessor.]

c) Lessee shall be responsible for maintenance of all improvements so constructed or installed.

d) At the termination of the Lease, Lessor and Lessee will adhere to the following procedure regarding disposition of said improvements:

[Examples: permissions or requirements to remove; compensation process and calculation if applicable]

14. Termination and Default

*[Note: **Termination** means ending the lease contract, which can occur at the end date of the lease, or earlier, depending on how the lease is written.*

***Default** is an omission or failure by either Party to meet a provision of the lease. If the default is not "cured" ("remedied") by the defaulting Party, actions may be taken by the other Party, including (but not limited to) terminating the lease.*

The purpose of this section is to address various termination scenarios – in part to minimize the potential stress of a termination. It also establishes what constitutes a default by either Party, and how a default is addressed. Defaults and remedies should be specified in reasonable detail. An agricultural lease should spell out what happens to crops remaining at the time of termination, whether at the end of the term or earlier.]

a) This lease may be terminated according to these conditions:

[Examples:

The Tenant may terminate this Lease with a written notice to the Landlord not sooner than 6 months prior to the desired termination.

The Landlord will/will not hold the Tenant liable for rental payments due for the remainder of the Lease term.

If the Premises subject to this Lease shall be damaged, in whole or in part, by fire or casualty or action of public authority, either party may terminate this Lease upon thirty (30) days written notice to the other.]

b) The following shall constitute default:

[Examples:

Failure by the Tenant to pay timely the rents and/or utilities required to be paid for a period of fifteen (15) days following written notice.

Failure by the Tenant to observe and perform any of his/its obligations under this Lease for a period of thirty (30) days after receiving written notice specifying such failure and requesting that it be remedied, unless such period to remedy is extended by agreement of the Parties;

Failure of the Tenant to abide by the laws, statutes or regulations of the State of Hawai'i;

Abandonment by the Tenant of the leased Premises during the Lease Term need to define abandonment.

Events of default by Landlord shall include, without limitation, failure to make the Premises fully available to Tenant for the establishment and development of an agricultural enterprise.]

c) A default by either party shall be handled according to the following procedures:

[Examples:

Whenever any event of default referred to above shall have happened and not be cured per this lease, the Landlord may take any one or more of the following remedial steps:

- declare all installments of rent payable for the remainder of the Lease Term to be immediately due and payable;*
- re-enter and take possession of the leased premises;*

- and/or take whatever action at law that may appear necessary or desirable to collect the rent and any other amounts payable by Tenant or to enforce performance and observance of any obligation, agreement or covenant of the Tenant under this lease.

A default in any of these provisions by either party may be cured upon written notice by the other party within 60 days of receipt of such notice. If the Lessee fails to remedy the default, the Lessor may terminate the Lease. If the Lessor fails to remedy the default, the Lessee has the right to withhold rent and to pursue other remedies.

Landlord shall in no event be in default in the performance of any of its obligations under the Lease unless and until he has failed to perform such obligations within sixty (60) days, or such additional time as is reasonably required to correct any default, after notice by Tenant/Lessee to Landlord properly specifying his/her failure to perform any such obligation.]

d) The Parties recognize that weather, “acts of God” or similar unforeseen events may, in extreme circumstances, interfere with the Lessee’s farming practices and could prevent the Lessee’s timely compliance with the terms of the Lease. The Lessor shall take such circumstances into account before declaring an event of default.

The inability to farm the land due to circumstances beyond the control of the Farmer that continues for ___ calendar months shall constitute cause for default on the part of Farmer.

15. Communication, Permissions and Dispute Resolution

*[Note: **Communication** between Parties to a lease can range from formal written notices to annual inspections to email exchanges and verbal conversations. Leases often (should) contain language about how approvals are obtained, and disagreements are handled. Any changes to the lease should be communicated in writing. The Parties should provide the mailing addresses, phone numbers, and email addresses to receive such communications, and they should agree on those topics that require written communication.*

***Permission and approval** procedures must be spelled out. Which activities need prior approval, and how is that approval obtained? This can pertain to both parties, such as the Landlord needing permission from the Tenant to enter the Premises for inspection.*

***Dispute resolution** can take several forms such as facilitated conflict management, mediation, and arbitration. A best practice is for the lease to spell out when and how the Parties will select a third party to resolve the dispute, so neither Party feels unfairly represented.*

The purpose of this section is to clearly set forth how and for what situations the Parties will communicate with one another, as well as how changes to the lease and disputes will be addressed. Addressing dispute resolution helps resolve disagreements before they escalate.]

a) Parties agree to resolve any disputes regarding the interpretation and performance of this Lease through mutual good faith effort. All disputes that cannot be resolved through such efforts shall be determined and settled as follows:

[Examples:

Prior to any court action, the Parties agree in good faith to select and engage a dispute resolution professional and to mutually abide by the process and outcome directed by the professional. The Parties agree to divide the costs of retaining the professional.

If a dispute should arise in connection with this Lease that cannot be resolved through good faith negotiation between the Parties, the Parties agree on a facilitation or no-cost mediation before engaging in fee-based mediation or arbitration.]

b) Requests and consents between Parties shall be handled as follows:

[Examples:

The Parties may make changes to this Lease at any point during the term. However, no change to this Lease shall be effective unless it is in writing and signed by both Parties.

All permissions required by the terms of this Lease shall be requested in writing by the requesting Party to the other. A response shall be delivered in writing within 30 days. Absence of a response shall constitute approval.

The Parties shall meet in person once per year to review the prior season and agree to management goals for the coming year. The agreements shall be reflected in writing.

Consent to engage in uses not expressly permitted shall be obtained by the Tenant submitting a written request with an adequate description of the desired use to the Landlord. Landlord shall within [timeframe] of receipt of such request provide approval or denial of said use in writing to the Tenant.]

16. Standard Contract Provisions

a) Severability. If any part of this Lease is invalid or unenforceable, the balance of this Lease shall remain effective, absent such provision.

b) Changes in Writing. No change in this Lease shall be effective unless it is in writing and is signed by both Lessor and Lessee.

c) No Partnership Created. This Lease shall not be deemed to give rise to a partnership relationship and neither Party shall have authority to obligate the other without written consent, except as specifically provided in this Lease.

d) Notices. Each party shall keep the other informed of the party's mailing address if the address differs from the address noted above. All notices to the other party shall be mailed to

that mailing address. The parties may rely upon electronic communication as notice to the other party so long as the other party acknowledges receipt of the electronic communication. Failure to acknowledge receipt by a reply to the notice shall void the notice electronically communicated.

e) Applicable Law. This Lease shall be construed under the law of the State of Hawai'i.

f) Recordation. This Lease or a Short Form of this Lease [will or may] be recorded in the Bureau of Conveyances of the State of Hawai'i.

[Note: If the lease is for one year or more, the lease or a short form of the lease should be recorded or registered in the Bureau of Conveyances (<https://dlnr.hawaii.gov/boc>). Generally, recording of the lease protects the tenant against subsequent claims to the property. If the Landowner dies or sells the property during the lease term, a recorded lease puts future takers on notice that the land is leased. Leases of land with the designation TCT in the title will be registered with the Land Court; registration of leases of Land Court property is also done through the Bureau of Conveyances. When you record a lease with the Bureau of Conveyances you will need to fill out a Conveyance Tax Certificate with the State of Hawai'i, Department of Taxation and deliver it with all applicable documents to the Bureau of Conveyances.]

IN WITNESS THEREOF, the parties have executed this Lease effective as of the date first set forth above.

SIGNATURES OF BOTH PARTIES.

Helpful resources for farmers leasing land and starting a business

Resource	Source
Drafting a Lease: Questions for Farmers and Landowners to Ask, Jan. 15, 2015	https://farmcommons.org/resources/drafting-lease-questions-farmers-and-landowners-ask
Liability and Insurance in a Farm Lease	http://landforgood.org/wp-content/uploads/LFG-Liability-and-Insurance-in-a-Farm-Lease-Guide.pdf
Elements of a Good Farm Lease	http://landforgood.org/wp-content/uploads/LFG-Elements-of-a-Good-Farm-Lease.pdf
Interactive Farm Lease template	http://landforgood.org/build-a-lease-tool/
Model Agricultural Ground Lease & Guide	http://equitytrust.org.customers.tigertech.net/wordpress/wp-content/uploads/2011/09/ModelAgriculturalGroundLease.pdf & http://equitytrust.org.customers.tigertech.net/wordpress/wp-content/uploads/2011/09/ModelGroundLeaseCommentary.pdf
Farmland Assessment Checklist	https://www.californiafarmlink.org/wp-content/uploads/2019/05/FARMLAND-ASSESSMENT-CHECKLIST.pdf
Resources for starting an agricultural business	https://www.californiafarmlink.org/resources/resources-for-starting-an-ag-business/
Create a Farm Business Plan	https://www.californiafarmlink.org/resources/create-a-farm-business-plan/