DRAFT License Agreement

**Parties**

This is a License Agreement (“Agreement”) between the following parties:

**Property Owner Name (hereafter collectively referred to as “Property Owner”)**

[Property owner name & address]

**Licensee(s) (hereafter collectively referred to as “Licensee(s)”)**

White River Conservation District, Bennington County Conservation District

**Background**

Whereas both parties share a mutual interest in long-term health and productivity of the property described below; whereas Licensee has an interest in accessing, cultivating, and harvesting hickory nuts from existing hickory trees for the purposes of supporting their organizational mission; and whereas the Property Owner wishes to offer a secure opportunity to the Licensee, its employees, agents, and contractors, to access the property for the purposes of cultivating and harvesting said nuts. The parties do not intend to create a lease or any other interest in real property for Licensee through this License Agreement, and the parties only intend to create a license that is revocable at will by either Property Owner or Licensee as provided herein. Both parties agree to adhere to high standards of stewardship and mutual respect, and further agree as follows:

**Terms**

# License.

Property Owner agrees to License to Licensee, and Licensee agrees to license from Landlord, access to the Licensed Area of Landowner’s Property [“Licensed Area”] described in Section (2) for the uses set forth in this Agreement on the terms and conditions stated in this Agreement and the attached Exhibit(s).

# Description of Real Property to be Leased.

## Address.

123 Example St.

## Acreage.

The Property consists of .1 acres.

## State.

The Property is located in the following state: [Vermont].

## County.

The Property is located in the following county: Example County

## Municipality.

The Property is located in the following municipality: Example Town

## Description of Licensed Area.

The Licensed Area shall consist of land, driveways, parking areas, and access routes, structures, etc. as follows: [In this section, you would describe the area you plan to access for cultivating/harvesting hickory nuts, e.g. "a 2.5 acre hickory tree stand in the northwest portion of the Property, and an access to said stand via a 10’ wide path from the driveway through the Property Owner’s yard, to an old logging road that runs directly through the stand."]

## Access

Licensee and Property Owner mutually agree to adhere to the following conditions on access to the Licensed Area:

[may include]

* Hours of access for Licensee
* Days of access for Licensee
* Months of access for Licensee
* Notice requirement – i.e. Property Owner must be given 24 hours notice via email or phone call prior to Licensee accessing the Licensed Area, or Property Owner must give Licensee 24 hours notice via phone or email if the Licensed Area will be inaccessible for any reason.
* Number of people or vehicles affiliated with Licensee; e.g., no more than 3 staff/volunteers may be onsite at any one time, no more than one car can park in the driveway, etc.

Provided, however, Property Owner, its employees, contractors, and agents shall also at all times have access to the Licensed Area, no consent of the Licensee being required for any such access at any time.

## Residence.

Property Owner shall continue to reside in the residential structure on the Property;

this agreement does not grant Licensee any rights of access to the residence or any other on site structure.

# Term, Renewal, Termination, and Surrender

## Initial Term.

The initial term of this Agreement shall run for [12 months,] beginning on [01 January 2025] and ending on [01 January 2026] (the “Termination Date”).

## Renewal.

The parties may renew this Agreement for an additional [5 year period] ("Renewal Term") as set forth in this paragraph. To renew this Agreement, Licensee shall deliver written notice of Licensee’s intent to renew this Agreement ("Renewal Offer") to Property Owner on or before [90 days] before the Termination Date. Upon Licensee’s delivery of a Renewal Offer, Property Owner shall have [15 days] to provide Licensee with written notice of Property Owner’s acceptance or rejection of Licensee’s Renewal Offer. If Property Owner fails to provide a written response to Licensee’s Renewal Offer, this Agreement shall not terminate on the Termination Date and instead shall automatically renew for the additional 5 year Renewal Term. If Licensee fails to deliver a Renewal Offer on or before [90 days], the Termination Date shall remain as set forth above unless the parties mutually agree otherwise.

## Early Termination.

The Property Owner and Licensee shall each have the power to terminate this Agreement with at least [90 days] written notice to the other party. If [90 days] written notice is properly provided to the other party, the license shall terminate [90 days] after the notice was received by the other party, or on a later date set forth in the notice.

## Remedy on Breach

Should the Property Owner fail to provide adequate notice of early termination as described in Section 3.3, Licensee will be entitled to a cash payment from Property Owner equivalent to the fair market value of Licensee’s costs associated with preparing the site for harvest

## Surrender.

Upon termination of this Agreement, unless otherwise mutually agreed upon by the parties, Licensee shall surrender possession of all land, equipment, structures, and other assets related to the Property on or before [Date].

# Compensation to Property Owner.

## No License Fee.

No license fee will be charged to access the Licensed Area.

## Donation Receipt Provided

In exchange for access to the Licensed Area and the right to harvest hickory nuts from Property Owner’s standing hickory trees, Licensee will provide Property Owner with a 170(c)(1)-compliant donation receipt for the total fair market value of the hickory nut harvest from the Licensed Area.

## Annual Accounting and Timing of Donation Receipts.

The Licensee agrees to keep an annual accounting of the hickory nut harvest and its fair market value and issue a corresponding donation receipt to the Property Owner by [date], in accordance with section 170(c)(1) of the Internal Revenue Code.

# Permitted Use and Use Restrictions

## Permitted Uses.

Property Owner agrees that Licensee, as represented by Licensee’s staff, agents, and contractors, is permitted to access and use the Licensed Area for the following permitted uses:

* All normal activities associated with hickory tree care and hickory nut harvesting;
* Forest management activities in accordance with the Understory Management Plan (as detailed in Section 6.4, below);
* Application of soil amendments;
* Pest and weed management;
* Use and maintenance of tools and equipment, including power tools such as chainsaws;
* Erect signs or markers on the Property (for example, Do Not Spray signs, or markers indicating the location of the hickory trees);
* Other common activities associated with cultivating and/or harvesting hickory nuts;
* Use of harvest equipment, such as wheelbarrows, tarpaulins, and electrified or motorized farm equipment such as ATVs.

## Restrictions on Use.

Licensee agrees to the following restrictions on Use of the Licensed Area:

* Access and use of the Licensed Area will be restricted to employees of the Licensee and their accompanied guests and volunteers;
* Representatives of the Licensee, including guests and volunteers accompanied by Licensee, will wear reflective vests or other similar high-visibility clothing while accessing the Licensed Area;
* Licensee will leave no equipment or other personal property in the Licensed Area unless explicitly authorized by the Property Owner;
* Licensee and any other visitors accompanied by Licensee will limit their including presence on the Property to Licensed Area, parking and access areas mutually agreed upon by Licensee and Property Owner;

## Consent To Engage in Prohibited Uses.

Licensee may request Property Owner’s consent to engage in prohibited uses or to engage in uses not clearly permitted under this Agreement. Licensee may submit a written description of the proposed use including the location and scope of the proposed use. Property Owner may approve, disapprove, require more information, or require certain modifications to the proposed improvement. A written document clearly indicating Property Owner’s consent to the proposed use shall constitute an amendment to this Agreement.

# Stewardship and Understory Management

## Purpose.

The purpose of these stewardship standards and Understory Management Agreement is to embody Property Owner and Licensee’s mutual commitment to protecting and enhancing the natural resources of the Property. Both parties agree to review and discuss these standards and Understory Management Agreement annually.

## Standards.

Licensee will manage the Licensed Area in a timely, diligent, thorough, and steward-like manner in accordance with good forest stewardship practices.

## Duty of Care.

Licensee will take care to not cause waste or damage to the Property or create a nuisance.

## Understory Management Plan.

Licensee agrees to abide by an Understory Management Plan for the Licensed Area, in consultation with Property Owner. The Understory Management Plan is attached to this Agreement as Exhibit A. In the Agreement, Licensee will have established forest management practices for the Licensed Area, which both Licensee and Property Owner will abide by. The Licensee will have ensured that the Understory Management Plan will comply with any previous conservation or forest management plan already in place for the Property. Property Owner has provided Licensee with notice of any conservation plan, stewardship plan, or government programs associated with the Property and further has provided Licensee with all relevant documents related to any plan(s) or program(s).

## Easements

Property Owner agrees to provide Licensee with notice of any easements on the Property that may impact the Licensed Area and the terms of any such easements on the Property. Licensee agrees to comply with the terms of any such easements on the Property.

# Organic Practices

Licensee agrees to use organic farming practices.

# Communication and Inspection

## Meetings.

Property Owner and Licensee agree to meet at least once a year to discuss use of the Licensed Area, modifications to land use patterns, and any other issues that may have arisen.

## Property Owner Entry Into Licensed Area.

Property Owner reserves the right to continual access to the Licensed Area for the purposes of reasonable inspection or normal residential use, but agrees to give 48 hours notice to Licensee for uses that may prevent Licensee from entering the Licensed Area during normal access hours [such as private events, work on the property, etc.].

## Joint Inspections.

In the interests of fostering frequent communication and a positive working relationship between the parties, Property Owner and Licensee shall conduct a joint inspection of the Licensed Area at least once every year.

# Storage

Licensee may not store cultivation or harvesting equipment or any other personal property used for its operations on the Property, without prior authorization from the Property Owner.

Licensee may not store any materials that may be hazardous or that may cause damage to the Property (other than fuel for equipment or necessary agricultural chemicals as agreed to).

Licensee is responsible for the security of equipment, supplies or any other personal property stored on the Property. Property Owner will not be liable for any claims arising from theft, loss, or damage of equipment or personal property left or stored on the Property.

Unless otherwise mutually agreed by the parties, Licensee may/may not store harvested nuts on the Property in the following locations: [list].

# Hickory Stand Management

Unless otherwise mutually agreed by the parties, Licensee is responsible for and has sole discretion related to the planning, management, and carrying out of Licensee’s operations in the Licensed Area.

Unless otherwise mutually agreed by the parties, Licensee is responsible for procuring necessary tools and equipment, farming inputs and fertilizers, and for hiring, monitoring, and paying for any labor Licensee uses on the Property.

# Rights to Farm Produce

Unless otherwise mutually agreed by the parties, Licensee is responsible for and has sole ownership over any hickory nuts harvested in the Licensed Area.

# Liens and Encumbrances

Licensee will not incur, create, or assume any lien or encumbrance on any portion of the Property, including any mechanic's or materialmen's liens, except any liens or encumbrances created under this Agreement.

Nothing in this Section will prevent Licensee from entering into customary crop financing and other financing arrangements (including crop insurance) and granting security interests in Licensee’s crops, inventory, equipment, supplies, and other assets.

# Sublease and Assignment

Licensee may only assign or sublicense all or part of the Licensed Area if Property Owner’s written approval is obtained. Such approval may be withheld in Property Owner’s sole and absolute discretion.

# Sale of Leased Premises

The terms of this Agreement shall remain with the land; sale of the Property or portions thereof shall not invalidate the terms of this Agreement. However, Licensee agrees to abide by terms of any conservation or agricultural easement placed upon the Property or portions thereof. Such easement terms shall not unduly restrict the activities anticipated under this Agreement.

If Property Owner should sell or otherwise transfer title to the Property, Property Owner will require the transferee (e.g., buyer) to recognize and take the Property subject to this Agreement. Licensee will recognize the transferee as the new Property Owner subject to the term of this Agreement.

# Utilities

## Licensee Responsibilities.

Licensee will arrange and pay for all utility costs relating to: [Types of utilities]

## Property Owner Responsibilities.

Property Owner will arrange and pay for all utility costs relating to: Types of utilities]

## Property Owner and Licensee Shared Responsibilities.

Property Owner and Licensee shall share responsibility for utility costs relating to:

* Electric;
* Water;

Property Owner and Licensee agree to share the costs as follows: During the cultivation and harvest season [August-October], the tenant will pay a flat fee of [$/month] to offset any increase in water or other utility costs on the part of the Property Owner.

## Utility Access.

Property Owner will cooperate with Licensee in order to facilitate Licensee’s access to utilities related to the Licensed Area.

# Labor

Should Licensee – in Licensee’s sole discretion – decide to employ any person(s) in connection with cultivating the Licensed Area, including as a volunteer, Licensee shall be solely responsible for all activities related to those person(s), including hiring, firing, and supervision activities. Any person(s) hired by Licensee in connection with this Agreement shall be employees of Licensee, and shall not be employees of Property Owner. Property Owner shall not have the authority to hire, fire, supervise, or otherwise direct any person employed by Licensee in connection with the Licensed Area or this Agreement. Licensee agrees to conduct any labor- and employment-related activities, including but not limited to procurement, payment/wages, overtime, insurance, tax compliance, notification, recordkeeping and supervision in compliance with federal, state, and local labor and employment laws and regulations. Licensee shall be solely liable for any fines or damages at law or in equity arising from failure to comply with any labor or employment laws and regulations.

# Real Estate

Property Owner agrees to pay all taxes, assessments, or other public charges levied or assessed by lawful authority against the Property.

# Indemnification

Each party agrees to indemnify the other party against any claim or action (including reasonable attorney fees, legal costs and expenses) brought by any third party against a party arising from a party’s negligence, intentional misconduct, or failure to comply with the terms of this Agreement. Each party agrees to notify the other party in writing within thirty (30) days of the date on which it becomes aware of any grounds for any claim against the other party related to this Agreement. Each party’s obligation to indemnify under this Section shall survive termination of this Agreement.

# Insurance

## Licensee Insurance Obligation.

Licensee agrees to obtain and/or maintain an insurance policy related to the Licensed Area. The following reflects the Property Owner and Licensee’s agreement related to the policy: The Licensee will carry a [$$] general liability policy to cover any harm to the Property Owner’s property resulting from Licensee’s activities, and will list the owner as additional insured.

## Evidence of Insurance.

Upon request, Licensee shall provide Property Owner with evidence of any insurance coverage related to the Licensed Area.

## Insurance Required By Law.

Licensee will also maintain such other insurance as required by law .

# Water Use

Property Owner and Licensee agree to work together to address the use of water and water-related infrastructure on the Property.

In particular, Property Owner and Licensee agree as follows: The licensee will be able to access the property owner's outdoor water spigot [location details] subject to [conditions].

# Compliance With The Law

Property Owner and Licensee will comply with all local, state, and federal laws, including, without limitation, environmental, contract, real estate, landlord-tenant, labor and employment, and occupational safety laws related to this Agreement.

# No Joint Venture

Property Owner and Licensee agree that the parties are acting in the capacity of independent contractors. Neither party is authorized by this Agreement to act on behalf of the other party, nor is one party liable for the acts or omissions of the other party. This Agreement does not form a joint venture, partnership, employer/employee relationship or a profit-sharing arrangement between the parties. None of the parties’ oral communications shall be construed as making either party the agent, employee, partner, or co-venturer of the other party.

# Dispute Resolution

The parties agree to make a good faith attempt to settle any dispute arising out of this Agreement prior to filing a lawsuit in connection with this Agreement. Upon mutual agreement of the parties, any dispute arising out of this Agreement may be addressed via mediation, arbitration or another mutually agreed upon alternative dispute resolution process.

# Governing Law, Jurisdiction, and Venue.

This Agreement shall be governed by, interpreted, and enforced under the laws of the state of Vermont, without giving effect to Vermont’s conflict of laws provisions. Any litigation between the parties shall be conducted exclusively in the state and federal courts with jurisdiction in Vermont and any mediation, arbitration, litigation or similar proceeding shall be conducted exclusively at a location within the county or counties where the Property is located or the closest practicable location.

# Attorney Fees and Costs.

In the event of a dispute between the parties related to the Agreement, each party shall bear its own attorney fees, costs, and other expenses.

# Disaster

Neither party shall be liable for damages due to delay or failure to perform any obligation under this Agreement if such delay or failure results directly or indirectly from: acts of war; civil commotion; riots; strikes; lockouts; interference with telephone or internet communications; failure of the water supply; carrier delays; fire, flood, hail, frost, windstorms, hurricanes, tornadoes, or other extreme weather events or acts of God; delay or failure to receive raw materials; or any cause of a like or different kind beyond the reasonable control of either party.

Should a circumstance discussed in this Section occur, Property Owner shall promptly notify Licensee, or Licensee shall promptly notify Property Owner, according to which party gains knowledge of such circumstance first. Property Owner and Licensee shall make best efforts to come to an agreement about how to proceed.

# No Waiver

The failure of either party to require the performance of an obligation under this Agreement or the waiver by either party of any breach hereunder shall not prevent subsequent enforcement of such obligation or be deemed a waiver of any subsequent breach.

# Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

# Severability

All provisions of this Agreement are fully severable. If any provision is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, this Agreement will be construed and enforced as if such provision had never comprised a part of this Agreement and the remaining provisions of this Agreement will remain in full force and effect. In lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

# Additional Documents and Acts

The parties agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated herein.

# Notices

Notices and consents under this Agreement must be in writing and delivered by mail, hand, fax, or e-mail to the addresses set out on the signature page of this Agreement or other addresses given by one party to the other in writing. Notices will be considered received by the receiving party two business days after deposit in the mail, or the first business day after delivery to a courier, fax, or transmission by e-mail.

# Gender, Number, Headings and Titles

As used herein, unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular, and using any gender shall apply to all genders. All headings or titles are included for descriptive purposes and the convenience of reference only and shall not control or alter the meaning of this Agreement.

# Successors

This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators and successors of the parties.

# Corporate Action

Each of the parties has taken all corporate action required to duly authorize the execution, delivery and performance of this Agreement and this Agreement constitutes an obligation enforceable against each in accordance with the terms of this Agreement.

# Entire Agreement

This Agreement contains the entire agreement between the parties and supersedes all prior understandings and agreements, whether oral or written. If there are any inconsistencies between this Agreement and any Exhibit(s), this Agreement will control.

# Modification By Subsequent Agreement

Except as otherwise set forth herein, this Agreement may be modified by subsequent agreement of the parties only by a valid writing signed by both parties.

# Joint and Several Liability

All persons or entities who are listed as Licensee shall be jointly and severally liable for the Licensee’s obligations hereunder.

All persons who are listed as Property Owner shall be jointly and severally liable for the Property Owner’s obligations hereunder.

**The parties to this Agreement have read, understood, and agreed to the foregoing terms.**

Property Owner:

|  | For and on behalf of: |
| --- | --- |
|  | [Example Property Owner] |
| By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Licensee:

|  | For and on behalf of: |
| --- | --- |
|  | [Conservation District] |
| By: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |