



Land Access for Growing and Foraging Non-Timber Forest Products

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During the last decade, there has been an increased interest in non-timber forest products (NTFPs) for economic development. NTFPs offer opportunities to maintain forest biodiversity, and to generate landowner income. During the 1980's, the domestic herbal market boomed, growing at an estimated 13-15 percent per year. In 1993, the United States exported about 77 tons of wild harvested ginseng alone, valued at more than \$21 million. The overall market for medicinal herbs in the United States more than doubled in value from 1996 (\$1.6B) to 1998 (\$3.97B). Since the boom of the US herbal market in the 1980's, populations of some of these special plants have declined significantly. Ginseng, once a common understory species throughout the cove sites of the central Appalachian hardwood region, is less frequent in today's forests. While little data are available on population dynamics of certain NTFP species, anecdotal evidence suggests a reduced availability of these prized forest products. Over-harvesting of species has become a concern, and many question the sustainability of the resources.

Often, individuals involved in the wild harvest of NTFPs (wildcrafting) have gathered plants on properties they don't own, in some cases illegally. Wildcrafters hunt or poach on properties owned by coal and natural gas companies, the forest products industry, absentee landowners, local, state, and federal owned properties, and other landowners. In addition to lost revenue, these practices present a number of liability questions for landowners. According to the Convention for International Trade of Endangered Species, one of the most well known NTFPs, ginseng, is considered an internationally endangered plant species. Ginseng is a protected species in many states according to the Endangered Species Act of 1973. Many landowners are unaware that this species is on their property, and should take certain precautions to ensure the sustainability of the species.

Unsanctioned wildcrafting also causes losses of profit from a landowner's property. For example, while most landowners consider grapevine to be an invasive



Photo Courtesy of Dylan Jenkins



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species that can overtake a stand, using this resource to create wreaths or baskets can prove to be valuable. What seems like a pest can bring revenue!

Cultivation

Cultivating certain species under natural conditions can satisfy market demands while creating additional income opportunities for Appalachian households. This method can potentially provide a sustainable socio-economic resource for many individuals in this region.

Many species of NTFPs have very specific site requirements, and can only be cultivated under particular conditions, especially when attempting to grow them for commercial purposes. Most phytopharmaceutical (used for medicinal purposes) plants have profitable returns, but must be grown under natural conditions. The plants also need to be monitored, because poaching is a risk for the cultivator. Finding the best growing site can also be a challenge for cultivators if they don't own property or have the specific conditions on their property necessary to grow these plants.



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Legal Assurances

Establishing a written agreement is desirable for two parties to make a number of things clear, such as the property location, amount of consideration to be paid to the landowner, and specific instructions regarding the use of the land. Most importantly, it establishes a legally binding relationship between landless cultivators and landowners, allowing written understanding for both parties. In many states, lease agreements of land for more than a year's duration must be in writing to be enforceable. Lease agreements are not unusual in the Appalachian region. Many landowners lease their property to hunters or hunt clubs for the right to enter the property and harvest wild game, or to farmers for agricultural production of hay or pasture for livestock.

Two examples of written agreements are presented here: a land use license and a lease. One model may be

more appropriate than the other depending upon the circumstances and landowner goals. The models can be used as examples or templates for landowners and cultivators, although they should be tailored to meet specific needs. The model agreements are designed differently than hunting and agricultural leases, and are more specific to NTFPs. Both are meant to be checklists for landowners, cultivators, and collectors, depending on local conditions or individual needs.



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Model Land Use License

The first model is a land use license. A land use license is an appropriate legal document for landowners desiring to permit other individuals to cultivate NTFPs on their land, while maintaining current forest management goals and objectives. For example, an industrial forest landowner might wish to permit use of its property to gain added income from the land resource. This land use license model could be used to develop a program that would allow NTFP cultivators to use the land for a fee. The industrial forest landowner would most likely use this document because restrictions can be placed upon the cultivator that would not allow damage to the timber on the property, and would reduce liability for injuries on the property as well. Many industrial forest landowners already have land use licenses for hunting rights. Be sure to discuss the following document with a lawyer before entering a legal contract.

Model Lease

The second model is a lease for real property. A lease may be used between a landowner and NTFP cultivator. Leasing property has several benefits for the cultivator and landowner. The property would be totally surrendered to the cultivator, allowing them to monitor the property and their crop more closely. As with hunting leases, an increased presence on the property can contribute to protecting a multitude of resources. The

cultivator would be the sole user of the property in a land lease. This model is similar to an agricultural lease and benefits the landowner by addressing the specific stewardship of the land. Some examples of NTFP cultivators that might use this type of lease include bee keepers, collectors of vines for crafts, or producers of floral greenery. This lease would be appropriate for several different types of landowners, including non-industrial private landowners, industrial landowners, and conservation easement holders. The lease may not be appropriate for federal or state owned properties. The following is offered as a template that could be adapted to local conditions. Before entering into this or a similar contract, it is important to learn about local laws and consult with a legal professional.

Summary

The land use license and lease models presented here may inspire development of relationships between NTFP cultivators and government agencies, industrial forest landowners, non-industrial private landowners, and conservation easement holders. These added income opportunities benefit both landowners and NTFP cultivators.

Before entering into any kind of legal agreement, both landowners and cultivators should seek the advice of local legal specialists. The landowner should clearly understand the intent of the NTFP cultivator or collector, and the cultivator should understand the landowner's goals for the land. Landowners should also be careful in selecting users or tenants to be sure that the tenants will be responsible users of the property. The intent of entering a legal agreement is to alleviate poaching pressure and to open up new avenues for sustainable forest management.

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Model Land Use License

This land use license is entered into this _____ day of _____, 20____, between _____, licensor, of [address] and _____, licensee, of [address].

A. Term of License.

1. The term of this license shall be for _____ year(s) from _____, 20 ____, to _____, 20 ____, and this license shall continue in effect from year to year thereafter until written notice of termination is given by either party to the other at least _____ months before expiration of this license or any renewal.

B. Rights.

1. The licensor agrees to grant the licensee the exclusive/non-exclusive (choose one) right of access, for the purpose of planting, cultivating, and harvesting non-timber forest product (NTFP) plants, to the licensor's property located at _____, in _____ County, the Commonwealth of _____, and consisting of _____ acres, more or less.
2. Licensee shall have the right to utilize those portions of the property in such a manner, and at whatever times as necessary to carry out those activities referred to above.
3. The licensee shall have the right of ingress and egress across any roads, gates, or other such items located on the property, and the licensor shall provide licensee with any keys, combinations, or other means necessary to access the property.

C. Restrictions

1. The licensee shall not have the right to occupy said property, nor shall the licensee permit any third party to enter upon or occupy said property. Any employee or agent of the licensee may enter upon the property for effecting the purposes of this license.
2. The licensee shall comply with any and all regulations or restrictions on access that the licensor may require as set out below:

3. Licensee's activities shall not interfere with any other management activity that the licensor may conduct on the subject property
4. Licensee shall not conduct any activity that results in the destruction, degradation, or waste of the property, nor creates any private or public nuisance. The licensee shall carry on activities such that the property shall be maintained in as good condition as at the beginning. Normal wear, depreciation and damage from causes beyond the tenant's control are excepted from this requirement.

D. License Fee.

1. The annual license fee shall be paid as follows: \$_____ annually, to be paid in twelve equal installments of \$_____, with first payment due upon execution of this agreement, and each subsequent payment due the ____ day of each month thereafter.
2. Additionally, the licensee shall remit on a quarterly basis _____% of the gross sale proceeds of NTFP sold during that quarter
3. Record of Expenses. The licensee will keep a record of all sales of NTFP, and shall submit such records quarterly in conjunction with the rental due in Paragraph E.2. above.

4. Willful Neglect. Willful neglect, failure, or refusal by either party to carry out any substantial provision of this lease shall give the other party the benefits of any proceedings provided by law.
5. Endangered Species Act. The licensee shall at all times comply with all provisions of the federal Endangered Species Act and any applicable state endangered species act. In the event that any NTFP cultivated by the licensee becomes listed as either threatened or endangered under the auspices of the federal Endangered Species Act or any state endangered species act, the licensee shall hold harmless, defend and indemnify the licensor for any claim or liability arising for the harvest of said NTFP on the property
6. Additional Agreements:

In Witness Whereof, the parties have signed this license on the date first above written.

Licensor:

Witness:

Licensor:

Witness:

Model Lease

This lease is entered into this _____ day of _____, 20____, between _____, landlord, of [address] and _____, tenant, of [address].

A. Term of Lease.

1. The term of this lease shall be for _____ year(s) from _____, 20____, to _____, 20____, and this lease shall continue in effect from year to year thereafter until written notice of termination is given by either party to the other at least _____ months before expiration of this lease or any renewal.
2. Continuous Occupancy. The tenant agrees that he or his agent will possess and occupy the property continuously during the term of the lease.
3. Surrender of Possession. The tenant agrees to surrender possession and occupancy of the premises peaceably at the termination of the lease.
4. Review of Lease. A request for general review of the lease may be made at least _____ days prior to the final date for giving notice to terminate this lease. Amendments and alterations to this lease shall be made in writing.

B. Property Rights

The landlord hereby leases to the tenant, to occupy and use for the cultivation of non-timber forest products, hereinafter referred to as NTFP, the following-described property, hereinafter referred to as the "property," located in _____ County, Commonwealth of _____, and consisting of _____ acres, more or less, together with all buildings and improvements thereon and all rights thereto except as specified below.

1. Right of Entry. The landlord reserves the right of himself, his agents, his employees, or his assigns to enter upon the property at any reasonable time for purposes of (a) consultation with the tenant; (b) making repairs, improvements, and inspections; (c) developing mineral resources; and (d) after notice of termination of the lease is given, for any land management activity, including preparation for timber harvesting, none of which shall interfere with the tenant in carrying out regular operations, pending the termination of this lease agreement.
 2. Transfer of Property. If the landlord should sell or otherwise transfer title to the property, he will do so subject to the provisions of this lease.
 3. Heirs and Successors. The terms of this lease shall be binding upon the heirs, executors, administrators, and successors of both landlord and tenant in like manner as upon the original parties. However, in the event the lease is for more than one year, the heirs or successors of the landlord or tenant shall have the option to give written notice of termination effective at the end of the lease year in which death occurs.
 4. Right to Lease. The landlord warrants that he has the right to lease the property, and will defend the tenant's possession against any and all persons whomsoever.
 5. Sublease. The tenant shall not re-lease or sublet the property or any portion of the property without the prior written approval of the landlord.
 6. Additional Agreements Regarding Property Rights:
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C. Land Use and Non-timber Forest Product Production

1. Land Use and Type of NTFP. Except when mutually agreed otherwise, the land use shall be as follows, and the numbers of each kind of NTFP shall not exceed those shown in the following table:

Use of Land	Acres	Location	Kind of NTFP (Genus/Species)

2. Acres and Numbers. The acres of NTFP crops, the locations on which they are grown, and the numbers and variety of species shown above are those planned for the first year of this lease. They may be adjusted within the year or from year to year by written mutual agreement.

D. Improving, Conserving, and Maintaining the Property

To improve the property, conserve its resources, and maintain its ability to be later managed for other purposes, the two parties agree as follows:

1. General Maintenance. The tenant will maintain the property during his tenancy in as good condition as at the beginning. Normal wear, depreciation and damage from causes beyond the tenant’s control are excepted from this requirement.
2. Stewardship. The tenant will operate and manage the property in an efficient and stewardly fashion, doing the seeding, cultivating, and harvesting in a manner that will conserve the landlord’s property.
3. Cropping Practices. The tenant will not, without oral consent of the landlord (a) plow permanent pasture or meadowland, (b) cut live trees for any purpose, (c) allow livestock on the property, or (d) burn any portion of the property for any purpose.
4. Waste. The tenant will not commit waste on, or damage to, the farm and will use due care to prevent others from so doing, nor will the tenant create any private or public nuisance.
5. Fire Protection. The tenant will not, without written consent of the landlord, house automobiles, trucks, or tractors in barns, or otherwise violate restrictions in the landlord’s insurance policy which restrictions the landlord shall make known to the tenant.
6. Replace Losses. The landlord will replace or repair as promptly as possible the dwelling or any other building that may be destroyed or damaged by fire, flood, or other cause beyond the control of the tenant or make rental adjustments in lieu of replacements.
7. Noxious Weeds. The tenant will use diligence to prevent noxious weeds from going to seed on the property and will destroy the same, and will keep the weeds and grass cut or destroyed on any fields, farmstead, road-side, or fence rows.

Treatment of weed infestation and cost thereof shall be handled as follows:

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8. Maintenance of Improvements. The tenant will keep the buildings, fences, and other improvements on the property in as good repair and condition as they are when he takes possession, ordinary wear and tear, loss by fire, or unavoidable depreciation or destruction excepted.

9. **Materials and Labor.** The landlord will furnish materials and the tenant will perform labor for normal maintenance and repairs, except that skilled labor, which the tenant himself is unable to perform satisfactorily, shall be furnished by the landlord.

Additional terms and conditions regarding materials and labor:

10. **Purchase of Materials.** The tenant may buy, without further authorization, materials for normal maintenance and repairs in a total amount not to exceed \$ _____ within each year, and the landlord will credit or reimburse the tenant for such expenditures as follows:
11. **Improvements.** The tenant will not, without written consent of the landlord, (a) erect or permit to be erected on the property any nonremovable structure or building, or (b) incur any expense to the landlord for such purpose, or (c) add electrical wiring, plumbing, or heating to any buildings, and if consent is given, he will make such additions meet standards and requirements of power and insurance companies.
12. **Compensation for Conservation Improvements.** The two parties may independently or jointly carry out new conservation practices and measures and make other improvements, and share contributions and costs necessary for completing such practices and improvements as set forth below. The landlord will reimburse the tenant when any such practice, measure or improvement is completed, or will be compensated for its unexhausted value when the tenant leaves the farm.
13. **Conservation Practices.** The tenant will control soil erosion as completely as practicable by adherence to any applicable best management practices, and by filling in or otherwise controlling small washes or ditches that may form.
14. **Conservation Structures.** The tenant will keep in good repair all terraces, open ditches, inlets and outlets of any drains or culverts, and preserve all established watercourses or ditches including grass waterways, and refrain from any operation or practice that may or will damage them.
15. **Removable Improvements.** The tenant at his own expense may make minor improvements of a temporary or removable nature, which do not mar the condition or appearance of the property. The tenant may at any time this lease is in effect, or within a reasonable time thereafter, remove such improvements, provided he leaves in good condition that part of the property from which they are removed.
16. **Compensation for Damages.** When the tenant leaves the property he will pay the landlord reasonable compensation for any damages to the property for which the tenant is responsible, except ordinary wear and depreciation and damages beyond the tenant's control.
17. **Additional Terms and Conditions Pertaining to Conservation and Improvements:**
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E. Rental Rates.

1. The annual rental due shall be paid as follows: \$ _____ annually, to be paid in twelve equal installments of \$ _____, with first payment due upon execution of this agreement, and each subsequent payment due the ____ day of each month thereafter.
2. Additionally, the Tenant shall remit on a quarterly basis ____% of the gross sale proceeds of NTFP sold during that quarter

Additional Agreements in Regard to Rental Rates:

3. Record of Expenses. The Tenant will keep a record of all sales of NTFP, and shall submit such records quarterly in conjunction with the rental due in Paragraph E.2. above.

F. Miscellaneous Provisions

1. 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.
2. Debts and Accidents. Each party agrees that the other party shall in no way be responsible for the debts of, or liabilities for accidents or damages caused by, the other party. Further, the licensee shall defend and hold harmless the licensor from any lawsuit or claim brought against the licensor by reason of any act or omission of the licensee.
3. Willful Neglect. Willful neglect, failure, or refusal by either party to carry out any substantial provision of this lease shall give the other party the benefits of any proceedings provided by law.
4. Endangered Species Act. The Licensee shall at all times comply with all provisions of the federal Endangered Species Act and any applicable state endangered species act. In the event that any NTFP cultivated by the Licensee becomes listed as either threatened or endangered under the auspices of the federal Endangered Species Act or any state endangered species act, the licensee shall hold harmless, defend and indemnify the licensor for any claim or liability arising for the harvest of said NTFP on the property
5. Additional Agreements:

In Witness Whereof, the parties have signed this lease on the date first above written.

Landlord:

Witness:

Tenant:

Witness:
