

KERNZA® TRADEMARK LICENSE AGREEMENT
(Restaurant)

This Trademark License Agreement (the "Agreement"), effective as of [insert date] (the "Effective Date"), is entered into by and between The Land Institute, a Kansas corporation with a principal place of business at 2440 East Water Well Road, Salina, Kansas 67401 ("Licensor") and

[insert Licensee name], a

[insert type of organization and state of organization if applicable]

with a principal place of business or mailing address at [insert address for Licensee] ("Licensee").

Background

Licensor is the owner of all right, title, and interest in and to the trademark KERNZA and related branding elements for use with perennial seeds, grain and products containing or derived from the grain, including United States Trademark Registration Nos. 3,958,300 and 4,905,715 (collectively the "KERNZA® Mark"). Licensee desires to use the KERNZA® Mark in connection with Licensee's sale, marketing and distribution of prepared food items through its restaurant(s). Licensor is willing to grant Licensee such rights subject to the terms of this Agreement.

In consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Licensor and Licensee agree as follows:

ARTICLE 1
DEFINITIONS

As used in this Agreement the following terms shall have the meanings set forth below:

1.1 "Licensed Grain" means agricultural grain of *Thinopyrum Intermedium* (intermediate wheatgrass) and varieties thereof produced by or on behalf of licensed Kernza® producers and certified as compliant with KERNZA® program requirements.

1.2 "Territory" means [Country].

1.3 "Trademark Usage Guidelines" means the style guide and quality control standards set forth by Licensor. The Trademark Usage Guidelines may be updated or modified by Licensor from time to time at its sole discretion.

1.4 "Licensed Product(s)" shall mean the following prepared food items containing or derived from Licensed Grain: *List Licensee's product(s) made with Licensed Grain.*

1.5 "Licensed Marks" shall mean the KERNZA word and design marks, and the statutory and common law rights, including trademarks, service marks, trade dress, copyrights, and goodwill associated therewith.

ARTICLE 2 LICENSE

2.1 **Grant of License.** Subject to the terms and conditions of this Agreement, Licensor grants to Licensee a non-exclusive, non-transferable license to use the Licensed Marks in the Territory, solely on or in connection with the sale, offer for sale, promotion, advertising, and distribution of Licensed Product(s) to consumers through its restaurant(s).

2.2 **Limited Sublicense.** The license granted under Section 2.1 may not be sublicensed.

2.3 **Permitted Use.** Licensee may use the Licensed Marks in the following manner, or as otherwise approved by Licensor in writing in accordance with the terms of this Agreement: advertising, promotional and communication materials, including but not limited to print and digital merchandise, menus, table-tents, in-store signage and promotions, TV, radio, social media, banners and as otherwise mutually agreed by the parties (collectively "Advertising Materials").

2.4 **Approvals.** Licensor will have prior approval over any Advertising Materials containing the Licensed Marks or any claims about the environmental or health benefits of the Licensed Grain. Licensee shall not publicly display any Advertising Materials or claims about environmental or health benefits of the Licensed Grain until written approval is received from Licensor. Should Licensor withhold approval of any Advertising Materials, Licensor shall provide Licensee with sufficient details for approval. Licensor shall make a good faith effort to accept or reject proposed Advertising Materials within five (5) business days. Once initially reviewed and approved by Licensor, Licensee will not depart from the approved form of the Advertising Materials unless additional approval is obtained.

2.5 **Quality Standard.** The Licensed Product(s) shall meet a minimum standard of quality consistent with a high standard of like products in the industry and otherwise comply with standards of quality that may be established from time to time by Licensor with notice. All use of the Licensed Marks shall comply with the Trademark Usage Guidelines.

2.6 Compliance with Applicable Laws. Licensee shall comply with all applicable laws and regulations, including without limitation consumer product and food safety laws and regulations, and obtain all necessary governmental approvals pertaining to the production, processing, labeling, packaging, storage, sale, distribution, promotion and advertisement of the Licensed Product(s).

ARTICLE 3 LICENSE FEE AND REPORTS

3.1 Amount. In consideration of the license granted by Licensor under this Agreement, Licensee shall pay to Licensor an annual lump sum fee (the "Annual Fee") in the amount set forth in Schedule A attached hereto, which amount may be adjusted in Licensor's sole discretion for any renewal term in accordance with Section 5.1.

3.2 Payment. The License Fee shall be paid upon the Effective Date and annually thereafter on the anniversary of the Effective Date for each renewal term.

3.3 Sales Reports. Licensee shall provide Licensor a true and correct report of all Licensed Product(s) sold by Licensee on an annual basis during the term of the Agreement (the "Sales Report"). Each Sales Report shall be provided to Licensor on the anniversary date of the Effective Date and shall include the name and amount (in units) of each Licensed Product sold during the preceding year. Licensor may from time to time modify the information to be included in the Sales Report with notice.

3.4 Late Payments. Any License Fees not paid when due in accordance with the terms of this Agreement will bear interest from the due date until received by Licensor at the lower of twelve percent (12%) per annum or the maximum interest rate allowable by law. The obligation to pay and the payment of interest will not operate to extend any payment due date, and Licensor does not waive any rights by accepting late payment with interest. Interest under this Section is due and payable on the date the outstanding balance is paid to Licensor.

3.5 Maintenance of Records. Licensee shall maintain all records necessary to verify compliance with its obligations under this Agreement, including those records necessary to determine the number (in units) of Licensed Product(s) sold in any given year for a period of at least three (3) years from the date of expiration or termination of this Agreement.

ARTICLE 4 INDEMNIFICATION; LIABILITY

4.1 Indemnification by Licensee. It is understood and agreed that Licensee will be solely responsible, obligated, and liable for its activities relating to this Agreement and for all activities relating to the Licensed Product(s) and any Licensed Grain contained therein or from which the Licensed Product(s) are derived, including, without limitation, the distribution, production, processing, labeling, packaging, purchasing, storage, sale, promotion, advertising, delivery, distribution and ultimate quality of the Licensed Product(s) ("Activities"). Licensee shall and hereby does indemnify, defend, protect, save and hold Licensor, its affiliated entities, and their respective officers, directors, and employees ("Licensor Indemnitees") completely harmless from and against any and all losses, liabilities, damages, penalties, costs, expenses, and disbursements

of any kind whatsoever, including but not limited to reasonable attorney's fees, which may be imposed on, incurred by, or asserted at any time by a third party against any of Licensor Indemnitees (i) in any way relating to or arising from a claim brought by a third party relating to the Activities, including without limitation, product liability, food safety and breach of warranty claims, but excluding claims of trademark infringement arising solely from use of the Licensed Marks in compliance with this Agreement, (ii) arising from or relating to any breach or violation of the representations and warranties made by Licensee in this Agreement, or (iii) arising from or relating to any negligence, gross negligence or willful misconduct of Licensee or any of its officers, directors, employees, independent contractors or agents. This provision shall survive the termination of this Agreement. If a claim for indemnity is made pursuant to this section 4.1, Licensor must give Licensee prompt written notice of any alleged liability or action and must offer to tender the full defense thereof to Licensee. With respect to any such tendered action, Licensee may employ counsel of its own choice to direct the handling of the litigation and any settlement thereof, so long as any such settlement does not obligate Licensor to pay any damages in respect thereof.

4.2 Limitation of Liability; Disclaimer of Damages. EXCEPT FOR THE INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 4.1, NEITHER PARTY SHALL BE LIABLE FOR, AND EACH PARTY EXPRESSLY DISCLAIMS ANY LIABILITY FOR, ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, OR EXEMPLARY OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY BROUGHT AGAINST THE PARTY.

ARTICLE 5 TERM AND TERMINATION

5.1 Term. The initial term of this Agreement shall run for a period of one (1) year from the Effective Date.

(a) After the initial term, this Agreement will be automatically renewed for one (1) year terms thereafter, unless either party provides written notice of termination at least thirty (30) days prior to the expiration of the then-current term. If Licensor intends to adjust the Annual Fee for any given year, Licensee will provide written notice of such adjustment sixty (60) days prior to expiration of the then-current term.

(b) Notwithstanding the foregoing, this Agreement may be terminated at any time upon mutual written agreement of the parties.

5.2 Licensor's Right to Terminate. Licensor is entitled to terminate this Agreement immediately upon written notice to Licensee in connection with any of the following events of default:

(a) Licensee breaches any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof from Licensor, including, without limitation, failure of Licensee to comply with Sections 2.4 and 2.5 regarding approval and quality standards; or

(b) Licensee files for bankruptcy under the federal bankruptcy laws, or declares insolvency, or consents to the disposition of any of its assets for the benefit of its creditors.

5.3 Discontinuation of the Use of the Licensed Marks. Upon termination or expiration of this Agreement, Licensee shall immediately discontinue and cease all use of the Licensed Marks, except that Licensee shall, subject to the terms of this Agreement, have an additional sixty (60) day period after the date of such termination or expiration in which to sell or otherwise distribute any remaining Licensed Product(s), provided that: (i) Licensee furnish to Licensor, within thirty (30) days after the Effective Date of the termination or expiration, a written statement of the amount and description of such Licensed Product(s) in inventory, (ii) the Licensed Product(s) complies with Section 2.5 regarding quality standards, and (iii) all use of the Licensed Marks in relation to such sales or distribution is in compliance with Sections 2.4 and 2.5 regarding approval and quality standards.

5.4 Effect of Termination. In no event shall any expiration or termination of this Agreement excuse either party from any breach or violation of this Agreement existing on the date of such termination. Notwithstanding any provision of this Agreement to the contrary, Articles 4, 6, and 7 and Section 5.3 hereof shall survive any expiration or termination of this Agreement.

ARTICLE 6 OWNERSHIP OF THE MARK

6.1 Ownership of the Marks. Licensee expressly acknowledges the exclusive ownership of the Licensed Marks by Licensor and promises that all use of the Licensed Marks by Licensee shall be to the benefit of Licensor. Licensee shall not do, cause to be done, or participate in anything inconsistent with Licensor's ownership and shall not attack Licensor's title to or ownership of the Licensed Marks or attack the validity of the Licensed Marks or this Agreement. Licensee agrees that it will only use the Licensed Marks in a manner that is compliant with the Trademark Usage Guidelines, will not modify the Licensed Marks in any manner, and will not use any conflicting or confusingly similar mark to that of the Licensed Marks during or after the term of this Agreement.

6.2 No Registration. Licensee agrees that will not (i) register or attempt to register the Licensed Marks or any other trademark, trade name or design that is confusingly similar to the Licensed Marks with any government agency, or (ii) register or attempt to register any URL, Internet domain name or social media address that consists of or contains the term "Kernza" or any other term that is confusingly similar thereto with any domain name registrar.

ARTICLE 7 MISCELLANEOUS

7.1 Representations and Warranties. Licensor and Licensee each hereby represent and warrant that each has the full power, right and authority to enter this Agreement.

7.2 Relationship of the Parties. This Agreement does not create a partnership or joint venture between Licensee and Licensor, and the parties shall have the power to obligate or bind one another in any manner whatsoever.

7.3 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior discussions, representations, understandings and agreements, whether written or oral, between the Parties with respect to the subject matter hereof. This Agreement may be altered, modified or amended only by a written document signed by the parties.

7.4 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Kansas without regard to its conflicts of law provisions, with the state and federal courts of Kansas having exclusive jurisdiction over any and all disputes arising out of or relating to this Agreement.

7.5 Notices. All notices or other communications required or desired to be sent to either party shall only be regarded as properly given if sent by messenger, certified U.S. mail (postage prepaid, return receipt requested) or sent by overnight mail, charges prepaid, to the address indicated below:

To Licensor: The Land Institute
2440 E. Water Well Rd.
Salina, KS 67401
Attn: Tessa Peters
Email: peters@landinstitute.org

To Licensee:

7.6 Severability. If any term or provision of this Agreement is found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of the law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

7.7 Modification; Waiver. This Agreement may only be modified or amended by the written agreement of both Parties. A waiver by either party hereto or any default or breach by the other party shall not constitute a waiver of any subsequent default or breach of same or other provisions hereof. The failure by either party to this Agreement to object to, or to take action with respect to, any conduct of the other which is in violation of this Agreement shall not be construed as a waiver thereof, or of any future breach of subsequent wrongful conduct

7.8 Assignability. This Agreement may not be assigned by Licensee without the express written consent of Licensor; provided however, Licensee shall be able to assign this agreement to any affiliate or party acquiring substantially all of the assets of Licensee without the consent of Licensor by providing advance written notice to Licensor.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Licensee name

THE LAND INSTITUTE

Name

Name

Title

Title

SCHEDULE A
Annual License Fee

Licensee shall pay Licensor an annual license fee of **list amount**

Anticipated Gross Food Sales	License Fee	Schedule A
\$0-\$125,000	\$100	I
\$125,001 - \$250,000	\$200	II
\$250,001 - \$1,000,000	\$500	III
\$1,000,001 - \$5,000,000	\$1,000	IV
\$5,000,001 - \$10,000,000	\$2,000	V
Over \$10,000,000	\$5,000	VI