

## **DRAFT LICENSE AGREEMENT**

This Agreement, made this day of June, 2012, is by and between the Town of Acton, a municipal corporation in Middlesex County, Massachusetts, acting by its Conservation Commission (hereinafter "the Commission") and Thomas B. McConnon, Rita McConnon and Hybrid Farm, Inc.(hereinafter "the Licensees").

On October 9, 1979, a Special Town Meeting voted to authorize the Town to purchase land on Nagog Hill Road owned by Quin. (hereinafter "Nagog Hill") On January 24, 1980 said Nagog Hill property was deeded to the Town.

The Licensees are hereby given the privilege and license to use a portion of Nagog Hill (hereinafter "the licensed premises") solely for the purposes and subject to the limitations stated in this Agreement.

While allowing the Licensees to conduct the agricultural activities described below, it is the intent of the Commission that this Agreement be interpreted and administered in such a manner as to protect and enhance the wetlands, wildlife, and natural areas of the licensed premises.

It is agreed by the parties that a vegetative cover shall be established and maintained by the Licensees on areas A, B and C of the licensed premises. In addition, it is agreed by the parties that public access to the licensed premise shall be provided by the Licensees.

### **1. Description of Licensed Premises**

The licensed premises are comprised of twelve and one half acres, more or less, as shown on a (photograph)(plan) attached hereto, bounded by a yellow line and marked A,B. C and D.

### **2. Allowed Uses**

The licensed premises may be used by the Licensees solely for the purpose of grazing, training, and riding horses owned by them, and for providing riding lessons, trail rides, and other similar activities, including but not limited to Pony Club training and birthday parties. These activities are subject to the conditions and limitations stated in this Agreement.

### **3. Public Access**

A. The licensee shall provide and maintain in good working order gates to all paddocks in Areas A,B,C and D and signs notifying the public of their right to pass thru and to use the paddocks for any use allowed under the Rules and Regulations of the Conservation Commission for Acton conservation lands. The signs and the locations of such gates must be approved by the Commission.

B. The Licensees shall permit the public to use and traverse the licensed premises for passive recreation purposes or any other activities allowed under the Rules and Regulations of the Conservation Commission for Acton conservation lands.

***(Optional additional language for the Commission to consider): In order to protect the safety and welfare of both the public and the Licensees, upon written approval by the Commission, the Licensees may prohibit(or discourage) the public from entering the paddocks when horses are present)***

C. The Licensees, by accepting this condition, do not waive any remedies that they may have against any member of the public who may damage crops or other property of the Licensees.

D. The Commission and its agents and employees shall have unrestricted access to the licensed premises at all times.

#### **4. Limitations on Use**

A. The Licensees agree and commit to use best efforts beginning in August 2012 and continuing thereafter to establish and maintain a healthy vegetative ground cover on Areas A, B and C. Until the Commission has determined in writing that such ground cover is established in Area C, that area may not be used by the Licensee for any of the activities permitted in para. 2 above. In the event that the Commission determines in writing and in its sole discretion that the vegetative ground cover in Areas A, B or C is significantly diminished or destroyed so that significant portions of these areas have reverted to bare dirt, all activities on said areas shall cease until the Commission has determined in writing that a healthy vegetative ground cover has been restored in said areas.

B. No trees or shrubs shall be removed without the consent of the Commission. Licensee agrees not to use or apply any herbicide, insecticide, pesticide, or fertilizer without the prior written consent of the Commission.

#### **5. Fees**

Upon execution of this license Agreement, the following annual rental for the licensed premises will be payable to the Town of Acton at such times as the Commission determines:

***(The following amounts for annual rental are listed as options for the Commission to consider)***

a. \$1000/acre (based on statements by owners of Stoneymeade Farm)	\$12,000
b. \$500/acre (based on statements by owners of Larkspur Farm)	\$6,000
c. \$200/horse (calculated and paid quarterly @ \$50/horse based on list of horses provided by the Licensees)	\$6,000
d. \$1000	\$1000

At least quarterly, the Licensees shall provide to the Commission a list of the horses currently at Hybrid Farm, with the name and age of each horse. The list will specify any horses that have been added or are no longer at Hybrid Farm since the last list.

## **6. Wetlands Crossing**

Not later than October 1, 2012, the Licensees shall file a Notice of Intent (NOI) pursuant to the Wetlands Protection Act and the Town of Acton Wetland Bylaw for any work or activity within areas subject to protection under the Act or Bylaw. Such NOI shall, at a minimum and with appropriate engineering documentation, propose a manner of crossing from Area C to Area D which remediates the current conditions and which protects the areas subject to protection under the Act and Bylaw. Use of the crossing into Area D is prohibited after December 31, 2012 unless the Commission has issued an Order of Conditions allowing such use, and the Licensees have received a Certificate of Completion from the Commission.

## **7. Commitment to Maintain Licensed Premises in Good Repair**

The Licensees hereby agree to use best efforts to maintain in good repair, at all times, all structures shelters allowed by this license, including fences, signs, and shelters.

## **8. Closure Plan**

Not later than October 1, 2012, the Licensees shall file with the Commission a surety bond in an amount determined by the Commission to adequately cover the costs of an independent contractor removing and disposing of all fences and structures on the licensed premises, and restoring said premises to their pre-license condition or to such condition as is determined by the Commission at that time.

## **9. Filing of Plan for Fences and Shelters**

Not later than October 1, 2012, the Licensees shall file with the Commission the following plans and documents:

A. a detailed site plan showing: all proposed fences and gates on the licensed premises; the locations of all proposed shelters on the licensed premises including a description of such shelters (size and material). Plywood shall not be used for the walls of the shelters.

B. The Licensees may construct such fences, signs, and shelters upon written approval by the Commission.

## **10. Size of Herd *(the following options are provided for the Commission to consider)***

The number of horses using the licensed premises shall not exceed:

a. 18   b. 28   c. 30   d. 32   e. 36

## **11. Extension of License**

This License renews and extends the existing License, as amended, from July 19, 2012 until December 31,, 2012. Failure of the Licensees to comply with any term of this License will result in the termination of this License pursuant to para. 15 below.

## **12. Renewal**

This license may be renewed for subsequent one year periods beginning January 1, 2013, by written agreement between the Commission and the Licensees. The Licensees shall apply for such renewal by November 1 of each year.

## **13. Indemnity**

The LICENSEES acknowledge and agree that the LICENSEES are responsible, jointly and severally, as independent contractors for all duties and responsibilities under this license, for all proceedings and claims arising out of the rights and privileges conferred by this agreement, and for all the acts of their employees and agents hereunder, and agree that they will indemnify and hold the Town of Acton and its officers, boards, committees and employees harmless from any and all losses, damages, costs, charges, expenses and claims which may be made against it or them or to which it, they or any of them may be subject by reason of any alleged act, action, neglect, omission or default on the part of the LICENSEES or any of their agents or employees any way arising out of this license agreement.

## **14. Insurance**

Before executing this agreement, the LICENSEES shall purchase and maintain at their expense for the duration of this agreement a policy of insurance providing for public liability and property damage insurance covering liability for itself, its employees and agents under this agreement, which provides indemnity protection to the amount or limit of at least \$1,000,000 on account of injury to or death of any one person, of at least \$1,000,000 on account of any one accident resulting in injury or death of more than one person, as well as coverage for property damage to the amount or limit of at least \$1,000,000 on account of any one accident resulting in such property damage; and the LICENSEE shall, before execution of this agreement secure and file with the COMMISSION a certificate of such insurance in a form approved by the Town with a surety company or companies authorized to do business in the Commonwealth of Massachusetts and approved by the COMMISSION. Each such certificate shall state that the Town will be notified in writing no less than (15) days prior to cancellation of any such insurance coverage.

**(question for the Commission- should the Town be listed as an Insured under the policy?)**

## **15. Termination**

The LICENSEES agrees that if the COMMISSION, in its sole discretion, shall determine at any time during the term of this agreement that the LICENSEES are using any or all of the premises in violation of the terms and conditions of this agreement, the COMMISSION may, in its sole discretion, at any time thereafter terminate all or part of this agreement, by giving written notice thereof to the LICENSEES, specifying the effective date of such notice, and thereupon, upon the date so specified, this license shall terminate, but such termination shall not prejudice or waive any rights or remedies which the Town of Acton or the Commission may have against the LICENSEES, jointly and severally, because of any

default or failure to observe and comply with the terms and conditions of this agreement up to the date of such termination.

#### **16. Assignment**

The LICENSEE shall not assign or transfer by power of attorney, or otherwise, the right and privilege conferred upon it by this license, or any portion thereof, without the previous written consent of the COMMISSION, nor shall any such rights or privilege be subject to or otherwise reached by any legal or equitable process.

#### **17. Notice**

Any notice, demand or request required to be given hereunder shall be deemed sufficiently given or served on either of the parties hereto mailed by certified mail, return receipt requested, postage prepaid, to the COMMISSION at Town Hall, Massachusetts, and to the LICENSEE Thomas B. and Rita Marie McConnon, 217 Nagog Hill Road, Acton, Massachusetts, 01720.

v. 1.0

6-25-12

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