

DRAFT LICENSE AGREEMENT

This Agreement, made this day of July, 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 Hybid 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 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, water quality, wildlife, and natural areas of the licensed premises and to provide safe public access.

1. Description of Licensed Premises

1.1 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

2.1 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.

2.2 It is agreed by the parties that a vegetative ground cover shall be established and maintained at all times by the Licensees on areas A, B and C of the licensed premises.

2.3 It is further agreed that Area B will remain unfenced and will be used for lower intensity activities than other areas.

2.4 It is further agreed that Area D will be maintained in its current state, until such time as the parties agree on a vegetative cover plan.

3. Limitations on Use

3.1 In the event that the Commission determines in writing and in its sole reasonable 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.

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

4. Public Access

4.1 The licensee shall provide and maintain in good working order gates to Areas A,B,C and D and signs notifying the public of established trails on Nagog Hill conservation land. The location of the signs and the locations of such gates must be approved by the Commission.

4.2 The Licensees shall permit the public to 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.

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

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

5. Fees

5.1 Upon execution of this license Agreement, ~~an annual~~ license fee of ~~\$1,000~~⁵⁰⁰ for the licensed premises shall be payable to the Town of Acton ~~at such times and in such increments as the Commission determines~~ for the period of July 19, 2012 until January 15, 2013.

~~5.2 Upon each renewal of this license Agreement, an annual license fee of \$1,000 for the licensed premises shall be payable to the Town of Acton by January 15th of each year.~~

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6. Commitment to Maintain Licensed Premises in Good Repair

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

7. Size of Herd

7.1 The number of horses using the licensed premises shall not exceed 32 horses at any one time.

7.2 ~~At least quarterly~~Semiannually, in January and July of each year, the Licensees shall provide to the Commission by email a list of the horses currently at Hybrid Farm, ~~with the name of each horse. The list will specify any horses that have been added or are no longer at Hybrid Farm since the last list.~~

8. Extension of License

8.1 This License renews and extends the existing License, as amended, from July 19, 2012 until January 15, 2013. Failure of the Licensees to comply with any material term of this License, which failure is not cured within 30 days of receipt of written notice thereof from the Commission, may result in the termination of this License pursuant to para. 13 below.

(Note: is the failure clause even needed since it's already spelled out in paragraph 13?)

9. Actions Required by the Licensees in 2012

9.1 Establishing and Maintaining Vegetative Cover in Area C. The Licensees agree and commit to use reasonable best efforts beginning in August-September 2012 and continuing thereafter to establish and maintain a healthy vegetative ground cover in Area 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 Licensees for any of the activities permitted in para. 2 above.

9.2 Filing Site Plan. Not later than October 1, 2012, the Licensees shall file with the Commission 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). Plain plywood shall not be used for the walls of the shelters. Upon written approval by the Commission, the Licensees may construct such fences, signs, and shelters.

9.3 Posting Surety Bond. 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.

(Note: Shouldn't the amount be specified in the Agreement?)

9.4 Wetland Filing.

9.4.1 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 proposed alteration within areas subject to protection under the Act or Bylaw.

9.4.2 Not later than October 1, 2012 an NOI with appropriate engineering documentation shall be filed proposing either a crossing from Area C to Area D or remediation of the existing crossing. (Note: this crossing is being abandoned. Fencing that forms the "chute" will be removed. No remediation is needed.)

9.4.3-2 Use of the crossing from Area C 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.

9.5 Other Permits or Approvals

9.5.1 The Licensees shall obtain all other permits or approvals required by state or local bylaws and regulations.

10. Renewal

10.1 This license may be renewed for subsequent one year periods beginning January 15, 2013, by written agreement between the Commission and the Licensees. The Licensees shall apply for such renewal by October 1 of each year. Such written agreement shall be deemed an amendment to this license agreement; provided, however, that this license shall automatically renew for a successive one year period if the Commission does not respond to the Licensees' application by the December 1 immediately following Licensees' most recent application.

(To discuss with the Commission: is a renewal application really required 3 months from now, or can we commence submitting them in October of 2013?)

11. Indemnity

11.1 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 except to the extent caused by the Town of Acton's neglect, omission or default.

12. Insurance

12.1 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?)

13. Termination

13.1 The Licensees agree that if the Commission, in its sole [reasonable](#) discretion, determines at any time during the term of this agreement that the Licensees are using any or all of the premises in [material](#) violation of the terms and conditions of this agreement, the Commission may, in its sole discretion, at any time thereafter [\(subject to a 30-day right to cure by Licensees\)](#) 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.

14. Assignment

14.1 The Licensees 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.

15. Issues to be considered in 2013.

15.1 The parties agree to use [reasonable](#) best efforts to resolve the following issues in 2013:

15.1.1 what changes, if any, should be made in the vegetative/tree cover in Area D

15.1.2 how to control runoff and prevent adverse impacts on water quality from activities in Area D.

16. Notice

16.1 Any notice, demand or request required to be given hereunder shall be deemed sufficiently given or served on either of the parties hereto [either by hand-delivery or](#) 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.

[17. Events Beyond the Control of the Parties](#)

[17.1 In the event the operations of the Commission or Licensees' facilities \(or any substantial portion thereof\) are interrupted by war, acts of terrorism, fire, insurrection,](#)

riots, the elements, earthquakes, or acts of God, the provisions of this License (or such portions thereof as such party is thereby rendered incapable of performing) will be suspended for the duration of such interruption.

v. 2.0

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