TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 929-6431
Fax (978) 929-6340

Conservation Commission

LICENSE AGREEMENT

This Agreement, made this ___ day of September, 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-Marie McConnon and Hybid Farm, Inc.(hereinafter "the Licensees") (collectively, the "Parties").

WHEREAS, on October 9, 1979, a Special Town Meeting voted to authorize the Town to purchase land on Nagog Hill Road owned by Thomas J. Quin, Jr. and Wilda M. Quin (hereinafter "Nagog Hill"). The Quins deeded Nagog Hill to the Town by deed dated January 2, 1980 and recorded at Middlesex South Regustry of Deed Book 13871, Page 233.

WHEREAS, the Licensees desire to continue their use of a portion of Nagog Hill, which has been permitted in the past pursuant to a License Agreement between the Commission and the McConnons signed on July 19, 1989.

WHEREAS, the Licensees are hereby given the privilege and license to continue to use a portion of Nagog Hill (hereinafter "the Licensed Premises") solely for the purposes and subject to the limitations stated in this Agreement.

WHEREAS, although 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.

NOW THEREFORE, the Parties agree to the following:

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 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, 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. The Parties agree that a vegetative ground cover shall be established and, where necessary, re-established, and maintained at all times by the Licensees on areas A, B and C of the Licensed Premises.

2.3. Licensees agree that Area B will remain unfenced and will be used for lower intensity activities than other Areas.

2.4. Licensees agree that Area D will be maintained in its current state, until the parties agree on a vegetative cover plan.

3. Limitations on Use

3.1. If the Commission determines in its sole reasonable discretion that the vegetative ground cover in Areas A, B or C is significantly diminished or destroyed such that significant portions of these areas constitute bare dirt, it shall provide Licensees with notice to cease all activities on those areas until the Commission has determined that a healthy vegetative ground cover has been restored in such areas of concern.

3.2. No trees or shrubs shall be removed from the Licensed Premises 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 Licensees shall provide and maintain in good working order (1) gates to Areas A,B,C and D and (2) signs notifying the public of established trails on Nagog Hill conservation land. The location of the signs and the gates must be approved by the Commission prior to placement.

4.2. The Licensees shall permit the public to traverse the Licensed Premises unimpeded for passive recreation or any other purposes allowed and at the times permitted under the Commission's Rules and Regulations 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 Agreement, Licensees shall pay a license fee of $500 for use of the Licensed Premises to the Town of Acton for the period of July 19, 2012 until January 15, 2013.

5.2. Thereafter, upon each renewal of this license Agreement, Licensees shall pay an annual license fee of $1,000 for use of the Licensed Premises to the Town of Acton by January 15th of each year.

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 and required by this Agreement.

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. The Licensees shall provide to the Commission quarterly by email a list of the horses currently at Hybid Farm. The list will specify any horses that have been added or are no longer at Hybid Farm since the last list.

8. Default

8.1. 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 ¶13 below.

9. Actions Required by the Licensees

9.1. Establishing and Maintaining Vegetative Cover in Area C. The Licensees agree and commit to use reasonable best efforts beginning in September 2012 and continuing thereafter to establish and maintain a healthy vegetative ground cover in Area C. Until the Commission has determined that such ground cover is established in Area C, that area may not be used by the Licensees for any of the activities otherwise permitted in this Agreement.

9.2. Filing Site Plan. Not later than October 1, 2012, the Licensees shall file with the Commission a detailed site plan showing: the wetland boundary, 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). Upon written approval from the Commission, the Licensees may construct such fences, signs, and shelters; provided however, that in no event shall the walls of any shelter be constructed of plain plywood.

9.3. Restoration of Site at Termination. At the termination of this License, either by non-renewal or pursuant to Section 13 herein, the Licensees agree to remove and dispose of all fences and other structures on the Licensed Premises, and restore the Licenses Premises to such reasonable condition as is determined by the Commission at the termination of this Agreement. The Licensees shall complete the requirements of this Section within thirty (30) days of termination of this License. Licensees are permitted to enter Licensed Premises after the termination of the License during that thirty (30) day period only to fulfill their obligations under this Section.

9.4. Posting Surety Bond. Not later than October 1, 2012, the Licensees shall file with the Commission a surety bond in the amount of $2,500 and in a form approved by Town Counsel to adequately cover the costs of removing and disposing of all fences and structures on the Licensed Premises, and restoring the Licensed Premises to their pre-license condition or to such reasonable condition as is determined by the Commission at the termination of this Agreement in the event of failure by the Licensees to do the same as required pursuant to Section 9.3 herein.

9.5. Abandonment of Existing Crossing. Use of the crossing from Area C into Area D, as shown in the attached plan, 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 Compliance from the Commission.

9.6. Other Permits or Approvals. The Licensees shall obtain all other permits or approvals required by federal, state or local bylaws and regulations.

10. Renewal

10.1. This License Agreement may be renewed for subsequent one year periods beginning January 15, 2013, by writing between the Commission and the Licensees. The Licensees shall apply for such renewal by October 1 of each year. Such writing shall be deemed an amendment to this License Agreement; provided, however, that this License Agreement 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.

10.2. Before any renewal of this Agreement is granted, the Parties agree to use reasonable best efforts to agree to (1) changes, if any, that should be made in the vegetative cover in Area D; and (2) how to control runoff and prevent adverse impacts on water quality from activities on the Licensed Premises.

11. Indemnity

11.1. The Licensees acknowledge and agree that the Licensees are responsible, jointly and severally, for all duties and responsibilities under this License Agreement, 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 License 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 Licensees 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.

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. Notice

15.1. 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 Licensees Thomas B. and Rita-Marie McConnon, 217 Nagog Hill Road, Acton, Massachusetts, 01720.

16. Events Beyond the Control of the Parties

16.1. 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 the party is thereby rendered incapable of performing) will be suspended for the duration of such interruption.AS AGREED:

ACTON CONSERVATION COMMISSION:

_____

By:

_____

By:

_____

By:

Dated: September __, 2012

THOMAS B. MCCONNON, individually and as Treasurer of Hybid Farm, Inc.

_____

Dated: September __, 2012

RITA-MARIE MCCONNON, individually and as President of Hybid Farm, Inc.

_____

Dated: September __, 2012