

LAND USE LICENSE AGREEMENT

THIS LICENSE AGREEMENT made as of this ____ day of _____, 2015 (the “Commencement Date”) by and between the TOWN OF ACTON, a municipal corporation in Middlesex County, Massachusetts, acting by its Conservation Commission (“Licensor”), and the COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF CORRECTION (“Licensee”),

WITNESSES that:

Licensee is hereby given the privilege and license by Licensor to use the land more fully described below from the Commencement Date to May 27, 2024 (the “Term”) for the purposes and upon the terms and conditions hereinbelow set forth:

WITNESS that:

This agreement is entered into as a condition of that certain lease, dated as of May 27, 2014, between the Town of Acton and the Commonwealth of Massachusetts, acting by and through its Division of Capital Asset Management and Maintenance, a notice of which is recorded in Book 64145, Page 346 of the Middlesex South Registry of Deeds. The applicable covenant is attached hereto as Exhibit A (the “Agricultural Restriction”).

I. DESCRIPTION OF LICENSED PREMISES

Licensor is the owner of that certain 72-acre parcel located on Route 2 and Wetherbee Street in Acton, Massachusetts and described with more particularity on Exhibit B, attached hereto. Licensor hereby grants Licensee, subject to the terms and conditions of this Agreement, license to use an approximately 31-acre portion of such parcel, described with more particularity as follows (the “Licensed Premises”):

Beginning at the most southeastern corner of the property at the intersection of Wetherbee St. and Route 2, N85W 1200’ by Route 2, thence N9E 990’, thence N58W 90’, thence N9E 200’, thence S75E 670’, thence S77E 626’, thence by Wetherbee St., S10W 114’ and S12W 867’ to the point of beginning.

II. PERMITTED USE

- A. Licensee may use the Licensed Premises solely for the purpose of farming and all use shall be subject to and consistent with the terms of the Agricultural Restriction (the “Permitted Use”). Licensee shall submit a crop plan to the Town of Acton Conservation Committee (“ConComm”) annually, and at least six weeks prior to planting. If ConComm objects to any aspect of such crop plan, ConComm shall provide written notice to Licensee within 30 days of submission setting forth the basis of its objection(s); if ConComm does not object to the crop plan it shall notify Licensee in writing of its acceptance. Following receipt of an objection notice from ConComm, Licensee shall propose an alternate crop plan that is responsive to the basis of ConComm’s previous objection. ConComm

shall review such alternate plan and either accept or object to the plan as set forth above; ConComm and Licensee shall continue such submission and review procedure until ConComm accepts a proposed plan. Except for the Permitted Use, Licensee shall not enter, use, conduct, or permit any activity, operations or business upon the Licensed Premises.

- B. Licensee shall maintain the Licensed Premises in as good a condition as the Licensed Premises are in at the time of commencement of this Agreement, normal wear and depreciation from causes beyond Licensee's control excepted; shall practice farming in a manner consistent with proper use of conservation land; and without limiting the generality of the foregoing, shall maintain PH and productivity, and during non-growing season shall maintain ground cover adequate to prevent erosion.
- C. No trees or shrubs shall be removed without prior written consent of Licensor. Licensee shall take responsible care to prevent injury or damage to the trees and shrubs on the Licensed Premises.
- D. Licensee will not use any herbicide, insecticide, pesticide, or fertilizer without the prior written consent of Licensor, such consent may be granted, conditioned or withheld in the sole discretion of Licensor. Licensee shall comply at all times with the Massachusetts Pesticide Control Act (MGL Ch. 132B) and the regulations in furtherance of such Act (333 CMR §§ 1-13).
- E. Licensee shall at all times use the Licensed Premises in accordance with all applicable laws, statutes, ordinances, regulations, permits, licenses and approvals.

III. WASTE

Licensee shall not make, permit or suffer any Licensee Party (as such term is defined below) nor shall it permit or suffer the commission of waste upon the Licensed Premises by any such person.

IV. ALTERATIONS; STRUCTURES

Licensee shall make no alterations to the Licensed Premises, including, but not limited to, the installation, placement or construction of any structure, or fixed improvement in or upon the Licensed Premises without the prior written approval of Licensor which may be granted, conditioned or withheld in Licensor's sole discretion. Notwithstanding the foregoing, approval is not required "alterations" performed in connection with typical farming activity such as plowing and re-grading. Any approval granted by Licensor is exclusive of any additional approvals that may be required by third parties, including, but not limited to, the Massachusetts Historical Commission. Nothing in this section shall preclude Licensee from using motorized farm vehicles on the Licensed Premises as otherwise allowed in connection with the Permitted Use.

V. PUBLIC ACCESS

Licensee shall permit the public to use and traverse the Licensed Premises for passive recreational purposes and other activities approved by Licensor, as Licensor shall approve, provided, however, that Licensee, in accepting these conditions, does not thereby waive any remedies it may have against any member of the public who shall steal, damage, or destroy the crops or property on land covered by this license. Licensor, its agents and servants shall have unrestricted access to the aforesaid Licensed Premises at all times for inspection purposes. In addition to (and not in limitation of) the foregoing, Licensee shall neither plant nor plow the northerly 30 feet of the Licensed Premises bounded by Wetherbee Road to the east and the westerly edge of the Licensed Premises to the west, and such area may be used by Licensor and the public to access the conservation area to the west of the Licensed Premises.

VI. CONTROL OF EMPLOYEES AND INMATES

Licensee expressly agrees that it shall exercise exclusive control and supervision over its agents, employees, servants and other persons under its control (including, but not limited to, any inmates of any facility of Licensee), to insure that the provisions of this Agreement are carried out. Neither the Town of Acton nor any of its officers, agents, employees, boards, commissions or committees shall be liable for any injury to persons or property resulting from any activity undertaken by Licensee or any persons acting under Licensee's control relating in any way to this License Agreement.

VII. HAZARDOUS MATERIALS

- A. For the purposes of this License, the term "Hazardous Materials" shall include, but not be limited to, substances defined as "hazardous substances", "toxic substances", "hazardous wastes", "hazardous materials", "oil" or "asbestos" in any federal or state statute concerning hazardous materials now or hereafter enacted, including all regulations adopted or publications promulgated thereunder (collectively, "Environmental Laws").
- B. During the Term, no Hazardous Materials may be used, generated, stored, released, or disposed of on, under or about, or transported to, from or through the Licensed Premises (except for minor amounts of such materials that may be contained in cleaning materials and maintenance vehicles and machines customarily used in connection with the Permitted Use).
- C. Licensee shall, with all due diligence, at its own cost and expense and in accordance with Environmental Laws (and in all events in a manner reasonably satisfactory to Licensor), take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of Hazardous Materials at or released or migrating from the Licensed Premises, including all removal, containment and remedial actions. In conjunction with any actions by Licensee required above, to the extent permitted by law, Licensee shall pay or cause to be paid at no expense to Licensor all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by

such Environmental Laws which may be asserted against the Licensed Premises. Licensee shall indemnify Licensor from all claims, damages, losses, penalties actions, liens, demands, costs, liabilities, expenses, fines and judgments resulting from a breach of Environmental Laws or violation of any provision of this Article VII. [*Note to draft*: Licensee's ability to indemnify under law to be discussed with Licensee].

- D. The provisions of this Article VII shall survive the expiration or earlier termination of this Agreement.

VIII. CONDITION OF LICENSED PREMISES AND LICENSEE'S ASSUMPTION OF RISK

Licensee acknowledges and agrees as follows:

- A. The Licensed Premises are provided to Licensee in "**AS-IS, WHERE-IS**" condition.
- B. Licensor is under no obligation to make any repairs, renovations, or alterations to the Licensed Premises.
- C. Licensor makes no representations or warranties whatsoever regarding the Licensed Premises, including, without limitation, the suitability or fitness of the Licensed Premises for the Permitted Use.
- D. Licensee agrees that Licensee shall enter upon and use the Licensed Premises and the areas surrounding the Licensed Premises at Licensee's own risk, and Licensor shall not be liable to Licensee or to any of Licensee's officers, agents, representatives, contractors, employees, invitees and/or any other person claiming by or through Licensee ("Licensee's Parties") for any death or personal injury, or for any loss or damage to any personal property that is brought onto the Licensed Premises by, or on behalf of, Licensee or Licensee's Parties, including, without limitation, equipment, fixtures, vehicles or other personal property; provided, however, that notwithstanding the foregoing, Licensor shall be liable for claims, damages, costs and expenses related to the negligence or willful misconduct of Licensor and Licensor's employees and agents. Licensee shall indemnify and hold harmless Licensor against all claims, damages, losses, penalties, actions, liens, demands, costs, liabilities, expenses, fines and judgments (including without limitation reasonable legal fees) related to Licensee's use of the Premises during the Term. [*Note to draft*: Licensee's ability to indemnify under law to be discussed with Licensee].
- E. Licensee accepts complete liability for the acts, omissions, and negligence of Licensee and Licensee's Parties, while present upon the Licensed Premises or in connection with this License; provided, however, that Licensee does not accept

liability for claims, damages, costs and expenses related to the negligence or willful misconduct of Licensor and Licensor's employees, agents and/or invitees.

- F. Without limiting the foregoing, Licensor shall not have any liability to Licensee or to any of Licensee's Parties for any injury, death, loss, or damage caused by any act of Licensee's Parties or members of the general public; provided, however, that notwithstanding the foregoing, Licensor shall be liable for claims, damages, costs and expenses related to the negligence or willful misconduct of Licensor and Licensor's employees and agents.
- G. Notwithstanding the provisions of Sections IIX.D and IIX.F above, if Licensor and Licensee are jointly, concurrently or successively liable for an actionable wrong to an injured person, each party shall have a right to contribution from the other party. The right of contribution shall be limited to the amounts paid by a party in excess of that party's share of liability, based upon principles of equity (including the principle of comparative fault). If either party receives any claim, demand, suit or judgment for which the other party is or may be jointly, concurrently or successively liable, that other party shall be given prompt notice thereof. If Licensor and Licensee become co-defendants, either may file a cross-complaint against the other for a declaration of rights respecting the relative responsibility of each for contribution. If either Licensor or Licensee becomes a defendant in an action or proceeding in which the other is a non-party, the defendant therein may either file a cross-complaint against the non-party for a declaration of rights of contribution or may bring a separate and independent action against the non-party for contribution.
- H. The provisions of this Article IIX shall survive the expiration or earlier termination of this Agreement.

IX. TERMINATION

If Licensor shall determine at any time during the term of this Agreement that Licensee is using the Licensed Premises for any use other than the Permitted Use, Licensor may, at its election at any time thereafter, terminate this Agreement by giving written notice thereof to Licensee, specifying the effective date of such termination (such termination date to be at least thirty (30) days following the date such notice is sent by Licensor), and thereupon, upon the date so specified, this Agreement shall terminate, but such termination shall not prejudice or waive any rights or remedies which the Town of Acton or Licensor may have against Licensee 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.

X. ASSIGNMENT

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 Licensor, nor shall any such rights or privileges be subject to or otherwise reached by any legal or equitable process.

XI. NOTICE

Any notice, demand or request required to be given hereunder shall be deemed sufficiently given or served on either of the parties hereto if mailed by certified mail, return receipt requested, postage prepaid, to Licensor at Town Hall, Acton, Massachusetts, and to Licensee at Department of Correction, 100 Cambridge Street, 22nd Floor, Boston, Massachusetts, Attention: Commissioner of Correction, or to such other address as shall be designated by either party in writing for that purpose.

XII. RENEWAL

Upon expiration of the Term, this terms of this Agreement shall continue in full force and effect, provided, however, that following expiration of the Term, Licensee agrees to vacate the Licensed Premises upon thirty (30) days' written notice from Licensor which may be delivered by Licensor at any time and in Licensor's sole discretion. Upon the expiration of such thirty (30) day notice period, Licensor shall have no right of entry to the Licensed Premises and the terms of this Agreement shall be of no further force and effect except for those provisions that expressly survive the expiration or earlier termination of this Agreement.

[remainder of page intentionally left blank; signatures follow]

IN WITNESS WHEREOF, the parties have hereto set their hands and seals, the Town of Acton by its Conservation Commission thereunto duly authorized, who, however, incur no personal liability by reason of the execution hereof or anything herein contained, both induplicate, the date and year first above written.

Approved as to form:

Name:
Title:

LICENSEE:

Commonwealth of Massachusetts,
Department of Correction

Name:
Commissioner, Dept. of Correction

LICENSOR:

The Town of Acton
Conservation Commission,

Andrew Magee

Terry Maitland

Tom Arnold

William Froberg

Amy Green

James Colman

Paula Goodwin

Exhibit A

Agricultural Restriction

(see following pages)