

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF AGRICULTURAL RESOURCES, DIVISION OF AGRICULTURAL
CONSERVATION AND TECHNICAL ASSISTANCE
LICENSE TO ENTER AND USE VACANT STATE-OWNED LAND

Preamble

This instrument ("this License") is a license pursuant to MGL c. 128, s. 7A-7F, by and between the Commonwealth of Massachusetts, acting by and through its Department of Agricultural Resources ("Licensor") _____ ("Licensee"), a _____ (name of domiciliary commonwealth or state)

(check one)

- | | |
|---|--|
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> General Partnership |
| <input type="checkbox"/> Business Corporation | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Not-For-Profit Corporation | <input type="checkbox"/> Limited Liability Partnership |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> other: _____ |
| <input type="checkbox"/> Trust | (indicate entity type) |

The Commonwealth of Massachusetts is the owner of certain vacant land (the "Licensed Premises") that is more fully described in Articles 2 and 3 of, and *Exhibit A* to, this License. Licensee desires to enter upon the Licensed Premises for the purposes described in Article 4 of this License. Therefore, Licensor grants the privileges of such entry, the permitted uses defined in Article 4 of this License, and the other privileges set forth in this License, and Licensee accepts the same, subject to the following terms and conditions:

License

1. REFERENCE DATA

A. Date of License: _____

B. Mailing Address of Licensor: Department of Agricultural Resources
Attention: Land Use Administrator
138 Memorial Drive, Suite 42
West Springfield MA 01089

Telephone Number: (413) 726-2003

Fax Number: (413) _____

All references in this License to "Licensor" refer to said Department of Agricultural Resources unless otherwise expressly stated in this License.

C. Mailing Address of Licensee: _____
(include ZIP Code) _____

(include Area Code(s)) Telephone Number: _____

Fax Number _____

D. Licensed Premises: As defined and described in Articles 2 and 3 of, and *Exhibit A* to, this License.

- E. Permitted Use: Agricultural use, as further defined in Article 4 of this License.
- F. Term of License (not to exceed 5 years): As defined in Article 6 of this License.
- G. License Fee: \$_____ As defined in Article 7 of this License.

2. LICENSED PREMISES

- A. Entry and use are limited to the Licensed Premises, as shown on the plan(s) or diagram(s) attached to this License as *Exhibit A*, and further described as follows (if no further limitation, write “NONE”):

Approximately _____ acres of agricultural land located _____.

(Attach plan(s) or diagram(s), marked as *Exhibit A*, showing location of the Licensed Premises and entry)

- B. Licensee’s employees, agents, and contractors shall have, as appurtenant to this License, the non-exclusive use, in common with others entitled thereto, of any sidewalks, elevators, loading facilities, and entrances and exits from public streets and highways serving the Licensed Premises.

3. CONDITION OF THE LICENSED PREMISES

Licensee acknowledges and agrees as follows:

- A. Licensee accepts the Licensed Premises 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 has made no representations or warranties whatsoever regarding the Licensed Premises, including, without limitation, no representations or warranties regarding fitness of the Licensed Premises for Licensee’s intended purpose or use.

4. PURPOSES AND USES

The privileges of Licensee under this License with regard to the Licensed Premises shall be for the following and no other purposes and uses (the “Permitted Uses”): Agriculture, as further defined in the Management Plan which is incorporated into this License as *Exhibit D*.

(Attach Management Plan, marked as *Exhibit D*.)

5. LICENSEE’S EQUIPMENT

Licensee may bring such vehicles and other equipment upon the Licensed Premises as would ordinarily be used to operate and use the Licensed Premises for the purposes and uses permitted by this License, subject however, to the following limitations: (Do not leave blank – if no limitations, write “NONE.”)

6. TERM (NOT TO EXCEED FIVE YEARS) (Fill in blank(s) appropriately.)

- A. The term of this License shall be ___year(s) ___ month(s) ___ week(s) ___day(s).
- B. The term of this License shall commence on _____and shall expire on _____unless terminated earlier in accordance with the terms of Article 17 (indicate the appropriate month, day, and year in each blank).
- C. The term of this License (Mark one. If (2) is marked, complete blank at end.)
- (1) _____ shall not be extended
- (2) _____ may be extended on the following terms, subject to the prior written approval of Licensor:
- (3) _____ may be extended on the same terms.

7. LICENSE FEE

- A. In consideration of the rights granted to Licensee under this License, Licensee shall pay the following annual license fee (the "License Fee":) \$_____ Fee (United States Dollars), payable in full on _____ and on the first day of _____ in each year of the License thereafter.
- B. The License Fee shall be delivered to Licensor at the address shown on page 1 of this License and shall be payable in good funds to the order of the Commonwealth of Massachusetts.

8. PERMITS

- A. This License and all obligations hereunder are specifically dependent upon the issuance to Licensee of all permits and licenses (including, but not limited to, pesticide applicator licenses, animal health permits, and applicable environmental authorizations) required to use the Licensed Premises for the purposes described in this License from all governmental agencies having jurisdiction.
- B. It shall be the responsibility of Licensee to obtain each such permit or license, at Licensee's sole cost and expense.
- C. If Licensee is refused any such permit or license, this License shall be null and void, with no further obligation by either party to perform.
- D. If any such permit or license is revoked or cancelled during the term of this License, it shall be cause for terminating this License immediately as set forth in Section 17.C, hereof.

9. ALTERATION OF THE LICENSED PREMISES

- A. Except as provided in Section 9.B hereof, Licensee shall make no alterations or improvements upon the Licensed Premises except as may be specifically permitted in the Management Plan (attached to this License as *Exhibit D*.)
- B. Licensee shall not make any alterations or improvements not permitted by the Management Plan upon the Licensed Premises unless Licensee has obtained Licensor's prior written approval and

consent. Licensor shall review and respond in a timely manner to any reasonable requests by Licensees to make such alterations or improvements.

- C. Any alterations or improvements made by Licensee shall be made strictly in accordance with the terms and conditions established in writing by Licensor. Such terms may include, without limitation, prior written approval of plans, insurance coverage, and a requirement that Licensee remove any or all of Licensee's alterations or improvements upon the expiration or earlier termination of this License.
- D. All such alterations or improvements remaining upon the Licensed Premises after the expiration of this License shall be subject to the provisions of Section 11.J hereof.

10. UTILITIES (Mark A, B, or C and any necessary subparts.)

A. _____ The Licensed Premises are not served by any utilities.

B. _____ Licensee shall pay for the following utility service(s):

_____ electricity _____ water

C. _____ Licensor shall pay for the following utility service(s):

_____ electricity _____ water

- If Licensor provides any utility system or service at the Licensed Premises or agrees to pay for the cost of any utility service, Licensor makes no representation or warranty whatsoever with respect thereto, including, without limitation, no representation or warranty as to the adequacy of the same for the purposes and use of Licensee.
- Licensor shall not be responsible for any interruption in utility service.
- Licensor may, at any time, require Licensee to contract directly with the supplier of such service.

11. CONDUCT OF LICENSEE

A. Compliance with Licensor's Directives

Licensee agrees to observe and obey all directives given by hand, facsimile, or registered or certified mail duly designated personnel of Licensor.

B. Compliance with Laws

Licensee shall at all times operate the Licensed Premises in accordance with all applicable laws, statutes, ordinances, regulations, permits, licenses, and the requirements of Licensee's insurance policies.

C. Repair of Damage

Licensee shall neither cause nor suffer any waste of the Licensed Premises and shall maintain the Licensed Premises in good order at all times. Licensee's responsibilities shall include, but not be limited to, the repair of any and all damage or breakage resulting from acts of vandalism or the intentional or negligent acts of Licensee or others, but excluding damage or breakage caused by employees, agents, or contractors of Licensor. All repairs made by Licensee shall be performed in a

manner satisfactory to Licensor. Licensor shall have the option to make such repairs for the account of Licensee, in which event Licensee shall reimburse Licensor for any and all costs incurred by Licensor to make such repairs. Licensee shall make payment within ten business days after written demand by Licensor.

D. Sanitation

Licensee shall maintain the Licensed Premises in a sanitary condition and shall follow all directions of Licensor with regard to the collection and disposal of refuse.

E. Security

Licensee shall be solely responsible for providing, at Licensee's sole cost and expense, such security protection as Licensor may require, in Licensor's sole discretion, to protect the Licensed Premises, Licensee's invitees, third parties, and the public from injury or damage.

F. Cost of Operations

Except as otherwise expressly set forth in this License, Licensee shall be responsible for any and all costs and expenses associated with Licensee's operations upon the Licensed Premises.

G. Operations Limited to Permitted Uses

Licensee shall not conduct, nor permit any of its employees, agents, contractors, or invitees to conduct, any operations or business upon the Licensed Premises except for that permitted by Article 4 of this License, unless prior written authorization is provided by Licensor. Any such authorization shall be given or denied solely at Licensor's discretion.

H. Hazardous Materials

Without limiting any of Licensee's obligations under this or any other Article of this License, Licensee agrees that Licensee shall not cause or permit any hazardous materials to be used, generated, stored, or disposed of on, under, or about, or transported to or from the Licensed Premises. For the purposes of this License, "hazardous materials" shall include, but not be limited to, substances defined as "hazardous substances," "toxic substances," "hazardous wastes," "hazardous materials," or "oil" in any federal or state statute concerning hazardous materials now or hereafter enacted, including all regulations adopted or publications promulgated thereunder. For purposes of this License, "hazardous materials" shall not include pesticides or fertilizers that are used and managed in compliance with *Exhibit D* of this License and with all applicable laws, regulations, orders, permits and/or licenses.

I. Alcoholic Beverages

Unless specifically permitted by the terms of this License, Licensee shall not bring, store, maintain, consume, or serve alcoholic beverages upon the Licensed Premises, nor allow any of Licensee's employees, agents, contractors, or invitees to do the same.

J. Surrender of Licensed Premises

Upon the expiration or earlier termination pursuant to Article 17 of this License, Licensee shall immediately vacate and surrender the Licensed Premises to Licensor. Licensee shall also remove all of Licensee's property from the Licensed Premises and restore the Licensed Premises to the condition the Licensed Premises were in at the commencement of this License, reasonable wear and tear excepted, and subject further to any obligation Licensee may have hereunder to make repairs or improvements to the Licensed Premises. Upon agreement of the parties, Licensee may abandon all or part of its property and/or agricultural improvements it has made in place. If any of Licensee's personal property remains on the Licensed Premises after the expiration or earlier termination of this License without a written agreement between the parties, said property shall be deemed abandoned

and may be retained by Licensor without any compensation to Licensee, or said property may be removed and either stored or disposed of by Licensor at the sole cost and expense of Licensee.

12. LICENSEE ASSUMES ALL RISKS

- A. Licensee agrees that Licensee shall use and occupy the Licensed Premises at Licensee's own risk, and Licensor shall not be liable to Licensee for any death or personal injury, or for any loss or damage to vehicles, equipment, fixtures, or other personal property of Licensee that are brought upon the Licensed Premises.
- B. Licensee accepts complete liability for the acts, omissions, and negligence of Licensee and the officers, agents, contractors, employees, and invitees of Licensee while present upon the Licensed Premises or while exercising Licensee's rights hereunder.
- C. Without limiting the foregoing, Licensor shall have no liability to Licensee or to Licensee's officers, agents, contractors, employees, or invitees for any injury, death, loss, or damage caused by any act of Licensee's invitees, officers, agents, contractors, employees, or members of the general public.

13. INDEMNIFICATION

- A. Licensee shall indemnify Licensor and the Commonwealth of Massachusetts and save them harmless from and against any and all injury, loss, claim, action, damage, or liability arising out of any act, failure to act, or negligence of Licensee, or of Licensee's officers, agents, contractors, employees, or invitees.
- B. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities, including attorney's fees, in connection with any such injury, loss, or damage or any such claim, or any proceeding brought thereon or in defense thereof.

14. INSURANCE

Licensee shall keep in force, at Licensee's sole cost and expense during the full term of this License and during such other times as Licensee occupies the Licensed Premises or any part thereof, the following insurance policies:

- A. Comprehensive general liability insurance insuring Licensee against all claims and demands for personal injury or damage to property that may be claimed to have occurred upon or about the Licensed Premises. Said insurance shall be written on an occurrence basis to afford protection in the amount of \$_____ (not less than fifty thousand dollars) combined single limit for personal and bodily injury and death and for property damage, with a so-called "broad-form" endorsement and contractual liability coverage insuring the performance by Licensee of the indemnity agreements set forth in Article 13 of this License.
- B. Vehicle Liability Insurance covering each vehicle of Licensee entering the Licensed Premises in an amount not less than the compulsory coverage required in Massachusetts.
- C. Workers compensation insurance covering Licensee's employees upon the Licensed Premises in such amounts as are required by law.
- D. The following additional insurance coverage (describe, if any; otherwise write "NONE"): _____

- E. All insurance coverage required by this Article 14 shall be by standard policies obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts.
- F. Each said insurance policy shall name the Commonwealth of Massachusetts as an additional insured and shall contain a provision stating that such coverage shall not be cancelled, reduced, or otherwise materially altered without at least ten days prior written notice to Licensor. Cancellation, reduction, or other material alteration shall be grounds for termination of this License pursuant to Section 17.C of this License.
- G. If Licensee fails to obtain or to maintain any of the insurance coverage required by this Article 14, or if any of the required insurance policies is cancelled, it shall be grounds for immediate termination of this License as provided in Section 17.C of this License.
- H. One or more certificates of insurance showing insurance coverage as required by this Article 14 are attached to this License as *Exhibit E*.

15. ASSIGNMENT

Licensee shall not sell, assign, sublicense, mortgage, or transfer any interest in this License without obtaining, in each instance, the prior written consent of Licensor. The decision to grant or withhold such consent shall be at Licensor's sole discretion.

16. RIGHTS OF LICENSOR AND AGENCY TO ENTER

- A. Licensor reserves the right to enter upon the Licensed Premises at any time to make repairs, perform maintenance, inspect the Licensed Premises, show the Licensed Premises to others, monitor compliance with this License, or for any other reason.
- B. Licensee shall not interfere with the exercise of this right and shall cooperate with Licensor, other representatives of the Commonwealth of Massachusetts, and their agents.

17. TERMINATION

This License shall expire on the date specified in Section 6.B, unless extended in compliance with the terms of this License and all other requirements of law, or unless terminated earlier under the following conditions:

- A. Without Cause. If circumstances that were unanticipated at the time this License was issued, or that are beyond the control of Licensee or Licensor, result in an inability to continue this License for its full term, then either Licensee or Licensor may terminate this License by giving written notice to the other party at least ninety (90) calendar days prior to the effective date of termination stated in the notice. Licensor shall not terminate this License pursuant to this Section 17.A during the growing season of any crop grown on the Licensed Premises described in *Exhibit A* pursuant to the Management Plan attached as *Exhibit D* unless required to do so by law.
- B. For Breach. If, in the opinion of Licensor, Licensee fails to fulfill its obligations, Licensor may terminate this License by giving written notice to Licensee at least ten (10) calendar days before the effective date of termination stated in such notice. The notice shall specify in reasonable detail the nature of Licensee's breach. The notice may also state a period during which Licensee may cure the breach, provided that such period shall expire on or before the termination date stated in the notice. If Licensee is given an opportunity to cure the breach (which shall be within the sole discretion of

Licensor) and Licensee fails to complete such cure to the satisfaction of Licensor within the cure period, this License shall come to an end on the termination date stated in the notice.

- C. Emergency. If Licensor determines that it is necessary to terminate this License or suspend Licensee's rights hereunder immediately in order to prevent injury or damage to persons or property, including, but not limited to, the interest of the Commonwealth of Massachusetts in the Licensed Premises, or to protect state or federal funds, Licensor may terminate this License or suspend Licensee's rights hereunder by providing written notice to Licensee stating the grounds for said termination or suspension. Said notice may be given in the form of a telegram, mailgram, hand-carried letter, fax, or other reasonable written means, and this License shall be terminated or suspended, as the case may be, upon delivery of said notice to Licensee.
- If this License is terminated in accordance with any of the provisions of this Article 17, this License shall come to an end as fully and completely as if the term had expired on the date set forth in Article 6, and Licensee shall vacate and surrender the Licensed Premises as provided in Section 11.J.
 - Upon the expiration or earlier termination of this License, Licensor, immediately or at any time thereafter, may enter upon the Licensed Premises or any part thereof and expel Licensee and those claiming through or under Licensee and remove their effects forcibly if necessary. This remedy shall be without prejudice to any other remedies that Licensor may have for breach of this License by Licensee.
 - If this License is terminated by Licensor in accordance with any of the provisions of this Article 17, Licensee shall not be relieved of liability to Licensor for arrears in the License Fee or for any other injury or damage sustained by Licensor or the Commonwealth of Massachusetts as a result of a breach by Licensee of any of the terms or conditions of this License, whether occurring before or after such termination.
 - Licensee expressly waives any right to damages related to such termination, including, without limitation, incidental or consequential damages.
 - If this License is terminated for any reason other than the fault or request of Licensee, Licensor shall commensurately reduce, on a prorated basis, the License Fee that Licensee has covenanted to pay. Furthermore, under such circumstances, Licensor shall refund to Licensee, on a prorated basis, any portion of the License Fee that has been prepaid for a period during which Licensee was denied use and occupancy of the Licensed Premises for any reason other than the fault or cause of Licensee.

18. NO ESTATE CREATED

- A. This License shall not be construed as creating or vesting in Licensee any estate in the Licensed Premises, but only the privileges of entry and use as herein described.
- B. Licensee understands, acknowledges, and agrees that Licensee is acquiring no interests or rights whatsoever in or to the Licensed Premises by virtue of this License and that Licensee is hereby granted the privileges of entering and using the Licensed Premises in accordance with the provisions of this License.
- C. This License does not constitute the granting of an interest in real property for any purpose, and Licensee shall not have any right to make any permanent improvements to, nor to install any permanent fixtures on, the Licensed Premises, unless such improvements or fixtures are explicitly authorized by Article 4 hereof or by other written authorization subsequently given by Licensor pursuant to Section 9 hereof.

- D. Licensee shall have no right to require specific performance of the obligations of Licensor hereunder.

19. NON-DISCRIMINATION

- A. Licensee shall not discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Licensee, nor shall Licensee deny any person access to the Licensed Premises or to any activities or programs carried out pursuant to this License because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation.
- B. Licensee shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment and accommodations.

20. NOTICES

- A. Unless otherwise expressly permitted hereunder, all notices or other communications required or permitted to be given under this License shall be in writing and signed by a duly authorized representative of the party giving the notice, and shall be given by hand delivery (including, without limitation, courier, Federal Express, or other overnight delivery service) or mailed by United States certified mail, postage prepaid, return receipt requested.
- B. Such notices shall be sent or addressed to Licensor and Licensee at the addresses set forth in Article 1 of this License.
- C. Notices may also be sent by fax to either party, provided a fax number is given for such party in Article 1 of this License.
- D. By notice given hereunder at any time and from time to time, Licensor or Licensee may designate a different address or fax number to which notices shall be sent.
- E. Notices served as aforesaid shall be deemed given for all purposes (i) on the date shown on the receipt for such delivery or (ii) as of the date such notice was sent if notice is given by fax or if delivery is refused or acceptance could not be obtained.

21. MISCELLANEOUS PROVISIONS

- A. This License may not be modified except in a written document duly executed by both parties.
- B. This License contains the entire agreement of the parties and there are no other agreements or understandings between the parties regarding the subject matter of this License.
- C. Licensee, its employees, officers, contractors, or agents are not authorized to bind or involve the Commonwealth of Massachusetts or any of its agencies in any contract or to incur any liability for or on the part of the Commonwealth of Massachusetts.
- D. If any portion of this License is declared to be illegal, unenforceable, or void, then all parties to this License shall be relieved of all obligations under that portion, provided, however, that the remainder of this License shall be enforced to the fullest extent permitted by law.
- E. No consent or waiver, whether express or implied, by Licensor to or of any breach of the terms of this License by Licensee shall be construed as a consent or waiver to or of any other breach. No

waiver of any breach or default or other indulgence shall be effective unless expressed in writing by Licensor.

- F. The Preamble of this License is an integral part of this License and not mere recitals.
- G. The captions in this License are inserted for convenience of reference only and in no way define, describe, or limit the scope or intent of this License or any of the provisions hereof.
- H. No official, employee, or consultant of the Commonwealth of Massachusetts shall be personally liable to Licensee or to any person claiming under or through Licensee for or on account of any alleged breach of this License, or for any act, failure to act, or other matter arising out of the execution of this License or the performance of Licensor's obligations hereunder.
- I. This License shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this License shall be brought in courts within the Commonwealth of Massachusetts.
- J. This License is to take effect as a sealed instrument.
- K. The following exhibits and attachments are made a part of this License for all purposes (mark appropriately below and on each exhibit):

- Exhibit A** - Plan or Diagram of Licensed Premises
- Exhibit B** - M.G.L. Chapter 128, section 7A-7F
- Exhibit C** - 333 CMR 18.00 Land Use
- Exhibit D** - Management Plan
- Exhibit E** - Insurance Certificate(s)

WITNESS the duly authorized signatures of Licensee and Licensor on three counterparts of this License, each of which shall be considered to be an original, for all intents and purposes. This License shall be valid upon, but not before, the delivery of a fully executed counterpart to Licensee by Licensor.

LICENSEE:

(as Licensee's full name appears on page 1 of this License)

By: _____
Authorized Signature Title

Signer's Printed Name Date

**LICENSOR: THE COMMONWEALTH OF MASSACHUSETTS
ACTING BY AND THROUGH ITS DEPARTMENT OF AGRICULTURAL RESOURCES**

Authorized Signature Title

Signer's Printed Name Date