

HOST COMMUNITY AGREEMENT

FOR THE SITING OF A THROUGHbred RACETRACK IN THE TOWN OF HARDWICK

**By and Between the Town of Hardwick, Massachusetts
and
Commonwealth Equine and Agricultural Center LLC**

This Host Community Agreement (“Agreement”) is made and entered into as of November __, 2022 (the “Effective Date”), by and between the Town of Hardwick, Massachusetts, acting by and through its Select Board, in reliance upon all of the representations made herein, a Massachusetts municipal corporation with a principal address of 308 Main Street, Hardwick, MA 01037, (the “Town” or “Hardwick”), and Commonwealth Equine and Agricultural Center LLC, a Massachusetts limited liability company, with a business address at c/o Butters Brazilian LLP, 699 Boylston Street, 12th Floor, Boston, MA 02116 (“CEAC” and, collectively with the Town, the “Parties”).

RECITALS

WHEREAS, CEAC wishes to locate and operate an equine center providing for the breeding, housing, riding, showing, studying, treatment, training, and racing of horses and other equestrian-and agricultural-related uses, which also includes live and simulcast horse racing and related sports betting as authorized by the Commonwealth of Massachusetts (the “Equine Center”) with wagering in-person only on Festival days to be located at Great Meadowbrook Farm and nearby properties in Hardwick, Massachusetts 01037 (the “Site”) in accordance with and pursuant to applicable state laws and regulations, including, but not limited to Massachusetts General Laws Chapters 23N, 128, 128A, and 128C, and such licenses, permits and approvals as may be issued by the Commonwealth of Massachusetts (the “Commonwealth”) in accordance with its laws and regulations and by the Town in accordance with its Zoning Bylaws and other applicable local statutes, bylaws and regulations; and

WHEREAS, CEAC anticipates that as a result of the Equine Center’s operation, the local economy will create additional business for local farms, restaurants and local businesses; and

WHEREAS, the Town and CEAC want to ensure ongoing collaboration and communication amongst the parties, Town will establish and CEAC agrees to meet with a nine-member Equine Center Advisory Commission to review and make recommendation with CEAC to the Select Board before March 31 of each year on the operation of the Equine Center the year before and plans for operations for the year ahead, including the number of Festival days, non-racing operations, parking, marketing, and hiring of vendors and employees.

WHEREAS, the Town recognizes the development of the Equine Center at the Site will benefit the Town and its citizens through increased economic development, additional employment opportunities for residents, and a strengthened local tax base, bringing in \$500,000 or more per year in new revenue and benefits, and further that the Equine Center operation will enhance and protect the Agricultural Preservation Restriction and chapter 61A designation of the site, accordingly the Town desires to support CEAC in the development of the Equine Center at the Site; and

WHEREAS, CEAC recognizes that 423 residents of the Town, according to the most recent U.S. Census reports, live at or below the poverty line and will work to employ and assist these individual and families as permitted by law to reduce the number of individuals and families below the poverty level in Town; and

WHEREAS, CEAC anticipates that as a result of the Equine Center's operation, the Town will incur additional expenses and impacts on the Town's roads and other infrastructure systems, law enforcement, fire protection services, inspectional services, permitting and consulting services, as well as unforeseen impacts, both quantifiable and unquantifiable on the Town; and provided further that CEAC is committed to paying the cost of such expenses and impacts; and

WHEREAS, CEAC intends to provide certain benefits to the Town in the event that (a) the Town issues applicable licenses, permits and approvals for the operation of the Equine Center, (b) CEAC or its affiliates receives all necessary licenses, permits and approvals from the Massachusetts Gaming Commission to operate the live and simulcast horse racing with wagering and sports betting; and (c) CEAC or its affiliates receives all other necessary licenses, permits and approvals from the Commonwealth and the Town to construct and operate the Equine Center; and

WHEREAS, CEAC commits to never seek or apply for any expanded onsite gaming or wagering in the Town of Hardwick, so-called casino or Class III gaming, other than wagering on Festival days; and

WHEREAS, a majority of the registered voters of Worcester County voting on the question described in Massachusetts General Laws, Chapter 128A, Section 14 regarding horse racing meetings, voted in the November general election in 1974 in the affirmative when said question was last submitted to them, and therefore Worcester County has authorized the licensing of horse racing therein at which the pari-mutuel system of betting shall be permitted; and

WHEREAS, the Select Board, after a public hearing held after seven days' notice had been given by posting on the Town website and publishing in Ware River News, has approved the location of a racetrack at the Site such that the Massachusetts Gaming Commission may issue a license for racing meetings at the Equine Center pursuant to Massachusetts General Laws, Chapter 128A, Section 13A.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties agree as follows:

1. Recitals

The above Recitals are true and accurate and are incorporated herein and made a part of this Agreement.

2. Payments to the Town, Support of the Town

In the event that CEAC or its affiliates obtains the requisite licenses and/or approvals as may be required for the operation of the live and simulcast horse racing with wagering and sports betting horse racing components of the Equine Center from the Massachusetts Gaming Commission, and receives any and all other licenses, permits and approvals necessary for the construction and operation of the Equine Center from the Commonwealth and the Town, and at the expiration of any final appeal period related thereto, such licenses, permits and approvals allow CEAC and its affiliates to locate, occupy and operate the Equine Center in the Town, then CEAC

agrees to provide the following “Annual Payments” each municipal fiscal year that it conducts live racing and so licensed to fully operate to the Town (expected to commence July 1, 2023):

A. Annual Community Impact Fee

CEAC anticipates that the Town will incur additional expenses and impacts on the Town’s road and other infrastructure systems, law enforcement, fire protection services, inspectional services, and permitting and consulting services, as well as unforeseen impacts, both quantifiable and unquantifiable, on the Town. Accordingly, in order to mitigate the financial impact on the Town and use of Town resources, CEAC agrees to pay an “Annual Community Impact Fee” to the Town, in the amount and under the terms as follows:

1. CEAC shall make monthly payments to the Commonwealth in the amount of one and one-half percent (1.5%) of simulcast revenue as provided for in Massachusetts General Laws Chapter 128C, Section 4. Said amount to be collected by the Commonwealth and paid to the Town along with its local aid disbursements. It is estimated that said fee will be approximately \$240,000 per year.
2. The Town shall use the Annual Community Impact Fee as it deems appropriate in its sole discretion.

B. Additional Costs, Payments and Reimbursements

1. Initial Community Benefit Payment: Within thirty (30) days after receipt of all licenses and permits necessary to operate the Equine Center, including without limitation a license to permit sports wagering, but in any event before undertaking any horse racing or sports wagering operations, CEAC shall pay to the Town an initial community benefit payment in the amount of twentyfive thousand dollars (\$25,000).
2. Permit and Connection Fees: CEAC hereby acknowledges and accepts, and waives all rights to challenge, contest or appeal, the Town’s building permit and other permit application fees and all other local charges and fees generally applicable to other commercial developments in the Town.
3. Equine Center Consulting Fees and Costs: In addition to the Annual Community Impact Fee, CEAC shall reimburse the Town for any and all reasonable consulting costs and fees related to any land use applications concerning the Equine Center, negotiation of this Agreement and any other related agreements, and any reviews concerning the Equine Center, including planning, engineering, legal and/or environmental professional consultants and any related reasonable disbursements at standard rates charged by the above-referenced consultants in relation to the Equine Center not otherwise covered by this agreement.
4. Other Costs: CEAC shall reimburse the Town for the actual costs incurred by the Town in connection with holding public meetings and forums substantially devoted to discussing the Equine Center and/or reviewing the Equine Center and for any and all reasonable consulting costs and fees

related to the monitoring and enforcement of the terms of this Agreement, including, but not limited to independent financial auditors and legal fees.

5. Meals Tax Revenues: CEAC shall be responsible to collect and remit to the Commonwealth on behalf of the Town any local meals taxes with respect to the Equine Center in accordance with applicable law. It is estimated that said tax will be approximately \$60,000 per year.
6. Motor Vehicle Excise Taxes: CEAC shall principally garage all vehicles owned by it or its affiliates and used in connection with the Equine Center in the Town, so that excise taxes shall be paid to the Town consistent with applicable law.
7. Late Payment Penalty: CEAC acknowledges that time is of the essence with respect to its timely payment of all funds required under Section 2 of this Agreement. In the event that any such payments are not fully made with thirty (30) days of the date they are due; the Town shall provide CEAC with written notice of such failure to make a timely payment. CEAC shall have a thirty (30) day period to cure such failure to make timely payment from the date of receipt of such notice. If CEAC fails to make full payment within such cure period, CEAC shall be required to pay the Town a late payment penalty equal to five percent (5%) of such required payment. CEAC shall pay an additional penalty equal to five percent (5%) of the required payment to be made directly to Town for each thirty days that accrues without full payment.
8. Real & Personal Property Taxes: CEAC understands and accepts that its property will be assessed and taxed in accordance with state law and will pay all such tax bills in a timely fashion. Provided, however, that said payment, including a payment in lieu of taxes, shall be at least \$200,000 per municipal fiscal year.

C. Public amenities

The CEAC shall complete, as components of its project, a series of infrastructure and public improvements in connection with the project, including, without limitation:

1. Community Events: CEAC shall work with the community to host at least one event per year at the Equine Center for the benefit of the community, such as fundraisers for local charities, athletic teams, and schools, and for celebration of community.
2. Local Preference: CEAC shall develop a program for preferential access to and parking at Festivals conducted at the Equine Center for Hardwick residents.
3. Education & Mentoring Program: CEAC shall work with local schools to develop an “Ag in the Classroom” program for students and a mentoring program to provide jobs for local graduates of agricultural schools.

D. Annual Charitable/Non-Profit Contributions

In addition to any funds specified herein, CEAC shall annually contribute to public local charities/non-profit organizations in the Town, or a regional non-profit organization that directly benefits residents of the Town, in an amount no less than ten thousand dollars (\$10,000), said charities/non-profit organizations to be determined by CEAC with the approval of the Select Board in its reasonable discretion. The charitable/non-profit contribution shall be made annually beginning on the first anniversary following the Commencement of Operations at the Equine Center, and shall continue for the term of this Agreement.

E. Minimum Payment to Town

CEAC shall, after adding up the actual payments, direct and indirect, received for each of the payments made in accordance with the sections above at the end of each municipal fiscal year, make an additional payment, if any, as long as ECAC is conducting live racing in accordance with chapter 128A and is fully licensed by the Commonwealth and Town, within 60 days of the end of each municipal fiscal year in an amount necessary for the total amount of revenues to the Town to equal \$500,000 for the municipal fiscal year.

F. Commencement of CEAC Payments to Town

Not including one-time payments to the Town, annual payments to the Town shall commence in the fiscal year in which CEAC first conducts live racing in accordance with M.G.L. c. 128A at the Equine Center. This is expected to occur on September 9 and 10, 2023, so annual payments to the Town would commence on July 1, 2023.

3. Vehicular Access To and From the Project

A. Traffic Plan & Improvements

CEAC, as part of its project review by the Planning Board, at its sole expense shall study the local traffic impacts of the proposed project and present a plan to mitigate any such impacts to the Town. CEAC shall fund and cause the permitting, design, and construction, in coordination with federal, state and municipal regulations, of any said improvements to the project as outlined in the foregoing plan.

B. Transportation & Parking Management Plan

CEAC shall develop, in coordination with state and municipal officials, a transportation and parking management plan for all Festival days at the Equine Center to ensure that impacts from said events are properly managed. Said plan will be formulated with the input of the police chief, fire chief, planning board chair, and town administrator, and then presented to the Select Board for its approval at least thirty (30) days in advance of the first Festival day and will be updated on an annual basis to both reaffirm the original plan and improve operations, as identified, and needed.

C. Traffic Peer Reviewer

If asked, CEAC will provide up to \$5,000 in funding to the Town from which it will be allowed to hire an independent traffic/transportation engineering consultant to review CEAC's proposed transportation and parking plan, and provide commentary,

recommendations, and general advice to the Town during the review of the Traffic and Parking Plan.

D. Upper Church Street

The Town agrees to close the portion of Upper Church Street from Barre Road to the end of the Site to all but emergency traffic on Festival days. CEAC will be permitted to use the closed portion of said Street for vendors, food trucks, a wagering kiosk, restrooms, and similar activities, as needed for its Festivals.

E. Setup, Removal & Cleanup

CEAC shall, at its sole expense, pay for the setup, removal and cleanup of the site and surrounding area. In addition, CEAC shall pay for all necessary police and fire details, DPW personnel, or other related municipal cost associated with the operations of the Festival. CEAC shall commence setup of the site no sooner than three days before the start of the Festival, shall cleanup the site and surrounding area within one day of the conclusion of the Festival, and shall remove all temporary facilities within two days of the close of each Festival.

4. Local Permit Review

CEAC acknowledges that, in accordance with the Town's Zoning Bylaws, the operation of the Equine Center is subject to the issuance of a permit by the Planning Board and that the application for a permit will involve site plan approval by the Planning Board. Nothing in this Agreement is intended to or shall have the effect of binding or otherwise limiting the discretion of the Planning Board to conduct such reviews and impose such conditions as it deems appropriate in connection with its review of CEAC's application for a permit. Any permit or license required for the Equine Center and issued by any Town board, committee, commission or official, including any amendments or changes to said Town permits or licenses approved by such any such board, committee, commission or official, shall automatically be made part of this Agreement and shall be enforceable by the Town in contract thereby, in addition to any other regulatory or administrative enforcement remedies that may be available to the Town.

5. Operational Issues

A. Limitation on Festival Days

CEAC agrees that no more than twenty (20) Festival days shall be held at the Equine Center per calendar year; provided, that if CEAC conducts more than four Festival days in any calendar year, that at least half of said days shall be on weekdays of Tuesday through Thursday, and provided further, that said Festival days shall be limited to no more than four weekends per year. Further, CEAC agrees, prior to filing its annual application for a Racing Meeting License, to review the number of live race days it will request with the Town. The parties recognize that the number of race days are subject to approval by the MGC.

Over the next five years CEAC plans to seek approval to race the following number of weekends (days) each year:

2023: One Weekend (two days)

2024: One Weekend (two days)

2025: One Weekend (three days)
2026: Two Weekends (four days)
2027: Two Weekends (four days)

6. Treatment of Horses

CEAC has emphasized the importance of the care and treatment of horses in connection with the Equine Center and recognizes that the Town was induced in part to execute this Agreement based upon CEAC's representations in this regard. To this end, CEAC shall establish and implement best in trade management practices to ensure the highest possible level of care, treatment and protection of horses kept, trained and/or raced at the Equine Center. CEAC shall establish a Racing Oversight Board, which shall be charged with establishing and ensuring compliance with these best in trade management practices. CEAC shall at least annually report to the Town on the steps it has taken to ensure compliance with this provision. Upon request, the Racing Oversight Board or its chair shall attend a meeting of the Select Board to review and discuss CEAC's compliance with this section.

CEAC shall forthwith advise the Town of the initiation of any investigation by the Massachusetts Gaming Commission (MGC) or any other state or federal regulatory body into the poor treatment of horses by CEAC or at the Equine Center and, upon completion of such investigation, shall forthwith advise the Town of the results thereof.

CEAC shall collect and dispose of horse manure in accordance with regulations.

7. Responsible Gaming in Hardwick

CEAC recognizes that, while gaming is an enjoyable leisure and entertaining activity for most, there is a small percentage of the population that cannot game responsibly. Therefore, CEAC will implement a "Responsible Gaming Plan" at the Equine Center on Festival days, the goal of which shall be to ensure that those people who cannot game responsibly get the help they need and to make sure that people who can game responsibly understand the importance of gaming responsibly.

CEAC will accomplish the Responsible Gaming Plan goals by: (1) educating its employees and providing information to patrons about the odds of betting and how to make responsible gaming decisions; (2) promoting responsible gaming at Festival day operations; (3) supporting public awareness of responsible gaming; and (4) prominently displaying and providing educational materials at the Equine Center on Festival days to educate customers regarding the risk of problem gambling and available services to obtain treatment.

8. Local Vendors and Employment

Prior to the Commencement of Operations at the Site, CEAC shall organize and conduct two separate information sessions and job fairs for veterans and Town residents, and shall publicize both events through local Town website and newspapers, social media and by posting notice of the same at various locations in the Town. CEAC shall also use good faith efforts to offer job skills assessments and provide guidance for interested persons to receive training to qualify for certain positions at the Equine Center.

To the extent such practice and its implementation are consistent with federal, state, and local statutes, bylaws and regulations, CEAC will make every effort, in a legal and non-discriminatory manner, to give priority to local businesses, suppliers, contractors, builders and vendors in the provision of goods and services for the “non-initial” construction, maintenance and continued operation of the Equine Center when such contractors and suppliers are properly qualified and price competitive and shall use best faith efforts to hire Town residents and utilize women-owned, minority-owned, and veteran-owned vendors within the Town. CEAC also shall use best faith efforts to offer job skills assessments and provide guidance for interested persons to receive training to qualify for certain positions at the Equine Center.

In addition to the information sessions and job fairs mentioned above, CEAC’s efforts shall include actively soliciting bids from vendors through local advertisements and direct contact, advertising any job expansion or hiring of new permanent full-time employees first to Town residents a minimum of two (2) weeks before advertising through all typical regional employment advertising outlet coordination with the Central Massachusetts South Chamber of Commerce and such other reasonable measures as the Town may from time to time request.

CEAC’s annual report to the Select Board in accordance with Section 14 of this Agreement shall include information concerning the number of Town residents employed at the Equine Center.

In coordination with Hardwick businesses, CEAC shall actively promote Hardwick farms, restaurants, businesses and other attractions, both on its website and in prominent locations within the Equine Center.

9. Local Taxes

At all times during the term of this Agreement, property, both real and personal, owned, leased or operated by CEAC or its affiliates shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by CEAC or its affiliates and CEAC shall not object or otherwise challenge the taxability of such property with respect to such taxes.

10. Security and Safety

To the extent requested by the Town’s Police Department, and subject to the requirements of state and local authorities, CEAC shall work with the Town’s Police Department in reviewing and approving security plans prior to the Commencement of Operations, including determining the placement of security cameras. Unless prohibited by the Massachusetts Gaming Commission or Massachusetts State Police, the Town’s Police Department shall be given access to video feeds from all security cameras.

CEAC agrees to cooperate with the Town’s Police Department, including but not limited to periodic meetings to review operational concerns, security, cooperation in investigations, and communications with the Town’s Police Department of any suspicious activities at or in the immediate vicinity of the Equine Center.

CEAC shall pay for police and fire details to staff Festival days as deemed appropriate by the Fire Chief and Police Chief. The Equine Center shall be open to the Police Department for inspection at any time, with or without notice.

CEAC agrees and acknowledges that annual inspections of the Equine Center by the Town's Police Department, Fire Department, Building Department and Board of Health shall be a condition of continued operation in Town and agrees to cooperate with the Town's Police Department, Fire Department, Building Department and Board of Health in providing access for scheduled inspections of the Equine Center.

11. Nature of CEAC's Obligations

The obligations of CEAC set forth in this Agreement are specifically contingent upon (a) CEAC or its affiliates receiving all necessary licenses, permits and approvals from the Massachusetts Gaming Commission to operate the live and simulcast horse racing with wagering and sports betting aspects of the Equine Center; and (b) CEAC or its affiliates receiving all other necessary licenses, permits and approvals from the Commonwealth and the Town to construct and operate the Equine Center. If, for any reason, CEAC and its affiliates have not received all such local and state licenses, permits and approvals necessary to construct and operate said Equine Center within 48 months after the date of this Agreement, not including months with an intervening force majeure event, then either party may, in its sole discretion, upon notice to the other, terminate this Agreement, whereupon neither the Town nor CEAC shall have any further obligations or liabilities hereunder, provided, however, that CEAC shall be required to pay any consulting or other costs incurred by the Town prior to such notice in connection with the Equine Center. If CEAC does so terminate this Agreement, then the Town shall not be responsible for the return of any funds provided to it by CEAC.

This Agreement does not affect, limit, or control the authority of Town boards, commissions, and departments to carry out their respective powers and duties to decide upon and to issue, or deny, applicable licenses, permits and other approvals under the statutes and regulations of the Commonwealth, the General Bylaws and Zoning Bylaws of the Town, or applicable regulations of those boards, commissions, and departments or to enforce said statutes, bylaws and regulations. The Town, by entering into this Agreement, is not hereby required or obligated to issue such licenses, permits and approvals as may be necessary for the Equine Center to operate in the Town, or to refrain from enforcement action against CEAC and/or the Equine Center for violation of the terms of said licenses, permits and approvals or said statutes, bylaws, and regulations.

12. Support

The Town agrees to support the adoption of the requisite licenses, permits and approvals for the operation of the Equine Center. The Town further agrees to submit to the Massachusetts Gaming Commission, or such other state licensing, registering or monitoring authority, as the case may be, the required certifications relating to CEAC's (or its affiliate's) application for a license or certificate of registration to operate the Equine Center where such compliance has been properly met, but makes no representation or promise that it will act on any other license, permit or approval request, including, but not limited to any zoning application submitted for the Equine Center, in any particular way other than by the Town's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

13. Term

Except as expressly provided herein, this Agreement shall take effect on the date set forth above, and shall be applicable for as long as CEAC, its affiliates, their successors or their assigns operates the Equine Center at the Site and is licensed by the Massachusetts Gaming Commission to operate the live and simulcast horse racing with wagering and related sports betting aspects of the Equine Center.

14. Annual Reporting

CEAC shall file an annual written report with the Select Board each year, on or before March 31, for the purpose of reporting on compliance with each of the terms of this Agreement during the preceding calendar year and shall, at the request of the Select Board, appear at a regularly or specially scheduled meeting to discuss such annual report.

15. Successors/Assigns

This Agreement is binding upon the Parties hereto, their successors, assigns and legal representatives. CEAC shall not transfer or assign its rights or obligations under this Agreement without prior written authorization of the Town, which will not unreasonably be withheld, delayed or conditioned. CEAC shall provide the Town with information relating to any such successor in advance of any such transaction, including any information required by the Massachusetts Gaming Commission. Any assignee of or successor in interest to CEAC shall be bound by the terms of this Agreement to the fullest extent allowed by law. The provisions of this paragraph shall also apply to any transfer, sale or conveyance of CEAC of a controlling interest therein. The town may consider a prospective owner's documented violations by regulators owing to its failing to protect the health and wellbeing of horses in giving its approval.

16. Notices

Any and all notices, consents, demands, requests, approvals or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or by other reputable delivery service, and shall be deemed given when so delivered.

To Town: Town Administrator, Town of Hardwick
308 Main Street
Hardwick, MA 01566

Copy to:
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110

To CEAC: Commonwealth Equine & Agricultural Center llc
c/o Butters Brazilian LLP
699 Boylston Street, 12th Floor
Boston, MA 02116

Copy to:
John A. Stefanini
Commonwealth Equine & Agricultural Center llc

Post Office Box 2311
Framingham, MA 01703

17. Severability

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless the Town or CEAC would be substantially or materially prejudiced. Further, CEAC agrees that it will not challenge, in any jurisdiction, the enforceability of any provision included in this Agreement; and to the extent the validity of this Agreement is challenged by CEAC in a court of competent jurisdiction, CEAC shall pay for all reasonable fees and costs incurred by the Town in enforcing this Agreement.

18. Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Parties submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

19. Indemnification

Excluding any Claims (as herein defined) caused by the gross negligence or intentional misconduct of the Town, CEAC shall indemnify, defend, and hold the Town harmless from and against any and all claims, demands, liabilities, actions, causes of actions, defenses, proceedings, subpoenas, document requests and/or costs and expenses, including attorney's fees (collectively, the "Claims"), brought against or initiated as to the Town, its agents, departments, officials, employees, insurers and/or successors, by any party, including any private or public entity, arising from or relating to the Equine Center. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and consultants of the Town's choosing incurred in defending or responding to such Claims. CEAC agrees, within thirty (30) days of written notice by the Town, to reimburse the Town for any and all costs and fees incurred in defending itself from or responding to such Claims. To the extent that any of the Town's insurance policies provide coverage for any Claim to which indemnity is being sought hereunder alleging negligence or intentional misconduct of the Town, the Town shall first submit the Claim to its insurance carrier before seeking indemnity from CEAC, and CEAC shall only be required to indemnify the Town to the extent there is no coverage or insufficient coverage.

20. Entire Agreement

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between CEAC and the Town with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the Parties hereto.

21. Amendments/Waiver

The failure of any party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver

by any party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

22. Headings

The article, section, and/or paragraph headings in this Agreement are for convenience of reference only, and shall in no way affect, modify, define or be used in interpreting the text of this Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

23. Counterparts

This Agreement may be signed in any number of counterparts all of which taken together, shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing one or more counterparts.

24. Signatures

Each party hereto, and their respective successors and assigns agree that the execution of this Agreement by electronic means (including by use of DocuSign (or similar) and/or by use of digital signatures) and/or the delivery of an executed copy of this Agreement by e-mail shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Agreement had been delivered.

25. No Joint Venture

The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the Town and CEAC, or the Town and any other successor, affiliate or corporate entity as joint ventures or partners.

26. Nullity

This Agreement shall be null and void in the event that CEAC does not construct the Equine Center in the Town or relocates the Equine Center out of the Town. Further, in the case of any relocation out of the Town, CEAC agrees that an adjustment of annual Payments due to the Town hereunder shall be calculated based upon the period of occupation of the Equine Center within the Town, but in no event shall the Town be responsible for the return of any funds provided to it by CEAC.

27. Third-Parties

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or CEAC.

28. Representation of Authority

Each person signing this Agreement hereby represents and warrants that he or she has the full authority and is duly authorized and empowered to execute this Agreement on behalf of the party for which he or she signs.

29. Force Majeure

CEAC shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or

delayed by a “Force Majeure Event” (as defined below). If CEAC is prevented or delayed in the performance of any such obligation by a Force Majeure Event, it shall provide reasonable notice to the Town of the circumstances preventing or delaying performance and the expected duration thereof, if known. For the purposes of this Agreement, a “Force Majeure Event” is any circumstance not within the reasonable control, directly or indirectly, of the Party affected and includes, but is not limited to, the following: strikes or other significant labor disputes; significant supply shortages; pandemics, adverse weather conditions and other acts of nature; acts of God, fire, other substantial property damage or any condition that prevents or significantly interferes with the operations of the Equine Center; significant subsurface conditions; riot or civil unrest; the forced closure of all gaming establishments by the Commonwealth of Massachusetts or the Massachusetts Gaming Commission; and actions or failures to act of any governmental authority or agency. A Force Majeure Event may justify delay of performance of one or more payment obligations hereunder but shall not justify excusal of performance.

30. Enforcement.

It is expressly understood and agreed, by and between CEAC and Town, that if CEAC shall neglect, fail or refuse to substantially comply with any nonpayment term herein, then CEAC does hereby agree, as a part of consideration for the Town’s execution of this Agreement, after 30 days written notice from the Select Board specifying in detail said lack of substantial compliance and the resolution sought by Town, and if after another 30 days written notice outlining reasons for the continued lack of substantial compliance and a public hearing by the Select Board, then to pay to the Town one thousand dollars (\$1,000) per day per violation, not as a penalty but as liquidated damages for such breach of contract, for each and every calendar day that CEAC shall be in default after receipt of the initial notice of such default from the Town. The said amount is fixed and agreed upon by and between CEAC and the Town because of the impracticability of fixing and ascertaining the actual damages the Town would in such event sustain, and said amount is agreed to be the amount of damages which the Town would sustain and said amount shall be deducted by the Town from periodic payments. Nothing herein shall limit the Town’s ability to pursue injunctive relief, specific performance or any other remedy available at law or in equity.

{ INTENTIONALLY BLANK }

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal on the day and year first written above.

TOWN OF HARDWICK

COMMONWEALTH EQUINE AND
AGRICULTURAL CENTER LLC

By: Julie M. Quink
Title: Chair

By: Richard T. Fields
Title:

By: H. Robert Ruggles
Title: Vice Chair

By: Kelly Kemp
Title: Clerk

True Copy attested by

By: Ryan J. Witkos
Title: Town Clerk