

BOVINE AGISTMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, _____, by and between Jocelin and Marc Whitaker d/b/a Shomer Eretz Farm (“Agister”) and _____ (“Owner”).

Recitals

Agister possesses dairy facilities at 2592 Washington S Road, Mansfield, OH 44903 (the “Dairy Facilities”), for the holding, care, handling, and milking of dairy cows. Owner wishes to board the cow(s) constituting Owner’s undivided interest in the herd of dairy cows (the “Herd”) at the Dairy Facilities.

Agister has agreed to provide care and boarding for the Herd at the Dairy Facilities for a fee of Forty Dollars (\$40.00) per month per full share, and Twenty-Five Dollars (\$25.00) per month per half share, on behalf of the Owner (together with other Herd Owners also entering into a similar agreement with Agister).

The parties agree as follows:

1. Definitions. In addition to other terms defined in this Agreement, for purposes of this Agreement, the words:

- A. “Agister” shall mean Jocelin and Marc Whitaker d/b/a Shomer Eretz Farm.
- B. “Agistment” shall mean pasturing, feeding, maintaining, and caring for, and milking the Herd at the Dairy Facilities; and making available the Herd’s milk production for the Herd Owners.
- C. “Herd” means the dairy cows referred to above, augmented annually by any increases (male as well as female) and replacements, and diminished annually by any decreases.
- D. “Herd Agreements” shall mean collectively this Agreement and all other similar agreements signed by the remaining owners of the Herd.
- E. “Owner” shall mean the person named above who possesses an undivided interest in the Herd.
- F. “Herd Owners” shall mean all the owners of undivided interests in the Herd.
- G. “Percentage Interest” shall mean the undivided percentage interest of Owner (or another person) in the Herd determined by dividing the total number of the Owner’s (or other person’s) shares in the Herd by the total number of shares authorized to be sold in the Herd.

2. Share(s) of the Herd.

A. As evidenced by the document attached hereto and titled Bovine Bill of Sale, Owner has purchased _____ share(s) in the Herd at Fifty Dollars (\$50.00) per full share, and Twenty-Five Dollars (\$25.00) per half share.

B. Owner expressly disclaims any ownership rights to any calves that may be born into the Herd from time to time or meat that may be harvested. Owner acknowledges that calves may or may not become a part of the Herd at the Agister’s discretion and, if the Agister sells the calves, Owner expressly disclaims any interest in the proceeds from that sale.

3. Boarding Fees.

A. Owner shall pay to Agister a monthly care and boarding fee of Forty Dollars (\$40.00) per full share, and Twenty-Five Dollars (\$25.00) per half share owned by Owner. The first month's fee is to be paid with the execution of this Agreement, and Owner agrees s/he is thereafter responsible for paying the fee each month in full on the last pickup of the prior month. The fee shall be paid even if milk is not picked up. The date that milk is picked up will be set by the Agister based on availability of milk and may be subject to change based on supply. If Owner does not pick up milk within two (2) days after scheduled date, milk may be disposed of as Agister prefers and as permitted by law. The parties agree that the fee is a fair and reasonable charge for the services and supplies provided by the Agister. Payment shall be made by cash, check, or credit card. Agister will impose an additional fee of Three Dollars (\$3.00) per credit card payments when Owner's credit card is stored in Agister's file, and an additional fee of Six Dollars (\$6.00) per credit card payment made via Agister's online payments system.

B. Agister may, at his or her discretion, adjust the fee up to twice each year to cover any increased expense of boarding and caring for the Herd, such increase not to exceed 25% annually. If Agister determines, or Owner requests, any special services beyond those required under this Agreement, Agister will inform Owner of the amount of additional charges to be paid by Owner.

4. Allocation of Milk.

A. Owner shall be entitled to receive a percentage of the milk Herd production equal to Owner's Percentage Interest in the Herd. It is estimated that one full share will typically yield one (1) gallon per week of the Herd's milk production, and a half share will typically yield one half (1/2) gallon per week, but the actual amount Owner receives will be based on the actual production, which will vary.

B. Owner shall provide half gallon Ball brand glass jars with lids for the storage of milk. Owner assumes all responsibility for cleaning and returning the jars and lids at the next milk pickup to Agister for refilling. Agister will impose an additional fee of Three Dollars and Fifty Cents (\$3.50) per jar and lids to replace broken, unclean, unreturned, or otherwise unusable jars. Return of cleaned jars and lids is a condition of this Herd Share.

C. The dates and times for pickup of milk from Owner's share of the herd will Sunday through Friday from 9:30 a.m. until 8:00 p.m. and shall change only upon notice to Owner by Agister. Owner agrees to receive his/her milk directly and in person. Agister will not release Owner's milk to anyone but the Owner, or the Owner's agents. On request, the Agister may, but is not required, to deliver Owner's milk. If requested, the parties will enter into a separate agreement for milk delivery.

D. Owner agrees that all milk obtained from the Herd will be used only for consumption by Owner and his/her immediate family only, and accepts all risk and responsibility of consumption by anyone, including but not limited to himself/herself and his/her immediate family.

5. Duties of Agister. Agister's duties under this Agreement shall include:

A. Boarding the Herd at the Dairy Facilities, and maintaining and caring for the Herd pursuant to the Agister's herd health protocols;

B. Managing the Herd for the Herd Owners and acquiring and disposing of cows as needed to maintain the health and production of the Herd;

C. Paying all expenses to maintain and care for the Herd as required above, except Owner shall pay pro rata on a per share basis extraordinary veterinary expenses, which include, but are not limited to, all tests conducted in accordance with herd health protocols; and

D. Providing appropriate reports to apprise Owner of the condition, health, and performance of the Herd.

E. Agister shall not publish any statement that implies the approval or endorsement of the United States Department of Agriculture or similar state authority regarding milk delivered pursuant to this Agreement.

6. No Sales of Milk/Indemnification. Agister and Owner acknowledge that the sale of raw milk is prohibited by the State of Ohio. Agister and Owner agree not to transfer the milk from the Herd, or any raw milk products made from said milk, in any transaction that would constitute a sale of raw milk in violation of the statutes of the State of Ohio, and each agrees to indemnify and hold the other harmless for any liability, loss, damage, expense or penalties that result from a breach of this Paragraph or other applicable law governing the subject matter of this Agreement.

7. Enforcement.

A. Owner shall timely pay the care and boarding charges and agrees that if payments are not paid when due, or as otherwise arranged with the Agister, Agister may, ten (10) days after having notified Owner in writing, dispose of Owner's interest in the Herd at public or private sale. In the alternative, or in addition to the foregoing, Agister may acquire Owner's interest in the Herd in satisfaction of the debt.

8. Ownership.

A. Owner agrees that ownership in the Herd does not entitle Owner to any rights in real or personal property owned by the Agister or Farm.

B. Owner and Owner's family may visit the Farm and Dairy Facilities where the Herd is boarded by prior appointment only and agrees that s/he may only visit the premises under the supervision, and with the express permission of the Agister.

9. Owner's Assumption of Risk and Waiver of Claims.

A. Owner understands and acknowledges that raw milk may contain harmful pathogens and that its consumption is not recommended by the Centers for Disease Control (CDC), the Food and Drug Administration (FDA), or the Ohio Department of Agriculture. Owner agrees to educate immediate family members about the risks of consuming or improperly storing raw milk and releases Agister from any responsibility for education of Owner's immediate family members or guests.

B. Owner acknowledges that there may be risks of harm when entering Agister's premises, including but not limited to proximity to farm equipment, and visiting and/or interacting with the Herd and other animals.

C. Owner acknowledges that Agister quickly chills the milk and keeps it at or below 40 degrees Fahrenheit. Once the milk is removed from Agister's refrigeration, Owner understands he/she should transport and store milk at or below 40 degrees Fahrenheit. Once the milk is removed from Agister's facility, Agister is not responsible for souring or bacterial growth.

D. By signing this Agreement, Owner hereby knowingly and voluntarily assumes the risk of any and all such harm and also hereby waives any and all right to make, file, or pursue any claims, demands, suits, actions, causes of action, damages, etc. against the other Herd Owners, Agister or any of Agister's agents, employees, representatives, principals, lessors, lessees, vendors, contractors, subcontractors, etc. that arise out of or in any way relates to any injury, illness, death, loss or damage caused, in whole or in part, by (1) the handling or consumption of raw milk produced by the Herd, and/or (2) visiting or entering upon Agister's premises or any premises where the Herd is located, and/or (3) to the Herd caused, in whole or in part, by the care and/or boarding of the Herd with Agister.

10. Indemnification. Owner shall indemnify, defend, and hold harmless Agister and Agister's agents, employees, representatives, principals, lessors, lessees, vendors, contractors, subcontractors and all other Herd Owners against any and all demands, claims, suits, actions, causes of action, etc. for any injury, illness, death, loss or damage that arises out of or relate in any way to (1) any handling, consumption, or use of any milk produced by the Herd after it has been retrieved or otherwise obtained by Owner, (2) the visit of any person that Owner brings to or causes to visit Agister's premises or any premises where the Herd is located, and/or (3) any failure on the part of Owner to comply with the terms of this Agreement or with any rules, procedures, directions, orders, etc. of Agister that are authorized or permitted by this Agreement.

11. Claims. Should either Agister or Owner seek to assert any claim against the other for any reason in connection with their duties and responsibilities in this Agreement, other than a claim of nonpayment under **Section 7**, the nature of the claim shall be made in writing and served on the other party within sixty (60) days of learning of the circumstances giving rise to the claim. Otherwise, such claim shall be waived.

12. Arbitration of Disputes. All disputes, claims, and questions regarding the parties' rights and obligations under this Agreement (other than a claim of nonpayment under **Section 7**) are subject to arbitration. A written demand for arbitration may be served by either party on the other within sixty (60) days after the dispute first arises, including any demand for arbitration served in compliance with a written claim made pursuant to **Section 11**. The parties shall agree on an arbitrator in accordance with the rules of the American Arbitration Association, and each party shall pay its own arbitration costs, except the costs of the arbitrators shall be shared equally.

13. Termination:

A. This Agreement shall be effective upon execution and continue until terminated by either party upon written notice served in person or by email, regular, or certified mail to the address of each party provided in this Agreement not less than thirty (30) calendar days prior to the expressly stated date of termination, unless caused by catastrophic loss of Herd animals and/or due to acts of God; in such case notice shall be given as soon as practicable. Receipt shall be effective as of the day after mailing.

B. Upon termination of this Agreement by Agister, if termination is not due to default by Owner, Owner may demand that Agister purchase Owner's shares at the price originally paid. Such demand must be made within 30 days of effective notice of termination of this Agreement, or it will be deemed waived.

14. First Right of Refusal. Upon written notice of termination of this Agreement by Owner, Agister has the first right of refusal to purchase Owner's shares at the price initially paid. Should Agister not exercise his/her first right of refusal, any transfer of Owner's interest may only occur with Agister's approval, which shall not be unreasonably withheld.

15. Force Majeure. Neither Agister nor Owner shall be responsible for any delay or failure of his/her performance under this Agreement if caused by any matter beyond the control of either party, including, but not limited to: government regulations, public emergency or necessity; legal restrictions; labor disputes and actions related thereto; riot, war, or insurrection; and windstorms, rainstorms, ice storms, snowstorms, floods, disease outbreaks, or other acts of God.

16. Miscellaneous.

A. Construction. When necessary for proper construction, the masculine of any word used in this Agreement shall include the feminine and gender neutral; the singular, the plural; and vice versa.

B. Governing Law. This Agreement is being executed, delivered, and shall be construed in accordance with and governed by the laws of the State of Ohio.

C. Severability. If any provision(s) of this Agreement are determined to be invalid, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

D. Waiver. No expressed or implied assent or waiver to a breach of any one or more of the provisions above shall constitute a waiver of any succeeding breach.

E. Assignment. This Agreement and each of its provisions shall inure to the benefit of and be binding upon the parties, their successors and permitted assigns.

F. Execution. This agreement is executed in duplicate, and each party has an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown below to be effective on the date or dates described above.

_____		_____	
For Agister	Date	Owner	Date
Print Name: _____		Print Name: _____	
Address: _____		Address: _____	
Email Address: _____		Email Address: _____	