

BOVINE AGISTMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, _____, by and between Lyndsey Miller d/b/a Broken Arrow Farm (“Agister”) and _____ (“Owner”) is a boarding contract.

RECITALS

Agister possesses dairy facilities at _____ Creston, WV 26141 (the “Dairy Facilities”), for the holding, care, handling, and milking of dairy cows. Owner wishes to board the cow(s) constituting his/her 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 Thirty-Five dollars (\$35.00) per month per full share and Eighteen Dollars (\$18.00) per month per half share on behalf of the Owner (together with all 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 Lyndsey Miller d/b/a Broken Arrow Farm.

B. “Agistment” shall mean pasturing, feeding, maintaining, caring for, and milking the Herd at the Dairy Facilities, and making available the Herd’s milk production for the Herd Owners.

C. “Herd” shall mean the dairy cows referred to above, augmented annually by any increases (male or female) and replacements, and diminished annually by any decreases.

D. “Herd Agreements” shall mean, collectively, this Agreement and all other similar agreements signed by all other Owners of the Herd.

E. “Owner” shall mean a person who possesses an undivided interest in the Herd.

F. “Herd Owners” shall mean, collectively, all of 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 One Hundred Dollars (\$100.00) per full share, and Fifty Dollars (\$50.00) 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 Thirty-Five dollars (\$35.00) per full share and Eighteen Dollars (\$18.00) 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 on or before the 5th of the month, even if milk shares are not picked up that month. A five dollar (\$5.00) late fee will be assessed for any boarding fees not paid by the 5th. The date that milk shares are 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 his/her milk share 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 amount of the care and boarding fee set forth herein is a fair and reasonable charge for the services and supplies to be provided by Agister to Owner under this Agreement. Payment shall be made by cash, check, or other method agreed upon by the parties.

B. Agister may, at his/her discretion, adjust the fee up to twice per calendar 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. 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 ($\frac{1}{2}$) gallon per week, but the actual amount Owner receives will be based on the actual production, which will vary.

B. Agister shall provide glass jars with lids for the storage of milk for a fee to be paid by Owner of eight dollars (\$8.00) per jar. Owner assumes all responsibility for cleaning and returning the jars and lids at next milk pickup to Agister for refilling. Agister will impose an additional charge of eight dollars (\$8.00) per jar to replace broken, unreturned, or unusable jars. Return of cleaned jars and lids is a condition of this Agreement and a two dollar (\$2.00) per jar fee will be assessed for any jars returned uncleaned.

C. The dates and times for milk pickup will be agreed upon in advance between the parties and shall thereafter remain consistent each week. Owner agrees to receive his /her share of 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 Owner may have Agister deliver Owner's share of milk, and the parties will enter into an additional agreement for prices for such service.

D. Owner agrees that all milk obtained from the Herd will be used only for consumption by Owner and his/her immediate family, 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 in accordance with the herd health protocols attached to this Agreement (Exhibit A);

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 that 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 Exhibit A; and

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

6. No Sales of Milk/Indemnification. Agister and Owner acknowledge that it is unlawful in the State of West Virginia to sell or distribute raw milk. Under no circumstances shall either Agister or Owner transfer the ownership or possession of any raw milk production from the Herd in any transaction that would constitute a sale of milk in violation of the statutes of the State of West Virginia. Agister and Owner each agrees to indemnify and hold the other harmless for any liability, loss, damage, expense or penalties that are incurred by the other because of a breach of the provisions of this Paragraph by the indemnifying party. This Agreement is made pursuant to West Virginia Code § 19-1-7 regarding the use of shared animal ownership agreements. The signed and executed Agreement shall be filed by the Agister with the state Commissioner of Agriculture.

7. Enforcement. _____

A. Owner shall timely pay the care and boarding fee and agrees that if payments are not paid when due, or as otherwise arranged with the Agister, Agister may, ten (10) business days after having notified Owner in writing, dispose of Owner's interest in the Herd at public or private sale, or 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 immediate family may visit the Dairy Facilities where the Herd is boarded by prior appointment only and agrees that s/he may only visit the Dairy Facilities 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 the inherent dangers of consuming 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). Owner understands and acknowledges that raw milk may contain bacteria such as Brucella, Campylobacter, Listeria, Salmonella and E. Coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women and those with compromised immunity. Owner and Agister mutually acknowledge their responsibilities under W. Va. Code § 19-1-7(d) to report any illness directly related to consuming raw milk to the local health department and the West Virginia Commissioner of Agriculture as soon as practicable.

Owner agrees that Owner will educate Owner's family members about the risks associated with the consumption of raw milk and with the improper storage of raw milk and releases Agister from any responsibility for education of Owner's family members and guests.

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

C. 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 may arise out of, or in any way relate, to any injury, illness, death, loss or damage: 1) caused to the Owner, in whole or in part, by (a) the handling or consumption of raw milk produced by the Herd, except for dangers caused by the negligent acts or omissions of the Agister, and/or (b) visiting or entering upon Agister's premises or any premises where the Herd is located.

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, liabilities, suits, actions, causes of action, etc. for any injury, illness, death, loss, costs, or damage that arises out of or relates 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 one hundred eighty (180) calendar 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 one hundred eighty (180) calendar 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 by regular or registered mail (return receipt requested) to the address

of each party provided in this Agreement not less than ten (10) calendar days prior to the expressly stated date of termination, unless caused by catastrophic loss of Herd animals or due to acts of God, and 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, Owner may demand that Agister purchase Owner's shares at the price originally paid.

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 that party, including, but not limited to: government regulations, public emergency, public health emergency or necessity, herd diseases that result in quarantines or depopulation, legal restrictions, labor disputes and actions related thereto, riot, war, or insurrection, and windstorms, rainstorms, ice storms, snowstorms, floods or any 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 West Virginia.

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

D. Waiver. No express 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.

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		Email	
Address:	_____	Address:	_____

Exhibit A

Farm Operating Standards and
Herd Health Protocols

Agister hereby agrees to operate Broken Arrow Farm, [REDACTED] Creston, WV 26141 (the "Farm"), under the standards below, which are subject to change:

1. Dairy animals shall be given testing at least every twelve (12) months for Brucellosis, Tuberculosis and other diseases required by the state veterinarian. Additions to the herd must test negative for these diseases within the previous 30 days before introduction to the herd. In addition, milk-producing animals producing bloody, stringy or abnormal milk, but with only slight inflammation of the udder, shall be excluded from the milking herd until reexamination shows that the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd.
2. Animals shall be tested annually for tuberculosis and brucellosis.
3. Milk shall be packaged in glass containers supplied by Agister and paid for by Owner, as provided for in section 4 of this Agreement.
4. Dairy animals shall be fed a predominantly pasture- and/or hay- or forage-based diet depending on climate conditions.
5. The Farm shall, upon request, advise Herd Owner concerning the appropriate care of the animals and the handling of milk produced by animals boarded at the Farm.
6. If provisions herein are not met, it shall not constitute a breach of contract.

These are aspirations.

For Agister Date Owner Date

Print Print

Name: Name:
