

**BOVINE BOARDING CONTRACT**

THIS AGREEMENT is made and entered into to be effective as provided herein by and between R Patch O’Heaven, whose address is 34829 WCR # 53, Eaton, Colorado 80615, and \_\_\_\_\_ whose address is \_\_\_\_\_ (herein called "BOARDER").

**RECITALS**

1. R Patch O’ Heaven, LLC is the owner of dairy facilities located at located at 34829 Weld County Road 53, Eaton, Colorado 80615, for the holding, caring for, handling and milking of dairy cows. Said facilities may be used for the boarding and milking on behalf of the BOARDER and others of the dairy cows which will constitute the hereafter defined Herd.
2. BOARDER is the owner of: An undivided interest of \_\_\_\_\_ (\_\_\_\_\_) Shares in a herd (herein called the “Herd”) of dairy cows located at R Patch O’ Heaven, LLC, the address of which is 34829 WCR 53, Eaton Colorado 80615, and all replacements and increase of the dairy cows which Herd constitutes and shall constitute all of the dairy cows, producing or dry, at that location.
3. BOARDER (together with the owners of all undivided interests in the Herd who are each entering into this agreement with R Patch O’ Heaven, LLC substantially similar to this one) desires to board the Herd with R Patch O’ Heaven, LLC and to have R Patch O’ Heaven, LLC care for and milk the cows in the Herd and R Patch O’ Heaven, LLC desires to take on the boarding obligation.

**AGREEMENTS**

NOW, THEREFORE, for and in consideration of the recitals and mutual obligations contained in the Agreement, the parties agree as follow:

1. Definitions: In addition to other terms defined in this Agreement, for purposes of this Agreement, the terms:
  - (a) “Boarding” shall mean having possession of, feeding, maintaining and caring for the Herd, milking the Herd and preparing the production of milk from the Herd for pick up by Herd owners or their agent(s).
  - (b) “Herd Agreements” shall mean collectively this Agreement and all the other Agreements substantially similar to this one signed by the owners of the remaining undivided interests in the Herd.
  - (c) “Herd Owners” shall mean collectively all of the owners of undivided interest in the Herd.
  - (d) “Percentage Interest” shall mean the undivided percentage interest of BOARDER (or another person) in the Herd determined by dividing the total number of the BOARDER’s (or other person’s) undivided number of shares in the Herd by the total number of shares created and existing from time to time in the entire Herd.
2. Delivery of Herd for Boarding. Upon the execution of Agreements substantially similar to this one by the owners of all the ownership interests in the Herd, R Patch O’ Heaven, LLC shall take possession of the Herd for and on behalf of the owners.
3. Boarding Fees. For boarding the BOARDER’s undivided interest in the Herd, BOARDER shall pay to R Patch O’ Heaven, LLC a uniform monthly boarding fee equal to \$\_\_\_\_\_ per share of the Herd owned by BOARDER. The first month’s boarding fee is being paid with the execution of this Agreement.

Thereafter, the uniform boarding fee shall be paid by BOARDER to R Patch O' Heaven, LLC in advance, on or before the twentieth (20th) day of each month during the time this Agreement is in effect. The parties agree the amount of the uniform boarding fee is a fair and reasonable charge equal to the actual average costs to be incurred by BOARDER for its services to be provided to R Patch O' Heaven, LLC under this Agreement.

- (a) There is also a \$10.00 jar fee with first signing of contract, then charged as needed to replace jars being lost, or broken.

4. Shares of Milk.

- (a) BOARDER shall be entitled to receive the milk production from BOARDER's undivided shares in the Herd. The milk production attributable to BOARDER's undivided interest shall be equal to \_\_\_\_\_gallons per week.
- (b) BOARDER shall pick up owners' share of milk production at R Patch O' Heaven, LLC's facilities at least one time per week (or more frequently if R Patch O' Heaven, LLC determines that to be necessary to preserve the milk for its owners) at times to be specified by R Patch O' Heaven, LLC, provided, that R Patch O' Heaven, LLC shall make every reasonable effort to make those times convenient for the Herd Owners by soliciting comments on scheduling from the Herd Owners. Milk may also be picked up by agents of the owner.

5. Duties of R Patch O' Heaven, LLC. In addition to any other duties provided in this Agreement, R Patch O' Heaven, LLC shall have the following duties in connection with the boarding of the Herd:

- (a) To receive the Herd for boarding at its principal place of business and to provide any other reasonable services required for in this Agreement or requested by the Herd Owners;
- (b) To maintain and care for the Herd using sound practices in accordance with the Herd Health Plan and Dairy Operating Standards attached to this Agreement and incorporated in it by reference and, whether applicable to the operations of R Patch O' Heaven, LLC or not, as closely as reasonably possible to the requirements of the Colorado Health Laws and Regulations applicable to the caring of female bovine and the handling of milk productions from them;
- (c) To manage the Herd for and on behalf of the Herd Owners and to acquire and dispose of cows as shall be necessary to maintain the health and productive capacity of the Herd;
- (d) To pay all expenses for maintaining and caring for the Herd as required above;
- (e) To provide reports to BOARDER as shall be appropriate to apprise BOARDER of the condition of the Herd and any other information which R Patch O' Heaven, LLC believes will be useful to BOARDER regarding the health and performance of the Herd with respect to BOARDER's interest in the Herd.

6. **Special Services.** In addition to the uniform boarding fee provided for in this agreement should BOARDER request R Patch O' Heaven, LLC to perform any special services beyond the boarding and milking required under this Agreement, BOARDER and R Patch O' Heaven, LLC shall agree as to the amount of additional charges, if any, to be paid by BOARDER to R Patch O' Heaven for the special services.

7. No Sales of Milk. BOARDER and R Patch O' Heaven, LLC acknowledge that the sale of raw milk is prohibited by the State of Colorado. Under no circumstances shall either BOARDER or R Patch O' Heaven, LLC transfer the ownership or possession of milk in violation of the statutes of the State of

Colorado or the regulations of the Colorado Department of Public Health and Environment. BOARDER and R Patch O' Heaven, LLC each agree to indemnify and hold the other harmless from any liability, loss, damages, expenses or penalties which are incurred by the other because of a breach of the provisions of this Section by the indemnifying party.

8. Lien for Charges; Enforcement.

- (a) BOARDER shall timely pay all expenses resulting from boarding and other charges resulting from the boarding and care of the Herd. R Patch O' Heaven, LLC shall have, and BOARDER specifically grants to R Patch O' Heaven, LLC a lien and security interest in the undivided interest of BOARDER in the Herd for all unpaid boarding and other charges resulting from the boarding and care of the Herd and other services required or requested of R Patch O' Heaven, LLC by BOARDER under and pursuant to this Agreement. BOARDER shall not pledge as security or collateral any interest he/she owns in the Herd.
- (b) BOARDER agrees that in the event the charges due R Patch O' Heaven, LLC by BOARDER are not paid within the time provided herein or otherwise agreed to between BOARDER and R Patch O' Heaven, LLC, R Patch O' Heaven, LLC may exercise its lien rights and in connection with such rights, may dispose of BOARDER's interest in the Herd for any and all unpaid charges. In the event the sale does not secure a sufficient price to pay the charges due and any and all costs of the sale, BOARDER shall pay to R Patch O' Heaven, LLC the difference within ten (10) days of demand by R Patch O' Heaven, LLC. Any amounts realized by R Patch O' Heaven, LLC at the sale, over and above charges due and any and all costs of the sale, shall be returned to the BOARDER.

9. Ownership; Transfer.

- (a) BOARDER specifically represents and warrants to R Patch O' Heaven, LLC that BOARDER is the owner of the undivided interest in the Herd described in the recitals and has acquired the interest in the Herd for BOARDER's own use and benefit.
- (b) BOARDER shall not transfer or assign any of BOARDER's rights and interests in the Herd or under this Agreement without the prior written consent of R Patch O' Heaven, LLC and without the transferee or assignee having entered into a Herd Agreement covering the interest being transferred or assigned prior to or contemporaneously with the transfer or assignment. BOARDER shall at no time and under no circumstance sell or exchange any of BOARDER's interest in the production from the Herd and shall at all times use the BOARDER's share of production for BOARDER's own use. Because all of the Herd Agreements are interdependent and cannot function without all interests in the Herd being covered by them, notwithstanding the foregoing, if any court orders a transfer or assignment of an interest in a proper cause of action, the Court is requested to make transfer or assignment subject to the terms of a Herd Agreement with respect to the transfer or assignment being ordered by the Court.

10. Liability.

- (a) R Patch O' Heaven, LLC shall not be liable to BOARDER for any loss of or damages to the Herd or for anything resulting from the care and maintenance of the Herd by R Patch O' Heaven, LLC or from handling of production from the Herd by R Patch O' Heaven, LLC so long as R Patch O' Heaven, LLC shall have complied with the requirements of this Agreement with respect to the Herd and the milk production from it.
- (b) R Patch O' Heaven, LLC shall not be liable to BOARDER for any sickness, death, loss, or damages from the production of raw milk produced and received by BOARDER

unless R Patch O' Heaven, LLC shall have failed to comply with Herd Health Program and the Operation Standards attached to this Agreement and the sickness, death, loss, or damages shall have resulted directly from the failure of R Patch O' Heaven, LLC to so comply.

- (c) Notwithstanding the forgoing, R Patch O' Heaven, LLC shall indemnify and hold BOARDER harmless for any loss, damages liability, or expense caused by any animal in the Herd to the BOARDER or property of BOARDER or third parties because of the gross neglect or intentional act or omission of R Patch O' Heaven, LLC.

11. Damage Claims. In the event that BOARDER seeks to assert any claim against R Patch O' Heaven, LLC for any reason in connection with this Agreement or the activities of R Patch O' Heaven, LLC under it, BOARDER must file a written claim with R Patch O' Heaven, LLC stating the nature of the claim and the amount of relief sought within one hundred eighty (180) days after BOARDER becomes aware of the circumstances giving rise to the claim. Unless BOARDER files the claim within the prescribed time, BOARDER waives any and all right that BOARDER may have against R Patch O' Heaven, LLC for any liability arising under this Agreement.

12. Arbitration of Disputes. All disputes, claims and questions regarding the right and obligations of the parties under the terms of the Agreement are subject to arbitration. Either party may make a demand for arbitration by filing a demand in writing with the other party within one hundred eighty (180) days after a dispute first arises. Thereafter, the arbitration shall be conducted by three arbitrators (one appointed by BOARDER, one by R Patch O' Heaven, LLC, and a third by the other two arbitrators) in accordance with the rules of commercial arbitration of the American Arbitration Association. Each party shall pay the party's own costs in connection with the arbitration and costs of arbitrators shall be paid in equal amounts by the parties.

13. Effective Date.

- (a) This Agreement shall be effective the day following the execution of this Agreement.
- (b) This Agreement shall continue so long as the Herd Agreements are in effect for the entire Herd. If any one of the Herd Agreements, other than this one, shall be terminated for any reason, this Agreement shall continue in effect for an additional one Hundred eighty (180) days during which time R Patch O' Heaven, LLC and the remaining Herd Owners may seek to obtain one or more Herd Agreements covering that portion of the Herd which was covered by the terminated Herd Agreement(s). If a replacement Herd Agreement is not obtained within the specified time period, this Agreement may be terminated by R Patch O' Heaven, LLC pursuant to subsection 14.A. below. In seeking a replacement Herd Agreement, R Patch O' Heaven, LLC may for its own account determined to take on the obligation under a terminated Herd Agreement, provided that in so doing, R Patch O' Heaven, LLC will take no actions which would involve the sale of milk from the Herd in a contravention of the Herd Agreement or the laws and applicable regulations of the State of Colorado.

14. Termination.

- (a) This Agreement may be terminated by R Patch O' Heaven, LLC upon ninety (90) days notice to BOARDER so long as R Patch O' Heaven, LLC shall terminate all the Herd Agreements at the same time or has found a replacement Herd Agreement for this Agreement.
- (b) This Agreement may be terminated by BOARDER (a) if BOARDER, together with other Herd Owners, have Herd Agreements which together cover a majority of the cows in the Herd notify R Patch O' Heaven, LLC of the termination of the Herd Agreements within a

period of twenty (20) days of each other; (b) or BOARDER has found another person who is acceptable to R Patch O' Heaven, LLC who acquires BOARDER's interest in the Herd and signs a Herd Agreement substantially the same as this one.

- (c) Upon termination of this Agreement pursuant to subsections 14A. or B. above, without a replacement Herd Agreement being signed, BOARDER agrees that a committee of three Herd Owners appointed by Herd Owners (or if they fail to agree within thirty (30) days, R patch O' Heaven, LLC,) shall review all of the animals in the Herd and provide to BOARDER and all other Herd Owners a recommended list of assignments to be made to transfer ownership of the animals in the Herd to BOARDER and all other Herd owners so that the undivided interest in separate specific animals in the Herd Owners to own an individual cow so that they might dispose of it or arrange for other boarding more easily. The interest to be created shall be created by transferring each Herd Owner's shares in the Herd as a whole to one or more cows as necessary. BOARDER agrees to this technique and further agrees to execute any documents necessary to accomplish the recommendation of the committee.

15. Force Majeure. Notwithstanding anything to the contrary in this Agreement, R Patch O' Heaven, LLC shall not be responsible for any delay or failure of its performance under this Agreement if the delay or failure is caused by any matter beyond the control of R Patch O' Heaven' LLC including, but not limited to, an illness in the Herd not caused by a breach of R Patch O' Heaven, LLC's duties under this Agreement and which R Patch O' Heaven, LLC has promptly taken steps to have tested and corrected, death of cows in the Herd which does not result from a breach by R Patch O' Heaven, LLC of its duties under this Agreement, government regulations, public emergency or necessity, legal restrictions, labor disputes and actions related thereto, riot war insurrection, windstorms, rainstorms, snowstorms, floods 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 neuter gender, the singular, the plural, and vice versa.
- (b) Governing Law. This agreement is being executed and delivered in the State of Colorado and shall be construed in accordance with and governed by the laws of such state.
- (c) Captions. The captions of sections and subsections contained in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- (d) Entire Agreement. This Agreement constitutes the entire contract between the parties and may not be modified or amended except in writing signed by both parties.
- (e) Waiver. No accent or waiver, expressed or implied, to any breach of any one or more of the covenants or agreements hereof shall be deemed or taken to be a waiver of any succeeding breach.
- (f) Incorporation by Reference. All schedules, Exhibits and attachments referred to in this Agreement are incorporated by reference and made a part of this Agreement.
- (g) 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 described above.

BOARDER

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State,Zip)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Date)

R PATCH O'HEAVEN

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Date)