

MUSCLE HILL SYNDICATE AGREEMENT

FRACTIONAL INTEREST NO. ____ OF 120.

THIS SYNDICATE AGREEMENT ("Agreement"), dated December __, 2009 by and among Muscle Hill Racing, LLC, c/o Mr. Jerry Silva, 750 Park Place, Long Beach, NY, 11561, Southwind Farm, 29 Burd Road, Pennington, NJ, 08534, T L P Stable, 1 Bucks Mill Lane, Holmdel, New Jersey 07733 and Mr. Jerry Silva, 750 Park Place, Long Beach, NY, 11561, (collectively "Owners"), Southwind Farm ("Syndicate Manager"), and the person or entity identified on the last page of this Agreement, having the address therein set forth as a holder of a Fractional Interest(s) or Share(s) in **MUSCLE HILL** and any subsequent purchasers of Fractional Interests in **MUSCLE HILL** or other subscribers to this Agreement who execute counterparts hereof as herein described ("Shareholder(s)").

W I T N E S S E T H :

WHEREAS, Owners are the owners of the Standardbred stallion, **MUSCLE HILL** (2006), by Muscles Yankee out of Yankee Blondie by American Winner (3D568); and

WHEREAS, Owners desire to form and by this instrument do form a breeding syndicate creating a total ownership of ONE HUNDRED TWENTY (120) undivided fractional interests ("Fractional Interest(s) or Share(s)") in **MUSCLE HILL** which may be sold to others or retained by Owners; and

WHEREAS, the parties hereto desire to set forth in this Agreement for the benefit of themselves and all persons or entities to whom Fractional Interests may be sold or transferred and all subsequent owners thereof, the terms and conditions to govern the supervision and management of **MUSCLE HILL** during his stallion career from and after the effective date of this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties herein contained, the parties hereby agree as follows:

1. **SYNDICATION AND OWNERSHIP.** The ownership of **MUSCLE HILL** is hereby established as consisting of **ONE HUNDRED TWENTY** (120) Fractional Interests representing undivided interests in **MUSCLE HILL**. Each Fractional Interest (including Fractional Interests retained by Owners) shall be indivisible, shall be entitled to such rights and privileges and subject to such duties and obligations as every other Fractional Interest, and shall be subject to all of the terms and conditions of this Agreement. Each Fractional Interest is only transferable as hereinafter provided. Owners of the Fractional Interests at any time shall be known as the Shareholders.

The ONE HUNDRED TWENTY (120) Fractional Interests shall be evidenced and represented by ONE HUNDRED TWENTY (120) executed copies of this Agreement issued by and over the signature of the Syndicate Manager, and serially numbered ONE (1) through ONE HUNDRED TWENTY (120), inclusive, to the Owners of **MUSCLE HILL** in proportion to their current ownership interest therein, as follows:

- (i) 1 through 25 to Muscle Hill Racing LLC, Long Beach, NY
- (ii) 26 through 55 to Southwind Farm, Pennington, NJ;
- (iii) 56 through 93 to T L P Stable, Kearny, NJ; and
- (iv) 94 through 120 to Jerry Silva, Long Beach, NY.

The Fractional Interests so issued and delivered by the Syndicate Manager and the breeding rights and annual nominations making up each Fractional Interest, shall be subject to all the terms and conditions of this Agreement; except those provisions relating to the right of first refusal to purchase contained in Paragraph 11 hereof shall not apply to any "Original Sale," transfer or other disposition by Owners or to Fractional Interests sold at public auction in accordance with the provisions of paragraph 11 (f). Provided, however, such right of first refusal provisions shall apply to any subsequent sale, transfer or other disposition by any transferee or successor in interest of any such party. An "Original Sale" as the term is used in this Agreement shall mean the initial sale of a Fractional Interest in **MUSCLE HILL** by Owners.

2. **EFFECTIVE DATE.** The syndication of the ownership of **MUSCLE HILL** and the terms and conditions of this Agreement shall be effective and binding immediately upon the execution of this Agreement by the parties hereto.

3. **SYNDICATE MANAGER AND FARM LOCATION.**

(a) **General.** **MUSCLE HILL** shall, from and after the effective date and until changed as herein provided, be under the complete custody, management and control of the Syndicate Manager, its agents and representatives, who shall have full charge of all matters pertaining to **MUSCLE HILL**.

(b) **Farm Location.** **MUSCLE HILL** shall initially stand at Southwind Farms of Pennington, New Jersey.

(c) **Management of Breeding Career.** The Syndicate Manager shall manage and supervise the breeding career of **MUSCLE HILL**, which includes, but is not limited to, the daily maintenance, care, handling and breeding of **MUSCLE HILL**.

(d) **Removal of Syndicate Manager.** The Syndicate Manager shall not be removed unless approved in writing by Shareholders owning eighty (80) or more Fractional Interests in **MUSCLE HILL** at a meeting of the Shareholders held at a time and place specified in a written notice sent to all Shareholders.

(e) **Shareholders Meetings.** A meeting of the Shareholders may be called at any time by the Syndicate Manager or by the owner or owners of at least sixty (60) of the Fractional Interests in **MUSCLE HILL**. The presence in person or by proxy of sixty (60) of the Fractional Interest holders shall constitute a quorum at any meeting. To be valid, a proxy must be signed and dated; such proxy shall remain valid until the Syndicate Manager receives notice of its revocation. Such meeting will be held at a convenient location to be determined by the Syndicate Manager. Such meeting will take place upon not less than seven (7) days notice to all Shareholders, the Syndicate Manager and the farm at which the stallion stands. The notice of the meeting shall include the time, place and purpose of the meeting. In the event a Shareholder desires to have any additional matter relating to the affairs of the **MUSCLE HILL SYNDICATE** discussed and considered at the meeting, such Shareholder must provide written notice to the Syndicate Manager and all other Shareholders, describing the issue to be considered, at least four (4) days prior to the meeting. Each Shareholder present in person or by proxy shall be entitled to one (1) vote for each Fractional Interest owned by him. In the event that a Fractional Interest is owned by a partnership, corporation or entity other than an individual, evidence of authority to vote on behalf of such partnership, corporation or other entity must be presented to the Syndicate Manager in writing prior to any vote. All action which may be taken by a vote of the Shareholders at a duly held meeting, if the owners of the requisite number of Fractional Interests for such action so vote thereon, must be by written instrument. A decision can be made by a vote of sixty (60) of the Fractional Interests, or as otherwise provided in paragraph 3(d) and paragraph 12. In addition to the in-person meeting provisions of this Paragraph 3 (e), the Syndicate Manager may request the Shareholders to vote by mail on issues relating to the business affairs of the **MUSCLE HILL SYNDICATE**. To do so, the Syndicate Manager must provide dated, written notice to the Shareholders of the issue(s) to be considered and voted on by the Shareholders. This notice must be dated and sent in accordance with the provisions of Paragraph 18 (a) of this Agreement and must clearly identify the issue(s) to be considered by the Shareholders. To be binding, the vote by mail, in lieu of an in-person meeting, must be by a vote of sixty (60) of the Fractional Interest Holders. The vote must be signed, dated, notarized and returned in accordance with the provisions of Paragraph 18 (a) within fourteen (14) days of the date of the notice letter to the Shareholders described above. If more than forty (40) of the Shareholders object to a vote by mail on the issue(s) presented by the Syndicate Manager, then the issue(s) may only be considered and voted on at an in-person meeting of the Shareholders held in accordance with the provisions of this Paragraph 3 (e).

(f) **Syndicate Manager Resignation.** The Syndicate Manager may resign at any time by giving sixty (60) days notice in writing to all Shareholders prior to the effective date of such resignation. Upon the removal or resignation of the Syndicate Manager herein named, a successor Syndicate Manager shall be selected by a majority vote of sixty (60) of the Fractional Interests, and such successor Syndicate Manager shall have all the duties and authority as the Syndicate Manager herein named. Any successor shall have the right to resign at any time by giving sixty (60) days notice in writing prior to the effective date of such resignation and may be removed by a vote of eighty (80) of the Fractional Interests.

4. **AUTHORITY AND DUTIES OF THE SYNDICATE MANAGER.** The Syndicate Manager shall have all of the authority and duties as are set forth herein and all authority and duties as may be implied from the terms of this Agreement or as may exist as customary duties and authority of a syndicate manager in the Standardbred horse industry. The Syndicate Manager's duties may from time to time be delegated to its agents, representatives or employees. The Syndicate Manager's duties and authority include, but are not limited to, the following:

(a) **General.** The Syndicate Manager shall have all reasonable authority and discretion with respect to the keeping, maintenance, care, management, breeding, advertising, promotion and handling of **MUSCLE HILL**, the disbursement of funds which may be necessary to, or in furtherance of, the objectives contemplated by this Agreement and all bookkeeping, accounting and legal matters pertaining to the operation of the Syndicate.

In the event of an emergency brought on by injury or illness, the Syndicate Manager shall have total discretion in determining, with the advice of qualified veterinarians, whether **MUSCLE HILL** should be destroyed or otherwise rendered incapable for future breeding, on account of injury or illness. The Syndicate Manager shall not be liable to any Shareholders or any other person for the good faith exercise of such discretion, regardless of whether or not the Shareholder has obtained insurance. Provisions of certain insurance policies purchased by the Shareholders may provide that the insurance carriers shall have the right to exercise sole and absolute discretion concerning the control of **MUSCLE HILL** (including control of the treatment, location, use, retention and/or disposal of **MUSCLE HILL**) in the event of sickness of, or accident to, **MUSCLE HILL**. The Syndicate Manager shall not be bound by, and shall have no obligation or liability from failing to abide by, any such provisions. The Syndicate Manager may, however, in its sole and absolute discretion, nevertheless allow the insurance carriers to exercise such policy provisions relating to control and shall have no liability for or obligation with respect to any action taken by such carriers or their representatives. Nothing in this paragraph shall be construed to divest any Shareholder of his Fractional Interest in **MUSCLE HILL**.

(b) **Nominations.** The Syndicate Manager shall have the sole discretion, subject to the provisions of this Agreement, to do the following: (i) select the

dates for the commencement and ending of each breeding season; (ii) determine the number of mares to be nominated to **MUSCLE HILL** each season; (iii) select the veterinarian or veterinarians who will attend to the care and breeding of **MUSCLE HILL**; and (iv) accept or reject any mare proposed for breeding to **MUSCLE HILL**.

(c) **Service Fee.** The service fee to be charged for the initial breeding season for **MUSCLE HILL** shall be Thirty Thousand (\$30,000.00) Dollars in United States currency. For each breeding season thereafter, the Syndicate Manager shall determine a service fee for **MUSCLE HILL** no later than December 15 of the year preceding the breeding season.

(d) **Standard of Care.** The Syndicate Manager shall employ the degree of care customarily employed in the Standardbred horse industry by persons who keep and breed stallions in the discharge of duties as Syndicate Manager. The Syndicate Manager and his appointed agents and representatives shall not be responsible for any theft, loss, injury, disease or death of **MUSCLE HILL**, nor for any injury, disease or death of any mare resulting from breeding or attempted breeding to **MUSCLE HILL**, unless it is established by clear and convincing evidence that the Syndicate Manager or such agent or representative is guilty of gross negligence. The Syndicate Manager and his appointed agents and representatives shall not be liable for, and is hereby released from, liability with respect to any loss of or injury to **MUSCLE HILL** to the extent that the Syndicate or the Members of the Syndicate have obtained insurance which compensates or indemnifies them for such loss or injury and the insurance carried by any Shareholder shall contain waivers of subrogation with respect to the Syndicate Manager. The Syndicate Manager shall keep and maintain a policy of public liability insurance in the amount of One Million Dollars (\$1,000,000.00) insuring against loss or liability to any persons or property by reason of standing **MUSCLE HILL** insuring the Shareholders and the Syndicate Manager, his agents, servants and employees.

(e) **Syndicate Expenses.** The Syndicate Manager shall pay all normal and ordinary charges, costs and expenses incurred in connection with the maintenance, care and handling of **MUSCLE HILL**. Advertising, administration and promotional costs, public liability insurance, extraordinary veterinary costs or other expenses of an extraordinary nature and stallion nomination fees shall be allocated among the Shareholders on a pro-rata basis.

(f) **Corresponding Officer.** The Syndicate Manager or its agents or representatives shall be the corresponding officer with the United States Trotting Association and any other governmental bodies having jurisdiction over **MUSCLE HILL** and shall have all duties and rights arising therefrom.

(g) **Regulatory Compliance.** The Syndicate Manager shall have the authority to take such action as is necessary in order to comply with the United States Trotting Association Rules and Regulations or any other rules and regulations of governmental bodies, including the authority to make **MUSCLE HILL** eligible for state

and provincial sponsored breeding programs and the Breeders Crown program. **MUSCLE HILL** shall be made and kept eligible to the New Jersey Sire Stakes program.

(h) **Mating Certificates.** The Syndicate Manager shall cause to be issued, in a form acceptable to the United States Trotting Association and Standardbred Canada, mating certificates required for registration of foals out of mares bred to **MUSCLE HILL**; provided, however, that no such certificate shall be issued to any Shareholder or transferee who is in default in the payment of his share of the expenses or in default with respect to any of the provisions of this Agreement until such default has been cured. There shall be a \$25.00 (U.S.) pre-paid administrative fee for a duplicate mating certificate requested and issued by the Syndicate Manager.

(i) **Books and Records.** The Syndicate Manager shall maintain separate books and records regarding **MUSCLE HILL** reflecting the mares bred, the dates of such breedings, and the receipts and disbursements made on behalf of the Shareholders. The Syndicate Manager shall have the right to collect all receipts from or related to the breeding career of **MUSCLE HILL** for the administrative convenience of all Shareholders, which shall not include commencing litigation on behalf of any Shareholder. Any funds so collected shall be distributed to the Shareholders pursuant to the terms of this Agreement not less than once annually. The Syndicate Manager shall have the obligation to keep accurate books and records relating to the receipts and disbursements relating to **MUSCLE HILL**. These books and records shall be available to the Shareholders upon reasonable notice to the Syndicate Manager.

(j) **Statement of Receipts and Disbursements.** The Syndicate Manager shall provide each Shareholder, on or before March 31 of each year, a statement of receipts and disbursements for the Syndicate for the preceding calendar year.

(k) **Identity of Mares.** The Syndicate Manager shall not be responsible for checking the identity of mares to be bred to **MUSCLE HILL**. It is the responsibility of the party offering the mare for breeding to report the correct identity of the mare to the Syndicate Manager.

(l) **Pregnancy Status of Mares.** Each Shareholder shall be responsible for securing a veterinary examination for pregnancy of each mare bred on a nomination attributable to the ownership of a Fractional Interest, and obtaining from such examining veterinarian and furnishing to the Syndicate Manager, prior to October 15 of the year bred, certification in writing or by electronic communication certifying whether the mare is believed to be pregnant or barren to the cover(s) of **MUSCLE HILL**. ***Each Fractional Interest Holder that fails to provide such statement, or such other information related to the use of a nomination, shall not be entitled to vote on syndicate matters, to utilize or transfer nominations, to utilize excess breedings that may be available or to sell his Fractional Interest for so long as said Shareholder remains in default.*** Each year by December 1, the Syndicate Manager shall furnish to each Shareholder in each year a listing of the mares bred to **MUSCLE**

HILL during such breeding season along with an indication as to whether such mares are believed pregnant or barren.

(m) **Other Business Activities of Syndicate Manager.** The Syndicate Manager shall not be expected to devote itself exclusively to its duties as Syndicate Manager hereunder, and shall be permitted to conduct such other business activities and to accept such other employment as to him appears appropriate without limitation, including the management of other stallions and the purchase, sale, racing and breeding of horses, none of which shall be considered to conflict with his duties hereunder.

(n) **Outside Compensation.** The Syndicate Manager shall not receive monetary or other compensation from any outside source in connection with standing **MUSCLE HILL** at a particular farm or in connection with the transfer of the office of Syndicate Manager, which office may not be sold, assigned or otherwise transferred except as provided in Paragraph 3 of this Agreement.

(o) **No Duty to Sell Nominations.** The Syndicate Manager shall not be obligated or expected to sell nominations for the account of the Shareholders.

(p) **Powers of Attorney.** In accordance with, and subject to the terms and limitations hereof, each Shareholder authorizes and empowers the Syndicate Manager, and constitutes and appoints the Syndicate Manager as his agent and attorney-in-fact (i) to execute and deliver stallion service agreements and mating certificates, and generally to do and file on behalf of such Shareholder such things as the Syndicate Manager shall deem necessary or appropriate with the United States Trotting Association, Standardbred Canada or any other governmental or regulatory bodies, and (ii) to execute such elections as may be required by the taxing authorities of the United States of America and Canada as may be provided herein.

(q) **No Liability to Third Parties.** The Syndicate Manager shall have no duty to note or record third-party claims of ownership or other rights including, without limitation, security interests, in and to Fractional Interests, breeding rights or any other interest or right created pursuant to this Agreement. The Syndicate Manager shall be entitled to rely upon directions given by the record owner of any such rights, as determined by the records of the Syndicate Manager, notwithstanding actual or constructive notice of purported third-party rights in and to such interests.

5. OBLIGATIONS OF SHAREHOLDERS.

(a) Each Shareholder shall pay, for each Fractional Interest owned, one one-hundred-twentieth (1/120) of all advertising, administrative and promotional costs, public liability insurance premiums, stallion nomination fees, extraordinary veterinary costs, and all other expenses of an extraordinary nature incurred in connection with the maintenance, breeding, and promotion of **MUSCLE HILL**.

(b) The Shareholders shall have no right to control or change any action taken or decision made by the Syndicate Manager on any matter within the scope of his authority, subject to the provisions of Paragraphs 3(e) and 18(g) herein.

(c) ***In the event a Shareholder fails to satisfy his obligations under this Agreement or to the Owners, including but not limited to timely payment of his share of the expenses of the Syndicate or for service fees, or fails to provide breeding information as requested by the Syndicate Manager, then the Shareholder shall not be entitled to vote on syndicate matters, to utilize or transfer nominations, to utilize excess breedings or to sell his Fractional Interest for so long as said Shareholder remains delinquent in his obligations.*** If a Shareholder is in default of his payment on his share of the expenses of the Syndicate, interest will accrue for any period during which the same shall be overdue at a rate per annum equal to the maximum rate permitted by applicable law, or, where no maximum rate is prescribed by applicable law, at the rate of eighteen percent (18%) per annum and shall be payable on demand.

The Syndicate Manager shall be entitled to and shall have a lien under N. J. S. A. 2A:44-51 and N. J. S. A. 2A:44-52, or similar statutes of any other jurisdiction that may be applicable, upon and is granted a security interest under the Uniform Commercial Code of New Jersey in any Fractional Interest in **MUSCLE HILL** as to any portion of the charges, costs and expenses due and owing by the Shareholder owning such Fractional Interest have not been paid. The Syndicate Manager shall be entitled to commence legal action upon ten (10) days prior written notice to a Shareholder, the date of such notice being the date upon which the cause of action for nonpayment shall be deemed to occur. In the event the default shall continue for a period of six (6) months, the Syndicate Manager shall be entitled to sell the Fractional Interest, as agent and attorney-in-fact, for the Shareholder who is in default. If a Shareholder is in default of his payment on his share of the expenses of the syndicate, the Syndicate Manager shall have the right to deduct any amounts due from the Shareholder's distribution under the provisions of Paragraphs 8 and 9 of this Agreement. The defaulting party must reimburse the Syndicate Manager for all costs of collection on the default, including but not limited to reasonable attorney fees. The Shareholder shall be solely responsible for all past, present and future taxes due, including but not limited to, income tax, sales tax, property taxes and excise taxes, on the Fractional Interests, transfer of Fractional Interests, and transfer of nominations. At no time shall the Syndicate Manager be held responsible or liable for such taxes.

6. **BREEDING RIGHTS/NOMINATIONS.**

(a) A Shareholder shall be entitled to one (1) breeding right to **MUSCLE HILL** per breeding season. Each breeding right shall entitle the Shareholder to one (1) nomination to **MUSCLE HILL** per breeding season. Specific mare nominations are required. If nominations are available, a Shareholder may request bookings for additional mares to **MUSCLE HILL** during the breeding season. The

Syndicate Manager shall make available such breeding nominations in accordance with Paragraph 9 below.

(b) In addition to the breeding rights and nominations of a Shareholder as described above:

(i) The Syndicate Manager shall be entitled to ten (10) complimentary breeding rights to **MUSCLE HILL** per breeding season. Each breeding right shall entitle the Syndicate Manager to one (1) nomination to **MUSCLE HILL** per breeding season.

(ii) Greg Peck, trainer, shall be entitled to three (3) complimentary breeding rights to **MUSCLE HILL** per breeding season. Each breeding right shall entitle Greg Peck to one (1) nomination to **MUSCLE HILL** per breeding season.

(iii) Brian Sears, driver, shall be entitled to two (2) complimentary breeding right to **MUSCLE HILL** per breeding season. Each breeding right shall entitle Brian Sears to one (1) nomination to **MUSCLE HILL** per breeding season.

(iv) Jerry Silva, racing manager, shall be entitled to one (1) complimentary breeding right to **MUSCLE HILL** per breeding season. Each breeding right shall entitle Jerry Silva to one (1) nomination to **MUSCLE HILL** per breeding season.

The individuals and/or entities identified in Paragraph 6(b)(ii-iv) shall be hereinafter referred to as the "Service Group" and their respective nominations shall be referred to as the "Service Group Nominations."

(c) With respect to the breeding rights provided for in paragraph 6(b)(i-iv) above, the Syndicate Manager and Service Group do not have an ownership interest in **MUSCLE HILL**, may not vote on Syndicate matters and are not subject to the duties and obligations of the Shareholders, except as otherwise provided herein. The breeding rights of the Syndicate Manager and the Service Group may not be sold, exchanged or otherwise transferred; provided, however, that the nominations associated with such breeding rights may be sold, exchanged or transferred annually subject to the terms and conditions of this Agreement. The breeding rights of the Syndicate Manager may be assigned by the Syndicate Manager to agents or representatives of the Syndicate Manager that are appointed to assist the Syndicate Manager in the discharge of its duties contemplated by this Agreement. The breeding rights provided for in this Paragraph 6 may, however, pass by inheritance or will subject to the terms and conditions of this Agreement.

(d) Each mare offered for breeding to **MUSCLE HILL** shall be in sound breeding condition and free from disease and infection. Any mare certified by the

veterinarian attending **MUSCLE HILL** not to be, in such veterinarian's sole opinion, in sound breeding condition and free from disease and infection, shall not be bred to **MUSCLE HILL** and in such event, the Syndicate Manager shall promptly notify the owner of the mare.

(e) There shall be no accumulation of nominations from season to season.

7. **BOOK LIMITATION AND NOMINATION PROCEDURE.**

MUSCLE HILL shall breed mares during the customary breeding season subject to the following conditions and limitations:

(a) **Maximum Book of Mares.** The maximum book of **MUSCLE HILL** shall consist of one hundred forty (140) mares in each breeding season ("Maximum Book").

(b) **Use of Breedings.** Each Shareholder and member of the Service Group shall notify the Syndicate Manager annually, **prior to December 1**, of the following: i) whether such Shareholder or member of the Service Group intends to utilize his nomination(s) in the upcoming breeding season or whether any nomination(s) will be available for sale to third-parties; and ii) the number of additional nominations the Shareholder or member of the Service Group is requesting for the upcoming breeding season.

(c) **Approval of Mares by Syndicate Manager.** **MUSCLE HILL** shall only be bred to mares approved by the Syndicate Manager. The Syndicate Manager, acting as agent for the Shareholders as a whole, shall either approve or disapprove a mare for breeding to **MUSCLE HILL** after considering the mare's pedigree, conformation, racing record, and production record (including current breeding status). In the event that a mare is bred with the intent of effecting an embryo or ovum transfer, that fact shall be disclosed at the time of booking. Only one mating certificate shall be issued for each mare bred to **MUSCLE HILL** during each breeding season notwithstanding the number of foals produced by embryo/ovum transfer. The mating certificate shall be issued for registering the first born of the mare, natural or otherwise. Mares that are actively racing and/or mares that are not at least two years of age will not be booked to **MUSCLE HILL** for purposes of embryo ovum transfer unless approved by the Syndicate manager.

(d) **Reduction in Normal Book of Mares.** If the Syndicate Manager, in his sole judgment or (i) as a result of a change in the Rules of the United States Trotting Association or other regulatory bodies, (ii) because of the health of **MUSCLE HILL**, (iii) by virtue of any applicable statute, regulation, or ordinance or (iv) for any other reason, determines that **MUSCLE HILL** should be bred to less than one hundred forty (140) mares in any breeding season, the Syndicate Manager shall determine the number of mares to which **MUSCLE HILL** may be bred, and **MUSCLE HILL** shall be

bred only to such reduced number of mares (hereinafter the "Reduced Book"). The determination of the Syndicate Manager shall be conclusive. The breeding rights of the Syndicate Manager shall not be reduced. In the event of a Reduced Book, the Service Group nominations provided for in Section 6(b)(ii-iii) shall be eliminated for any such year in which there is a Reduced Book. If a decision is made to establish a Reduced Book prior to commencement of the breeding season, those entitled to participate in a Reduced Book, and the extent of their participation therein, shall be determined by lot, with each Fractional Interest being entitled to one draw for each nomination attributable to each Fractional Interest. Each Fractional Interest that has been excluded from participating in a Reduced Book shall not be subjected to the risk of a drawing in any subsequent breeding season for which there is a Reduced Book until all Fractional Interests shall have been excluded from participating in Reduced Books. If such determination is made after commencement of a breeding season, the Syndicate Manager may make such allocation of nominations and proceeds from the sale thereof by the Syndicate Manager as the Syndicate Manager in its sole discretion shall determine to be fair and equitable under the circumstances so that the benefit of all available nominations and such proceeds shall be allocated and paid among the Shareholders as nearly as practicable in accordance with their respective interests in a Normal Book.

(e) **Notice of Reduced Book.** Prompt notice of the decision to reduce the book of **MUSCLE HILL** to a number less than one hundred forty (140) mares shall be sent by the Syndicate Manager to each Shareholder. Notice of the fact that there will be a Reduced Book, the number to which the book is to be reduced, and the time and place of any drawing, shall be sent by the Syndicate Manager to each Shareholder and to the farm at which **MUSCLE HILL** stands at least ten (10) days prior to the drawing, as set forth in Paragraph 7(d) above. In the event of a reduction in the Normal Book and if a Fractional Interest or eligible nomination shall already have been used in that breeding season, then such Fractional Interest or eligible nomination shall be excluded from the drawing.

8. **EXPORT BOOK NOMINATIONS.**

(a) In the event the Syndicate Manager determines, in its sole discretion, that **MUSCLE HILL** is capable of exporting frozen semen for breeding outside North America, the Syndicate Manager shall decide, in its sole discretion, the number of frozen semen straws to be produced and exported (the "Export Book").

(b) The net proceeds from the sale of the Export Book nominations shall be divided on a pro rata basis among all Shareholders in proportion to their ownership interest in **MUSCLE HILL**. In computing the proceeds hereunder, the Syndicate Manager may deduct reasonable costs and expenses relating to the collection of delinquent service fees associated with the excess nominations.

9. **DISPOSITION OF PROCEEDS.**

(a) All Shareholders, the Syndicate Manager and the Service Group may turn over nominations to the Syndicate Manager annually for sale provided that the Syndicate Manager is notified in writing or by way of electronic communication of such election **prior to December 1** of the year preceding the breeding season. The Syndicate Manager will not be required to accept any such nominations for sale where notice is provided subsequent to that date. Owners of the nominations turned over to the Syndicate Manager shall share in the proceeds in accordance with subparagraph (b) hereof. In the event the requests of Shareholders for additional nominations, in the aggregate, exceed the aggregate number of nominations offered for sale, all nominations turned over to the Syndicate Manager under this Paragraph 9 are subject to the right of first refusal as set forth in Paragraph 11 below. Any remaining surplus nominations offered for sale, after giving effect to the requests of the Shareholders for additional nominations, may be sold by the Syndicate Manager at times and on terms determined in its discretion.

(b) Each Shareholder or owner of a nomination who has turned over a nomination(s) to the Syndicate Manager for sale pursuant to subparagraph (a) above shall share in all collected breeding fees in proportion to the number of that person's nominations turned over to the Syndicate Manager to the total number of nominations turned over to the Syndicate Manager by all Shareholders, the Syndicate Manager and the Service Group.

10. **TRANSFERABILITY OF NOMINATIONS.**

(a) **Transfer of Nominations.** A Shareholder may sell or transfer any nomination which he does not intend to use, provided in the event of a sale or transfer of the nomination, the Shareholder shall provide the Syndicate Manager with prior written notice of the sale or transfer thereof and shall comply with the terms of this Agreement.

(b) **Right of First Refusal.** The sale, exchange or other transfer of all nominations, including any nominations turned over to the Syndicate Manager and the Service Group as provided for in Paragraph 9 above, is subject to the right of first refusal as set forth in Paragraph 11 below, except as provided in Paragraph 9 above.

11. **TRANSFERABILITY OF FRACTIONAL INTERESTS; RIGHT OF FIRST REFUSAL.** All of the Fractional Interests and Nominations in **MUSCLE HILL** shall be transferable only subject to the provisions and conditions contained in this Agreement.

(a) **Notice to Syndicate Member of Acceptable Offer.** Any Shareholder who shall receive a *bona fide* acceptable offer to purchase his Fractional Interest(s)/Nomination(s) shall notify the Syndicate Manager in writing, stating the name and address of the offeror, the amount of such offer and the terms thereof. The Syndicate Manager shall promptly notify the Shareholders in writing of such offer and

the Shareholders shall have ten (10) days after the date of such notice in which to accept said offer on the same terms by so notifying the Syndicate Manager.

(b) **Drawing by Lot.** If more than one (1) Shareholder desires to accept the offer, then the Shareholder entitled to purchase the Fractional Interest(s)/Nomination(s) offered for sale shall be determined by a drawing by lot conducted by the Syndicate Manager. In the event that two or more Fractional Interest(s)/Nomination(s) are offered for sale, the drawing by lot shall be made separately for each Fractional Interest/Nomination. Each Fractional Interest Holder or Nomination Holder, where appropriate, is entitled to one draw for each Fractional Interest owned.

(c) **Notice of Approval to Sell.** If no Shareholder desires to accept the offer, then the Syndicate Manager shall so notify the Shareholder desiring to sell and he may then consummate the sale to the third-party offeror upon the terms stated in the notice to the Syndicate Manager; provided, however, no such sale may be made until the prospective purchaser of such Fractional Interest or Nomination agrees in writing to be bound by the terms and conditions of this Agreement and all expenses owed to the Syndicate Manager relating to the Fractional Interest have been paid in full. In the event the offeror or offeree fails to disclose the complete terms of the offer, the Fractional Interest or Nomination sold shall be subject to forfeiture to the Syndicate Manager for the benefit of the Shareholders.

(d) **Related Party Transfers.** Fractional Interests may pass by inheritance or will without being subject to the right of first refusal, but subject to all other terms and conditions of this Agreement which must be consented to by any legatee. Provided that in the event any legatee fails to so consent, then the legatee's right to use or transfer the nominations accruing to such Fractional Interest shall be suspended until such consent is given. Furthermore, a Fractional Interest may be transferred to any member of the Shareholder's immediate family or to any firm, entity or trust owned or controlled by the Shareholder without being subject to the right of first refusal stated herein; provided, however, that all terms of this Agreement are accepted by such individual, firm, entity or trust.

(e) **Original Sales.** The right of first refusal to purchase provided by this section shall not apply to the Original Sale of Fractional Interests by the Owners, but such provisions shall be applicable to any subsequent sale or disposition thereof.

(f) **Public Auctions.** The sale of Fractional Interests shall be permitted at public auction if the provisions of this paragraph are satisfied; provided, however, such sales are subject to all other terms and conditions of this Agreement. If a Shareholder desires to sell a Fractional Interest at public auction, the Shareholder must provide the Syndicate Manager with three (3) weeks written notice of the sale. Thereafter, the Syndicate Manager shall use its best efforts to provide seven (7) days written notice of the public auction to all Shareholders (in accordance with this Agreement). If the Fractional Interest is purchased by a Shareholder at public auction,

and if the notice provisions of this paragraph 11(f) are satisfied by the Shareholder, then the right of first refusal does not apply. Otherwise, if the notice provisions hereof are not complied with by the Shareholder, the Fractional Interest sold is subject to the right of first refusal of this Paragraph 11.

(g) **Expenses Associated with Transfer.** All expenses incurred by the Syndicate Manager in performing his duties under this section shall be paid by the selling Shareholder, including attorneys' fees, if any. In addition, there shall be a \$100.00 (U.S.) administrative fee associated with any transfer of a Fractional Interest hereunder, which fee shall accompany the notice to the Syndicate Manager under paragraph 11(a) above. No Fractional Interest shall be transferred until all such expenses have been paid in full.

12. **SALE OF MUSCLE HILL AS A WHOLE.** In the event that it is determined that it is in the best interest of the Shareholders, and only after an affirmative vote of Shareholders owning eighty (80) or more Fractional Interests at a meeting called for such purpose and held in accordance with the terms and conditions hereof, **MUSCLE HILL** may be sold as a whole. The proceeds of such sale shall be distributed among the Shareholders in proportion to the number of Fractional Interests owned by each Shareholder. The Syndicate Manager and the Service Group shall not be entitled to any proceeds from the sale of **MUSCLE HILL**; provided, however, that the Syndicate Manager shall be reimbursed for all expenses incurred in connection with the sale under the terms of this Paragraph 12, which expenses shall be deducted from the proceeds of the sale of **MUSCLE HILL** prior to distribution to the Shareholders. In the event that it is determined that **MUSCLE HILL** is to be sold, the Syndicate Manager is hereby appointed irrevocable attorney-in-fact for the Shareholders to effect the sale of **MUSCLE HILL** and to execute all documents necessary to effect such sale.

13. **SUBSCRIPTION TO SYNDICATION AND PURCHASE TERMS.**

(a) The undersigned hereby subscribes for and agrees to purchase one Fractional Interest, such numbered Fractional Interest representing an undivided ownership interest in **MUSCLE HILL**, and hereby agrees to pay the Owners, for each Fractional Interest, the sum specified in the Bill of Sale and other related documents executed between the Owners and Shareholder simultaneously herewith.

(b) The Syndicate Manager will not maintain mortality or fertility insurance on **MUSCLE HILL** for the benefit of the Shareholders. It shall be the responsibility of each Shareholder to purchase and maintain mortality and/or fertility insurance for **MUSCLE HILL**.

14. **WARRANTY OF OWNERSHIP AND FERTILITY.** Owners warrant that they are the owners of **MUSCLE HILL**, that the Fractional Interest represented by this counterpart of the **MUSCLE HILL SYNDICATE AGREEMENT** is free and clear of all liens and encumbrances, except a lien, if any, in favor of Owners from the Shareholder. **EXCEPT FOR SUCH WARRANTY, OWNERS MAKE NO WARRANTIES OR**

REPRESENTATIONS OF ANY KIND, EITHER EXPRESSED OR IMPLIED, AS TO THE OWNERSHIP, HEALTH, FERTILITY, CONDITION, CONFORMATION, SOUNDNESS, OR BREEDING SOUNDNESS OF MUSCLE HILL INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Shareholders assume all risks of loss from and after the effective date hereof.

15. **REPRESENTATIONS; DISCLAIMERS.**

(a) As a condition of sale, each Shareholder acquiring a Fractional Interest in **MUSCLE HILL** acknowledges and agrees, and represents and warrants the following:

(i) Shareholder understands that the Fractional Interests in **MUSCLE HILL** are being sold without registration under the securities act of 1933 (the "Act"), as amended, or any state securities act and if the Fractional Interests are considered "Securities" under the Act or any state securities act, an exemption from such registration may be available for non-public offerings,

(ii) Shareholder has sufficient information, knowledge and experience to evaluate the merits and risks of purchasing a Fractional Interest or, if he is not qualified to make such an evaluation by himself, he has utilized the advice of an advisor and that he and the advisor together are capable of evaluating the merits and risks of purchasing a Fractional Interest,

(iii) Shareholder is financially able to assume his pro-rata Fractional Interest of the expenses of the Syndicate, and is able to bear the economic risks attendant to the acquisition of a Fractional Interest for an indefinite period of time,

(iv) Shareholder is a breeder/owner and his sole purpose in acquiring a Fractional Interest in **MUSCLE HILL** to assure himself of the right to breed his own mares to **MUSCLE HILL**.

(v) Shareholder is not dependent upon the expertise or management of the Syndicate Manager in order to successfully conduct the affairs of his own breeding endeavor other than his reliance upon the Syndicate Manager's normal custodial responsibilities as set forth in this Agreement,

(vi) The benefits inuring to the Shareholder from his ownership of an interest in **MUSCLE HILL** are not the result of the efforts of the Syndicate Manager or any third party,

(vii) It is Shareholder's understanding and intent that no partnership, legal person, association, or jural entity is created hereby,

(viii) Shareholder and/or his advisor have been afforded the opportunity to ask questions of and to receive answers from the Syndicate Manager concerning

MUSCLE HILL, the syndicate's operations, and any aspect of membership in the Syndicate, all to the Shareholders' satisfaction,

(ix) Shareholder understands that the Syndicate Manager is not required to sell nominations on his behalf,

(x) Shareholder and/or his advisors have been granted the right to inspect **MUSCLE HILL** and to obtain any additional information to the extent the Syndicate Manager possesses such information which is necessary to make an informed business decision or to verify any other information provided, and

(xi) Shareholder is not acquiring any Fractional Interest or Fractional Interests for sale in connection with a distribution so as to be an underwriter.

Further, each Shareholder acknowledges that (i) neither the Owners nor the Syndicate Manager have made any representations or warranties to the Shareholder with respect to **MUSCLE HILL'S** ability to stand at stud except as stated herein, (ii) he is knowledgeable with respect to the pedigree, racing record and stud record of **MUSCLE HILL**, and (iii) he has investigated both and has independently formed a judgment with respect thereto and with respect to the prospects of **MUSCLE HILL** as a successful sire.

(b) Each of the representations set forth above are also made by the Owners each to the other and to the Syndicate Manager.

(c) Owners as between themselves, and the Owners and the Syndicate Manager as to all purchasers of Fractional Interests or other breeding rights, disclaim any and all warranties, express or implied, as to **MUSCLE HILL**, including without limitation (i) any warranty as to breeding soundness, (ii) fitness for any intended purpose, and (iii) merchantability.

16. **ELECTION DISCLAIMING PARTNERSHIP STATUS.** The owners of the Fractional Interests of **MUSCLE HILL** are co-owners of undivided interests in **MUSCLE HILL**. It is not the purpose or intention of this Agreement to create, and this Agreement shall not be considered as creating a joint venture, partnership, or legal entity or other relationship whereby any party shall be held liable for the omission or commission of any other party. No partnership, legal person, association, or jural entities are intended or hereby created by the parties. If for Federal tax purposes this Agreement or the relationship established hereby and the operations hereunder are deemed to constitute a partnership, then each of the parties hereby elects not to be treated as a partnership and further elects to be excluded from the application of all of the provisions of Subchapter K, Chapter 1, Subtitle A, of the Internal Revenue Code of 1986, pursuant to an election under Section 761(a) of the Code (Regulation 1.761-2). The Syndicate Manager is authorized to make this election as may be required by Federal Treasury Regulations. In making this election, each of the entities which is a party hereto states that the income derived from co-ownership of **MUSCLE HILL** can be adequately

determined without the computation of partnership taxable income. Each co-owner agrees to properly report such income and expenses as is applicable to his ownership of an interest in **MUSCLE HILL** on his appropriate income tax returns.

17. **SEVERABILITY.** If any provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed entered into or taken hereunder, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken hereunder, and this Agreement shall remain in force to the fullest extent permitted by law, provided the rights and obligations of the parties remain substantially unchanged.

18. **MISCELLANEOUS.**

(a) **Notices.** Any notice given or required to be given to the Members hereunder shall be effective and binding if, and the same shall be deemed to have been given when delivered in writing, (i) delivered in person; (ii) mailed postage prepaid by certified or registered mail; (iii) dispatched by express courier; (iv) or dispatched by facsimile transmission, telegram, electronic communication or cable to the person to whom it is required to be given at his address designated herein or to such other address as he shall designate by written notice sent to the Syndicate Manager for that purpose, and notices to the Syndicate Manager shall only be effective and binding upon the actual and timely receipt thereof by the Syndicate Manager.

(b) **Tax Matters of Shareholders; Indemnification.** The Syndicate Manager, the Owners and/or the **MUSCLE HILL** Syndicate shall not be liable for any costs, assessments, penalties or related expenses incurred by a Shareholder relating to any claim made by any local, state or federal taxing authority. In the event of any claim, including but not limited to a lawsuit against the Owners, the Syndicate Manager and/or the **MUSCLE HILL** Syndicate arising directly or indirectly out of this Agreement or its performance hereunder, including but not limited to lawsuits by any Shareholder(s), then the Owners, the Syndicate Manager and/or the **MUSCLE HILL** Syndicate shall be indemnified, held harmless and reimbursed by the Shareholders. The Shareholders' agreement to indemnify, hold harmless and reimburse the Owners, the Syndicate Manager and/or the **MUSCLE HILL** Syndicate shall include all costs and expenses of any nature, including attorneys' fees.

(c) **Waiver of Right to Demand Partition.** The Shareholders hereby waive whatever right they may have to demand the partition, or sale for partition, of **MUSCLE HILL** under any law of the State of New York, or any other jurisdiction, and they do hereby agree that the sole and adequate means by which an owner of a Fractional Interest may divest himself of his interest in **MUSCLE HILL** shall be the transfer of the Fractional Interest(s) which he owned therein pursuant to the provisions of this Agreement.

(d) **Binding Effect of Agreement; Counterparts.** Upon execution by the Owners, the Syndicate Manager and a Shareholder, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, legatees, executors, personal representatives, successors and permitted assigns. This Agreement may be executed in counterparts, which shall constitute the Agreement between the parties as if all signatures were appended to the original instrument, but no rights shall inure to any party hereto until the Agreement is approved and signed by Owners.

(e) **Applicability of Agreement to Subsequent Purchasers of Fractional Interests and Breeding Nominations.** Any person or entity not a party to this Agreement at the time of its original execution who purchases or otherwise acquires a Fractional Interest or breeding nomination or the right thereto in **MUSCLE HILL** shall be deemed a party to this Agreement to the same extent and in the same manner as though he had signed and executed the original hereof, and any such person or entity agrees to execute any agreement reasonably requested by the Syndicate Manager evidencing such person's consent to the terms of this Agreement.

(f) **Related Documents.** Each party to this Agreement agrees to execute such other documents as may be necessary or appropriate in order to implement the respective provisions of this Agreement.

(g) **Amendment or Modification.** This Agreement may not be amended or modified in any manner without the express written consent of the Shareholders owning not less than thirty (30) or more of the Fractional Interests in **MUSCLE HILL** at a meeting called for such purpose as provided for in this Agreement.

(h) **Governing Law; Jurisdiction; Venue.** This Agreement as well as the instruments executed with respect or pertaining to any right or interest created hereunder shall be governed by and construed in accordance with the laws of the State of New York. Any disagreement, contest or lawsuit arising out of or relating to this Agreement as well as any instrument executed with respect to any right or interest created hereunder shall be brought within the Courts of the State of New York or the United States District Court for the Southern District of New York. The parties agree to submit to the jurisdiction of the courts of the State of New York or the United States District Court for the Southern District of New York and hereby waive trial by jury as to any lawsuit.

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the day and year first above written.

OWNER:

SHAREHOLDER:

MUSCLE HILL RACING, LLC

By: _____
JERRY SILVA

SOUTHWIND FARM

Address

By: _____
ALLEN SKOLNICK

TLP STABLE

By: _____
THOMAS PONTONE

SYNDICATE MANAGER

JERRY SILVA

By: _____