

CLOSING ITEM NO.: A-6

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

ULTRA DAIRY, LLC

SECOND AMENDED AND RESTATED
PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF MAY 1, 2019

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Second Amended and Rested Payment in Lieu of Tax Agreement and is for convenience of
reference only.)

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SECOND AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT

THIS SECOND AMENDED AND RESTED PAYMENT IN LIEU OF TAX AGREEMENT (the “Agreement”) dated as of May 1, 2019 by and between the ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the “Agency”), having an office for the transaction of business located at 333 West Washington Street, Suite 130, Syracuse, New York 13202 and ULTRA DAIRY, LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 2394 US Route 11, Lafayette, New York 13084 (the “Company”).

W I T N E S S E T H :

WHEREAS, Title I of Article 18-A of the General Municipal Law of the State of New York (the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities; whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 435 of the Laws of 1970 of the State and Chapter 676 of the Laws of 1975 of the State, as amended (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on June 12, 2003, the Agency undertook a project (the “2003 Project”) on behalf of the Company consisting of the following: (A)(1) the acquisition of an interest in an approximately 21 acre parcel of land located at 6750 Benedict Road (tax map no. 042.-13-05.1) in the Town of Dewitt, Onondaga County, New York (the “Land”); (2) the construction on the Land of an approximately 31,000 square foot manufacturing and packaging facility for use by the Company (the “2003 Facility”); and (3) the

acquisition and installation in the 2003 Facility of certain machinery and equipment (the “2003 Equipment” and collectively with the Land and the 2003 Facility, the “2003 Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real estate transfer taxes and real property taxes; (C) the lease (with an obligation to purchase) or sale of the 2003 Project Facility to the Company ; and (D) assisting the Company in the financing of the 2003 Project Facility; and

WHEREAS, in connection with the 2003 Project, the Agency and the Company entered into, inter alia, an underlying lease agreement dated as of August 1, 2003, a memo of which was recorded in the Onondaga County Clerk’s Office (the “Clerk’s Office”) on August 19, 2003 in Book 4793 at Page 0437 in which the Company leases its interest in the Land and the 2003 Facility to the Agency (the “2003 Underlying Lease”), a bill of sale dated as of August 1, 2003 pursuant to which the Company sold its interest in the 2003 Equipment to the Agency (the “2003 Company Bill of Sale”), a lease agreement dated as of August 1, 2003, a memo of which was recorded in the Clerk’s Office on August 19, 2003 in Book 4793 at Page 443 in which the Agency leases its interest in the 2003 Project Facility to the Company (the “2003 Agency Lease”) and a payment in lieu of tax agreement dated as of August 1, 2003 (the “2003 PILOT”); and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on December 14, 2006 the Agency undertook a project (the “2007 Project”) consisting of the following: (A)(1) construction of an approximately 4,000 square foot addition to and modification of the 2003 Facility (as modified and expanded, the “2007 Facility”); and (2) the acquisition and installation in the 2007 Facility of certain machinery and equipment (the “2007 Equipment”) (the Land, the 2007 Facility and the 2007 Equipment are sometimes hereinafter collectively referred to as the “2007 Project Facility”); and (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes; and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on July 10, 2008 the Agency undertook a project (the “2008 Project”) consisting of the following: (A)(1) construction of an approximately 55,000 square foot expansion of the 2007 Facility (as modified and expanded, the “2008 Facility”); and (2) the acquisition and installation in the 2008 Facility of certain machinery and equipment (the “2008 Equipment”) (the Land, the 2008 Facility and the 2008 Equipment are sometimes hereinafter collectively referred to as the “2008 Project Facility”); and (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes; and

WHEREAS, on March 1, 2010, the Agency and the Company entered into an amended and restated payment in lieu of tax agreement dated as of March 1, 2010 (the “2010 PILOT”), which amended and restated, in its entirety, the 2003 PILOT Agreement; and

WHEREAS, by resolution adopted by the Agency on October 9, 2018 (the “Initial Resolution”), the Agency determined to accept an application (the “Application”) from the Company, and the Agency further agreed, subject to numerous conditions, to consider undertaking a

project (the “Project”) consisting of the following: (A) (1) the retention of the Agency’s interest in the Land and the 2003 Project Facility; (2) the construction of an approximately 38,400 square foot addition, an approximately 2,970 square foot addition and an approximately 1,165 square foot addition to the 2008 Facility (the “2019 Improvements” and, together with the 2008 Facility, the “Facility”) located on the Land; and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “2019 Equipment”) (the Land, the Facility, the 2003 Equipment, the 2007 Equipment, the 2008 Equipment and the 2019 Equipment being collectively referred to as the “Project Facility”), such Project Facility to provide manufacturing, storage and cooling space for the manufacturing, storage and shipment of dairy and non-dairy food products; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes and mortgage recording taxes (subject to certain statutory limitations) (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to a resolution duly adopted by the members of the Agency on January 8, 2019, the Agency determined to undertake the Project, to grant the Financial Assistance and to enter into an Amended and Restated Lease Agreement (the “Lease Agreement”) and certain other documents related to the Financial Assistance to the Project; and

WHEREAS, the Company has agreed with the Agency to continue to lease 2003 Project Facility and to additionally lease all improvements to the 2003 Project Facility, including the 2019 Improvements, to the Agency, and the Agency desires to continue to lease the 2003 Project Facility and to additionally lease all improvements to the 2003 Project Facility, including the 2019 Improvements, from the Company pursuant to the terms of a certain Amended and Restated Underlying Lease dated as of May 1, 2019 (the “Underlying Lease”), by and between the Company and the Agency; and

WHEREAS, the Company has agreed to transfer title to the 2019 Equipment to the Agency pursuant to a certain bill of sale, dated the Closing Date (the “Bill of Sale”); and

WHEREAS, the Agency has agreed with the Company to continue to lease the 2003 Project Facility and to additionally lease the all improvements to the 2003 Project Facility, including the 2019 Improvements, to the Company, and the Company has agreed with the Agency to continue to lease the 2003 Project Facility and to additionally lease all improvements to the 2003 Project Facility, including the 2019 Improvements, from the Agency, upon the terms and conditions set forth in the Lease Agreement; and

WHEREAS, this Agreement shall amend and restate, in its entirety, the 2010 PILOT; and

WHEREAS, said Project is to be used for any legal purpose under the Act; and

WHEREAS, the Project is located within the boundaries of the County of Onondaga; and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "RPTL"), the Agency is not required to pay Real Estate Taxes (hereinafter defined) upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, the Agency has expressed its reluctance to enter into the Underlying Lease unless the Company shall agree to make payments in lieu of Real Estate Taxes ("PILOT Payments") pursuant to the this Agreement with respect to the Project; and

WHEREAS, the PILOT Payments contemplated by this Agreement are in lieu of Real Estate Taxes which may be payable with respect to the Project during the term of this Agreement; and

WHEREAS, this Agreement shall supersede and replace any current payment in lieu of tax agreement to which the Land may be subject including, but not limited to, the 2003 PILOT and the 2010 PILOT;

NOW, THEREFORE, in consideration of the matters above recited, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto formally covenant, agree and bind themselves as follows to wit:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company does hereby represent and warrant to the Agency as follows:

(A) Power: The Company has full legal power and authority to own its properties and conduct its business.

(B) Authorization: The Company has the legal power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. The Company has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of the compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provision of any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Agreement nor the Company's performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing. This Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(C) Governmental Consent: No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

ARTICLE II

COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF PROJECT FACILITY.

(A) Assessment of Project Facility: Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a leasehold interest in the Project Facility by the Agency and the filing by the Agency, and for so long thereafter as the Agency shall have a leasehold interest in the Project Facility, the Project Facility shall be assessed by the Town of Dewitt, Onondaga County, New York (hereinafter referred to as the "Town") and by the various other taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, school district, or other political unit or units wherein the Project Facility is located (the Town and such other taxing entities being sometimes collectively referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest in the Project Facility. The Company shall, promptly following acquisition by the Agency of the leasehold interest, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency and, for so long thereafter as the Agency shall have a leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency obtains of record a leasehold interest in the Project Facility. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. Subject to Section 3.01 hereof, the Agency will reasonably cooperate with the Company to preserve the tax-exempt status of the Project Facility and to achieve the purposes and effect of this Agreement.

(B) Special Assessments: The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the State Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company shall pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES.

(A) Agreement to Make Payments: The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the assessor a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be

paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the “Receivers of Taxes”) for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company, shall pay interest and late charges as required by Section 874 of the Act.

(B) Amount of Payments in Lieu of Taxes: For each roll year beginning on March 1, 2020, the payments in lieu of taxes to be paid by the Company to the various Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement (each a “Regular PILOT Payment”) shall be as follows:

ROLL YEAR	TOWN/COUNTY YEAR	SCHOOL DISTRICT YEAR	PILOT PAYMENT
1	1/1/20 – 12/31/20	7/1/19 – 6/30/20	\$216,094.16
2	1/1/21 – 12/31/21	7/1/20 – 6/30/21	\$220,416.04
3	1/1/22 – 12/31/22	7/1/21 – 6/30/22	\$240,883.24
4	1/1/23 – 12/31/23	7/1/22 – 6/30/23	\$267,288.49
5	1/1/24 – 12/31/24	7/1/23 – 6/30/24	\$311,361.26
6	1/1/25 – 12/31/25	7/1/24 – 6/30/25	\$357,090.02
7	1/1/26 – 12/31/26	7/1/25 – 6/30/26	\$369,758.08
8	1/1/27 – 12/31/27	7/1/26 – 6/30/27	\$382,790.04
9	1/1/28 – 12/31/28	7/1/27 – 6/30/28	\$396,195.36
10	1/1/29 – 12/31/29	7/1/28 – 6/30/29	\$409,983.79
11	1/1/30 – 12/31/30	7/1/29 – 6/30/30	\$424,165.27
12	1/1/31 – 12/31/31	7/1/30 – 6/30/31	\$438,750.02

Notwithstanding the foregoing schedule, the Company further covenants and agrees that for any period that the Agency continues to hold a leasehold interest in the Land and Improvements after the School District fiscal year ending June 30, 2031 and after the County/Town fiscal year ending December 31, 2031, the Company shall pay 100% of the taxes that would be imposed on the Project Facility if the Agency did not have a leasehold interest in the Project Facility. The Company shall not be liable or responsible for double tax payments associated with this Agreement and the restoration of the Project Facility to the assessment roll under Section 520 of the Real Property Tax Law.

All PILOT payments will be allocated among the “affected tax jurisdictions” pro-rata in accordance with the applicable tax rates.

(C) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any material modification or any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land that is not included in the definition of “Project Facility” (such structural additions and additional buildings and other structures being hereinafter referred to as “Additional Facilities”) the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as

“Additional Payments”) to the Receiver of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the “Additional Normal Tax”) which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (D) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity, as if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein), the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency, the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(D) Valuation of Additional Facilities.

(1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(C) hereof shall be determined by the Assessor of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the “Additional Assessed Value”) upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company shall have the right to contest the Additional Assessed Value of the Project Facility made for purposes of determining any payments due hereunder and to seek a refund of any such

payments made hereunder. The Company's challenge to the Additional Assessed Value of the Project Facility and the determination of the Company to seek a refund of any payments made hereunder shall be made in accordance with State Real Property Tax Law.

(E) Statements: The Agency agrees to give the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities a copy of this Agreement and request that said officers submit to the Company and to the Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(F) Time of Payments: Subject to Section 2.03(B) hereof, the Company agrees to pay the amounts due hereunder to the appropriate Taxing Entity within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(G) Method of Payment: All payments by the Company hereunder shall be paid to the Receivers of Taxes by check in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

(H) Transfer to Company: In the event the Agency no longer has a leasehold interest in the Project Facility, the Facility shall be immediately subject to taxation pursuant to Section 302 and Section 520 of the Real Property Tax Law, as amended. However in no event shall the Company be required to pay both payments in lieu of taxes and real property taxes for a concurrent tax year or any portion thereof. Therefore, should the Facility be conveyed to the Company and thus become taxable pursuant to Real Property Tax Law Section 520, the Taxing Entities agree that any payments payable under this Agreement as payments in lieu of taxes shall be reduced by the amount of any taxes which are required to be paid under Real Property Tax Law Section 520 for any such concurrent tax year or any portion thereof, and should such payments in lieu of taxes already have been made, the Taxing Entities shall refund any such amounts owing to the Company.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Credits: The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that should the Company pay in any calendar year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, sales and use taxes, or special assessments and special ad valorem levies described in Section 2.01(B) above) then the Company's obligation to make payments in lieu of property taxes for such calendar year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such calendar year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing

Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other calendar year.

(B) Method of Claiming Credits: If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity prior written notice of its intention to claim any credit pursuant to the provisions of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable, together with interest thereon from the date such payment in lieu of tax was originally due, at the rate of eighteen percent (18%) per annum, and such amount and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. INTEREST. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with late charges and interest thereon, as required by Section 874 of the Act and as more fully described in Section 4.05 hereof.

ARTICLE III

LIMITED OBLIGATION OF THE AGENCY

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. Notwithstanding anything contained in this Agreement to the contrary:

(A) No Recourse: All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, officer, agent (other than the Company), servant or employee of the Agency in his or her individual capacity, and no recourse under or upon any obligation, covenants or Agreement contained in this Agreement, or otherwise based upon or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement, it being expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(B) Limited Obligation: The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the County of Onondaga, New York, and neither the State of New York nor the County of Onondaga, New York shall be liable thereon, and further such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation: Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses (including, without limitation, attorneys' fees and expenses) or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency

satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV

EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Agreement, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(A) Failure of the Company to pay any amount due and payable by the Company pursuant to this Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in subsection (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period, the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same;

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement; or

(D) The occurrence and continuance of an “Event of Default” under the Lease Agreement, beyond any applicable cure period (if any).

SECTION 4.02. REMEDIES ON DEFAULT. Whenever any Event of Default shall have occurred with respect to this Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to the Agency or such Taxing Entity, as the case may be, to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement, including without limitation, terminating the Company’s status as agents of the Agency and causing the surrender of Underlying Lease to be duly recorded. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York, consent to the jurisdiction of each such court in any such suit, action or proceeding, and waive any objection which they may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY’S FEES AND EXPENSES. If the Company should default in performing any of their obligations, covenants or agreements under this Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of

any amounts payable hereunder or for the enforcement of performance or observance of any obligation or Agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, the reasonable expenses so incurred, whether or not an action is commenced together with interest thereon at the maximum rate allowed by law.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive: No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay: No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required: In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement or the Act.

(D) No Waiver: In the event any provision contained in this Agreement should be breached by either party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

SECTION 4.05. PAYMENT OF INTEREST AND PENALTIES. Pursuant to Section 874(5) of the General Municipal Law of New York, as amended, if the Company shall fail to make or cause to be made any such payments in lieu of real estate taxes when due, the amount or amounts so in default shall continue as an obligation of the Company until fully paid, and the Company hereby agrees to pay or cause to be paid the same, together with a late payment penalty equal to five percent (5%) of the amount due. Additionally, if the Company shall fail to make any payment required by this Section 4.05 when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the same rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM OF AGREEMENT. General: This Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Agreement by resolution of the Agency and the execution and delivery of this Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Agreement shall continue to remain in effect until the earliest to occur of (1) the date on which the Agency's interest in the Project Facility pursuant to the Underlying Lease is terminated, or (2) the occurrence of an Event of Default hereunder.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Agreement shall be payable by check in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Agency is required to do or accomplish any act or thing hereunder, the Company may, with the prior written consent of the Agency, cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Agency. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENT OF AGREEMENT. This Agreement may not be amended, changed, modified, altered or terminated unless such amendment, change, modification, alteration or termination is in writing and, in the case of any amendment, change, modification or alteration of this Agreement, unless the Company and its successors and assigns shall assume in writing the obligations of such amended, changed, modified or altered Agreement.

SECTION 5.05. NOTICES. (A) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) received at the applicable address stated below by registered or certified mail, postage prepaid, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

If to the Agency:

Onondaga County Industrial Development Agency
333 West Washington Street, Suite 130
Syracuse, New York 13202
Attention: Deputy Director

With a copy to:

Barclay Damon LLP
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Attention: Anthony P. Rivizzigno, Esq.

If the Company:

Ultra Dairy, LLC
2394 US Route 11
Lafayette, New York 13084
Attention: Carl V. Byrne

With a copy to:

James A. Gosier, Esq.
General Counsel
Ultra Dairy, LLC
2394 US Route 11
Lafayette, New York 13084

(B) The Agency, the Company and the Town may, with notice given hereunder to each of the others, designate any further of different addresses to which subsequent notices, certificates or other communications to them shall be sent.

SECTION 5.06. BINDING EFFECT. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subsection, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subsection, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

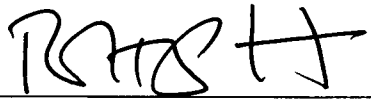
SECTION 5.09. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 5.10 DEFINITIONS. Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Lease Agreement dated as of May 1, 2019, by and between the Company and the Agency unless the context requires otherwise.

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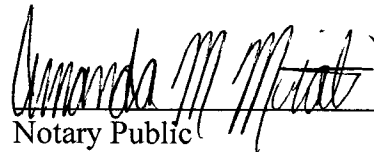
IN WITNESS WHEREOF, the Agency, the Company and the Sublessee have caused this Agreement to be executed in their respective names, by their duly authorized representatives, all being done as of the date first above written.

ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Robert M. Petrovich
Deputy Director

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

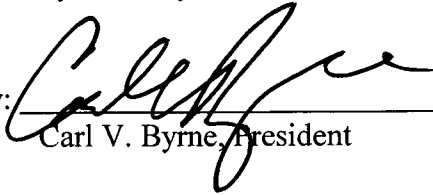
On the 26th day of April in the year 2019 before me, the undersigned, a notary public in and for the State of New York, personally appeared Robert M. Petrovich, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

AMANDA M. MIRABITO
Notary Public, State of New York
No. 02M16300592
Qualified in Broome County
Commission Expires April 7, 2022

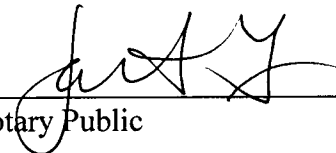
ULTRA DAIRY, LLC

BY: Byrne Dairy, Inc., its Sole Manager

By: 
Carl V. Byrne, President

STATE OF NEW YORK)
) SS.:
COUNTY OF)

On the 30th day of April in the year 2019 before me, the undersigned, a notary public in and for the State of New York, personally appeared Carl V. Byrne, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

JAMES A. COOPER
Notary Public, State of New York

Notary Public for the County of Ulster
My Commission Expires on 23

EXHIBIT "A"

DESCRIPTION OF THE LAND

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, being situate in the Town of Dewitt, County of Onondaga and State of New York and being a part of Farm Lot No. 32 in said Town and being further described as follows:

BEGINNING at a capped iron rerod set at the intersection of the westerly highway limits of New York State 481 and the southerly road margin of Benedict Road; thence S 12° 30' 00" W, along the westerly highway limits of Interstate Route 481, a distance of 255.81 feet to a concrete monument found; thence S 19° 11' 00" W, continuing along the westerly highway limits of Interstate Route 481, a distance of 483.03 feet to an iron pipe found; thence N 83° 00' 00" W a distance of 386.55 feet to an iron rerod found; thence N 06° 53' 10" E a distance of 82.00 feet to a capped iron rerod found; thence N 83° 00' 00" W a distance of 200.00 feet to an iron pipe found; thence S 06° 53' 10" W a distance of 82.00 feet to a capped iron rerod set; thence N 83° 00' 00" W a distance of 218.89 feet to a capped iron rerod set; thence N 06° 53' 10" E a distance of 100.00 feet to a capped iron rerod set; thence N 83° 00' 00" W a distance of 255.00 feet to a capped iron rerod set at the easterly road margin of Fly Road; thence N 06° 53' 10" E, along the easterly road margin of Fly Road, a distance of 285.00 feet to a capped rerod set at an angle point in said easterly road margin of Fly Road; thence N 18° 39' 16" E, continuing along the easterly road margin of Fly Road a distance of 49.39 feet to a capped iron rerod set; thence S 83° 18' 00" E a distance of 244.93 feet to a capped iron rerod found; thence N 06° 53' 10" E a distance of 350.00 feet to a capped iron rerod set; thence N 83° 18' 00" W a distance of 256.75 feet to an iron rerod found at the easterly road margin of Fly Road; Thence N 06° 53' 10" E, along the easterly road margin of Fly Road a distance of 79.45 feet to a capped iron rerod found; thence N 06° 53' 10" E continuing along the easterly road margin of Fly Road a distance of 148.00 feet to a capped iron rerod set; thence N 19° 24' 54" E, continuing along the easterly road margin of Fly Road a distance of 25.95 feet to a capped iron rerod set at the intersection of said easterly road Margin of Fly Road and the southerly road margin of Benedict Road; thence S 83° 55' 50" E, along the southerly road margin of Benedict Road, a distance of 96.95 feet to a capped iron rerod set; thence S 06° 53' 23" W a distance of 173.25 feet to a capped iron rerod set; thence S 83° 55' 50" E a distance of 133.92 feet to a capped iron rerod set; thence N 06° 07' 40" E distance of 173.23 feet to a capped iron rerod set at the southerly road margin of Benedict Road; thence S 65° 44' 30" E, along the southerly road margin of Benedict Road, a distance of 829.99 feet to an iron pipe found at an angle point in said southerly road margin of Benedict Road; thence S 60° 50' 00" E, continuing along the southerly road margin of Benedict Road, a distance of 177.00 feet to the point of beginning.