

## **PROJECT AGREEMENT**

THIS PROJECT AGREEMENT (the “Project Agreement”), made as of May 1, 2019, by and between the ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the “Agency”) and ULTRA DAIRY, LLC, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 2394 US Route 11, Lafayette, New York 13084 (the “Company”).

### **WITNESSETH:**

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, 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 May 1, 2010, the Agency and the Company entered into an amended and restated payment in lieu of tax agreement dated as of May 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, by resolution of its members adopted on January 8, 2019 (the “Approving Resolution”), the Agency has conferred on the Company in connection with the Project certain financial assistance consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, renovation, construction, reconstruction or equipping of the Project Facility; and (b) an abatement from real property taxes through a 12-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (the “Taxing Jurisdictions”) (collectively, the sales and use tax exemption benefit and the abatement from real property taxes benefit, are hereinafter collectively referred to as the “Financial Assistance”); and

WHEREAS, it has been estimated and confirmed by the Company that the Company has included within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$6,400,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$512,000, and (ii) the real property tax abatement benefits to be provided to the Company over the 12-year benefit period of the anticipated payment in lieu of taxes agreement are estimated to be approximately \$397,464 (such savings are estimated based on the current assessed value and tax rates of the Taxing Jurisdictions; actual savings are subject to change over the term of the Lease Agreement (as hereinafter defined) depending on any changes to the assessed value of the Project Facility and/or tax rates of the Taxing Jurisdictions); 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 previously has transferred title to the 2003 Equipment to the Agency pursuant to a certain bill of sale, dated August 2003 (the “2003 Company Bill of Sale”); 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 herein pursuant to the terms of a certain Amended and Restated Lease Agreement dated as of May 1, 2019 (the “Lease Agreement”); and

WHEREAS, in order to define the obligations of the Company regarding payments in lieu of taxes for the Project Facility, the Agency and the Company will enter into a Payment in Lieu of Tax Agreement, dated as of May 1, 2019 (the “PILOT Agreement”), by and between the Agency and the Company; and

WHEREAS, by its Approving Resolution, the Agency authorized the Company to act as its agent for the purposes of undertaking the Project and the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of this Project Agreement and compliance with the terms set forth herein and in the Approving Resolution; and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency’s Financial Assistance as agent of the Agency to acquire, construct, renovate, equip and complete the Project Facility and to undertake the Project, the Agency, the Company will enter into this Project Agreement; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Approving Resolution and as more particularly described in the PILOT Agreement and this Project Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Project Agreement;

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

## ARTICLE I PURPOSE OF PROJECT

Section 1.01 Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency’s provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Underlying Lease, Lease Agreement, PILOT Agreement and this Project Agreement in order to, promote, develop, encourage and assist in the acquiring,



constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the County of Onondaga and to otherwise accomplish the public purpose of the Act.

## ARTICLE II REAL PROPERTY TAX EXEMPTION

Section 2.01. PILOT Agreement. Attached hereto and made a part hereof is Exhibit A, which contains an executed copy of the PILOT Agreement entered into by and between the Company and the Agency.

## ARTICLE III RESERVED

## ARTICLE IV SALES AND USE TAX EXEMPTION

Section 4.01. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Approving Resolution to acquisition, construction and installation of the Project Facility. The right of the Company to act as agent of the Agency shall expire on May 31, 2020, unless extended by a resolution adopted by the members of the Agency. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.03(b) hereof unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agents for the Agency shall include the following language:

“This contract is being entered into by Ultra Dairy, LLC (the “Agent”), as agent for and on behalf of the Onondaga County Industrial Development Agency (the “Agency”), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 6750 Benedict Road (tax map no. 042.-13-05.1) in the Town of Dewitt, Onondaga County, New York (the “Premises”). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of May 1, 2019 by and between the Agency and the Company (the “Project Agreement”), and the Agent hereby represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

Section 4.02. Appointment of Sub-Agents. Subject to the terms and conditions of this Project Agreement and pursuant to the Approving Resolution, the Agency hereby delegates to the



Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and such other parties as the Company choose (each, a "Sub-Agent"). The appointment of each such Sub-Agent will be effective only upon: (1) the execution by the Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached hereto as Exhibit B, the terms and provisions of which are incorporated herein, and (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 4.03(e) below.

**Section 4.03. Representations and Covenants of the Company.**

(a) The Company hereby incorporates and restates the representations, covenants and warranties made in the Lease Agreement.

(b) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to \$6,400,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$512,000.

(c) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (Form ST-60) for itself and each Sub-Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(d) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance an "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Company has claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency, but in no event later than February 15 of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of (1) the Company's authority to act as agent for the Agency, and (2) the authority of any sub-agent of the Agency appointed by the Company pursuant to Section 4.02 hereof to act as agent for the Agency.

(e) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123, a copy of which is attached hereto as Exhibit C), shall be the responsibility of the Company or the Sub-Agent, as the case may be, (and not the Agency) to complete Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill of invoice should state, "I, [NAME OF AGENT], certify that I am a duly appointed agent of the Onondaga County Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from



sales and use taxes under my Project Agreement with the Onondaga County Industrial Development Agency.” The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: Ultra Dairy, LLC Project; 6750 Benedict Road (tax map no. 042.-13-05.1) in the Town of Dewitt, Onondaga County, New York; IDA Project No.: 3101-18-07F.

(f) The Company acknowledges and agrees that the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party or parties liable thereunder.

## ARTICLE V COMMITMENTS AND REPORTING

Section 5.01. Compliance Commitments. The Company agrees and covenants that it shall meet and maintain the following commitments beginning in the first year in which Financial Assistance is so claimed, and continuing through the term of the PILOT Agreement:

(a) The Company employed at least one hundred seventy-five (175) full time equivalent (“FTE”) employees within the County of Onondaga at the date of the Application for Financial Assistance (the “Baseline FTE”). The Company shall at all times maintain such Baseline FTE within the County of Onondaga. In addition to the Baseline FTE employees, the Company shall (i) within one year after the Completion Date, create FTE employment at the Project Facility equal to twelve (12) FTE employees, (ii) within two years after the Completion Date, create additional FTE employment at the Project Facility equal to three (3) FTE employees, and (iii) within three years after the Completion Date, create additional FTE employment at the Project Facility equal to five (5) FTE employees. The employment requirements set forth in the paragraph (b) are hereinafter referred to as the “Employment Commitment”. In no event shall any independent contractor as determined under the laws of the State of New York be included in calculating the number of FTE employees employed within the County of Onondaga and/or at the Project Facility.

(b) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project (the “Reporting Commitment”).

Section 5.02. Reporting Requirement. (A) The Company agrees, whenever requested by the Agency, to provide and certify or cause to be certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation. The Company also agrees to provide and certify information concerning its finances and other topics as the Agency considers appropriate.

(B) As part of the commitments set forth in Section 5.01 and paragraph (A) of this Section 5.02, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full



time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Exhibit D contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

ARTICLE VI  
SUSPENSION, DISCONTINUATION, RECAPTURE  
AND/OR TERMINATION OF FINANCIAL ASSISTANCE

Section 6.01. Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Underlying Lease, the Lease Agreement, the PILOT Agreement and this Project Agreement in order to provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

(a) The Company attests that it understands and agrees to the recapture provisions of the Agency's Uniform Tax Exemption Policy (the "Policy").

(b) In accordance with Section 875(3) of the New York General Municipal Law, the Policy, and the Approving Resolution, the Company covenants and agrees that it is subject to recapture of all State sales and use tax exemption benefits if:

- (1) the Company or its Sub-Agents, if any, authorized to make purchases for the benefit of the Project is not entitled to the State sales and use tax exemption benefits; or
- (2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Sub-Agents, if any; or
- (3) the State sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or
- (4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between or among the Company and/or the Agency.

Each of the foregoing four events are hereinafter referred to as a "State-Mandated Recapture Event". The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a State-Mandated Recapture Event has occurred.



(c) In addition to Section 6.01(b), in accordance with the Policy and the Approving Resolution, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance:

(1) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency; and/or such exemptions were for property or services not authorized by the Agency (“Local Sales Tax Benefit Violation”);

(2) the Company fail to reach and maintain 75% of its Employment Commitment (“Job Deficit”);

(3) the Company fails to meet its Reporting Commitment (“Reporting Failure”); or

(4) there otherwise occurs any event of default under any Basic Document (each, an “Event of Default”) or a material violation of the terms and conditions of any Basic Document (a “Material Violation”).

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Reporting Failure, Event of Default or Material Violation (each a “Noncompliance Event”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Basic Document in accordance with the terms of the Basic Document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance, and shall consider the following criteria in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- Whether the Company has proceeded in good faith.
- Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company, such as the Company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of the County of Onondaga.



- The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and, based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the "Determination"). The Determination shall provide terms, if any, by which the Company may remedy any Noncompliance Event upon which the Determination was based. The Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company (which will be at the Agency's sole discretion).

(d) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company agrees and covenants that it will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company; and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(e) In the event (x) the Project Facility is sold or closed, or the occurrence of a Noncompliance Event and (y) the Agency determines by resolution that no substantial future economic benefit is likely to accrue to the community, then the value of the property tax exemption and sales and use tax exemption benefits extended to the Company by the Agency shall be subject to recapture as described below in this paragraph (e).

(1) The recapture payment required to be paid by the Company to the Agency shall be equal to the (x) sum of (1) the difference between any PILOT payments made by the Company and the real property taxes that have would be paid by the Company if the Project Facility were not under the supervision, jurisdiction or control of the Agency, (2) the value of the mortgage recording tax exemption, if any, granted to the Company, and (3) the amount of sales and use tax that would have been paid if sales and use tax exemption had not been granted; (y) multiplied by the Applicable Percentage as set forth in subparagraph (2) of this paragraph (e).



(2) <u>Occurrence of Recapture Event</u>	<u>Applicable Percentage</u>
Within two (2) years of Certificate of Occupancy	100%
Within three (3) years of Certificate of Occupancy	80%
Within four (4) years of Certificate of Occupancy:	60%
Within five (5) years of Certificate of Occupancy:	40%
Within six (6) years of Certificate of Occupancy:	30%
Within seven (7) years of Certificate of Occupancy:	20%
Within eight (8) years of Certificate of Occupancy:	10%
Eight years or more of Certificate of Occupancy:	0%

## ARTICLE VII MISCELLANEOUS PROVISIONS

### Section 7.01. Hold Harmless Provisions.

(a) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agree that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agree to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Sections 4.01 and 4.02 hereof, and (4) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees



and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(c) To effectuate the provisions of this Section 7.01, the Company agrees to provide for and insure, in the liability policies required by Section 7.02 of this Project Agreement, its liabilities assumed pursuant to this Section 7.01.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company pursuant to this Section 7.01 shall remain in full force and effect after the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

Section 7.02. Insurance Required.

(a) The Company agrees that it shall maintain all insurance required under the Lease Agreement.

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date hereof and until the construction of the Project Facility is complete, insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, with the Agency named on each such policy as an additional insured.

Section 7.03. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency.

Section 7.04. Notices. All notices, certificates and other communications under this Project Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed 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 to 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

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

Section 7.05. Amendments. No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company and the Agency.

Section 7.06. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

Section 7.07. Counterparts. This Project Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

Section 7.08. Governing Law. This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Onondaga County, New York.



Section 7.09. Term. Except as specifically provided otherwise, the term of this Project Agreement shall be the longer of: (1) the term of the Lease Agreement; or (2) five years following the Project's completion date. The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of this Project Agreement.


Section 7.10. Joint and Several Liability. In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against the Company, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

Section 7.11. Section Headings. The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

ONONDAGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY


By:   
Robert M. Petrovich  
Deputy Director

Signature Page to Project Agreement  
Page 1 of 2



ULTRA DAIRY, LLC

BY: Byrne Dairy, Inc., its Sole Manager

By:   
Carl V. Byrne, President

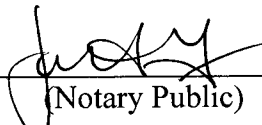
STATE OF NEW YORK     )  
COUNTY OF                ) ss.:

Carl V. Byrne, being first duly sworn, deposes and says:

1. That I am the President of Byrne Dairy, Inc., Manager of ULTRA DAIRY, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

  
Carl V. Byrne

Subscribed and affirmed to me  
under penalties of perjury  
this 30<sup>th</sup> day of April, 2019.

  
(Notary Public)

JAMES A. GOSIER  
Notary Public, New York  
Qualified in                County  
Commission Expires March 23, 2023

Signature Page to Project Agreement  
Page 2 of 2



**EXHIBIT A**

Second Amended and Restated PILOT Agreement



CLOSING ITEM NO.: A-6

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ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

ULTRA DAIRY, LLC

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SECOND AMENDED AND RESTATED  
PAYMENT IN LIEU OF TAX AGREEMENT

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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  
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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").

### WITNESSETH:

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.



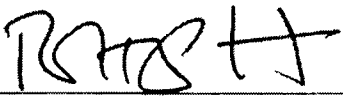
**SECTION 5.10 DEFINITIONS.** Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Lease Agreement dated as of May 1, 2019, by and between the Company and the Agency unless the context requires otherwise.

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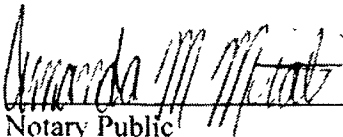
IN WITNESS WHEREOF, the Agency, the Company and the Sublessee have caused this Agreement to be executed in their respective names, by their duly authorized representatives, all being done as of the date first above written.

ONONDAGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Robert M. Petrovich  
Deputy Director

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

On the 26<sup>th</sup> 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.

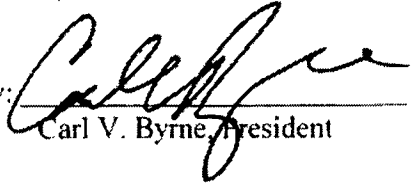
  
Notary Public

AMANDA M. MAHAFFEY  
Notary Public, State of New York  
Exp. 02/02/2022  
Onondaga County, New York  
Commission Expires 02/02/2022



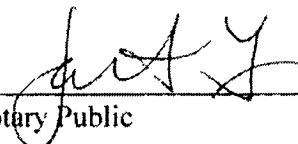
ULTRA DAIRY, LLC

BY: Byrne Dairy, Inc., its Sole Manager

By:   
Carl V. Byrne, President

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

On the 30<sup>th</sup> 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

NEW YORK  
COUNTY OF 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.



## **EXHIBIT B**

### **Form of Sub-Agent Appointment Agreement**

THIS SUB-AGENT APPOINTMENT AGREEMENT (the "Agreement"), dated as of \_\_\_\_\_, 20\_\_, is by and between ULTRA DAIRY, LLC, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 2394 US Route 11, Lafayette, New York 13084 (the "Company"), and [NAME OF SUB-AGENT], a \_\_\_\_\_ of the State of New York, having an office for the transaction of business at \_\_\_\_\_ (the "Sub-Agent").

### **WITNESSETH:**

WHEREAS, the Onondaga County Industrial Development Agency (the "Agency") was created by Chapter 435 of the Laws of 1970 of the State of New York (the "State") and Chapter 676 of the Laws of 1975 of the State of New York, as amended pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York (the "State"); and

WHEREAS, by resolution of its members adopted on January 8, 2019 (the "Approving Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking a project for the benefit of the Company (the "Project") consisting of: (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, by the Approving Resolution, the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of a project agreement by and among the Company and the Agency and compliance with the terms set forth therein;

WHEREAS, the Company and the Agency entered into a Project Agreement by and between the Company and the Agency dated as of May 1, 2019 (the "Project Agreement");



NOW, THEREFORE, the parties hereto hereby agree as follows:

1. The Company hereby appoints the Sub-Agent as an agent of the Agency for the purpose of assisting the Company and the Agency in the completion of the Project and benefitting from the State and local sales and use tax exemption relative to expenditures made in furtherance thereof. The Sub-Agent is only an agent of the Agency for the aforementioned purposes. The Sub-Agent hereby agrees to limit its activities as agent for the Agency under the authority of this Agreement to acts reasonably related to the completion of the Project Facility.

2. The Sub-Agent covenants, agrees and acknowledges:

a. To make all records and information regarding State and local sales and use tax exemption benefits claimed by it in connection with the Project available to the Company and the Agency upon request. The Sub-Agent agrees to comply with all procedures and policies established by the State Department of Taxation and Finance, or any similar entity, regarding the documenting or reporting of any State and local sales and use tax exemption benefits, including providing to the Company all information of the Sub-Agent necessary for the Company to complete the State Department of Taxation and Finance's "Annual Report of Sales and Use Tax Exemptions" (Form ST-340).

b. To be bound by and comply with the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein. Without limiting the scope of the foregoing, the Sub-Agent acknowledges that pursuant to Section 875(3) of the Act, the Agency shall recover, recapture, receive or otherwise obtain from the Sub-Agent the portion of the Financial Assistance (the "Recapture Amount") consisting of: (1) (a) that portion of the State sales and use tax exemption claimed by the Sub-Agent to which the Sub-Agent was not entitled, which is in excess of the amount of the State sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State sales and use tax exemption claimed by the Sub-Agent, if the Sub-Agent fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in the application to the Agency in regard to the Project or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise.

c. That the failure of the Sub-Agent to promptly pay such Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, together with interest and penalties. In addition to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from State sales and use taxation, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

d. That all purchases made by the Sub-Agent in connection with the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123, a copy of which is attached hereto as Exhibit A), and it shall be the responsibility of the

B-2



Sub-Agent (and not the Agency) to complete Form ST-123. The Sub-Agent acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the Onondaga County Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: Ultra Dairy, LLC Project; 6750 Benedict Road; IDA Project No.: 3101-18-07F.

e. That the Sub-Agent shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), for such claims or liabilities that arise as a result of the Sub-Agent acting as agent for the Agency pursuant to this Agreement or otherwise.

The Sub-Agent shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation only to Sub-Agent's work on or for the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

f. That as agent for the Agency or otherwise, the Sub-Agent will comply at the Sub-Agent's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Sub-Agent with respect to the Project Facility.

g. That Section 875(7) of the Act requires the Agency to post on its website all resolutions and agreements relating to the Sub-Agent's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement, and that Public Officers Law Article 6 declares that all records in the possession of the Agency (with certain limited



exceptions) are open to public inspection and copying. If the Sub-Agent feels that there is information about the Sub-Agent in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Sub-Agent's competitive position, the Sub-Agent must identify such elements in writing, supply same to the Agency prior to or contemporaneously with the execution hereof and request that such elements be kept confidential in accordance with Public Officers Law Article 6. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the Act.

3. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Sub-Agent's or the Company's State and local sales and use tax exemption with respect to the Project at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

4. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Approving Resolution, the Lease Agreement by and between the Company and the Agency dated as of May 1, 2019, the Project Agreement or of any other agreement entered into by the Company in connection with the Project.

5. The Company and the Sub-Agent agree that the Agency is a third-party beneficiary of this Agreement.

6. This Agreement shall be in effect until the earlier of: (i) the completion of the work on the Project by the Sub-Agent; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c) and 2(e) shall survive the termination of this Agreement.

[NO FURTHER TEXT ON THIS PAGE]



IN WITNESS WHEREOF, the Company and the Sub-Agent have caused this Agreement to be executed in their respective names by their respective duty authorized officers, all as of the day and year first above written.

ULTRA DAIRY, LLC

By: \_\_\_\_\_

Name:

Title:

[NAME OF SUB-AGENT]

By: \_\_\_\_\_

Name:

Title:



Exhibit A to Sub-Agent Appointment Agreement

Form ST-123  
(see attached)



**IDA Agent or Project Operator  
Exempt Purchase Certificate****Effective for projects beginning on or after June 1, 2014**

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village                      State              ZIP code	City, town, or village                      State              ZIP code
Agent or project operator sales tax ID number (see instructions)	

Mark an **X** in one:    ☐ Single-purchase certificate              ☐ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (use OSC number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....	/	/
Enter the date that agent or project operator status ends (mm/dd/yy) .....	/	/

**Exempt purchases**(Mark an **X** in boxes that apply)

- ☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	



**EXHIBIT C**

Form ST-123  
(see attached)



**IDA Agent or Project Operator  
Exempt Purchase Certificate****Effective for projects beginning on or after June 1, 2014**

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village                      State              ZIP code	City, town, or village                      State              ZIP code
Agent or project operator sales tax ID number (see instructions)	

Mark an **X** in one:    ☐ Single-purchase certificate              ☐ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (use OSC number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....	/	/
Enter the date that agent or project operator status ends (mm/dd/yy) .....	/	/

**Exempt purchases**(Mark an **X** in boxes that apply)

- ☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	



## **EXHIBIT D**

### Form of Annual Reporting Questionnaire



## FORM ANNUAL EMPLOYMENT REPORT

### Onondaga County Industrial Development Agency Annual Survey of Companies January 2019

**Overview:** As an agent of the Onondaga County Industrial Development Agency, \_\_\_\_\_ is required annually to document for the term of its contractual agreement with the Agency: its employment levels, insurance coverage, payment of taxes and fees, and in some instances amount of indebtedness. To fulfill your compliance requirements, please:

1. Complete the employment and if applicable to your project, the indebtedness , sales tax and mortgage recording tax sections of the document;
2. Attach the required supporting documentation;
3. Sign and certify the document; and
4. Return to the Agency **no later than February 28, 2020**

*Failure to comply with this request may result in an action by the Agency to terminate or recapture the benefits granted to you. As noted in the Agency agreement, the Agency reserves the right to verify any information provided in this document, including an onsite inspection of the project facility or its supporting records throughout the life of the project agreement*

#### **I. Contact Information** – please update any of the following information.

**File Number:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Responsible Company Officer:** \_\_\_\_\_

**Officer Title:** \_\_\_\_\_

**Officer Phone:** \_\_\_\_\_

**Officer Fax:** \_\_\_\_\_

**Officer Email:** \_\_\_\_\_



**II. Employment Section** – Please report the number and average hourly wage rate of all full-time equivalent (FTE) employees working at the project location, including the employees of any tenants or subtenants. Also, please report the number of construction employees working on the project if applicable. The Agency definition of the term “full-time equivalent employee” is located on the last page of this document.

Number of FTE jobs as of December 31, \_\_\_\_\_

Average Wage of Full-time Employee \_\_\_\_\_

Number of FTE construction jobs created  
between January 1, \_\_\_\_\_– December 31, \_\_\_\_\_

**II. Outstanding Indebtedness** – Please report the information for any Agency authorized bonds and notes issued, outstanding or retired during the period beginning January 1, \_\_\_\_\_ and ending December 31, \_\_\_\_\_.

Current Interest Rate: \_\_\_\_\_

Outstanding Balance as of Dec. 31,  
\_\_\_\_\_: \_\_\_\_\_

Principle payments during the period  
Jan. 1, \_\_\_\_\_ through Dec. 31, \_\_\_\_\_: \_\_\_\_\_

Outstanding Balance as of Dec. 31, \_\_\_\_\_: \_\_\_\_\_

Final Maturity Date of the Issue: \_\_\_\_\_

Were the bonds or notes retired during the  
reporting period of Jan. 1, \_\_\_\_\_ through  
Dec. 31, \_\_\_\_\_ Yes ☐ No ☐

**III. Sales Tax Exemption** – Please report amount of New York State sales and use tax exemption accrued by the project during the period of January 1, \_\_\_\_\_ through December 31, \_\_\_\_\_. This information should agree with that reported on your \_\_\_\_\_ NYS Tax Form ST340.

\$ \_\_\_\_\_



**V. Mortgage Recording Tax Exemption** - Please report amount of mortgage recording tax exemption accrued by project during period Jan. 1, \_\_\_\_ and ending Dec. 31, \_\_\_\_.

\$ \_\_\_\_\_

**VI. Required Attachments** – Please attach copies of the following documents.

- ☐ NYS-45-MN Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Form, filed for the quarter ending Dec. 31, \_\_\_\_.
- ☐ For companies that have made sales tax exempt purchases utilizing the sale tax exempt certificate provided to it by the Onondaga County Industrial Development Agency, a copy of NYS ST-340 Annual Statement to NYS Department of Tax and Finance of the value of all sales and use tax exemptions claimed by the Company under the authority granted by the Agency.

**VII. Certification:** The undersigned hereby certifies the Company has complied with all provisions of its agreement with the Agency and that the information provided to the Agency in this annual survey is accurate and correct.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone