STATE OF NORTH CAROLINA

COUNTY OF

RIGHT OF FIRST REFUSAL and OPTION TO PURCHASE AGREEMENT

Property Subject to Agreement: PIN

THIS OPTION TO PURCHASE AGREEMENT (“Agreement”) is made effective this the 1st day of , 20\_\_ by and between  (“Optionor”), and  (“Optionee”).

WITNESSETH:

WHEREAS, Optionor is seized and possessed of interests in real property and dairy facilities located in Iredell County; and

WHEREAS, Optionee has leased from Optionor that certain tract of land and dairy facilities described in Exhibit A attached hereto; and

WHEREAS, the Purpose of the lease is to effect the succession of a diary operation from Optionor to Optionee; and

WHEREAS, as part of the bargain of the lease by Optionor to Optionee, Optionor has agreed to execute this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises herein made, the sum of Ten Dollars ($10.00) paid by Optionee to Optionor, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties herein do hereby agree and covenant as follows:

**Part 1**

**OPTION TO PURCHASE**

1.1 **Effectiveness.** This Option to Purchase becomes effective upon the death of the survivor of (hereafter “Survivor”). This Option to Purchase is effective only so long as Optionee is leasing (under an initial term or any written or unwritten renewal terms or periods) the Property from Optionor. Termination of Optionee’s leasehold on the Property terminates this Option to Purchase.

1.2 **Exercise of Option.** Optionee must exercise its Option to Purchase within **sixty (60) days** of the date of death of Survivor (“Exercise Notice”). Optionee will then have **ninety (90) days** from the Offer Exercise to close on the purchase of the Property.

1.3 **Purchase Price.** The purchase price of the Property must be its **fair market value (at the Survivor’s date of death)** determined by an appraiser chosen by Survivor’s successor in interest, and paid for equally by Optionor and Optionee. If Optionor refuses to select an appraiser within thirty (30) days of the Exercise Notice, Optionee may select an appraiser, whose valuation of the Property is final. If Optionee of Optionor disagree with the fair market value opinion of the first appraiser, the disagreeing party may select a second appraiser at split cost between Optionee and Optionor. The mean average of the two appraisals is then determinative of the purchase price.

1.4 **Property Subject to Option and Right of First Refusal.** See Exhibit A attached hereto.

**Part 2**

**RIGHT OF FIRST REFUSAL**

1.1 **Purpose.** In the event Optionor (or his heirs) **desires to accept** an unsolicited bona fide offer to purchase the Property (or a portion thereof or partial interest therein) from anyone not a lineal descendant of Optionor (hereafter “Offeror”), Optionee has the right to match said offer upon the terms (subject to §1.4) offered by the Offeror. Such will be referred to herein as the “Right of First Refusal.”

1.2 **Irrevocable Right of First Refusal.** Optionor hereby grants and conveys to Optionee an exclusive and irrevocable right of first refusal to purchase Optionor’s Property, together with all easements, rights and appurtenances attached thereto and all improvements located thereon. This right of first refusal must continue in full force and effect until it is terminated by: (a) the sale of Optionor’s Property to Optionee; or (b) Optionee’s refusal to purchase Optionor’s Property as provided below; or (c) the expiration of thirty (30) years from the date this Agreement is executed by all parties, whichever of these events first occurs.

1.3 **Notice of Bona Fide Offer.** At such time as Optionor receives an **unsolicited bona fide written offer** to purchase Optionor’s Property (“unsolicited offer”) and Optionor is then desirous and willing to sell Optionor’s Property on the terms and conditions contained in the unsolicited offer, then, in such events, Optionor shall accept such offer subject to the rights of Optionee contained herein. Within five (5) days of acceptance of the offer to purchase, Optionor must give written notice to Optionee of such proposed sale and transmit to Optionee a copy of the sale contract or written offer (“unsolicited offer notice”).

1.4 **Notice of Election to Purchase.** Optionee must notify Optionor in writing within **thirty (30) days** of receipt of the unsolicited offer notice from Optionor whether or not Optionee elects to purchase Optionor’s Property on the terms and conditions as contained in the unsolicited offer, with the exception that in no event will Optionee have less than **sixty (60) days** from the Offer notice to close on the purchase of the Property. If Optionee is willing to purchase Optionor’s Property on the terms and conditions as contained in the unsolicited offer (subject to the 60-day closing exception), then Optionee shall transmit along with its notice of election to purchase good and sufficient earnest money payable to Optionor in at least the same amount as described in the sale contract, but not to exceed **One Thousand Dollars ($1,000).**

1.5 **Failure to Exercise Right.** If Optionee notifies Optionor that Optionee does not elect to purchase Optionor’s Property on the terms and conditions set forth in the sale contract, or if Optionor receives no response from Optionee within the time prescribed in §1.4, then Optionor may sell Optionor’s Property to the original Offeror upon the price and terms contained in the original unsolicited offer. However, should Optionee fail to elect to purchase as prescribed herein and the original Offeror does not close on Optionor’s Property within one hundred eighty (180) days of the unsolicited offer notice, then this Agreement continues in full force and effect as if no offer had been made to Optionor for Optionor’s Property. Upon the closing of the sale of the Property upon the terms of the unsolicited offer Optionor may record the Termination of Agreement identified in §3.8 of this Agreement. If Optionee fails to elect to purchase Optionor’s Property as prescribed herein and subsequently the terms of the sale resulting from the original unsolicited offer should change from those in the original unsolicited offer in favor of the party making the original unsolicited offer, then Optionor must then again offer Optionor’s Property to Optionee on the revised terms and conditions under procedures set forth in §1.3 and Optionee must respond in the time prescribed in §1.4.

1.6 **Mortgage of Property**. Nothing herein prohibits (a) any mortgaging, subjection to deed of trust or other hypothecation of Optionor’s interest in Optionor’s Property or any part thereof, and all rights of Optionee hereunder shall be subordinate to same. Should Optionor default on any obligation under any of said instruments granting a power of sale in favor of holder of such instrument, Optionee has the right to satisfy the entire balance (including any applicable penalties). Upon cancellation of security instrument, Optionor must grant Optionee a partial interest deed in the Property equal to the percentage of the fair market value of the Property represented by the amount of the obligation satisfied by Optionee.

1.7 **Other Transfers.** Any transfer of Optionor’s interest in Optionor’s Property or any part thereof to a mortgagee, beneficiary under deed of trust or other hold of a security interest therein by **deed in lieu of foreclosure** must remain subordinate to this Agreement. Any intervivos or testamentary transfer to any lineal descendant of the Optionor must be conveyed subject to this Agreement.

1.8 **Liens.** Should Optionor fall into arrears on county real property taxes and the county places a lien on the Property, or if any federal, state or local agency places a lien on the Property, or if a creditor docket a judgment against Optionor that would otherwise subject the Property to sale to satisfy said judgment, then in all such cases Part 2 applies, the purchase to include the extinguishment of debt, lien or judgment as the case may be.

**Part 3**

**GENERAL TERMS**

3.1   **Purpose.** The General Terms supplied herein apply to the entire Agreement.

3.2   **Notices.** Notices required to be given pursuant to the terms of this Agreement  must be addressed as follows:

Optionor: NAME AND ADDRESS

Optionee: NAME AND ADDRESS

Either party may change the address to which notices hereunder are to be sent by notifying the other at the address above. All notice required to be given hereunder must be given to the above address by certified mail, return receipt requested, by and delivery, or by overnight courier service or express mail (signature required). A notice shall be deemed given and received by the addressee three (3) days after mailing by certified mail, on the date of delivery by hand delivery, and on the day that signature was obtained by overnight courier service or express mail. If any time or date by which an act must be done pursuant to this Agreement should fall on a Saturday or Sunday or North Carolina legal holiday, then the time for such act to be done shall be extended through the next business day thereafter.

3.3 **Entire Agreement.** The parties agree that no representations or inducements have been made other than those expressed herein and that this Agreement contains the entire agreement between the parties with regard to the subject matter hereof.

3.4 **Binding Upon Heirs.** This Agreement binds the Optionor and Optionee and their respective heirs, legal representatives, successors and/or assigns. The Right of First Refusal and Option to Purchase in this agreement may be exercised by the heirs, successors and assigns, or the legal representatives thereof, of Optionee against the heirs, successors and assigns, or the legal representatives thereof, of the Optionor and the interests held by each in the Property. This Agreement is to be construed and interpreted under the laws of the State of North Carolina.

3.5 **Recording of Memorandum**. Optionor and Optionee shall record this Agreement or a Memorandum sufficient to comply with North Carolina General Statute §47-119.

3.6 **Subdivision of Property.** All parcels resulting from an agreed or litigated (including action for partition) subdivision of the Property remain subject to this Agreement for its term in §3.7. The termination of this Agreement as to any subdivision of the Property has no effect as to the Agreement’s validity as to the remaining subdivisions of the Property.

3.7 **Expiration (Thirty Years).** All rights of first refusal and options contained in this Agreement automatically expire thirty (30) years from the date of this Agreement.

3.8 **Termination Agreement.** In the event this Agreement is terminated by its terms, or for any other reason, other than Optionee’s purchase of Optionor’s Property, then Optionor may record the termination agreement (“Termination Agreement”) attached hereto as **Exhibit A**. In the event this Termination Agreement is recorded prior to the due termination of this Agreement under the terms herein (i.e. for Optionee’s failure to exercise the Option and Right of First Refusal within the times prescribed herein), Optionor shall bear Optionee’s costs of correction, including reasonable attorneys fees.

IN TESTIMONY WHEREOF, the parties hereto have hereunto set their hands and seals the day and year above first above written.

**OPTIONOR:**

BY:

OPTIONOR

OPTIONOR

STATE OF NORTH CAROLINA

COUNTY

I, , a Notary Public for said County and State do hereby certify that **[OPTIONOR]** personally came before me this day and acknowledged her due execution of the foregoing instrument and the capacity in which he executed the foregoing instrument.

Witness my hand and notarial seal this day of , 20\_\_\_\_.

Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA

COUNTY

I, , a Notary Public for said County and State do hereby certify that [**OPTIONOR]** personally came before me this day and acknowledged her due execution of the foregoing instrument and the capacity in which she executed the foregoing instrument.

Witness my hand and notarial seal this day of , 20\_\_\_.

Notary Public

My Commission Expires:

**OPTIONEE**

OPTIONEE

STATE OF NORTH CAROLINA

COUNTY

I, , a Notary Public for said County and State do hereby certify that **[OPTIONEE]** personally came before me this day and acknowledged his due execution of the foregoing instrument personally.

Witness my hand and notarial seal this day of , 2018.

Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA

COUNTY

I, , a Notary Public for said County and State do hereby certify that **[OPTIONEE]** personally came before me this day and acknowledged his due execution of the foregoing instrument personally.

Witness my hand and notarial seal this day of , 20\_\_\_.

Notary Public

My Commission Expires:

EXHIBIT A

PROPERTY DESCRIPTION