

## BOVINE AGISTMENT AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Everson Jerseys Dairy Farm (Agister) and its owners, Shane and Jamie Everson, and \_\_\_\_\_ (Owner).

### Recitals

Agister possesses dairy facilities at 7010 Middletown Road, Canfield OH 44406 (the "Dairy Facilities"), for the holding, caring for, and handling and milking of dairy cows.

Owner has an undivided interest in a herd of dairy cows (the "Herd") and desires to board the cow(s) constituting Owner's undivided interest in the Herd at the Dairy Facilities.

Agister has agreed to provide care and boarding for the Herd at the Dairy Facilities for a fee of twenty-five dollars (\$25.00) per month per share; and Owner (together with the Herd Owners of all the undivided interests in the Herd, each of whom is entering into this or a similar agreement with Agister) desires to board the cow(s) constituting Owner's undivided interest in the Herd with Agister and to have Agister pasture, care for, and milk the Herd, pursuant to the terms and conditions of this agreement.

The parties agree as follows:

1. Definitions. In addition to other terms defined in this Agreement, for purposes of this Agreement, the words:

A. "Agister" shall mean the person who will pasture and control the Herd at the Dairy Facilities; feed, maintain and care for the Herd; milk the Herd; and make available the production of the Herd for pick up by Herd Owners or their agents.

B. "Agistment" shall mean pasturing and controlling the Herd at the Dairy Facilities; feeding, maintaining and caring for the Herd; milking the Herd and making available the production from the Herd for pick up by Herd Owners or their agents.

C. "Herd" means the dairy cows referred to in the Recital above, augmented annually by any increases (male as well as female) and replacements, and diminished annually by any decreases.

D. "Herd Agreements" shall mean collectively this Agreement and all of the other substantially similar agreements signed by the owners of the remaining undivided interests in the Herd.

E. "Owner" shall mean the person named above who possesses an undivided interest in the Herd.

F. "Herd Owners" shall mean collectively all the owners of undivided interests in the Herd.

G. "Percentage Interest" shall mean the undivided percentage interest of Owner (or another person) in the Herd determined by dividing the total number of the Owner's (or other person's) shares in the Herd by the total number of shares authorized to be sold in the Herd.

2. Share(s) of the Herd.

A. As evidenced by the document attached hereto and titled Bovine Bill of Sale, Owner has purchased \_\_\_\_\_ share(s) in the Herd at fifty dollars (\$50.00) per share.

B. Owner expressly disclaims any ownership rights to any meat that may be harvested from the Herd from time to time.

C. Owner expressly disclaims any ownership rights to any calves that may be born into the Herd from time to time. Owner acknowledges that these calves may or may not become a part of the Herd at the Agister's discretion. If the Agister sells the calves instead of integrating them into the Herd, Owner expressly disclaims any ownership interest in the proceeds from that sale.

D. Should Buyer wish to sell his/her interest in the Herd, Seller has the first right of refusal to purchase Buyer's interest at the price that Buyer initially paid Seller for such interest. Should Seller not exercise its first right of refusal, any transfer of Buyer's interest can only occur with Seller's approval, which shall not be unreasonable withheld.

3. Boarding Fees.

A. For boarding his/her undivided interest in the Herd, Owner shall pay to Agister a monthly boarding fee of twenty-five dollars (\$25.00) per share owned by Owner. The first month's boarding fee is to be paid with the execution of this Agreement. Thereafter, the boarding fee shall be paid by Owner to Agister, each month when milk shares are picked up, or on another basis as agreed to by the parties, provided that payment for board is paid in advance. Owner shall pay Agister the boarding fee for the month regardless of whether or not milk shares are picked up. The date that milk shares are picked up will be set by the Agister based on availability of milk and may be subject to change based on supply. The parties agree that the amount of the boarding fee is a fair and reasonable charge for the services and supplies to be provided by Agister to Owner under this Agreement. Payment shall be made by cash or check, or other method agreed upon by the parties.

B. Agister may, at his or her discretion, adjust the boarding fee up to twice each year to cover any increased expense of boarding and caring for the Herd, such increase not to exceed 10%.

C. Owner understands he is responsible for regular and timely payment of boarding fees, even if he does not retrieve his share of the Herd's milk production. Owner is paying Agister for the ongoing boarding and care of Owner's share of the Herd.

4. Allocation of Milk.

A. Owner shall be entitled to receive a percentage of the weekly milk production equal to Owner's Percentage Interest in the Herd. Based on the historical production of the Herd, it is estimated that one share will typically yield one (1) gallon, but the actual amount Owner receives will be based on the actual production, which will vary.

B. Owner, or Owner's agents, shall pick up milk on the dates and locations agreed to between the parties. If Owner does not pick up milk within two (2) days after scheduled date, Agister may dispense with milk as Agister prefers and as permitted by law.

C. Agister shall provide plastic one-use jars with lids for the storage of milk.

D. Owner agrees to receive his share of milk directly and in person. Agister will not release Owner's milk to anyone but the Owner, or the Owner's agents.

E. Owner warrants that all milk obtained from Agister is for consumption by Owner and Owner's immediate family only, and for no other purpose. Owner accepts all risk and responsibility associated with the consumption of Owner's milk by anyone including but not limited to himself and his immediate family.

5. Duties of Agister. In addition to any other duties provided in this Agreement, Agister shall have the following duties in connection with the boarding of the Herd:

A. To board the Herd at the Dairy Facilities and to provide any other reasonable services required by this Agreement or requested by the Herd Owners;

B. To maintain and care for the Herd using sound practices in accordance with the herd health protocols attached with this Agreement (**Exhibit A**);

C. To manage the Herd for and on behalf of the Herd Owners and to acquire and dispose of cows as shall be necessary to maintain the health and productive capacity of the Herd;

D. To pay all expenses for maintaining and caring for the Herd as required above, except Owner shall pay pro rata on a per share basis extraordinary veterinary expenses. Extraordinary veterinary expenses include, but are not limited to all tests conducted in accordance with herd health protocols; and

E. To provide reports to Owner as shall be appropriate to apprise Owner of the condition of the Herd and any other information that will be useful to Owner regarding the health and performance of the Herd.

6. Special Services. Should Agister determine that special services are reasonably necessary, or should Owner request Agister to perform any special services beyond the boarding required under this Agreement, Agister shall inform Owner as to the amount of charges, if any, in addition to the monthly boarding fee, to be paid by Owner to Agister for the special services.

7. No Sales of Milk. Agister and Owner acknowledge that the sale of raw milk is prohibited by the State of Ohio. Under no circumstances shall either Agister or Owner transfer the ownership or possession of any raw milk production from the Herd in any transaction that would constitute a sale of milk in violation of the statutes of the State of Ohio. Agister and Owner each agrees to indemnify and hold the other harmless for any liability, loss, damage, expense or penalties that are incurred by the other because of a breach of the provisions of this **Paragraph** or other applicable law governing the subject matter of this Agreement by the indemnifying party.

8. Lien for Charges; Enforcement.

A. Owner shall timely pay the boarding charges and other charges contemplated by this Agreement. Agister shall have, and Owner hereby grants to Agister, a lien and security interest in Owner's undivided interest of the Herd for all unpaid purchase price, boarding and other charges that this Agreement obligates Owner to pay.

B. Owner agrees that in the event the payments for which Owner is liable are not paid within the time provided herein or otherwise agreed between Agister and Owner, Agister may dispose of

Owner's interest in the Herd for any and all unpaid charges at public or private sale, with or without public notice, ten (10) days after having notified Owner in writing of Agister's intent to act, and apply the net proceeds, if any, to Owner's debt. In the alternative, or in addition to the foregoing, Agister may acquire Owner's interest in the Herd in satisfaction of the debt.

9. Ownership; Transfer.

A. Owner specifically represents and warrants to Agister that Owner has acquired his/her interest in the Herd for Owner's own use and benefit.

B. Owner shall at no time and under no circumstance sell or exchange any of Owner's interest in the milk production from the Herd and shall at all times use the Owner's share of milk production for Owner's and their immediate family's use. Because all of the Herd Agreements are interdependent and cannot function without all interests in the Herd being covered by them, notwithstanding the foregoing, if any court orders a transfer or assignment of an interest, the Court is requested to make the transfer or assignment subject to the terms of the Herd Agreement.

C. Owner understands and agrees that ownership in the Herd does not entitle Owner to any rights in real or personal property owned by the Agister or Farm.

D. Owner and Owner's immediate family may visit the Farm where Owner's cow(s) are Boarded, inspect Owner's cow(s) and boarding facilities and observe the milking of Owner's cow(s) by prior appointment with Agister. Owner further understands and agrees that he may only enter the Farm premises under the supervision of the Agister, or with the express permission of the Agister.

E. Owner agrees not to post any comments, photos, or information on any public forum or social media sites (including but not limited to Facebook and Twitters) or any other website, about this Agreement, Owner's interest in the Herd, or Owner's receipt of milk production from the Agister.

10. Owner's Assumption of Risk and Waiver of Claims.

A. Owner understands and acknowledges that raw milk may contain harmful pathogens and that its consumption is not recommended by the Centers for Disease Control (CDC), the Food and Drug Administration (FDA), or the Ohio Department of Agriculture. Owner agrees that Owner will educate Owner's immediate family members about the risks associated with the consumption and improper storage of raw milk and releases Agister from any responsibility for education of Owner's immediate family members or guests.

B. Owner understands and acknowledges that there are or may be risks of harm encountered in visiting or entering Agister's premises or any other premises where the Herd is located including but not limited to visiting and/or interacting with the Herd and/or other animals that may be found in the vicinity of the Herd.

C. By signing this Agreement, Owner hereby knowingly and voluntarily assumes the risk of any and all such harm and also hereby waives any and all right to make, file, or pursue any claims, demands, suits, actions, causes of action, damages, etc. against the other Herd Owners, Agister or any of Agister's agents, employees, representatives, principals, lessors, lessees, vendors, contractors,

subcontractors, etc. that arise out of or in any way relates to any injury, illness, death, loss or damage caused, in whole or in part, by (1) the handling or consumption of raw milk produced by the Herd, and/or (2) visiting or entering upon Agister's premises or any premises where the Herd is located.

D. In addition, Owner hereby waives any and all right to make, file, or pursue any claims, demands, suits, actions, causes of action, damages, etc. against the other Herd Owners, Agister or any of Agister's agents, employees, representatives, principals, lessors, lessees, vendors, contractors, subcontractors, etc. that arise out of or in any way relates to any injury, illness, death, loss or damage to the Herd caused, in whole or in part, by the care and/or boarding of the Herd by Agister.

11. Indemnification.

A. Owner shall indemnify and defend Agister and all other Herd Owners and shall hold harmless Agister and all other Herd Owners against any and all demands, claims, suits, actions, causes of action, etc. for any injury, illness, death, loss or damage that arises out of or relate in any way to (1) any handling, consumption, or use of any milk produced by the Herd after it has been retrieved or otherwise obtained by Owner, (2) the visit of any person that Owner brings to or causes to visit Agister's premises or any premises where the Herd is located, and/or (3) any failure on the part of Owner to comply with the terms of this Agreement or with any rules, procedures, directions, orders, etc. of Agister that are authorized or permitted by this Agreement.

B. Owner shall also indemnify, defend, and hold harmless Agister's agents, employees, representatives, principals, lessors, lessees, vendors, contractors, subcontractors, etc. against any and all demands, claims, suits, actions, causes of action, etc. for any injury, illness, death, loss or damage that arises out of or relate in any way to (1) any handling, consumption, or use of any milk produced by the Herd after it has been retrieved or otherwise obtained by Owner, (2) the visit of any person that Owner brings to or causes to visit Agister's premises or any premises where the Herd is located, and/or (3) any failure on the part of Owner to comply with the terms of this Agreement or with any rules, procedures, directions, orders, etc. of Agister that are authorized or permitted by this Agreement.

12. Claims. In the event that either party to this Agreement seeks to assert any claim against the other party for any reason in connection with this Agreement or the activities of the other party under it, other than a claim of nonpayment as contemplated by **Section 8** of this Agreement, the party asserting the claim shall, within one hundred eighty (180) days of learning of the circumstances giving rise to the claim, reduce it to writing, stating the nature of the claim and amount of relief sought, and serve it on the other party. Any claim for liability under this Agreement not made in compliance with this **Section** is waived.

13. Arbitration of Disputes. All disputes, claims, and questions regarding the rights and obligations of the parties under the terms of this Agreement (other than a claim of nonpayment as contemplated by **Section 8** of this Agreement) are subject to arbitration. Either party may serve on the other a written demand for arbitration within one hundred eighty (180) days after the dispute first arises. Any demand for arbitration of a claim served in compliance with **Section 12** above shall be contained within and served with the written claim. The arbitration shall be conducted by three arbitrators (one appointed by

Agister, one by Owner, and a third by the other two arbitrators) in accordance with the rules of commercial arbitration of the American Arbitration Association. Each party shall pay its own costs in connection with the arbitration, and costs of the arbitrators shall be paid in equal amounts by the parties.

14. Effective Date and Duration. This Agreement shall be effective upon execution and shall continue in effect until terminated by either Agister or Owner pursuant to **Section 15** hereof.

15. Termination:

A. This Agreement may be terminated by either party upon written notice. Such notice shall be given not less than ten (10) calendar days prior to the date of termination unless caused by catastrophic loss of Herd animals and /or due to acts of God; in such case notice shall be as soon as practicable. Notice shall be given in writing to the address of each party provided in this Agreement and shall expressly state the date that termination is effective.

B. Upon termination of this Agreement by Agister, Owner may demand that Agister shall purchase shares at the price originally paid.

16. First Right of Refusal. Upon written notice of termination of this Agreement by Owner, Agister has the first right of refusal to purchase Owner's shares at the price that Buyer initially paid Seller for such shares, such option to expire if not exercised by Agister not less than thirty (30) days before the termination date of this Agreement. Agister's failure or decision not to exercise this option shall not constitute a waiver of Agister's rights to exercise the same option in other Herd Agreements or Herd Transfer Agreements.

17. Force Majeure. Notwithstanding anything to the contrary in this Agreement, neither Agister nor Owner shall be responsible for any delay or failure of its performance under this Agreement if the delay or failure is caused by any matter beyond the control of either party, including, but not limited to, government regulations, public emergency or necessity; legal restrictions; labor disputes and actions related thereto; riot, war, or insurrection; and windstorms, rainstorms, snowstorms, floods, disease outbreaks, or other acts of God.

18. Contract Language Interpretation. Each and every provision of this Agreement shall be construed as though parties participated equally in the drafting of same, and any rule of construction that a document be construed against the drafting party, including without limitation the doctrine commonly known as contra proferentem, shall not be applicable to this Agreement.

19. Miscellaneous.

A. Construction. When necessary for proper construction, the masculine of any word used in this Agreement shall include the feminine and neuter gender; the singular, the plural; and vice versa.

B. Governing Law. This Agreement is being executed and delivered in the State of Ohio and shall be construed in accordance with and governed by the laws of such state.

C. Severability. If, for any reason, any provision or provisions of this Agreement are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation or affect those portions of this Agreement which are valid.

D. Notice. Any notice required by this Agreement shall be in writing and served by registered mail (return receipt requested) to the recipient's address shown on this Agreement or contained in Agister's business records. Receipt shall be effective as of the day after mailing.

E. Captions. The captions of sections and subsections contained in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

F. Entire Agreement. This Agreement constitutes the entire contract between the parties and may not be modified or amended except in writing signed by both parties.

G. Waiver. No assent or waiver, expressed or implied, to any breach of any one or more of the covenants or agreements hereof shall be deemed or taken to be a waiver of any succeeding breach.

H. Incorporation by Reference. All schedules, exhibits and attachments referred to in this Agreement are incorporated by reference and made a part of this Agreement.

I. Assignment. This Agreement and each of its provisions shall inure to the benefit of and be binding upon the parties, their successors and permitted assigns.

J. Execution. This agreement is executed in duplicate, and each party has an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown below to be effective on the date or dates described above.

_____	_____	_____	_____
For Agister	Date	Owner	Date
Print		Print	
Name: _____		Name: _____	

