

**BOARD OF SELECTMEN
TOWN OF EAST WINDSOR
11 RYE STREET
BROAD BROOK, CONNECTICUT**

MINUTES OF SPECIAL MEETING

Friday, August 24, 2018 at 8:00 a.m.

1. TIME AND PLACE OF SPECIAL MEETING

First Selectman Robert Maynard called the meeting to Order at 8:10 a.m. in the East Windsor Town Hall, 11 Rye Street in Broad Brook, CT.

2. ATTENDANCE

Present:

Robert Maynard, First Selectman
Steve Dearborn, Deputy First Selectman
Andy Hoffman, Selectman
Charlie Szymanski, Selectman

Absent:

Jason E. Bowsza, Selectman

3. EXECUTIVE SESSION

MOTION made (Hoffman) and **SECONDED** (Dearborn) to enter into Executive Session to include Jay Ussery.

All in favor.

The Board came out of Executive Session at 8:18 a.m.

MOTION made (Hoffman) and **SECONDED** (Dearborn) to approve the Fixed Assessment Agreement presented at the August 24, 2018 special BOS meeting between the Town of East Windsor and **DDJ Group Enterprises of East Windsor, LLC**, a Connecticut limited liability company having an address of 212 Locust Street, Hartford, CT 06114 (“Company”), and **Sardilli Produce & Dairy Co., Inc.**, a Connecticut corporation having an address of 212 Locust Street, Hartford, CT 06114 (“Business”) and authorize the First Selectman to sign the agreement.

All in favor.

Referenced agreement attached hereto.

4. ADJOURNMENT

MOTION made (Maynard) and **SECONDED** (Hoffman) to adjourn.

All in favor.

The meeting adjourned at 8:20 a.m.

Respectfully submitted,

Robert Maynard

TOWN OF EAST WINDSOR
FIXED ASSESSMENT AGREEMENT

THIS AGREEMENT made effective as of August 24, 2018 (the "Effective Date"), by and among **Town of East Windsor**, Connecticut, a governmental body organized under the laws of the State of Connecticut, 11 Rye Street, East Windsor, Connecticut 06016 ("Town"), **DDJ Group Enterprises of East Windsor, LLC**, a Connecticut limited liability company having an address of 212 Locust Street, Hartford, CT 06114 ("Company"), and **Sardilli Produce & Dairy Co., Inc.**, a Connecticut corporation having an address of 212 Locust Street, Hartford, Connecticut 06114 ("Business")

RECITALS

- A. Company has entered into an agreement to purchase the Land, as defined herein, and plans to construct the Facility thereon, as defined herein, to be leased to its affiliate Sardilli Produce & Dairy Co., Inc. which is going to operate a produce and dairy business there under a written lease from the Company.
- B. Town has adopted Ordinance 16-01, an "Ordinance Establishing a Tax Incentive Program for Substantial New Investment in the Town of East Windsor" in accordance with Section 12-65b of the Connecticut General Statutes, as amended, (the "Ordinance"), which provides for a written agreement fixing the assessment of real property and improvements thereon.
- C. Under the Ordinance, the assessed value of the real property and improvements thereon may be fixed for a period of up to seven (7) years if the cost of the new improvements is not less than Three Million Dollars (\$3,000,000).
- D. Company has provided Town information verifying the estimated cost of the Facility and the estimated cost of the personal property to be located within the Facility.
- E. Town has determined that the Facility qualifies for a fixed assessment of up to seven (7) years under the Ordinance and desires to offer a seven (7) year assessment schedule on the Facility as an inducement for Company to develop and construct the Facility within Town.
- F. The Board of Selectmen of the Town has adopted a resolution authorizing Town to enter into this Agreement.
- G. The parties now desire to enter into this Agreement to affect a Fixed Graduated Assessment of the Facility.

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

ARTICLE 1 - DEFINITIONS

Capitalized terms used and not defined herein shall have the definitions ascribed to them as set forth below:

Section 1.1 - Produce and Dairy Building.

Section 1.2 - Commencement Date. The term "Commencement Date" shall mean the date the Grand List is executed and confirmed by Town Assessor immediately following the date when both the final certificate of occupancy for the Facility has been issued and the Company has completed the conditions included in Sections 3.1 and 3.2 of this Agreement.

Section 1.3 - Facility. The term "Facility" shall mean the buildings, structures, HVAC and refrigeration systems, fixed racking, foundations, fencing, curbing, light standards, walkways, access drives, landscaping and parking areas owned by the Company, but otherwise exclusive of any personal property and motor vehicles of the Business, and Land, as defined herein. The Facility shall be constructed in conformity with the Town of East Windsor Zoning Regulations and Building Codes.

Section 1.4 - Fixed Assessment. The term "Fixed Assessment" shall refer to Town's authority, under Connecticut General Statutes section 12-65b and the Ordinance, of a fixed assessment on the Facility, which shall be equal to a portion of the assessed value of the Facility, for a given year of the Fixed Assessment Period, as set forth in Section 2.1 below. The fair market value and assessment of the Facility shall be determined by the Assessor in accordance with law.

Section 1.5 - Fixed Assessment Period. The term "Fixed Assessment Period" shall refer to a full seven (7) assessment year period that shall begin on the first day (July 1) of the first tax year (expected to be 2020) following the Commencement Date and ending on the last day of the seventh tax year following the Commencing Date (expected to be June 30, 2027), subject to the provisions of Section 2.1 hereof. Upon the completion of such seven (7) year period, the Fixed Assessment Period shall automatically expire.

Section 1.6 - Investment In Facility. The term "Investment In Facility" shall mean all costs incurred by Company in development and construction of the Facility as set forth in Section 1.3 above, including the cost of materials, labor, fixtures, and all other hard costs capitalized as part of the Facility, excluding land cost.

Section 1.7 - Investment In Personal Property. The term "Investment In Personal Property" shall mean all costs incurred by Company in the fabrication, purchase, lease, transportation and installation of personal property located at the facility and on the Land, including all manufacturing and vendor costs, sales taxes and other hard costs capitalized as part of such personal property.

Section 1.8 - Land. The term "Land" shall mean the premises generally collectively known as 10 South Main Street, East Windsor, Connecticut (Assessor ID Nos 01694500 & 01696500) and 12 South Main Street, East Windsor, Connecticut, together with any additions or reductions thereof.

ARTICLE 2 - TAX MATTERS

Section 2.1 - Fixed Assessment. Town and Company agree that the Fixed Assessment for the Facility shall be effective during the Fixed Assessment Period. During the Fixed Assessment Period, Town shall establish the assessment of the Facility at an amount equal to (i) ten percent (10%) of the assessed value of the Facility for year one of the Fixed Assessment Period, (ii) twenty-five percent (25%) of the assessed value of the Facility for year two of the Fixed Assessment Period, (iii) thirty-five percent (35%) of the assessed value of the Facility for year three of the Fixed Assessment Period, (iv) fifty-two percent (52%) of the assessed value of the Facility for year four of the Fixed Assessment Period, and (v) sixty-four percent (64%) of the assessed value of the Facility for year five of the Fixed Assessment Period, (vi) sixty-nine percent (69%) of the assessed value of the Facility for year six of the Fixed Assessment Period, and (vii) (95%) of the assessed value of the Facility for year seven of the Fixed Assessment Period. The assessed value of the Facility is determined each year and is based on the assessed value of the property on the grand list on October first of the prior year. The assessed value of the Facility may change during a revaluation year or if additions or modifications are made to the building. This Agreement does not include any taxes levied by the fire district or other taxing entity. The assessment value of the Land, including any existing improvements thereon as of the Effective Date, any personal property, and any motor vehicles shall be determined by the Assessor in the normal course pursuant to state and local laws.

Section 2.2 - Minimum Real Estate Tax Payment. During the Fixed Assessment Period, Company agrees to pay for each tax year a minimum ad valorem real estate tax payment for the Facility and the Land based on the assessed value of the Land plus the Fixed Assessment for the Facility for each such year as set forth in Section 2.1 above. Sardilli Produce shall be responsible for the payment of these real estate taxes under its written Lease with the Company and the Company shall make or shall cause such payment to be made no later than the applicable due dates of the tax billing or otherwise shall be subject to penalty interest for late payment.

Section 2.3 - Personal Property and Motor Vehicle Taxes. Business agrees to pay full taxes levied on all personal property and motor vehicles or leased motor vehicles of the Business by Town during the Fixed Assessment Period. Company shall make such payment no later than the applicable due dates of the tax billing or otherwise shall be subject to penalty interest for late payment.

Section 2.4 - Assessment and Revaluation. The Company shall have the right to appeal any increase in assessment due to a Town-wide property revaluation pursuant to Connecticut General Statutes, sections 12-117a and 12-119, as amended. The assessment of the Land for the period prior to the Commencement Date was determined in the normal course pursuant to state and local laws.

ARTICLE 3 - MINIMUM INVESTMENTS

Section 3.1 - Section 3.1 – Minimum Investment In The Facility. Company shall commence construction of Facility within 24 months after approval of a site plan by the Town Planning and Zoning Commission. Company agrees to make an Investment in Facility in accordance with the approved site plan of approximately \$15,000,000 to \$23,000,000, which deadline shall be

extended by the Board of Selectmen provided that the Board finds the Company is diligently and continuously pursuing the completion of the Facility with reasonable allowances for force majeure events beyond the Company's control such as strikes, work stoppages, acts of war or terrorism, natural catastrophes or act of God provided the Company uses reasonable efforts to resume as soon as practicable under the circumstances.

Section 3.2 - Minimum Investment In Personal Property. Business agrees to make an Investment In Personal Property of approximately \$2,250,000+ no later than November 2020, which deadline shall be extended by the Board of Selectmen provided that the Company is diligently and continuously pursuing the completion of the Facility with reasonable allowances for force majeure events beyond the Business's control such as strikes, work stoppages, acts of war or terrorism, natural catastrophes or act of God provided the Company uses reasonable efforts to resume as soon as practicable under the circumstances. In addition, the Business agrees to locate its motor vehicles or leased motor vehicles in East Windsor to the extent required by law.

Section 3.3 - Schedule. No later than November 30, 2020 or at the end of any approved extension period as provided in Section 3.1 and Section 3.2, Company shall furnish Town with a certificate confirming Company's satisfaction of the obligations contained in Sections 3.1 and 3.2 hereof. Company, at the request of Town, shall furnish Town with general information substantiating the expenditure of such investment. Town acknowledges that any certification from a third-party architect, managing contractor, engineer, general contractor, vendor or manufacturer, which certifies such investment will satisfy any request by Town for additional evidence verifying the expenditure of such investment. Company shall permit the town at reasonable times and upon reasonable notice during the term of this Agreement to inspect the Facility for purposes of confirming that its use continues to comply with one or more of the uses set forth in Section 12-65b of the Connecticut General Statutes and the Ordinance.

Section 3.4 - Failure to Comply. In the event the Company has not provided the anticipated Investment In The Facility and Investment In Personal Property as set forth in Sections 3.1 and 3.2 above by November 30, 2020 or at the end of any extension periods as provided in Section 3.1 and Section 3.2, the Town shall be entitled to terminate this Agreement. In the event of such termination by Town, then Town and Company shall not have any further obligation under this Agreement and the assessment of the facility shall revert to 70% of its fair market value as determined by the Assessor retroactive to the Commencement Date and the Town shall thereafter have its rights defined in Section 7.2.

ARTICLE 4 - EMPLOYMENT MATTERS

Section 4.1 - Town Residents. During the Fixed Assessment Period, Business shall exercise good faith efforts to recruit qualified residents of Town to fill part and full-time positions used for the Facility; provided, however, that Business is under no legal obligation to hire any resident of Town for such purposes, it being understood that Business, in its sole discretion, will make the ultimate determination on whether or not a resident is qualified to fill a position or to hire such person. For purposes of this Agreement, Business's good faith efforts shall include providing

notice of job openings for its business at the Facility to the First Selectman of the Town for dissemination.

ARTICLE 5 - OPERATION OF FACILITY

Section 5.1 - Operation. During the Fixed Assessment Period and for a period of two (2) consecutive years thereafter, the Company agrees that it shall not:

- 5.1.1. Relocate the operations of the Company associated with the Facility outside of the Town;
- 5.1.2. Change, suffer or allow the use of the Facility to a use that does not comply with one or more of the uses set forth in Section 12-65b of the Connecticut General Statutes and the Ordinance;
- 5.1.3. Fail to pay the taxes contemplated under this Agreement when due; or
- 5.1.4. Declare bankruptcy.

Section 5.2 - Remedies. In the event the Company is in default under Sections 3.1, 3.2, 3.4 and 5.1.1 through 5.1.3 above, the Town shall have the right to recover all tax benefits provided to the Company during the Fixed Assessment Period and terminate this Agreement and the Fixed Assessment. In the event that Company has instituted appropriate administrative or legal proceedings challenging the amount of the statutory assessment of the Facility and Land, payment of any and all taxes shall be in accordance with Connecticut General Statutes section 12-117 and other applicable law.

ARTICLE 6 - REPRESENTATIONS AND WARRANTIES

Section 6.1 - Town Representations and Warranties. Town hereby represents and warrants to Company as follows:

- 6.1.1. This Agreement is in material compliance with Town Charter, Ordinance 16-01 of the Town and with the Connecticut General Statutes, et seq.
- 6.1.2. Town is a municipality duly organized and operating under the laws of the State.
- 6.1.3. Town has the power to enter into this Agreement and to carry out its obligations hereunder.
- 6.1.4. The execution and delivery of this Agreement, the conferral of the Fixed Assessment to Company, the performance of its other obligations contained in this Agreement, the consummation of the other transactions contemplated hereby, and the fulfillment of the compliance with the terms and conditions of this Agreement, by Town are not prevented by or result in a breach of, the terms, conditions or provisions of Town Charter, any statute, law, ordinance or regulation by which Town is bound.

- 6.1.5. This Agreement has been duly authorized by Board of Selectmen, and is a valid and binding obligation of Town, and is enforceable in accordance with its terms against Town.
- 6.1.6. The representative of Town executing this Agreement is in good standing with Town, and is authorized to execute and deliver this Agreement, in such capacity.
- 6.1.7. There is no claim or litigation, or to the best of Town's knowledge, threat of any claim or litigation, against Town with respect to its execution and delivery of this Agreement or otherwise pertaining to the conferral of the Fixed Assessment or any other matter contained in this Agreement.

Section 6.2 - Company Representations and Warranties. Company hereby represents and warrants to Town as follows:

- 6.2.1. Company is qualified and licensed to transact business in the State of Connecticut.
- 6.2.2. Company has the power to enter into this Agreement and to carry out its obligations hereunder.
- 6.2.3. The execution and delivery of this Agreement, the performance of the obligations of Company contained in this Agreement, the consummation of the other transactions contemplated hereby, and the fulfillment of the compliance with the terms and conditions of this Agreement by Company are not prevented by or result in a breach of, the terms, conditions or provisions of any statute, law, ordinance or regulation by which Company is bound, or any contractual restriction, financing, agreement or instrument of whatever nature to which Company is now a party by which it is bound, nor do they constitute default under any of the foregoing.
- 6.2.4. This Agreement has been duly authorized by Company, and is a valid and binding obligation of Company and is enforceable in accordance with its terms against Company.
- 6.2.5. The officer of Company executing this Agreement is in good standing with Company and is authorized to execute and deliver this Agreement, in such capacity.
- 6.2.6. There is no claim or litigation, threat of any claim or litigation, against Company with respect to its execution and delivery of this Agreement, the conferral of the Fixed Assessment or any other matter contained in this Agreement.
- 6.2.7. There are no actions, suits or proceedings pending or, threatened against or affecting the Company or before any arbitrator or any governmental body in which there is a reasonable possibility of an adverse decision which could materially affect the ability of Company to perform its obligations under this Agreement.

ARTICLE 7 - DEFAULT

Section 7.1 - Town Default. In the event that Town fails to perform under Section 2.1 of this Agreement and Company furnishes notice to that effect to Town, and Town fails substantially to rectify the same within thirty (30) days after receipt of notice, and such an additional reasonable time period as is necessary to rectify the matter if the nature of such non-compliance cannot be reasonably cured within said thirty (30) day period so long as Town initiates the curing thereof within said thirty (30) day period and thereafter diligently prosecutes such curing, then Town shall be deemed to be in default of this Agreement. In the event of Town's default under this Agreement beyond applicable cure periods, Company shall be entitled to all rights and remedies at law or in equity.

Section 7.2 - Company Default. In the event that Company fails to perform a covenant or agreement, or to observe a term or condition, contained in this Agreement and Town furnishes notice to that effect to Company, and Company fails substantially to rectify the same within thirty (30) days after receipt of notice, and such an additional reasonable time period as is necessary to rectify the matter if the nature of such non-compliance cannot be reasonably cured within said thirty (30) day period so long as Company initiates the curing thereof within said thirty (30) day period and thereafter diligently prosecutes such curing, then Company shall be deemed to be in default of this Agreement. In the event of Company's default under this Agreement beyond applicable cure periods, the Town may terminate this Agreement by written notice to the Company whereupon the Town shall be under no obligation to grant further tax relief hereunder. Further, the Town, in addition to any remedies provided herein, shall be entitled to all rights and remedies at law or in equity, including the right to assess all penalties and to exercise all rights accorded to it as a taxing authority under the Connecticut General Statutes for the non-payment of taxes and the payment of all legal fees and expenses incurred by the Town relating to the Company's default.

ARTICLE 8 - MISCELLANEOUS

Section 7.1 Notices. All notices and requests required pursuant to this Agreement shall be sent by personal delivery, overnight courier, or certified mail as follows:

To Town: Town of East Windsor
 East Windsor Town Hall
 11 Rye Street
 Broad Brook, CT 06016
 Attention: First Selectman

With a copy to:

Robert M. DeCrescenzo, Esq.
Updike, Kelly & Spellacy, P.C.
P.O. Box 231277, 100 Pearl Street
Hartford, CT 06123-1277

To Company: DDJ Group Enterprises of East Windsor, LLC
212 Locust Street
Hartford, CT 06114
Attention: Devin Sardilli

With a copy to:

Robert A. DeFrino, Esq.
241 Asylum Street, 5th floor
Hartford, CT 06103
Email: rdefrino@hartfordctlaw.com
Facsimile: (888) 391-6210

To Business: Sardilli Produce & Dairy Co., Inc.
212 Locust Street
Hartford, CT 06114
Attention: Devin Sardilli

With a copy to:

Robert A. DeFrino, Esq.
241 Asylum Street, 5th floor
Hartford, CT 06103
Email: rdefrino@hartfordctlaw.com
Facsimile: (888) 391-6210

or at such other addresses as the parties may indicate in writing to the other by personal delivery, overnight courier, or registered mail, return receipt requested, with proof of delivery thereof. Notices and requirements shall be deemed delivered to the address set forth above (a) when delivered in person on a business day, or (b) on the same business day received if delivered by overnight courier or by registered mail, return receipt requested.

Section 7.2 - Successors and Assigns; Assignment. Company shall not assign its rights and obligations under this Agreement except with the written consent of the East Windsor Board of Selectmen. All of the terms and provisions of this Agreement shall be binding on and inure to the benefit of all of the successors and assigns of the parties hereto.

Section 7.3 - Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions, and understandings between Company and Town relative to the fixing the assessments on the Facility and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them related thereto, other than as herein set forth. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding on the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

Section 7.4 - Counterparts. This Agreement (or any exhibit or addendum to it) may be executed by facsimile or using an e-signature format such as DocuSign, and in counterparts, each of which

(including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.

Section 7.5 - No Admission as to Value. The parties acknowledge and agree that the values placed upon the Property, the Facility and/or the Improvements as a result of this Fixed Assessment Agreement shall not now or at any other time be construed as an admission by any party or as evidence of any kind as to the true fair market value of the Property, the Facility and/or the Improvements.

Section 7.6 - No Further Abatement: Company acknowledges and agrees that the Abatement offered pursuant to this Agreement is not binding upon the Town beyond the seven-year Abatement Term agreed to herein.

[NEXT PAGE IS SIGNATURE PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by authorized representatives of the parties hereto and is effective as of the aforesaid date.

TOWN OF EAST WINDSOR

By: Robert Maynard
Robert Maynard
Its First Selectman

Date: 8/24, 2018

SARDILLI PRODUCE & DAIRY CO., INC.

By: Don N. Sardilli Pres
Don N. Sardilli
Its President

Date: 8/24/, 2018

DDJ GROUP ENTERPRISES OF EAST WINDSOR, LLC

By: Don N. Sardilli Mgr
Don N. Sardilli
Its Manager

Date: 8/24/, 2018