

## **AGREEMENT OF PURCHASE AND SALE**

**THIS INDENTURE** dated the \_\_\_\_\_ day of December , 2017

**BETWEEN:**

### **THE CORPORATION OF THE TOWN OF ST. MARYS**

hereinafter called the **VENDOR**

- and -

### **SHEPHERD GOURMET DAIRY (ONTARIO) INC**

hereinafter called the **PURCHASER**

#### **Offer to Purchase**

1. The Purchaser, having inspected the lands and premises hereinafter described, hereby offers to purchase from the Vendor the lands and premises situated in the Town of St. Marys, located as shown on the sketch attached as Schedule "A" to this Agreement, legally described Part of Lot 13, South Boundary Concession (formerly in the Township of Blanshard), Town of St. Marys, County of Perth, more particularly described as Parts 2, 3 and 4 on Reference Plan 44R-4615, and being part of PIN 53245-0168 (LT) for the purchase price of

**Two hundred and three thousand nine hundred and nine dollars and thirty-eight cents  
(\$203,909.68)**

of lawful money of Canada, to be paid by bank draft or certified cheque to the Vendor on the date of completion.

#### **Deposit**

2. The Purchaser has submitted Twenty Thousand Dollars (\$20,000.00) paid to the Vendor to be held pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. No interest shall be earned, received or paid on the deposit.

#### **Adjustments**

3. Any unearned fire insurance premiums, rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to the Purchaser.

#### **Free from Encumbrances**

4. Provided the title to the property is good and free from all encumbrances, except as otherwise expressly provided herein, and except as to any registered easements, restrictions or covenants that run with the land, or municipal by-laws, or other governmental enactments, providing that such are complied with.

#### **Schedules**

5. The following Schedule(s) form part of this Agreement:

Schedule A – Sketch of the Property

Schedule B – Sketch of Stormwater Pipe/Drain to be Conveyed  
Schedule C – Additional Terms and Conditions – Municipality-Owned Land Sale Policy  
Schedule D- Drain Agreement

#### Property Condition

6. The Agreement is made without representation, warranty or condition with respect to the fitness for any purpose, condition, quality or quantity, zoning or lawful use of the property. The Purchaser acknowledges that it has relied entirely on its own investigations and inspections. The Purchaser will accept the property “as is” on the day of closing without regard for its state of repair, location of structures, walls, retaining walls or fences (freestanding or otherwise) and subject to all judicial, municipal or any other governmental by-laws, agreements, restrictions or orders affecting or regarding its condition or use (including deficiency, compliance requests, work and other orders), all registered or unregistered restrictions, agreements, rights of way, easements, covenants which run with the land or minor encroachments by buildings or fences on the Lands or adjoining properties or streets, all municipal and other development and sewer levies, fees, imposts and charges and all amounts added to the tax roll, in all cases regardless of whether there is compliance.

#### Fixtures and Chattels Excluded and Included

7. There are no fixtures or chattels being conveyed other than a storm water pipe/drain within the property. The Vendor agrees to convey all fixtures included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures .

The parties acknowledge and agree that there is a storm water pipe/drain within the property (as outlined on the attached Schedule “B”), which pipe serves the properties currently owned by Shepard Gourmet Dairy (Ontario) Inc. and Nutreco Canada Inc.. As a condition of sale, within ninety (90) days from the transfer of title, the Purchaser shall, to the satisfaction of the Owner, be required to negotiate and enter into a mutual drain agreement with Nutreco Canada Inc. (or its successor in title), as contemplated in the *Drainage Act* (Ontario). Notice of the said mutual drain agreement shall be registered on title to applicable properties at the cost of the Purchaser.

If the Purchaser fails to enter into a Drain Agreement as set out in Schedule D and /or register same on title then at the option of the Vendor the Property shall be reconveyed to the Vendor without consideration. This paragraph 7 shall survive and not merge on the completion of this sale

#### Title Documents

8. The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title except as may be in the possession or control of the Vendor, unless otherwise provided herein.

#### Examination of Title

9. The Purchaser is to be allowed until 5:00 P.M. (local time) on **December 18, 2017** to examine the title at its own expense. If within that time any valid objection to title is made in writing to the Vendor which the Vendor is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objection shall be at an end, and all monies theretofore paid shall be returned to the Purchaser without interest or deduction, and the Vendor shall not be liable for any costs or damages. Except as to any valid objection so made within such time, and except for any objection going to the root of the title, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the property.

#### Completion of Transaction

10. The transaction of purchase and sale to be completed by no later than 5:00 P.M. (local time) on December 23, 2017. The Vendor may unilaterally amend the completion date on 5 calendar days written notice to the Purchaser in order to allow the Vendor to pass the necessary municipal by-laws to complete the herein transaction. Vacant possession of the property shall be given to the Purchaser on the date of completion, unless otherwise provided herein.

#### Time of Essence

11. This Agreement, when accepted, shall constitute a binding contract of purchase and sale between the Purchaser and Vendor and time shall, in all respects, be of the essence thereof, provided that the time for the doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing, signed by the Vendor and the Purchaser or by their respective solicitors who are hereby expressly appointed in this regard. It is agreed that there is no condition, expressed or implied, representation, warranty, or collateral agreement affecting this Agreement or the property or supported hereby, except as expressed herein in writing.

#### Deed or Transfer

12. The deed or transfer shall be prepared in registerable form by the Vendor's solicitor. The Purchaser shall pay the cost of registration and taxes of all documents. The Purchaser further undertakes and agrees, forthwith after the completion date, to provide a copy of the registered Transfer of Land to the Vendor's solicitor. This covenant shall survive the closing of the herein transaction and shall remain in full force and effect notwithstanding the transfer of title to the Property to the Purchaser.

#### Written Additions

13. Provided that, notwithstanding any terms or conditions outlined in the printed wording herein, any provisions written into the Agreement at the time of the signing of the Agreement by the Purchaser shall be the true terms and shall supersede the printed portion in respect of the parts affected thereby. This Agreement and its acceptance shall be read with all changes of gender or number required by the context and shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns, as the case may be.

#### Costs and Tender

14. The Purchaser acknowledges that he or she shall be responsible for all costs associated with the herein sale transaction. Any tender of documents or money desired hereunder may be made upon the solicitor acting for the Vendor or Purchaser, and it shall be sufficient that a Bank Draft or Certified Cheque may be tendered instead of cash.

#### Good and Services Tax or Harmonized Sales Tax

15. If this transaction is subject to Goods and Services Tax or Harmonized Sales Tax ("GST/HST"), then such tax shall be **in addition** to the purchase price. If this transaction is subject to GST/HST, the Purchaser shall self-assess and remit the GST/HST payable and file the prescribed form and shall indemnify the Vendor in respect of any GST/HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If this transaction is not subject to GST/HST, Vendor agrees to certify on or before closing that the transaction is not subject to GST/HST.

#### Electronic Registration

16. The Vendor and Purchaser acknowledge that this transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L4, as amended. The Vendor and Purchaser further acknowledge and agree that the delivery of documents and the

release thereof to the Vendor and Purchaser shall be governed by a Document Registration Agreement in the Law Society of Upper Canada's most recent standard form for such agreements and hereby authorize their respective solicitors in that regard.

#### Business Day

17. In the event that any date specified in this Agreement shall fall on a day other than a Business Day (defined to mean a day other than a Saturday or Sunday on which chartered banks in the Town of St. Marys, Ontario are open for the transaction of business with the public), then such date shall be deemed to be the next following Business Day.

#### Notice

18. Any notice or requisition required or contemplated by any provision of this Agreement which either party may desire to give to the other shall be sufficiently given to the Purchaser by personal delivery or facsimile transmission addressed to the Purchaser at:

Shepherd Gourmet Dairy (Ontario) Inc.  
38 Enterprise Drive PO Box 847  
St Marys, ON  
N4X 1B5

Attention: Stewart Cardiff, President

and any notice to be given to the Vendor shall be sufficiently given by personal delivery or facsimile transmission addressed to the Vendor at:

The Corporation of the Town of St. Marys  
175 Queen Street East  
P.O. Box 998  
St. Marys, ON N4X 1B6

Attention: Clerk

and to the Vendor's Solicitors:

Carlyle Peterson Lawyers LLP  
7-717 Richmond St., London ON N6A 1S2

Attention: Sue Carlyle  
Facsimile: (519) 432-0634

and all such notices shall be effective as of the date of such personal delivery or facsimile transmission unless delivered or transmitted after 5:00 p.m. on a Business Day or on a day which is not a Business Day in which event such delivery or transmission shall be deemed to be effective on the next Business Day.

#### Successors and Assigns

19. The heirs, estate trustees, administrators, successors and assigns of the undersigned are bound by the terms herein.

#### Realtor Commission

20. The parties acknowledge and agree that the Vendor shall not be responsible for any real estate or brokerage commission or fees payable to any agent or any other person arising out of or in connection with the transaction contemplated in this Agreement.

Time for Acceptance

21. This Agreement shall be irrevocable and open for acceptance until 11:59 P.M. (local time) on the 8th day of December, 2017, after which time, if not accepted, this Agreement shall be null and void and the deposit (if any) shall be repaid to the Purchaser without interest or deduction.

IN WITNESS WHEREOF the Purchaser has duly executed this Agreement as of the date first written above.

SIGNED, SEALED & DELIVERED

**SHEPHERD GOURMET DAIRY (ONTARIO) INC.**

\_\_\_\_\_  
Stewart Cardiff  
Date of Signature:

I have the authority to bind the Corporation.

**ACCEPTANCE**

The Vendor accepts the above Agreement.

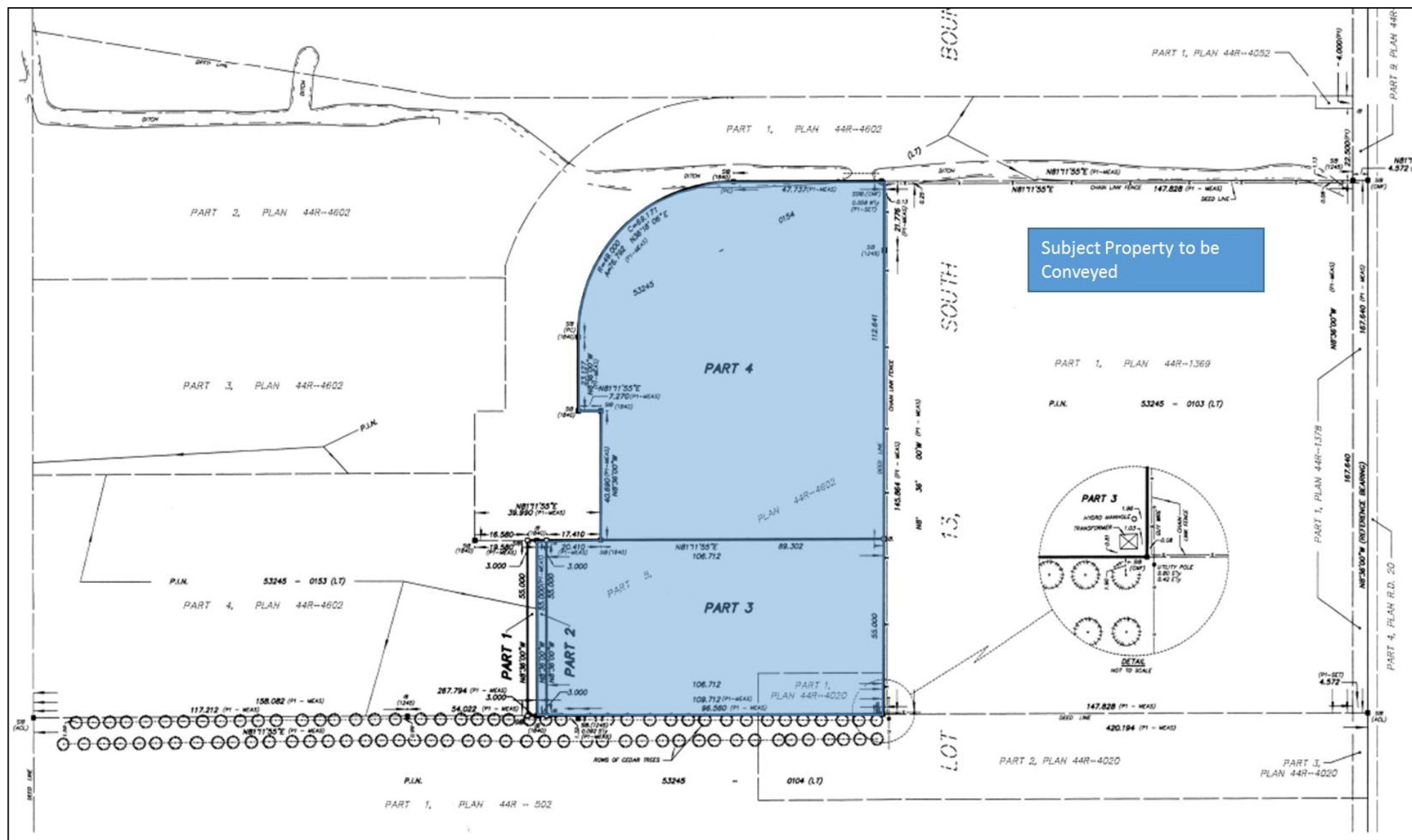
**THE CORPORATION OF THE TOWN OF ST. MARYS**

\_\_\_\_\_  
Al Strathdee, Mayor  
Date of Signature:

\_\_\_\_\_  
Brent Kittmer, Clerk  
Date of Signature:

We have the authority to bind the Corporation.

### Sketch of Property



### Sketch of Stormwater Pipe/Drain to be Conveyed



## **SCHEDULE "C"**

### **Additional Terms and Conditions**

#### **Purchaser Covenant(s)**

As a condition of this Agreement, the Purchaser hereby agrees to be bound by any policy of The Corporation of the Town of St. Marys with respect to the sale and/or transfer of Municipally-owned, serviced, industrial land, certain provisions of such policy being attached hereto, it being the intent of the parties hereto that the provisions of the said policies shall survive the closing of any transaction to such extent as may be required to give effect to the said policy. As a further condition of this Agreement, the Purchaser agrees to accept a Transfer/Deed with respect to the property herein described in a form sufficient to give effect to the said policy.

#### **Municipality-Owned Land Sale Policy**

1. The purpose of this policy is to establish the terms upon which Town of St. Marys -owned serviced industrial land is to be sold and transferred.
2. This policy is to be read and applied fairly and beneficially with such variations as circumstances or the nature of the subject matter require provided the general purpose, intent, meaning and spirit of the policy are maintained.
3. In this policy,
  - (a) Commencement of construction means the date upon which a building permit is issued by the Town of St. Marys,
  - (b) Completion of construction is reached when the building or structure or a substantial part thereof is ready for use or is being used for the purpose intended; and
  - (c) Coverage has the meaning ascribed to it under the applicable zoning by-law.

#### **CLASS 1 SALE**

4. A class 1 sale is a sale of a land for the purpose of the erection thereon of a building or structure for a detached industrial use.
5. A class 1 sale shall be subject to the following conditions:
  - (a) The purchaser shall commence construction within 18 months of the registration of the deed or transfer and shall diligently complete construction of the building or structure, in default of which the purchaser shall in the sole discretion of the Town of St. Marys reconvey the land to the Town of St. Marys in accordance with Section 14 of this policy and free and clear of all encumbrances, easements, restrictions or covenants except as to those originally assumed by the purchaser from the Town of St. Marys.
  - (b) The minimum coverage of the building or structure shall be 15 per cent, provided however that, where the maximum coverage permitted under the applicable zoning by-law is 15 percent or less, the maximum coverage under the zoning by-law shall be deemed to be the minimum coverage required by this condition.
  - (c) The purchaser shall not within 10 years of the registration of the deed or transfer convey

any vacant part of the land by deed, transfer, grant, assignment, appointment, mortgage, charge, lease or sub-lease (Planning Act, R.S.O. 1990, Chapter P .13), without first notifying the Town of St. Marys and, where it has been so notified, the Town of St. Marys may either grant its consent (which shall not be unreasonably withheld) to the conveyance or application or may in its sole discretion require the purchaser to reconvey the vacant part to the Town of St. Marys in accordance with Section 14 of this policy and free and clear of all encumbrances, easements, restrictions or covenants except as to those originally assumed by the purchaser from the Town of St. Marys; provided that this section 5(c) shall not apply in the case of transfer, conveyance or assignment to an affiliate or associate (as such terms are defined in the Business Corporations Act (Ontario)) of the purchaser.

(d) The purchaser shall pay local improvement charges and any other special levies assessed at any time against the land on and after completion of the purchase.

6. The CAO/Clerk may grant one or more extensions (which in total shall not exceed one year) of the time under condition (a) of Section 5 of this policy within which construction of a building or structure is to be commenced provided the purchaser has filed a written request with the CAO/Clerk for the extension and paid to the City Treasurer by cash or certified cheque an extension charge produced by multiplying the selling price at the effective date of the desired extension of comparable City-owned serviced industrial land by the bank interest rate payable by the Town of St. Marys at the date the request is filed, for the period of the desired extension.
7. A purchaser wishing to notify the Town of St. Marys under condition (c) of Section 5 of this policy shall file a written request with the CAO/Clerk who shall submit a recommendation thereon to Council.

#### CLASS 2 SALE

8. A class 2 sale is a sale of a land for the purpose of the extension or enlargement of a building or structure erected or to be erected upon land of the purchaser abutting the land.
9. A class 2 sale shall be subject to conditions (c) and (d) of Section 5 of this policy and the further condition that the land shall not be used for any purpose other than the extension or enlargement of a building or structure erected or to be erected upon lands of the purchaser abutting the land.

#### CLASS 3 SALE

10. A class 3 sale is a sale that is not a class 2 sale and that is a sale of a land for the purpose of a use ancillary to a building or structure erected or to be erected upon land of the purchaser abutting the parcel.
11. A class 3 sale shall be subject to conditions (c) and (d) of Section 5 of this policy and the further condition that the land shall not be used for any purpose other than a use ancillary to a building or structure erected or to be erected upon land of the purchaser abutting the parcel.

#### GENERAL

12. In the last quarter of each year or at more frequent intervals, if warranted, the CAO/Clerk shall make a recommendation to Council as to the price per acre at which land ought to be offered for sale during the ensuing year.
13. Where, in the Town of St. Marys' opinion, land is properly sold through a real estate agent, the Town of St. Marys shall pay a fee to the agent not exceeding the scale established by the Town of St. Marys upon completion of the transaction but no fee shall be payable if the

purchaser is permitted to withdraw from the agreement of purchase and sale prior to the completion of the transaction.

14. Where the whole or any part of land is reconveyed by the purchaser to the Town of St. Marys pursuant to a condition of sale or otherwise, the amount payable upon the reconveyance shall be 90 per cent of either the original purchase price (exclusive of interest thereon and any extension charges), if the whole land is reconveyed, or the portion thereof that is in the same ratio as the area of the reconveyed part is to the whole land, subject to adjustments as of the date of reconveyance for taxes, local improvements and other rates and subject, where the Town of St. Marys considers necessary, to the City's withholding until a new purchaser is found, an amount sufficient to compensate the Town of St. Marys for the cost of restoring the land to its original condition if so required by the new purchaser.
15. That, on the recommendation of the CAO/Clerk, based on the following objective criteria with regard to development review of industrial development on City - owned industrial land that has been sold and build upon, be noted:
  - (a) That the entire site which is not used for building, for the provision of off-street parking, for driveways or for loading docks shall be levelled, seeded and maintained in a grassed condition, including the boulevards;
  - (b) That, should the developer wish to take advantage of the establishment of visitor parking between the building and the street, namely the front of the building where permitted under the bylaw, the parking area and roadways to same shall be asphalt surfaced prior to the occupancy of the building;
  - (c) That the external appearance of the main building shall present a rectangular profile, or some other profile satisfactory to the CAO/Clerk to the street on which it fronts.
16. The cost of service connections from the main to the property line is the responsibility of the purchaser.
17. The cost of removal of topsoil on the site is the responsibility of the purchaser.
18. The Vendor hereby acknowledges and confirms that the transaction contemplated herein is a Class 3 Sale and the lands being conveyed to the Purchaser will be used by the Purchaser for ancillary uses to the existing structures erected on the abutting lands owned by the Purchaser for storm water management, additional parking and truck turnarounds.