

Forbearance Agreement Regarding Option to Purchase

This Forbearance Agreement (the “**Agreement**”) is entered into by and among the Brookings Economic Development Corporation, a South Dakota nonprofit corporation (“**BEDC**”), the City of Brookings, South Dakota (“**City**”), Berry Properties, LLC, a South Dakota limited liability company (“**Berry Properties**”), Millborn Seeds, Inc., a South Dakota corporation (“**Millborn Seeds**”), and Brookings Municipal Utilities (“**BMU**”). Berry Properties and Millborn Seeds are collectively referred to herein as “**Developers**”. All the forementioned are collectively referred to as the “**Parties**”.

Recitals

WHEREAS, the Parties previously entered into that certain Real Estate Purchase and Property Development Agreement dated April 11, 2023 (the “**Development Agreement**”), along with the City of Brookings, South Dakota (the “**City**”), and Brookings Municipal Utilities (“**BMU**”), wherein the City and the BEDC agreed to sell to the Developers approximately 13.09 acres in a lot legally described as

Lot Three (3) in Block Ten (10) of Freeland Addition, an Addition to the City of Brookings, County of Brookings, State of South Dakota.

the “**Property**”.

WHEREAS, the Developer’s overall plan, which was stipulated to and agreed with the other Parties in the Development Agreement, was to develop a “logistics and ag innovation ecosystem upon the above-described property.”

WHEREAS, Exhibit “B” to the Development Agreement was a statement of Restrictive Covenants agreed to between the Parties (the “**Restrictive Covenants**”). Section 2 of the Restrictive Covenants provides:

While Developers plan to start construction of the first facility (Phase One (1) described above in Section 7) in the summer of 2023, if Developers do not start construction by April 1, 2025, BEDC can purchase all of the real property originally conveyed to Berry Properties, LLC pursuant to this Real Estate Purchase and Property Development Agreement at the original purchase price paid by Developers.

the “**Option to Purchase**”.

WHEREAS, the Parties agree that Developers did not start construction by April 1, 2025, and BEDC may exercise the Option to Purchase described above, should it elect to do so.

WHEREAS, the Parties wish to come to an agreement concerning development of the Property and the Option to Purchase.

NOW, THEREFORE, in consideration of the above recitals, the agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the following is agreed between the Parties:

1. Acknowledgment. The Parties acknowledge the recitals above are true and correct and are made a part of this Agreement. Capitalized terms used and not defined in this Agreement have the meanings assigned to such terms in the Development Agreement.

2. No Development Without Agreement. Following the Effective Date of this Agreement, the Parties agree that Developers will not commence construction on the Property without the prior consent and agreement of BEDC, which may be withheld in BEDC's sole discretion.

3. No Encumbrance; No Subordination. During the Negotiation Period, as defined below, Developers will not use the Property as collateral for any loan, nor otherwise encumber the Property. The Parties agree that during the Negotiation Period BEDC will not be required to subordinate its Option to Purchase the Property or other rights set forth in the Restrictive Covenants to any lender, unless the City consents to such subordination.

4. Limited Forbearance of Option to Purchase. The Parties agree that BEDC will not exercise its Option to Purchase the Property for at least one year following the Effective Date of this Agreement (the "**Negotiation Period**").

5. Negotiations Regarding Development. During the Negotiation Period, and after the Negotiation Period in BEDC's sole discretion, BEDC and Developers will engage in negotiations to determine what kind of construction and development would be sufficient, in BEDC's discretion, for BEDC to forego exercising its Option to Purchase the Property. The goal of the construction and development must be to promote the advancement of a public purpose or industrial development purpose as enumerated in SDCL § 9-54-1.

6. Exercise of Option. After the expiration of the Negotiation Period, in the event the Parties are not able to reach an agreement concerning the construction and development to take place on the Property, BEDC may exercise its Option to Purchase the Property. Notwithstanding anything to the contrary, if, during the Negotiation Period, BEDC provides the consent referenced in Section 2 above and Developers subsequently commence construction on the Property, BEDC's Option to Purchase, as set forth in Section 2 of the Restrictive Covenants, shall automatically terminate and be of no further force or effect; provided, however, that except as expressly provided herein, nothing in this Agreement shall operate or be deemed to constitute a waiver of any other repurchase rights or remedies (other than those provided under Section 2 of the Restrictive Covenants) granted to BEDC pursuant to the Development Agreement and the Restrictive Covenants.

7. Successor in Interest to BEDC. The Parties to this Agreement agree and acknowledge that BEDC has or intends to combine with one or more economic development organizations related to the City. Developers and BEDC agree and acknowledge that the Brookings Regional Growth Alliance, or such other South Dakota nonprofit corporation that

BEDC has designated in writing to be its successor, will be the successor in interest to BEDC for purposes of this Agreement and the Development Agreement (including the Restrictive Covenants attached thereto), and will bear all the rights and obligations of BEDC provided in this Agreement and the Development Agreement.

8. Notices. Any notice or other communication to any party in connection with this Agreement or the Development Agreement must be in writing and be sent by manual delivery, overnight courier or United States mail (postage prepaid) addressed to such party at the address specified below, or at such other or additional address as such party specified to the other party in writing. All periods of notice (if any) will be measured from the date of delivery thereof if manually delivered, from the first business day after the date of sending if sent by overnight courier, or from four days after the date of mailing if mailed. Each notice or other communication should be addressed as follows:

If to BEDC:

Brookings Economic Development Corporation
2301 Research Park Way
Brookings, SD 57006

With a copy to (which will not constitute service):

Brendan Reilly
Davenport, Evans, Hurwitz & Smith, LLP
206 West 14th Street
Sioux Falls, SD 57104

If to City of Brookings:

City of Brookings
520 3rd Street, Suite 230
Brookings, SD 57006

With a copy to (which will not constitute service):

J. Vincent Jones
Woods, Fuller, Shultz & Smith, P.C.
300 South Phillips Ave., Suite 300
Sioux Falls, SD 57104

If to Berry Properties, LLC:

Berry Properties, LLC
1530 17th Avenue South
Brookings, SD 57006

If to Millborn Seeds, Inc.:

Millborn Seeds, Inc.
2132 32nd Avenue
Brookings, SD 57006

If to Brookings Municipal Utilities:

Brookings Municipal Utilities
525 Western Avenue
Brookings, SD 57006

The Parties agree the notice addresses set forth in this Agreement supersede and replace all prior notice addresses.

9. No Further Commitment to Extend or Forbear. Except as specifically provided in this Agreement, BEDC is not committed and is not committing at this time to forbear from exercising its Option to Purchase for longer than the Negotiation Period. Any agreement to extend the Negotiation Period must be expressly set forth in writing between, and signed by authorized representatives of, the Parties.

10. Right to Record. Any of the Parties may cause, under its signature alone, to be recorded a Memorandum noting this existence of this Agreement with the Register of Deeds for Brookings County, South Dakota, and informing third parties that additional information may be obtained from the Parties.

11. Time. Time is of the essence with respect to all provisions of this Agreement.

12. Effective Date. The “**Effective Date**” shall mean the date that the last of the Parties executes this Agreement.

13. No Amendment. No Amendment, modification, or waiver of the provisions of this Agreement or the Development Agreement will be effective unless the same is in writing and signed by all Parties.

14. Governing Law. This Agreement will be governed by and construed under and in accordance with the laws of the State of South Dakota.

15. No Waiver. BEDC’s failure to exercise its Option to Purchase or any other right or remedy provided under this Agreement or the Development Agreement will not operate as a waiver of the Option to Purchase or any other right or remedy.

16. Severability. If any terms, covenants or conditions of this Agreement will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held

invalid or unenforceable, will not be affected thereby and each term, covenant or condition of this Agreement will be valid and be enforced to the fullest extent permitted by law.

17. Waiver of Jury Trial. The Parties agree that a trial of any lawsuit based on statute, common law, and/or related to this Agreement or the Development Agreement will be to a judge and not a jury.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original but all of which, when taken together, will be one and the same document. Counterparts may be signed and delivered via electronic mail (including by .pdf, .tif, .gif, .jpeg, or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

(signature page follows)

Dated this ____ day of _____, 2025.

BROOKINGS ECONOMIC DEVELOPMENT CORPORATION

By: _____

Its: _____

Dated this ____ day of _____, 2025.

BROOKINGS REGIONAL GROWTH ALLIANCE

By: _____

Its: _____

Dated this ____ day of _____, 2025.

BERRY PROPERTIES, LLC

By: _____

Its: _____

Dated this ____ day of _____, 2025.

MILLBORN SEEDS, INC.

By: _____

Its: _____

Dated this ____ day of _____, 2025.

CITY OF BROOKINGS, SOUTH DAKOTA

Oepke G. Niemeyer, Mayor

ATTEST:

Bonnie Foster, Clerk

Dated this ____ day of _____, 2025.

BROOKINGS MUNICIPAL UTILITIES

By: _____

Its: _____