

## OPTION AGREEMENT

THIS OPTION AGREEMENT (this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2025 (the "**Effective Date**") by and between Bear Creek DevCo LLC, a Delaware limited liability company ("**Purchaser**"), and Kyle N. Swalheim ("**Owner**").

### ARTICLE 1 PROPERTY

1.1 **Grant of Option.** For and in consideration of the Option Fee Payments (defined below), and other good and valuable consideration, the receipt and sufficiency of which the parties hereto hereby acknowledge, Owner does hereby grant to Purchaser the exclusive right and option to purchase (the "**Option**") that certain real property situated in Brown County (the "**County**"), Wisconsin (the "**State**") and consisting of approximately 36.42 acres, as legally described on **Exhibit A** attached hereto and incorporated herein (the "**Land**"), together with (i) all buildings, structures, fixtures and other improvements, if any, located on the Land; and (ii) all other appurtenances pertaining to the Land, including, without limitation, all development rights, entitlements, water rights, claims, strips and gores, easements benefiting the Land, and rights in and to adjoining roadways (the Land and such other property being hereinafter collectively called the "**Property**").

1.2 **Mineral Rights.** During the Option Period, any time before Closing and following the Closing, (a) Owner shall not enter into any agreement allowing the location of any drill site upon the Property, without the prior written consent of Purchaser; (b) Owner hereby waives any and all rights to use the Property for the exploration or development of all oil, gas, mineral, metal and other deposits in, on or under the Property; and (c) Owner shall not enter into any agreement allowing for the use of the Property for such purposes, without the prior written consent of the Purchaser. This Section 1.2 shall survive the Closing of this Agreement.

#### 1.3 **Recording.**

(a) **Memorandum of Agreement.** On the Effective Date, Owner and Purchaser shall also execute and deliver a Memorandum of Option Agreement in the form attached hereto as **Exhibit B** (the "**Memorandum**"). Within five (5) business days after the full execution and delivery of this Agreement and the Memorandum, Purchaser and Owner shall each deliver its executed and acknowledged original of the Memorandum to the Title Company (defined below) for recordation, at Purchaser's expense, by the Title Company in the real property records of the County.

(b) **Release.** If Purchaser does not timely exercise its Option, or having exercised the Option fails to consummate the purchase in accordance with the terms of this Agreement, then within thirty (30) days following the expiration or termination of this Agreement and upon request from Owner, Purchaser shall execute and record in the real property records of the County a release of the Memorandum. Purchaser's obligation under this Section 1.3(b) shall survive the termination or expiration of this Agreement.

### ARTICLE 2 OPTION AND PURCHASE

2.1 **Option Period.** Owner hereby grants to Purchaser the Option for a period of two (2) years from the Effective Date (the "**Option Period**").

2.2 **Option Fee Payment.** Within fifteen (15) business days after the full execution and delivery of this Agreement and the Memorandum, Purchaser shall deliver to Owner a check or wired funds in the amount of \$25,000 as the initial option fee payment (the "**Initial Option Fee Payment**"). On or before the six (6)-month anniversary of the Effective Date, Purchaser shall deliver to Owner a check or



wired funds in the amount of \$25,000 as the second option fee payment (the "**Second Option Fee Payment**"). On or before the one (1) year anniversary of the Effective Date, Purchaser shall deliver to Owner a check or wired funds in the amount of \$25,000 as the third option fee payment (the "**Third Option Fee Payment**"). On or before the eighteen (18)-month anniversary of the Effective Date, Purchaser shall deliver to Owner a check or wired funds in the amount of \$25,000 as the fourth option fee payment (the "**Fourth Option Fee Payment**"). The Initial Option Fee Payment, the Second Option Fee Payment, the Third Option Fee Payment, and the Fourth Option Fee Payment are sometimes referred to herein individually as an "**Option Fee Payment**" and collectively as the "**Option Fee Payments**". If Purchaser shall fail to timely deliver any Option Fee Payment to Owner, then Owner shall provide written notice to Purchaser (an "**Option Fee Payment Late Notice**") and Purchaser shall have five (5) days after Purchaser's receipt of the Option Fee Payment Late Notice to deliver to Owner the Option Fee Payment that is then due and owing. If an Option Fee Payment Late Notice has been issued and Purchaser shall fail to deliver the Option Fee Payment to Owner within said five (5) day period, then upon the expiration of said five (5) day period, this Agreement automatically shall terminate without further notice to or action by any person, and shall be void and of no force and effect. The Option Fee Payments shall be non-refundable to Purchaser but credited against the Purchase Price at Closing.

### **ARTICLE 3** **EXERCISE OF THE OPTION**

3.1 **Exercise of the Option.** Purchaser, in its sole discretion, may exercise the Option by delivering to Owner, on or before the expiration of the Option Period, written notice of its exercise of the Option (the "**Exercise Notice**"). Upon exercise of the Option, Owner shall be obligated to sell and Purchaser shall be obligated to purchase the Property in accordance with and subject to the provisions of this Agreement. If Purchaser should fail to timely exercise the Option on or before the expiration of the Option Period, and provided that this Agreement has not been previously terminated, then as of such expiration neither party shall have any further liability to the other under this Agreement, except as otherwise expressly provided in this Agreement.

3.2 **Purchase Price.** The purchase price ("**Purchase Price**") for the Property shall be \$50,000 per acre. \$11,821,000

3.3 **Closing.** In the event Purchaser exercises the Option, the transaction contemplated hereby shall be closed ("**Closing**") on the date designated by Purchaser which shall be no sooner than thirty (30) days and no later than ninety (90) days after the date of the Exercise Notice. Closing shall be consummated through a deed and money escrow to be held at the Title Company's offices, subject to the conditions to closing as set forth in **Exhibit C** and the closing deliveries and terms set forth in **Exhibit D**.

3.4 **Closing & Farming Activities.** If as of the Effective Date the Property is being used for the growing of crops (the "**Farming Activities**"), Owner shall have the right to continue such Farming Activities on a year-by-year basis (subject to the limitations described in Section 6.2(a) below). If Owner notifies Purchaser that the Property is being used for Farming Activities, and if Purchaser elects to exercise this Option and schedule the Closing prior to the harvest of any growing crops, then Purchaser shall reimburse Owner (or any farm tenant designated by Owner in writing to Purchaser) a one-time payment for the fair market value for the damage or displacement of such growing crops on the Property for the single applicable harvest in accordance with the calculation for crop damages provided in Section 4.2(b) below; provided, however if Purchaser provides written notice to Owner to cease the Farming Activities no later than October 1 of the preceding calendar year, and if Owner continues the Farming Activities notwithstanding receipt of such written notice, Purchaser shall have the right to exercise the Option and provide for a Closing prior to the harvest of any growing crops and Purchaser shall have no obligation to Owner or any tenant farmer of the Property for the damages or loss of such growing crops.

### **ARTICLE 4** **PURCHASER DUE DILIGENCE**

4.1 **Owner Deliverables.** Within fifteen (15) days after the Effective Date, Owner shall provide Purchaser with true, correct and complete copies of the following as it relates to the Property, but only to the extent in Owner's possession or control: (i) any oral or written leases, options, contracts or other occupancy agreements; (ii) any oral or written access, license or easement agreements; (iii) any environmental reports or soil tests; (iv) any drawings or maps of drainage tiles or culverts; (v) building and occupancy permits for any structures on the Property; (vi) any sewage and utility agreements; (vii) any zoning or other governmental permits, certificates or permissions; and (viii) any other similar items related to the Property (collectively, the "**Property Documents**"). Attached as **Exhibit F** is a list of any existing contracts, leases or agreements (written or oral) encumbering or affecting the Property of which Owner is aware (the "**Existing Agreements**"), copies of which shall be provided as part of the Property Documents.

4.2 **Inspections.**

(a) **Tests and Investigation.** Subject to the following provisions of this Section 4.2 and in addition to and without limiting Purchaser's rights under Section 4.3 of this Agreement, Purchaser shall have the right from the Effective Date through the later of (i) the expiration of the Option Period, or (ii) if the Option is exercised, the date of Closing, to (w) enter onto and inspect the Property, including, without limitation, to conduct engineering studies, geotechnical borings or tests, soil tests, and any invasive or non-invasive environmental studies, and investigate other matters related to the Property, (x) examine, inspect, and investigate the Property Documents, (y) obtain all necessary approvals, including, without limitation, as hereinafter provided, and (z) satisfy itself as to all other matters relating to the Property and its intended use of the Property (collectively, the "**Inspections**"), in each case above, in Purchaser's sole discretion and at Purchaser's sole cost and expense. Purchaser shall provide 24-hour prior notice to Owner prior to accessing the Property to perform the Inspections permitted under this Section 4.2(a) and endeavor to minimize the impact on Owner's use of the Property. After any test or investigation on the Property, Purchaser will return the Property to substantially the same condition that existed immediately prior to such test or investigation, including, without limitation, plugging any and all boreholes drilled by Purchaser or Purchaser's agents or contractors with native materials.

(b) **Compensation for Crop Damage.** In the event Owner suffers any damage to its crops as a result of Purchaser's Inspections of the Property, Purchaser agrees to compensate Owner for any such crop damage in an amount equal to the fair market value of the crops. Promptly after any damages to crops have occurred on the Property, Purchaser shall work with Owner to determine the fair market value of the crops based on the amount of damaged acres and crop price and yield. Owner may submit records and documentation to Purchaser that Owner believes accurately reflect the amount of damaged acres and crop yield. The parties shall try in good faith to agree to the extent of damage and acreage affected. If the parties cannot agree, they shall have the area measured and the extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, the expense of such adjuster or agent to be equally split between Owner and Purchaser.

4.3 **Development and Other Approvals.** During the Option Period and, if Purchaser exercises the Option, at any time prior to Closing, Owner shall cooperate with Purchaser in good faith and, at the request of Purchaser, join Purchaser in the execution of, or otherwise execute individually as the then current owner of the Property if required, (i) applications and submissions to applicable governmental authorities in connection with Purchaser obtaining the zoning approvals, development approvals, entitlements, tax concessions, consents and permits that are or may become necessary, appropriate, or desirable for Purchaser to develop and operate the Property after Closing, and (ii) non-disturbance agreements, surface waivers, or other instruments with any third party that owns any oil, gas, mineral or other subsurface interest under the Property; provided, however, that without the express consent of Owner, not to be unreasonably withheld, any and all such zoning approvals, development approvals, entitlements, consents and permits and other approvals or agreements arising from the actions contemplated in this Section 4.3 (i) shall in no event be binding upon Owner and (ii) shall not be binding on the Property unless and until Purchaser acquires the Property at Closing pursuant to this Agreement. Additionally, Owner shall not be required to incur any third party out of pocket expenses in connection with assisting Purchaser in the execution or pursuit of the foregoing applications, submissions and/or

instruments, and all such third party out of pocket expenses relating to the same shall be paid by Purchaser.

4.4 **AS-IS.** WITH THE EXCEPTION OF THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 9.3, EXHIBIT E AND IN THE CLOSING DOCUMENTS, AND WITH THE EXCEPTION OF THE COVENANTS SET FORTH IN SECTIONS 6.2 AND 9.3, PURCHASER WILL BE ACQUIRING THE PROPERTY FOLLOWING THE EXERCISE OF THE OPTION, IF AT ALL, "AS IS", WITH ALL FAULTS AND DEFECTS. OWNER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY INTEND TO CONDUCT THEREON, (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY HAVING JURISDICTION, OR (D) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY.

## **ARTICLE 5**

### **TITLE AND SURVEY MATTERS**

5.1 **Title Commitment.** Purchaser shall reasonably select the title company for the transaction hereunder ("**Title Company**"). Purchaser, at Purchaser's expense, may, but shall not be obligated to, request from the Title Company a written commitment (the "**Commitment**") for a current ALTA Owner's Policy of Title Insurance ("**Title Policy**") with gap coverage from the date of the Commitment through the date of recording, including extended coverage over the standard or general exceptions, and all other endorsements required by Purchaser or its lender, if any, naming Purchaser as the insured in the amount of the Purchase Price for the Property, together with copies of all instruments of record reflecting encumbrances, easements or other interests affecting the Property.

5.2 **Survey.** Purchaser, at Purchaser's expense, may, but shall not be obligated to, cause to be prepared a survey of the Property, certified to Purchaser, its successors and assigns, its lender, if any, and the Title Company, and otherwise being acceptable to Purchaser (the "**Survey**"). Owner shall cooperate with Purchaser and Purchaser's agents and contractors in connection with the preparation of the Survey, including, without limitation, allowing Purchaser and its agents and contractors to enter upon the Property at all reasonable times for the purposes of conducting any necessary or desirable field work in connection with the preparation of the Survey. If Purchaser causes a Survey to be prepared, then upon completion of the Survey, Purchaser shall provide a copy of the Survey to Owner for informational purposes only and shall have the right to attach to the Agreement a legal metes and bounds description of the Property as **Exhibit A**, which description shall supersede and replace the **Exhibit A** description attached to the Agreement as of the Effective Date.

5.3 **Objections to Commitment and Survey.** If the Commitment and/or the Survey reveals defects in title or other conditions which Purchaser finds unacceptable (each, a "**Title Objection**"), Purchaser may give written notice to Owner of the Title Objection and Owner shall reasonably cooperate with Purchaser to cure such Title Objection. If the Title Objection cannot be eliminated on or prior to Closing, then Purchaser may, at its option, refuse to close and Owner shall retain the Option Fee Payments. Owner shall have no obligation to cure any such Title Objection except as provided in Section 5.4 or otherwise herein.

5.4 **Removal of Liens.** Notwithstanding anything in this Agreement to the contrary, Owner, at its sole cost and expense, shall be obligated on or before Closing to cure, remove or insure over (in a manner reasonably acceptable to Purchaser) all mortgages, deeds of trust, judgment liens, tax liens, mechanic's and materialmen's liens, and other liens and encumbrances against the Property which either secure indebtedness or can be removed by payment of a liquidated sum of money (collectively "**Monetary Liens**"), whether or not Purchaser objects thereto. If Owner fails to so cure, remove or insure over such



Monetary Liens as provided above, Owner shall be in default under this Agreement; provided, however, that Purchaser, in its sole discretion, may elect to proceed to Closing and withhold from the Purchase Price the amount necessary to cure, remove or insure over such Monetary Liens (in each case in a manner reasonably acceptable to Purchaser).

## **ARTICLE 6** **USE BY OWNER**

6.1 **Continued Use; Improvements.** During the Option Period, and, if Purchaser exercises the Option, at any time prior to Closing, but subject to Owner's covenants in Section 6.2 below, Owner may continue to use the Property in substantially the same manner in which Owner has used the Property prior to the Effective Date, provided that Owner (i) shall cause the Property to be maintained in accordance with all applicable laws, (ii) shall maintain, natural wear and tear excepted, the existing environmental and natural attributes, status and characteristics of the Property, and (iii) shall not allow the Property to be used for the dumping of off-site debris or materials, including, without limitation, environmentally hazardous materials.

### 6.2 **Covenants.**

(a) From the Effective Date until the Closing, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, Owner shall not (i) enter into, extend, renew, amend or terminate any contracts or agreements, including, without limitation, the Existing Agreements, other than Existing Agreements for a term of not more than one (1) year and that can be terminated, without further consideration nor penalty on not more than ninety (90) days prior notice (and which Owner shall be obligated to terminate on or before Closing), (ii) perform any material grading or excavation, (iii) construct any new material improvement or structure or make any other material change to an existing improvement or structure upon or about the Property, (iv) take any action or omit to take any action that would cause any of the representations or warranties by Owner herein to become untrue, or (v) cease maintaining the Property pursuant to the normal scope of maintenance that existed as of the Effective Date. At the time Purchaser provides the Exercise Notice, Purchaser shall notify Owner which, if any, of the Existing Agreements Purchaser intends to assume at Closing (the "**Accepted Existing Agreements**"). From the Effective Date until the Closing, without the prior written consent of Purchaser, which consent shall be in Purchaser's sole discretion, Owner shall not enter into any agreement or instrument or take any action that would (A) transfer or convey the Property or any portion thereof, (B) bind Purchaser or encumber the Property or any portion thereof after Closing (other than any Accepted Existing Agreements as provided above), or (C) interfere with Purchaser's exercise of its rights under this Agreement or Purchaser's intended use of the Property, including, without limitation, the imposition of any easements, covenants, conditions or restrictions on the Property.

(b) From and after the Effective Date until the Closing, Owner shall pay and discharge before delinquency all real estate taxes and similar taxes, charges, debts, costs, charges, and expenses of or against the Property (collectively "**Taxes**") that are incurred or that accrue throughout the Option Period or at any time prior to Closing and any assessments which are levied or charged against the Property at any time prior to Closing, and, upon the request of Purchaser, shall provide evidence of such payment to Purchaser. If Owner fails to timely pay any such obligations for which it is responsible hereunder, including, without limitation, Taxes and assessments, Purchaser may, at its election (but without obligation), pay the same with any interest and penalties due thereon, and the amount so paid shall be deducted from the Purchase Price at Closing.

## **ARTICLE 7** **DEFAULT**

7.1 **Owner Default.** In the event Owner shall be in default hereunder, and such default is not cured within thirty (30) days of written notice from Purchaser, provided Purchaser is not in default, Purchaser may, in addition to Purchaser's other rights available at law or in equity, but subject to Section 7.3, either (i) terminate this Agreement and not be obligated to purchase the Property from Owner (even if

Purchaser has previously exercised its Option); or (ii) bring a suit for specific performance of this Agreement.

7.2 **Purchaser Default.** Except as provided in Section 2.2 (for which a separate notice, cure period and remedy is provided for), in the event Purchaser shall be in default hereunder, and such default is not cured within thirty (30) days of written notice from Owner, provided Owner is not in default, Purchaser, shall, as its sole and exclusive remedy, pay to Owner the sum of \$50,000 as liquidated damages and not as a penalty, it being acknowledged and agreed by Owner and Purchaser that the sum of \$50,000 is a reasonable forecast of just compensation for the harm that could be caused by Purchaser's default, that the harm that could be caused to Owner by such default is one that is difficult or impossible to accurately ascertain or predict, and that the payment of the sum of \$50,000 to Owner upon Purchaser's default as provided herein shall constitute full satisfaction and accord of Purchaser's obligations under this Agreement.

7.3 **Actual Damages.** Notwithstanding anything contained herein to the contrary, the liability of Owner hereunder for any default by Owner under this Agreement shall be limited to Purchaser's actual direct damages, and Owner shall not be liable for any consequential, punitive or exemplary damages related to such default. Notwithstanding anything contained herein to the contrary, the liability of Purchaser hereunder for any default by Purchaser under this Agreement shall be limited to the liquidated damages as provided in Section 7.2 above and in no event shall Purchaser be liable for any consequential, punitive or exemplary damages related to such default.

## **ARTICLE 8**

### **CONDEMNATION**

8.1 **Condemnation; Right to Terminate.** If, at any time prior to Closing (whether before or after the exercise by Purchaser of the Option), a notice of a condemnation proceeding with respect to all or any portion of the Property is received by Owner, Owner shall immediately notify Purchaser of such condemnation proceeding and include therewith a copy of the condemnation notice. Unless this Agreement has been previously terminated by Purchaser, Owner shall not agree to a conveyance in lieu thereof or otherwise settle any such proceeding without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. If the taking or threatened taking involves a material portion of the Property (hereafter defined), Purchaser may elect, by written notice to be delivered to Owner on or before the sooner of (i) the fifteenth (15th) day after Purchaser's receipt of such condemnation notice, or (ii) the date of Closing, to terminate this Agreement, in which event the parties hereto shall have no further obligations hereunder, except for obligations which are expressly intended to survive the termination of this Agreement. If Purchaser elects to close this transaction notwithstanding such taking or condemnation of a material portion of the Property, there shall be no reduction in the Purchase Price; provided, however, Purchaser shall be entitled to any award paid to Owner as a result of such taking or condemnation proceedings or, if not yet paid, an assignment at Closing of all of Owner's right, title and interest in the right to the award. As used herein, a "material portion of the Property" means any part of the Property reasonably required, in Purchaser's good faith business judgment, for Purchaser's intended development and use of the Property. If any condemnation or threatened condemnation does not involve a material portion of the Property, Purchaser shall not have the right to terminate this Agreement pursuant to this Section 8.1, and if Purchaser thereafter proceeds to Closing, Purchaser shall be entitled to any award paid to Owner as a result of such taking or condemnation proceedings or, if not yet paid, an assignment at Closing of all of Owner's right, title and interest in the right to the award. The provisions of this Section 8.1 shall survive the Closing of this Agreement.

## **ARTICLE 9**

### **OTHER PROVISIONS**

9.1 **Notices.** All notices, demands and requests hereunder shall be in writing and shall be deemed to have been properly delivered as of the time of delivery if personally delivered, as of the time actually received and signed for if sent by United States certified mail, return receipt requested, postage prepaid, or as of the time of delivery by Federal Express (or comparable express delivery system) if sent by such method with all costs prepaid. All notices, demands and requests hereunder shall be addressed to:



To Owner:

Kyle N. Swalheim

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Purchaser:

Bear Creek DevCo LLC  
712 Main Street, Suite 3100  
Houston, TX 77002  
Attn: General Counsel; legal@cloverleafinfra.com

or to such other addresses which either party may so designate by sending notice as aforesaid.

9.2 **Time of the Essence; Business Days.** The obligations and undertakings of the parties hereto shall be performed within the time specified therefore, time being of the essence. However, if the expiration of any time period set forth herein falls on a Saturday, Sunday or legal holiday, such time period shall be deemed to expire on the next day which is not a Saturday, Sunday, or legal holiday. A legal holiday shall be any day on which state and national banks doing business in the State are authorized or permitted by applicable law to be closed.

9.3 **Broker Fees and Commissions.** The parties mutually warrant and represent to the other that neither has authorized any brokers to act on its behalf in respect of the transaction contemplated hereby, and that neither has dealt with any broker in connection therewith, except for Coldwell Banker Real Estate Group (the "**Broker**"). Each of the parties shall indemnify and save the other harmless from any claim by any broker or other person, other than Broker, for commissions or other compensation for bringing about the transactions contemplated hereby where such claim is based on the purported employment or authorization of any broker or other person by such party. Owner shall be responsible to pay the Broker at the Closing a commission amount equal to 3% of the Purchase Price. The provisions of this Section 9.3 shall survive the Closing or termination of this Agreement.

9.4 **Successors and Assigns; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns. Owner may not assign this Agreement without the express prior written consent of Purchaser, which consent shall not be unreasonably withheld. Purchaser may assign or pledge (including any collateral assignment of) this Agreement and Purchaser's rights and obligations hereunder to any affiliate of Purchaser and to any other person or entity upon written notice to Owner.

9.5 **Confidentiality.** Owner will maintain in strict confidence, for the sole benefit of Purchaser, all information pertaining to the financial terms of this Agreement or Purchaser's intended use of the Property, whether disclosed by Purchaser or discovered by Owner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or any party acting by, through or under Owner, or (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity. Owner will not use any such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Purchaser.

9.6 **Entire Agreement; Counterparts and Electronic Execution.** This writing and the Exhibits hereto set forth the entire agreement between the parties, and no other statement, agreement or understanding, oral or written, will be recognized or enforced unless the same shall be in writing and signed by both parties subsequent to the date hereof. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement will be effective upon the delivery by electronic mail (in PDF format) of fully executed counterparts.

9.7 **Applicable Law; Attorney's Fees.** This Agreement shall be governed by laws of the State. In the event that either party brings suit for the breach of any covenant, condition, or agreement

contained herein, the prevailing party shall be entitled to recover all reasonable attorneys' fees and expenses and court costs in connection therewith.

[signature page follows]



The parties hereto, intending legally to be bound hereby, have executed this Agreement as of the Effective Date.

**OWNER:**

Kyle N. Swalheim

By: \_\_\_\_\_

**PURCHASER:**

Bear Creek DevCo LLC

By: \_\_\_\_\_

Name: David Berry

Title: CEO

## EXHIBIT A

### Description of Land

#### PARCEL 1:

The Southeast Quarter of the Northwest Fractional Quarter (SE 1/4 of NW Fract'l 1/4), Section Six (6), Township Twenty-One (21) North, Range Twenty (20) East, in the Village of Greenleaf, Brown County, Wisconsin, EXCEPTING THEREFROM that part described in Volume 15 Certified Survey Maps, Page 15, except part in Volume 8 Certified Survey Maps, Page 253, except part described in Jacket 14859 Records, Image 12, and further excepting any parts used and/or conveyed for road purposes.

Tax Key No.: VG-359

#### PARCEL 2:

A parcel of land located in the Southeast Quarter of the Northwest Fractional Quarter (SE 1/4 of NW Fract'l 1/4), Section Six (6), Township Twenty-One (21) North, Range Twenty (20) East, in the Village of Greenleaf, Brown County, Wisconsin, described as follows:

Commencing at the West One-quarter corner of said Section 6, thence North 90°00'00" East along the East-West One-quarter line 1377.66 feet to the point of beginning; thence continuing North 90°00'00" East 692.44 feet; thence North 08°10'08" East 715.23 feet; thence North 84°53'36" West 224.17 feet; thence South 8°13'38" West 109.33 feet; thence North 84°40'00" West 507.18 feet; thence South 04°18'06" West 668.75 feet to the point of beginning, EXCEPTING THEREFROM those parts used and/or conveyed for road purposes.

Tax Key No.: VG-359-2



EXHIBIT B

Form of Memorandum of Option Agreement

Document Number	MEMORANDUM OF OPTION AGREEMENT_
	<u>Document Title</u>
THIS MEMORANDUM OF OPTION AGREEMENT is made effective this ____ day of _____, 2025, by and between Kyle N. Swalheim (" <b>Owner</b> "), and Bear Creek DevCo LLC, a Delaware limited liability company (" <b>Purchaser</b> ").	
THAT, by that certain Option Agreement dated _____, 2025 (the " <b>Option Agreement</b> "), by and between Owner and Purchaser, Owner has granted to Purchaser an option to purchase fee simple title to that certain real property consisting of approximately 36.42 acres, situated in Brown County, Wisconsin (the " <b>Land</b> ") as more particularly described on <u>Exhibit A</u> attached hereto and incorporated herein, together with (1) all buildings, structures, fixtures and other improvements located, if any, on the Land; and (2) all other appurtenances pertaining to the Land, including, without limitation, all development rights, entitlements, water rights, claims, strips and gores, easements benefiting the Land, and rights in and to adjoining roadways. The option period is for two (2) years, expiring on _____, 2027.	
Recording Area	
THIS DOCUMENT PREPARED BY, AND AFTER RECORDING RETURN TO:	
Bear Creek DevCo LLC Attn: General Counsel 712 Main St., Suite 3100 Houston, TX 77002	
PIN: See Exhibit A	

The purpose of this memorandum is to give notice of the existence of Purchaser's option rights granted in the Option Agreement, to which Option Agreement reference is made for a full description of the terms and conditions thereof. In the event any of the terms and provisions of this memorandum conflict with the terms and provisions of the Option Agreement, the terms and provisions of the Option Agreement shall control.

This Memorandum of Option Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

EXECUTED as of \_\_\_\_\_, 2025.

[SIGNATURES AND NOTARY BLOCKS ON THE FOLLOWING PAGES]

**OWNER:**

**Kyle N. Swalheim**

By: \_\_\_\_\_

STATE OF \_\_\_\_\_

§  
§  
§

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2025, by Kyle N. Swalheim, an individual.

[SEAL]

\_\_\_\_\_  
Notary Public State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**PURCHASER:**

**Bear Creek DevCo LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: David Berry  
Title: CEO



STATE OF TEXAS

§  
§  
§

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2025, by David Berry, as CEO of Bear Creek DevCo LLC, a Delaware limited liability company.

[SEAL]

\_\_\_\_\_  
Notary Public State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Exhibit A to  
MEMORANDUM OF OPTION AGREEMENT

Description of Land

*[Pursuant to the terms of the Agreement, the description of the Land contained on this Exhibit A shall, upon request by Purchaser, be replaced with a more detailed description approved by Purchaser and its title company or surveyor]*

PARCEL 1:

The Southeast Quarter of the Northwest Fractional Quarter (SE 1/4 of NW Fract'l 1/4), Section Six (6), Township Twenty-One (21) North, Range Twenty (20) East, in the Village of Greenleaf, Brown County, Wisconsin, EXCEPTING THEREFROM that part described in Volume 15 Certified Survey Maps, Page 15, except part in Volume 8 Certified Survey Maps, Page 253, except part described in Jacket 14859 Records, Image 12, and further excepting any parts used and/or conveyed for road purposes.

Tax Key No.: VG-359

PARCEL 2:

A parcel of land located in the Southeast Quarter of the Northwest Fractional Quarter (SE 1/4 of NW Fract'l 1/4), Section Six (6), Township Twenty-One (21) North, Range Twenty (20) East, in the Village of Greenleaf, Brown County, Wisconsin, described as follows:

Commencing at the West One-quarter corner of said Section 6, thence North 90°00'00" East along the East-West One-quarter line 1377.66 feet to the point of beginning; thence continuing North 90°00'00" East 692.44 feet; thence North 08°10'08" East 715.23 feet; thence North 84°53'36" West 224.17 feet; thence South 8°13'38" West 109.33 feet; thence North 84°40'00" West 507.18 feet; thence South 04°18'06" West 668.75 feet to the point of beginning, EXCEPTING THEREFROM those parts used and/or conveyed for road purposes.

Tax Key No.: VG-359-2

## EXHIBIT C

### Conditions to Closing

1. **Purchaser's Conditions to Closing.** The obligation of Purchaser to purchase the Property at Closing is contingent upon satisfaction (or waiver in writing by Purchaser) of all of the following conditions precedent:

(a) **Representations and Warranties.** All of Owner's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and as of the date of Closing.

(b) **Performance of Covenants.** Owner shall have satisfied all obligations of Owner required by the terms of this Agreement and performed all covenants and agreements of Owner required by the terms of this Agreement and no default by Owner under this Agreement shall exist.

(c) **Title and Survey.** There shall be no Monetary Liens.

(d) **Removal of Personal Property.** Unless Purchaser has expressly notified Owner in writing that Purchaser accepts one or more items of personal property, all personal property of Owner shall be removed from the Property on or before Closing.

(e) **Termination of Existing Agreements.** All Existing Agreements other than the Accepted Existing Agreements shall be terminated on or before Closing.

(f) **Adverse Effects.** No material change shall have occurred or be threatened with respect to the Property after the Effective Date, which would adversely affect Purchaser's intended use for the Property.

(g) **Governmental Approvals.** Purchaser shall have obtained all zoning, development, tax or other approvals or agreements necessary or desired by Purchaser for Purchaser's intended use of the Property.

2. **Failure of Conditions Precedent to be Satisfied.** If, on the date of Closing, (x) Owner shall have failed to satisfy those conditions precedent identified as in Section 1 of this **Exhibit C** above (other than Section 1(g)) or (y) Purchaser shall have failed to obtain any governmental approvals as contemplated under Section 1(g) of this **Exhibit C**, then Purchaser may, at its option, (A) waive such condition(s) in writing and proceed to close the sale and purchase of the Property hereunder, (B) in the case of clause (x) only, exercise the remedies expressly provided to Purchaser under Section 7.1 for a breach by Owner of this Agreement, or (C) terminate this Agreement by delivery of a written termination notice to Owner on or before the date of Closing, in which event all rights and obligations hereunder of each party shall terminate, and neither party shall have any further liability to the other under this Agreement, except as otherwise expressly provided in this Agreement.

## EXHIBIT D

### Closing Deliveries, Closing Costs and Prorations

1. **Purchaser Deliveries at Closing.** At Closing, Purchaser shall take the following actions and/or deliver, or cause to be delivered, to Owner (through the escrow with the Title Company) the following:

(a) **Purchase Price.** Purchaser shall pay the Purchase Price, subject to those adjustments as provided herein.

(b) **Closing Statement.** A closing statement signed by Purchaser.

(c) **Other Documents.** Purchaser shall execute and deliver such other documents as are customarily executed in the State by purchasers in connection with the acquisition of real property, including all required closing statements, affidavits and any other instruments that may be reasonably required by the Title Company.

2. **Owner Deliveries at Closing.** At Closing, Owner shall take the following actions and/or deliver, or cause to be delivered, to Purchaser (through the escrow with the Title Company) the following:

(a) **Deed.** Owner shall execute and deliver a special warranty deed (the "**Deed**") in form attached hereto as **Exhibit G**, or otherwise in form reasonably satisfactory to Purchaser and the Title Company.

(b) **Bill of Sale.** Owner shall execute and deliver a Bill of Sale in form and substance reasonably satisfactory to Purchaser for any personal property Purchaser expressly agrees in writing to allow to remain on the Property.

(c) **Assignment of Intangible Property.** Owner shall execute and deliver an Assignment of Intangible Property in form and substance reasonably satisfactory to Purchaser in order to fully and completely transfer and assign to Purchaser all of Owner's right, title, and interest in and to any licenses, permits, certificates of occupancy and governmental approvals with respect to the Property.

(d) **Assignment.** Owner shall execute and deliver an Assignment in form and substance reasonably satisfactory to Purchaser for any Accepted Existing Agreements.

(e) **Owner's Affidavit and GAP Indemnity.** An owner's affidavit and gap indemnity (or equivalent documents required by the Title Company) duly executed and acknowledged by Owner.

(f) **Transfer Tax Declaration.** The Wisconsin Real Estate Transfer Return filed with the Wisconsin Department of Revenue for the transactions contemplated hereby, and its corresponding receipt.

(g) **FIRPTA Certificate.** Owner shall execute and deliver a certificate meeting the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended.

(h) **Closing Statement.** A closing statement signed by Owner.

(i) **Possession.** Owner shall deliver possession of the Property to Purchaser at Closing, free and clear of all parties or tenants in possession, subject only to the Accepted Existing Agreements.

(j) **Other Documents.** Owner shall execute and deliver such other documents as are customarily executed by sellers in the State in connection with the conveyance of real property,



including all required closing statements, releases, affidavits, and any other instruments that may be reasonably required by the Title Company.

3. **Prorations.**

(a) All Taxes relating to the Property for the years prior to the year of Closing shall be paid in full by Owner. All Taxes relating to the Property for the year of Closing shall be prorated as of the date of Closing between Owner and Purchaser. As between Owner and Purchaser, Owner shall be liable for all Taxes attributable to any period prior to the date of Closing, and Purchaser shall be liable for all Taxes attributable to any period from and after the date of Closing. If the amount of Taxes for the year of Closing are not known at the time of Closing, Purchaser shall receive a credit against the Purchase Price in an amount equal to 100% of the most recent full year's Taxes, and when the final tax bill becomes available, Owner or Purchaser may request reimbursement from the other party for any excess amount charged to that party at Closing. The obligations under this Section 1.3(a) shall survive Closing.

(b) Special assessments which are levied or charged against the Property as of Closing shall be paid by Seller at Closing, whether or not then due and payable.

(c) Fees, costs or expenses paid or payable under any Accepted Existing Agreements shall be prorated as between Owner and Purchaser, with Owner being liable for all fees, costs and expenses attributable to any period prior to the date of Closing, and Purchaser being liable for all fees, costs and expenses attributable to any period from and after the date of Closing.

(d) If there are other items, the credit or proration of which are necessary to fairly allocate the benefits and burdens of ownership of the Property, such items shall be prorated or credited, as the case may be, at Closing and unless stated to the contrary above, all adjustments and prorations shall be final.

(e) If the Property has been designated or valued as agricultural, open space or other special category, such that its sale or change of use would trigger the imposition of any "rollback", conversion charge or "catch up" tax, Purchaser shall be responsible for any such taxes and charges resulting from a change in use of the Property after Closing.

4. **Closing Costs.** Owner and Purchaser each agrees to pay the following costs at Closing:

(a) **Owner's Costs.** Owner agrees to pay the cost of preparing and recording any releases necessary to convey the Property in accordance with this Agreement; one-half (1/2) of any and all escrow or closing fees charged by the Title Company; Owner's own legal fees; special assessment letter fees; and State, county and local documentary stamps and similar real property transfer taxes, unless the governing statute expressly allocates the buyer as the responsible party for such stamps or transfer taxes.

(b) **Purchaser's Costs.** Purchaser agrees to pay the cost of preparing the closing documents (other than releases); recording fees for the Deed; the premium costs for the Title Policy; one-half (1/2) of any and all escrow or closing fees charged by the Title Company; the cost of the Survey; Purchaser's own legal fees, and to the extent mandated by the local governing statute, State, county and local documentary stamps and similar real property transfer taxes.

(c) **Other Closing Costs.** Any other closing costs not specifically allocated to Owner or Purchaser herein shall be allocated between the parties in accordance with the customary practices in the State for similar real property transactions.

## EXHIBIT E

### Representations and Warranties

1. **Owner's Representations and Warranties.** As of the Effective Date and as of Closing, Owner hereby represents, warrants and covenants to Purchaser the following:

(a) **Requisite Authority.** Owner is and at Closing shall be the owner in fee simple title of the Property and have the requisite authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) **No Hazardous Substances.** To the best of Owner's knowledge, there are no Hazardous Substances on, in or under the Property, and the Property has never been used to generate, treat, store, dispose, transport or in any manner deal with Hazardous Substances. Owner has not received from any applicable governmental authority written notice of any violation of any applicable Environmental Law. The Property does not contain any underground storage tanks. The term "**Hazardous Substances**" shall mean any substances or materials which, if present in the environment, would under applicable Environmental Laws require assessment, remediation, or corrective action, including, without limitation, chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products which are classified as hazardous, toxic, radioactive, dangerous, or otherwise regulated by or form the basis for liability under any Environmental Law. As used herein, "**Environmental Laws**" shall mean all federal, state and local laws relating to public health, or to pollution or protection of the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface).

(c) **No Violations.** Owner has not received from any applicable governmental authority notice of any violation of any applicable law, rule, regulation, ordinance or code and, to the best of Owner's knowledge, no violation of any applicable law, rule, regulation, ordinance or code exists with respect to the Property.

(d) **No Third Party Rights.** Except for the Existing Agreements, to the best of Owner's knowledge, there are no leases, licenses, service contracts, maintenance contracts, construction contracts, management agreements, or other agreements (written or verbal) encumbering, affecting or relating to the Property, including, without limitation, those that grant or permit any person to enter onto, access, use or possess the Property or any portion thereof, and there are no contracts or agreements that grant a right to purchase, lease or otherwise acquire or possess the Property or any portion thereof in each case which will survive Closing.

(e) **No Litigation.** Owner has received no notice of any pending or threatened claim, litigation, proceeding or investigation (including, without limitation, any condemnation or notice of condemnation) affecting or related to the Property.

2. **Survival.** The representations and warranties of Owner set forth in this Agreement are made as of the Effective Date and are remade as of the date of Closing and shall survive Closing for a period of one (1) year after the date of Closing; provided, however, that Owner's representation and warranty as set forth in Section 1.1(a) of this **Exhibit E** shall survive indefinitely.

**EXHIBIT F**

**Existing Agreements**

[If none, state "None"]

**EXHIBIT G**

**Form of Deed**

[See attached.]



State Bar of Wisconsin Form 6-2003  
**SPECIAL WARRANTY DEED**

Document Number \_\_\_\_\_

Document Name \_\_\_\_\_

**THIS DEED**, made between \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grantor for a valuable consideration, ("Grantee," whether one or more),  
conveys to Grantee the following described real estate, together with the rents,  
profits, fixtures and other appurtenant property (if more space  
needed please attach addendum): \_\_\_\_\_ ("Grantor," whether one or more), and

**SEE LEGAL DESCRIPTION ON EXHIBIT A ATTACHED HERETO AND  
INCORPORATED HEREIN BY REFERENCE.**

Recording Area \_\_\_\_\_

Name and Return Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

See Exhibit A \_\_\_\_\_

This \_\_\_\_\_ homestead  
(is)(is not) **property.**

Grantor warrants that the title to the Property is good, indefeasible, in fee simple and free and clear of encumbrances arising by,  
through, or under Grantor, except: **those Permitted Exceptions listed on Exhibit B attached hereto and incorporated herein by  
reference.**

Identification Number (PIN) \_\_\_\_\_

Dated \_\_\_\_\_

**SEE ATTACHED SIGNATURE** (SEAL)

\_\_\_\_\_  
(SEAL)

\* \_\_\_\_\_  
\_\_\_\_\_

**PAGE**

\_\_\_\_\_  
(SEAL)

\* \_\_\_\_\_  
\_\_\_\_\_

**AUTHENTICATION**

**ACKNOWLEDGMENT**

Signature(s) \_\_\_\_\_

STATE OF WISCONSIN )

authenticated on \_\_\_\_\_

\_\_\_\_\_)  
COUNTY )

\* \_\_\_\_\_

Personally came before me on \_\_\_\_\_  
the above-named \_\_\_\_\_

**TITLE: MEMBER STATE BAR OF WISCONSIN**

(If not, \_\_\_\_\_  
authorized by Wis. Stat. § 706.06)

to me known to be the person(s) who executed the foregoing  
instrument and acknowledged the same.

ss. \_\_\_\_\_

**THIS INSTRUMENT DRAFTED BY:**

\* \_\_\_\_\_

My Commission (is permanent) (expires: \_\_\_\_\_)

(Signatures may be authenticated by acknowledgment. Both are not necessary.)  
Notary Public, State of Wisconsin

**NOTE: THIS IS A STANDARD FORM. ANY MODIFICATIONS TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.**

**SPECIAL WARRANTY DEED**

© 2003 STATE BAR OF WISCONSIN

**FORM NO. 1-2003**

\* Type name below signatures.

**SIGNATURE PAGE TO SPECIAL WARRANTY DEED**

**GRANTOR:**

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above-named  
\_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, to me known to  
be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Name: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description**

Parcel Identification Number:

**EXHIBIT B**  
**Permitted Exceptions**