

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 25 – SERIES 2023**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE TOWN OF
MINTURN TO SIGN A SETTLEMENT AGREEMENT BETWEEN THE
BATTLE MOUNTAIN ENTITIES AND THE TOWN OF MINTURN
CREATING A DUE DILIGENCE PERIOD AND A POTENTIAL PATH
TO RESOLVE PENDING LITIGATION.**

WHEREAS, in 2008, the Town approved annexation of the Battle Mountain Property for the development of a ski and golf resort-oriented project.

WHEREAS, in connection with the Annexation, Minturn and the Battle Mountain Entities entered into a number of agreements on February 27, 2008, including the Battle Mountain Annexation Agreement and Vested Property Rights Development Agreement and a Water Service Agreement.

WHEREAS, on February 15, 2012, the Town Council approved Resolution No. 5-2012, and the Parties entered into an Agreement Regarding Escrows and Funding.

WHEREAS, on March 4, 2022, the Town commenced litigation against the Battle Mountain Entities in a case known as *Town of Minturn v. Battle One Developer, LLLP et al.*, Eagle County District Court Case No. 2022CV30050. In the Litigation, the Town alleges that Battle Mountain Entities have breached various agreements, and the Battle Mountain Entities have asserted counterclaims against the Town.

WHEREAS, following settlement discussions, Minturn and the Battle Mountain Entities reached an agreement aimed at resolving the Litigation, as more particularly described in and contingent on implementation of the matters and transactions described in the Settlement Agreement.

WHEREAS, the Settlement Agreement provides the Town with the opportunity to acquire land from Battle Mountain in exchange for releasing prior promises and agreements.

WHEREAS, the Settlement Agreement provides the Battle Mountain Entities with the opportunity to obtain land use approvals for up to 250 residential units and other development as more particularly described in the Settlement Agreement.

WHEREAS, the Settlement Agreement provides the parties with a six month period in which to conduct due diligence and for the Battle Mountain Entities to seek land use approvals in accordance with the Agreement.

WHEREAS, during the due diligence period either party may withdraw from the Settlement Agreement and return to litigating the case.

WHEREAS, the Settlement Agreement provides a potential path to resolve the Litigation and provide a path forward for the Battle Mountain Entities to undertake a reduced amount of development on their property.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

1. The Minturn Town Council approves the Settlement Agreement attached as **Exhibit A** and authorizes the Mayor or his designee to sign on behalf of the Town of Minturn any and all documents required to reasonably ensure completion.

INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 6th day of September, 2023.

TOWN OF MINTURN

By: _____

Earle Bidez, Mayor

ATTEST:

Jay Brunvand, Town Clerk



SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this 6th day of September, 2023 (“**Effective Date**”) by and among the following (individually, a “**Party**”; and, collectively, the “**Parties**”): Battle One Developer, LLLP, a Georgia limited liability limited partnership, Battle Two Developer, LLLP, a Georgia limited liability limited partnership, Battle North, LLC, a Georgia limited liability company, Battle South, LLC, a Georgia limited liability company, and Battle One A Developer, LLC, a Georgia limited liability company (collectively, together with their respective successors and assigns, “**Battle**”); and the Town Council for the Town of Minturn, Colorado (“**Town Council**”), the Town of Minturn Water and Sanitation Activities Enterprise, an enterprise fund established pursuant to C.R.S. §37-45.1-101 *et seq.* (the “**Enterprise**”), and the Town of Minturn, Colorado, a home rule municipal corporation (collectively with Town Council and the Enterprise, the “**Town**”).

RECITALS

This Agreement is made with respect to the following facts:

A. In 2004, certain predecessors of the Battle entities purchased approximately 4,340 acres of property in Eagle County, generally to the south of the then-existing boundaries of the Town (“**Original Property**”).

B. On March 15, 2006, the Parties entered into a Wastewater Service Agreement (“**Wastewater Agreement**”).

C. In 2008, the Town approved annexation of the Original Property (“**Annexation**”) for the development of a ski and golf resort-oriented project (“**Resort Project**”).

D. In connection with the Annexation, the Parties entered into a number of agreements on February 27, 2008, including the Battle Mountain Annexation Agreement and Vested Property Rights Development Agreement (“**Annexation Agreement**”), and a Water Service Agreement (“**Water Service Agreement**”).

E. Together with related matters as approved by Town Council pursuant to Resolution No. 18-2008, the Town approved that certain Planned Unit Development Preliminary Plan and Battle Mountain PUD Guide (“**PUD Preliminary Plan**”) which established the uses, density and intensity of use, and other development parameters for the five character areas comprising the following three general areas of Original Property:

(1) the Willow Creek Character Area, the Rock Creek Character Area and the Holy Cross Character Area, collectively, comprising approximately 3,700 acres located east of Highway 24 (“**Mountaintop Property**”);

(2) the Gilman Character Area, comprising approximately 100 acres located west of Highway 24 in the southerly portion of the Original Property (“**Gilman Property**”); and

(3) as depicted in the Bolts Lake Concept Plan attached at **Exhibit A** (“**Concept Plan**”), the Bolts Lake Character Area, comprising approximately 540 acres located in the northerly portion of the Original Property surrounding the historic Bolts Lake location, principally west of Highway 24 (“**Bolts Lake Property**”).

F. In April 2008, the Parties entered into three escrow agreements (collectively, “**Escrow Agreements**”), pursuant to which Battle deposited a total of \$11.6 million into escrow based on specific provisions in the Annexation Agreement and/or the Water Service Agreement.

G. On February 15, 2012, the Town Council approved Resolution No. 5-2012, and the Parties entered into an Agreement Regarding Escrows and Funding (“**Funding Agreement**”).

H. In 2017, Town Council approved Ordinance No. 2-2017 approving the Development Agreement Implementing the Mountain Concept Alternative within the Mountaintop Area of the Battle Mountain Property (“**Mountaintop Development Agreement**”), which applied to the Mountaintop Property.

I. In 2020, Battle One Developer, LLLP sold the Mountaintop Property to a third party.

J. Pursuant to that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir by and among Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority (collectively, “**ERWSD**”) and Battle North, LLC (together with its successors and assigns, “**Battle North**”), dated as of February 9, 2021 (“**Reservoir Agreement**”), Battle North, conveyed to ERWSD fee title to certain parcels within the Bolts Lake Property and granted ERWSD certain temporary construction and perpetual easements (“**ERWSD Easements**”) within the Bolts Lake Property relating to the Reservoir Project (as defined in the Reservoir Agreement).

K. Battle North owns the Bolts Lake Property excluding the parcels previously conveyed to ERWSD pursuant to the Reservoir Agreement (“**Battle North Property**”), and portions of Battle North Property are subject to the ERWSD Easements.

L. Battle South, LLC (together with its successors and assigns, “**Battle South**”) owns the Gilman Property.

M. Except for Battle North and Battle South, no entity comprising Battle owns any real property comprising any portion of the Original Property.

N. On March 4, 2022, the Town commenced litigation against Battle in a case known as *Town of Minturn v. Battle One Developer, LLLP et al.*, Eagle County District Court Case No. 2022CV30050 (“**Litigation**”). In the Litigation, the Town alleges that Battle has breached the Annexation Agreement, the Water Service Agreement and the Funding Agreement, and Battle has asserted counterclaims against the Town.

O. Following settlement discussions, the Parties reached an agreement aimed at resolving the Litigation, which will, as more particularly described in and contingent on implementation of the matters and transactions described in this Agreement, *inter alia*:

(1) terminate and replace the Wastewater Agreement, the Annexation Agreement, the Water Service Agreement, the Escrow Agreements, and the Funding Agreement (collectively, and together with the Town resolutions and/or ordinances approving such instruments, “**Prior Agreements**”) and the PUD Preliminary Plan as to the Bolts Lake Property;

(2) cause disconnection of the Gilman Property from the Town to be legally effected;

(3) together with zoning consistent with such purposes, provide for conveyance to the Town of fee title to the Town Parcels (defined in Section 2(a)(i)) and imposition of Restrictions (defined in Section 2(a)(ii)) on the Restricted Parcels (defined in Section 2(a)(ii)) that are for the benefit of and enforceable by the Town;

(4) provide a public process in accordance with the Minturn Municipal Code (as amended, including pursuant to Section 2, the “**Code**”) for zoning and related land use entitlements to enable development of the Battle Retained Parcels (defined in Section 2(a)(iii)); and

(5) as contemplated pursuant to Section 8, entry of an order dismissing the Litigation with prejudice and effecting the Parties’ full and complete mutual waiver of all claims (“**Settlement**”).

P. If the Settlement is successfully implemented through a public process, the permissible level of development on the Battle North Property will be substantially reduced from what was contemplated in connection with the Resort Project and the PUD Preliminary Plan, the Gilman Property will be disconnected from the Town, and approximately 250 acres of land comprising the Town Parcels and the Restricted Parcels will be conveyed to the Town or subjected to Restrictions that are for the benefit of and enforceable by the Town.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals (which are incorporated in this Agreement), the terms, conditions and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Deposit of Funds; Stay of Litigation.** Within five business days of the Effective Date, Battle will deposit Fifty Thousand Dollars (\$50,000) with the Town to be used to defray the Town’s costs to conduct Diligence Activities (defined in Section 5). Concurrently therewith, the Parties will file a Joint Motion in the Litigation, advising the Court of this Agreement, and requesting an extension of the stay that is currently in place to and including November 30, 2023.

2. **Code Amendments.** During the period commencing on the Effective Date and continuing through and including six months after the Effective Date (as may be extended in writing by the Parties, “**Approvals Period**”), the Parties will in good faith undertake to coordinate and process Town-initiated amendments (collectively, “**Code Amendments**”) to the Code through a public process in accordance with the applicable Code provisions. Within thirty (30) days of the Effective

Date, Battle will endeavor to provide Town staff with initial draft ordinances to effect the Code Amendments. Town staff will work diligently to provide timely written comments on the initial draft ordinances, and subsequent drafts, with the goal of having final ordinances acceptable to Battle and Town staff for Town Council's first reading on or before January 31, 2024 and second reading on or before February 28, 2024. The Code Amendments will:

(a) Subdivision. In furtherance of the Town's intent to create a generally applicable process ("**Exemption Plat Process**") for administrative review and approval of subdivision exemption plats ("**Exemption Plat(s)**"), amend Chapters 16, 17 and other appropriate provisions of the Code. The Exemption Plat Process will, as pertinent to this Agreement, enable the Parties to process and take final action on an application for an Exemption Plat that will, upon Town approval and recording in the real property records of the Eagle County Clerk and Recorder ("**Record(ed)(ing)**"), create within the Battle North Property various legally conveyable parcels. The Exemption Plat will create the following categories of parcels within the Battle North Property:

(i) Town Parcels. Parcels which Battle North will convey to the Town ("**Town Parcels**"), subject to certain Reserved Easements (defined in Section 7(a)) for Battle North's benefit. The Town Parcels intended to be created are, as conceptually depicted and labeled in the Concept Plan: (A) the Highlands Area; (B) the Reservoir South Area (excluding the Processing Area); (C) the Rec Center Parcels; and (D) the Highway 24 Parcels.

(ii) Restricted Parcels. Parcels which Battle North will own but, subject to certain Reserved Uses (defined in Section 7(b)(i)) for Battle North's benefit, will be encumbered by Recording certain instruments ("**Restricted Parcel(s)**") imposing one or more of the following (collectively, and as applicable, "**Restriction(s)**"): (A) a Perpetual Easement (defined in Section 7(b)(i)) granting to the Town the right to undertake a specific scope of uses, on terms the Parties mutually determine appropriate; (B) a Restrictive Covenant (defined in Section 7(b)(ii)) that limits the uses that may be undertaken within such Restricted Parcel, on terms the Parties mutually determine appropriate; and/or (C) with respect to any or all Restricted Parcels requested by the Town at its election, a Purchase Option (defined in Section 7(b)(iii)) granting to the Town an option to purchase such Restricted Parcel(s). The Restrictions will run with title to the Restricted Parcels and will be enforceable by and for the benefit of the Town. Unless Battle North and the Town otherwise mutually agree in writing prior to the Closing Date, the Restricted Parcels intended to be created are, as conceptually depicted and labeled in the Concept Plan: (v) the OTP Area; (w) the Processing Area (being a portion of the Reservoir South Area); (x) the CTP Area (y) the Trestle Area; and (z) the Maloit Wetlands Area.

a. *Plat Note Restricting Conveyance*. Restricted Parcels may be platted as legally conveyable (but not developable) parcels separate from the Battle Retained Parcels; provided, however, the applicable Exemption Plat must contain a note to the effect that such separately platted Restricted Parcels may be conveyed only:

(1) to a metropolitan district formed pursuant to Section 3(d); or

(2) to the Town pursuant to the Town’s exercise of a Purchase Option pursuant to Section 7(b)(iii); or

(3) to another special district, governmental or quasi-governmental entity, or other public or private entity; provided, however, with respect to a conveyance of the OTP Area or the Processing Area only, such entity has sufficient financial capacity, as determined by the Town in its reasonable discretion, to perform the landowner’s legal obligations as Battle North’s successor pursuant to the Reservoir Agreement; and

(4) if the Environmental Protection Agency (“EPA”)/Colorado Department of Public Health and Environment (“CDPHE”) has approved conveyance of the applicable Restricted Parcel pursuant to, and the entity acquiring a Restricted Parcel executes the consents and certifications required pursuant to Section 9 of, the Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA §107(r) Lien, Docket No. CERCLA-08-2018-009.

b. *Method of Conveyance.* Subject to compliance with clause (4) of Section 2(a)(ii)a, a Restricted Parcel may be conveyed by deed after Recording of the applicable Exemption Plat, or by dedication pursuant to the applicable Exemption Plat.

(iii) Town’s Right to Convert. By delivery of written notice to Battle prior to expiration of the Diligence Period (defined at Section 5), the Town will have the right to convert one or more of the Town Parcels into a Restricted Parcel and to convert one or more of the Restricted Parcels into a Town Parcel.

(iv) Battle Retained Parcels. Battle North will retain for purposes of future development or other disposition all parcels created pursuant to the Exemption Plat that are neither Town Parcels nor Restricted Parcels (“**Battle Retained Parcels**”). The Exemption Plat will contain a note expressly stating that the Battle Retained Parcels must be replatted (in such development sequence and phasing as Battle North determines desirable and in accordance with Town infrastructure requirements) to create buildable lots pursuant to a Recorded final plat prior to submittal of building permit applications for habitable improvements. Neither engineering plans for nor construction of public improvements will be required in connection with the Exemption Plat Process or Recording of the Exemption Plat, such matters being deferred to subsequent applications for preliminary and final plat that will be required to replat the Battle Retained Parcels into buildable lots prior to development.

(b) Zoning. Amend Chapters 16, 17 and other pertinent provisions of the Code, as applicable, to create zone districts specific to the Battle North Property that will establish as uses by right, subject to obtaining an approved final subdivision plat and construction of Infrastructure Improvements (defined in Section 2(b)(i)) to serve such development:

(i) Residential. A residential zone district (“**Bolts Residential District**”) which provides for: (A) on lots of a minimum size of 4,000 square feet, single-family homes and accessory dwelling units; (B) on lots of a minimum size of 5,000 square feet, duplexes; (C) trails, parks and similar active and passive recreational uses customarily provided within residential communities; and (D) roads, the Water Treatment System and Water Distribution System (defined in Section 2(c)) and related water service infrastructure, sanitary sewer infrastructure, stormwater infrastructure, electric and gas utilities, renewable and alternative energy facilities, telecommunications infrastructure and similar infrastructure improvements the Town approves and/or requires pursuant to the Town’s preliminary and final plat process to serve development within the Battle Retained Parcels (“**Infrastructure Improvements**”). Maximum building heights in this zone will be 28 feet. Maximum building lot coverage in this zone will be 50%. The intent of the Bolts Residential District will be to enable an eclectic mix of housing types and styles consistent with the housing types and character in other areas of the Town.

(ii) Mixed Use. A mixed use zone district (“**Bolts MU District**”) which provides for: (A) all uses permitted in the Bolts Residential District; (B) multifamily dwelling units; and (C) low impact neighborhood commercial uses (limited size convenience, gas station, bakery, etc.), spa/wellness center and accessory uses thereto, hotel and accessory uses thereto, and similar recreational uses. The minimum lot size for multifamily structures will be 5,000 square feet. For other residential uses and commercial uses, the minimum lot size will be 2,500 square feet. Maximum building lot coverage for commercial and vertically integrated mixed use structures will be 80% and for duplex, single-family and accessory dwelling units will be 50%. Maximum building heights in this zone will be 35 feet for commercial, vertically mixed use and multifamily, and 28 feet for duplex, single-family and accessory dwelling units. The intent of the Bolts MU District will be to enable denser multifamily, single-family homes, and duplexes similar in character but with smaller minimum lot sizes than in the Bolts Residential District.

(iii) Bolts Open Space. An open space and recreational use zone district (“**Bolts OS/Rec District**”) for land intended to remain predominately undeveloped, generally limited to trails, other passive (non-motorized) recreation uses, Infrastructure Improvements (generally excluding roadways, except as necessary to facilitate other Infrastructure Improvements and cross-easements to provide legal and physical access between such parcels and public roadways), all activities and facilities necessary to comply with requirements imposed by the EPA and CDPHE, and all activities the Reservoir Agreement and the ERWSD Easements, as applicable, contemplate occurring in connection with the Reservoir Project.

(iv) Holding Zone. A holding zone for Town Parcels intended to be held for later conveyance or further future zoning determinations (“**Holding District**”), which will allow Infrastructure Improvements (generally excluding roadways, except as necessary to facilitate other Infrastructure Improvements and cross-easements to provide legal and physical access between such parcels and public roadways), all activities and facilities necessary to comply with requirements imposed by the EPA and CDPHE, and all activities the Reservoir Agreement and the ERWSD Easements, as applicable, contemplate

occurring in connection with the Reservoir Project. No other public or governmental uses of the property will be permitted.

(c) Water System. Amend Chapter 13, Appendix C and other appropriate provisions of the Code to expressly provide that: (i) the Town/Enterprise will not provide municipal water service to the Battle Retained Parcels; (ii) as to be constructed, owned and operated in accordance with applicable provisions of the Reservoir Agreement, ERWSD will provide municipal water service to the Battle Retained Parcels for up to 700 SFE's utilizing a water treatment plant with a treatment capacity sized to serve the maximum density permitted pursuant to Sections 3(c)(ii) and (iii) to be developed within, and with a service area limited to, the Battle Retained Parcels ("**Water Treatment Plant**"), together with diversion structures, raw water input lines and related infrastructure inboard to the Water Treatment Plant (collectively with the Water Treatment Plant, the "**Water Treatment System**"); (iii) appropriate language be placed on final plats acknowledging that the Town will not provide municipal water services to the Battle Retained Parcels; and (iv) pursuant to Code Section 16-25-40(8), development and operation of the Water Treatment System will be fully exempt from all review and permitting requirements of Chapter 16, Article 25 of the Code (i.e., 1041 permitting), provided, however, the Town may require application for a 1041 permit for any expansion in the treatment capacity or land to be served by the Water Treatment System above and beyond that described in clause (ii) of this Section 2(c). As to be addressed in the Development Agreement pursuant to Section 3(c)(ix):

(i) Town Review of Water Treatment Plant; Water Treatment System. The Town will not own, operate or maintain the Water Treatment System. Design, construction and operation of the Water Treatment System will comply with applicable ERWSD and CDPHE regulations and permitting requirements. In connection with the Exemption Plat process and/or pursuant to a Recorded final plat, Battle North will propose and the Town will review and approve the site for the Water Treatment Plant as a Battle Retained Parcel that is legally conveyable for construction, ownership and operation of the Water Treatment Plant as contemplated in the Reservoir Agreement. Such Town review may include the location, character and extent of the Water Treatment Plant pursuant to C.R.S. § 31-23-209. Except with respect to the Town's review of the Water Treatment Plant site as provided above, the Town will not exercise or conduct any technical or other review of the Water Treatment System, including but not limited to its location, character, and extent pursuant to C.R.S. § 31-23-209.

(ii) Town Review of Water Distribution System. In connection with preliminary and final plat(s) for development within the Battle Retained Parcels, the Town will review locations of the distribution infrastructure to deliver municipal water service outboard from the Water Treatment Plant (e.g., water mains, storage tanks, distribution lines and service lines) to platted development sites within the Battle Retained Parcels ("**Water Distribution System**"). Engineering and technical requirements of the Water Distribution System will be subject to ERWSD regulations and Town subdivision regulations (including but not limited to applicable fire flow requirements). The Town will not own, operate or maintain the Water Distribution System. Except with respect to the Town's review of the Water Distribution System as provided above, the Town will not exercise or conduct any technical review of the Water Distribution System, including but not limited to its location, character, and extent pursuant to C.R.S. § 31-23-209.

(d) Design Standards. Amend Appendix B (Minturn Design Standards and Guidelines) and other appropriate provisions of the Code to expressly provide that only the standards and guidelines set forth in Section II will apply to development within the Battle Retained Parcels. Any design standard applicable to the Battle Retained Parcels will incorporate eclectic design principle consistent with design themes in the Town of Minturn and shall be approved by the Town as part of a future subdivision process.

(e) Vested Property Rights. Amend Code Section 16-21-710(b)(2) by adding a subsection h which incorporates the Development Agreement (defined in and contemplated by Section 3(c)) in the list of instruments that can be a site specific development plan which creates vested property rights pursuant to C.R.S. § 24-68-101, *et seq.* and the Code.

(f) Disconnection by Ordinance. To the extent the Town determines necessary or desirable to effect disconnection of the Gilman Property as contemplated by Section 3(e), amend the Code to expressly adopt and authorize the procedure for disconnection by ordinance pursuant to C.R.S. §§ 31-12-501, *et seq.*

(g) Metropolitan Districts. At the Town's election, but not as a requirement of this Agreement, add an Article to the Code that creates a generally applicable process for metropolitan district formation and adopts a model service plan.

3. **Applications; Final Approval.** Concurrently with processing of and Town Council's final action to approve the Code Amendments, the Parties will coordinate and cooperate to submit, process to a final decision in accordance with the Code, and obtain Town Council's final action on passage of resolutions and second reading of the applicable ordinances prior to expiration of the Approvals Period to approve at the same public hearing (together with the ordinances approving the Code Amendments, "**Approvals**") the applications described in this Section 3. At the time of submitting applications, Battle will execute the Town's standard reimbursement agreement. Within 30 days of the Effective Date, Battle will endeavor to submit the following, which the Town will review and process in good faith:

(a) Exemption Plat. An application pursuant to the Exemption Plat Process for approval of an Exemption Plat that will create the Town Parcels, Restricted Parcels and Battle Retained Parcels as conceptually depicted in the Concept Plan. The application will contain the information required pursuant to clauses (1) through (5) and (7) of Code Section 16-21-170 together with proof of legal and physical access to the parcels and/or commitments to grant such cross-easements as may be necessary or desirable to provide legal and physical access to, from and among the various Town Parcels, Restricted Parcels and Battle Retained Parcels. The approved and Recorded Exemption Plat will establish the precise legal descriptions of the Town Parcels, Restricted Parcels and Battle Retained Parcels. Without limitation of the foregoing, the Rec Center Parcels, collectively, will not be required to be larger than a total of 2 acres.

(b) Rezoning of Battle North Property. An application for rezoning of the Battle North Property, which will contain the information required pursuant to Code Section 16-21-430 and pursuant to clauses (1) through (5) and (7) of Code Section 16-21-170. Consistent with the Concept Plan:

(i) Battle Retained Parcels. Certain Battle Retained Parcels (or areas within them) will be proposed for zoning to, as applicable, the Bolts Residential District, the Bolts MU District or the Bolts OS/Rec District. The boundaries of each zone district will be determined during processing of the zoning application and the Exemption Plat application.

(ii) Town Parcels and Restricted Parcels. The Town Parcels will be proposed for zoning to the Holding District; and the Restricted Parcels will be proposed for zoning to the Bolts OS/Rec District.

(iii) Effect on PUD Preliminary Plan. Rezoning of the Battle North Property as provided above will have the effect of terminating, and fully releasing Battle and the Town from any further rights, obligations or liabilities with respect to, the PUD Preliminary Plan as it applies to the Battle North Property. Simultaneous with approving the rezoning described herein, the Town will adopt a resolution formalizing the termination of Ordinance No. 12-Series 2008, Resolution No. 18-Series 2008, and Resolution No. 19-Series 2008, together with the Conditions to Approval and all other documents, instruments and matters appended to, attached to, referenced by and otherwise incorporated in said Resolutions.

(c) Development Agreement. An initial draft development and statutory vested property rights agreement (“**Development Agreement**”) that will address the following matters:

(i) Release of Prior Agreements and PUD Preliminary Plan. Effective as of implementation of the Settlement pursuant to Section 8, the Development Agreement and the ordinance approving the Development Agreement will replace, supersede and effect termination of the Prior Agreements and the PUD Preliminary Plan as applied to the Battle North Property, and will effectuate the Parties’ full and complete mutual release of all rights, obligations and liabilities pursuant to the Prior Agreements and the PUD Preliminary Plan as related to the Battle North Property.

(ii) Residential Density Limitation. Each residential dwelling unit, regardless of type, will comprise one “dwelling unit.” By way of example, a single family home is one dwelling unit, an accessory dwelling unit is one dwelling unit, a duplex is two dwelling units, a multifamily building containing six separate apartments or condominium units is six dwelling units, etc. The Battle Retained Parcels will be subject to the following residential density limitation:

a. Without a Spa/Wellness Center. If a spa/wellness center is not developed within the Bolts MU District, the total dwelling units that can be developed within the Bolts Residential District and the Bolts MU District, cumulatively, will not exceed two hundred fifty (250) dwelling units.

b. With a Spa/Wellness Center. If a spa/wellness center is developed within the Bolts MU District, the total dwelling units that can be developed within the Bolts Residential District and the Bolts MU District, cumulatively, will not exceed two hundred twenty-five (225) residential units.

(iii) Commercial Density Limitation. The total nonresidential commercial development within the Bolts MU District, cumulatively, will not exceed 50,000 square feet of gross leasable area. For such purposes, “gross leasable area” means the total floor area (measured from the interior surface of demising walls) that is designed for the tenants’ or business’ occupancy and exclusive use, and does not include the floor area of any public or common areas such as utility rooms, mechanical rooms, stairwells, elevator shafts, foyers, malls and so on.

(iv) Ownership and Maintenance of Public Roads. Pursuant to the final platting process, the right-of-way for and physical improvements comprising Maloit Park Road will be dedicated to, accepted, owned and maintained (including snow plowing) by the Town in accordance with the Town’s generally applicable regulations, including but not limited to the Town’s roadway engineering standards and a development specific traffic study. All other public roads located within the Battle Retained Parcels will be owned and maintained (including snow plowing) by a metropolitan district as contemplated pursuant to Section 3(d), and/or owners’ association(s). The classifications, cross-sections, profiles and related technical matters pertinent to such roadways will be determined in connection with the processing and approval of preliminary and final plats for the Battle Retained Parcels.

(v) Maloit Wetlands Area. Simultaneously with Recording of the first final plat adjacent to the Maloit Wetlands Area, Battle North will Record a Restriction (in the form of a Restrictive Covenant approved and enforceable by the Town) that will ensure the Maloit Wetlands Area remains undeveloped (except for installation, operation and maintenance of Infrastructure Improvements, and the construction of Maloit Park Road) and serves as a wildlife corridor between adjoining United States Forest Service land to the north and the CTP Area to the south. All Battle North improvements located within the Maloit Wetlands Area shall be subject to Town review and approval, except for activities necessary to comply with requirements imposed by EPA and/or CDPHE. Activities necessary to comply with requirements imposed by EPA and/or CDPHE and public access for non-motorized winter recreational activities (e.g. cross country skiing, snowshoeing, hiking, birding, etc.), including by residents and guests within the Battle Retained Parcels, will be permitted.

(vi) Fishing Easement. Concurrently with Recording of the first final plat adjacent to Cross Creek, Battle North will grant to the Town and Record a perpetual, nonexclusive easement that grants the public the right to fish within the Cross Creek streambed and up to the ordinary high-water mark, as defined in Code Section 16-2-20, of the Cross Creek segments adjacent to the Battle Retained Parcels and grants access for such purpose within the areas conceptually depicted in the Concept Plan. Except to the extent depicted in the Concept Plan, the public fishing access easement will not provide for or allow the general public to access the Cross Creek streambed from, across, or over the Battle Retained Parcels, or to otherwise enter upon the Battle Retained Parcels, but will expressly provide that residents and guests within the Battle Retained Parcels will have the legal right to utilize the public fishing easement.

(vii) Parks; No Open Space Dedications. In accordance with applicable Code requirements, final plats for development sites within the Battle Retained Parcels will be required to provide for adequate active parks to support the approved level of residential development. Parks will be dedicated to, improved, constructed, owned and maintained by metropolitan districts as contemplated pursuant to Section 3(d) and/or owners' association(s). No open space dedications will be required in connection with final plats for development within the Battle Retained Parcels.

(viii) Generally Applicable Code Provisions. Generally applicable Code provisions in effect at the time of final platting regarding technical and procedural matters will apply to all final plat applications to the extent not in conflict with or having the effect of negating or impairing the vested property rights established pursuant to Section 3(c)(xi) to the densities, product types, lot size, lot coverage and related development parameters established pursuant to the approved zoning. Without limitation of the foregoing: (A) the Community Housing Guidelines established pursuant to Code Chapter 16, Article 26 will apply to development within the Battle Retained Parcels, provided, however, no revisions to the percentages, deed-restriction conditions and AMI criteria set forth in Code § 16-26-100 in effect as of the Effective Date will apply to the Battle Retained Parcels without Battle's consent; and (B) no river setback of greater than thirty (30) feet will apply to developable lots within the Battle Retained Parcels that are adjacent to Cross Creek.

(ix) Water Service. Consistent with and subject to the terms and conditions of applicable Code Amendments, the Town/Enterprise will not provide municipal water service to the Battle Retained Parcels and, as more fully described in Section 2(c), ERWSD will provide municipal water service to the Battle Retained Parcels utilizing the Water Treatment System and the Water Distribution System to be constructed, owned, operated and maintained in accordance with applicable provisions of the Reservoir Agreement.

(x) Sewer Service. ERWSD will provide sanitary sewer service to the Battle Retained Parcels as provided in the Code.

(xi) Vested Property Rights. Pursuant to Code Section 16-21-710 (as amended pursuant to Section 2(d)), the Development Agreement will constitute a site specific development plan that creates vested property rights for a period of thirty (30) years from the date on which the Settlement is implemented pursuant to Section 8.

(d) Service Plans. The Town will process applications seeking approval of service plans for the formation of up to three (3) metropolitan districts in accordance with the statutory process pursuant to C.R.S. §§32-1-101, *et seq.* and, as applicable, the Town process contemplated by Section 2(g). Town is not required to approve any metropolitan districts. Upon completion of the formation process, the metropolitan districts are anticipated to have authority to finance the construction, operation and maintenance of the Water Treatment System, Water Distribution System, other backbone infrastructure and parks to serve development within the Battle Retained Parcels, to impose and enforce restrictions to protect wildlife within the Battle Retained Parcels and the Restricted Parcels, to own Restricted Parcels (prior to conveyance, or which are not

anticipated to be conveyed in the future, to and owned by the Town), and to perform and/or enforce environmental obligations and/or environmental restrictions.

(e) Disconnection of Gilman Property. In connection with the contemplated Settlement, the Town has proposed and Battle South has agreed to effect disconnection of the Gilman Property. Accordingly, Battle South will submit to Town Council an application for disconnection of the Gilman Property by ordinance pursuant to C.R.S. §§ 31-12-501, *et seq.* The disconnection becoming legally effective will fully release Battle, the Town and the Gilman Property from any further rights, obligations and liabilities under or with respect to the Prior Agreements and the PUD Preliminary Plan relating to the Gilman Property.

(f) Dissolution of General Improvement District. Pursuant to C.R.S. § 31-25-625, the Parties will cooperate to dissolve the General Improvement District established by Ordinance No. 24, Series 2008, Recorded at Reception No. 200901380.

(g) Survival of Disconnection and Dissolution Obligations. If this Agreement terminates prior to implementation of the Settlement, the Parties' obligations to process disconnection of the Gilman Property pursuant to Section 3(e) and to process dissolution of the General Improvement District pursuant to Section 3(f) will survive such termination for a period of, and the Parties will cooperate to cause disconnection of the Gilman Property and dissolution of the General Improvement District to be made legally effective within, ninety (90) days after the date of such termination.

4. **Approval Date: Final Approval; Legal Challenges.** The ordinances comprising the Approvals will be legally effective thirty (30) days after publication following the date on which Town Council approves them on second reading (the "**Approval Date**"), and the resolutions comprising the Approvals will be legally effective on the date set forth in such resolutions (which will not be later than thirty (30) days after the Approval Date); provided, however:

(a) Conditions Precedent To Binding Effect and Recording. The Parties' intend that Final Approval (defined below) of all Approvals occurs on the same date or not at all, such that no action required to fully implement Settlement remains subject to Legal Challenge (defined below). Accordingly, and notwithstanding any earlier effective date of such ordinances and resolutions pursuant to Section 4, each ordinance and each resolution will contain an express condition that the substantive matters comprising the Approvals will not be legally effective or binding upon the Parties, and will not be legally effective as to (and no Approvals instruments will be Recorded against) the Battle North Property or the Gilman Property, prior to implementation of the Settlement (pursuant to Section 8) following Final Approval (defined below) of all Approvals. With respect to the foregoing:

(i) "**Final Approval**" will occur with respect to each of the Approvals: (A) if no Legal Challenge is filed on or prior to the last day by which the applicable statute, rule of civil procedure, Code, or Town Charter provision requires the applicable Legal Challenge to be filed,; or (B) if a Legal Challenge is timely filed against one or more of the Approvals within the period described in the foregoing clause (A), and unless the Parties agree otherwise, all such Legal Challenges are resolved in a manner that is final, not subject

to appeal, and upholds the validity of the Approvals that were subject to the Legal Challenge.

(ii) **“Legal Challenge”** means: (A) any third-party’s commencement of a legal proceeding, pursuant to C.R.C.P. Rule 106 or otherwise, that directly or indirectly challenges, or seeks to reverse or nullify, any of the Approvals and/or implementation of the Settlement; or (B) submission of a valid petition under the Code for a referendum seeking to reverse or nullify any of the Approvals and/or implementation of the Settlement.

(b) Termination Prior to Final Approval. By delivery to the Town of a written notice of termination prior to the latest effective date of the Approvals ordinances and resolutions pursuant to Section 4, Battle will have the right to terminate this Agreement if Battle is not satisfied with the Town’s processing of the Approvals applications, any Town-imposed conditions of the Approvals, any substantive elements of the Approvals, or for any other reason relating to the Approvals. If Battle timely delivers written notice of termination to the Town, this Agreement will terminate and the Parties will be released from further liability or obligation under this Agreement except those that expressly survive termination of this Agreement.

5. **Diligence Period; Diligence Activities; “As-Is” Transaction; Disclosures.** During the period commencing on the Effective Date and continuing until the earlier to occur of the date on which this Agreement is terminated or the occurrence of the Approval Date pursuant to Section 4 (**“Diligence Period”**), the Town will conduct its own review and evaluation of the information contained in Battle North’s Disclosures (defined in Section 5(d)), will inspect and investigate the Town Parcels and the Restricted Parcels, and will engage such qualified agents, contractors, engineers or consultants, including, without limitation, environmental consultants, as the Town deems necessary to make all appropriate inquiry with respect to title, survey, physical conditions, environmental conditions (including, without limitation, all CERCLA and other Environmental Laws (as such terms are defined in Section 5(a))) and such other matters pertinent to the Town Parcels and Restricted Parcels as the Town, in its sole discretion, deems necessary or appropriate, to assess the suitability of the Town Parcels and the Restricted Parcels (**“Diligence Activities”**). The Town will rely solely on such independent Diligence Activities. Battle will have no obligation pursuant to this Agreement to cure or remedy any matter affecting title, survey, physical, environmental or other conditions affecting the Town Parcels or the Restricted Parcels. In its sole discretion and without obligation to incur any expense in connection therewith, Battle may elect to cooperate with the Town’s efforts to address and resolve such matters to the Town’s satisfaction. The Town’s obligation at the Closing (defined in Section 7) to acquire fee title to the Town Parcels and the Town’s interests in the Restrictions that will encumber the Restricted Parcels for the Town’s benefit (collectively, **“Property Interests”**) is expressly conditioned on the Town not having exercised its right to terminate this Agreement pursuant to Section 5(h).

(a) Environmental Definitions. As used in this Agreement:

(i) **“Actual Knowledge”** of Battle, Battle North or similar phrases mean the current, actual (not constructive) knowledge, without duty of inquiry or investigation, of either (A) Lorne Bassel in his capacity as President of the Manager of Battle North and, if applicable, his successor in such capacity, or (B) Tim McGuire, in his capacity as Battle North’s local representative and, if applicable, his successor in such capacity.

(ii) **“Hazardous Materials”** means any substance: (A) the presence of which requires special handling, storage, investigation, notification, monitoring, or remediation under any Environmental Laws (defined below); (B) which is toxic, explosive, corrosive, erosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous; (C) which is (or becomes so during the Diligence Period regulated by any federal, state or local authority under any Environmental Laws, (D) any hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. § 9601(14), and also including petroleum, crude oil, or any fraction thereof, mining-related wastes, asbestos and polychlorinated biphenyls; (E) any substance designated in 40 C.F.R. § 304.2; (F) any substance identified or listed pursuant to section 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*, (G) any substance identified or listed by the State of Colorado pursuant to 6 CCR Part 261; and (H) underground storage tanks (USTs).

(iii) **“Environmental Laws”** means all laws, rules and regulations, as well as all agreements between EPA, CDPHE and Battle North or any third party, relating to (A) emissions, discharges, spills, cleanup, remediation, releases or threatened releases of any Hazardous Materials; (B) the presence of any Hazardous Materials on or in, land, soil, ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, storage tanks of any kind, wetlands, or septic systems, (C) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment, cleanup or remediation of Hazardous Materials; and (D) the protection of human health or the environment.

(b) **“As Is” Transaction.** The Town (for itself and its successors and assigns) acknowledges that, if the Town does not terminate this Agreement pursuant to a termination right of the Town under this Agreement, it will acquire the Property Interests in their respective **“AS IS, WHERE IS, AND WITH ALL FAULTS”** condition as of the Closing Date. The Town (for itself and its successors and assigns) accepts all risks regarding all attributes and conditions, latent or otherwise, of the Property Interests. The Town will acquire the Property Interests based solely upon the Town’s Diligence Activities and not in reliance on any statement, representation or inducement of Battle except as expressly set forth in and limited by Sections 5(d) and 6(a). Without limitation of the foregoing:

(i) **No Implied Representations.** Except as expressly set forth in and limited by Sections 5(d) and 6(a): (A) NEITHER BATTLE NORTH NOR ANY AGENT, EMPLOYEE, OFFICER, DIRECTOR, CONTRACTOR OR REPRESENTATIVE OF BATTLE HAS MADE (OR HAS AN OBLIGATION TO THE TOWN TO MAKE), AND BATTLE SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, GUARANTEE OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY INTERESTS, INCLUDING, WITHOUT LIMITATION, (1) THE NATURE, QUANTITY, QUALITY OR CONDITION OF THE PROPERTY INTERESTS; (2) THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY INTERESTS; OR (3) COMPLIANCE OF OR BY THE PROPERTY INTERESTS WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE

GOVERNMENTAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, CERCLA OR ANY OTHER ENVIRONMENTAL LAWS; AND (B) THE TOWN IS RELYING SOLELY UPON ITS OWN INSPECTION OF THE PROPERTY INTERESTS AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF, OR TO BE PROVIDED BY OR ON BEHALF OF, BATTLE NORTH OR UPON ANY REPRESENTATIONS MADE TO IT BY BATTLE NORTH OR ANY AGENT, EMPLOYEE, OFFICER, DIRECTOR, CONTRACTOR OR REPRESENTATIVE OF BATTLE NORTH. ANY INFORMATION PROVIDED OR TO BE PROVIDED BY BATTLE NORTH WITH RESPECT TO THE PROPERTY INTERESTS WAS OR MAY BE OBTAINED FROM A VARIETY OF SOURCES AND BATTLE NORTH HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH THIRD-PARTY INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH THIRD-PARTY INFORMATION.

(ii) Waiver and Release. Except to the extent directly caused by Battle's breach of Sections 5(d) and 6(a), the Town (for itself and its respective successors and assigns) releases Battle and its agents, employees, officers, directors, shareholders, partners, members, managers, contractors and representatives from, and waives any and all causes of action or claims against any of such persons for: (A) any and all liability attributable to any physical condition of or at the Property Interests, including, without limitation, the presence on, under or about the Property Interests of any Hazardous Materials; (B) any and all liability resulting from the failure of the Property Interests to comply with any applicable laws, including, without limitation, any Environmental Laws; and (C) any liabilities, damages or injury arising from, connected with or otherwise caused by statements, opinions or information obtained from any of such persons with respect to the Property Interests.

(iii) Survival. The terms and conditions of this Section 5(b) will survive: (A) Closing pursuant to this Agreement; and (B) with respect to causes of action or claims arising from or relating to the Town's Diligence Activities, termination of this Agreement.

(c) License; Insurance and Indemnification. During the Diligence Period and in order to facilitate the Town's undertaking of its Diligence Activities pertaining to the physical condition of the Property Interests:

(i) License. The Town (together with its employees, contractors, subcontractors, consultants and invitees, "**Licensee(s)**") will have a non-exclusive license ("**License**") to access and enter upon the Town Parcels and Restricted Parcels at reasonable times and from time to time for the purposes of conducting Diligence Activities, at no cost or expense to Battle, which may include, without limitation, reasonable tests, inspections, studies, investigations, surveys and, with not less than three (3) business days' written notice (which may be by email) to Battle's local representative, Tim McGuire (tmcguire@acpcommunities.com), investigation of soil, geotechnical, environmental conditions, and related invasive tests such as borings (but expressly excluding blasting). Battle North will cooperate reasonably with such Diligence Activities so long as such cooperation is at no cost or expense to Battle. The Town and its Licensees will not engage in any demolition, clearing, grading, excavation, dewatering or other activity that

physically modifies the Town Parcels or Restricted Parcels without Battle's specific prior written consent. The Town will contemporaneously notify Lorne Bassel and Tim McGuire of any entry upon the parcels and Battle's representative will have the right to be present during any entry upon or investigation of the Town Parcels and Restricted Parcels. Following any Town (or Licensee) activities causing damage to the land comprising the Town Parcels, the Restricted Parcels or, if applicable, adjacent areas of the Battle Retained Parcels, the Town will promptly and diligently restore the damaged area to its preexisting condition. The Town will be responsible for the generation and proper disposal of any "Investigative Derived Waste", whether solid or hazardous waste, derived from the Town's invasive testing, and will perform its Diligence Activities at its own risk.

(ii) Insurance. As a condition of exercising its rights pursuant to the License, the Town will, at no cost or expense to Battle:

a. Licensees. Require its contractors and other Licensees who enter the Town Parcels and Restricted Parcels pursuant to the License to: (A) cause Battle North to be named an additional insured on a primary non-contributory basis under their respective policies of commercial general liability insurance, in an amount of at least (I) \$2,000,000 for each occurrence, (II) \$2,000,000 for personal injury, and (III) \$4,000,000 in the general aggregate; and (B) procure and maintain workers' compensation coverage, meeting the statutory requirements of the State of Colorado. Prior to any Licensees' entry upon the Town Parcels and Restricted Parcels, the Town will cause written evidence to be delivered to Battle North of such insurance coverages being in effect.

b. Town. Cause Battle North to be named an additional insured on a primary non-contributory basis under the Town's policy of public entity general liability insurance (or equivalent), in an amount not less than the limits under the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.* (which limits are currently (A) \$424,000 for injury to one person in any single occurrence, and (B) \$1,195,000 for injury to two or more person in any single occurrence) against claims of bodily injury, property damage or death occurring in, on or about the Town Parcels and Restricted Parcels.

(iii) Indemnity. To the extent arising from its Diligence Activities, the Town will, to the maximum extent permitted by law, indemnify, defend, and hold harmless Battle from any and all claims, demands, liens, costs, expenses, damages and liabilities, including reasonable attorneys' fees and costs, that are asserted against Battle, the Town Parcels, Restricted Parcels or Battle Retained Parcels, or which Battle may suffer or incur, to the extent arising out of any claims for property damage or personal injury, or claims from materialmen or laborers. The Town will pay Battle's reasonable costs and expenses, including reasonable attorneys' fees incurred in defending any such matter, not to exceed one hundred thousand dollars (\$100,000). If this Agreement terminates, the Town will promptly and diligently repair damage to the Town Parcels and Restricted Parcels (and, if applicable, to adjacent areas of the Battle Retained Parcels) to the extent caused by the Town's Diligence Activities. The Town will reimburse Battle on demand for all expenses

Battle incurs in repairing any damage to the extent resulting from the Town's Diligence Activities if the Town does not promptly repair such damage.

(iv) Survival. The Town's obligations pursuant to this Section 5(c) will survive termination of this Agreement and/or Closing for a period of one (1) year.

(d) Battle North's Disclosures. Within ten (10) business days after the Effective Date, Battle North will deliver or cause to be made available to the Town for review and/or copying (by dropbox or similar electronic means) the following documents, to the extent in Battle North's possession or control, without obligation to obtain documents not in Battle North's possession or control, and without representation or warranty of any kind with respect to the accuracy or completeness of any reports, studies or other documents furnished to the Town that were prepared by parties other than Battle North, to the extent relating or pertaining to the Town Parcels and the Restricted Parcels (collectively, "**Battle North's Disclosures**"):

(i) Surveys. Battle North's most recent ALTA survey(s) of the Battle North Property and/or areas thereof corresponding to all or any part of the Town Parcels and Restricted Parcels.

(ii) Contractual Documents. Copies of leases, contracts, property management agreements, letter agreements and amendments, subleases or licenses, if any.

(iii) Reports and Documents. To the extent not publicly available at EPA's Superfund Records Center, EPA's webpage relating to the Eagle Mine Superfund Site at <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0800159>, the CDPHE Hazardous Materials and Waste Management Division Records Center, CDPHE's webpage relating to the Eagle Mine Superfund Site at <https://cdphe.colorado.gov/eagle-mine>, within Recorded instruments, or located in the Eagle Mine Site Repository in Minturn: copies of any reports or data regarding environmental conditions, including but not limited to hydrology, geology, hydrogeology, soils, ground water, cleanup or remediation plans or requirements and any amendments thereto; material correspondence with EPA or CDPHE in the prior three (3) years regarding environmental conditions, as described above, and any order, assessment, penalty, complaint, report or data related to the parcels' physical condition or affected by release of any Hazardous Materials from such parcels.

(iv) Capital Improvements. A schedule of capital improvements, if any, made or installed during Battle's ownership.

(v) Documents. All appraisals, engineering reports, title abstracts, and other reports generated during Battle's ownership.

(vi) Additional Matters. To the extent not listed above, any documents and materials that the Town reasonably requests from time to time which directly pertain to the physical condition or status of title, are in Battle North's possession or control, and which are neither subject to attorney-client or other privilege nor subject to any non-disclosure agreement that is legally binding on Battle North.

(e) Title Insurance. As part of its Diligence Activities, the Town may in its sole discretion, at its sole cost, and at such time as it determines desirable, order from a title insurance company of its choice (“**Title Company**”) one or more commitments (“**Title Commitment(s)**”) for issuance of policy(ies) of title insurance for any or all of the Property Interests in such form, at such insured amount, and with such endorsements, if any, as the Town may choose to purchase (“**Title Policy(ies)**”). The Town will cause the Title Company to include Battle North on the distribution list for all Title Commitments and updates thereto, and will provide to Battle North written notice of the selected Title Company together with contact information for the individual(s) at the Title Company responsible for coordinating such Title Commitments and providing Closing services. The Town will be solely responsible for working with the Title Company to resolve to the Town’s satisfaction any title matters disclosed in the Title Commitments. Upon receipt of the Town’s written notice of any title matters with respect to which the Town objects or otherwise has concerns, Battle North may, in its sole discretion and without obligation to cause such title matter to be cured or to incur any expense or liability in connection therewith, cooperate with the Town’s efforts to address and resolve such matters to the Town’s satisfaction. In connection with the Title Company’s issuance of the Title Policy(ies), Battle North will execute such certificates and affidavits as title companies typically require and are commercially reasonable for a land seller to execute in a commercial real estate transaction.

(f) Survey. As part of its Diligence Activities, the Town may in its sole discretion, at its sole cost, and at such time as it determines desirable, either engage a surveyor to produce one or more new surveys of the Town Parcels and the Restricted Parcels or cause the survey(s) Battle North provides pursuant to Section 5(d)(i)(d)(i) to be updated, to more specifically address the Town Parcels and the Restricted Parcels, to reflect the matters disclosed in the Title Commitment(s), and to add the Town to the survey certification (in either case, as applicable, “**Survey(s)**”). The Town will be solely responsible for working with the surveyor to resolve any Survey matters to the Town’s satisfaction. Upon receipt of the Town’s written notice of any Survey matters with respect to which the Town objects or otherwise has concerns, Battle North may, in its sole discretion and without obligation to cause such Survey matter to be cured or incur any expense or liability in connection therewith, cooperate with the Town’s efforts to address and resolve such matters to the Town’s satisfaction.

(g) CERCLA Protections. As part of its Diligence Activities, the Town may in its sole discretion, at its sole cost, and at such time as it determines desirable, elect to pursue environmental liability protections related to the Property Interests (“**CERCLA Protections**”), which may include one or more of: (i) negotiation of a transfer of the Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA §107(r) Lien, Docket No. CERCLA-08-2018-009, by and among the United States on behalf of the United States Environmental Protection Agency, the Colorado Department of Public Health and Environment, and Battle North, LLC and Battle South, LLC as it relates to the Property Interests; (ii) comfort letters from CDPHE and/or EPA; (iii) environmental insurance; (iv) negotiation of one or more prospective purchaser agreements; and (v) other mechanisms of managing potential environmental liabilities associated with the Property Interests. The Town will be solely responsible for all undertakings and activities pertinent to investigating, evaluating and pursuing such CERCLA Protections as the Town deems desirable. Upon receipt of the Town’s written request, in its sole discretion and without obligation to incur any expense or liability in connection therewith, Battle

may cooperate with and facilitate the Town's efforts to secure CERCLA Protections to the Town's satisfaction.

(h) Termination During Diligence Period. By delivery to Battle of a written notice of termination prior to the Approval Date, the Town will have the right to terminate this Agreement if the Town is not satisfied with the results of its Diligence Activities, for any other reason, or for no reason. If the Town timely delivers written notice of termination to Battle, this Agreement will terminate and the Parties will be released from further liability or obligation under this Agreement except those that expressly survive termination of this Agreement. If the Town terminates this Agreement and to the extent Battle so requests in writing, the Town will deliver to Battle copies of test results, reports, and other information generated from the Town's Diligence Activities, except to the extent such documents may be subject to attorney-client privilege or work product protections.

6. Representations and Warranties. Battle and the Town each represent, warrant and covenant to the other Party as to the matters set forth in this Section 6 as of the Effective Date, and will be deemed to remake the same as of, as applicable, the Closing Date and implementation of the Settlement.

(a) Battle's Representations and Warranties. Battle represents, warrants and covenants to the Town as follows:

(i) Authority. As described and set forth in the introductory paragraph of this Agreement, each entity comprising Battle is, as applicable, either a limited liability limited partnership or a limited liability company that is duly organized, validly existing and in good standing under the laws of the State of Georgia, has the full right and authority to enter into this Agreement and consummate the transactions contemplated by this Agreement, and has taken all requisite action in connection with the execution of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby.

(ii) Consents; Binding Obligations. No third-party approval or consent is required to enter into this Agreement or to consummate the transactions contemplated hereby. This Agreement and all documents required hereby to be executed by Battle are and shall be valid, legally binding obligations of and enforceable against Battle in accordance with their terms.

(iii) Battle North's Disclosures. To Battle North's Actual Knowledge, Battle North's Disclosures made available to the Town pursuant to Section 5(d) constitute all of such materials as are in Battle North's possession or control.

(iv) No Bankruptcy Proceedings. No bankruptcy, insolvency, rearrangement or similar action or proceeding, whether voluntary or involuntary, is pending or threatened against any entity comprising Battle, and to Battle's Actual Knowledge, no such entity has an intention of filing or commencing any such action or proceeding.

(v) Litigation. Excepting the Litigation, there are no actions, suits, litigation or proceedings pending, or to Battle's Actual Knowledge threatened, affecting the Town

Parcels or Restricted Parcels. There are no actions, suits, litigation or proceedings pending, or to Battle's Actual Knowledge threatened, affecting Battle's right, power or authority to enter into and perform this Agreement in accordance with its terms, or which question the validity or enforceability of this Agreement or any action taken or to be taken by Battle under this Agreement.

(vi) Condemnation. Battle North has no Actual Knowledge, and has received no notice from any governmental authorities, that proceedings for the condemnation of any portion of the Town Parcels or Restricted Parcels are pending.

(vii) No Violations. To Battle North's Actual Knowledge, the Town Parcels and Restricted Parcels have been and presently are used and operated in compliance in all material respects with, and in no material way violate, any applicable statute, law, regulation, rule, ordinance, order or permit of any kind whatsoever affecting the Town Parcels, Restricted Parcels or any part thereof.

(viii) Leases. Except as disclosed in Battle North's Disclosures, no portion of the Town Parcels or Restricted Parcels is subject to any lease, license, easement or right of access.

(ix) Service Contracts. Except as disclosed in Battle North's Disclosures, there is no agreement, in writing or otherwise, between Battle North and any other person or persons for service, supply, maintenance, management or the operation of the Town Parcels or Restricted Parcels which is not cancelable upon not more than thirty (30) days' notice without payment of any penalty or premium.

(x) Hazardous Materials; Environmental Liens. To Battle North's Actual Knowledge, and except as disclosed in Battle North's Disclosures: (A) Battle North has received no notice, complaint or allegation from any state, federal or local agency or authority, or any third party, of any violation of any Environmental Law with respect to any portion of the Town Parcels or Restricted Parcels related to any release or alleged release of Hazardous Materials at or from any portion of the Town Parcels or Restricted Parcels; (B) neither the Town Parcels or Restricted Parcels nor any portion thereof have at any time been used for the transfer, storage, disposal or manufacture of any Hazardous Material; (C) there has been no release of Hazardous Materials at or from any portion of the Town Parcels or Restricted Parcels; (D) there are no Hazardous Materials located at, on or under the Town Parcels or Restricted Parcels or any portion thereof, the presence of which would constitute a violation of any Environmental Law; (E) no other property and no third party has been affected by any release of Hazardous Materials at or from any portion of the Town Parcels or Restricted Parcels; (F) with the exception of utilities, if any, there are no underground storage tanks or pipelines located on the Town Parcels or Restricted Parcels or any portion thereof; (G) Battle North is not in violation of, or alleged to be in violation of, any judgment, decree, order, law, license, rule or regulation or permit pertaining to any Environmental Law; and (H) no portion of the Town Parcels or Restricted Parcels is subject to any environmental lien, environmental use restriction or environmental covenant.

(xi) Changed Circumstances. If Battle acquires Actual Knowledge of any act or circumstances which would change or render incorrect, in any material respect, any representation or warranty made by Battle under this Agreement, whether as of the date given or any time during the Diligence Period and whether or not such representation or warranty was based upon Battle's knowledge and/or belief as of a certain date, Battle will give prompt written notice of such changed fact or circumstance to the Town. Battle may, without obligation pursuant to this Agreement to do so, cause the representation or warranty to again become true or correct prior to the Closing Date. If Battle does not cause such representation or warranty to be true or correct as of the Closing Date, the Town's sole remedies will be either to terminate this Agreement (in which event the Parties will be relieved of any further obligations under this Agreement that do expressly survive termination) or to waive any objection to the representation or warranty to the extent it has become untrue or incorrect and to proceed with the Closing and the Settlement.

(b) Town's Representations and Warranties. The Town represents, warrants and covenants to Battle as follows:

(i) Authority. The Town is duly organized, validly existing and in good standing under the laws of the State of Colorado. The Town has full right and authority to enter into this Agreement and consummate the transactions contemplated by this Agreement. The Town has taken all requisite action in connection with the execution of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby.

(ii) Consents; Binding Obligations. No third-party approval or consent is required to enter into this Agreement or to consummate the transactions contemplated hereby. This Agreement and all documents required hereby to be executed by the Town are and will be valid, legally binding obligations of and enforceable against the Town in accordance with their terms.

(c) No Other Representations. Except as expressly set forth in this Section 6, this Agreement is made without representation or warranty of any kind by the Parties.

(d) Survival. Each Party making representations and warranties in this Section 6 acknowledges the Party to whom they are given will materially rely upon them in proceeding with the Closing and the Settlement. Such representations and warranties will survive for a period of two (2) years following the Closing Date. To the extent permitted by law, the Party giving such representations and warranties will indemnify, defend and hold the Party to whom they are given (together with such Party's directors, members, officers, employees, agents, successors and assigns) harmless from and against any loss, liability or expense, including reasonable attorneys' fees, not to exceed fifty thousand dollars (\$50,000), arising from a third-party complaint that is filed against such receiving Party during such two (2) year period to the extent based on or arising from the breach of such Party's representations or warranties in this Section 6.

7. Closing. If this Agreement has not otherwise been terminated pursuant to a Party's express termination right under this Agreement, consummation of Battle North's conveyance of the Property Interests to the Town ("**Closing**") will occur, contemporaneously with implementation

of the Settlement pursuant to Section 8, on the fifth (5th) business days after the date on which Final Approval occurs (“**Closing Date**”). In connection with Closing:

(a) Fee Interests in the Town Parcels. Battle North will convey fee title to each of the Town Parcels to the Town, free and clear of monetary liens (except the inchoate lien for *ad valorem* taxes and assessments for the year of Closing due and payable by Battle North in the year following Closing), by separate statutory forms of special warranty deed in substantially the form attached at Exhibit B (“Deed(s)”). The legal descriptions, acreages and configurations of the Town Parcels will be established by the Exemption Plat. During the Diligence Period, the Battle North and the Town will negotiate mutually acceptable terms and conditions to which such conveyances will be subject, and the Deeds will incorporate as applicable:

(i) Reserved Easement(s). Battle North may, reserve general, blanket easements within the Town Parcels, except for the parcel depicted on the Concept Plan as the Highlands Parcel and the Rec Center Parcel, for construction, ownership, operation, maintenance, repair and replacement of existing and to-be-constructed utilities, roads, pedestrian crossings, sidewalks, bike paths, the Water Distribution System and similar Infrastructure Improvements required or desirable in connection with development of the Battle Retained Parcels (“**Reserved Easement(s)**”). The engineering requirements of Infrastructure Improvements (excluding the Water Treatment System) within, and the final “as-built” locations of, the Reserved Easements will be subject to Town review and approval in connection with preliminary and final plats for development within the Battle Retained Parcels. The legal descriptions and locations of the Reserved Easements will be subject to modification to conform to such final “as built” conditions. Any blanket easement that has not been narrowed to its final engineered location within fifteen (15) years of the Effective Date shall automatically terminate, and be void and unenforceable.

(ii) Deed Restriction(s). Battle North and the Town may mutually agree upon certain use restrictions with respect to a particular Town Parcel for the benefit of and enforceable by Battle North and the Battle Retained Parcels (“**Deed Restriction(s)**”). The Rec Center Parcels will incorporate a Deed Restriction that limits use of the Rec Center Parcels to community, recreation, artistic, child care, and/or entertainment, and similar uses to be determined by the Parties and not more than three employee/caretaker units, and the Deed(s) for other Town Parcels may incorporate similar or different Deed Restrictions generally consistent with the permitted uses under the Holding Zone. The other Town Parcels will incorporate a deed restriction to exclude industrial uses of those parcels without the written consent of Battle Mountain.

(iii) Exceptions. All matters of Record the Town has not caused to be removed from Schedule B-II of the Title Commitment for the applicable Town Parcel (“**Exceptions**”).

(b) Restrictions. Battle North and the Town anticipate that different Restrictions will encumber different Restricted Parcels in different ways and on different terms. During the Diligence Period, Battle North and the Town will negotiate mutually acceptable terms and conditions of the specific Restrictions that will encumber each of the Restricted Parcels, together with the forms thereof. Such Restrictions may include all or any combination of the following:

(i) Perpetual Easements. It is anticipated that each Restricted Parcel will be encumbered by a perpetual easement agreement (“**Perpetual Easement Agreement(s)**”) pursuant to which Battle North will grant to the Town a perpetual non-exclusive easement (“**Perpetual Easement(s)**”) over, across and within such Restricted Parcel, or specified area therein, for the Town’s benefit in order to provide a specific scope of access and/or utility purposes, use, and/or benefit. For the Highlands Parcel, Battle North will grant at Closing to the Town an easement for access and utility purposes across the OTP Area to the Highlands Area at a location and in a size mutually agreeable to the parties. For parcels other than the Highlands Area, such scope may include active or passive non-motorized recreational uses, the provision of legal and physical access to and from other Town Parcels or a public road, and similar matters. The Perpetual Easement Agreements will expressly reserve to Battle North, as grantor, and incorporate Battle North’s general right to use the Restricted Parcels for purposes that do not unreasonably conflict with or impair the Town’s use and enjoyment of the Perpetual Easement(s), including but not limited to construction, ownership, operation, maintenance, repair and replacement of existing and to-be-constructed utilities, roads, pedestrian crossings, sidewalks, bike paths, the Water Distribution System and similar Infrastructure Improvements required or desirable in connection with development of the Battle Retained Parcels (the “**Reserved Uses**”). The infrastructure types, locations and engineering requirements (except the Water Treatment System) of such Reserved Uses and Infrastructure Improvements will be subject, and the final “as-built” locations of the Reserved Uses will be established pursuant, to Town review and approval in connection with approval of preliminary and final plats for development within the Battle Retained Parcels.

(ii) Restrictive Covenants. It is anticipated that each Restricted Parcel may be encumbered by a covenant that restricts Battle North’s use of the Restricted Parcels to only those uses allowed within the Bolts OS/Rec District as of the Effective Date or such other or additional future site-specific uses as the Parties otherwise agree is necessary to implement the intent of this agreement (“**Restrictive Covenant(s)**”). As Battle North and the Town may mutually agree during the Diligence Period, the Restrictive Covenants for particular Restricted Parcels may be incorporated into the applicable Perpetual Easement Agreement (i.e., as an express limitation of the Reserved Uses) or may be set forth in a separate instrument in a mutually agreed upon form suitable for Recording. No Restrictive Covenant for any Restricted Parcel will require Town review or approval for, preclude, constrain, impair or otherwise restrict activities which are necessary or desirable to comply with EPA or CDPHE rules, regulations or requirements, or activities which are necessary or desirable to comply with or otherwise implement the Reservoir Agreement.

(iii) Purchase Options. At the election of the Town, upon such terms and conditions, and utilizing such form(s) as Battle North and the Town may mutually agree during the Diligence Period, certain of the Restricted Parcels may be made subject to Battle North’s grant to the Town of an option to acquire fee title to such Restricted Parcel (“**Purchase Option**”). Each Option will be exercisable by The Town for a period of twenty-five (25) years from the Closing Date and will cost The Town no more than one dollar (\$1.00). As Battle North and the Town may mutually agree during the Diligence Period, the Purchase Option for particular Restricted Parcels may be incorporated into the applicable Perpetual Easement Agreement or may be set forth in a separate instrument. If

set forth in a separate instrument, such separate instrument will not be Recorded, but Battle North and the Town may Record a mutually agreed upon short form memorandum of Purchase Option as part of the Closing.

(c) Policies of Title Insurance. The Town, in its sole discretion and at its sole expense, may elect to purchase such Title Policy(ies) as the Town deems appropriate with respect to the Property Interests. Battle North, in its sole discretion and at its sole expense, may elect to purchase such policy(ies) of title insurance for the Reserved Easements as Battle North deems appropriate.

(d) Disposition of Previously Escrowed Funds. All remaining escrow funds pursuant to the Escrow Agreements and the Funding Agreement will be disbursed to the Town.

(e) Escrow Closing. On or prior to the Closing Date, each of Battle North and the Town will deposit into escrow with the Title Company (in such capacity, “**Escrow Agent**”), subject to the terms and conditions to be set forth in an escrow agreement executed by and among Escrow Agent and the applicable Parties (“**Escrow Agreement**”) regarding the release, delivery and, as applicable, Recording of the following funds, documents and instruments (fully executed and notarized by Battle North and/or the Town as applicable):

(i) Battle North’s Deliveries.

a. A Deed for each of the Town Parcels.

b. A counterpart original Stipulation (pursuant to Section 8(a)) containing Battle’s fully executed signature page(s) thereto.

c. An original Release of Claims (pursuant to Section 8(b)(i)) containing Battle’s fully executed signature page(s) thereto.

d. A certificate of non-foreign status, which provides that Battle North is not a “foreign person” as that term is defined in the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto, and there is no obligation under Section 1445 of the U.S. Internal Revenue Code of 1986, as amended, to withhold and pay over to the U.S. Internal Revenue Service any part of the “amount realized” by Battle North in connection with the Closing (as defined in the regulations issued under said Section 1445).

e. Such certificates and affidavits as the Title Company reasonably and customarily requires of a seller of real property or grantor of insurable interests therein to issue an extended coverage Title Policy.

f. Such funds as Battle North is required to deposit with Escrow Agent as set forth in the Closing Settlement Statement pursuant to Section 7(e)(iii)e.

(ii) Town’s Deliveries.

a. A counterpart original Stipulation (pursuant to Section 8(a)) containing the Town’s fully executed signature page(s) thereto.

b. An original Release of Claims (pursuant to Section 8(b)(ii)) containing the Town's fully executed signature page(s) thereto.

c. Such certificates and affidavits as the Title Company reasonably and customarily requires of a purchaser of real property or grantee of insurable interests therein to issue the Title Policy.

d. Such funds as the Town is required to deposit with Escrow Agent as set forth in the Closing Settlement Statement pursuant to Section 7(e)(iii)e, including but not limited to the Town's payment of the premium for and applicable endorsements to the Title Policy(ies).

(iii) Mutual Deliveries.

a. The Escrow Instructions.

b. The Perpetual Easement Agreements.

c. The Restrictive Covenants, if any, that are not incorporated within the Perpetual Easement Agreements,

d. Short form memoranda of Purchase Options, if any, as contemplated pursuant to Section 7(b)(iii).

e. A closing settlement statement prepared by the Title Company setting forth credits, adjustments and prorations between and among Battle North and the Town, the net funds due to or from Battle North, and the net funds due to or from the Town ("**Closing Settlement Statement**").

f. Such other documents as the Title Company reasonably and customarily requires parties to a commercial real estate transaction, or which Battle North and the Town otherwise may have agreed in this Agreement, to deliver at the Closing.

(f) Costs, Prorations and Adjustments. As to be set forth in the Closing Settlement Statement (and without limitation of other costs and expenses that may be reflected therein), Battle North and the Town will be responsible for payment at Closing of:

(i) Property Taxes. Subject to and as calculated and determined pursuant to Section 7(f)(iv), Battle North will be responsible for payment of all *ad valorem* property taxes (including special assessments and personal property taxes (if any), but excluding real estate transfer taxes, if any, which are payable by the buyer/grantee) applicable to the Town Parcels through and including the date immediately preceding the Closing Date, comprised of: (A) those for which tax bills have been issued as of the Closing Date (for years prior to the year of Closing), the amount of such obligations is known as of the Closing Date, and are due and payable in the year of Closing ("**Current Property Taxes**"); and (B) those for the year of Closing which will be due and payable in arrears, for which

tax bills will be issued due and payable in the year following the year of Closing (“**Deferred Property Taxes**”).

(ii) Battle’s Costs and Adjustments. Battle North will pay: (A) to the extent not paid prior to the Closing Date, the Current Property Taxes; (B) Battle North’s own attorneys’ fees; (C) the premium payable in connection with issuance of the policy(ies) of title insurance, if any, that Battle North elects to obtain for the Reserved Easements; and (D) fifty percent (50%) of (1) the documentary taxes due upon the execution and Recording of the Deeds and other closing documents; (2) Recording costs in connection with the Recording of the Deeds and other documents to be recorded at Closing; and (3) the fees, costs and expenses of the Escrow Agent pursuant to the Escrow Agreement.

(iii) The Town’s Costs and Adjustments. The Town will pay: (A) real estate transfer taxes, if any, which are payable by the buyer/grantee with respect to conveyance of the Property Interests; (B) the Town’s own attorneys’ fees; (C) the fees and premiums payable in connection with the Title Commitment(s) and issuance of any Title Policy(ies) the Town elects to obtain for the Property Interests; and (D) fifty percent (50%) of (1) the documentary taxes due upon the execution and Recording of the Deeds and other closing documents; (2) Recording costs in connection with the Recording of the Deeds and other documents to be recorded at Closing; and (3) the fees, costs and expenses of the Escrow Agent pursuant to the Escrow Agreement.

(iv) Calculation of Prorations; True Up. For purposes of calculating prorations, Battle North will be the owner of the Town Parcels through and including the day immediately preceding the Closing Date, and the Town will be the owner of the Town Parcels and other Property Interests as of and following the Closing Date. Accordingly, items subject to proration pertaining to the period prior to the Closing Date will be allocated to Battle North and items subject to proration pertaining to the period starting on and including the Closing Date will be allocated to the Town. All such prorations will be made on the basis of the actual number of days of the year and months which will have elapsed as of the Closing Date. Items of income and expense for the period prior to the Closing Date will be for the account of Battle North, all as determined by the accrual method of accounting. The proration for Taxes will be readjusted based on the actual invoice for Taxes upon the written request of either Party made no later than one year after the Closing Date. Without limitation of the foregoing:

a. Current Property Taxes. Battle North’s payment of Current Property taxes pursuant to clause (A) of Section 7(f)(ii) will be final as of the Closing Date and will not be subject to later adjustment.

b. Deferred Property Taxes. It is anticipated that (and Battle North and the Town will coordinate as may reasonably be necessary to cause) the County Assessor will establish separate tax parcels for the Town Parcels after Recording of the Deeds (to the extent any such Town Parcels were not separate tax parcels prior to the Closing Date), and will issue to Battle North tax bills for the Deferred Property Taxes on the Town Parcels (i.e., taxes assessed on the Town Parcels for the year of Closing that will be due and payable in the year following Closing) in

the year following Closing. If the Town receives tax bills for Deferred Property Taxes payable for the Town Parcels, the Town will promptly deliver such tax bills (or copies thereof) to Battle North. Whether Battle North receives tax bills for the Deferred Property Taxes payable for the Town Parcels directly from the County Assessor or from the Town, Battle North will fully and timely pay such Deferred Property Taxes (for the period of the year of Closing through and including the day immediately preceding the Closing Date) in accordance with the terms of such tax bills. Battle North will retain all rights to contest valuation of the Town Parcels and the amount of Deferred Property Taxes payable. Battle North's obligation to pay the Deferred Property Taxes will survive Closing until fully performed.

c. Other. All other costs and expenses in connection with the Closing and not otherwise specifically addressed in this Section 7(f) will be allocated to and paid by Battle North and the Town in the manner in which such costs and expenses are customarily allocated between the parties at closings of commercial property transactions in Eagle County, Colorado.

8. **Mutual Release and Dismissal of Litigation**. On the Closing Date or as promptly thereafter as practicable, the Parties will coordinate to implement the Settlement by:

(a) Dismissal with Prejudice. The Parties will mutually execute, deposit in escrow pursuant to the Escrow Agreement, and cause to be filed with the Court a Stipulation for Dismissal with Prejudice in the Litigation ("**Stipulation**"), dismissing all claims in the Litigation with prejudice, with each Party to bear its own attorneys' fees and costs.

(b) Mutual Release. Concurrently with filing of the Stipulation for Dismissal, each of the Parties will execute, deposit in escrow pursuant to the Escrow Agreement, and cause to be delivered to the others a written instrument ("**Release of Claims**") which, without limitation, releases any and all claims, actions, demands, rights, defenses, liabilities, damages and causes of action, whether in law or in equity, whether as of this date known or unknown, and whether asserted or unasserted, of whatsoever kind or character (collectively, "**Claims**") that were asserted, or could have been asserted in the Litigation, and all Claims arising from the transactions or occurrences that are the subject matter of the Litigation, as follows:

(i) Battle's Release. Battle, on behalf of itself, and its members, managers, shareholders, officers, directors, limited partners, general partners, affiliates, employees, agents, successors, assigns, and anyone claiming by, through or under Battle, releases, remises and forever discharges the Town and the Town's board members, managers, employees, agents, successors and assigns of and from any and all Claims, which Battle now has or may claim to have in the future, arising from or based in whole or in part upon any act, omission, event, transaction, matter or thing involved, or arising directly or indirectly from or in connection with any portion of the Original Property, the Annexation, the Resort Project, the Prior Agreements, the PUD Preliminary Plan and/or the Litigation.

(ii) Town's Release. The Town, on behalf of itself, and board members, managers, employees, agents, successors, assigns, and anyone claiming by, through or under the Town, releases, remises and forever discharges Battle, and Battle's members,

managers, shareholders, officers, directors, limited partners, general partners, affiliates, employees, agents, successors, and assigns of and from any and all Claims, which the Town now has or may claim to have in the future, arising from or based in whole or in part upon any act, omission, event, transaction, matter or thing involved, or arising directly or indirectly from or in connection with any portion of the Original Property, the Annexation, the Resort Project, the Prior Agreements, the PUD Preliminary Plan and/or the Litigation.

9. **Term; Intent.** Unless the Parties otherwise agree in writing, or a Party earlier terminates this Agreement pursuant to a termination right set forth in this Agreement, the term of this Agreement will commence on the Effective Date and will expire and be of no further force or effect on the earlier to occur of: (a) the date on which the Settlement is fully implemented pursuant to Section 8; and (b) April 30, 2024; provided, however, in the event of a Legal Challenge, this Agreement will remain in effect until the earlier to occur of: (x) the second (2nd) anniversary of the Effective Date; and (y) the date on which Final Approval occurs following a successful resolution of the Legal Challenge. The intent of this Agreement is for the Parties to pursue and complete the matters contemplated in this Agreement, including but not limited to securing Final Approval of the Approvals. Accordingly, during the term of this Agreement, no Code provision which precludes the submittal and processing of land use applications or similar matters, including but not limited to Code Section 13-21-740 (regarding the effect of pending litigation or appeal), will apply to the Battle North Property, Battle, the Applications, the Approvals, this Agreement or any other matters this Agreement addresses.

10. **No Admission of Liability.** This Agreement is entered into in the interest of avoiding further cost, expense and time associated with the Litigation and resolution of the disputes. Each Party expressly denies any liability, and nothing set forth in this Agreement will be construed as an admission of liability.

11. **No Third-Party Beneficiaries.** There are no intended third-party beneficiaries of this Agreement. Enforcement of the terms and conditions of this Agreement is, and all rights of action relating to this Agreement are, strictly reserved to the Parties and their successors and assigns. Nothing contained in this Agreement will give or allow any claim or right of action by any other or third person. Other than the Parties and their respective successors and assigns, anyone receiving a benefit from this Agreement is an incidental beneficiary only and will have no rights under or pursuant to this Agreement.

12. **Governing Law; Venue.** This Agreement will be interpreted in accordance with, and governed by, the laws of the State of Colorado. Venue for any dispute will be in District Court for Eagle County, Colorado.

13. **Entire Agreement; Successors in Interest.** This Agreement contains the entire agreement among the Parties with regard to the matters set forth in it and supersedes any and all prior agreements and understandings, written or oral, relating to the subject matter of this Agreement. This Agreement is binding upon the Parties and their respective successors and assigns.

14. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision or Section of this Agreement.

15. **Time of the Essence.** Time is of the essence in the Parties' performance of their respective obligations imposed by this Agreement.

16. **Severability.** The Parties have bargained for and negotiated the terms and provision of this Agreement based on the assumption that each and every provision is legally valid and enforceable. If a court of competent jurisdiction, notwithstanding the foregoing, holds any part, term, or provision of this Agreement to be invalid, void or unenforceable, the remaining portions or provisions of this Agreement will continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining, or would substantially deprive such Party of the benefit of its bargain. If a court order invalidates, voids, or renders unenforceable any provision that concerns a material term of this Agreement, the Parties will amend this Agreement, or in the absence of mutual agreement to amend this Agreement any Party may seek a Court order to judicially reform this Agreement, in a manner which re-establishes the equities and benefits of the bargain and most fully implements the Parties' original intent and objectives.

17. **No Construction Against Drafter; Advice of Counsel.** Each Party has consulted with their respective legal counsel concerning, and has cooperated in, the drafting and preparation of this Agreement. In construing any provision of this Agreement, any rule favoring construction against the drafter will not apply against any Party.

18. **Attorneys' Fees and Costs.** If a Party commences any legal action to interpret or enforce the terms of this Agreement, the substantially prevailing Party in any litigation, arbitration or other proceeding related thereto will be awarded its attorney fees and costs associated with responding to or prosecuting such action. In the event of multiple claims, the "substantially prevailing Party" will be determined by the court, arbitrator or similar applicable deciding body, with reference to which Party prevailed on more claims, the value of those claims, and the nature and amount of relief awarded.


19. **Facsimile/Scanned Signatures/Counterparts.** Signatures may be evidenced electronically, by facsimile or a scan. A facsimile transmitted or scanned copy of this Agreement (including a PDF) executed by a Party will be accepted as an original signature for all purposes. This Agreement may be executed in several counterparts, each of which will be construed together as one original.

20. **Effect of Termination of Agreement.** If this Agreement is terminated for any reason permitted under this Agreement prior to full implementation of Settlement pursuant to Section 8, the Parties will be returned to their respective positions in the Litigation as if no settlement was reached. The Town will have no obligation to return to Battle any portion of the funds deposited pursuant to Section 1. Except to the extent the Parties stay and/or dismiss the Litigation pursuant to this Agreement, this Agreement will have no bearing on the Litigation, and no statements made or agreed to in this Agreement will have any binding effect or influence on the Litigation.


[Signature Pages and Exhibits Follows This Page]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the Effective Date.


TOWN OF MINTURN,
a Colorado home rule municipal corporation

By: 
Name: Earle Bidez
Title: Mayor

TOWN COUNCIL FOR THE TOWN OF MINTURN,
the legislative body of the Town of Minturn


By: 
Name: Earle Bidez
Title: Mayor

MINTURN WATER AND SANITATION ACTIVITIES ENTERPRISE,
an enterprise fund established pursuant to C.R.S. §37-45.1-101 *et seq.*

By: 
Name: Earle Bidez
Title: Mayor

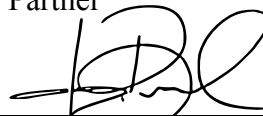
Battle One Developer, LLLP,
a Georgia limited liability limited partnership

By: Bassel Battle Investment, Corp.,
a Colorado corporation,
its General Partner

By: 
Name: Lorne Bassel
Title: President

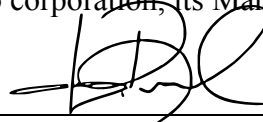
Battle Two Developer, LLLP,
a Georgia limited liability limited partnership

By: Bassel Battle Investment, Corp.,
a Colorado corporation,
its General Partner

By: 
Name: Lorne Bassel
Title: President


Battle North, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager

By: 
Name: Lorne Bassel
Title: President

Battle South, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager

By: 
Name: Lorne Bassel
Title: President

Battle One A Developer, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager


By: 
Name: Lorne Bassel
Title: President

Exhibit A Concept Plan

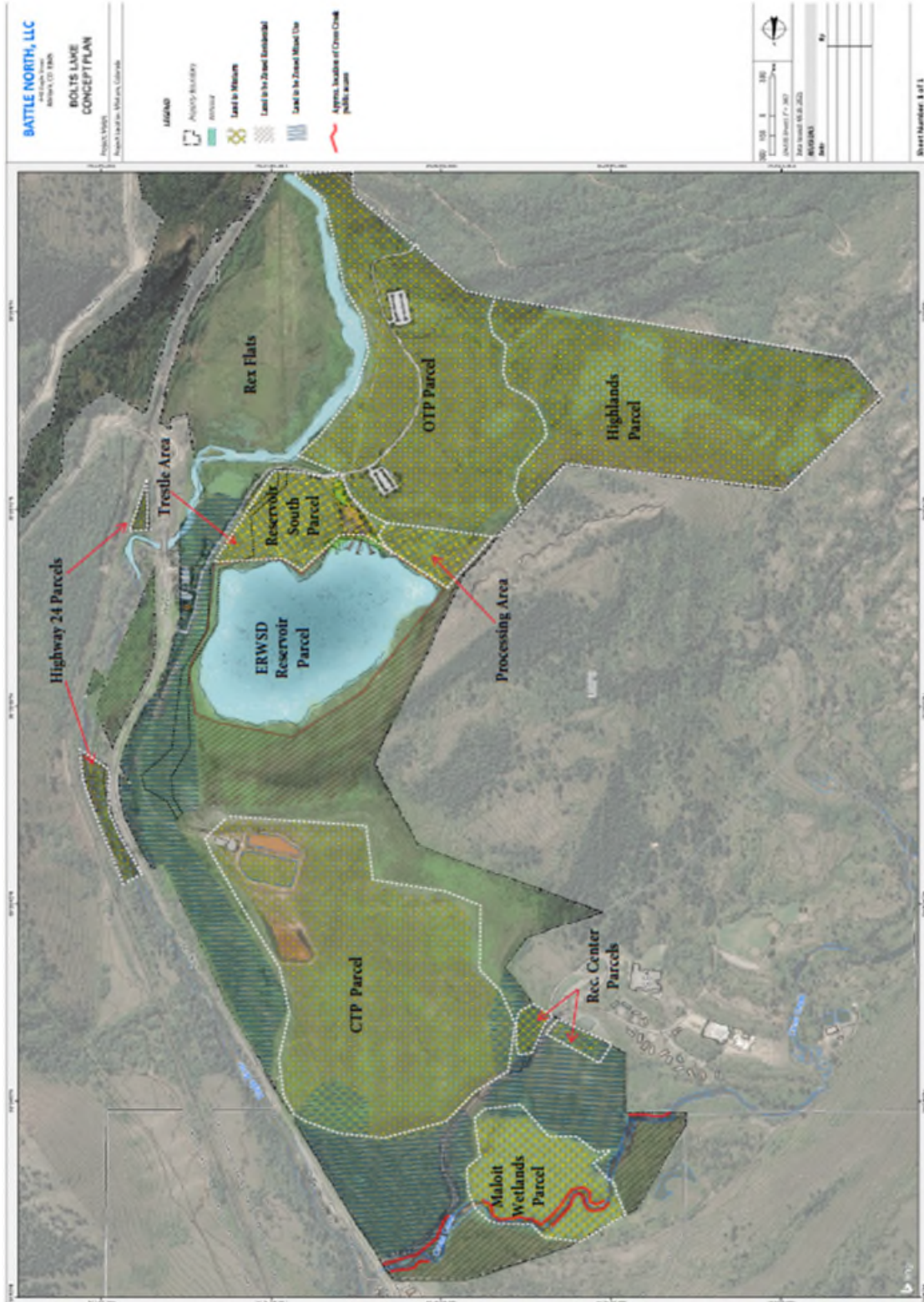


Exhibit A
to Settlement Agreement
Page 1

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

No Documentary Transfer Tax Payable.
Grantee is a political subdivision of the State of
Colorado. C.R.S. § 39-13-104(1)(a)

ATTENTION:

Exhibit B
FORM OF DEED
STATUTORY FORM – C.R.S. § 38-30-113(b)]

BATTLE NORTH, LLC, a Georgia limited liability company (together with its successors and assigns, “**Grantor**”), whose street address is 164 Railroad Ave., Minturn, CO 81645, for the consideration of Ten and 00/100 Dollars (\$10.00), in hand paid, and other good and valuable consideration described herein, hereby sells and conveys to TOWN OF MINTURN (together with its successors and assigns, “**Grantee**”), whose street address is _____, fee simple title to the real property that is legally described and graphically depicted at **Exhibit A** attached hereto and made a part hereof (the “**Land**”), and warrants the title to the Land against all persons claiming under Grantor; subject, however, to the following:

(a) As set forth in **Exhibit B** attached hereto and made a part hereof: (i) the easements reserved to Grantor (the “**Reserved Easement**”); and (ii) the limitations and restrictions applicable to Grantee’s uses of the Land for the benefit of and appurtenant to Grantor’s adjacent properties, which limitations and restrictions will run with title to the Land and be legally enforceable against Grantee and the Land by Grantor (“**Deed Restriction**”); and [**Retain or delete Deed Restriction as applicable**]

(b) The matters set forth in **Exhibit C** (the “**Exceptions**”) attached hereto and made a part hereof.

Signed the ____ day of _____, 202____, to be made effective the ____ day of _____, 202____.

Exhibit A
to Special Warranty Deed
Legal Descriptions and Graphic Depictions of the Land

(To be inserted based on approved and Recorded Exemption Plat)

Exhibit B
to Special Warranty Deed
Deed Restriction and Reserved Easement

RESERVED EASEMENT

The conveyance to Grantee of the Land as legally described and graphically depicted in Exhibit A to this Special Warranty Deed is subject to Grantor's reservation of a general blanket easement (the "**Reserved Easement**") for construction, ownership, operation, maintenance, repair and replacement of existing and to be constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar improvements (the "**Permitted Improvements**") within the Land for the benefit of Grantor's (or its successor's) land to be served by such Permitted Improvements.

The locations and engineering requirements of Permitted Improvements within the Reserved Easements will be subject to applicable Town of Minturn rules and regulations pursuant to and established by the preliminary and final plat process for development of Grantor's (or its successor's) land to be served by such Permitted Improvements.

At Grantee's election, the general, blanket Reserved Easement described above may be modified and narrowed to correspond to the final "as built" locations, configurations and legal descriptions based on the final engineering designs for the Permitted Improvements and related considerations as established in connection with the final plat process described above. If Grantee so requests in writing, Grantor and Grantee will by mutual agreement execute and Record an amendment to this Exhibit B which sets forth the specific legal description and graphic depiction of the Reserved Easement in its "as built" location and configuration established in connection with such final plat process.

DEED RESTRICTION

[Insert or delete, as applicable]

Exhibit C
to Special Warranty Deed
Exceptions

Conveyance of the Land pursuant to the foregoing Special Warranty Deed is subject to the following Exceptions:

(to be inserted/incorporate from applicable Title Commitment Schedule B-II)