

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

**KARP NEU HANON PC
201 14TH STREET, SUITE 200
P.O. BOX 2030
GLENWOOD SPRINGS, CO 81602
ATTN: MICHAEL J. SAWYER**

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

**RELOCATABLE PERPETUAL ACCESS EASEMENT AGREEMENT
(Highlands – Parcels 1 and 2)**

THIS RELOCATABLE PERPETUAL ACCESS EASEMENT AGREEMENT (Highlands – Parcels 1 and 2) (this “**Agreement**”) is made and entered into as of this ___ day of September, 2024 (“**Effective Date**”), by and among the following (individually, a “**Party**” and, collectively, the “**Parties**”): Battle North, LLC, a Georgia limited liability company (together with its successors and assigns, “**Grantor**”), and the Town of Minturn, Colorado, a home rule municipal corporation (together with its successor and assigns, “**Grantee**”).

RECITALS

This Agreement is made with respect to the following facts:

A. Grantor processed and obtained approval of the Battle Mountain North Exemption Plat recorded in the real property records of the Eagle County clerk and recorder’s office (“**Record(ed)(ing)**”) contemporaneously with the Effective Date (the “**Exemption Plat**”).

B. Grantor is the fee simple owner of Parcel 3 of the Exemption Plat (“**Parcel 3**”) and Parcel 4 of the Exemption Plat (“**Parcel 4**,” and together with Parcel 3, “**Grantor Property**”).

C. Grantee is the fee simple owner of Parcels 1 and 2 of the Exemption Plat (“**Grantee Property**”).

D. The Grantor Property is subject to certain restrictions and requirements (“**Agencies Requirements**”) imposed by the United States Environmental Protection Agency (“**EPA**”) and/or the Colorado Department of Public Health and Environment (“**CDPHE**” and, collectively with the EPA, “**Agencies**”) pursuant to the Administrative Order on Consent for Response Action and Release and Waiver of CERCLA Lien, Docket No. CERCLA 08-2018-0009 (“**AOC**”) and the Notice of Environmental Use Restrictions imposed by CDPHE pursuant to C.R.S. Section 25-15-321.5 Recorded on November 20, 2019 at Reception No. 201919762 and May 24, 2021 at Reception No. 202112199 (collectively, “**Restrictive Notice**”). The Agencies provisionally approved that certain Project Delivery Method dated December 2021 (the “**OTP Work Plan**”) and may approve other work plans for remediation or other activities on the Grantor Property following the Effective Date (“**Work Plan(s)**”).

E. The Grantor Property is subject to certain terms and conditions of that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project by and among the Eagle River Water & Sanitation District, Upper Eagle Regional Water Authority (collectively,

“**District/Authority**”), and Battle North, LLC (“**Reservoir Agreement**”), including but not limited to the District/Authority’s acquisition of certain Property Interests (as defined in the Reservoir Agreement) that are subject to relocation and other terms and conditions of that certain special warranty deed Recorded on February 10, 2022 at Reception No. 202202329, and that certain Perpetual Easement Agreement (Eagle River Parcel) Recorded on February 10, 2022 at Reception No. 202202330 (collectively, “**Reservoir Instruments**”).

F. Grantee has reviewed and conducted due diligence to its satisfaction with respect to encumbrances of record that affect title to the Grantor Property, including the Restrictive Notice and the Reservoir Instruments (“**Title Matters**”), and also with respect to the AOC and the Reservoir Agreement.

G. Tigiwon Road provides the Grantor Property with legal and physical access to and from US Highway 24.

H. In connection with the Recording of the Exemption Plat and to provide the Grantee Property with legal and physical access from Tigiwon Road to the Grantee Property, Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, a non-exclusive, relocatable, perpetual access easement over, across and through a portion of the Grantor Property subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Perpetual Easement; Easement Area. Subject to the Title Matters, the AOC, Restrictive Notice, Reservoir Agreement, and Reservoir Instruments, Grantor hereby grants, bargains, sells and conveys to Grantee, for its use and the use of its employees, contractors, subcontractors and consultants (“**Grantee’s Permittees**”) the following easements (collectively, the “**Perpetual Easement**”):

(a) a non-exclusive, relocatable, perpetual easement over, across and through the portion of the Grantor Property that is 25 feet on either side of the centerline of the existing road (the “**Northern Easement Area**”), as depicted in Exhibit A; and

(b) a non-exclusive, relocatable, perpetual easement over, across and through the portion of the Grantor Property that is 100 feet from the Parcel 3 southerly property line (the “**Southern Easement Area**,” and together with the **Northern Easement Area**, the “**Easement Area**”), as depicted in Exhibit A.

2. Permitted Uses. Provided that such activities are in all cases subject to the terms, conditions and restrictions imposed pursuant to the AOC, Restrictive Notice, Reservoir Agreement, Reservoir Instruments, and the Title Matters, the scope of Grantee’s and Grantee’s Permittee’s permitted use of the Easement Area and enjoyment of the Perpetual Easement is limited to the following (“**Permitted Uses**”):

(a) At Grantee's sole cost and expense, Grantee's planning, design, construction, operation, maintenance, repair, replacement and, if applicable pursuant to Section 4, relocation of roadways, pedestrian crossings, sidewalks, trails, bike paths, and utilities to serve Grantee Property.

(b) In connection with the foregoing, a right of vehicular (motorized and non-motorized) and pedestrian ingress and egress, including construction vehicles, for the transport of personnel, maintenance materials and equipment to and from the Grantee Property and, as when and subject to such terms as Grantee may establish, such access may be open for public use.

(c) Vehicular ingress and egress for access to and from the Grantee Property.

(d) To impose rules and regulations on the use of roadways, pedestrian crossings, sidewalks, trails, and bike paths constructed by Grantee in order to promote public safety and prevent harm to Grantee's infrastructure, including limitations on points of access and weights of vehicles.

(e) Grantee's performance of its restoration obligations pursuant to Section 7.

3. Reserved Uses. Grantor reserves for itself and for Grantor's employees, contractors, subcontractors and consultants, the right to use the Easement Area and to grant further easements and other interests in (for the limited purposes of planning, design, construction, operation, maintenance, repair, replacement of utilities serving Grantor's Property and Exemption Plat Parcels 7, 9, 13, 14, 15 and 16 (collectively, the "**Battle Retained Parcels**")) together with implementation of the Reservoir Agreement, the AOC the Restrictive Notice, OTP Work Plan, Work Plan(s), and other Agencies Requirements, and permit others to use, the Easement Area so long as such grants and uses do not unreasonably interfere or conflict with Grantee's exercise of its rights to undertake and engage in the Permitted Uses (collectively, the "**Reserved Uses**"). The Reserved Uses include but are not limited to Grantor's performance of its obligations pursuant to the Reservoir Agreement that require activities within the Easement Area, if any, and Grantor's construction, ownership, operation, maintenance, repair and replacement of existing and to-be-constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar improvements for the use and benefit of the Battled Retained Parcels. The Reserved Uses will be subject to the Town of Minturn's rules and regulations after such time that Grantee constructs a permanent gravel or paved roadway in the Easement Area. With respect to activities undertaken pursuant to the Reservoir Agreement, the Town of Minturn's rules and regulations may determine points of access and mitigation of impacts to the roadway in the Easement, but will not preclude access by Grantor or the District/Authority for such Reservoir Agreement activities.

4. Relocation.

(a) If applicable, to the extent and at such time as may be warranted in connection with Grantor's performance of its remediation obligations pursuant to the Reservoir Agreement, the AOC, OTP Work Plan, and/or other Agencies Requirements within the Easement Area or in connection with the District/Authority's final "as built" location of the Eagle River Parcel (as defined in the Reservoir Agreement) pursuant to the

terms of the Reservoir Agreement, the Parties will cooperate to relocate the Easement Area by executing, delivering and Recording an amendment to this Agreement that replaces and supersedes the Easement Area legal description and graphic depiction originally attached to this Agreement with an amended Exhibit A that reflects relocation and modification of the Easement Area based on final engineering designs for the Reservoir Project (as defined in the Reservoir Agreement), development of the Grantee Property, and related considerations.

(b) Following Grantee's completion of the construction of any improvements permitted pursuant to Section 2(a), Grantor and Grantee will by mutual agreement execute and Record an amendment to this Agreement which modifies and narrows the Easement Area to correspond to the final "as built" locations, configurations and legal descriptions based on the final engineering designs for such improvements.

5. Cooperation. Grantee, in the conduct of the Permitted Uses, and Grantor, in the conduct of the Reserved Uses, will in good faith coordinate their respective activities within the Easement Area. If and when applicable, the Parties will in good faith cooperate to mutually agree to the amended legal description and graphic depiction for relocation of the Easement Area pursuant to Section 4 above.

6. Review of Grantee Improvements. Grantor's performance of its remediation obligations pursuant to the Reservoir Agreement, AOC, OTP Work Plan, and/or other Agencies Requirements within the Easement Area may disrupt Grantee's Permitted Uses within the Easement Area and any improvements constructed by Grantee within the Easement Area prior to Grantor's performance of such remediation obligations. To minimize impacts to Grantee's roadway constructed within the Easement Area from Grantor's performance of its remediation obligations pursuant to the Reservoir Agreement, AOC, OTP Work Plan, and/or other Agencies Requirements within the Easement Area, Grantee must submit plans for the installation of any improvements within the Easement Area for Grantor's review and comment (which comments will be provided to Grantee within 30 calendar days of transmittal of the plans to Grantor). Grantee will take Grantor's comments into account in finalizing plans for installation of improvements.

7. Restoration. Promptly upon completion of any construction or other activities, Grantor (with respect to its Reserved Uses) and Grantee (with respect to the Permitted Uses) will restore the Easement Area, and any improvements therein which are the other Party's property, to the condition as existed prior to such Party's entry thereon, except as necessarily modified for the Reserved Uses or Permitted Uses (as applicable), and will repair any damage resulting from entry on the Easement Area in connection with this Agreement. The Party having such obligation hereunder will reimburse the other Party on demand for all expenses such Party incurs in repairing any damage resulting directly from activities pursuant to this Agreement if such obligated Party does not promptly repair such damage.

8. Compliance with Laws. Each Party, at its sole cost and expense, will comply with all federal, state and local requirements, regulations, ordinances and laws (including the Agencies Requirements) regarding the Permitted Uses or the Reserved Uses, as applicable, conducted within the Easement Area, and will be solely responsible for any fines, fees or costs relating to the same. Without limiting the foregoing, such Party will be solely responsible, at its expense, to obtain all

necessary governmental approvals relating to the Permitted Uses or the Reserved Uses, as applicable, including, but not limited to any necessary governmental approvals related to the AOC, Restrictive Notice, OTP Work Plan, Work Plan(s), or other Agencies' Requirements.

9. Insurance.

(a) Grantee will, at no cost or expense to Grantor: (i) cause Grantor to be named an additional insured on a primary non-contributory basis under its policy of commercial general liability insurance (or equivalent), in an amount not less than the limits under the Colorado Governmental Immunity Act, which are currently (I) \$424,000 for each occurrence, and (II) \$1,195,000 in the general aggregate, against claims for bodily injury, personal injury, advertising injury, death or property damage, occurring in, on or about the Easement Area; and (ii) require its contractors and other third parties who enter the Easement Area pursuant to the Permitted Uses to (A) cause Grantor 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) \$1,000,000 for each occurrence, (II) \$1,000,000 for personal injury, and (III) \$2,000,000 in the general aggregate; and (B) procure and maintain workers' compensation coverage, meeting the statutory requirements of the State of Colorado. Prior to initial entry upon the Easement Area, and annually thereafter, Grantee will cause written evidence to be delivered to Grantor of such insurance coverages being in effect and cause such coverages to remain in effect at all times during the term of this Agreement.

(b) Grantor will, at no expense to Grantee : (i) cause Grantee to be named an additional insured under its policy of commercial general liability insurance (or equivalent), in an amount not greater than the limits under the Colorado Governmental Immunity Act, which are currently (I) \$424,000 for each occurrence, and (II) \$1,195,000 in the general aggregate, against claims for bodily injury, personal injury, advertising injury, death or property damage, occurring in, on or about the Easement Area; and (ii) require its contractors who enter the Easement Area pursuant to the Permitted Uses to (A) cause Grantee 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) \$1,000,000 for each occurrence, (II) \$1,000,000 for personal injury, and (III) \$2,000,000 in the general aggregate; and (B) if a contractor with employees, procure and maintain workers' compensation coverage, meeting the statutory requirements of the state of Colorado; and (iii) cause Grantee to be named an additional insured with respect to the Easement Area on Grantor's Beazley Eclipse Enviro Covered Location Insurance Policy No. W2E64E210101, and any renewal or replacement thereof purchased by Grantor. On the Effective Date, and annually thereafter, Grantor will cause written evidence to be delivered to Grantee of such insurance coverages being in effect and cause such coverages to remain in effect at all times during the term of this Agreement.

(c) The Party's compliance with this Section 9 will terminate: (x) as to Parcel 3, if and at such time that Grantee becomes the fee simple owner of Parcel 3; and (y) as to Parcel 4, if and at such time that Grantee becomes the fee simple owner of Parcel 4.

10. Indemnity. Solely to the extent arising directly from Grantee's conduct of the Permitted Uses, or directly from Grantor's conduct of the Reserved Uses, as applicable, each Party will, to the extent permitted by law, indemnify, defend, and hold harmless the other Party from any and all claims, demands, liens, costs, expenses, damages and liabilities, including reasonable attorneys' fees and costs, that are asserted against the indemnified Party, the Easement Area or the indemnified Party's improvements located within the Easement Area, or which the indemnified Party may suffer or incur, to the extent arising out of any claims for property damage or personal injury, or claims from materialmen or laborers. Grantee's compliance with this Section 10 will terminate: (i) as to Parcel 3, if and at such time that Grantee becomes the fee simple owner of Parcel 3; and (ii) as to Parcel 4, if and at such time that Grantee becomes the fee simple owner of Parcel 4.

11. Easement Area "As Is". Grantor disclaims and makes no representations or warranties, expressed or implied, regarding the Easement Area as of the Effective Date or thereafter, including but not limited to physical condition and suitability for the Permitted Uses for which Grantee may enter upon or occupy the Easement Area. Grantee is accessing the Easement Area and using the Perpetual Easement based on the "AS IS" physical condition, "WITH ALL FAULTS." Grantee accepts the Perpetual Easement and the Easement Area subject to the Reserved Uses, other terms, conditions and limitations set forth in this Agreement, all matters of record and other matters of which Grantee has actual knowledge as of the Effective Date, including but not limited to easements, rights of way, reservations, covenants, agreements and instruments affecting the Easement Area.

12. Mutual Release. The Parties, each for itself and its respective successors and assigns, hereby releases the other Party and its agents, employees, officers, directors, shareholders, partners, members, managers, contractors and representatives ("**Released Parties**") from, and waives any and all causes of action or claims against any of such persons for any and all current and future claims and demands, including claims for liens, costs, expenses, damages and liabilities, and reasonable attorneys' fees and costs, arising out of Hazardous Materials (defined below) existing in, on, under or around the Easement Area. Nothing in the foregoing will be interpreted to release Released Parties from, or waive, such claims or causes of action to the extent Hazardous Materials were introduced to the Easement Area by Released Parties on or after the Effective Date or exacerbated by the negligence or intentional misconduct of such persons, or arise out of such persons' failure to comply with the Restrictive Notices, the AOC (as applicable to Grantor), or Environmental Law (defined below). As used in this Section 12:

(a) "**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 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).

(b) “**Environmental Laws**” means all laws, rules and regulations, as well as all agreements between the Agencies and Grantor 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.

13. Mechanics’ Liens. Grantee will not cause or allow any mechanics’ or materialmen’s liens to be filed against the Easement Area or any adjacent property owned by Grantor as a result of any work performed or material furnished on behalf of Grantee (a “**Lien**”). If a Lien is filed as a result of work authorized by Grantee, Grantee will, at its sole cost and expense, cause the Lien to be discharged or bonded off of record not later than 45 days after Grantee’s receipt of notice of the filing of such Lien. If such Lien is not discharged or bonded off of record within such 45 days, Grantor may, but will have no obligation to, defend, prosecute or pursue any action that Grantor deems reasonably necessary to discharge the Lien, and Grantee will, to the extent permitted by law, reimburse Grantor’s out-of-pocket expenses incurred in connection therewith upon demand therefor by Grantor, subject to Grantor’s delivery to Grantee of reasonable documentation (i.e., invoices, receipts, etc.) of such expenses. The provisions of this Section 13 will survive termination of this Agreement for a period of one year.

14. Default; Remedies. If a defaulting Party does not cure a default in the performance of its obligations under this Agreement within 15 days after written notice of such default from the non-defaulting Party (or in the case of a default that would reasonably take more than 15 days to cure, if the defaulting Party will fail to undertake substantial action to cure such default within such 15 days after written notice of default and thereafter diligently pursue completion of such cure), the non-defaulting Party will have all remedies that may be available to it in law or equity.

15. Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been properly given, received and effective: (a) if personally delivered, when actually given to and received by the applicable Party; (b) if delivered by overnight courier service, on the next business day following deposit with such courier service; (c) if by email (pdf), on the same day if sent before 5:00 P.M. Mountain Time, or on the next business day if sent after 5:00 P.M. Mountain Time; or (d) if by registered or certified United States mail, postage prepaid, on the third (3rd) business day after it is mailed. All such notices or other communications will be addressed as follows:

If to Grantor: Battle North, LLC
164 Railroad Ave. [Physical]
P.O. Box 56 [mailing]
Minturn, CO 81645
Attention: Tim McGuire
Telephone: 802.473.0275
Email: tmcguire@acpcommunities.com

with required copies to: Crave Real Estate
3500 St. Jacques
Montreal, Quebec, Canada H4c1h2
Attention: Lorne Bassel
Telephone: 514.940.1199
Email: lbassel@craverealestate.com

ACP Communities, LLC
3284 Northside Parkway NW, Suite 570
Atlanta, Georgia 30327
Attention: Amy Wilde
Telephone: 404.334.0450
Email: awilde@acpcommunities.com

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 17th Street, Suite 1600
Denver, CO 80202
Attention: Munsey Ayers [020665-0009]
Telephone: 303.575.7555
Email: munsey@ottenjohnson.com

If to Grantee: Town of Minturn
302 Pine Street
P.O. Box 309
Minturn, CO 81645
Attention: Town Manager
Telephone: (970) 827-5645
Email: manager@minturn.org

with a required copy to: Karp Neu Hanon PC
201 14th Street, Suite 200
P.O. Box 2030
Glenwood Springs, CO 81602
Attn: Michael J. Sawyer, Esq. (Minturn Town Attorney)
Telephone: (970) 945-2261
Email: mjs@mountainlawfirm.com

A Party may change its address or contact information by the giving of written notice to the other Party in accordance with this Section 1515.

16. No Owner or Operator Status. The grant of the Easement herein is NOT intended nor will it be deemed or construed to grant or provide to Grantee “owner” or “operator” status with respect to the Grantor Property as such terms are defined in CERCLA § 101, 42 U.S.C. § 9601.

17. Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be 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 under this Agreement. Any person other than the Parties or their successors and assigns, receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

18. Attorneys’ Fees. If any legal proceeding is commenced to enforce or interpret any provision of this Agreement, the substantially prevailing Party in such suit will be entitled to recover its reasonable attorneys’ fees and expenses from the non-prevailing Party. The provisions of this Section 18 will survive the term of this Agreement.

19. Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado. Venue for any legal proceeding to enforce or interpret this Agreement will be in the state district court for Eagle County, Colorado.

20. Binding Effect; Recordation. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Grantee may, at its expense, Record this Agreement and, upon such recordation, this Agreement will run with title to the Easement Area.

21. Entire Agreement; Modification. This Agreement sets forth the entire understanding between the Parties regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement will not be amended except by written instrument signed by all Parties.

22. Headings. The headings which appear in the Sections of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Sections in which they appear.

23. Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement. The facsimile or pdf signature of any Party on this Agreement (and on any instrument required or permitted to be delivered to a Party pursuant to this Agreement) will be deemed an original for all purposes.

[Signature Pages and Exhibits Follow this Page]

GRANTEE:

Town of Minturn,
a municipal corporation of the State of Colorado

By: _____
Name: _____
Title: Mayor

ATTESTED by:

By: _____
Town Clerk

APPROVED as to legal form:

By: _____
Town Attorney

