

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

Pursuant to C.R.S. § 39-13-104(1)(a),
No Documentary Transfer Tax Payable.

**OPTION TO ACQUIRE EASEMENT FOR RECREATIONAL USE
OR FEE SIMPLE INTEREST
(Old Tailings Pile (Parcel 3) and Processing Area (Parcel 4))**

THIS OPTION TO ACQUIRE EASEMENT FOR RECREATIONAL USE OR FEE SIMPLE INTEREST (Old Tailings Pile (Parcel 3) and Processing Area (Parcel 4)) (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 (the “**Town**”).

RECITALS

This Agreement is made with respect to the following facts:

A. Grantor is the fee simple owner of Parcel 3 and Parcel 4, Battle Mountain North Exemption Plat (“**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 (“**Grantor Property**”). All references to “Parcel” herein refer to the legally conveyable parcels designated in the Exemption Plat.

B. The Parties have entered into that certain Settlement Agreement dated September 6, 2023, approved by Minturn Town Council pursuant to Resolution 25 – Series 2023 (“**Settlement Agreement**”), to settle a case known as *Town of Minturn v. Battle One Developer, LLLP et al.*, Eagle County District Court Case No. 2022CV30050 (“**Litigation**”). Among other things, the Settlement Agreement requires the conveyance of certain perpetual easements and purchase options to the Town and the recording of certain restrictions on use of “Restricted Parcels” (defined in the Settlement Agreement), which Restricted Parcels include, but are not limited to, the Grantor Property.

C. In full satisfaction of Grantor’s obligations pursuant to Sections 7(b)(i) and 7(b)(ii) of the Settlement Agreement:

1. Grantor Recorded that certain Declaration of Restrictive Covenant and Servitude (Restricted Parcels) contemporaneously with the Effective Date (“**Servitude**”), which imposes certain restrictions on the Restricted Parcels.

2. Grantor granted the Town an easement over a portion of the Grantor Property for access to Parcels 1 and 2 (Highlands Parcels) pursuant to that certain Relocatable

Perpetual Access Agreement Recorded contemporaneously with the Effective Date (“**Highlands Access Easement**”).

D. Pursuant to Section 7(b)(i) of the Settlement Agreement, Grantor undertook the obligation to grant the Town a perpetual, non-exclusive easement in gross for limited non-vehicular public access and recreational purposes (the “**Easement**”) on, over and across Grantor Property once the Agencies (defined in Recital F) issue the Parcel 3 Remediation Certification (defined in Recital H) (“**Easement Option Obligation**”).

E. Pursuant to Section 7(b)(iii) of the Settlement Agreement, Grantor undertook the obligation to grant to the Town an option to acquire fee title to the Grantor Property (“**Purchase Option Obligation**”).

F. Grantor and/or the Grantor Property are 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 and as amended, “**Restrictive Notice**”).

G. Grantor and/or the Grantor Property are 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 (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**”).

H. As more fully set forth and described in the Reservoir Instruments, District/Authority acquired certain real property and related property interests in order to facilitate the construction, ownership and operation of an approximately 1,210 acre-foot water storage facility (as defined therein, “**Reservoir**”) together with certain Reservoir-related water conveyance structures and related improvements to be located within, as applicable, areas of the Restricted Parcels, the Battle Retained Parcels and the Town Parcels (as defined therein, collectively, “**Reservoir Project**”). District/Authority has no contractual obligation to Grantor to commence or complete the Reservoir Project within any specified time or at all. In anticipation of and preparation for District/Authority’s prospective determination to commence the Reservoir Project, Grantor obtained Agencies’ provisional approval of that certain Project Delivery Method dated December 2021 (the “**OTP Work Plan**”), pursuant to which soils District/Authority excavates from the Reservoir site will be placed on Parcel 4 (Processing Area) in order to be processed and sorted prior to placement and compaction of the processed soils on Parcel 3 (OTP). The Agencies’ issuance of a Certification of Completion upon completion of the processed soils placement on

Parcel 3 pursuant to the OTP Work Plan together with the Agencies' deletion of Parcel 3 from the National Priorities List (collectively, the "**Parcel 3 Remediation Certification**"), will constitute evidence that all appropriate and required response actions for Parcel 3 have been implemented and the releases of hazardous substances pose no significant threat to public health, welfare or the environment (the "**Parcel 3 Remediation**").

I. As more particularly described in Sections 2.1 and 2.2 of this Agreement, the Town may only exercise the Easement Option (defined in Section 2.1) after the Agencies' issuance of the Parcel 3 Remediation Certification. It is the intent of this Agreement, *but not a requirement*, that the Town exercise the Purchase Option (defined in Section 3.1) after the Agencies' issuance of the Parcel 3 Remediation Certification.

J. As of the Effective Date, the Restrictive Notice does not allow the Permitted Uses (defined in Section 2.3). However, the EPA issued that certain letter to the Town dated July 1, 2024, regarding Bona Fide Prospective Purchase Considerations, Eagle Mine Superfund Site, Eagle County (the "**Comfort/Status Letter**"), which provides, among other terms and conditions, that "[a]fter the [Parcel 3 Remediation] is completed and the [Restrictive Notice] is modified again, Minturn's proposed potential uses for 'recreational open space' and 'housing' are not incompatible with the anticipated future use restrictions on the OTP Parcel, as long as they still comply with the anticipated remaining groundwater use restrictions."

K. The Town has reviewed and conducted initial due diligence with respect to encumbrances of record that affect title to the Grantor Property, including the Restrictive Notice ("**Title Matters**"), and also with respect to the AOC, Reservoir Agreement, and Reservoir Instruments. The Town may perform future due diligence in relation to its exercise of the options granted by this Agreement in accordance with the terms and conditions set forth in this Agreement.

L. In full satisfaction of Grantor's Easement Option Obligation and Purchase Option Obligation, Grantor desires to grant to the Town, and the Town desires to accept, the Easement Option (defined in Section 2.1) and Purchase Option (defined in Section 3.1) upon the terms and conditions provided in 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:

ARTICLE 1 RECITALS

1.1 Incorporation of Recitals. The foregoing Recitals are incorporated in and made substantive provisions of this Agreement.

ARTICLE 2 GRANT OF EASEMENT OPTION

2.1 Grant of Easement Option; Easement Option Term. From and after the Effective Date until the day that is twenty-five (25) years after the Effective Date, but not earlier than the date the Agencies issue the Parcel 3 Remediation Certification, (as may be extended, “**Easement Option Term**”), Grantor grants the Town an option to obtain the Easement (the “**Easement Option**”) over the Grantor Property (in its entirety) or Parcel 3 or Parcel 4 (separately and at different times during the Easement Option Term), pursuant to the terms and conditions of this Agreement. If physical work has commenced on the Grantor Property pursuant to the Reservoir Agreement and/or the OTP Work Plan but said work will not be complete by the day that is twenty-five (25) years after the Effective Date, the Easement Option Term will automatically extend (without the need to amend this Agreement) to the date that is two (2) years after the date on which the Agencies issue the Parcel 3 Remediation Certification.

2.2 Easement Option. Provided (a) the Agencies have issued the Parcel 3 Remediation Certification; and (b) the Town has not previously exercised the Purchase Option (defined in Section 3.1), the Town may exercise the Easement Option by providing Grantor written notice (“**Easement Option Notice**”) of its election prior to the expiration of the Easement Option Term. If the Town timely exercises the Easement Option, the following terms and conditions will apply:

2.3 Perpetual Easement Agreement. Following Grantor’s receipt of the Easement Option Notice, the Parties will in good faith negotiate and enter into perpetual, non-exclusive easement agreement (“**Perpetual Easement Agreement**”) that, following the Parties’ mutual execution, will be Recorded. The Perpetual Easement Agreement will include substantially the same provisions set forth in Section 2.3(a) through Section 2.3(n) below.

(a) Grant of Perpetual Easement. Subject to the Title Matters, the AOC, Reservoir Agreement, Reservoir Instruments, Use Limitations (defined in Section 2.3(c)), Statutory Protections (defined in Section 2.3(b)), and other terms and conditions of the Perpetual Easement Agreement, Grantor will grant and convey to the Town the Easement on, over, across, and through the Grantor Property for the limited purposes of the following uses and no others, which uses must be undertaken consistent with the Comfort/Status Letter and in compliance with other Agencies Requirements as applicable, from time to time, to the Grantor Property (collectively, the “**Permitted Uses**”):

(i) Non-vehicular public access and non-motorized recreational open space and Reservoir-related uses, including but not limited to Nordic/cross-country skiing, mountain biking, cycling, equestrian, and hiking by Public Recreational Users (defined in Section 2.3(b)) along a trail or trails within the Grantor Property (“**Recreational Access**”);

(ii) Vehicular parking to facilitate Recreational Access to trailhead(s) within the Grantor Property or the Reservoir; and

(iii) The Town's construction, installation, inspection, maintenance, repair and replacement of the Permitted Improvements (defined in Section 2.3(e)) that the Town installs and maintains within the Grantor Property.

(b) Statutory Protections. The Perpetual Easement Agreement will expressly state that the Parties intend that the Easement, being granted to the Town for recreational and related public access purposes, is to be subject to and within the scope of C.R.S. §§ 33-41-101, *et seq.*, and 13-21-115 (collectively, "**Statutory Protections**"), is to be construed as having been granted for a "recreational purpose" as defined in C.R.S. §§ 33-41-102(5) and 33-41-103(2)(e)(III), that individuals entering upon the Grantor Property ("**Public Recreational User(s)**") do so as "invited guests" as defined in C.R.S. § 33-41-103(2)(e)(I) or, and only to the extent not construed to be "invited guests," as a "licensee" as defined in C.R.S. § 13-21-115(7)(c), and that Grantor is and will be construed to be entitled to those protections from and limitations on landowner liability to the fullest extent provided for in the Statutory Protections and applicable common law limitations on landowner liability.

(c) Use Limitations. Subject to Grantor's entitlement to the Statutory Protections to the fullest extent, in exercising the Recreational Access within the Grantor Property, the following express limitations (collectively, the "**Use Limitations**") apply:

(i) Each Public Recreational User who enters the Grantor Property for the purpose of Recreational Access does so at such Public Recreational User's risk, assumes all risk of engaging in the Permitted Uses upon the Grantor Property in its "as is" condition, and waives all claims consistent with the Statutory Protections.

(ii) No Public Recreational Users or any other third parties, either individually or collectively, will be construed to have any legal or equitable rights arising solely under the Perpetual Easement Agreement.

(iii) No Public Recreational Users or any other third parties, either individually or collectively, will be construed to have any legal or equitable right to enforce the Perpetual Easement Agreement, such enforcement rights being expressly limited and reserved to the Parties.

(iv) Any benefit to Public Recreational Users under the Perpetual Easement Agreement is incidental to and arises solely through and derivative of the Town's status as a Party, and only to the extent the Town's rights under the Perpetual Easement Agreement constitute or are construed as constituting rights held in public trust.

(v) The Perpetual Easement Agreement burdens and encumbers the Grantor Property only and does not burden or encumber, and will not be construed to encumber title to, any portion of the Grantor Property that is adjacent to, but does not overlap or include, all or any portion of the Grantor Property.

(vi) Other than the limited vehicular parking permitted by Section 2.3(a)(ii), no party will operate motorized vehicles within the Grantor

Property; provided, however, that as and when necessary or convenient: (A) Town-authorized construction and maintenance vehicles and equipment may be operated in connection with the construction, maintenance, operation, or repair of the Grantor Property and Permitted Improvements; (B) Grantor, its contractors and agents may operate vehicles and equipment within the Grantor Property in connection with the Reserved Uses (defined in Section 2.3(g)); (C) emergency responders may operate emergency service vehicles (e.g. fire trucks, ambulances, and search and rescue equipment) within the Grantor Property in response to emergencies within the Grantor Property; (D) motor vehicles may be operated pursuant to the Highlands Access Easement; and (E) motor vehicles may be operated in furtherance of the Reservoir Instruments.

(vii) Permitted Uses may be further limited (but may not be expanded) by the Town's ordinances, rules, and regulations as in effect from time to time that govern the use of public recreational areas under the Town's jurisdiction.

(viii) Except for Permitted Improvements as expressly provided in Section 2.3(e) and improvements permitted pursuant to the Reserved Uses as provided in Section 2.3(g), neither Party will install, construct or operate any surface or subsurface improvements within, on or under the Grantor Property.

(d) Trespassers. Trespassers (as defined in C.R.S. § 13-21-115(7)(d)) will be subject to prosecution for such trespass, and the Statutory Protections will apply for the benefit of Grantor.

(e) Permitted Improvements. The Town may cause to be installed within the Grantor Property, at no cost to Grantor, certain of the following improvements that are or will be within the scope of the Permitted Uses (collectively, the **"Permitted Improvements"**):

(i) Required Improvements. If the Town utilizes the Grantor Property for Recreational Access, then, prior to commencing Recreational Access activities within the Grantor Property, the Town must install signage advising Public Recreational Users of the limits of the Grantor Property, the applicability of the Statutory Provisions, and that no trespassing into adjacent portions of the Grantor Property is permitted (together with such discretionary fencing and other measures, if any, as the Town determines desirable and Grantor approves pursuant to Section 2.3(e)(ii) for the purpose of marking the limits of the Grantor Property and establishing physical barriers, the **"Trespass Controls"**).

(ii) Elective Improvements. In addition to the required Trespass Controls, and with Grantor's prior written consent, not to be unreasonably withheld, conditioned or delayed, the Town may elect to install certain improvements that are consistent with and supportive of the Recreational Access purpose of the Grantor Property, including but not limited to discretionary Trespass Controls (i.e., physical barriers and marking of Grantor Property limits), groomed trail surfaces, trash receptacles, picnic tables, Reservoir-related recreational facilities, trailhead

parking, clearing of vegetation (brush, trees, bushes, etc.) adjacent to trail improvements, information signage, and similar improvements.

(iii) Ownership of Permitted Improvements. All Permitted Improvements, if any, in the Grantor Property will be and will remain the Town's property.

(f) Management and Maintenance Obligations. Except to the extent caused by or required for the Reserved Uses, the Town will be solely responsible, at no cost or expense to Grantor, for the management, maintenance and repair of the Grantor Property and any Permitted Improvements installed therein. Without limitation of the foregoing:

(i) Neither Grantor nor the Town will impose, collect or receive any fee or charge, and no revenue will be collected from any Public Recreational User, for the Permitted Uses within the Grantor Property or for use and enjoyment of the Permitted Improvements.

(ii) The Town will maintain and keep the Grantor Property and the Permitted Improvements in a good, sightly and safe condition at all times, including but not limited to installation and maintenance of the Trespass Controls. Except to the extent caused by or required for the Reserved Uses, the Town will conduct all maintenance work for the Grantor Property, the Permitted Improvements and related activities within, and will not extend beyond, the boundaries of the Grantor Property.

(iii) To the extent either Party causes damage to the Grantor Property or another Party's improvements (i.e., the Town's Permitted Improvements, Grantor owned improvements or Recreational Improvements (defined in Section 2.3(g)), or other third-party owned improvements), the responsible Party will promptly, and at no cost or expense to the other Party, repair or cause the repair of damage to the Grantor Property or such damaged improvements, utility provider owned utility lines or facilities, and other third party owned improvements located within the Grantor Property. Upon completion of any such maintenance or repair work, the responsible Party will cause all affected areas to be restored to substantially the same condition in which they were found before undertaking the applicable work (subject to the presence of any Permitted Improvements). In the course of any such work, the responsible Party will also cause the affected areas to be kept in a reasonably clean and neat condition, and upon the completion of the applicable work, will cause all materials, supplies and equipment to be removed from the affected areas.

(iv) The Town will not cause or allow any mechanics' or materialmen's liens to be filed against the Grantor Property or any adjacent property owned by Grantor as a result of any work performed or material furnished on behalf of the Town (a "**Lien**"). If a Lien is filed, the Town will, at its sole cost and expense, cause the Lien to be discharged or bonded off of record not later than forty-five (45) days after the Town's receipt of notice of the filing of such Lien. If

such Lien is not discharged or bonded off of record within such forty-five (45) day period, Grantor may, but will have no obligation to, defend, prosecute or pursue any action that Grantor deems reasonably necessary to discharge the Lien, and to the extent permitted by law, the Town will promptly reimburse Grantor's out-of-pocket expenses incurred in connection therewith upon demand therefor by Grantor, subject to Grantor's delivery to the Town of reasonable documentation (i.e., invoices, receipts, etc.) of such expenses. The Town's obligations pursuant to this Section 2.3(f)(iv) will survive termination of this Agreement for a period of one (1) year.

(v) Except to the extent caused by or required for the Reserved Uses or as provided in Section 2.3(f)(iii): (i) Grantor will have no obligation with respect to, and will be subject to no liability regarding or arising from the condition of the Grantor Property and the Permitted Improvements; (ii) Grantor will not be liable for the management of the Permitted Improvements, and will have no obligation or duty whatsoever to construct or furnish any maintenance, repairs or replacements for any Permitted Improvements, or to provide notice or warning of any dangerous or defective conditions relating to the Grantor Property (unless required by the Statutory Protections) or the Permitted Improvements, or to otherwise regulate in any respect the use and enjoyment of the Grantor Property or the Permitted Improvements; and (iii) Grantor will not be liable for any injury, harm, damage or liability that may result from any failure by the Town or the Town's contractors, employees, or agents to properly discharge the Town's obligations and duties in relation to the use and enjoyment of the Easement, the Permitted Improvements, or that may otherwise arise in relation to such use and enjoyment by Public Recreational Users within the Grantor Property; provided, however, that the foregoing will not relieve Grantor from any liability for damage to the Permitted Improvements, or for dangerous or defective conditions relating to the Grantor Property or the Permitted Improvements, to the extent caused by actions of Grantor or its contractors, employees or agents that constitute gross negligence or willful misconduct.

(g) Reserved Uses. The Easement is non-exclusive, and Grantor reserves for itself and for Grantor's employees, agents, contractors, subcontractors, and consultants, the right to use the Grantor Property 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**")), and permit others to use, the Grantor Property so long as such grants and uses do not unreasonably interfere or conflict with the Permitted Uses and the use and enjoyment of the Easement permitted hereunder by the Town (collectively, the "**Reserved Uses**"). The Reserved Uses include but are not limited to: (i) Grantor's performance of its obligations pursuant to and implementation of the AOC, the Reservoir Agreement, the Reservoir Instruments, Restrictive Notice, and other Agencies Requirements that require activities within the Grantor Property; (ii) installation and maintenance of ground mounted solar energy systems; (iii) installation and maintenance of utilities and related improvements as may be necessary or desirable in connection with development within the Grantor Property or the Battle Retained Parcels;

and (iv) construction of recreational improvements consistent with the Permitted Uses and Permitted Improvements (“**Recreational Improvements**”). Pursuant to Section 2.3(f)(iii), upon completion of any such work within the Grantor Property, Grantor or such third party will cause all affected areas and existing Permitted Improvements to be restored to substantially the same condition in which they were found before the undertaking of the applicable work. Grantor will further have the right to interrupt temporarily (such interruption not to exceed fourteen (14) calendar days) the use and enjoyment of the Grantor Property as necessary or appropriate in connection with the Reserved Uses within or proximate to the Grantor Property, subject to providing the Town with fourteen (14) calendar days prior written notice.

(h) Coordination of Improvements.

(i) Town’s Permitted Improvements. Prior to the Town’s construction of any Permitted Improvements, the Town will submit a recreational improvement plan identifying locations of proposed Permitted Improvements for Grantor’s review and approval (which approval will not be unreasonably withheld, conditioned or delayed). Grantor will complete its review and provide its decision within thirty (30) calendar days of receipt of the Town’s recreational improvement plan. At any time, the Town may submit additional recreation improvement plans or amend the recreational improvement plan and submit the same for Grantor’s approval pursuant to this Section 2.3(h)(i).

(ii) Grantor’s Recreational Improvements. Prior to Grantor’s construction of any Recreational Improvements, Grantor will submit a recreational improvement plan identifying locations of proposed Recreational Improvements for Town’s review and approval (which approval will not be unreasonably withheld, conditioned or delayed). Town will complete its review and provide its decision within thirty (30) calendar days of receipt of Grantor’s recreational improvement plan. At any time, Grantor may submit additional recreation improvement plans or amend the recreational improvement plan and submit the same for the Town’s approval pursuant to this Section 2.3(h)(ii).

(i) Cooperation. The Town, 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 Grantor Property. If requested by the Town in writing, Grantor will, at no out-of-pocket cost to Grantor, reasonably cooperate with the Town to request from the EPA a modification to the Restrictive Notice to allow the Permitted Uses; provided, however, any additional remediation work or governmental approvals (beyond the work completed as part of the Parcel 3 Remediation Certification) necessary for the Agencies to approve such modification and/or to implement the Permitted Uses will be the sole responsibility of the Town and at the Town’s sole cost and expense.

(j) 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 Grantor Property, and will be solely responsible for any

finest, fees or costs associated with its uses within the Grantor Property. 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 (as applicable to Grantor), Restrictive Notice, or other Agencies' Requirements. Except as provided in Section 2.3(i), Grantor will not be construed to have any obligation to the Town to undertake any activities to enable the Town's Permitted Uses within the Grantor Property as it relates to the AOC, Restrictive Notice, or other Agencies Requirements. The Town will not be construed to have any obligation to Grantor to undertake any activities to enable the Reserved Uses within the Grantor Property as it relates to compliance with the AOC, Restrictive Notice, or other Agencies Requirements.

(k) Insurance. During the term of the Perpetual Easement Agreement, the Parties will maintain the following insurance policies:

(i) Town Insurance. The Town 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 Grantor Property; and (ii) require its contractors and other third parties who enter the Grantor Property 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 Grantor Property, and annually within fifteen (15) days of Grantor's written request, the Town 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 the Perpetual Easement Agreement.

(ii) Grantor Insurance. Grantor will, at no expense to the Town: (i) cause the Town 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 Grantor Property; and (ii) require its contractors who enter the Grantor Property pursuant to the Permitted Uses to (A) cause the Town 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 the Town to be an additional named insured with respect to the Grantor Property on Battle North, LLC'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 within fifteen (15) days of the Town's written request, Grantor will cause written evidence to be delivered to Town of such insurance coverages being in effect and cause such coverages to remain in effect at all times during the term of this Agreement.

(l) Indemnity. Solely to the extent arising directly from the Town's conduct of the Permitted Uses or the Permitted Improvements, 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 Grantor Property or the indemnified Party's improvements located within the Grantor Property, 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.

(m) Grantor Property "As-Is". Grantor disclaims and makes no representations or warranties, expressed or implied, regarding the Grantor Property as of the effective date of the Perpetual Easement Agreement or thereafter, including but not limited to physical condition and suitability for the Permitted Uses for which the Town or Recreational Users may enter upon or occupy the Grantor Property. The Town and Recreational Users are accessing the Grantor Property and using the Easement based on the "AS IS" physical condition, "WITH ALL FAULTS." The Town accepts the Easement and the Grantor Property subject to the Reserved Uses, other terms, conditions and limitations set forth in the Perpetual Easement Agreement, all matters of record, including, but not limited to the Title Matters, Reservoir Agreement, and Reservoir Instruments, and other matters of which Grantee has actual knowledge as of the Effective Date, including but not limited to the AOC, easements, rights-of-way, reservations, covenants, agreements and instruments affecting the Grantor Property. The Town accepts the Easement and Grantor Property based solely upon the Town's due diligence investigations and not in reliance on any statement, representation, or inducement of Grantor.

(n) Perpetual Easement Agreement Assignment. The Perpetual Easement Agreement and the rights and interests established therein will be solely for the Town's benefit and will not be assignable or transferable by the Town in any respect, and any purported assignment or transfer of any such rights or interests will be null and void *ab initio* at the election of Grantor; provided, however, the Town may license the operation and maintenance of the Nordic/cross-country skiing trails within the Grantor Property to entities providing recreational facility management services by separate agreement with the Town.

2.4 Subject to Article 4. The Town's Easement Option and Grantor's obligation to convey the Easement pursuant to this ARTICLE 2 is expressly subject to all terms, conditions and limitations set forth in ARTICLE 4.

2.5 Expiration of Easement Option Term. Upon expiration of the Easement Option Term without the Town having timely exercised the Easement Option, or upon the Town exercising

the Purchase Option (defined in Section 3.1), the Easement Option will expire, this Agreement will automatically terminate, and the provisions of Section 5.2(c) will apply.

2.6 Assignment of Easement Option. The Easement Option granted to the Town is personal to the Town and does not apply to any successors or assigns of the Town. Any assignment of the Easement Option by the Town to a third party will be void and of no force or effect per the terms of this Agreement.

ARTICLE 3 GRANT OF PURCHASE OPTION

3.1 Grant of Purchase Option; Purchase Option Term. From and after the Effective Date until the day that is twenty-five (25) years after the Effective Date (as may be extended, “**Purchase Option Term**”), Grantor grants the Town an exclusive (subject to Battle North, LLC’s right to convey the Grantor Property, or portions thereof, to Battle North Metropolitan District Nos. 1, 2, 3 or 4 (“**District(s)**”) pursuant to Section 5.3 of this Agreement and Section 2.4 of the Servitude) option to purchase (the “**Purchase Option**”) the Grantor Property (in its entirety) or Parcel 3 or Parcel 4 (separately and at different times during the Purchase Option Term), pursuant to the terms and conditions set forth in this Agreement. If physical work has commenced on the Grantor Property pursuant to the Reservoir Agreement and/or the OTP Work Plan but said work will not be complete by the day that is twenty-five (25) years after the Effective Date, the Purchase Option Term will automatically extend (without the need to amend this Agreement) to the date that is two (2) years after the date on which the Agencies issue the Parcel 3 Remediation Certification.

3.2 Purchase Option. The Town may exercise its Purchase Option by providing Grantor written notice (“**Purchase Option Notice**”) of its election prior to the expiration of the Purchase Option Term. If the Town timely exercises the Purchase Option, the following terms and conditions will apply.

(a) Closing Date. The Town will designate in its Purchase Option Notice a date to close (“**Closing**” or “**Close**”) on the purchase of the Grantor Property (“**Closing Date**”). Such Closing Date will be not less than five (5) nor more than sixty (60) days after Grantor’s receipt of the Purchase Option Notice, or such earlier or later business day as the Town and Grantor mutually agree in writing.

(b) Purchase Price. On the Closing Date, the Town will pay Grantor one dollar (\$1.00) (the “**Purchase Price**”) for the purchase of the Grantor Property.

(c) Title Insurance. The Town, in its sole discretion and at its sole cost, may elect to order from a title insurance company of its choice (“**Title Company**”) a commitment (“**Title Commitment**”) for issuance of a policy of title insurance for the Grantor Property in such form, at such insured amount, and with such endorsements, if any, as the Town may choose to purchase (“**Title Policy**”). 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, Grantor 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, Grantor 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.

(d) Subject to Article 4. The Town's Purchase Option and Grantor's obligation to convey the Grantor Property pursuant to this ARTICLE 3 is expressly subject to all terms, conditions and limitations set forth in ARTICLE 4.

(e) Fee Interest in Grantor Property. Grantor will convey fee title to the Grantor Property 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 Grantor in the year following Closing), by special warranty deed in substantially the form attached at Exhibit A ("Deed"). The Deed may include:

(i) Reserved Easement(s). Grantor may reserve general, blanket easements within the Grantor Property for construction, ownership, operation, maintenance, repair and replacement of existing and to be constructed utilities, roads, pedestrian crossings, sidewalks, bike paths, the Bolts Water Distribution System (as defined in Section 13-1-10 of the Minturn Town Code in effect as of the Effective Date ("**Code**")) and similar infrastructure improvements required or desirable in connection with development of the Battled Retained Parcels ("**Reserved Easement(s)**"). The engineering requirements of infrastructure improvements (excluding the Bolts Water Treatment System (as defined in Section 13-1-10 of the Code)) within, and the final "as built" locations of, the Reserved Easements will be subject to the Town's 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 years of the Closing Date will automatically terminate, and be void and unenforceable. If Grantor reserves Reserved Easement(s) within the Grantor Property as contemplated in this Section 3.2(e)(i), Grantor will maintain insurance coverages set forth in Section 2.3(k)(ii) for such Reserved Easement(s).

(ii) Deed Restriction. The Deed conveying the Grantor Property will incorporate a deed restriction for a period of thirty (30) years post-Closing to exclude the use of the Grantor Property as a "Spa/Wellness Center" (as defined in Section 16-2-20 of the Code) and, without the written consent of Grantor, industrial uses (which will specifically exclude municipal uses including public works facilities).

(iii) Exceptions. All matters of Record the Town has not caused to be removed from Schedule B II of the Title Commitment for the Grantor Property.

(f) Escrow Closing. On or prior to the Closing Date, Grantor and the Town will deposit into escrow with the Title Company (in such capacity, “**Escrow Agent**”):

(i) Grantor Deliveries.

- (A) A Deed for the Grantor Property.
- (B) A certificate of non-foreign status.
- (C) 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.
- (D) Such funds as Grantor is required to deposit with Escrow Agent as set forth in the Closing Settlement Statement pursuant to Section 3.2(f)(iii)(A).

(ii) Town Deliveries.

- (A) The Purchase Price.
- (B) 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.
- (C) Such funds as the Town is required to deposit with Escrow Agent as set forth in the Closing Settlement Statement pursuant to Section 3.2(f)(iii)(A), including but not limited to the Town’s payment of the premium for and applicable endorsements to the Title Policy.

(iii) Mutual Deliveries.

- (A) A closing settlement statement prepared by the Title Company setting forth credits, adjustments and prorations between and among Grantor and the Town, the net funds due to or from Grantor, and the net funds due to or from the Town (“**Closing Settlement Statement**”).
- (B) Such other documents as the Title Company reasonably and customarily requires parties to a commercial real estate transaction, or which Grantor and the Town otherwise may have agreed in this Agreement, to deliver at the Closing.

(g) Grantor's Representations and Warranties. The Town and Grantor will each represent, warrant, and covenant to the other Party as to the matters set forth in Exhibit B ("Representations and Warranties") as of the Closing Date.

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

(i) Grantor's Costs and Adjustments. Grantor will pay: (A) to the extent not paid prior to the Closing Date, the current property taxes; (B) Grantor's own attorneys' fees; and (C) 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) fifty percent (50%) of the fees, costs and expenses of the Escrow Agent.

(ii) 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 Grantor Property; (B) the Town's own attorneys' fees; (C) the fees and premiums payable in connection with the Title Commitment and issuance of any Title Policy the Town elects to obtain for the Grantor Property; 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) fifty percent (50%) of the fees, costs and expenses of the Escrow Agent.

3.3 Effect of Town's Purchase of the Grantor Property. If the Town timely exercises its Purchase Option and Closes on the Grantor Property, the Easement Option, or the Easement if granted, will terminate by operation of merger, this Agreement will automatically terminate, without the requirement of further action, demand or notice by the Parties, and neither Party will have any further rights or obligations hereunder, except those that expressly survive termination of this Agreement. In such event, the Parties may Record a termination of this Agreement.

3.4 Expiration of Purchase Option Term. Upon expiration of the Purchase Option Term without the Town having timely exercised the Purchase Option, the Purchase Option will expire, this Agreement will automatically terminate, and the provisions of Section 5.2(c) will apply.

3.5 Assignment. The Purchase Option granted to the Town is personal to the Town and does not apply to any successors or assigns of the Town. Any assignment of the Purchase Option by the Town to a third party will be void and of no force or effect per the terms of this Agreement.

ARTICLE 4

INVESTIGATIONS; "AS IS" TRANSACTIONS

4.1 Town's Investigations. Pursuant to the terms of the Settlement Agreement, the Town has previously reviewed and conducted due diligence to its satisfaction with respect to the physical and environmental condition of the Grantor Property, suitability of the Grantor Property for the Town's intended use, Title Matters, and also with respect to the AOC, Reservoir

Instruments, Reservoir Agreement, Comfort/Status Letter, and Agencies Requirements. Upon receipt of the Town's written request to update its due diligence investigations with respect to the Grantor Property, Grantor will grant the Town a non-exclusive license ("**License**") to access and enter upon the Grantor Property at reasonable times and from time to time for the purposes of conducting additional due diligence investigations, including an updated Phase I and Phase II Environmental Site Assessment and geotechnical surveys, at no cost or expense to Grantor. As a condition of exercising its rights pursuant to the License, the Town will maintain, and cause any third-party contractors to maintain, certain insurance requirements and indemnify Grantor to the extent permitted by law for any claims, demands, liens, costs, expenses, damages, and liabilities arising from the Town's due diligence activities. The License and insurance and indemnification requirements will be generally consistent with the scope and requirements set forth in Section 5(c) of the Settlement Agreement.

4.2 Grantor Disclosures. Within ten (10) business days after Grantor receives the Town's Purchase Option Notice, Grantor 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 that were not otherwise provided to the Town as part of the "Battle North's Disclosures" identified in Section 5(d) of the Settlement Agreement, to the extent in Grantor's possession or control, without obligation to obtain documents not in Grantor'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 Grantor, to the extent relating or pertaining to the Grantor Property (collectively, "**Grantor Disclosures**"):

(a) Surveys. Grantor's most recent ALTA survey(s) that includes the Grantor Property.

(b) 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/csinfo.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 the Town of Minturn, Colorado: 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.

(c) 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 Grantor'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 Grantor.

(d) Transfer of Documents. If Battle North, LLC conveys fee title to the Grantor Property to a District, District will, upon the Town's written request, make the materials described in this Section 4.2 available to the Town to the extent such materials are in District's possession. This Section 4.2(d) will survive such transfer and, thereafter, will continue to be applicable to District.

4.3 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 additional environmental liability protections related to the Grantor Property ("**CERCLA Protections**"), which may include one or more of: (i) updated or revised Comfort/Status Letter from CDPHE and/or EPA; (ii) environmental insurance; (iii) the Agencies' approval of remedial plans as provided in the AOC or the Restrictive Notice; or (iv) other mechanisms of managing potential environmental liabilities associated with the Grantor Property. 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, Grantor may cooperate with and facilitate the Town's efforts to secure CERCLA Protections to the Town's satisfaction.

4.4 Termination Prior to Closing. By delivery to Grantor of a written notice of termination prior to the Closing Date, the Town will have the right to terminate the exercise of its Purchase Option if the Town is not satisfied with the results of its diligence activities, for any other reason, or for no reason.

4.5 Environmental Definitions. As used in this Agreement:

(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 (or becomes so during the Purchase Option Term) 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.

4.6 “As Is” Transaction; Grantor Property Condition. The Town (for itself and its successors and assigns) acknowledges that if the Town exercises its Easement Option, it will acquire the Easement or, if the Town exercises its Purchase Option, it will acquire fee title to the Grantor Property in its “AS IS, WHERE IS, AND WITH ALL FAULTS” condition as of the Closing Date or effective date of the Perpetual Easement Agreement, as applicable. The Town (for itself and its successors and assigns) accepts all risks regarding all attributes and conditions, latent or otherwise, of the Grantor Property. The Town will acquire any Easement and, if the Town exercises its Purchase Option, title to the Grantor Property based solely upon the Town’s due diligence investigations and not in reliance on any statement, representation or inducement of Grantor, except as expressly provided in the Representations and Warranties set forth in Exhibit B. Without limitation of the foregoing:

(a) No Implied Representations. The Town acknowledges that except as provided in the Representations and Warranties set forth in Exhibit B: (A) NEITHER GRANTOR NOR ANY SUCCESSOR OWNER OR AGENT, EMPLOYEE, OFFICER, DIRECTOR, CONTRACTOR OR REPRESENTATIVE OF GRANTOR (OR ANY SUCCESSOR OWNER) HAS MADE (OR HAS AN OBLIGATION TO TOWN TO MAKE), AND GRANTOR SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, GUARANTEE OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE GRANTOR PROPERTY, INCLUDING, WITHOUT LIMITATION, (1) THE NATURE, QUANTITY, QUALITY OR CONDITION OF THE GRANTOR PROPERTY; (2) THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE GRANTOR PROPERTY; OR (3) COMPLIANCE OF OR BY THE GRANTOR PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, CERCLA (DEFINED BELOW) OR ANY OTHER ENVIRONMENTAL LAWS (DEFINED BELOW); AND (B) TOWN IS RELYING SOLELY UPON ITS OWN INSPECTION OF THE GRANTOR PROPERTY AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF, OR TO BE PROVIDED BY OR ON BEHALF OF, GRANTOR (OR THE APPLICABLE SUCCESSOR OWNER(S)) OR UPON ANY REPRESENTATIONS MADE TO IT BY GRANTOR, SUCCESSOR OWNER, OR ANY AGENT, EMPLOYEE, OFFICER, DIRECTOR, CONTRACTOR OR REPRESENTATIVE OF GRANTOR OR A SUCCESSOR OWNER. ANY INFORMATION PROVIDED OR TO BE PROVIDED BY GRANTOR (OR ANY SUCCESSOR OWNER(S)) WITH RESPECT TO THE GRANTOR PROPERTY WAS OR MAY BE OBTAINED FROM A VARIETY OF SOURCES AND GRANTOR (OR ANY SUCCESSOR OWNER(S)) 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.

(b) Waiver and Release. The Town (for itself and its respective successors and assigns) releases Grantor 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 Grantor Property as of the Effective Date, effective date of any Perpetual Easement Agreement, or any Closing Date, including, without limitation, the presence on, under or about the Grantor Property of any Hazardous Materials, including, without limitation, Hazardous Materials documented in the AOC and the Comfort/Status Letter; (B) any and all liability resulting from the failure of the Grantor Property to comply with any applicable laws as of the Effective Date (but not thereafter), 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 Grantor Property. Nothing in the foregoing will be interpreted to release any such claims or causes of action to the extent Grantor introduces Hazardous Materials to the Grantor Property on or after the Effective Date or Hazardous Materials are exacerbated by Grantor's negligence or intentional misconduct, or arise out of Grantor's failure to comply with the Restrictive Notices, the AOC (after any Closing), or Environmental Law with respect to the Grantor Property.

4.7 Grantor's Release. Grantor hereby releases the Town 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 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 existing in, on, under or around the Grantor Property, including, without limitation, Hazardous Materials documented in the AOC and the Comfort/Status Letter. Nothing in the foregoing will be interpreted to release any such claims or causes of action to the extent Hazardous Materials were introduced to the Grantor Property by such parties on or after the grant of any Easement hereunder 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 (after any Closing), or Environmental Law with respect to the Grantor Property.

4.8 Survival. The terms and conditions of this ARTICLE 4 will survive any Closing pursuant to the Purchase Option, will survive the Recording of any Perpetual Easement Agreement, and will survive any termination of this Agreement.

ARTICLE 5 GENERAL PROVISIONS

5.1 Default; Remedies. If a defaulting Party does not cure a default in the performance of its obligations under this Agreement within fifteen (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 fifteen (15) days to cure, if the defaulting Party fails to undertake substantial action to cure such

default within such fifteen (15) day period or thereafter fails to diligently pursue completion of such cure), the non-defaulting Party will have all remedies available to it at law or in equity.

5.2 Termination. This Agreement may be terminated as follows:

(a) By Agreement. The Parties may, by mutual agreement, terminate this Agreement by Recording a written termination notice executed by the Parties, and neither Party will have any further rights or obligations hereunder, except those that expressly survive termination of this Agreement.

(b) Town's Purchase of the Grantor Property. Pursuant to Section 3.3, if the Town Closes on the Grantor Property, this Agreement will automatically terminate, without the requirement of further action, demand or notice by the Parties, and neither Party will have any further rights or obligations hereunder, except those that expressly survive termination of this Agreement. In such event, the Parties may Record a termination of this Agreement.

(c) Expiration of Option Terms. If this Agreement terminates pursuant Section 2.5 or Section 3.4, neither Party will have any further rights or obligations hereunder, except those that expressly survive termination of this Agreement. In such event, either Party may Record a termination of this Agreement.

5.3 Assignment; Enforcement; Amendment; Successors-in-Interest. This Agreement and the rights and interests established hereunder for the Town's benefit will not be assignable or transferable by the Town in any respect, and any purported assignment or transfer of any such rights or interests will be null and void *ab initio* at the election of Grantor. Only the Town will have right to enforce this Agreement and any obligations or duties of Grantor hereunder, and no such right of enforcement will inure to the benefit of any member of the general public. This Agreement may be terminated, amended or modified only by further Recorded instrument mutually executed by the Town and Grantor, and the Town will have and retain all right, power and authority to make any such termination, amendment or modification, or to waive any rights hereunder as the Town may determine to be appropriate. This Agreement, including all covenants, agreements, rights and obligations created hereby, will run with the land comprising the Grantor Property, and will be binding on and inure to the benefit of all persons having or acquiring fee title to, or other legal or equitable interest in, the Grantor Property, all upon the terms, provisions and conditions set forth in this Agreement. In accordance with Section 2.4 of the Servitude, Grantor may convey fee title to the Grantor Property to the District(s).

5.4 No Public Dedication. Nothing herein will be deemed or construed as a grant of a public dedication of any fee ownership interest in the Grantor Property or other related or affected properties. During the term of this Agreement, Grantor retains its fee ownership interests in all respects, it being the Parties' intent that the sole property interests conveyed by this Agreement are the Easement Option and Purchase Option, as the same are governed by the other provisions of this Agreement.

5.5 No Owner or Operator Status. The grant of the Easement Option, any grant of the Easement, or the grant of the Purchase Option herein are NOT intended nor will they be deemed

or construed to grant or provide to the Town “owner” or “operator” status with respect to the Grantor Property as such terms are defined in CERCLA § 101, 42 U.S.C. § 9601.

5.6 Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, are strictly reserved to the Parties. Nothing contained in this Agreement will give or allow any claim or right of action by any other or third person under this Agreement. Other than the Parties, any person receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

5.7 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.

5.8 Attorneys’ Fees. The substantially prevailing Party in any legal proceeding to enforce or interpret this Agreement will be awarded its reasonable attorneys’ fees and expenses from the non-prevailing Party. The provisions of this Section 5.8 will survive termination of this Agreement.

5.9 Governmental Immunity. Nothing in this Agreement is intended or will be construed to waive or limit any rights, immunities, or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, that Grantor or Town may have or assert against third parties.

5.10 Recording. This Agreement will be Recorded promptly after the Effective Date.

5.11 Entire Agreement; Modification. This Agreement sets forth the Parties’ entire understanding regarding the matters addressed herein and supersedes any previous communications, representations or agreements, whether oral or written, including, but not limited to the Servitude and the Settlement Agreement dated September 6, 2023 by and between the Parties. This Agreement will not be amended except by written instrument signed by the Parties.

5.12 Headings. The headings which appear in the Sections of this Agreement are for purposes of convenience and reference and are not to be construed as modifying or used in interpreting the Sections in which they appear.

5.13 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 Town: 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 5.13.

5.14 Electronic Signatures; 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, pdf, or DocuSign 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. Amendments to this Agreement may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, will constitute a fully executed amendment to this Agreement and will be considered a single document.

[Signature and Exhibit pages follow this page]

Grantor Signature Page to
Option to Acquire Easement for Recreational Use or Fee Simple Interest
(Old Tailings Pile (Parcel 3) and Processing Area (Parcel 4))

TOWN:

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

EXHIBIT A
Form of Special Warranty Deed

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:

SPECIAL WARRANTY DEED
STATUTORY FORM – C.R.S. § 38-30-113(1)(B)
(Old Tailings Pile – Parcel 3 and Processing Area – Parcel 4)

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 One and 00/100 Dollars (\$1.00), 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 302 Pine Street, P.O. Box 309, Minturn, CO 81645, Attn: Town Manager, 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 easement 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

(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____.

Battle North, LLC,
a Georgia limited liability company

By: _____
 Name: Lorne Bassel
 Title: President
 Date: _____, 202 ____

BE IT REMEMBERED, that on this ____ day of _____, 202__, before me the undersigned, a notary public in and for the Province and the City aforesaid, came Lorne Bassel, in his capacity as President of Bassel Battle Investment, Corp., a Colorado corporation, as Manager of Battle North, LLC, a Georgia limited liability company, who is personally known to me to be the same person who executed this instrument of writing, and said person fully acknowledged this instrument to be the free act and deed of said Lorne Bassel.

Notary Public

Exhibit A
to Option to Acquire Easement for Recreational Use or Fee Simple Interest
(Old Tailings Pile (Parcel 3) and Processing Area (Parcel 4))
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Exhibit A
to Special Warranty Deed
Legal Descriptions and Graphic Depictions of the Land

[Insert 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 Easement 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.

Grantor and Grantee will modify and narrow the general, blanket Reserved Easement described above 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. 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. **[Scope of Reserved Easement to be determined at the time of conveyance.]**

DEED RESTRICTION

Without Grantor's prior written consent, which consent may be withheld in Grantor's sole discretion, the Land as legally described and graphically depicted in Exhibit A to this Special Warranty Deed may not be used:

- (i) for a period ending **[insert date that is 30 years after the Closing Date]** as a Spa/Wellness Center (as such term is defined in Section 16-2-20 of the Minturn Town Code in effect as of **[September 10, 2024]**); or
- (ii) for any industrial purpose such as manufacturing, processing, assembling, fabricating, repairing (including vehicle service or repairs), warehousing, receiving, storing, mining and related resource extraction, junkyard, or similar industrial uses. Municipal uses, such as ground mounted solar energy systems and public works facilities, are not considered industrial uses prohibited by this Deed Restriction.

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/incorporated from applicable Title Commitment Schedule B-II]

EXHIBIT B
Representations and Warranties

Grantor and the Town will each represent, warrant and covenant to the other Party as to the matters set forth herein as of the Closing Date of the Purchase Option.

1. **Grantor's Representations and Warranties.** Grantor represents, warrants and covenants to the Town as follows:

(a) Authority. Grantor is a limited liability limited 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.

(b) 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 Grantor are and will be valid, legally binding obligations of and enforceable against Grantor in accordance with their terms.

(c) Grantor Disclosures. To Grantor's actual knowledge, the Grantor Disclosures made available to the Town pursuant to Section 4.2 of this Agreement constitute all of such materials as are in Grantor's possession or control.

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

(e) Litigation. There are no actions, suits, litigation or proceedings pending, or to Grantor's actual knowledge threatened, affecting the Grantor Property. There are no actions, suits, litigation or proceedings pending, or to Grantor's actual knowledge threatened, affecting Grantor'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 Grantor under this Agreement.

(f) Condemnation. Grantor has no actual knowledge, and has received no notice from any governmental authorities, that proceedings for the condemnation of any portion of the Grantor Property are pending.

(g) No Violations. To Grantor's actual knowledge, during Grantor's ownership of the Grantor Property, the Grantor Property has been and presently is used and operated in compliance in all material respects with, and in no material way violate, any applicable

Exhibit B

to Option to Acquire Easement for Recreational Use or Fee Simple Interest
(Old Tailings Pile (Parcel 3) and Processing Area (Parcel 4))

statute, law, regulation, rule, ordinance, order or permit of any kind whatsoever affecting the Grantor Property or any part thereof.

(h) Leases. Except as disclosed in the Grantor Disclosures, no portion of the Grantor Property is subject to any lease, license, easement or right of access.

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

(j) Hazardous Materials; Environmental Liens. To Grantor's actual knowledge, and except as disclosed in the Grantor Disclosures: (A) Grantor 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 Grantor Property related to any release or alleged release of Hazardous Materials at or from any portion of the Grantor Property; (B) neither the Grantor Property 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 Grantor Property; (D) there are no Hazardous Materials located at, on or under the Grantor Property 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 Grantor Property; (F) with the exception of utilities, if any, there are no underground storage tanks or pipelines located on the Grantor Property or any portion thereof; (G) Grantor 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 Grantor Property is subject to any environmental lien, environmental use restriction or environmental covenant.

2. Town's Representations and Warranties. The Town represents, warrants and covenants to Grantor as follows:

(a) 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.

(b) 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

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are and will be valid, legally binding obligations of and enforceable against the Town in accordance with their terms.

3. **No Other Representations.** Except as expressly set forth in this Exhibit B, this Agreement is made without representation or warranty of any kind by the Parties.

4. **Changed Circumstances.** If Grantor acquires actual knowledge of any act or circumstances which would change or render incorrect, in any material respect, any representation or warranty made by Grantor under this Agreement, whether or not such representation or warranty was based upon Grantor's knowledge and/or belief as of a certain date, Grantor will give prompt written notice of such changed fact or circumstance to the Town. Grantor 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 Grantor 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 of the Purchase Option.

5. **Survival.** Each Party making representations and warranties in this Exhibit B acknowledges the Party to whom they are given will materially rely upon them in proceeding with the Closing. 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 Exhibit B.