

**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.

**POST-SETTLEMENT AGREEMENT
(Rec Center Parcel – Parcel No. 11)**

THIS POST-SETTLEMENT AGREEMENT (Rec Center Parcel – Parcel No. 11) (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, “**Battle North**”), 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. Battle North is the fee simple owner of Parcel 11, 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 (“**Parcel 11**”).

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 Battle North to convey fee title interest in the “Town Parcels” (defined in the Settlement Agreement) to the Town. Parcel 11 is a Town Parcel under the Settlement Agreement.

C. The Settlement Agreement contemplated that Battle North would convey fee title to Parcel 11 to the Town as part of the Settlement (defined in Recital O of the Settlement Agreement) implementation and Closing (defined in Section 7 of the Settlement Agreement) (together, the “**Settlement Implementation**”). The Settlement Implementation occurred contemporaneously with the Effective Date.

D. However, Battle North did not convey fee title to Parcel 11 to the Town at the time of Settlement Implementation because the Town does not want to receive fee title to Parcel 11 until the Remediation (defined in Recital G) is complete and the Agencies (defined in Recital E) issue the Remediation Certification (defined in Recital G) for Parcel 11.

E. Battle North and/or Parcel 11 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. 201919763 (“**Restrictive Notice**”).

F. As of the Effective Date, the Restrictive Notice does not allow any uses on Parcel 11. 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 “[Parcel 11] currently has a [Restrictive Notice] prohibiting all potential uses . . . However, after Remedial Work is completed and the [Restrictive Notice] is modified, the Town’s proposed potential uses for ‘community and recreational uses’ that may include the construction of buildings and other structures, are not incompatible with the anticipated future use restrictions for [Parcel 11].”

G. As of the Effective Date, Battle North is processing a work plan with the Agencies to facilitate cleanup and remediation of Parcel 11 (“**Work Plan**”) as provided in the AOC or the Restrictive Notice. The Agencies’ issuance of a Certification of Completion upon remediation of Parcel 11 in accordance with the Work Plan (the “**Remediation Certification**”), will constitute evidence that all appropriate and required response actions for Parcel 11 have been implemented and the releases of hazardous substances pose no significant threat to public health, welfare or the environment (the “**Remediation**”).

H. The Town has reviewed and conducted initial due diligence with respect to encumbrances of record that affect title to Parcel 11, including the Restrictive Notice (“**Title Matters**”), and also with respect to the AOC. The Town may perform future due diligence following the Agencies’ issuance of the Remediation Certification in accordance with the terms and conditions set forth in this Agreement.

I. The Parties have agreed to postpone the conveyance of Parcel 11 to allow Battle North time in which to complete the Remediation and receive the Remediation Certification 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 Remediation

2.1 Battle North's Remediation. Battle North will have the time period from and after the Effective Date until the day that is five (5) years after the Effective Date in which to complete the Remediation and obtain the Agencies' issuance of the Remediation Certification.

2.2 Post-Remediation Cooperation. Following the Agencies' issuance of the Remediation Certification and upon the Town's written request, Battle North will, at no out-of-pocket cost to Battle North, in good faith diligently cooperate with the Town to request the Agencies: (a) remove Parcel 11 from the EPA's National Priorities List ("NPL"); and (b) request a modification to the Restrictive Notice to allow community and recreational uses and the construction of buildings and other structures (collectively, "**Town's Intended Use**") on Parcel 11; provided, however, any additional remediation work or governmental approvals (beyond the work completed as part of the Remediation Certification) necessary for the Agencies to remove Parcel 11 from the NPL and approve such modification and/or to implement the Town's Intended Use will be the sole responsibility of the Town and at the Town's sole cost and expense.

Article 3 Conveyance of Parcel 11

3.1 Conveyance. The Town will have the time period from and after the date the Agencies issue the Remediation Certification until such date that is two (2) years later ("**Conveyance Term**") to complete its due diligence investigations of the Property and notify Battle North in writing of its election to purchase Parcel 11 upon the terms and conditions set forth in this Agreement ("**Conveyance Notice**").

3.2 Closing Date. The Town will designate in its Conveyance Notice a date to close ("**Closing**" or "**Close**") on the purchase of Parcel 11 ("**Closing Date**"). Such Closing Date will be not less than five (5) nor more than sixty (60) days after Battle North's receipt of the Conveyance Notice, or such earlier or later business day as the Town and Battle North mutually agree in writing.

3.3 Purchase Price. On the Closing Date, the Town will pay Battle North one dollar (\$1.00) (the "**Purchase Price**") for the purchase of Parcel 11.

3.4 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 Parcel 11 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, Battle North may, in its sole discretion and without obligation to cause such title matter to be cured or to incur any expense or liability in connection therewith, cooperate with the Town's efforts to address and resolve such matters to the Town's satisfaction. In connection with the Title Company's issuance of the Title Policy, Battle North will execute such certificates and

affidavits as title companies typically require and are commercially reasonable for a land seller to execute in a commercial real estate transaction.

3.5 Subject to Article 4. Battle North's obligation to convey Parcel 11 to the Town pursuant to this Article 3 is expressly subject to all terms, conditions and limitations set forth in Article 4.

3.6 Fee Interest in Battle North Property. Battle North will convey fee title to Parcel 11 to the Town, free and clear of monetary liens (except the inchoate lien for *ad valorem taxes* and assessments for the year of Closing due and payable by Battle North in the year following Closing), by special warranty deed in substantially the form attached at Exhibit A ("**Deed**"). The Deed may include:

(a) Deed Restrictions. The Deed conveying Parcel 11 will incorporate: (1) a deed restriction for a period of thirty (30) years post-Closing to exclude the use of Parcel 11 as a "Spa/Wellness Center" (as defined in Section 16-2-20 of the Minturn Town Code in effect as of the Effective Date) but not excluding a public recreation center; and (2) a deed restriction that limits the use of Parcel 11 to community, recreation, artistic, child care, and/or entertainment, and similar uses to be determined by the Parties and not more than three (3) employee/caretaker units (collectively, the "**Deed Restrictions**").

(b) Exceptions. All matters of Record the Town has not caused to be removed from Schedule B II of the Title Commitment for Parcel 11.

3.7 Escrow Closing. On or prior to the Closing Date, Battle North and the Town will deposit into escrow with the Title Company (in such capacity, "**Escrow Agent**"):

(a) Battle North Deliveries.

(i) A Deed for Parcel 11.

(ii) A certificate of non-foreign status.

(iii) 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.

(iv) Such funds as Battle North is required to deposit with Escrow Agent as set forth in the Closing Settlement Statement pursuant to Section 3.7(c)(i).

(b) Town Deliveries.

(i) The Purchase Price.

(ii) 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.

(iii) Such funds as the Town is required to deposit with Escrow Agent as set forth in the Closing Settlement Statement pursuant to Section 3.7(c)(i), including but not limited to the Town's payment of the premium for and applicable endorsements to the Title Policy.

(c) Mutual Deliveries.

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

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

3.8 Battle North's Representations and Warranties. The Town and Battle North 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.

3.9 Battle North's Pre-Closing Covenants. As a material inducement to the Town entering into this Agreement and as a condition to the Town's obligations hereunder, Battle North will:

(a) not enter into any leases with terms extending beyond the Closing Date, or grant any other rights in Parcel 11 that would be effective beyond the Closing Date, without first obtaining the Town's written consent thereto;

(b) not allow any liens or encumbrances to attach to or burden Parcel 11;

(c) not transfer Parcel 11 to any third party without first obtaining the Town's written consent thereto; and

(d) not engage in any vertical development on Parcel 11.

3.10 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), Battle North and the Town will be responsible for payment at Closing of:

(a) Battle North's Costs and Adjustments. Battle North will pay: (A) to the extent not paid prior to the Closing Date, the current property taxes; (B) Battle North's own attorneys' fees; 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.

(b) 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 Parcel 11; (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 Parcel 11; 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.

Article 4 **Investigations; "As Is" Transaction**

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 Parcel 11, suitability of Parcel 11 for the Town's intended use, Title Matters, and also with respect to the AOC, Comfort/Status Letter, and Agencies Requirements. Upon receipt of the Town's written request to update its due diligence investigations with respect to Parcel 11, Battle North will grant the Town a non-exclusive license ("**License**") to access and enter upon Parcel 11 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 Battle North. 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 Battle North 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 Battle North Disclosures. Within ten (10) business days after Battle North receives the Town's Conveyance Notice, Battle North will deliver or cause to be made available to the Town for review and/or copying (by Dropbox or similar electronic means) the following documents 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 Battle North's possession or control, without obligation to obtain documents not in Battle North's possession or control, and without representation or warranty of any kind with respect to the accuracy or completeness of any reports, studies or other documents furnished to the Town that were prepared by parties other than Battle North, to the extent relating or pertaining to Parcel 11 (collectively, "**Battle North Disclosures**"):

(a) Surveys. Battle North's most recent ALTA survey(s) that includes Parcel 11.

(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/csitinfo.cfm?id=0800159>, the CDPHE Hazardous Materials and Waste Management Division Records Center, CDPHE's webpage relating to the Eagle Mine Superfund Site at

<https://cdphe.colorado.gov/eagle-mine>, within Recorded instruments, or located in the Eagle Mine Site Repository in 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 Battle North's possession or control, and which are neither subject to attorney-client or other privilege nor subject to any non-disclosure agreement that is legally binding on Battle North.

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 Parcel 11 ("**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 Parcel 11. The Town will be solely responsible for all undertakings and activities pertinent to investigating, evaluating and pursuing such CERCLA Protections as the Town deems desirable. Upon receipt of the Town's written request, in its sole discretion and without obligation to incur any expense or liability in connection therewith, Battle North 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 Battle North of a written notice of termination prior to the Closing Date, the Town will have the right to terminate this Agreement if the Town is not satisfied with the results of its diligence activities, for any other reason, or for no reason.

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 Conveyance 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 Battle North or any third party, relating to (A) emissions, discharges, spills, cleanup, remediation, releases or threatened releases of any Hazardous Materials; (B) the presence of any Hazardous Materials on or in, land, soil, ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, storage tanks of any kind, wetlands, or septic systems, (C) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment, cleanup or remediation of Hazardous Materials; and (D) the protection of human health or the environment.

4.6 “As Is” Transaction; Battle North Property Condition. The Town (for itself and its successors and assigns) acknowledges that the Town will acquire fee title to Parcel 11 in its “AS IS, WHERE IS, AND WITH ALL FAULTS” condition as of the Closing Date. The Town (for itself and its successors and assigns) accepts all risks regarding all attributes and conditions, latent or otherwise, of Parcel 11. The Town will acquire title to Parcel 11 based solely upon the Town’s due diligence investigations and not in reliance on any statement, representation or inducement of Battle North, 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 BATTLE NORTH NOR ANY SUCCESSOR OWNER OR AGENT, EMPLOYEE, OFFICER, DIRECTOR, CONTRACTOR OR REPRESENTATIVE OF BATTLE NORTH (OR ANY SUCCESSOR OWNER) HAS MADE (OR HAS AN OBLIGATION TO TOWN TO MAKE), AND BATTLE NORTH SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, GUARANTEE OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO PARCEL 11, INCLUDING, WITHOUT LIMITATION, (1) THE NATURE, QUANTITY, QUALITY OR CONDITION OF PARCEL 11; (2) THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF PARCEL 11; OR (3) COMPLIANCE OF OR BY PARCEL 11 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 PARCEL 11 AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF, OR TO BE PROVIDED BY OR ON BEHALF OF, BATTLE NORTH (OR THE APPLICABLE SUCCESSOR OWNER(S)) OR UPON ANY REPRESENTATIONS MADE TO IT BY BATTLE NORTH, SUCCESSOR OWNER, OR ANY AGENT, EMPLOYEE, OFFICER, DIRECTOR, CONTRACTOR OR REPRESENTATIVE OF BATTLE NORTH OR A SUCCESSOR OWNER. ANY INFORMATION PROVIDED OR TO BE PROVIDED BY BATTLE NORTH (OR ANY SUCCESSOR OWNER(S)) WITH RESPECT TO PARCEL 11 WAS OR MAY BE OBTAINED FROM A VARIETY OF SOURCES AND BATTLE NORTH (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 Battle North 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 Parcel 11 as of the Effective Date, or any Closing Date, including, without limitation, the presence on, under or about Parcel 11 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 Parcel 11 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 Parcel 11. Nothing in the foregoing will be interpreted to release any such claims or causes of action to the extent Battle North introduces Hazardous Materials to Parcel 11 on or after the Effective Date or Hazardous Materials are exacerbated by Battle North's negligence or intentional misconduct, or arise out of Battle North's failure to comply with the Restrictive Notice, the AOC (after any Closing), or Environmental Law with respect to Parcel 11.

4.7 Battle North's Release. Battle North 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 Parcel 11, 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 Parcel 11 by such 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 Notice, the AOC (after any Closing), or Environmental Law with respect to Parcel 11.

4.8 Survival. The terms and conditions of Sections 4.3, 4.6, and 4.7 will survive any Closing or 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. If Battle North fails to complete the Remediation and receive the Agencies' issuance of the

Remediation Certification as provided in Section 2.1, the Town's remedies will include, at the Town's election either specific performance or reimbursement of all of the Town's costs and expenses, including reasonable attorneys' and consultants' fees and Agencies oversight costs, associated with completing the Remediation and receiving the Agencies' issuance of the Remediation Certification.

5.2 Term. The term of this Agreement will commence on the Effective Date and will terminate upon the earliest to occur of: (a) the Parties' Recording of a written termination of this Agreement executed by both Parties; (b) the date the Deed is Recorded; (c) Battle North's receipt of the Town's written termination notice pursuant to Section 4.4; (d) the date that is seven (7) years after the Effective Date. Upon any termination, neither Party will have any further rights or obligations hereunder, except those that expressly survive 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 Battle North. Only the Town will have right to enforce this Agreement and any obligations or duties of Battle North 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 Battle North, and 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 Parcel 11, 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, Parcel 11, all upon the terms, provisions and conditions set forth in this Agreement.

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 Parcel 11 or other related or affected properties. During the term of this Agreement, Battle North retains its fee ownership interests in all respects.

5.5 No Owner or Operator Status. This Agreement is NOT intended nor will it be deemed or construed to grant or provide to the Town "owner" or "operator" status with respect to Parcel 11 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 Battle North or the 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. 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 Battle North: 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]

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:**

**KARP NEU HANON PC
201 14TH STREET, SUITE 200
P.O. BOX 2030
GLENWOOD SPRINGS, CO 81602
ATTENTION: 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)

**SPECIAL WARRANTY DEED
STATUTORY FORM – C.R.S. § 38-30-113(1)(b)
(Rec Center Parcel – Parcel No. 11)**

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, 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____.

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

[Insert legal description and depiction for Exemption Plat Parcel No. 11]

Exhibit B
to Special Warranty Deed
Deed Restriction

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 as a Spa/Wellness Center (as such term is defined in Section 16-2-20 of the Minturn Town Code in effect as of **[insert Closing Date]**). This Deed Restriction will not be interpreted to prohibit Community Facilities, Community-Oriented Building/Facility/Use, or Recreational Facility uses by Grantee that may include elements of a Spa/Wellness Center (as such term is defined in Section 16-2-20 of the Minturn Town Code).

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 only be used for the following uses (as such terms are defined in Section 16-2-20 of the Minturn Town Code in effect as of **[insert Closing Date]**): Amusements, Community Facilities, Community-Oriented Building/Facility/Use, Day Care Center, Recreational Facility, Studio and Education Facilities for Arts and Crafts, and up to three Caretaker or employee housing Units.

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

Battle North 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.

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

(a) Authority. Battle North 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 Battle North are and will be valid, legally binding obligations of and enforceable against Battle North in accordance with their terms.

(c) Battle North Disclosures. To Battle North's actual knowledge, the Battle North Disclosures made available to the Town pursuant to Section 4.2 of this Agreement constitute all of such materials as are in Battle North'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 Battle North, and to Battle North'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 Battle North's actual knowledge threatened, affecting Parcel 11. There are no actions, suits, litigation or proceedings pending, or to Battle North's actual knowledge threatened, affecting Battle North's right, power or authority to enter into and perform this Agreement in accordance with its terms, or which question the validity or enforceability of this Agreement or any action taken or to be taken by Battle North under this Agreement.

(f) Condemnation. Battle North has no actual knowledge, and has received no notice from any governmental authorities, that proceedings for the condemnation of any portion of Parcel 11 are pending.

(g) No Violations. To Battle North's actual knowledge, during Battle North's ownership of Parcel 11, Parcel 11 has been and presently is used and operated in compliance in all material respects with, and in no material way violate, any applicable

statute, law, regulation, rule, ordinance, order or permit of any kind whatsoever affecting Parcel 11 or any part thereof.

(h) Leases. Except as disclosed in the Battle North Disclosures, no portion of Parcel 11 is subject to any lease, license, easement or right of access.

(i) Service Contracts. Except as disclosed in the Battle North Disclosures, there is no agreement, in writing or otherwise, between Battle North and any other person or persons for service, supply, maintenance, management or the operation of Parcel 11 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 Battle North's actual knowledge, and except as disclosed in the Battle North Disclosures: (A) Battle North has received no notice, complaint or allegation from any state, federal or local agency or authority, or any third party, of any violation of any Environmental Law with respect to any portion of Parcel 11 related to any release or alleged release of Hazardous Materials at or from any portion of Parcel 11; (B) neither Parcel 11 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 Parcel 11; (D) there are no Hazardous Materials located at, on or under Parcel 11 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 Parcel 11; (F) with the exception of utilities, if any, there are no underground storage tanks or pipelines located on Parcel 11 or any portion thereof; (G) Battle North is not in violation of, or alleged to be in violation of, any judgment, decree, order, law, license, rule or regulation or permit pertaining to any Environmental Law; and (H) no portion of Parcel 11 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 Battle North 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 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 Battle North acquires actual knowledge of any act or circumstances which would change or render incorrect, in any material respect, any representation or warranty made by Battle North under this Agreement, whether or not such representation or warranty was based upon Battle North's knowledge and/or belief as of a certain date, Battle North will give prompt written notice of such changed fact or circumstance to the Town. Battle North may, without obligation pursuant to this Agreement to do so, cause the representation or warranty to again become true or correct prior to the Closing Date. If Battle North 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.

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.