

**DEVELOPMENT AND VESTED PROPERTY RIGHTS
AGREEMENT IMPLEMENTING THE BOLTS LAKE
SETTLEMENT AGREEMENT**

BETWEEN

**The Town of Minturn Water and Sanitation Activities Enterprise,
an enterprise fund established pursuant to C.R.S. § 37-45.1-101 *et*
seq. and the Town of Minturn, Colorado, a home rule municipal
corporation**

AND

Battle North, LLC, a Georgia limited liability company

[_____], 2024

**APPROVAL OF THIS DEVELOPMENT AGREEMENT ESTABLISHES VESTED
PROPERTY RIGHTS PURSUANT TO ARTICLE 68 OF TITLE 24, C.R.S., AS
AMENDED, AND SECTION 16-21-710 OF THE TOWN OF MINTURN MUNICIPAL
CODE. THIS DEVELOPMENT AGREEMENT, CONSTITUTES A SITE SPECIFIC
DEVELOPMENT PLAN AND CREATES VESTED PROPERTY RIGHTS PURSUANT
TO ARTICLE 68 OF TITLE 24, C.R.S. AND SECTION 16-21-710 OF THE TOWN OF
MINTURN MUNICIPAL CODE, AS BOTH EXIST ON THE EFFECTIVE DATE OF
THIS DEVELOPMENT AGREEMENT, FOR A PERIOD OF GREATER THAN THREE
YEARS FROM SAID EFFECTIVE DATE.**

**DEVELOPMENT AND VESTED PROPERTY RIGHTS AGREEMENT
IMPLEMENTING THE BOLTS LAKE SETTLEMENT AGREEMENT**

THIS DEVELOPMENT AND VESTED PROPERTY RIGHTS AGREEMENT IMPLEMENTING THE BOLTS LAKE SETTLEMENT AGREEMENT (as may be amended, this “**Development Agreement**”) is made and entered into as of [_____], 2024 (“**Execution Date**”) by and among the following (individually, a “**Party**” and, collectively, the “**Parties**”): the Town of Minturn Water and Sanitation Activities Enterprise, an enterprise fund established pursuant to C.R.S. § 37-45.1-101 *et seq.* (“**Enterprise**”) and the Town of Minturn, Colorado, a home rule municipal corporation (collectively, as defined in Exhibit D, “**Town**”); and Battle North, LLC, a Georgia limited liability company (together with its successors and assigns, “**Battle North**”).

RECITALS

This Development Agreement is made with reference to the following facts:

A. Initially capitalized words and phrases used in this Development Agreement have the meanings set forth in Exhibit D, which definitions are incorporated herein.

B. In 2004, certain entities which were predecessors-in-interest (“**Original Owners**”) of Battle North and/or Battle North’s affiliates Battle One Developer, LLLP, a Georgia limited liability limited partnership, Battle Two Developer, LLLP, a Georgia limited liability limited partnership, Battle South, LLC, a Georgia limited liability company, and Battle One A Developer, LLC, a Georgia limited liability company (collectively, such affiliates together with Battle North and their respective successors and assigns, “**Battle Entities**”), purchased approximately 4,340 acres of land in Eagle County, generally to the south of the Town’s then-existing boundaries (as legally described in Exhibits 1 and 2 of the Annexation Agreement, the “**Original Property**”).

C. Between 2006 and 2012, in connection with the annexation and then-contemplated development of the Original Property, the Town entered into the Wastewater Agreement, Annexation Agreement, Water Service Agreement, Escrow Agreements, and Funding Agreement (collectively, and together with the Town resolutions and/or ordinances approving such instruments, “**Prior Agreements**”) with the Original Owners and/or, as applicable, the Battle Entities.

D. In 2008, Town Council approved the Planned Unit Development Preliminary Plan and Battle Mountain PUD Guide approved by Town Council pursuant to Resolution No. 18-2008, which established the uses, density and intensity of use, and other development parameters for the five character areas of the Original Property (“**PUD Preliminary Plan**”).

E. As of the Execution Date, Battle North owns approximately 379 acres of the Original Property (as legally described and graphically depicted in Exhibit A, “**Battle North Property**”), and no development of the Battle North Property has occurred pursuant to the Prior Agreements or the PUD Preliminary Plan.

F. The Battle North Property is subject to the Reservoir Agreement, including certain Recorded easements that encumber areas within the Battle North Property (“**ERWSD**”).

Easements”) and are appurtenant to and benefit certain real property that Battle North conveyed to ERWSD pursuant to the Reservoir Agreement (“**Reservoir Parcels**”).

G. On March 4, 2022, the Town commenced litigation against the Battle Entities in a case known as *Town of Minturn v. Battle One Developer, LLLP et al.*, Eagle County District Court Case No. 2022CV30050 (“**Litigation**”).

H. In the Litigation, the Town alleged that the Battle Entities breached the Prior Agreements in certain respects, and the Battle Entities asserted counterclaims against the Town.

I. Following settlement discussions, the Town and the Battle Entities reached an agreement to resolve the Litigation and, pursuant to Resolution 25 – Series 2023, Town Council approved and authorized execution of that certain Settlement Agreement having an effective date of September 6, 2023 (as amended, “**Settlement Agreement**”).

J. As of the Execution Date, and as contemplated by and in implementation of the Settlement Agreement, the Town has approved the following (“**Approvals**”):

(1) Pursuant to Ordinance No. 1, Series 2024, the Bolts Lake Code Provisions, which established certain amendments to the Town Code specific to the Battle North Property and, consistent with the Bolts Concept Plan, rezoned areas within the Battle North Property to, as applicable, the Bolts Residential District, the Bolts Mixed Use District, the Bolts Open Space/Rec District, or the Holding District.

(2) Pursuant to Resolution No. 12, Series 2024, termination of Resolution No. 18, Series 2008 as to the Battle North Property.

(3) Pursuant to Ordinance No. [____], Series 2024, this Development Agreement and termination of Ordinance No. 12, Series 2008, Resolution No. 19, Series 2008, and the Prior Agreements as to the Battle North Property.

(4) Dissolution of the Town of Minturn General Improvement District, Town of Minturn, County of Eagle, Colorado pursuant to Ordinance No. 18, Series 2023.

(5) Pursuant to Ordinance No. 3, Series 2024, disconnection from the Town of certain parcels within the Original Property.

(6) Pursuant to Resolution No. [____], service plans for the formation of the Districts.

(7) The Battle Mountain North Exemption Plat which, upon Recording, will establish the Town Parcels, the Restricted Parcels, and the Battle Retained Parcels as legally conveyable parcels.

K. Contemporaneously with the occurrence of the Effective Date following final, non-appealable approval of the Approvals, and as contemplated by and in implementation of the Settlement Agreement, certain of the Approvals will be Recorded, as applicable, Battle North will convey the Town Parcels to the Town subject to the Deed Restrictions and the Reserved

Easements, and Battle North will encumber the Restricted Parcels by Recording of the Restrictions.

L. Following the Effective Date, subject to and in accordance with the Bolts Concept Plan, the Bolts Lake Code Provisions and this Development Agreement, the Parties anticipate and intend that development of the Battle Retained Parcels will occur in one or multiple phases at such time as market conditions support, that ownership and operation of the Restricted Parcels will be and remain subject to the Restrictions, and that ownership and operation of the Town Parcels will be and remain subject to the Deed Restrictions and Reserved Easements.

M. Town Council has determined that development of the Battle Retained Parcels is anticipated to occur over an approximately thirty (30) year build-out period in accordance with and reliance upon this Development Agreement and the other Approvals; in reliance on enforcement of the Deed Restrictions and Reserved Easements with respect to the Town Parcels, and on enforcement of the Restrictions with respect to the Restricted Parcels; require substantial financial commitments for Infrastructure Improvements, related horizontal and vertical improvements; provide for orderly growth in accordance with the Town's policies and goals; ensure reasonable certainty, stability and fairness in the land use planning process; stimulate economic growth; foster cooperation between the public and private sectors in the area of land use planning; and otherwise achieve the goals and purposes for which the Vested Property Rights Statute and the Vested Property Rights Regulations were enacted.

N. In exchange for these benefits and the other benefits to the Town contemplated by this Development Agreement and other of the Approvals, together with the public benefits served by the orderly development of the Battle Retained Parcels, Battle North desires to receive, and Town Council desires to provide, assurance during the Vesting Period that Battle North and its successor Landowners will have Vested Property Rights that ownership, operation and development within the Battle North Property will occur pursuant to and in accordance with the terms and conditions of the Bolts Concept Plan, the Bolts Lake Code Provisions, this Development Agreement and the other Approvals.

O. The Vested Property Rights Statute and the Vested Property Rights Regulations authorize the Town to enter into development agreements with landowners providing for the vesting of property development rights for a period exceeding three (3) years.

P. Accordingly, this Development Agreement constitutes a development agreement granting the Vested Property Rights for a period in excess of three (3) years in accordance with Section 24-68-104(2) of the Vested Property Rights Statute and Subparagraph (b)(2)(h) of the Vested Property Rights Regulations.

AGREEMENT

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

ARTICLE 1 GENERAL PROVISIONS

Section 1.1 Incorporation of Recitals. The Recitals are incorporated into and made substantive provisions of this Development Agreement.

Section 1.2 Effective Date; Effectiveness. Notwithstanding any earlier Execution Date, this Development Agreement in its entirety will be legally binding on the Parties on the date the Settlement is fully implemented as evidenced by the filing of a Stipulation for Dismissal with Prejudice in the Litigation with the Eagle County District Court (“**Effective Date**”). Any delay or failure to Record this Development Agreement following the occurrence of the Effective Date will not negate or impair the effectiveness of this Development Agreement as between the Parties and any other parties having actual or constructive notice of this Development Agreement. Notwithstanding the foregoing, the following provisions will be legally binding on the Signatories as of the Execution Date:

a. Recording of Approvals. The Signatories will neither cause nor permit Recording of this Development Agreement or any other of the Approvals to occur prior to the Effective Date. The Signatories will cause Recording of this Development Agreement and other of the Approvals that are intended to be Recorded to occur on or promptly following the Effective Date. Notwithstanding the foregoing and in accordance with the terms of the Settlement Agreement, the Signatories consented to Recording of Ordinance No. 18, Series 2023, on **[insert date]** at Reception No. **[insert]**, which dissolved the Town of Minturn General Improvement District, Town of Minturn, County of Eagle, Colorado, and Ordinance No. 3, Series 2024, on **[insert date]** at Reception No. **[insert]**, which disconnected certain parcels within the Original Property from the Town.

b. Defense of Legal Challenges. If a third party timely commences a Legal Challenge to any of the Approvals prior to the Effective Date, the Signatories will undertake in good faith to cooperate in defending the Legal Challenge. If the Signatories are unable or determine it is inappropriate to mutually select legal counsel to jointly defend the Legal Challenge, or to enter into a joint defense agreement for such purposes, each Party may select its own legal counsel. Battle North will reimburse the Town for costs, expenses, and attorneys’ fees the Town reasonably incurs in defense of such Legal Challenge; provided, however, that such reimbursement obligation is subject to the Town’s submittal of invoices or other written evidence documenting that it has incurred and paid such amounts, and Battle North having not less than sixty (60) days after receiving such documentation within which to remit such reimbursement amounts to the Town.

c. Automatic Termination for Failure of Effective Date. Notwithstanding anything to the contrary in Section 5.2, if the Settlement Agreement terminates by its terms following the Execution Date but prior to the Effective Date this Development Agreement will automatically terminate without the requirement of additional action by either Signatory and the Signatories will have no further rights or obligations arising pursuant to this Development Agreement; provided, however, the provisions of this Section 1.2 will survive such termination.

Section 1.3 Covenants. Upon Recording as provided in Section 1.2a, the provisions of this Development Agreement will constitute covenants and servitudes that touch, attach to and run with the land comprising the Battle North Property and, except as otherwise provided in Section 5.3a with respect to amendments to this Development Agreement that only affect specified subareas within the Battle North Property, the burdens and benefits of this Development Agreement will bind and inure to the benefit of all estates and interests in the land comprising the Battle North Property, and will bind and inure to the benefit of all Parties.

Section 1.4 Relationship to Prior Agreements and PUD Preliminary Plan. Upon Recording as provided in this Article 1, this Development Agreement and the ordinance approving this Development Agreement will replace, supersede and effect termination of the Prior Agreements, the PUD Preliminary Plan, Ordinance No. 12, Series 2008, and Resolution No. 19, Series 2008 as applied to the Battle North Property, and will effectuate the Parties' full and complete mutual release of all rights, obligations and liabilities pursuant to the Prior Agreements, the PUD Preliminary Plan, Ordinance No. 12, Series 2008, and Resolution No. 19, Series 2008 as related to the Battle North Property and the Reservoir Parcels. Ordinance No. 3, Series 2024 Recorded on [insert date] at Reception No. [insert] disconnected a portion of the Original Property described therein, and such disconnection fully released such property and the Parties from all rights, obligations and liabilities arising from the Prior Agreements, the PUD Preliminary Plan, Ordinance No. 12, Series 2008, and Resolution No. 19, Series 2008 as it relates to such disconnected property.

Section 1.5 No Obligation to Develop. Neither Battle North nor any successor Landowner will have an obligation under this Development Agreement to develop all or any portion of the Battle Retained Parcels, nor will Battle North or any successor Landowner have liability under this Development Agreement to any other Party or other person or entity for development not occurring within the Battle Retained Parcels.

ARTICLE 2 SUBDIVISION, ZONING AND DEVELOPMENT REGULATIONS

Section 2.1 Subdivision. The Bolts Lake Subdivision Regulations and related components of the Bolts Lake Code Provisions will govern and control subdivision of land and the provision of Public Infrastructure within the Battle North Property. Without limitation of the foregoing:

a. Exemption Plats. The Exemption Plat Process and related Bolts Lake Code Provisions will govern and control with respect to the creation of Exemption Plat Parcels within the Battle North Property.

b. Preliminary Plats; Final Plats. To the extent not expressly or implicitly in conflict with the Bolts Lake Subdivision Regulations and related Bolts Lake Code Provisions or having the effect of negating or impairing the Vested Property Rights, generally applicable Town Code provisions in effect at the time of Development Application submittals for preliminary plats and final plats, including related technical requirements and procedural matters, will apply to such Development Applications. Without limitation of the foregoing: (i) the Community Housing Guidelines established pursuant to Town Code Chapter 16, Article 26 will apply to residential

development within the Battle Retained Parcels; provided, however, with the exception of amending the Community Housing Guidelines to lower the top cap to no lower than 140% AMI and to have the AMI percentages apply to sales after the initial sale of a unit, no revisions to the percentages, deed restriction conditions and AMI criteria set forth in Town Code § 16-26-100 in effect as of the Execution Date will apply to the Battle Retained Parcels without Battle North's (or the pertinent successor Landowner's) consent; and (ii) with respect to the Town's Watershed Protection Plan (Town Code Section 13-6-10, *et seq.*), the presumptive river setback for purposes of the Battle Retained Parcels located up-stream of the Raw Water Intake Structure as depicted on Appendix A to the Town Code (Minturn Watershed Map) is thirty (30) feet (as measured from the ordinary high water mark), so long as best management practices are designed and installed to protect the Town's supplies and waterworks as allowed in Town Code Section 13-6-10. Preliminary and final plats for Battle Retained Parcels located adjacent to Cross Creek and up-stream of the Raw Water Intake Structure as depicted on Appendix A to the Town Code (Minturn Watershed Map) will contain the following plat note "The property is potentially located within the Minturn Watershed Protection Plan Area and may be subject to permitting requirements under Town Code Sections 13-6-10 *et seq.*" In processing preliminary plats and final plats for Battle Retained Parcels, the Town will not require the submittal of master plans or development scenarios for planning areas outside of property within the preliminary plats or final plats being processed.

c. Equitable Allocation of Infrastructure Improvement Costs. In connection with processing and approval of Development Applications for final plats within the Battle North Property, the Town and the applicant will identify those Infrastructure Improvements which serve the Battle Retained Parcels exclusively and those shared Infrastructure Improvements which serve other areas of the Battle North Property and/or land outside of the Battle North Property the development of which is or will utilize and benefit from the shared Infrastructure Improvements. The properties which utilize and benefit from such shared Infrastructure Improvements will be responsible for paying an equitable *pro rata* share of the capital costs to finance the design and construction of such shared Infrastructure Improvements. By way of example, the Town will require the benefitted party to reimburse the constructing party for its costs incurred and the allocation of such costs will be calculated and collected based on: (i) for public roads, traffic counts resulting from development of such properties; and (ii) for sanitary sewer collection lines and mains, ERWSD calculations of the gallons per day generated from development of such properties. For properties that benefit from shared Infrastructure Improvements which are located outside of the Battle North Property (e.g. property owned by the Eagle County School District), the Town will use good faith efforts to obtain agreements allocating the equitable *pro rata* share of the capital costs of Infrastructure Improvements, but the Town does not represent that it has the legal or regulatory abilities to require such agreements and there will be no remedy against the Town for failure to require or obtain such agreements.

Section 2.2 Zoning. The Bolts Lake Zoning Regulations and related components of the Bolts Lake Code Provisions will govern and control zoning, permitted uses, density and intensity of use and physical development standards within the Battle North Property. Without limitation of the foregoing:

a. Density Calculation. As provided in Sections 16-10.5-80(1) and (2) of the Bolts Lake Zoning Regulations, density within the Battle North Property will be calculated as follows:

i. Residential. For purposes of calculating residential density, each residential dwelling unit, regardless of type or size, within the Battle North Property will comprise one “dwelling unit.” By way of example, a single-family home is one dwelling unit, an accessory dwelling unit is one dwelling unit, a duplex is two dwelling units, a multifamily building containing six separate apartments or condominium units is six dwelling units, etc.

ii. Commercial. For purposes of calculating commercial density within the Battle North Property, “gross leasable area” means the total floor area (measured from the interior surface of demising walls) that is designed for the tenants’ or business’ occupancy and exclusive use, and does not include the floor area of any public or common areas such as utility rooms, mechanical rooms, stairwells, elevator shafts, foyers, malls, terraces, balconies and like spaces.

b. Density Limitations. As provided in Section 16-10.5-80(3) of the Bolts Lake Zoning Regulations, the Battle Retained Parcels will be subject to the following density limitations:

i. Residential. The maximum residential density within the Bolts Residential District and the Bolts Mixed Use District is, cumulatively:

(1) If a Spa/Wellness Center is not developed within the Bolts Mixed Use District, two hundred fifty (250) dwelling units; or

(2) If a Spa/Wellness Center is developed within the Bolts Mixed Use District, two hundred twenty-five (225) dwelling units.

ii. Commercial. The maximum nonresidential commercial development within the Bolts Mixed Use District, cumulatively, is 50,000 square feet of gross leasable area. If a Spa/Wellness Center is developed within the Bolts Mixed Use District, the following elements will not count as gross leasable area for purposes of the foregoing square footage limit: (A) “back of house” areas such as laundry rooms, locker rooms, changing rooms, restrooms, lunch rooms, loading dock/supply storage areas, and areas housing similar operational functions; and (B) stand-alone ancillary and accessory structures (whether fully or partially enclosed) such as cabanas, snack/drink bars, and structures housing saunas, hot tub areas, massage rooms, yoga rooms, meditation rooms and similar health/wellness activities.

Section 2.3 Ownership and Maintenance of Public Roads. Pursuant to the final platting process and subject to Section 2.1c, a minimum fifty (50) foot right-of-way based on engineered plans reviewed and approved by the Town for and physical improvements comprising Maloit Park Road and associated pedestrian/bicycle paths within the Battle Retained Parcels will be Dedicated to, accepted, owned and maintained (including snow plowing) by the Town in accordance with the Town’s generally applicable regulations, including but not limited to the Town’s roadway engineering standards and a development-specific traffic study. All other public roads located within the Battle Retained Parcels will be owned and maintained (including snow plowing) by a

District and/or an Association. The classifications, cross sections, profiles, and related technical matters pertinent to such roadways will be determined in connection with the processing and approval of Development Applications for preliminary plats and final plats for the Battle Retained Parcels.

Section 2.4 Maloit Wetlands Area. Simultaneously with Recording of the first final plat within the Battle Retained Parcels adjacent to the Maloit Wetlands Area, Battle North will Record certain mutually approved Restrictions, including a restrictive covenant approved and enforceable by the Town that will ensure the Maloit Wetlands Area remains undeveloped (except for grantor's reserved uses as described below) and serves as a wildlife corridor between adjoining United States Forest Service land to the north and the Restricted Parcel to the south (i.e., the CTP Area). All Infrastructure Improvements and Battle North improvements located within the Maloit Wetlands Area will be subject to Town review and approval, except for activities necessary to comply with requirements imposed by EPA and/or CDPHE. Grantor's reserved uses, as to be mutually agreed upon, for installation, operation and maintenance of Infrastructure Improvements, construction of Maloit Park Road, activities necessary to comply with requirements imposed by EPA and/or CDPHE and public access approved by the Town for non-motorized winter recreational activities (e.g. cross country skiing, snowshoeing, hiking, birding, etc.), including by residents and guests within the Battle Retained Parcels, will be permitted in accordance with the Bolts Open Space/Rec District.

Section 2.5 Fishing Easement. Concurrently with Recording of the first final plat for residential, commercial or mixed use development within the Battle Retained Parcels adjacent to Cross Creek, Battle North will grant to the Town and Record a perpetual, nonexclusive easement that grants the public the right to fish within the Cross Creek streambed and up to the ordinary high-water mark, as defined in Town Code Section 16-2-20, of the Cross Creek segments adjacent to the Battle Retained Parcels and grants access for such purpose within the areas conceptually depicted in the Bolts Concept Plan. Except to the extent depicted in the Bolts Concept Plan, the public fishing access easement will not provide for or allow the general public to access the Cross Creek streambed from, across, or over the Battle Retained Parcels, or to otherwise enter upon the Battle Retained Parcels, but will expressly provide that residents and guests within the Battle Retained Parcels will have the legal right to utilize the public fishing easement.

Section 2.6 Parks; No Open Space Dedications. In accordance with applicable Town Code requirements, final plats for development sites within the Battle Retained Parcels will provide adequate active neighborhood parks to support the approved level of residential development. Neighborhood parks will be Dedicated to, improved, constructed, owned and maintained by a District and/or an Association. No open space dedications will be required in connection with final plats for development within the Battle Retained Parcels.

Section 2.7 Water Service. The Bolts Lake Utilities Regulations and related components of the Bolts Lake Code Provisions will govern and control with respect to the provision of water service for development of the Battle North Property. Without limitation of the foregoing:

a. Water Service to Town Parcels and Certain Restricted Parcels. The Town (including through its Enterprise) will be solely responsible for the provision of municipal water

to serve all development or other activities undertaken within or upon the Town Parcels and, to the extent the Town (or any successor or assignee of the Town) undertakes any permitted activities within or upon the Restricted Parcels that require water service, to support such Town activities within or upon the Restricted Parcels.

b. Water Service to Battle Retained Parcels and Certain Restricted Parcels.

The Town (including through its Enterprise) is unable and unwilling to provide, and will not provide, water service to support development within the Battle Retained Parcels. Accordingly, pursuant to the terms and conditions of the Reservoir Agreement, ERWSD will operate the Bolts Water Treatment System and utilize the Bolts Water Distribution System to provide water service for up to 700 SFE's to support development within the Battle Retained Parcels and, to the extent Battle North (or any successor or assignee of Battle North other than the Town or a successor or assignee of the Town) undertakes any permitted activities within or upon the Restricted Parcels that require water service, to support such permitted activities within or upon the Restricted Parcels. Pursuant to and as more fully set forth in Sections 17-5-70(j) and 17-6-40(c) of the Bolts Lake Subdivision Regulations:

i. Acknowledgement and Waiver. Battle North acknowledges, and all successor Landowners will be deemed to have acknowledged, that the Town will not provide, and will have no obligation to provide, the same level of municipal water service to the Battle Retained Parcels as the Town provides to other areas within the Town's municipal boundaries. Battle North, on behalf of itself and all successor Landowners and other parties having taking title to or acquiring an interest in such Lots, knowingly and intentionally waives any and all right to disconnection of such Lots arising under C.R.S. § 31-12-119 and based on the Town's failure to provide municipal water service on the same general terms and conditions as other areas within the Town's municipal limits receive. The Town may, without obligation under this Development Agreement to do so, require an applicant for a building permit within the Battle Retained Parcels to execute a waiver (in a form approved by the Town) benefiting the Town and acknowledging and restating the provisions of this Section at the time of building permit application.

ii. Plat Notes. Each approved preliminary plat and final plat within the Battle Retained Parcels will contain the applicable statements and acknowledgements required pursuant to Sections 17-5-70(j) and 17-6-40(c) of the Bolts Lake Subdivision Regulations. By submitting a Development Application for preliminary plat or final plat on land within the Battle Retained Parcels and by taking title to any such Lot or other land within the Battle Retained Parcels, Battle North, each successor Landowner and their respective successors and assigns conclusively waive any and all right to receive municipal water service from the Town.

iii. Fees and Charges. In accordance with Section 13-8-20 of the Bolts Lake Utilities Regulations, the provisions of Chapter 13, Article 4 of the Town Code do not apply to the Battle Retained Parcels. Accordingly, no water deposits, fees, or charges will be due to the Town or its Enterprise in connection with the development of the Battle Retained Parcels.

c. Authorization of Bolts Water Systems. The construction, ownership, operation, and maintenance of the Bolts Water Treatment System, Bolts Water Treatment Plant, and Bolts Water Distribution System will occur in accordance with the applicable provisions of

this Development Agreement, the Reservoir Agreement, the Bolts Lake Utilities Regulations and related components of the Bolts Lake Code Provisions. Without limitation of the foregoing:

i. Bolts Water Treatment System.

(1) *Exempt from 1041 Regulations.* In accordance with Section 13-8-50(a) of the Bolts Lake Utilities Regulations and Section 16-25-40(8) of the Town Code, development and operation of the Bolts Water Treatment System will be fully exempt from all Town review and permitting requirements of Chapter 16, Article 25 of the Town Code. The Town may require application for a permit (as such term is defined in Section 16-25-90 of the Town Code) for any expansion of the Bolts Water Treatment System treatment capacity or service area in addition to such capacity and service area (which capacity and service area consists of up to 700 SFE's within Battle Retained Parcels and any permitted activity within or upon Restricted Parcels that is undertaken by any party other than the Town or the Town's successor or assign) as described in and limited by this Development Agreement and the Bolts Lake Utilities Regulations.

(2) *Town Review of Location.* In accordance with Section 13-8-50(b) of the Bolts Lake Utilities Regulations, the Town will not own, operate or maintain the Bolts Water Treatment System. Design, construction and operation of the Bolts Water Treatment System will comply with the terms and conditions of the Reservoir Agreement and applicable ERWSD and CDPHE regulations and permitting requirements. Battle North, its successors and assigns, will not amend Section 9.2 of the Reservoir Agreement without the Town's written consent, which consent will not be unreasonably withheld, conditioned, or delayed. In connection with any Exemption Plat and/or final plat within the Battle Retained Parcels that proposes the location of the Bolts Water Treatment Plant, the Town may review and approve the proposed location, character and extent of the Bolts Water Treatment Plant pursuant to C.R.S. § 31-23-209. Except with respect to the Town's review of the Water Treatment Plant location as provided above, the Town will not exercise or conduct any technical or other review of the Water Treatment System, including but not limited to its location, character, and extent pursuant to C.R.S. § 31-23-209.

ii. Bolts Water Distribution System. In accordance with Section 13-8-60 of the Bolts Lake Utilities Regulations, the Town will not own, operate or maintain the Bolts Water Distribution System. In connection with Development Applications for preliminary plats and final plat(s) for development within the Battle Retained Parcels, the Town will review and approve locations of the Bolts Water Distribution System. Engineering and technical requirements of the Bolts Water Distribution System will be subject to ERWSD regulations and Chapter 17 of the Town Code (including but not limited to applicable fire flow requirements), except as expressly stated to the contrary in Chapter 5 Section 6.02 of Appendix C to the Town Code. Except with respect to the Town's review of the Bolts Water Distribution System as provided above, the Town will not exercise or conduct any technical review of the Bolts Water Distribution System, including but not limited to its location, character, and extent pursuant to C.R.S. § 31-23-209.

d. Disputes. If any dispute arises with respect to the Town's review and/or denial of approval pursuant to Section 2.7c.i or Section 2.7c.ii, or Sections 13-8-50 or 13-8-60 of the Bolts Lake Utilities Regulations, such dispute may be submitted for resolution pursuant to Section 4.10.

Section 2.8 Sewer Service. Subject to Section 2.1c, ERWSD will provide sanitary sewer service to the Battle North Property as provided by the Town Code.

Section 2.9 Building; Impact Fees. The International Codes (as defined in Section 18-1-10 of the Town Code, and inclusive of such Town-specific amendments of general applicability thereto as Town Council may adopt from time to time), the Bolts Lake Subdivision Regulations, Bolts Lake Building Code Regulations, and related components of the Bolts Lake Code Provisions will govern and control with respect to imposition of impact fees relating to development of the Battle Retained Parcels. With the exception of impact fees associated with the provision of water through the Town's water system and to the extent not implicitly or expressly in conflict with this Development Agreement or the Bolts Lake Code Provisions, the Town may further adopt impact fees of general applicability for Town infrastructure and improvements which will apply to development of the Battle Retained Parcels.

Section 2.10 Processing of Development Applications. Battle North and/or its successor Landowners may, from time to time as and when market conditions justify, submit Development Applications for Exemption Plat Parcels pursuant to the Exemption Plat Process, for preliminary plats and final plats pursuant to the Bolts Lake Subdivision Regulations, for building permits pursuant to the Bolts Lake Code Provisions, and/or such other approvals, if any, as are required for development and use of the Battle Retained Parcels as expressly set forth in the Bolts Lake Code Provisions. The Parties will cooperate and diligently work to fully and timely process such Development Applications to completion, consistent with the Town Code, Bolts Lake Code Provisions, the Vested Property Rights and the other terms and conditions of this Development Agreement.

Section 2.11 Other Governmental Permits. The Town will cooperate with Battle North and successor Landowners in seeking to obtain other permits and approvals, if any, as may be required by other governmental or quasi-governmental agencies that have jurisdiction over or provide services to the Battle Retained Parcels in connection with the development of, or provision of services to, the Battle Retained Parcels. Battle North or successor Landowner(s) seeking to obtain such permits or approvals, as applicable, will reimburse the Town for the Town's costs and expenses reasonably incurred in obtaining any such permits and approvals.

Section 2.12 Declarations and Associations. Battle North or the applicable successor Landowners may encumber all or portions of the Battle Retained Parcels with declarations of covenants, conditions and restrictions and, in connection therewith, form one or more Associations. Such Association(s) may be responsible for collecting assessments and enforcing such declaration(s). To the extent not undertaken by the District(s), such Association(s) may, without obligation under this Development Agreement to do so, undertake to: (a) provide snow removal, security, and similar services; and/or (b) own, operate and/or maintain common areas and improvements including but not limited to, roads, open space tracts, parks, trails, similar common areas and Infrastructure Improvements.

Section 2.13 Districts. In accordance with Article 1 of Title 32 C.R.S., the Districts were formed for the purposes of, *inter alia*: (a) financing, acquisition, design, construction, operation and maintenance of Infrastructure Improvements and other eligible improvements necessary or desirable in connection with development of the Battle Retained Parcels, whether located within the Battle Retained Parcels, the Restricted Parcels, Dedicated rights-of-way or other Dedicated parcels, or Town Parcels; (b) providing snow removal, security and similar services that such Districts have the legal authority to provide; and/or (c) owning and maintaining certain of the Restricted Parcels in compliance with applicable CDPHE and EPA requirements. The Districts may, without obligation under this Development Agreement to do so, enter into one or more advance and reimbursement agreements with Battle North or any of its successor Landowners, enter into loan agreements, issue debt, and enter into intergovernmental agreements and/or subdivision improvements agreements with the Town, other metropolitan districts having territory within or otherwise providing services to the Battle North Property, or any other appropriate governmental or quasi-governmental entity to address the Districts' undertakings to finance, design, construct, own, operate, maintain and/or Dedicate to another governmental or quasi-governmental entity various of the Infrastructure Improvements and other eligible improvements. Exercise of all functions of the Districts will be in compliance with the service plans approved pursuant to Resolution No. [_____] and the Intergovernmental Agreement with the Town contemplated by the service plans.

ARTICLE 3 VESTED PROPERTY RIGHTS

Section 3.1 Scope of Vested Property Rights. During the Vesting Period and subject to Section 4.2b, Section 4.4b and Section 4.5, Battle North and its successor Landowners will have and be entitled to rely upon and enforce, and the Town will take no action that would have the effect of abridging, impairing or divesting, the following the rights (collectively the “**Vested Property Rights**”):

a. The right to process Development Applications, receive approval of the same, plan and engage in land uses for, and to undertake and complete development and use of the Battle Retained Parcels in accordance with the uses, density and intensity of use and development standards set forth in and otherwise subject to the terms and conditions of the Approved SSDPs in such order, at such rate and at such time as market conditions support.

b. The right to submit and for Town Council and the Town to process Development Applications for the Battle Retained Parcels in accordance with the procedures set forth in the Approved SSDPs (including but not limited to the Bolts Lake Code Provisions and this Section 3.1b) and, to the extent not in conflict with the Approved SSDPS, the Town Code.

c. The right to develop the Battle Retained Parcels in accordance with the uses, density and intensity of use, and the development standards set forth in the Approved SSDPs.

d. The right for development of the Battle Retained Parcels to be exempt from:
i. subject to and except as expressly stated in Section 3.5a and Section 3.5d, compliance with the requirements of any amendment to the Town Code approved

after the Execution Date that creates generally applicable submittal requirements, procedural requirements, or approval criteria which implicitly or expressly conflict with the terms and conditions of the Approved SSDPs;

ii. any moratorium (whether of facially general applicability within the Town or otherwise) that would have the effect of precluding, delaying, impairing or adversely affecting development of the Battle Retained Parcels in accordance with the Approved SSDPs or otherwise would have the effect of impairing or divesting the Vested Property Rights; and

iii. without Battle North's (for so long as Battle North owns any property within the Battle North Property) and a majority of successor Landowners' of directly affected land prior written consent, any ordinance, action or approval by the Town, or processing of any Development Application, that would effect a rezoning of the Battle Retained Parcels or amendment to any Approved SSDP which would have the effect of divesting, impairing or negating the uses, density and intensity of use and development standards set forth in the Approved SSDPs.

e. The right to enforce and rely upon the Deed Restrictions, the Reserved Easements, and the Restrictions.

Section 3.2 Approved SSDPs. In connection with the Vested Property Rights, the terms and conditions of the following will control development within the Battle Retained Parcels (collectively, and including amendments thereto, the "**Approved SSDPs**"):

a. This Development Agreement, expressly including but not limited to:

i. the terms and conditions set forth in Article 2 with respect to subdivision, zoning and development regulations;

ii. the terms and conditions set forth in this Article 3 with respect to the Vested Property Rights;

iii. the terms and conditions set forth in Article 4 with respect to the defaults and remedies; and

iv. the Bolts Lake Code Provisions.

b. The Exemption Plat.

c. Subsequently approved Development Applications for preliminary plans for subdivision, final plats for subdivision, subdivision improvements agreements, limited use permits, conditional use permits, and similar applications, if designated as site specific development plans.

Section 3.3 Vesting Period. Town Council, acting in its legislative capacity as governing body of the Town, expressly finds and determines that the Vested Property Rights will be in effect for a period (the "**Vesting Period**") that commences on the Effective Date and continues through and including the thirtieth (30th) anniversary of the Effective Date, and that the

duration of the Vesting Period for development of the Battle Retained Parcels is warranted in view of, without limitation, the factors stated in Recital M and: (a) the land area within the Battle Retained Parcels; (b) the significant investment in Infrastructure Improvements and other development-related activities required to facilitate development of the Battle Retained Parcels; (c) the anticipated thirty (30) year build-out and absorption period; (d) the anticipated development of the Battle Retained Parcels in multiple phases; and (e) the probable effect of economic cycles and varying market conditions over the anticipated build-out and absorption period. Subsequently approved Development Applications will only be subject to the Vesting Period if the Town Council makes a specific finding of such applicability as part of approval of future applications described in Section 3.2c.

Section 3.4 Vesting of Property Rights. Town Council, acting in its legislative capacity as governing body of the Town, has approved this Development Agreement in accordance with the requirements of the Vested Property Rights Statute and Vested Property Rights Regulations. This Development Agreement constitutes an approved Site Specific Development Plan, constitutes a “development agreement” within the meaning of Section 24-68-104(2) of the Vested Property Rights Statute and Section 16-21-710(b)(2)(h) of the Town Code, and establishes the Vested Property Rights for a period in excess of three (3) years. Accordingly, Battle North and its successor Landowners have and may rely on the Vested Property Rights during the Vesting Period.

Section 3.5 Applicability of Other Regulations. Provided that Battle North and its successor Landowners do not waive any rights they have to oppose the enactment or amendment of any such regulations or to challenge the validity of regulations enacted after the Execution Date through proper legal means, establishment of the Vested Property Rights will not be construed to preclude the Town from applying to the Battle Retained Parcels on a reasonably uniform and non-discriminatory basis, as such regulations exist on the Execution Date or may be enacted or amended after the Execution Date:

a. Town regulations of general applicability pertaining to building, fire, plumbing, engineering, electrical and mechanical codes (e.g., the International Codes (as defined in Section 18-1-10 of the Town Code, and inclusive of such Town-specific amendments of general applicability thereto as Town Council may adopt from time to time); or

b. Federal, State, Eagle County or other governmental or quasi-governmental body’s regulations with respect to which the Town does not have discretion in applying; provided, however, the foregoing will not be construed as a waiver by Battle North or any successor Landowner of any remedy otherwise available against any entity other than the Town that has imposed such regulations pursuant to the Vested Property Rights Statute or this Development Agreement.

c. Subject to Section 2.9, impact fees of general applicability for Town infrastructure and improvements.

d. To the extent not expressly or implicitly in conflict with this Development Agreement or the Bolts Lake Code Provisions, Town regulations of general applicability pertaining to content of land use applications, processing requirements, procedures of the Planning Commission and Town Council, appeal procedures, and implementation of land use approvals.

Section 3.6 Conflict. The terms, conditions and criteria set forth in the Approved SSDPs will prevail and govern development of the Battle Retained Parcels pursuant to the Bolts Concept Plan. Where the Approved SSDPs do not address a specific subject, the applicable provisions of the Town Code will control.

Section 3.7 No Implied Restriction. This Development Agreement will not be construed as a limitation on the exercise of any power or authority of the Town except to the extent expressly stated in this Development Agreement, and then only to the extent so stated.

ARTICLE 4 DEFAULTS; REMEDIES; MUTUAL WAIVERS

Section 4.1 Default by Battle North or a Successor Landowner. A “breach” or “default” by Battle North or a successor Landowner means such Party’s failure to fulfill or perform any express material obligation of such Party stated in this Development Agreement.

Section 4.2 Default by the Town.

a. Generally, a “breach” or “default” by the Town under this Development Agreement means such Party’s failure to fulfill or perform any express material obligation of such Party stated in this Development Agreement.

b. With respect to the Vested Property Rights, and consistent with Sections 105(1)(a) and (b) of the Vested Property Rights Statute and Section 4.5, the Parties acknowledge and expressly intend that the Vested Property Rights preclude any zoning or land use action by a local government or pursuant to any initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development of the Battle Retained Parcels as set forth in the Approved SSDPs, except that such rights may be divested only:

i. with the consent of the affected Landowner; or

ii. upon the discovery of natural or manmade hazards within or in the vicinity of the Battle Retained Parcels, which hazards could not have been reasonably discovered at the time of approval of the Approved SSDPs, and which hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare.

c. Accordingly, the Parties acknowledge and expressly intend that, subject to the exceptions listed in Section 4.2b.i and Section 4.2b.ii, any zoning, land use or similar action by the Town, or pursuant to any initiated measure, which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the Battle Retained Parcels pursuant to and in accordance with the Vested Property Rights would impermissibly divest Battle North and successor Landowners, as applicable, of the benefits of the Vested Property Rights, would constitute a breach or default under the Vested Property Rights Statute, and would entitle Battle North and successor Landowners (as applicable) to the specific and limited remedies set forth in Section 4.4; provided, however, the Town will not be deemed in default of this Development Agreement due to actions of third-parties that have the effect of altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or

otherwise adversely affecting or divesting the Vested Property Rights, and further provided that nothing in this Development Agreement or otherwise will require the Town to approve any land use where a natural or manmade hazard exists on, or in the immediate vicinity of, the proposed area of use, which natural or manmade hazard could not reasonably have been discovered at the time of approval of the development, provided that such hazards are not, or cannot be, corrected and pose a serious threat to the public health, safety, and welfare.

Section 4.3 Notices of Default. If a Party defaults in the performance of its obligations under this Development Agreement, the Party(ies) asserting the default will deliver Notice of the asserted default to the Party alleged to be in default, with copies to any other non-defaulting Parties. The Party alleged to be in default will have sixty (60) days from and after receipt of the Notice within which to cure the default without liability for the default. If the default is not of a type which can be cured within the applicable cure period and the Party alleged to be in default gives Notice to the Party(ies) who asserted the default within such cure period that it is actively and diligently pursuing a cure, the Party alleged to be in default will have a reasonable period of time given the nature of the default following the end of the applicable period to cure the default, provided that the Party alleged to be in default is at all times within the additional time period actively and diligently pursuing the cure. Notwithstanding the foregoing cure periods (and potential extensions thereof): (a) for a default that results in threats to the public health or safety, the non-defaulting Party may seek specific performance and injunctive relief immediately following expiration of the five (5) day cure period without such default having been cured; and (b) a Landowner asserting that the Town is in default will have the right to include a claim for breach of this Development Agreement and/or of the Vested Property Rights Statute in any claim brought under C.R.C.P. 106(a)(4) (which rule requires filing such claim within twenty-eight (28) days after the date of the final decision that is subject to such legal challenge) if such Landowner reasonably believes that failure to include such claim could jeopardize such Landowner's ability to exercise its remedies under this Development Agreement or under the Vested Property Rights Statute at a later date, any claim for breach of this Development Agreement or the Vested Property Rights Statute that is brought before the expiration of the applicable cure period will not be prosecuted by the Landowner asserting such claim until expiration of the applicable cure period, and such claim will be dismissed by the Landowner if the default is cured in accordance with this Section 4.3.

Section 4.4 Remedies. If any default under this Development Agreement is not cured pursuant to Section 4.3, the Party asserting the default will have the right to enforce the obligations of the Party alleged to be in default as follows:

a. Generally, and except to the extent this Development Agreement expressly states otherwise, the Party asserting the default will have the right to pursue and be entitled to enforce specific performance of, and to obtain injunctive relief as appropriate to enforce, the defaulting Party's obligations under this Development Agreement, which will be the sole remedy under this Development Agreement; provided, however, if there is a final judicial determination that a Party is in default under this Development Agreement but the court determines specific performance is not available or will not be granted as a remedy for such default:

i. a Landowner that is not in default will be entitled to seek and be awarded such alternate remedies for its actual damages (expressly excluding exemplary damages and damages for lost profits or diminution in value) as may be available at law or in equity; and

ii. as to any Landowner determined in a final judicial judgment to have defaulted in the performance of the terms of this Development Agreement, the Town will be entitled such remedies as may be available at law or in equity and, additionally, to enforce against such Landowner the forfeiture of that Landowner's Vested Property Rights.

b. In addition to and distinct from those remedies otherwise available pursuant to this Section 4.4, this Development Agreement is a Site Specific Development Plan and creates the Vested Property Rights, which entitles Battle North and its successor Landowners to the specific rights and remedies available pursuant to the Vested Property Rights Statute, subject to the mutual waivers and other terms and conditions set forth in Section 4.5.

c. If a final judicial determination is reached that the Town is in default under this Development Agreement but the court determines specific performance is not available or will not be granted as a remedy for such default and instead monetary damages are to be awarded, the Town will have the right to remove such regulations that the court determined constitute a default and to thereby not be legally responsible for payment of any monetary damages.

Section 4.5 Waiver of Potential Claims and Remedies. In consideration of the establishment of the Vested Property Rights, together with the benefits to the Parties that this Development Agreement otherwise assures, the Signatories, on behalf of themselves and their respective successors and assigns, as applicable, have determined that it is in their respective interests to address and to waive certain potential claims, rights and remedies that might otherwise be construed to apply in a manner contrary to the Signatories' intent in entering into and performing their respective obligations pursuant to this Development Agreement.

a. By its adoption of the ordinance approving the execution of this Development Agreement, Town Council has established in its legislative capacity as governing body of the Town that, although the Vested Property Rights Statute provides for the payment of certain monetary damages upon a deprivation, impairment, violation or other divestment of the Vested Property Rights, the Town will not be subject to liability for monetary damages pursuant to the Vested Property Rights Statute or the Vested Property Rights Regulations as a remedy for breach or default with respect to the Vested Property Rights.

b. In implementation of the foregoing policy to protect the Town from potential monetary liability under the Vested Property Rights Statute while securing to Battle North and its successor Landowners, as applicable, the benefits of the Vested Property Rights under and pursuant to the Vested Property Rights Statute:

i. Battle North hereby knowingly, intentionally, voluntarily and irrevocably waives, for itself and for its successors and assigns (including but not limited to any successor Landowner), any remedial right it or they, as applicable, may have pursuant to Section 105(1)(c) of the Vested Property Rights Statute to be paid money damages as just

compensation upon a deprivation, impairment, violation or other divestment of the Vested Property Rights.

ii. Town Council, in its legislative capacity as governing body of and on behalf of the Town, hereby knowingly, intentionally, voluntarily and irrevocably waives, for itself and for its successors and assigns, any right the Town may have pursuant to Section 105(1)(c) of the Vested Property Rights Statute to pay money damages to Battle North or to any successor Landowner as just compensation upon a deprivation, impairment, violation or other divestment of the Vested Property Rights.

iii. The Signatories have executed and entered into the foregoing mutual waivers with the express intent that such waivers will be mutually binding and enforceable as to each them and their respective successors and assigns, having been given in consideration of the mutual benefits accruing to each of them and to their respective successors and assigns as a result of such mutual waivers and otherwise accruing to each of them pursuant to this Development Agreement, and with the intent and mutual understanding that the effect of such mutual waivers will be that the Town are precluded from divesting, depriving, impairing or violating the Vested Property Rights under any circumstances other than those stated in Section 4.2b.i and/or Section 4.2b.ii.

iv. Town Council, acting in its legislative capacity as governing body of the Town and pursuant to its legislatively established policy as set forth in the ordinance that approved execution of this Development Agreement, expressly authorizes, determines and directs that Battle North and other successor Landowners will be entitled to seek and to be awarded, and the Town will be subject to, such mandatory or prohibitory equitable remedies as may be required to secure to the Parties the remedies, limitations on remedies, and enforcement of the other terms and conditions set forth in this Section 4.5

c. Only if, notwithstanding the foregoing mutual waivers and the Parties' express intent as to the enforceability and remedial effect of such waivers, it is judicially determined that the terms and conditions (either in whole or in part) set forth in Section 4.5b will not be enforced against the Town as written, Battle North and its successor Landowners, as applicable, will be entitled to pursue and be awarded just compensation pursuant to Section 105(1)(c) of the Vested Property Rights Statute to the extent the Town takes any action which has the effect of divesting, depriving, impairing or violating the Vested Property Rights under any circumstances other than those stated in Section 4.2b.i and/or Section 4.2b.ii and such action constitutes a compensable action under the Vested Property Rights Statute.

Section 4.6 Attorneys' Fees and Costs. If either Party commences any action or proceeding against the other Party to enforce the provisions of this Development Agreement, each Party will bear its own attorneys' fees and costs.

Section 4.7 No Cross-Defaults. No default by a Party that is asserted or judicially determined to exist under this Development Agreement will be construed to constitute a default of any other Party under this Development Agreement. No default of a Party that is asserted or judicially determined to exist under this Development Agreement will be construed to constitute a default of such Party under any other agreement to which such Party is a party. No default of a

Party that is asserted or judicially determined to exist under another agreement to which such Party is a party will be construed to constitute a default by such Party under this Development Agreement.

Section 4.8 Limitation on Actions. Any action brought to enforce the terms of this Development Agreement must be commenced, if at all, within two (2) years of the occurrence of the condition of default or will forever be barred.

Section 4.9 Governing Law; Venue; Waiver of Right to Jury Trial. This Development Agreement will be construed according to the laws of the State of Colorado. Venue will be in the district court for the State of Colorado, Eagle County, Colorado. To reduce the cost of and to expedite the resolution of disputes under this Development Agreement, **each Party hereby waives any and all right to request a jury trial in any civil action relating primarily to the enforcement of this Development Agreement.**

Section 4.10 Dispute Resolution Pertaining to Bolts Water Systems. Pursuant to Section 2.7d, if a dispute arises with respect to Town review or approval (as such approval is limited pursuant to Section 2.7c.i and Section 2.7c.ii of this Development Agreement and Sections 13-8-50 and 13-8-60 of the Bolts Lake Utilities Regulations) of the Bolts Water Distribution System, Bolts Water Treatment Plant, or Bolts Water Treatment System, the applicant may submit the dispute to binding arbitration to a panel of three (3) water law technical experts (e.g., engineers, geologists or hydrologists), of which the Town will appoint one expert, the applicant will appoint one expert, and the two appointed experts will select a third expert. The arbitration will be completed within sixty (60) days, the result of the arbitration will be binding on the applicant and the Town, and neither the Town nor the applicant will have any right to further appeal or challenge such result. Each Party to such binding arbitration will bear its own costs of the arbitration (including the fees of all arbitrators).

Section 4.11 Survival. All provisions of this Development Agreement pertaining to remedies, and limitations on remedies, including but not limited to this Article 4, will survive any termination or expiration of this Development Agreement.

ARTICLE 5 MISCELLANEOUS

Section 5.1 Authority. Each Signatory affirms that it is fully authorized to enter into and execute this Development Agreement, and that all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize its execution of this Development Agreement have been made.

Section 5.2 Term. The term of this Development Agreement will commence on the Execution Date and will continue through and including the later of: (a) the date on which the Vesting Period expires; and (b) the date upon which the Parties have fully performed their respective material obligations as expressly set forth in the Development Agreement. After expiration of the term, this Development Agreement will be deemed terminated and of no further force or effect; provided, however, such termination will not affect: (i) annexation of the Battle North Property to the Town; (ii) common law vested rights obtained prior to such termination; or

(iii) any right arising from Town permits, approvals or other entitlements for the Battle Retained Parcels which were granted or approved prior to, concurrently with, or subsequent to the approval of this Development Agreement.

Section 5.3 Amendment of Development Agreement.

a. Written Amendment Required. This Development Agreement may be amended, terminated or superseded only by mutual consent in writing of the Parties (for purposes hereof, excluding individual owners, tenants and occupants of residential dwelling units, commercial structures and mixed use structures) following the public notice and public hearing procedures required for approval of this Development Agreement.

b. Effectiveness and Recording. As between the required (pursuant to Section 5.3a) Parties thereto, a written amendment to this Development Agreement will be legally effective and binding upon the later to occur of: (i) execution by the required Parties, or (ii) the effective date of the ordinance approving such amendment. Promptly after any amendment to this Development Agreement becomes effective, the Parties thereto will cause it to be Recorded. Upon Recording, the amendment will be legally effective and will be binding on the Battle North Property, or such portion which is subject to any written amendment, and on all Parties. As between the required Parties thereto, the validity or enforceability of such an amendment will not be affected by any delay in or failure to Record the amendment.

Section 5.4 Time of the Essence; Force Majeure. Time is of the essence with respect to the performance of each Party's obligations under this Development Agreement. However, no Party will be liable for delays or failures to perform due to acts of God, strikes, civil commotions, epidemics, quarantines, freight embargoes, or other customary *force majeure* causes of similar nature not reasonably within such Party's control.

Section 5.5 No Joint Venture or Partnership. No form of joint venture or partnership exists between the Signatories, and nothing contained in this Development Agreement will be construed as making any of the Parties joint venturers or partners.

Section 5.6 No Third Party Beneficiaries. Nothing expressed or implied in this Development Agreement is intended or will be construed to confer upon, or to give to, any legal person other than the Parties, any right, remedy, or claim under or by reason of this Development Agreement or any covenants, terms, conditions or provisions hereof, and all of the covenants, terms, conditions and provisions in this Development Agreement by and on behalf of the Parties will be for the sole and exclusive benefit of the Parties. Nothing in this Development Agreement is intended to interfere with any other agreements by and among any Parties and/or any third parties.

Section 5.7 Assignment. In connection with conveyance of the Battle Retained Parcels or portions thereof, Battle North will have the right, without obligation under this Development Agreement to do so, to assign or transfer all or any portion of its interests, rights or obligations under this Development Agreement to third parties acquiring an interest or estate in the Battle Retained Parcels or such portions thereof, including, but not limited to, a District, an Association, other Landowners or long term ground lessees of individual Lots or other parcels of land within

the Battle Retained Parcels; provided, however, the scope of assigned and released obligations must correspond directly to the portion of the Battle Retained Parcels conveyed to such successor and no such obligations may be assigned and released in a manner which severs the obligations from the land that is directly affected by the assigned and released obligations. To the extent Battle North assigns any of its obligations under this Development Agreement, the assignee of such obligations will expressly assume such obligations. Together with a written agreement executed by the Town consenting to the release of Battle North, the express assumption of any of Battle North's obligations under this Development Agreement by its assignee or transferee will thereby relieve Battle North of any further obligations under this Development Agreement with respect to the matter so assumed. All such rights and unperformed obligations under this Development Agreement will attach to and run with title to the land directly affected by such rights and obligations. If Battle North no longer owns any land within the Battle Retained Parcels, Battle North will have no further, and will be deemed released from any further, rights or obligations under this Development Agreement, and all remaining rights and unperformed obligations under this Development Agreement will run with title to the relevant portions of the Battle Retained Parcels and the Landowners (for purposes hereof, excluding individual owners, tenants and occupants of residential dwelling units, and individual tenants or occupants of commercial structures) thereof. Without the express written agreement of the Town, any assignment contemplated herein will not prevent the Town from enforcing all obligations and remedies in this Development Agreement against any or all of the Landowners of the Battle Retained Parcels; provided, however, if any subdivision improvement agreement, preliminary plat, or final plat requires the party thereto to fulfill any obligation under this Development Agreement, the Town will only enforce such obligation against the party undertaking such obligation pursuant to such subdivision improvement agreement, preliminary plat, or final plat.

Section 5.8 Severability. If a final order issued by a court of competent jurisdiction holds any term, provision, covenant or condition of this Development Agreement to be invalid, void or unenforceable, the remaining provisions of this Development Agreement will, unless amended or modified as provided in Section 5.3, continue in full force and effect so long as enforcement of the remaining provisions would not deprive the Party(ies) against whom they are being enforced of a material benefit of the bargain under this Development Agreement or otherwise be inequitable to such Party(ies) under the facts and circumstances then pertaining. A final judicial determination that the mutual waivers set forth in Section 4.5 or the Town's obligations with respect to the Vested Property Rights are invalid, void, unenforceable such that those obligations will not be enforced: (i) will be construed as depriving Battle North and successor Landowners of a material benefit of the bargain and being otherwise inequitable to such Parties; and (ii) this Development Agreement will be modified by the Parties as provided in Section 5.3 or judicially reformed in such a manner that the obligations and commitments with respect to the Vested Property Rights and mutual waivers can be materially performed and complied with by alternative means that most fully implement the Signatories' intent as reflected in this Development Agreement.

Section 5.9 Construction. Each Party has participated fully in the drafting of this Development Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply to interpreting this Development Agreement. The language in this Development Agreement will be interpreted as to its fair meaning and not strictly for or against any Party.

Attn: Michael J. Sawyer, Esq. (Minturn Town Attorney)
Telephone: (970) 945-2261
Email: mjs@mountainlawfirm.com

If to Battle North: Battle North, LLC
164 Railroad Ave. [Physical]
P.O. Box 56 [mailing]
Minturn, CO 81645
Attention: Tim McGuire
Telephone: 970.827.4609
Email: tmcguire@acpcommunities.com

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

ACP Communities, LLC
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Atlanta, Georgia 30327
Attention: Amy Wilde
Telephone: 404.334.0450
Email: awilde@acpcommunities.com

Battle North, LLC
c/o Lubert-Adler Partners
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Philadelphia, PA 19103-3033
Attention: Gerry Ronon
Telephone: 215.972.2220
Email: gronon@lubertadler.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

Section 5.15 Counterparts; Electronic Delivery. The Signatories may execute this Development 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 Signatories may deliver executed copies of this Development Agreement by e-mail (pdf) and, upon receipt, which

instruments will be deemed originals and binding upon the Parties, regardless of whether the ink signed originals are delivered thereafter.

[Signature Pages and Exhibits Follow this Page]

IN WITNESS WHEREOF, the Signatories have executed this Development Agreement as of the Execution Date, with the intent that this Development Agreement will, subject to Section 1.2, be legally binding upon the occurrence of the Effective Date and will legally attach to and encumber the Battle North Property upon Recording.

TOWN:

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

**Town of Minturn Water and Sanitation
Activities Enterprise,**
an enterprise fund established pursuant to
C.R.S. § 37-45.1-101

By: _____
Name: _____
Title: Mayor

ATTESTED by:

By: _____
Town Clerk

APPROVED as to legal form:

By: _____
Town Attorney

EXHIBIT A

Legal Description and Graphic Depiction of the Battle North Property

Battle Retained Parcels: Parcels 7, 9, 13, 14, 15, and 16, Battle Mountain North Exemption Plat, County of Eagle, State of Colorado.

Restricted Parcels: Parcels 3, 4, 10, and 12, Battle Mountain North Exemption Plat, County of Eagle, State of Colorado.

Town Parcels: Parcels 1, 2, 5, 6, 8 and 11, Battle Mountain North Exemption Plat, County of Eagle, State of Colorado.

EXHIBIT B
Bolts Concept Plan

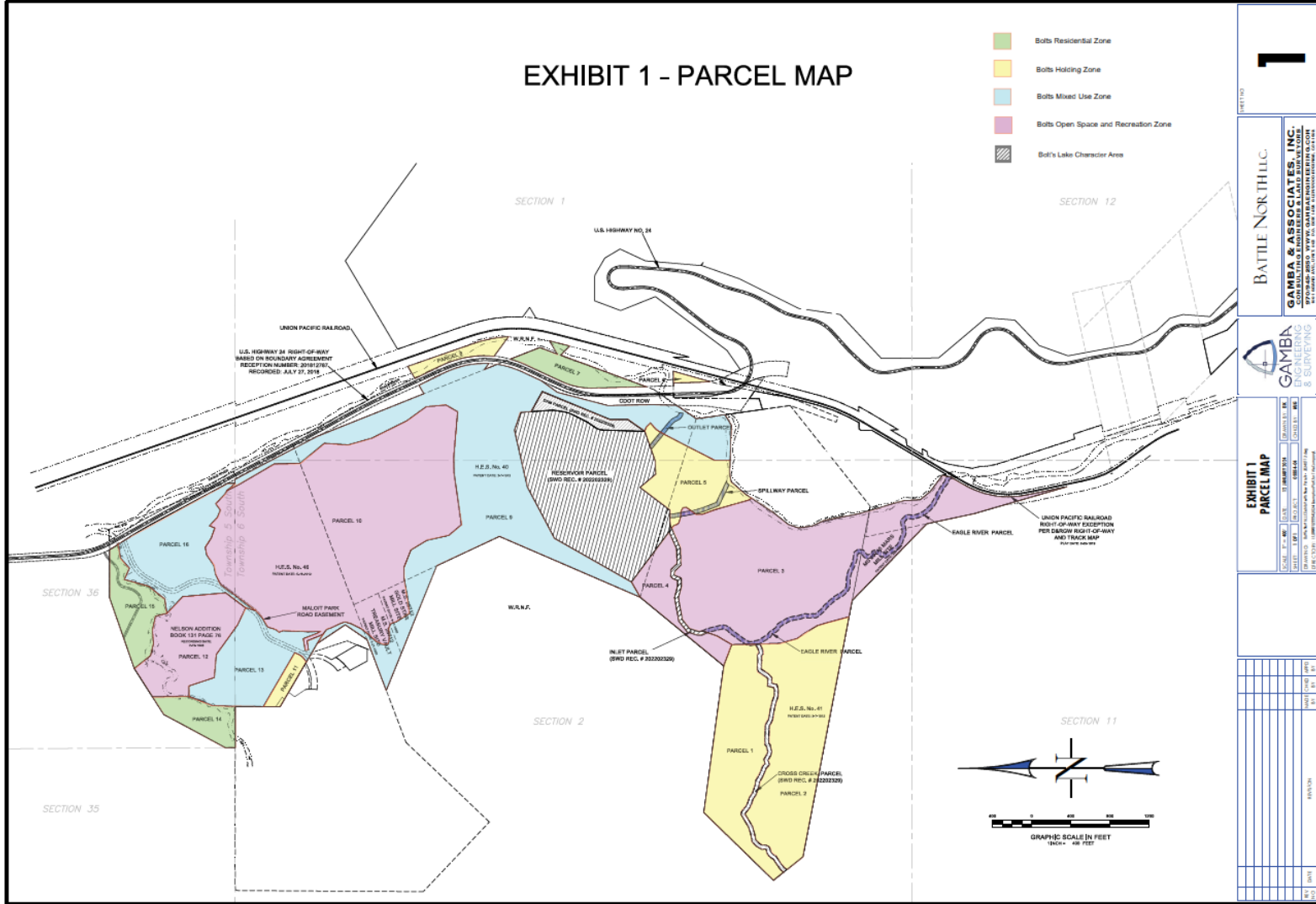


EXHIBIT C
Bolts Lake Code Provisions

As incorporated into the Town Code pursuant to Ordinance No. 1, Series 2024, the Bolts Lake Code Provisions consist of the following Town Code provisions:

Follow on next page

TOWN OF MINTURN, COLORADO
ORDINANCE NO. 01 – SERIES 2024

AN ORDINANCE OF THE TOWN OF MINTURN, COLORADO
AMENDING CHAPTER 13 (UTILITIES CODE), CHAPTER 16
(ZONING CODE), CHAPTER 17 (SUBDIVISION CODE), AND
CHAPTER 18 (BUILDING CODE) OF THE MINTURN
MUNICIPAL CODE.

WHEREAS, the Town of Minturn (“Town”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Town of Minturn Home Rule Charter for which the Minturn Town Council (“Town Council”) is authorized to act; and

WHEREAS, pursuant to Resolution 25 – Series 2023, on September 6, 2023, Town Council approved and authorized execution of that certain Settlement Agreement having an effective date of September 6, 2023 (“Settlement Agreement”) for the purposes set forth therein, which purposes included but are not limited to the parties to the Settlement Agreement (“Parties”) undertaking in good faith to coordinate and process certain Town-initiated amendments to the Minturn Municipal Code; and

WHEREAS, the Town is authorized by the Local Government Land Use Control Enabling Act of 1974, § 29-20-101 through § 29-20-108, C.R.S., as amended, and § 31-23-301, C.R.S., as amended, to plan for and regulate the use of land within the Town’s jurisdiction, and to enact zoning, subdivision, and other land use and development regulations; and

WHEREAS, the Town is authorized by State statute to regulate the construction of buildings and improvements within the Town’s jurisdiction (§ 31-15-601, C.R.S.) and to enact building codes and other regulations; and

WHEREAS, as contemplated by and in implementation of the Settlement Agreement, the Town Council and Planning Commission have held various work sessions and public hearings to receive public input on the changes to the Minturn Municipal Code sections described herein (the “Code Amendments”); and

WHEREAS, § 16-21-430 of the Minturn Municipal Code provides that the Town may initiate an amendment of the Zoning Code, and § 16-21-440 provides that the Town’s Planning Commission shall review all proposed amendments to the Town’s Zoning Code at a duly noticed public hearing and shall recommend approval or denial of a proposed amendment by Town Council, and that the Town Council shall finally approve or deny a proposed amendment at a duly noticed public hearing; and

WHEREAS, the Planning Commission at a duly noticed public hearing on February 14, 2024, considered the Code Amendments and provided a recommendation to the Town Council; and

WHEREAS, the Town Council at duly noticed public hearing on February 21, 2024 considered the proposed Code Amendments and recommendation of the Planning Commission

and determined that the amendments are in the best interest of the public health, safety and welfare of the citizens of the Town and conformed in all respects to the Minturn Municipal Code; and

WHEREAS, Sections 4 and 4(a) of the Settlement Agreement require that the Town ordinances comprising the Approvals (as defined in the Settlement Agreement), including but not limited to the Town ordinance approving the Code Amendments, will be legally effective thirty (30) days after publication following the date on which Town Council approves them on second reading; provided, however, and notwithstanding any earlier effective date of such ordinances, each such ordinance will contain an express condition that the substantive matters comprising the Approvals, including but not limited to the Code Amendments, will not be legally effective or binding upon the Parties prior to implementation of the Settlement (as defined in the Settlement Agreement).

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

SECTION 1 INCORPORATION OF RECITALS

The foregoing recitals are incorporated herein as if set forth in full.

SECTION 2 AUTHORITY FOR CODE AMENDMENTS

2.1 Article XI of Town Charter. Final action on the Code Amendments will be accomplished in accordance with the terms and conditions set forth in Article XI of the Town Charter.

2.2 Incorporation into the Minturn Municipal Code ("Code"). The Code Amendments will be incorporated into and made part of the Code in accordance with Sections 1-3-60 and 1-3-80 of the Code.

2.3 Chapter 13 of the Code (the "Utilities Code").

(a) Definitions. Unless otherwise defined in the Code Amendments, defined terms will have the meanings stated in Sections 13-1-10 of the Utilities Code.

(b) Amendments. Amendments to the Utilities Code will be processed and accomplished pursuant to Sections 1-3-60 and 1-3-80 of the Code.

2.4 Chapter 16 of the Code (the "Zoning Code").

(a) Definitions. Unless otherwise defined in the Code Amendments, defined terms will have the meanings stated in Sections 16-2-20 and 16-25-90 of the Zoning Code, as such may be amended.

(b) Amendments. Amendments to the Zoning Code will be processed and accomplished pursuant to Code Sections 1-3-60, 1-3-80, 16-21-30, 16-21-410 to 16-21-450.

2.5 Chapter 17 of the Code (the “Subdivision Regulations”).

(a) Definitions. Unless otherwise defined in the Code Amendments, defined terms will have the meanings stated in Sections 17-2-10 and 17-8-20 of the Subdivision Regulations.

(b) Amendments. Amendments to the Subdivision Regulations will be processed and accomplished pursuant to Sections 1-3-60 and 1-3-80, and Section 17-1-90 of the Code.

2.6 Chapter 18 of the Code (the “Building Code”).

(a) Definitions. Unless otherwise defined in the Code Amendments, defined terms will have the meanings stated in Building Code(s).

(b) Amendments. Amendments to the Building Code will be processed and accomplished pursuant to Sections 1-3-60 and 1-3-80 of the Code.

**SECTION 3
EFFECT OF AMENDMENTS**

Chapters 13, 16, 17 and 18 of the Code are hereby amended to read as follows, with certain sections added or amended and replaced in their entirety and other sections shown with additions in double underlined text, and deletions ~~strike through language is deleted~~. Sections of Chapters 13, 16, 17 and 18 which are not expressly described in this Ordinance continue to be in full effect without change.

**SECTION 4
UTILITIES CODE AMENDMENTS**

4.1 Section 13-1-10. The following defined terms will be inserted, in alphabetical order, into Section 13-1-10 as follows:

Battle Retained Parcels has the meaning stated in Section 16-2-20.

Bolts Development Agreement means, as may be amended, that certain Development and Vested Property Rights Agreement Implementing the Bolts Lake Settlement Agreement Battle One Developer, L.L.P. a Georgia limited liability limited partnership, Battle Two Developer, L.L.P. a Georgia limited liability limited partnership, Battle North, LLC, a Georgia limited liability company, Battle South, LLC, a Georgia limited liability company, and Battle One A Developer, LLC, a Georgia limited liability company (collectively, together with their respective successors and assigns, “Battle”), and the Town of Minturn, Colorado, a home rule municipal corporation (together with its successors and assigns, the “Town”) having an execution date of _____, 2024, recorded in the public records of Eagle County at Reception No. _____.

Bolts Water Distribution System means all water mains, storage tanks, distribution lines, service lines, and related infrastructure necessary to deliver water from the Bolts Water Treatment Plant to lots within the Battle Retained Parcels and, if applicable, to support

non-Town (or Town successors and assigns) activities permitted upon or within the Restricted Parcels.

Bolts Water Treatment Plant means the ERWSD water treatment plant developed within the Battle Retained Parcels (or as may be permitted use within a Restricted Parcel, within a Restricted Parcel) to serve the Battle Retained Parcels with a treatment capacity sized to serve up to 250 dwelling units and 50,000 square feet of gross leasable area.

Bolts Water Treatment System means the Bolts Water Treatment Plant and all diversion structures, raw water input lines and related infrastructure inboard to the Bolts Water Treatment Plant.

Bolts Lake Property has the meaning stated in Section 16-2-20.

ERWSD means, collectively and together with their respective successors and assigns, the Eagle River Water and Sanitation District and the Upper Eagle Regional Water Authority.

Exemption Plat has the meaning stated in Section 17-2-10.

Exemption Plat Parcel has the meaning stated in Section 17-2-10.

Exemption Plat Process has the meaning stated in Section 17-2-10.

Reservoir Agreement means and refers to that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir by and among Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority and Battle North, LLC, dated as of February 9, 2021.

Restricted Parcels has the meaning stated in Section 16-2-20.

Town Parcels has the meaning stated in Section 16-2-20.

4.2 Section 13-1-20. A new Subsection 13-1-20(f) is inserted as follows:

(f) Special Bolts Lake Property Provisions. Municipal water service within the Bolts Lake Property shall be provided in accordance with the following provisions:

(1) Town Parcels and Restricted Parcel Activities. The Town (including through its water and sanitation activities enterprise) will be solely responsible for the provision of municipal water to serve all development or other activities undertaken within or upon the Town Parcels and, to the extent the Town (or any successor or assign of the Town) undertakes any permitted activities within or upon the Restricted Parcels that require water service, to support such Town activities within or upon the Restricted Parcels. Accordingly, the Town's provision of such water service will fully comply with the terms, conditions and requirements of this Chapter 13.

(2) Battle Retained Parcels and Restricted Parcels Activities. The Town (including through its water and sanitation activities enterprise) will not provide municipal

water service to the Battle Retained Parcels or, except as provided in the foregoing clause (1), if applicable, to the Restricted Parcels. Accordingly, development, use and occupancy of residential dwelling units, commercial buildings and other permitted structures and permitted uses within the Battle Retained Parcels and, except as provided in the foregoing clause (1), if applicable, to the extent the landowner of a Restricted Parcel undertakes any permitted activities within or upon the Restricted Parcels that requires water service, the land comprising the Battle Retained Parcels and any such Restricted Parcels are, and water service to such parcels is, exempt from and are not subject to the requirements of Articles 1 through 7, inclusive, of this Chapter 13; provided, however, that the provision of such water service will be governed by Article 8 of this Chapter 13, including any specific provisions of Articles 1 through 6 that are expressly incorporated by reference in Section 13-8-80.

4.3 Section 13-1-120. Subsection 13-1-120 is amended by insertion of new clauses (e), (f) and (g) to read as follows:

- (e) As set forth in Section 13-8-30, the Town will not be liable or responsible for the design, construction, ownership, operation, maintenance or replacement of the Bolts Water Treatment Plant or other elements of the Bolts Water Treatment System.
- (f) As set forth in Section 13-8-60, the Town will not be liable or responsible for the ownership, operation, maintenance or replacement of the Bolts Water Distribution System.
- (g) Article 8 of this Chapter 13 will govern and control with regard to the design, construction, ownership, operation, maintenance and replacement of the Bolts Water Treatment Plant, other elements of the Bolts Water Treatment System, and the Bolts Water Distribution System.

4.4 Article 8. A new Article 8 is inserted as follows:

ARTICLE 8 – Bolts Lake Property Water Service Regulations.

Sec. 13-8-10. – Title.

This Article shall be known and may be cited as the “Bolts Lake Property Water Service Regulations.”

Sec. 13-8-20. – Intent.

The purpose of this Article 8 is, with respect to the Bolts Lake Property, to implement and give effect to certain provisions of the Bolts Development Agreement, to establish exemption from the requirements set forth in other Articles of this Chapter 13, and to establish alternative requirements applicable to the provision of municipal water service to areas within the Bolts Lake Property other than Town Parcels. Water service

required to support development within the Battle Retained Parcels (and any permitted activities within or upon Restricted Parcels that are undertaken by a landowner or other party other than the Town or any successor or assign of the Town) will be subject solely to compliance with the requirements of this Article 8, and will be exempt from the application of all other requirements of this Chapter 13 except to the extent any such provisions are incorporated by reference pursuant to Section 13-8-80. Any water service required with respect to Town Parcels (and any permitted activities within or upon Restricted Parcels that are undertaken by the Town or any successor or assign of the Town) will be fully subject to all other requirements of this Chapter 13.

Sec. 13-8-30. – Waiver of municipal water service.

Each approved exemption plat within the Battle Retained Parcels will contain the statement and acknowledgement required pursuant to Section 17-6-80(7)E(ii). Each approved preliminary plat within the Battle Retained Parcels will contain the statement and acknowledgement required pursuant to Section 17-5-70(i). Each approved and recorded final plat within the Battle Retained Parcels will contain the statement and acknowledgement required pursuant to Section 17-6-40(c). By submitting an application for exemption plat, preliminary plat or final plat within the Battle Retained Parcels and by taking title to any such lot within the Battle Retained Parcels, each landowner and its respective successors and assigns conclusively waives any and all right to receive municipal water service from the Town.

Sec. 13-8-40. – Provision of municipal water service.

(a) In accordance with applicable provisions of the Reservoir Agreement, but subject to the terms and conditions set forth in Section 16-10.5-80, and notwithstanding any provisions of this Chapter 13 to the contrary, ERWSD may provide water service for up to 700 SFE's within the Battle Retained Property (and any permitted activities within or upon Restricted Parcels that are undertaken by a landowner or other party other than the Town or any successor or assign of the Town) utilizing the Bolts Water Treatment System and the Bolts Water Distribution System. Water service for development within the Battle Retained Parcels (and any permitted activities within or upon Restricted Parcels that are undertaken by a landowner or other party other than the Town or any successor or assign of the Town) must comply with applicable provisions of this Article 8 and ERWSD regulations. The Town will have no obligation or responsibility with respect to acquisition or provision of water rights used or proposed to be used in connection with the Bolts Water Distribution System or required to serve development within the Battle Retained Parcels.

(b) As part of any application for preliminary or final plat, but not for an application for an exemption plat within the Bolts Lake Property, the applicant shall provide to the Town the letter from ERWSD required by Sections 17-5-70(f)(1)a and 17-6-40(b)(9)d, as applicable.

Sec. 13-8-50. – Development and Operation of the Bolts Water Treatment System.

(a) Exempt from 1041 Regulations. Section 13-8-40 and the Bolts Development Agreement authorize development of the Bolts Water Treatment System and Bolts Water Distribution System. Per Code Section 16-25-40(8), development and operation of the Bolts Water Treatment System will be fully exempt from all review and permitting requirements of Chapter 16, Article 25 of the Code. The Town may require application for a permit (as such term is defined in Section 16-25-90) for any expansion of the Bolts Water Treatment System treatment capacity or service area in addition to such capacity and service area as described in and limited by Section 13-8-40.

(b) Town Review of Location. The Town will not own, operate or maintain the Bolts Water Treatment System. Design, construction and operation of the Bolts Water Treatment System will comply with applicable ERWSD and CDPHE regulations and permitting requirements. In connection with any exemption plat and/or final plat within the Battle Retained Parcels that proposes the location of the Bolts Water Treatment Plant, the Town will review and may approve the location of the Bolts Water Treatment Plant. Such Town review may include the location, character and extent of the Bolts Water Treatment Plant pursuant to C.R.S. § 31-23-209. Except with respect to the Town's review of the Water Treatment Plant location as provided above, the Town will not exercise or conduct any technical or other review of the Water Treatment System, including but not limited to its location, character, and extent pursuant to C.R.S. § 31-23-209.

Sec. 13-8-60. – Development and Operation of the Bolts Water Distribution System.

The Town will not own, operate or maintain the Bolts Water Distribution System. In connection with preliminary and final plat(s) for development within the Battle Retained Parcels, the Town may review and approve locations of the Bolts Water Distribution System. Engineering and technical requirements of the Bolts Water Distribution System will be subject to ERWSD regulations and Chapter 17 (including but not limited to applicable fire flow requirements), except as expressly stated to the contrary in Chapter 5 Section 6.02 of Appendix C to the Town Code. Except with respect to the Town's review of the Bolts Water Distribution System as provided above, the Town will not exercise or conduct any technical review of the Bolts Water Distributions System, including but not limited to its location, character, and extent pursuant to C.R.S. § 31-23-209.

Sec. 13-8-70. – Right of entry for inspections.

A duly authorized employee or agent of the Town bearing proper credentials and identification shall be permitted, upon due notice to the landowner, to enter upon any and all lots within the Battle Retained Parcels for the purpose of confirming compliance with and enforcing this Article 8.

Sec. 13-8-80. Expressly Incorporated Provisions.

The following provisions of Articles 1 through 6 of this Chapter 13 are incorporated in this Article 8 by reference, subject to such modifications or qualifications as may be set forth below.

- (a) Section 13-1-10 (definitions).
- (b) Section 13-1-20(f) (exclusive authority of Town: exceptions).
- (d) Section 13-1-80 (fire hydrant use restricted).
- (e) Section 13-1-90 (pollution and interference with supply prohibited).
- (h) Section 13-1-120(e) and (f) (exculpation of Town).
- (i) Section 13-2-60(a) (restriction on connections to Town water system).
- (j) Section 13-2-120 (unauthorized uses of and tampering with Town water system).
- (k) Section 13-3-10 (authority for extensions of Town water system).
- (l) Article 6 (watershed protection plan).

SECTION 5 ZONING CODE AMENDMENTS

5.1 Section 16-2-20. The following defined terms will be inserted, in alphabetical order, into Section 16-2-20 as follows:

Battle Retained Parcels means, whether unplatted or divided into tracts, parcels, lots and blocks pursuant to the Exemption Plat Process or a recorded final plat, all land within the Bolts Lake Property that is neither a Town Parcel nor a Restricted Parcel and is intended for future development or other disposition.

Bolts Concept Plan means and refers to the concept plan and master map for the Bolts Lake Property that is set forth in Section 16-10.5-25, and which depicts the general locations of the Battle Retained Property, the Restricted Parcels and the Town Parcels.

Bolts Lake Property means the approximately 379 acres of land consisting of the Battle Retained Property, the Restricted Parcels and the Town Parcels, as conceptually depicted in the Bolts Concept Plan, but excluding any land conveyed to and owned in fee by ERWSD (or its successors and assigns) pursuant to the Reservoir Agreement.

Bolts Water Distribution System has the meaning stated in Section 13-1-10.

Bolts Water Treatment Plant has the meaning stated in Section 13-1-10.

Bolts Water Treatment System has the meaning stated in Section 13-1-10.

Day Spa means a non-destination commercial establishment (as distinguished from a spa/wellness center) comprising less than 5,000 square feet of gross leasable area (as defined in Section 16-10.5-80(2)) that offers aesthetic services such as massages, face and body treatments, and skin and nail treatments.

ERWSD has the meaning stated in Section 13-1-10.

Exemption Plat has the meaning stated in Section 17-2-10.

Exemption Plat Parcel has the meaning stated in Section 17-2-10.

Exemption Plat Process has the meaning stated in Section 17-2-10.

Reservoir Agreement has the meaning stated in Section 13-1-10.

Restricted Parcels means, as depicted on the Bolts Concept Plan, the following parcels or tracts of land within the Bolts Lake Property that are created pursuant the Exemption Plat Process, are neither Town Parcels nor Battle Retained Parcels, and are subject to certain perpetual easements, restrictive covenants, purchase options or similar restrictions that run with title to such parcels, are binding on the landowner thereof, and are enforceable by and for the benefit of the Town: (A) the OTP Area; (B) the Processing Area (being a portion of the Reservoir South Area); (C) the CTP Area; and (D) the Maloit Wetlands Area.

Spa/Wellness Center means a destination commercial establishment (as distinguished from a day spa) comprising at least 5,000 square feet of gross leasable area (as defined in Section 16-10.5-80(2)) that offers health and aesthetic services such as massages, face and body treatments, and skin treatments; health and wellness activities such as voga rooms, meditation rooms, saunas, and hot tubs; and/or associated food and beverage services.

Temporary Processing Area means, together with the placement site as described below, an area used for processing and temporary storage of soil, gravel, minerals, rocks, sand and similar materials excavated from an immediately adjacent site for the purpose of post-processing placement on another immediately adjacent site.

Town Parcels means, as depicted on the Bolts Concept Plan, the following parcels or tracts of land within the Bolts Lake Property that are created pursuant the Exemption Plat Process, are neither Battle Retained Parcels nor Restricted Parcels, and are fee-owned by the Town (or a successor of the Town): (A) the Highlands Area; (B) the Reservoir South Area (excluding the Processing Area); (C) the Rec Center Parcel(s); and (D) the Highway 24 Parcels.

5.2 Section 16-3-10. Subsection (7) of Section 16-3-10 is amended to read as follows:

(7) Bolt's Lake, ~~Gilman~~, Willow Creek, Rock Creek, and Holy Cross Character Areas. Uses within these Character Areas shall be as set forth in Sections 16-10-20, 16-10-30 and 16-10.5-70 of this Chapter, as applicable.

5.3 Article 10. The heading of Article 10 is amended to read as follows:

ARTICLE 10 – Bolt's Lake, ~~Gilman~~, Willow Creek, Rock Creek and Holy Cross Character Areas

5.4 Section 16-10-10. Section 16-10-10 is amended to read as follows:

Sec. 16-10-10. – Establishment of Bolt’s Lake, ~~Gilman~~, Willow Creek, Rock Creek and Holy Cross Character Areas.

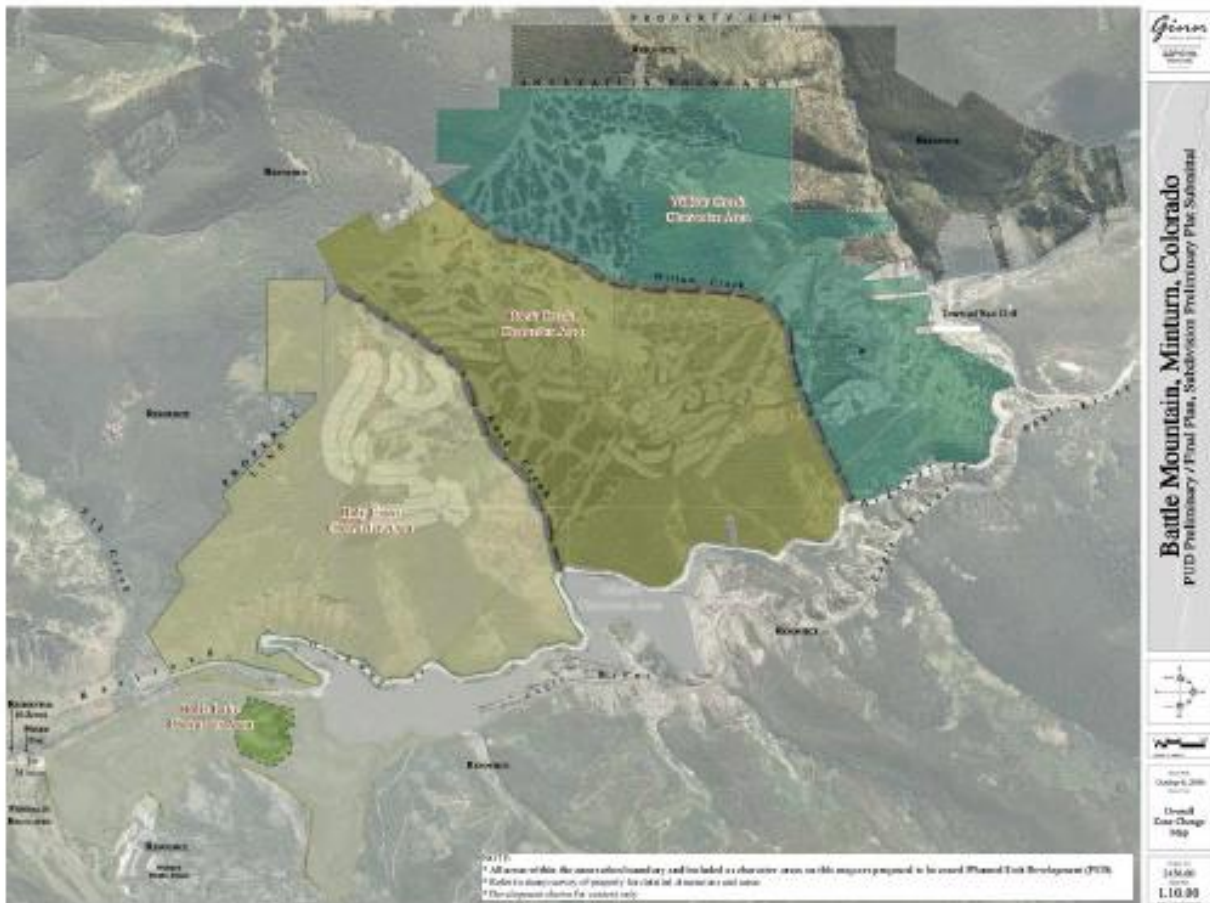
The Zoning Map of the Town is hereby amended to reflect the establishment of the Bolt’s Lake, ~~Gilman~~, Willow Creek, Rock Creek and Holy Cross Character Areas as shown on Attachment A, a copy of which is available at the Planning Department.

5.5 Section 16-10-20. The initial paragraph of Section 16-10-20 is amended to read as follows:

Sec. 16-10-20 - Character Area characteristics.

Except as otherwise provided in Sections 16-10-20 and 16-10-30, uses within the Bolt’s Lake, ~~Gilman~~, Willow Creek, Rock Creek and Holy Cross Character Areas shall be set forth on an approved final development plan for those areas. Until such time as a final development plan is approved, property within the Bolt’s Lake, ~~Gilman~~, Willow Creek, Rock Creek and Holy Cross Character Areas shall be used only for the following purposes:

5.6 Section 16-10-25. Section 16-10-25 is amended to replace Illustration 16-10.5 as follows:



5.7 Article 10.5. A new Article 10.5 is inserted as follows:

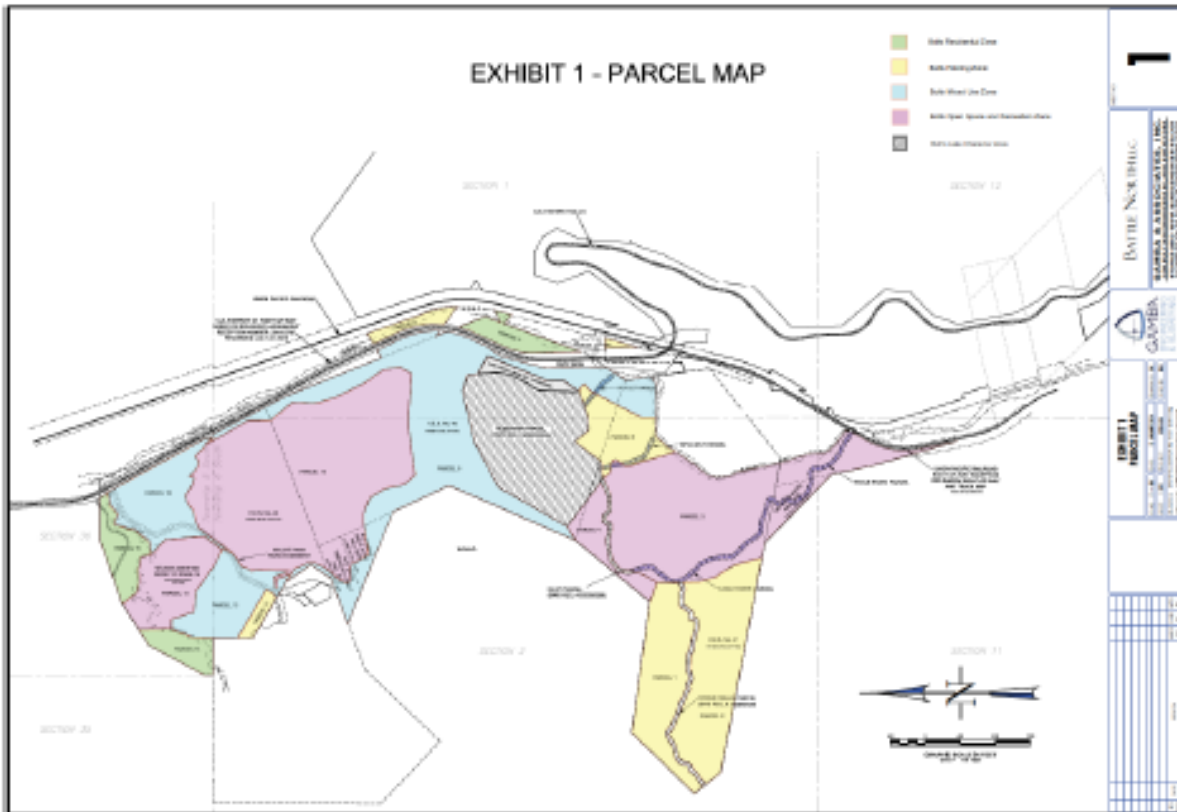
ARTICLE 10.5 – Bolts Lake Property Zone Districts.

Sec. 16-10.5-10. – Establishment of Zone Districts.

The following four zone districts are hereby established and are available, upon proper application and approval pursuant to the terms of this Article 10.5, to be applied to specific legally described areas with the Bolts Lake Property: (1) the Bolts Residential Zone; (2) the Bolts Mixed Use Zone; (3) the Bolts Open Space and Recreational Zone; and (4) the Bolts Holding Zone. These four zones provide for a variety of residential, commercial, public utility, and open space uses.

Sec. 16-10.5-25. – Bolts Concept Plan.

The Bolts Concept Plan, as defined in Section 16-2-20, is set forth as Illustration 16-10.5 below.



Sec. 16-10.5-30. – Bolts Residential Zone.

(a) The Bolts Residential Zone is characterized primarily by low density single family residences and duplexes and related public utilities, including, but not limited to the Bolts

Water Treatment System and Bolts Water Distribution System. Compatible public recreational and open space uses are encouraged.

(b) The purpose of the Bolts Residential Zone is to enable an eclectic mix of housing types and styles consistent with the housing types and character in other areas of the Town.

Sec. 16-10.5-40. – Bolts Mixed Use Zone.

(a) The Bolts Mixed Use Zone is characterized by residential and low-impact commercial business uses. The vertical integration of uses is encouraged. Compatible public recreational and open space uses are encouraged.

(b) The purpose of the Bolts Mixed Use Zone is to enable mixed use buildings and denser multi family, single-family homes, and duplexes similar in character, but with smaller minimum lot sizes than in the Bolts Residential Zone.

Sec. 16-10.5-50. – Bolts Open Space and Recreational Zone.

(a) The Bolts Open Space and Recreational Zone is characterized primarily by undeveloped open space, active and passive recreational uses, and public utilities.

(b) The purpose of the Bolts Open Space and Recreational Zone is to provide complimentary open space, active and passive recreational uses and public utilities for adjacent development in the Bolts Lake Property.

Sec. 16-10.5-60. – Bolts Holding Zone.

(a) The Bolts Holding Zone is characterized primarily by land owned by the Town that is to be held for further zoning determinations or later conveyance by the Town.

(b) The purpose of the Bolts Holding Zone is to create a zone for property that will be later rezoned or conveyed by the Town.

Sec. 16-10.5-70. – Permitted Use Table.

Notwithstanding anything in this Chapter 16 to the contrary, Table 16-[] sets forth the uses for the Bolts Lake Property Zone Districts.

Use	Bolts Residential Zone	Bolts Mixed Use District	Bolts Open Space and Recreational Zone	Bolts Holding Zone
R – Use by right; C – Conditional use; L – Limited use; N – Not allowed				
Accessory apartments – residential building	R	R	N	N
Accessory apartment – mixed use building	N	R (on second floor or higher in mixed use buildings)	N	N
Accessory dwellings	R	R	N	N
Agricultural uses	N	N	N	N

Use	Bolts Residential Zone	Bolts Mixed Use District	Bolts Open Space and Recreational Zone	Bolts Holding Zone
Amusements	N	R	L	N
Automotive detail shops	N	N	N	N
Automotive parts sales	N	N	N	N
Bakeries and confectioneries	N	R	N	N
Bakeries and delicatessens with food service	N	R	N	N
Banks and financial institutions	N	R	N	N
Bed and breakfast	N	R	N	N
Business and office services	N	R	N	N
Car washes (stand-alone or accessory to a gas station use)	N	N	N	N
Club	N	R	N	N
Cocktail lounges, taverns	N	R	N	N
Commercial accommodations	N	R	N	N
Convenience stores	N	R	N	N
Day Spa	N	R	N	N
Delicatessens and specialty food stores	N	R	N	N
Drive-thru/tip establishments	N	C	N	N
Drugstores and pharmacies	N	R	N	N
Dry cleaners	N	N	N	N
Duplexes	R	R	N	N
Garden landscaping supply and seed stores	N	R	N	N
Gas stations (with or without convenience store)	N	C	N	N
Grocery stores	N	R	N	N
Ground mounted solar energy systems, small scale wind systems, communications facilities and similar facilities	L	L	R	R
Haircare	N	R	N	N
Health/medical offices	N	R	N	N
Home business	L	L	N	N
Home occupation	L	L	N	N
Institutional uses	N	R	N	N
Laundries	N	N	N	N
Laundromats	N	R	N	N
Liquor stores	N	R	N	N
Manufacturing, light	N	N	N	N
Multi-family dwellings	R	R	N	N

Use	Bolts Residential Zone	Bolts Mixed Use District	Bolts Open Space and Recreational Zone	Bolts Holding Zone
Natural resource / material processing	N	N	C	N
Office uses	N	R	N	N
Open space (private and public)	R	R	R	N
Pawn shops	N	N	N	N
Photographic studios	N	R	N	N
Professional activities	N	R	N	N
Professional offices, business offices and studios	N	R	N	N
Public utilities and related public utility facilities, including, without limitation, any ERWSD facilities, the Bolts Water Treatment Plant, Bolts Water Treatment System, and Bolts Water Distribution System	R	R	R	R
Recreational facility (private and public)	C	R	R	R
Recreational uses, (outdoor, passive and active non-motorized) including but not limited to cross country skiing, mountain biking, equestrian, hiking, fishing	R	R	R	R
Restaurant	N	R	N	N
Retail	N	R	N	N
Single-family residential dwellings	R	R	N	N
Small appliance repair shops, excluding furniture repair	N	R	N	N
Spa/wellness center	N	R	N	N
Tailors and dressmakers	N	R	N	N
Temporary processing area	N	N	R (Processing Area and OTP, subject to restrictions of record for the benefit of and enforceable by Town) C (other than Processing Area and OTP)	N
Theaters, meeting rooms, churches and convention centers	N	C	N	N
Travel and ticket agencies	N	R	N	N

Sec. 16-10.5-80. – Density; Limitations applicable to Battle Retained Parcels.

(1) For purposes of calculating residential density, each residential dwelling unit, regardless of type, within the Bolts Lake Property will comprise one "dwelling unit." By way of example, a single-family home is one dwelling unit, an accessory dwelling unit is one dwelling unit, a duplex is two dwelling units, a multifamily building containing six separate apartments or condominium units is six dwelling units, etc.

(2) For purposes of calculating commercial density within the Bolts Lake Property, "gross leasable area" means the total floor area (measured from the interior surface of demising walls) that is designed for the tenants' or business' occupancy and exclusive use, and does not include the floor area of any public or common areas such as utility rooms, mechanical rooms, stairwells, elevator shafts, foyers, malls, terraces, balconies, and like spaces.

(3) The Battle Retained Parcels will be subject to the following density limitations:

A. Residential. The maximum residential density within the Bolts Residential District and the Bolts MU District is, cumulatively:

i) If a spa/wellness center is not developed within the Bolts MU District, two hundred fifty (250) dwelling units; or

ii) If a spa/wellness center is developed within the Bolts MU District, two hundred twenty-five (225) dwelling units.

B. Commercial. The maximum nonresidential commercial development within the Bolts MU District, cumulatively, is 50,000 square feet of gross leasable area. If a spa/wellness center is developed within the Bolts MU District, the following elements will not count as gross leasable area for purposes of the foregoing square footage limit: (A) "back of house" areas such as laundry rooms, locker rooms, changing rooms, restrooms, lunch rooms, loading dock/supply storage areas, and areas housing similar operational functions; and (B) stand-alone ancillary and accessory structures (whether fully or partially enclosed) such as cabanas, snack/drink bars, and structures housing saunas, hot tub areas, massage rooms, yoga rooms, meditation rooms and similar health/wellness activities.

Sec. 16-10.5-90. – Terms and conditions applicable Bolts Lake Property.

Notwithstanding anything in Section 16-10-20 to the contrary, permitted uses pursuant to Section 16-10.5-70 within the Bolts Lake Property must be developed and maintained in accordance with the following terms and conditions:

(1) Provision of potable water for development on lots will comply with the requirements set forth in Article 8 of Chapter 13.

(2) Construction of buildings, structures, and related improvements within lots will comply with the following requirements:

A. Development within any lot will comply with the requirements set forth in Article 15 of Chapter 18 and Appendix C to the Code, except as expressly stated to the contrary in Section 6.02 of Appendix C to the Code.

B. Development within the Bolts Lake Property will be subject to the design standards and design review pursuant to Sections 16-17-200 and 16-21-615, and Appendix B to the Code, provided that development within the Battle Retained Parcels need only comply with Sections I and II of Appendix B to the Code.

C. The maximum building height set forth in Section 16-2-60 will not apply to development within the Bolts Lake Property.

D. The general lot requirements and dimensional standards set forth in Section 16-2-40 will not apply to the development of lots within the Bolts Lake Property.

E. The following physical parameters shall apply to all development on lots within the Bolts Lake Property zone districts described below:

Zone	Use	Minimum Lot Area	Maximum Building Lot Coverage	Maximum Impervious Surface Area	Maximum Building Height	Minimum Setbacks		
						Front	Rear	Side
Bolts Residential Zone	Single-family home, accessory dwelling unit	4,000 s.f.	50%	60%	28 ft.	20 ft.	10 ft.	5 ft.
	Duplex	5,000 s.f.	50%	60%	28 ft.	20 ft.	10 ft.	5 ft.
	Other	N/A	50%	60%	28 ft.	20 ft.	10 ft.	5 ft.
Bolts Mixed Use District	Residential uses (other than multi-family dwellings)	2,500 s.f.	50%	60%	28 ft.	10 ft.	10 ft.	5 ft.
	Multi-family dwellings	5,000 s.f.	If mixed use: 80% If not mixed use: 50%	If mixed use: 90% If not mixed use: 60%	If mixed use: 35 ft. If not mixed use: 28 ft.	10 ft.	10 ft.	5 ft.
	Commercial	2,500 s.f.	80%	90%	35 ft.	10 ft.	10 ft.	5 ft.
Bolts Open Space and Recreational Zone	All	N/A	N/A	N/A	Building height and setback requirements to be determined at time of Design Review approval, Conditional Use review, or Location and Extent Review pursuant to <u>C.R.S. § 31-23-209</u>			

Bolts Holding Zone	All	N/A	N/A	N/A	N/A	N/A	N/A	N/A

F. Development within the Battle Retained Parcels is exempt from clauses (e) and (l) of Section 16-2-50.

(3) Off street parking and loading requirements within the Bolts Lake Property will be in accordance with the requirements set forth in Article 16 of Chapter 16.

(4) Limited uses identified in Section 16-10.5-70 will be processed and reviewed in accordance with Section 16-21-630.

(5) Conditional uses identified in Section 16-10.5-70 will be processed and reviewed in accordance with Section 16-21-620.

5.8 Section 16-21-710. Section 16-21-710(b)(2) is amended by insertion of new clause h to read as follows:

h. An approved development agreement.

5.9 Appendix B of Town Code. A new paragraph is added to the end of Section I.D as follows:

Pursuant to Section 16-10.5-90(2)B of the Town Code, only Sections I and II of these standards and guidelines shall apply to development within the Battle Retained Parcels.

SECTION 6 SUBDIVISION CODE AMENDMENTS

6.1 Section 17-2-10. The following defined terms will be inserted, in alphabetical order, into Section 17-2-10 as follows:

Battle Retained Parcels has the meaning stated in Section 16-2-20.

Bolts Lake Property has the meaning stated in Section 16-2-20.

Exemption Plat means the recorded final plat as approved pursuant to the exemption plat process.

Exemption Plat Parcel means, whether designated as a parcel, tract, lot or otherwise, a specific parcel of land located within the Bolts Lake Property created and legally described by reference to a recorded Exemption Plat, which parcel is legally conveyable but must be replatted to create buildable lots pursuant to a recorded final plat prior to submittal of building permit applications for habitable improvements.

Exemption Plat Process means the process described in Section 17-6-80 and applicable to the Bolts Lake Property for administrative review and approval of final subdivision plats

to create legally conveyable (but not developable prior to recording of an approved final plat) Exemption Plat Parcels within the Bolts Lake Property.

6.2 Section 17-3-30. Section 17-3-30 is amended to read as follows:

(a) The Town Council may, pursuant to a resolution duly adopted at a public meeting, exempt from the provisions of this Chapter any division of land if the Town determines that such division is not within the purposes of this Chapter and, in addition, the method of disposition adopted is not for the purpose of evading the provisions of this Chapter. Exempted divisions of land include those listed in the definition of subdivision in Section 17-2-10 of this Chapter.

(b) The Town Council hereby establishes an exemption plat process for the Bolts Lake Property. The purpose of the exemption plat process and exemption plat review is for the applicant to submit an application pursuant to Section 17-6-80 for administrative review and approval of plats to create legally conveyable (but not developable prior to recording of an approved final plat) exemption plat parcels within the Bolts Lake Property. Precise size, shape and location of lots, blocks, streets, easements, open space and other parcels of land to be created within the exemption plat parcels, and detailed, final engineered plans for public improvements and infrastructure will not be required for the exemption plat process, and such matters will be deferred to the preliminary plat and final plat processes.

6.3 Section 17-5-70. Section 17-5-70 is amended as follows:

(a) Subsection 17-5-70(f)(1)a. is amended to read as follows:

a. Adequate evidence prepared by a registered engineer that a water supply that is sufficient in terms of quality, quantity and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed, including requirements for fire protection. For preliminary plat applications affecting Battle Retained Parcels, a letter from ERWSD confirming its ability and commitment to meet the physical and legal water service needs for the proposed land use including fire flows. The ERWSD letter will be deemed to fully satisfy the foregoing requirement. Per Section 13-8-60, engineering and technical requirements of the Bolts Water Distribution System will be subject to ERWSD regulations (including but not limited to applicable fire flow requirements).

(b) Subsection 17-5-70(f)(3) is amended to read as follows:

(3) Water supply options. A review and analysis of all viable options for water supply, indicating the relative benefits of each, shall be submitted. For preliminary plat applications affecting Battle Retained Parcels, the foregoing requirement shall be satisfied by the ERWSD letter required by Section 17-5-70(f)(1)a.

(c) A new Subsection 17-5-70(j) is inserted as follows:

(j) Any preliminary plat within the Battle Retained Parcels must include the following statement and acknowledgement:

Municipal Water Service. The landowner(s) of the lots, tracts, blocks or parcels created pursuant to this plat and other parties having an interest in such hereby acknowledge that the Town will not provide, and will have no obligation to provide municipal water service to the lots, tracts, blocks or parcels or any improvements located within the lots, tracts, blocks or parcels. In consideration of the Town's approval of this plat, the landowner(s) and other parties having an interest in the property that have executed this plat, by so executing this plat, and all successor owners of the lots, tracts, blocks or parcels created pursuant to this plat or other parties having an interest therein, by taking title to or acquiring an interest in such, knowingly and intentionally waive any and all right to disconnection of the property arising under C.R.S. § 31-12-119 and based on failure to provide municipal services on the same general terms and conditions as the rest of the Town receives, to the extent based on the Town not providing the lots with municipal water service as described herein.

6.4 Section 17-6-40. Section 17-6-40 is amended as follows:

(a) Subsection 17-6-40(b)(9)d. is amended to read as follows:

d. Adequate evidence of water in sufficient quantity for both domestic and irrigation use which shall be transferred to a legal entity which shall be established to operate a system to provide such quantity of water. For final plat applications affecting Battle Retained Parcels, a letter from ERWSD confirming its ability and commitment to meet the physical and legal water service needs for the proposed land use including fire flows. The ERWSD letter will be deemed to fully satisfy the foregoing requirement. Per Section 13-8-60, engineering and technical requirements of the Bolts Water Distribution System will be subject to ERWSD regulations and Chapter 17 (including but not limited to applicable fire flow requirements).

(b) A new Subsection 17-6-40(c) is inserted as follows:

(c) Any final plat within the Battle Retained Parcels must include the following statement and acknowledgement:

Municipal Water Service. The landowner(s) of the lots, tracts, blocks or parcels created pursuant to this plat and other parties having an interest in such hereby acknowledge that the Town will not provide, and will have no obligation to provide municipal water service to the lots, tracts, blocks or parcels or any improvements located within the lots, tracts, blocks or parcels. In consideration of the Town's approval of this plat, the landowner(s) and other parties having an interest in the property that have executed this plat, by so executing this plat, and all successor owners of the lots, tracts, blocks or parcels created pursuant to this plat or other parties having an interest therein, by taking title to or acquiring an interest in such, knowingly and intentionally waive any and all right to disconnection of the property arising under C.R.S. § 31-12-119 and based on failure to provide municipal services on the same general terms and conditions as the rest of the Town receives.

to the extent based on the Town not providing the lots with municipal water service as described herein.

6.5 Section 17-6-80. A new Section 17-6-80 is inserted as follows:

Sec. 17-6-80. – Bolts Lake Property Exemption plat process.

Notwithstanding anything in the Subdivision Regulations to the contrary, which regulations will not apply to the exemption plat process unless expressly set forth in this Section, the creation of legally conveyable (but not developable prior to recording of an approved final plat) exemption plat parcels, will be accomplished by administrative review and approval by the planning director, and recording of an exemption plat, in accordance with the following requirements and procedures:

- (1) A pre-application meeting in conformance with Section 16-21-140 of the Code.
- (2) An application pursuant to the exemption plat process may only be submitted by a party permitted under Section 17-3-10.
- (3) There is no limit on the number of exemption plat parcels that may be created within the Bolts Lake Property pursuant to the exemption plat process.
- (4) Except for the creation or realignment of Town Parcels and Restricted Parcels, the minimum size for a parcel to qualify for an exemption plat is 5 acres.
- (5) The application must contain the following materials:
 - A. A completed application form in the format provided by the planning director and executed by the landowner or the landowner's authorized agent.
 - B. A check for the then-current exemption plat processing fee in an amount to be established by resolution of the Town Council.
 - C. One electronic copy and three (3) paper copies measuring twenty-four (24) by thirty-six (36) inches of the proposed exemption plat prepared in accordance with the requirements set forth in Section 17-6-80(5).
 - D. If required to provide legal access to a proposed exemption plat parcel that otherwise does not or would not have legal access to a public roadway, one electronic copy and three (3) paper copies of the proposed form of access easement agreement that will, upon recording, establish legal access from a public road to the boundary of each exemption plat parcel (to the extent such easement(s) are not created by recording of the exemption plat).

E. A copy of a title commitment issued by a title company doing business in Eagle County with an effective date no earlier than sixty (60) days prior to the submission of the application.

(6) Within fifteen (15) business days of receiving the application, the planning director will confirm and advise the applicant in writing whether the application is complete. If the application is not complete, the applicant may supplement the application and the planning director will provide an updated written determination of completeness as otherwise provided herein.

(7) Within thirty (30) business days after the date on which the application is determined complete, the planning director, after consultation with appropriate staff and referral agencies, if any, will complete review of the proposed exemption plat to confirm whether it complies with the following requirements:

A. It adheres to the format for final plats as described in Section 17-6-40(b), excluding subparagraphs (3), (4) and (9); provided, however, all surveying data shall be tied to primary control points. With respect to subparagraph (2), street addresses do not need to be assigned or shown for each exemption plat parcel. With respect to subparagraph (8)d, the certificate of ownership does not need to include any language of dedication. With respect to subparagraph (8)e, the certificate of title will be executed by a title company and will reference liens and exceptions to title as reflected in a specifically identified title commitment. The exemption plat shall include a certificate that taxes on the property have been paid.

B. It contains a certificate to be executed by a professional land surveyor, as defined in C.R.S. 38-51-102(16), that the proposed exemption plat was prepared in accordance with C.R.S. 38-51-106, which certificate will be deemed to satisfy the requirement of Section 17-6-40(b)(8)f.

C. It depicts rights-of-way and easements pursuant to C.R.S. 38-51-106 (1)(B)(I).

D. It complies with Section 17-3-40 of the Subdivision Regulations by demonstrating legal access. Such compliance will be demonstrated by the exemption plat depicting an existing or proposed road that would physically connect each proposed exemption plat parcel to a public road, identifies whether legal access to the exemption plat parcels is (or will be) granted by the exemption plat or by a separate instrument, and describes by reference to a recorded, or to be recorded, access easement agreement required pursuant to subparagraph (3)D above.

E. It contains the following statements and acknowledgements:

i) Land Not Developable. The landowner(s) of the exemption plat parcels created pursuant to this exemption plat and other parties having an interest in such exemption plat parcels

hereby acknowledge that no development is permitted on such exemption plat parcels prior to recording of an approved final plat for the land included in this exemption plat. This exemption plat and the exemption plat parcels created pursuant to this exemption plat only provide for the ability to legally convey such exemption plat parcels pursuant to Section 17-6-80 of the Town Code. Subsequent applications for preliminary plat(s) and final plat(s) will be required to be processed and approved, and such approved final plat(s) must be recorded, in order to create developable lots and other parcels within the exemption plat parcels created pursuant to this exemption plat.

- ii) Municipal Water Service. The landowner(s) of the lots, tracts, blocks or parcels created pursuant to this plat and other parties having an interest in such hereby acknowledge that the Town will not provide, and will have no obligation to provide municipal water service to the lots, tracts, blocks or parcels or any improvements located within the lots, tracts, blocks or parcels. In consideration of the Town's approval of this plat, the landowner(s) and other parties having an interest in the property that have executed this plat, by so executing this plat, and all successor owners of the lots, tracts, blocks or parcels created pursuant to this plat or other parties having an interest therein, by taking title to or acquiring an interest in such, knowingly and intentionally waive any and all right to disconnection of the property arising under C.R.S. § 31-12-119 and based on failure to provide municipal services on the same general terms and conditions as the rest of the Town receives, to the extent based on the Town not providing the lots with municipal water service as described herein.

(8) Upon completion of the foregoing review of the proposed exemption plat, the planning director will either approve, approve with conditions, or deny the proposed exemption plat, and will provide written notice of such determination to the applicant.

A. If the proposed exemption plat is approved, the applicant will prepare and cause to be executed a mylar in form suitable for recording and, upon execution by appropriate parties, including the Town, the same will be recorded.

B. If approved with conditions, the notice letter will specifically describe the conditions required to be satisfied prior to preparation of mylars for execution and recording as described in clause A above. The applicant will have a period of three (3) months to revise the proposed exemption plat

to accomplish satisfaction of the stated conditions and resubmit to the planning director for review and confirmation in accordance with subparagraphs (5) and (6) of this Section.

C. If the application is denied, the notice letter will specifically describe the deficiencies in the application and/or proposed exemption plat. At any time after receipt of a notice of denial, an applicant may resubmit such application with such modifications as may be appropriate to address the specified deficiencies, for reconsideration as a new application in accordance with the requirements set forth in this Section.

(9) The planning director's processing, review and final action with respect to exemption plat applications will be exempt from any posting and public notice requirements under the Code, including but not limited to Section 16-21-610 of the Zoning Code.

(10) Except as otherwise expressly set forth above in Section 17-6-80(3), no other engineering plans, public improvements, security guarantees, dedications, or fees will be required in connection with the approval and recording of an exemption plat pursuant to the exemption plat process. As such, any requirements set forth in Article 7 of Chapter 17, Articles 15 and 16 of Chapter 18, and Appendix C to the Code do not apply to the exemption plat process.

(11) Exemption plat parcels created by recording of an approved exemption plat must be replatted pursuant to the requirements set forth in Articles 5 and 6 of this Chapter prior to the construction of public improvements or issuance of building permits for habitable structures within such exemption plat parcels.

(12) The following provisions of Articles 1 through 9 of this Chapter 17 are incorporated in this Section by reference:

- A. Sec. 17-1-50. – Save harmless clause
- B. Sec. 17-1-60. – Disclaimer of liability
- C. Sec. 17-1-70. – Compliance required
- D. Sec. 17-1-80. – Remedies for violation
- E. Sec. 17-1-80. – Amendments
- F. Sec. 17-2-10. – Definitions
- G. Sec. 17-3-10. – Owner or agent may subdivide
- H. Sec. 17-3-30. – Exemptions
- I. Sec. 17-3-60 (a), (c)-(e). – Adequacy of applications

- J. Sec. 17-3-70. – Suspension of approval; service of written notice
- K. Sec. 17-3-80(a) – Permits for development; changes on final plat

6.6 Section 17-7-10. A new Subsection 17-7-10(d) is inserted as follows:

(d) Exemption plat. Notwithstanding anything in the Subdivision Regulations to the contrary, this Article 7 will not apply to the approval and recording of an exemption plat pursuant to the exemption plat process. As provided in Section 17-6-80(9), the exemption plat process is exempt from and is not subject to this Article 7 and no subdivision improvements agreement or public improvements will be required in connection with the approval or recording of an exemption plat.

6.7 Section 17-7-20. Section 17-7-20 is amended as follows:

(a) A new Subsection 17-7-20(1)h. is inserted as follows:

h. For improvements comprising Bolts Water Treatment System and Bolts Water Distribution System infrastructure that are to be constructed by ERWSD or for which ERWSD has separately required and obtained collateral as security in accordance with applicable ERWSD regulations, the Town shall not require collateral as security under the applicable subdivision improvements agreement.

(b) A new Subsection 17-7-20(3)c. is inserted as follows:

c. The foregoing provisions of this Section 17-7-20(3) shall not apply to final plats for property within the Battle Retained Parcels.

SECTION 7 BUILDING CODE AMENDMENTS

7.1 Section 18-2-20. A new Subsection 18-2-20(16) is inserted as follows:

(16) Notwithstanding anything in this Chapter 18 to the contrary, the Bolts Lake Property Water Service Regulations set forth in Article 8 of Chapter 13 and Section 6.02, Appendix C to the Town Code are the exclusive requirements applicable to water supply for development within the Battle Retained Parcels (as such term is defined in Section 13-1-10).

7.2 Section 18-16-10. A new Subsection 18-16-10(d) is inserted as follows:

(d) Notwithstanding any provision of this Article 16 inconsistent therewith, no impact fees shall be due in connection with the approval or recording of an exemption plat pursuant to the exemption plat process (as such terms are defined in Section 17-2-10).

7.3 Exemptions from Appendix C of Town Code. Appendix C is amended as follows:

- (a) Chapter 1. A new Section 2 is inserted as follows:

SECTION 2 – EXEMPTIONS

2.01 – EXEMPTION PLAT PROCESS

Pursuant to Section 17-6-80(9) of the Town Code, the standards, specifications, submittals, and approvals set forth in this manual shall not apply to the exemption plat process (as defined in Section 17-2-10), any exemption plat or any exemption plat parcel (as such terms are defined in Section 17-2-10) within the Bolts Lake Property.

- (b) Chapter 5. A new Section 6.02 is inserted as follows:

6.02 – Battle Retained Parcels

Pursuant to Chapter 13 of the Town Code and the Bolts Development Agreement (as defined in Section 13-1-10), ERWSD shall provide water services within the Battle Retained Parcels (as such term is defined in Section 13-1-10). The design and construction of the Bolts Water Distribution System (as such term is defined in Section 13-1-10) will be subject to the applicable ERWSD regulations and Section 1, Sections 2.01-2.02, and Section 3.01 of this Chapter 5. If any explicit or implicit conflict exists between the above-mentioned sections of this Chapter 5 and the applicable requirements of the ERWSD regulations or the Eagle River Fire Protection District, such ERWSD regulations or Eagle River Fire Protection District regulations, as applicable, shall govern and control.


INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THE 21ST DAY OF FEBRUARY 2024. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 6TH DAY OF MARCH, 2024 AT 5:30p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO



Earle Bidez, Mayor

ATTEST:

By: 
Jay Brunvand, Town Clerk



THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 6TH DAY OF MARCH, 2024.

THIS ORDINANCE WILL BE LEGALLY EFFECTIVE THIRTY (30) DAYS AFTER PUBLICATION FOLLOWING THE DATE ON WHICH TOWN COUNCIL APPROVED THIS ORDINANCE ON SECOND READING; PROVIDED, HOWEVER, AND NOTWITHSTANDING SUCH EARLIER EFFECTIVE DATE OF THIS ORDINANCE, THE CODE AMENDMENTS SET FORTH IN THIS ORDINANCE WILL NOT BE LEGALLY EFFECTIVE OR BINDING ON ANY PARTY PRIOR TO IMPLEMENTATION OF THE SETTLEMENT AS DEFINED IN AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT

TOWN OF MINTURN, COLORADO



Earle Bidez, Mayor

ATTEST:

By: 
Jay Brunvand, Town Clerk



EXHIBIT D
Schedule of Defined Terms

Annexation Agreement means that certain Battle Mountain Annexation Agreement and Vested Property Rights Development Agreement by and among the parties thereto, dated as of February 27, 2008, as approved pursuant to Town Ordinance 10 – Series 2008, and Recorded on March 27, 2008, at Reception No. 200806742.

Approvals has the meaning stated in Recital J.

Approved SSDP(s) has the meaning stated in Section 3.2.

Article refers to a numbered Article of, unless another document is specifically referenced, the Development Agreement.

Association(s) means, one or more owners associations that Battle North or a successor Landowner may form within the Battle Retained Parcels.

Battle Entities has the meaning stated in Recital B.

Battle North has the meaning stated in the initial paragraph of the Development Agreement.

Battle North Property has the meaning stated in Recital E.

Battle Retained Parcels means, as depicted on the Bolts Concept Plan and whether unplatted or subdivided into tracts, parcels, Lots and blocks by Recording of the Exemption Plat described in Recital J(7) or a subsequent Recorded final plat, all land within the Battle North Property that is neither a Town Parcel nor a Restricted Parcel, is owned by Battle North or its successors and assigns, and is intended for future sale, development or other disposition.

Bolts Concept Plan means and refers to the concept plan and master map for the Battle North Property that is attached to and incorporated herein as Exhibit B and set forth in Section 16-10.5-25 of the Bolts Lake Zoning Regulations, and which depicts the general locations of the Battle Retained Parcels, the Restricted Parcels and the Town Parcels.

Bolts Lake Building Code Regulations means, collectively, the Town Code provisions set forth in Section 7 of the Bolts Lake Code Provisions.

Bolts Lake Code Provisions means and refers to the following provisions of the Town Code, as in effect on the Effective Date and attached at Exhibit C, which Town Council adopted pursuant to Ordinance No. 1, Series 2024: (i) the Bolts Lake Utilities Regulations; (ii) the Bolts Lake Zoning Regulations; (iii) the Bolts Lake Subdivision Regulations; and (iv) the Bolts Lake Building Code Regulations.

Bolts Lake Subdivision Regulations means, collectively, the Town Code provisions set forth in Section 6 of the Bolts Lake Code Provisions.

Bolts Lake Utilities Regulations means, collectively, the Town Code provisions set forth in Section 4 of the Bolts Lake Code Provisions.

Bolts Lake Zoning Regulations means, collectively, the Town Code provisions set forth in Section 5 of the Bolts Lake Code Provisions.

Bolts Mixed Use District means the mixed use zone district established pursuant to Section 16-10.5-10 of the Bolts Lake Zoning Regulations for land within the Battle North Property.

Bolts Open Space/Rec District means the open space and recreational use zone district established pursuant to Section 16-10.5-10 of the Bolts Lake Zoning Regulations for land within the Battle North Property intended to remain predominately undeveloped.

Bolts Residential District means the residential zone district established pursuant to Section 16-10.5-10 of the Bolts Lake Zoning Regulations for land within the Battle North Property.

Bolts Water Distribution System means all water mains, storage tanks, distribution lines, service lines, and related infrastructure necessary to deliver water from the Bolts Water Treatment Plant to Lots within the Battle Retained Parcels and, if applicable, to support non-Town (or Town successors and assigns) activities permitted upon or within the Restricted Parcels.

Bolts Water Treatment Plant means the ERWSD water treatment plant developed within the Battle Retained Parcels (or as may be a permitted use within a Restricted Parcel, within a Restricted Parcel) to serve the Battle Retained Parcels with a treatment capacity sized to serve up to 250 dwelling units and 50,000 square feet of gross leasable area.

Bolts Water Treatment System means the Bolts Water Treatment Plant and all diversion structures, raw water input lines and related infrastructure inboard to the Bolts Water Treatment Plant.

CDPHE means the Colorado Department of Public Health & Environment.

Deed Restrictions means certain use restrictions with respect to particular Town Parcels for the benefit of and enforceable by Battle North and the Battle Retained Parcels.

Dedicate(d)/Dedication means the conveyance or grant, either of a fee interest or an easement interest, whether by plat, special warranty deed or easement agreement, as applicable, to the Town or other appropriate governmental or quasi-governmental entity of real property for a specified purpose, together with public improvements installed thereupon, if any, free and clear of all monetary liens and those non-monetary encumbrances that are not materially inconsistent with the purpose(s) for which Town or other governmental or quasi-governmental entity is acquiring the real property and related public improvements.

Development Agreement has the meaning stated in the initial paragraph of the Development Agreement Implementing the Bolts Lake Settlement Agreement to which this Exhibit D is attached and incorporated into.

Development Application(s) means any form of application or submittal that the Bolts Lake Code Provisions or Town Code require to be submitted to the Town for review and approval in connection with development within the Battle Retained Parcels, including but not limited to an application or submittal regarding an amendment to the Development Agreement, an amendment to the Bolts Lake Code Provisions, an Exemption Plat, a preliminary plat, a final plat, a design review, a grading permit, a building permit or similar matters.

District(s) means, individually or collectively as the context dictates, Battle North Metropolitan District Nos. 1-4, a quasi-municipal corporation of the State of Colorado, formed pursuant to Article 1, Title 32, Colorado Revised Statutes and Resolution No. [____] for the purpose of providing services and/or improvements benefiting all or any portion of the Battle Retained Parcels and Restricted Parcels, together with their respective successors and assigns.

Effective Date has the meaning stated in Section 1.2.

Enterprise has the meaning stated in the initial paragraph of the Development Agreement.

EPA means the United States Environmental Protection Agency.

ERWSD means, collectively and together with their respective successors and assigns, the Eagle River Water and Sanitation District and the Upper Eagle Regional Water Authority.

ERWSD Easements has the meaning stated in Recital F.

Escrow Agreements means, collectively, three escrow agreements by and among the parties thereto in April 2008, pursuant to which the Battle Entities and/or the Original Owners deposited a total of \$11.6 million into escrow based on specific provisions in the Annexation Agreement and/or the Water Service Agreement.

Execution Date has the meaning stated in the initial paragraph of the Development Agreement.

Exemption Plat means a Recorded plat approved for subdivision of land within the Battle North Property pursuant to the Exemption Plat Process, including but not limited to the plat described in Recital J(7).

Exemption Plat Parcel(s) means, whether designated as a parcel, tract, Lot or otherwise, a specific parcel of land created and legally described by reference to an Exemption Plat that is Recorded, which parcel is legally conveyable but must be replatted to create buildable Lots pursuant to a Recorded final plat.

Exemption Plat Process means the process described in Section 17-6-80 of the Bolts Lake Subdivision Regulations for administrative review and approval of final subdivision plats to create

legally conveyable (but not developable prior to Recording of an approved final plat) Exemption Plat Parcels within the Battle North Property.

Exhibit(s) means, unless another document is specifically referenced, the following exhibits to the Development Agreement, each of which is incorporated by reference into and made a part of the Development Agreement:

- Exhibit A Legal Description and Graphic Depiction of the Battle North Property
- Exhibit B Bolts Concept Plan
- Exhibit C Bolts Lake Code Provisions
- Exhibit D Schedule of Defined Terms

Funding Agreement means that certain Agreement Regarding Escrows and Funding by and among the parties thereto, as approved by Town Council Resolution No. 5-2012 on February 15, 2012.

Holding District means the holding zone district established pursuant to Section 16-10.5-10 of the Bolts Lake Zoning Regulations for Town Parcels intended to be held for later conveyance or further future zoning determinations pursuant to Section 16-10.5-10 of the Bolts Lake Zoning Regulations.

Infrastructure Improvements means roads, the Bolts Water Distribution System, Bolts Water Treatment Plant, Bolts Water Treatment System, and related water service infrastructure, sanitary sewer infrastructure, stormwater infrastructure, electric and gas utilities, renewable and alternative energy facilities, telecommunications infrastructure and similar infrastructure improvements the Town approves and/or requires pursuant to the Town’s preliminary and final plat process to serve development within the Battle Retained Parcels.

Landowner(s) means, individually or collectively, the Signatories and their respective successors as fee owner(s) of real property comprising the Battle North Property or any portion thereof.

Legal Challenge means, as applicable, (i) any third party’s filing of a complaint for judicial review that directly or indirectly challenges the validity of this Development Agreement, any of the other Approvals, or the ordinance(s) or other Town actions granting such Approvals; or (ii) the timely submission of a valid petition pursuant to the Town Code for a referendum seeking to reverse or nullify an ordinance approving this Development Agreement or any of the other Approvals.

Litigation has the meaning stated in Recital G.

Lot(s) means one or more parcels of developable land created by a final plat.

Notice(s) has the meaning stated in Section 5.14.

Original Owners has the meaning stated in Recital B.

Original Property has the meaning stated in Recital B.

Party(ies) has the meaning stated in the initial paragraph of the Development Agreement.

Prior Agreements has the meaning stated in Recital C.

PUD Preliminary Plan has the meaning stated in Recital D.

Recital(s) means, individually or collectively as the context dictates, the provisions set forth in the “Recitals” section of, unless another document is specifically referenced, the Development Agreement.

Record(ed/ing) means to file, having been filed or appearing in the real property records of the Eagle County clerk and recorder’s office.

Reserved Easements means and refers to the various general, blanket easements that Battle North has reserved within certain Town Parcels for construction, ownership, operation, maintenance, repair and replacement of existing and to-be-constructed utilities, roads, pedestrian crossings, sidewalks, bike paths, the Water Distribution System and similar Infrastructure Improvements required or desirable in connection with development of the Battle Retained Parcels.

Reservoir Agreement means that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir by and among ERWSD and Battle North, dated as of February 9, 2021.

Reservoir Parcels has the meaning state in Recital F.

Restricted Parcels means, as depicted on the Bolts Concept Plan, the following parcels or tracts of land within the Battle North Property created by Recording of the Exemption Plat described in Recital J(7), which are neither Town Parcels nor Battle Retained Parcels, and are subject to certain Restrictions: (i) the OTP Area; (ii) the Processing Area (being a portion of the Reservoir South Area); (iii) the CTP Area; and (iv) the Maloit Wetlands Area.

Restrictions certain Recorded encumbrances imposed on particular Restricted Parcels, which will run with title to such Restricted Parcels and will be enforceable by and for the benefit of the Town, including but not limited to: (i) perpetual non-exclusive easements granting to the Town the right to undertake a specific scope of uses on mutually agreed upon terms; (ii) restrictive covenants which establish mutually agreed upon limitations on the uses that may be undertaken; and/or (iii) a purchase option granting to the Town the option to purchase fee title to the pertinent Restricted Parcel within the time period and for the consideration stated therein.

Section(s) refers to a numbered section or sections of, unless another document is specifically referenced, the Development Agreement.

Settlement means an order dismissing the Litigation with prejudice and effecting the Parties’ full and complete mutual waiver of all claims, as further described in Section 8 of the Settlement Agreement.

Settlement Agreement has the meaning stated in Recital I.

Signatory(ies) means Battle North and the Town (acting by and through Town Council in its legislative authority as governing body of the Town), but expressly excludes their respective successors and assigns.

Site Specific Development Plan means a “site specific development plan” as defined in the Vested Property Rights Statute.

Spa/Wellness Center means a destination commercial establishment (as distinguished from a day spa, as such term is defined in Section 16-2-20 of the Bolts Lake Zoning Regulations) comprising at least 5,000 square feet of gross leasable area (as defined in Section 16-10.5-80(2) of the Bolts Lake Zoning Regulations) that offers health and aesthetic services such as massages, face and body treatments, and skin treatments; health and wellness activities such as yoga rooms, meditation rooms, saunas, and hot tubs; and/or associated food and beverage services.

Town means, together with and including the Enterprise, the Town of Minturn, a home rule municipal corporation of the State of Colorado and, if applicable, their respective successors and assigns.

Town Code means the Town’s municipal code as in effect from time to time.

Town Council means the Town Council of the Town, acting in its legislative capacity as governing body of the Town.

Town Parcels means, as depicted on the Bolts Concept Plan, the following parcels or tracts of land within the Battle North Property created by Recording of the Exemption Plat described in Recital J(7), are neither Battle Retained Parcels nor Restricted Parcels, and are or will be fee-owned by the Town (or a successor of the Town): (i) the Highlands Area; (ii) the Reservoir South Area (excluding the Processing Area); (iii) the Rec Center Parcels; and (iv) the Highway 24 Parcels.

Vested Property Rights has the meaning stated in Section 3.1.

Vested Property Rights Regulations means Section 16-21-710 of the Town Code.

Vested Property Rights Statute means C.R.S. §§ 24-68-101, *et seq.*, as in effect on the Execution Date.

Vesting Period has the meaning stated in Section 3.3.

Wastewater Agreement means that certain Wastewater Service Agreement by and among the parties thereto, dated as of March 15, 2006.

Water Service Agreement means that certain Water Service Agreement by and among the parties thereto, dated as of February 27, 2008.