

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 27 – SERIES 2016**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE
TOWN OF MINTURN TO SIGN A MEMO OF
UNDERSTANDING WITH BATTLE MOUNTIAN
CORPORATION.**

WHEREAS, the Town of Minturn desires to approve a Memo of Understanding with Battle Mountain Corp. as set forth in Exhibit A.

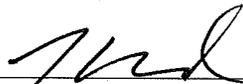
**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF
THE TOWN OF MINTURN, COLORADO THAT THE MAYOR OR HIS DESIGNEE IS
AUTHORIZED TO SIGN ON BEHALF OF THE TOWN OF MINTURN ANY AND ALL
NEGOTIATED DOCUMENTS REQUIRED TO EXECUTE SAID AGREEMENT.**

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED THIS
19TH DAY OF OCTOBER, 2016.**

TOWN OF MINTURN

By: 
Mathew Scherr, Mayor

ATTEST:


Jay Brunvand, Town Clerk



**MEMORANDUM OF UNDERSTANDING
RELATING TO BATTLE MOUNTAIN PROJECT**

This Memorandum of Understanding Relating to Battle Mountain Project (this “**MOU**”) is made and entered into this [9] date of October, 2016 (“**Effective Date**”) by and among Battle One Developer, LLLP, a Georgia limited liability limited partnership, Battle Two Developer, LLLP, a Georgia limited liability limited partnership (together with their respective successors and assigns, “**Battle**”), and the Town of Minturn, Colorado, a home rule municipal corporation (“**Town**”).

RECITALS

This MOU is made with respect to the following facts:

A. Battle, through certain affiliates, manages and is the owner of certain real property (the “**Project**”) that is the subject, *inter alia*, to the following matters as previously approved by the Town (collectively, the “**Existing Entitlements**”), acting by and through its governing body (“**Town Council**”):

(1) as approved by Town Council pursuant to Ordinance 10-Series 2008, that certain Battle Mountain Annexation Agreement and Vested Property Rights Development Agreement dated February 27, 2008 (the “**Annexation Agreement**”).

(2) together with related matters as approved by Town Council pursuant to Resolution No. 18-2008, that certain Planned Unit Development Preliminary Plan and Battle Mountain PUD Guide (the “**PUD Preliminary Plan**”) which addresses the uses, density and intensity of use, and other development parameters for the following planning areas within the Project: the Willow Creek Character Area; the Rock Creek Character Area; the Holy Cross Character Area; the Bolts Lake Character Area; and the Gilman Character Area.

(3) together with related matters as approved by Town Council pursuant to Resolution No. 19-2008 (collectively, the “**Preliminary Plats**”):

(a) with respect to the Willow Creek Character Area, that certain Preliminary Plat, Battle Mountain PUD Filing No. 1 – “Willow Creek” Resubdivision of a part of Battle Mountain Exemption (“**Willow Creek Preliminary Plat**”)

(b) with respect to the Rock Creek Character Area, that certain Preliminary Plat, Battle Mountain PUD Filing No. 2 – “Rock Creek” Resubdivision of a part of Battle Mountain Exemption (“**Rock Creek Preliminary Plat**”);

(c) with respect to the Holy Cross Character Area, that certain Preliminary Plat, Battle Mountain PUD Filing No. 3 – “Holy Cross” Resubdivision of a part of Battle Mountain Exemption (“**Holy Cross Preliminary Plat**”).

(d) with respect to the Bolts Lake Character Area, that certain Preliminary Plat, Battle Mountain PUD Filing No. 4 – “Bolts Lake Village” a Resubdivision of a part of Battle Mountain Exemption (“**Bolts Lake Village Preliminary Plat**”); and

(e) with respect to the Gilman Character Area, that certain Preliminary Plat, Battle Mountain PUD Filing No. 5 – “Gilman Village” a Resubdivision of a part of Battle Mountain Exemption (“**Gilman Village Preliminary Plat**”); and

B. Pursuant to that certain 2012 Agreement Regarding Escrows and Funding (“**Funding Agreement**”), the Town and Battle (individually, a “**Party**” and, collectively, the “**Parties**”) previously have contemplated the need to negotiate in good faith to amend the Annexation Agreement.

C. Responsive to the foregoing, Battle has prepared various information related to alternative development strategies for the Project which was used in public meetings hosted by the Town.

D. Battle has further prepared the following proposed modified development plan concepts for portions of the Project which the Parties anticipate will be the basis of formal applications to the Town as contemplated in this MOU:

(1) the Bolts Lake Village concept that is attached at Appendix A hereto (the “**Bolts Lake Concept**”); and

(2) large lot development concepts for the Willow Creek, Rock Creek and Holy Cross Character Areas that is attached at Appendix B hereto (the “**Mountain Concept**”).

E. In order to further investigate and potentially implement the matters discussed conceptually in Appendix C, the Parties wish to process applications for the Amendments as defined in Paragraph 1 below and, in general conformance with the bullet point outline set forth in Appendix D hereto.

F. Subject to approval of applicable land use entitlements, enactment or modification of applicable agreements, and successful resolution of certain pending litigation matters, the Parties will investigate and potentially implement a framework for development of the Project in phases, including a rational and economically feasible plan for the provision of public improvements and payment of fees to mitigate the impacts of development; and create the opportunity for near-term development of the Bolts Lake Village area and the Mountain area that will be responsive to and respectful of community input and community needs.

AGREEMENT

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

1. **Amendments.** The Parties will in good faith undertake to coordinate and efficiently process applications in an efficient, cost-effective and timely manner for the following matters (collectively, the “**Amendments**”):

(a) **Initial Phase.** As further outlined in Appendix D hereto, the Town (in consultation with Battle) will process regulation amendments in accordance with Minturn Municipal Code Sec. 16-21-410 *et. seq.* (collectively, “**Code Amendments**”) to the Minturn Municipal Code (“**Code**”):

(i) By October 31, 2016, Battle will endeavor to provide the Town with draft ordinances facilitating the amendments to Chapters 16 and 17 of the Code described below. The Town will work diligently on providing comments to Battle on the draft ordinances with the goal of having draft ordinances acceptable to Battle and Town Staff by November 16, 2016.

a. In order to enable the Mountain Concept, adding to Chapters 16 and 17 of the Code, as applicable, provisions that allow for the following within the Willow Creek, Rock Creek and Holy Cross Character Areas:

(1) a process to enable administrative review and approval of subdivision exemption plats to create not more than 10 legally conveyable parcels, each having a minimum land area of three hundred fifty (350) acres (“**Exemption Plat Process**”);

(2) a separate process to enable Planning and Zoning Commission review and approval (with right of review by Town Council) of subdivision plats to create legally conveyable parcels, each having a minimum land area of thirty five (35) per parcel (“**35 Acre Process**”); and

(3) clarification that parcels created pursuant to the Exemption Plat Process and parcels created pursuant to the 35 Acre Process are not required to obtain an approved final development plan under, *inter alia*, Town Code Sections 16-10-20 and 16-15-200.

b. In order to facilitate the Bolts Lake Concept, adding to Chapters 16 and 17 of the Code provisions that allow for the creation of legally conveyable phasing blocks as part of the approval of a PUD Preliminary Development Plan and associated development agreement (“**Phasing Block Process**”).

(ii) The Town will endeavor to have public notice requirements completed so that the Code Amendments can be considered by Planning Commission by the Commission’s second meeting in December, 2016 or first meeting in January 2017.

(iii) The Town will schedule a public hearing before the Town Council on the Code Amendments following a final recommendation being made by the Planning Commission.

(b) Second Phase. In order to better inform the Town and the public of the types of development, intensity of development, locations of development and other matters pertaining to the Bolts Lake Concept, Battle will endeavor to submit to the Town an application for a Planned Unit Development Concept Plan (the “**Bolts Lake Concept Plan**”), in accordance with Town Code Sections 16-15-90 to 16-15-120, not earlier than six (6) weeks following Town Council’s final action on the Code Amendments pursuant to Section 1(a)(iii) above.

(i) The Town will endeavor to have public notice requirements completed so that the Bolts Lake Concept Plan can be reviewed by Planning Commission by the Commission’s second meeting in the month following the date on which Battle submits its application for the Bolts Lake Concept Plan pursuant to Section 1(b) above.

(ii) The Town will have public notice requirements completed so that the Bolts Lake Concept Plan can be reviewed by the Town Council following the Planning Commission’s review and recommendation.

(c) Third Phase. In order to facilitate the consideration of the Mountain Concept and the Bolts Lake Concept and such other and related matters as the Parties determine necessary and appropriate in connection therewith, including but not limited to facilitating development of the Project in phases pursuant to a rational and economically feasible plan for the provision of public improvements and payment of fees to mitigate the impacts of development within the Project:

(i) Concurrent with review of the Bolts Lake Concept Plan, the Parties will schedule a series of meetings to discuss topics related to amendment of the Annexation Agreement, the PUD Preliminary Plan and, if deemed necessary or desirable, the Preliminary Plats and such other ancillary agreements among the Parties related to the Project as may require amendment (collectively, “**Entitlements Amendments**”). The Parties will endeavor to complete the discussions about amendments of the Annexation Agreement by March 15, 2017.

(ii) The initial discussions related to amendments to the Annexation Agreement shall focus on those amendments required to facilitate the Mountain Concept. Battle will endeavor to provide the Town with a proposed draft amendment to the Annexation Agreement as outlined in Appendix D facilitating the Mountain Concept by December 15 2016. The Town will work diligently on providing comments to Battle on the draft amendment with the goal of having final draft amendment acceptable to Battle and Town Staff by January 31, 2017. The Town will endeavor to schedule consideration of the amendment on the Town Council’s first meeting in March, 2017.

(iii) Battle will endeavor to provide the Town with a draft amendment to the Annexation Agreement facilitating the Bolts Lake Concept by March 31, 2017. The Town will work diligently on providing comments to Battle on the draft Bolts Lake amendment. The draft amendment of the Annexation Agreement related to Bolts Lake

can only be finalized and considered in conjunction with an application, review and final approval to amend the existing PUD Preliminary Plan.

(d) **Fourth Phase.** In order to facilitate the implementation of the Bolts Lake Concept, as such Concept Plan may be reviewed and modified by the Town and Battle after the process referenced in Section 1(b), Battle may submit applications to amend the PUD Preliminary Plan and the Annexation Agreement (and in accordance with Town Code Sec. 16-15-130, 16-15-140, 16-15-160, 16-15-170, and 16-15-230) consistent with the Bolts Lake Concept Plan and the discussions with Town staff about the Annexation Agreement. It is anticipated that the time for the Town to process the applications to amend the PUD Preliminary Plan and the Annexation Agreement will be between 60 and 90 days. The Town will endeavor to have public notice requirements completed so that the applications for amendment of the PUD Preliminary Plan and the Annexation Agreement can be considered by Planning Commission by the Commission's first meeting in the third month following Battle's submittal of such applications. The Town will schedule a public hearing before the Town Council on the PUD Preliminary Plan and the amendment to the Annexation Agreement following a final recommendation being made by the Planning Commission.

2. **Cooperation.** In connection with processing the Amendments, Battle and the Town will in good faith have regularly scheduled meetings, not less than bi-monthly, to coordinate regarding the progress of the Amendments in accordance with the timing milestones stated in Paragraph 1.

3. **Nature and Purpose of the Bolts Lake Concept.** The Bolts Lake Concept and Entitlements Amendments are not intended to identify with certainty the specific location and configuration of individual Phasing Block street and lot layout, lot sizes, lot locations, product types, floor area ratios, parking areas, open space and park layout, recreation areas, building and architectural design standards and other site design matters that will be considered as part of a final development plan for individual Phasing Blocks. The Bolts Lake Concept Plan and PUD Preliminary Plan amendment will meet the requirements of the Town Code and provide an adequate description and design of the following: zoning character areas with approximate densities and types of units, collector roads layouts, core utility layouts for water distribution and sewer collector, non-motorized access routes within the Bolts Lake area and connections with the Town, locations of domestic water storage, and design of and desired uses surrounding Bolts Lake.

4. **Costs and Expenses.** The Funding Agreement sets forth the obligations of the parties related to the costs and expenses incurred in connection with negotiation and execution of this Memorandum and the matters addressed herein. In addition to the monthly payments made by Battle to cover the Town's administrative costs, the Town agrees to use an amount not to exceed \$200,000 of the Town's Funds (as defined in section 6 of the Funding Agreement) earmarked for Legal and Consulting Costs for the purpose of paying legal and consulting costs incurred by the Town in reviewing and processing the items described in this MOU. After the sum of \$200,000 of the Town's Funds has been spent or committed by the Town for purposes of paying legal and consulting costs incurred by the Town in reviewing and processing the items described in this MOU, the terms of the Funding Agreement shall control. Except as expressly described in this MOU, the Funding Agreement shall not be interpreted to be amended in any way.

5. **Ratification of Use of Funds.** The Town hereby ratifies Battle's use of the Developer's Funds (as described in paragraph 5 of the Funding Agreement) to date as disclosed on Appendix D and Battle hereby ratifies the Town's use of the Town's Funds (as described in paragraphs 6 and 14 of the Funding Agreement) to date as disclosed on Appendix E.

6. **Term; Termination.** This MOU may be terminated by either party, in its sole discretion, by giving the other party written notice 30 days in advance.

7. **Aspirational Nature of Agreement.** This MOU is aspirational in nature. The dates described herein constitute target dates to initiate or accomplish tasks. Said dates are not enforceable deadlines. Furthermore, the Parties acknowledge that the items described herein are subject to public approval processes and governing law. Nothing herein shall constitute a waiver of any public right or legally required process. Nothing herein shall be construed as a statement of support by the Town of Minturn or its Town Council nor shall it constitute a guarantee that any proposed Code provision, agreement, or land use entitlement will be granted. The intent of this MOU is to establish a process for the consideration of the items discussed herein in the context of governing law.

8. **No Amendment of Any Other Agreement.** This MOU does not constitute and shall not be interpreted as an amendment to any other agreement between the Town and Battle (or its predecessors).

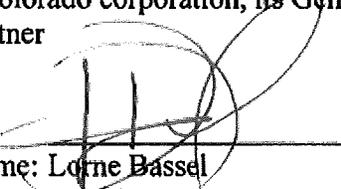
[Signature Page Follows This Page]

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

BATTLE:

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

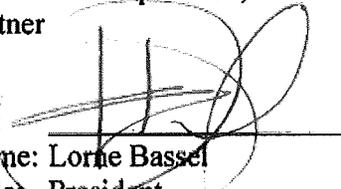
By: Bassel Battle Investment, Corp.,
a Colorado corporation, its General
Partner

By: 
Name: Lorne Bassel
Title: President

Open for acceptance until October 21, 2016

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

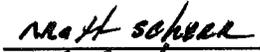
By: Bassel Battle Investment, Corp.,
a Colorado corporation, its General
Partner

By: 
Name: Lorne Bassel
Title: President

Open for acceptance until October 21, 2016

TOWN:

TOWN OF MINTURN, a municipal
corporation of the State of Colorado

By: 
Name: 
Title: Mayor

Appendix A
Bolts Lake Concept

[Follows this Page]

Appendix B
Mountain Concept

[Follows this Page]



**BATTLE MOUNTAIN
LARGE LOT CONCEPT**

- Un-annexed lands
 - Potential lynx denning habitat
 - Potential Peregrine Falcon nesting
 - Lands with Slopes < 20%
- 2 Large Lot

EAST PLANNING UNIT = 4,600 ac
 Annexed Area = 3,700 ac
 Un-Annexed Area = 900 ac

Existing Access Road

White River National Forest

White River National Forest



Legend

- Elevation/Spot Height Boundary
- Old 20' Area Boundary
- Proposed Road
- 30' Area Lots
- 20' Area Lots
- 15' Area Lots
- Proposed Subdivision Boundary
- 20' Area Vetting Area (to be a later date)
- 15' Area Vetting Area
- East River Boundary
- East River
- 20' Area Vetting Area (to be a later date)
- 15' Area Vetting Area
- 10' Area Vetting Area
- Area of Land Traced (to be a later date)
- 10' Area Vetting Area



City of Berkeley
 Planning Department
 2200 California Street, Suite 200
 Berkeley, CA 94704
 (415) 863-1000

Appendix C **Statement of Intent**

Crave Community Company “Crave” has listened to Minturn community input and is seeking to continue collaboration regarding land located South of Minturn and managed by Crave (commonly referred to as Battle Mountain property or “project”). The goal is to advance planning, and amendments to existing agreements, to allow a project that results in a mutually agreeable robust, mixed use community comprised of different product types and price points. In addition Crave seeks to work with Minturn to amend zoning and subdivision regulations to allow 35 acre ranch lots within designated zone districts at the Mountain Top. The overall goal is to preserve and protect the rights and interests of both the Town and the developer while allowing the flexibility of plans to adjust to the long term build out of the project.

In order to achieve this, Crave believes that amendments to the annexation agreement and to the existing PUD are required and will allow for a successful project that benefits the community. Amendments to the annexation agreement would be phased with an immediate minor amendment to allow 35 acre lot creation on Mountain Top land, which will not trigger any existing annexation commitments, but which may trigger obligations to be described in an Annexation Agreement amendment. Subsequent to this initial amendment, Minturn and Crave would collaborate on an amended and restated annexation agreement that aligns exactions and related requirements with current conditions and the scale of a project on the Bolts Lake property only. The agreement would include a phasing of public improvements and impact fees that rationally correspond to the service needs and impacts of actual development. Future development of existing PUD approved density on the Gilman and East parcel will require similar revised annexation agreements, but those are not being contemplated at this time.

The new structure for the Bolts Lake project shall address all necessary items as required by the Town Code for development including but not limited to the specific issues below:

- The developer will be responsible for all onsite improvements required for the project including utilities, roads, trails, environmental mitigation and ultimate water storage capacity including storage capacity for Minturn (as to be determined during the process outlined in the MOU).
- The developer will be responsible for off-site improvements that are rationally related to impacts imposed by the Project.
- Exactions will be limited to those typically required to be addressed by a developer as set forth in the Town Code and impact studies related to the Project, such as school, emergency services, traffic and other direct project related impact fees.
- The first phase of development at Bolts Lake is assumed to have the ability to utilize existing Town water. It is very important to understand if this is feasible and to understand what will be necessary to allow this to occur. Crave will work with Town personnel and consultants to verify this assumption, as well as to determine approximate capacity available and any other specific requirements for this to occur. Battle and the Town will make their staff and consultants reasonably available upon the signing of this MOU to review the legal and

engineering implications to provide an initial phase with existing Town water, so that this issue can be addressed in conjunction with the meetings to discuss topics related to amendment of the Annexation Agreement outlined in Section 1.c.i of this agreement.

- The amended agreement would outline when the developer is required to build Bolts Lake (likely based on the exceedance of a specific number of units).
- In order for the community to understand how individual phases within the Bolts Lake area may be advanced, conceptual plans will be developed with public input. These plans will still be conceptual in nature, to be finalized on a phased basis during the final development plan and platting approval processes.
- The definition of what constitutes a unit will be agreed upon, possibly based on number of bedrooms or gross square footage. This could allow smaller more affordable units to be developed in the project while still allowing the project to be economically successful.
- The amended agreement will address wastewater treatment needs and determine if a wastewater treatment plant is required, or if the Upper Eagle Valley Water and Sanitation District can provide sewage treatment, and if so, whether the collection system from the Project to the Avon Treatment Plant has adequate capacity.

Appendix D
Bullet Point Outline of Proposed Amendments

1. Amendment to the subdivision code permitting the limited creation of exemption parcels within defined Character Areas of the Mountaintop with a minimum acreage of 350 acres by administratively reviewed subdivision exemption plats (Exemption Plat Process). No more than 10 parcels, each with a minimum area of 350 acres, may be created pursuant to the Exemption Plat Process.
 - a. Town review of plats under the Exemption Plat Process would be limited to ensuring that:
 - i. The plat conforms with specified state survey / platting requirements.
 - ii. The plat conforms with specified Minturn plat requirements.
 - iii. Each of the parcels created by the Exemption Plat Process have legal access from a public road to the parcel boundary. In this instance, legal access will be limited to the exemption plat (a) depicting a road that physically connects to each 350 acre or larger parcel, and (b) identifies the method by which legal access to the exemption parcel is (or will be) provided (E.G. easements, ecrs, etc.)
 - iv. Construction of or security for the access roads would not be required before filing a subdivision exemption plat with the County thereby creating separately conveyable parcels.
 - b. Provisions noting municipal services to parcels created by the Exemption Plat Process is essentially non-existent and that such lots will not be disconnected from the Town due to the non-provision of services otherwise provided within Minturn.
2. Amendment to the subdivision code to create a separate subdivision process for lots 35 acres or larger in size within designated Mountaintop character areas ("35 Acre Process").
 - a. One step approval with P&Z with ability to appeal or call up to Town Council (similar to design review).
 - b. Review criteria for the 35 Acre Process would be limited to:
 - i. Demonstration of legal and physical access from a public road to all lots being created.
 - (1) Legal access would include that adequate easements or road dedications exist in appropriate form to permit the long term use, operation, repair and maintenance of an access road. Legal access

would also include demonstration that an appropriate legal arrangement exists for the common repair and maintenance of roadways that serve more than one lot (HOA, road association).

- (2) Physical access would include that all proposed roads meet Town public works standards for the number of lots/units being served and that the road design is compliant with referral entities' requirements (i.e. Fire District, Ambulance District, etc.).
 - (3) Confirmation that designated segments of certain Mountaintop roads and non-motorized trails will provide public access to designated open space tracts or areas, as generally described in the Mountaintop Concept conceptual depiction for 35 acre parcels that is attached at Appendix B of the MOU (and limited to such), and to be identified in the amendment to the annexation and development agreement.
 - (4) Construction of access roads or provision of adequate security to construct access roads prior to recording plat.
- ii. Determination that each lot created would contain a minimum of 1 acre of "buildable" land (building envelope) based upon the approved "wildlife/view corridor/ slope" map.
- c. Provisions noting that municipal services to 35 acre lots are limited and that such lots will not be disconnected from the Town due to the non-provision of services otherwise provided within Minturn.
3. Amend the zoning code and PUD Guide to permit the creation of lots utilizing the 35 Acre Process within specified character areas on the Mountaintop:
 - a. Implement lot dimensional standards.
 - i. 35 acre minimum lot size
 - ii. Front / side / rear yard setbacks
 - iii. Impervious surface limitations
 - b. Permitted uses by right / conditional use / special use / prohibited uses (Primary residential structure / ADU / Outbuildings)
 - c. Adopt a master map outlining buildable / non-buildable locations within Mountaintop character areas. This map would be created using information on wildlife corridors, view shed corridors, wetlands and stream corridors, and critical slopes. This map will be used in determining (a) whether a proposed lot at the time of subdivision contains a buildable area, and (b) whether at the time of

building permit a proposed structure is located in a potentially buildable area (building envelopes).

- d. Compliance with PUD open space requirements.
 - e. As conceptually depicted on the graphic in Appendix B of the MOU showing potential 35 acre parcel configurations (and limited to such), delineation of the specific segments of those Mountaintop roads and non-motorized trails that will provide public access. All segments of the Mountaintop roads and trails that are not shown in Appendix B as open to the public may, at developer's sole discretion, be restricted to private use (and emergency services) to serve the potential 35 acre parcels.
4. Amend Building Code to include provisions specific to construction in the Mountaintop character areas:
- a. Payment of impact fees at time of building permit (traffic, parks, etc.), to be established before the building code is amended, so that the parties (a) establish the methodology by which the amount of such fees will be determined; (b) identify the scope of impacts to be addressed by such fee; and (c) establish a methodology for calculating the fees with certainty in the future (i.e. in current dollars, with a reasonable CPI adjustment).
 - b. Determination that structures will be in a "buildable area" as designated by the master map.
 - c. Determination of adequate legal and physical water supply from exempt well.
 - d. Determination of adequate wastewater treatment and issuance of a septic permit.
 - e. Determination of compliance with hazard avoidance / mitigation requirements.
 - f. Determination of construction of access roadways to applicable approvals / codes.
 - g. Determination of adequate access driveway that complies with Town standards and referral agency requirements.
5. Amendment to Municipal Utility Code to provide:
- a. Within designated Mountaintop character areas water service may be provided by well or potentially community water system.
 - b. Within designated Mountaintop character areas wastewater treatment may be provided by septic system. Incorporate a septic system permitting system.
 - c. Provide that upon approval by the Town, water service within designated Mountaintop character areas can be provided by a community water system that is not operated by the Town:

- i. Legal water supply (water rights) sufficient for the requested amount of development. Community water system's water rights will not interfere with Town's water rights.
 - ii. Physical water supply in both quantity and quality sufficient to meet the requested amount of development.
 - iii. Compliance with CDPHE community water supply regulations
 - iv. Establishment of appropriate entity to manage and operate the community water supply.
 - v. Incorporation of adequate indemnities of the Town from operating, managing, owning or financially supporting the community water system.
 - vi. Comply with Fire District standards for fire suppression requirements.
6. Limited amendment to the Annexation and Development Agreement to provide:
- a. The creation of parcels or lots pursuant to the Exemption Plat Process and 35 Acre Process will not be subject to the requirement of a final development plan and will not trigger the payment and exaction requirements under the main ADA.
 - b. As depicted in the Mountaintop Concept conceptual depictions attached at Appendix B of the MOU (and limited to such), designation of specific segments of certain Mountaintop roads and non-motorized trails that will provide public access to certain limited and specifically designated public open space tracts or areas within the Mountain Top area.
 - c. As depicted in the Mountaintop Concept conceptual depictions attached at Appendix B of the MOU (and limited to such), designation of specific and limited public open space tracts within the Mountain Top area.
 - d. Payment of impact fees at time of building permit (traffic, parks, etc.), to be established before the building code is amended, so that the parties (a) establish the methodology by which the amount of such fees will be determined; (b) identify the scope of impacts to be addressed by such fee; and (c) establish a methodology for calculating the fees with certainty in the future (in current dollars, with a reasonable CPI adjustment).
 - e. Provisions indicating the reduced services that will be provided to the lots or parcels created through the Exemption Plat Process and the 35 Acre Process (no water, sewer, shallow utilities, public roads, snowplowing, streetlights, maintained parks, etc.) and this will not be grounds for disconnection from the Town.

Appendix E

Use of Escrow Funds

DETAIL	LITTLE BEACH PARK SCHOLARSHIP		CAPITAL FUND			WATER & INFRASTRUCTURE		TOTAL CAPITAL FUND		RESERVE FUND		TOTAL RESERVE	TITLE ESCROW	TOTAL
	INCOME FROM	250,000.00	LAND PURCHASE	REC CENTER	INFRASTRUCTURE	Admin Fees	Legal & Consulting	TOTAL CAPITAL FUND		RESERVE FUND				
								1,000,000.00	892,000.00	1,992,000.00	540,000.00			
RES 5-2012	6,088.28	8,523.30												
Previous Interest	462.60	636.77												
Interest - 2012	322.85	16,931.70												
Interest - 2013	284.70	4,068.64												
Interest - 2014	434.97	-69.94												
Interest - 2015	926.81	0.46												
Interest - 2016														
TOTAL INCOME	258,520.21	380,092.93	0.00	1,250,000.00	732,000.00	540,000.00	1,240,000.00	1,992,000.00	1,827,066.56	28,265.75	4,471,084.79			
EXPENSES														
PARK DESIGN - 2012	1,370.25													
PARK DESIGN - 2013	8,382.46													
PARK DESIGN - 2014														
PARK DESIGN - 2015														
SCHOLARSHIP - 2012		732.00												
SCHOLARSHIP - 2013**		49,000.00												
SCHOLARSHIP - 2014		9,100.00												
SCHOLARSHIP - 2015		4,000.00												
SCHOLARSHIP - 2016		5,350.00												
LAND PURCHASE-BONE YARD			236,470.00											
REC CENTER - 2012				502,978.52										
REC CENTER - 2013				750,000.00										
REC CENTER - 2014														
ADMIN FEE - 2012						180,000.00								
ADMIN FEE - 2013						180,000.00								
ADMIN FEE - 2014						180,000.00								
LEGAL AND CONSULTING-2012														
LEGAL AND CONSULTING-2013														
LEGAL AND CONSULTING-2014														
LEGAL CONSULTING & FEES-2015		14,848.25												
ENTRTY-2016														
TOTAL EXPENSE	9,792.71	83,030.25	236,470.00	1,252,978.52	590,000.00	540,000.00	1,240,000.00	2,019,448.52	1,292,058.44	0.00	2,864,939.92			
BALANCE REMAINING	248,767.50	297,062.88	-236,470.00	-2,978.52	202,000.00			-37,448.52	535,008.12	28,265.75	1,606,144.87			

* Change was made to 2014 budget numbers as a result

** Includes the \$40,000 scholarship set up at CMC

Water & Infrastructure	202,000.00
Plus Interest Earned	43,238.49
Net	245,238.49
Land Purchase	-236,470.00
Rec Center	-2,978.52
Funds Avail	5,769.97

4,362,000.00

October 6, 2016

To: Residents of Minturn
Fr: Willy Powell, Town Manager

Re: Memorandum of Understanding (MOU) between the Town and Battle Mountain Corporation

The Minturn Town Council considered and made a first review of the MOU at their meeting of October 5, and the MOU will be further considered at the next Council meeting of October 19. The MOU is somewhat complex and this memorandum is written to help the public understand the most important points of the MOU. The MOU follows along with a letter from the Town Attorney.

Important aspects of the MOU are the following.

- An MOU is not a binding agreement. Rather the MOU is an aspirational document which lays out a "roadmap" of land use submittals and reviews to occur and in conformance with the Municipal Code.
- Battle Mountain Corporation (BM) is proposing to develop on their private lands. No Forest Service land trades are contemplated now or in the future.
- BM contemplates developing 35 acre or larger lots on the "mountain top." The Bolts Lake area is contemplated for a residential PUD with densities to be decided during the review process. See conceptual maps contained as appendices to the MOU.
- Target dates for reviews contained within the MOU are not binding, rather a guideline. Timelines for land use reviews depend on many aspects including the following: timely and quality submittals by the applicant, thorough staff review, public hearings granting the Planning & Zoning Commission, Town Council and public sufficient time to consider the applicant submittal.
- Renegotiation of the Annexation and Development Agreement of 2008 to more closely align with any approved PUD and its commensurate density and effect on the Town.

Town Council and Staff are committed that any Battle Mountain land use approvals will constitute responsible developments, will adequately mitigate impacts, and not place undue burdens on Minturn tax payers and utility rate payers.

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September 30, 2016

To: Minturn Town Council

From: Town Attorney

Re: Memorandum of Understanding with Battle Mountain

Over the last few months, the Town's Battle Mountain Committee has engaged in several meetings with Battle Mountain to discuss the future of the project. Battle Mountain is interested in exploring alternative development scenarios from what is provided for in the existing PUD. Our initial meetings were to discuss the process that would be required to bring more detailed proposals before the public, the Planning Commission and the Town Council. The attached Memorandum of Understanding (MOU) outlines a process for revised development proposals both on Battle Mountain and in the Bolts Lake area to receive formal consideration.

In the course of the discussions about process, it made sense to flesh out possible framework for some of the alternative proposals Battle Mountain is considering. In particular, you will see a fair level of detail about a "Mountain Top Concept" that would be an alternative development pathway for the lands on Battle Mountain. The Mountain Top Concept contemplates larger lots on the mountain top with a minimum size of 35 acres. I want to stress that this is an alternative development pathway as the original zoning of the mountain top area for a ski area is anticipated to remain intact.

The Mountain Top Concept is consistent with many rural subdivisions in Eagle County. Similar to how rural subdivisions occur in Eagle County, the Mountain Top Concept as outlined in the MOU would permit for limited review by the Town for the creation of large lots. Very large lots (over 350 acres in size) could be created with an administrative review. Large lots (35 acres in size) could be created with a special subdivision process that would entail review by the Planning Commission.

Implementation of the Mountain Top Concept would require changes to the Town Code, the PUD zoning, and the Annexation and Development Agreement for Battle Mountain. All of these changes will undergo robust public processes. A proposed timeline for consideration is included in the MOU. However, that timeline is fully subject to these concepts being vetted in public meetings

Page 2

after opportunities for public comment. Thus, approval of the MOU does not constitute any sort of approval, or even endorsement, of the development concepts articulated in the exhibits.

The MOU similarly contemplates additional process relative to alternative development paths for the Bolts Lake area. The MOU provides that Battle Mountain will submit a Concept Plan application (as contemplated under the Town's PUD code) to introduce new development concepts for Bolts Lake. The Concept Plan will be considered in public meetings with opportunities for public comment. After the Concept Plan is reviewed, Battle Mountain anticipates bringing a revised preliminary PUD plan to the Town. This would require providing in-depth information on a variety of development topics. Further, it will require amendments to the Annexation and Development Agreement and the Town Code. Again, robust opportunities for public participation and Council deliberation exist with each application.

As Council is aware, many years ago Battle Mountain deposited a sizeable amount of money with the Town in escrow to cover certain expenses. Over \$1,000,000 of that money was earmarked for legal and consulting work. The MOU contemplates that the Town will further earmark \$200,000 of the legal and consulting escrow to pay outside costs (e.g. legal, engineering) incurred by the Town associated with the applications and processes described in the MOU. This is in addition to the \$15,000 per month that Battle Mountain pays to help offset Town staff expenses under an agreement from 2012. The \$200,000 earmark will leave over \$250,000 in escrow to cover other Town legal and consulting expenses that have a nexus to Battle Mountain (for example the Tucker Rule 106 litigation, upcoming water court cases, and efforts to have the Bolts Ditch congressionally authorized).

I would direct Council's attention to paragraphs 7 and 8 of the MOU. These provisions make clear that the MOU is aspirational in nature. It does not confer any rights without future Council actions. The MOU does not create any guarantees of substantive outcomes. Finally, the MOU does not amend any other agreement between the Town and Battle Mountain.

I look forward to discussing the MOU with you in more detail. Tim McGuire of Battle Mountain will also be present to answer questions.