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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

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.