

Glenwood Springs – Main Office

201 14th Street, Suite 200
P. O. Drawer 2030
Glenwood Springs, CO 81602

Aspen

0133 Prospector Rd.
Suite 4102J
Aspen, CO 81611

Montrose

1544 Oxbow Drive
Suite 224
Montrose, CO 81402

Office: 970.945.2261

Fax: 970.945.7336

**Direct Mail to Glenwood Springs*

DATE: August 6, 2024
TO: Minturn Town Council
FROM: Karp Neu Hanlon, P.C.
RE: Battle Mountain Fourth Amendment of Settlement Agreement

Unfortunately, we are going to need a Fourth Amendment to the Settlement Agreement. Once of the closing document is a declaration of restrictive covenants. This document was provided to me only a day or two before I left on vacation for 2 weeks. Upon reviewing this document in advance of the August 7 Council meeting it will need many modifications.

At the time that the Battle Mountain development agreement was approved by the Town Council, I made the following statement in the public meeting:

“The developer is requesting that this be a use by right but subject to a covenant whereby the Town could include certain mitigation requirements. The covenant has not been drafted yet and will be subject to review and approval by the Town Council.”

This means that the restrictive covenant will need to be on the agenda for August 21. Because the outside date in the settlement is currently August 22, I believe it is prudent to give the parties an additional week to implement the Closing. To that end, I have extended the outside date to August 30.

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 45 - SERIES 2024**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE
TOWN OF MINTURN TO SIGN A THIRD AMENDMENT
TO A SETTLEMENT AGREEMENT BETWEEN THE
BATTLE MOUNTAIN ENTITIES AND THE TOWN OF
MINTURN EXTENDING THE APPROVALS PERIOD AND
SETTLEMENT AGREEMENT TERM.**

WHEREAS, on March 4, 2022, the Town of Minturn (“Town”) commenced litigation against the Battle Mountain Entities in a case known as *Town of Minturn v. Battle One Developer, LLLP et al.*, Eagle County District Court Case No. 2022CV30050 (the “Litigation”). In the Litigation, the Town alleges that Battle Mountain Entities have breached various agreements, and the Battle Mountain Entities have asserted counterclaims against the Town.

WHEREAS, pursuant to Resolution 25 – Series 2023, on September 6, 2023, the Minturn Town Council (“Town Council”) approved and authorized execution of that certain Settlement Agreement having an effective date of September 6, 2023 (the “Original Settlement Agreement”) by and among the Town and Battle Mountain Entities for the purposes of, among other things, providing a potential path to resolve the Litigation and providing a path forward for the Battle Mountain Entities to undertake a reduced amount of development on their property.

WHEREAS, pursuant to Resolution 11 – Series 2024, on March 6, 2024, Town Council approved and authorized execution of that certain First Amendment to Settlement Agreement having an effective date of March 6, 2024 and pursuant to Resolution 30 – Series 2024, on June 19, 2024, Town Council approved and authorized execution of that certain Second Amendment to Settlement Agreement having an effective date of June 19, 2024 and pursuant to Resolution 40 – Series 2024, on July 17, 2024, Town Council approved and authorized execution of that certain Third Amendment to Settlement Agreement having an effective date of August 22, 2024 and together with the Original Settlement Agreement and Amendments One thru Four, the “**Settlement Agreement**”) by and among the Town and Battle Mountain Entities for the purposes of extending the Approvals Period and the outside expiration date of the Settlement Agreement term.

WHEREAS, the Settlement Agreement’s Approvals Period expires on August 22, 2024 and the outside expiration date for the term set forth in Section 9 of the Settlement Agreement is August 30, 2024.

WHEREAS, the Town and Battle Mountain Entities seek to extend the Settlement Agreement’s Approvals Period and term to provide additional time to implement the Settlement.

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

1. The Town Council approves the Third Amendment to Settlement Agreement attached as Exhibit A and authorizes the Mayor or his designee to sign on behalf of the Town any and all documents required to reasonably ensure completion.

INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 7th day of August, 2024.

TOWN OF MINTURN, COLORADO

Earle Bidez, Mayor

ATTEST:

By:

Jay Brunvand, Town Clerk

Exhibit A

Third Amendment to Settlement Agreement

[to be inserted]

FOURTH AMENDMENT TO SETTLEMENT AGREEMENT

This FOURTH AMENDMENT TO SETTLEMENT AGREEMENT (this “**Fourth Amendment**”) is made and entered into as of August 7, 2024 (“**Fourth Amendment Effective Date**”) by and among the following (individually, a “**Party**” and, collectively, the “**Parties**”): Battle One Developer, LLLP, a Georgia limited liability limited partnership, Battle Two Developer, LLLP, 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 Council for the Town of Minturn, Colorado (“**Town Council**”), the Town of Minturn Water and Sanitation Activities Enterprise, an enterprise fund established pursuant to C.R.S. §37-45.1-101 *et seq.* (the “**Enterprise**”), and the Town of Minturn, Colorado, a home rule municipal corporation (collectively with Town Council and the Enterprise, the “**Town**”).

RECITALS

This Fourth Amendment is made with respect to the following facts:

A. 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 (the “**Original Settlement Agreement**”) by and among the Parties.

B. Pursuant to Resolution 11 – Series 2024, on March 6, 2024, Town Council approved and authorized execution of that certain First Amendment to Settlement Agreement having an effective date of March 6, 2024. Pursuant to Resolution 30 – Series 2024, on June 19, 2024, Town Council approved and authorized execution of that certain Second Amendment to Settlement Agreement having an effective date of June 19, 2024 (the “**Second Amendment**,”). On July 17, 2024, Town Council approved and authorized execution of that certain Third Amendment to Settlement Agreement having an effective date of July 17, 2024 (the “**Third Amendment**,” and together with the Original Settlement Agreement, First Amendment, and Second Amendment the “**Settlement Agreement**”) by and among the Parties. Capitalized terms used in this Fourth Amendment have the meanings assigned to such terms in the Settlement Agreement.

C. The Parties further modified the Settlement Agreement pursuant to that Letter Agreement dated May 8, 2024, which clarifies that the Trestle Area will not be a Restricted Parcel and will not be a separate parcel created by the Exemption Plat.

D. The Settlement Agreement contemplates, among other things, the Parties undertaking in good faith to coordinate and process certain Approvals during the Approvals Period and to implement the Settlement prior to the expiration of the term set forth in Section 9 of the Settlement Agreement.

E. The Approvals Period currently expires on August 12, 2024 and the outside expiration date for the term set forth in Section 9 of the Settlement Agreement is August 22, 2024.

F. Following the Effective Date, Battle and the Town have worked diligently to prepare and process applications for and drafts of the Approvals and create documents that the parties must agree upon in order to implement the Settlement. However, the Parties will be unable to obtain Town Council's final action on the Approvals or have all documents drafted and agreed upon prior to the expiration of the Approvals Period.

G. The Parties desire to amend the Settlement Agreement to extend the Approvals Period as more particularly set forth below.

AGREEMENT

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

1. **Approvals Period.** Section 2 of the Settlement Agreement is amended to extend the Approvals Period through and including August 21, 2024.
2. **Term.** Section 9 of the Settlement Agreement for the outside expiration date of the Settlement Agreement term set forth in clause (b) shall be extended through and including August 30, 2024.
3. **Effect of Amendment.** Except as expressly modified by this Fourth Amendment, the Settlement Agreement is unmodified, is hereby ratified and affirmed, and will remain in full force and effect in accordance with its terms. If there is any inconsistency between the terms of this Fourth Amendment and the terms of the Settlement Agreement, the provisions of this Fourth Amendment will govern and control.
4. **Governing Law.** This Fourth Amendment will be governed by and construed in accordance with the laws of the State of Colorado.
5. **Facsimile/Scanned Signatures/Counterparts.** Signatures may be evidenced electronically, by facsimile or a scan. A facsimile transmitted or scanned copy of this Fourth Amendment (including a PDF) executed by a Party will be accepted as an original signature for all purposes. This Fourth Amendment may be executed in several counterparts, each of which will be construed together as one original.

[Signature Pages Follow This Page]

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

TOWN OF MINTURN,
a Colorado home rule municipal corporation

By: _____
Name: _____
Title: Mayor

**TOWN COUNCIL FOR THE TOWN OF
MINTURN,**
the legislative body of the Town of Minturn

By: _____
Name: _____
Title: Mayor

**MINTURN WATER AND SANITATION
ACTIVITIES ENTERPRISE,**
an enterprise fund established pursuant to
C.R.S. §37-45.1-101 *et seq.*

By: _____
Name: _____
Title: Mayor

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

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

Battle North, LLC,
a Georgia limited liability company

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

By: _____
Name: Lorne Bassel
Title: President

Battle South, LLC,
a Georgia limited liability company

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

By: _____
Name: Lorne Bassel
Title: President

Battle One A Developer, LLC,
a Georgia limited liability company

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

By: _____
Name: Lorne Bassel
Title: President