

TOWN OF MINTURN, COLORADO
RESOLUTION NO. 32 – SERIES 2023

A RESOLUTION AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN TO SIGN A SETTLEMENT AGREEMENT BETWEEN MINERS BASE CAMP, LLC AND THE TOWN OF MINTURN TO RESOLVE PENDING LITIGATION.

WHEREAS, Miners Base Camp, LLC (“Miners”), owns property in the Town of Minturn and has made applications for PUD zoning and subdivision approvals;

WHEREAS, the Town Council of the Town of Minturn approved Resolution No. 20, Series 2021 on June 16, 2021, approving with conditions the Belden Place Preliminary Subdivision Plat and Preliminary PUD Development Plan;

WHEREAS, the project/property is called the Belden Place Subdivision/PUD (“Belden Place”);

WHEREAS, on or about March 2, and March 16, 2022, Minturn’s Town Council held public hearings (*i.e.*, First Reading and Second Reading) and approved the Belden Place Final Development Plan for PUD (Ordinance No. 4, Series 2022), the Belden Place Final Subdivision Plat (Ordinance No. 5, Series 2022), the Belden Place Subdivision Improvements Agreement (“SIA”) (Resolution No. 8, Series 2022), a Cost Sharing and Construction Management Agreement (Resolution 10, Series 2022), and a Land Use Covenant (Resolution 11, Series 2022) (collectively, the “Belden Place Final Plan”);

WHEREAS, the buildout of the Belden Place Final Plan as approved requires 43.5 Single Family Equivalents/Water Taps (“SFEs”) to provide enough required water to all of the housing units approved by the Belden Place Final Plan;

WHEREAS, Ordinance No. 5, Series 2020, as amended, enacted a moratorium that limits the number of SFEs that can be used for new development (“Moratorium”);

WHEREAS, the SIA for the Belden Place Final Plan provided a total of 23 SFEs to Belden Place which is 20.5 SFEs short of providing enough SFEs to fully build out the project;

WHEREAS, prior to the approval of the Belden Place Final Plan, Miners filed a lawsuit in Eagle County District Court at case number 2022CV30054 contesting the number of SFEs made available to the project (the “Litigation”);

WHEREAS, the Town filed a counter claim in the Litigation against Miners;

WHEREAS, following settlement discussion, Minturn, and Miners, have reached an agreement aimed at resolving the Litigation, as more particularly described in and contingent on implementation of the matters and transactions described in the Settlement Agreement.

WHEREAS, the Settlement Agreement allows Miners to submit an application to Minturn for the remaining 16 SFEs to be allocated to Belden Place.

WHEREAS, the Settlement Agreement allows Miners to submit to Minturn an application to amend the Belden Place Final Development Plan and the Belden Place Final Subdivision Plat.

WHEREAS, the Settlement Agreement allows Miners to submit to Minturn an application to amend the SIA to conform with the change in the number of available SFEs and the revised number of lots.

WHEREAS, the Settlement Agreement provides a path to resolve the Litigation and provide a path forward for Miners to complete the Belden Place Final Plan

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

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

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED
this 15th day of NOVEMBER, 2023.**

TOWN OF MINTURN

By: 

Earle Bidez, Mayor

ATTEST:



Jay Brunvand, Town Clerk



SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into by and between Miners Base Camp, LLC, a Colorado limited liability company (“Miners”) and the Town of Minturn (“Minturn”) and is effective as of November 15, 2023 (“Effective Date”). Miners and Minturn are each a “Party” and, collectively, the “Parties.”

RECITALS

WHEREAS, Miners owns property in the Town of Minturn and made applications for PUD zoning and subdivision approvals;

WHEREAS, the Town Council of the Town of Minturn approved Resolution No. 20, Series 2021 on June 16, 2021, approving with conditions the Belden Place Preliminary Subdivision Plat and Preliminary PUD Development Plan for the property;

WHEREAS, the project/property is called the Belden Place Subdivision/PUD (“Belden Place”);

WHEREAS, on or about March 2, and March 16, 2022, Minturn’s Town Council held public hearings (*i.e.*, First Reading and Second Reading) and approved the Belden Place Final Development Plan for PUD (Ordinance No. 4, Series 2022), the Belden Place Final Subdivision Plat (Ordinance No. 5, Series 2022), the Belden Place Subdivision Improvements Agreement (“SIA”) (Resolution No. 8, Series 2022), a Cost Sharing and Construction Management Agreement (Resolution 10, Series 2022), and a Land Use Covenant (Resolution 11, Series 2022) (collectively, the “Belden Place Final Plan”);

WHEREAS, the buildout of the Belden Place Final Plan as approved requires 43.5 Single Family Equivalents/Water Taps (“SFEs”) to provide enough required water to all of the housing units approved by the Belden Place Final Plan;

WHEREAS, Ordinance No. 5, Series 2020, as amended, enacted a moratorium that limits the number of SFEs that can be used for new development (“Moratorium”);

WHEREAS, the SIA for the Belden Place Final Plan provided a total of 23 SFEs to Belden Place which is 20.5 SFEs short of providing enough SFEs to fully build out the project;

WHEREAS, prior to the approval of the Belden Place Final Plan, Miners filed a lawsuit in Eagle County District Court at case number 2022CV30054 contesting the number of SFEs made available to the project (the “Litigation”);

WHEREAS, the Town filed a counter claim in the Litigation against Miners;

WHEREAS, rather than continue the Litigation, with the costs and uncertainty associated therewith, the Parties desire to institute a process to settle the issues between them as provided for herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto intending legally to be bound hereby, agree as follows.

AGREEMENT

1. Incorporation of Recitals. The Recitals above set forth are incorporated by this reference as if set forth herein verbatim.
2. SFE Hearing. Ordinance No. 5, Series 2020 allows a party to seek modifications to the SFE limitations contained in the Moratorium “on a case-by-case basis by the Town Council based upon a specific application.” Pursuant to the Moratorium, Minturn has 70 SFEs of available water service for future development. The Moratorium reserved the 70 SFEs for the Minturn North project. Minturn North project has since revised the total number of SFEs for the project to 54 SFEs. Accordingly, 16 SFEs remain available for new development.

Within 60 days of the Effective Date of this Agreement, Miners may submit to Minturn an application for the remaining 16 SFEs to be allocated to Belden Place. Minturn shall hold a quasi-judicial public hearing on Miners’ application within 60 days of receipt of the application. If approved, Belden Place would have a total of 39 SFEs (*i.e.*, 23 existing SFEs, plus the 16 additional SFEs). The quasi-judicial public hearing shall be scheduled on the same agenda as the first reading of the ordinances referenced in Section 3 below.

3. Belden Place Final Development Plan and Final Subdivision Plat Amendment Hearing. Within 60 days of the Effective Date of this Agreement, Miners may submit to Minturn an application to amend the Belden Place Final Development Plan and the Belden Place Final Subdivision Plat to eliminate the Triplex on Lot 12/13/14 and replace it with a single-family unit plus an ADU as shown on Exhibit A attached hereto and incorporated herein. The application shall be processed as two ordinances amending Ordinance No. 4, Series 2022 and Ordinance No. 5, Series 2022.
4. SIA Amendment. Within 60 days of the Effective Date of this Agreement, Miners may submit to Minturn an application to amend the SIA to conform with the change in the number of available SFEs and the revised number of lots. Consideration of the application to amend the SIA shall be scheduled on the same agenda as the first reading of the ordinances referenced in Section 3 above.
5. Applications for Amendments. Miners shall execute application forms provided by Minturn to amend the Belden Place Final Development Plan amendment, Final Subdivision Plat, and SIA and execute the Town’s reimbursement agreement. Miners and the Town shall work in good faith to identify the information to be contained in Miners’ SFE application.

6. Stay of the Litigation. The Parties agree to stay the Litigation while the applications for the SFE allocation and amendments to the Belden Place Final Development Plan, Belden Place Final Subdivision Plat and the SIA are processed.
7. Dismissal of the Litigation if Approval is Granted. If Minturn approves Miners' SFE application and allocates the 16 SFEs to Belden Place (for a total of 39 SFEs to Belden Place), and Minturn approves Miners' Belden Place Final Development Plan amendment and Final Subdivision Plat amendment to replace the Triplex on Lot 12/13/14 with a single-family unit plus an ADU, and amend the SIA as described in Section 4 above, then the Parties shall file a stipulated dismissal of the Litigation and release their claims against one another in the Litigation. Each party shall bear its own costs and attorney's fees. In the event that Miners does not file the applications identified in Sections 2, 3 and 4 herein within 60 days from the Effective Date, or if Minturn does not approve the applications identified in Sections 2, 3 and 4 herein within 120 days from the Effective Date, then the Parties shall file a motion with the Court to terminate the stay of the Litigation and the Litigation will continue.
8. Approval of Belden Place Final Plan. The Parties acknowledge and agree that if Minturn approves Miners' SFE application and applications to amend the Belden Place Final Development Plan amendment, Final Subdivision Plat, and SIA as described above, then the Belden Place Final Plan as amended, is deemed approved, and Miners shall be permitted to proceed with the Belden Place project in conformance with the amended approval documents. The Parties, however, shall cooperate and work in good faith to update any documents to reflect the amended approval documents such as the Land Use Covenant. Miners acknowledges that any future applications to amend the Belden Place Final Development Plan shall be subject to any then-existing ordinances or restrictions on development and water services, as the Town has deemed necessary and appropriate.
9. Cost Sharing and Construction Management Agreement. The Parties acknowledge and agree that if Minturn approves Miners' SFE application and applications to amend the Belden Place Final Development Plan amendment, Final Subdivision Plat, and SIA as described above, then the Cost Sharing and Construction Management Agreement approved in Resolution No. 10, Series 2022 is null and void. If such approvals are granted, Miners will support the Town taking action to revoke Resolution No. 10, Series 2022. Minturn will cooperate and work in good faith with Miners to apply for and receive approvals from the necessary parties (including but not limited to the Eagle Valley Land Trust and the United States Forest Service) such that Miners can construct the stormwater drainage improvement that will convey stormwater and runoff from Belden Place across Minturn-owned and federal property into the Eagle River. The Parties agree that Miners shall be responsible for compiling the necessary applications and obtaining approvals, but Minturn will act as the "applicant," if necessary, on approval applications with Eagle Valley Land Trust and/or the United States Forest Service. Minturn shall execute documents acknowledging the Town's grant of the right to install drainage improvements on Town property and generally expressing the Town's support for the drainage improvements.

10. Plea Deal Obligation Suspended/Terminated. The Parties acknowledge and agree that they entered into a Stipulation for Entry of Plea in Minturn Municipal Court in case number 2022-001. As part of the Stipulation, Miners is required to restore the disturbed site on the Property to pre-disturbance conditions by October 11, 2023, as more specifically described in Section F.1. of the Stipulation for Entry of Plea. The October 11, 2023, deadline, is hereby extended to October 11, 2024. Additionally, if Minturn approves Miners' SFE application and Belden Place Final Development Plan, Final Subdivision Plat, and SIA amendments as described above, then Miners' obligation to restore the Property as described in Section F.1. of the Stipulation for Entry of Plea shall terminate and no longer be required. Under such circumstances Minturn agrees to file appropriate documentation in Minturn Municipal Court in case number 2022-001 to effectuate this provision.
11. Right to Remove Lot(s)/Unit(s). The Parties acknowledge and agree that, even by replacing the Triplex on Lot 12/13/14 with a single-family unit and an ADU as described above, Belden Place may still be short SFEs to fully build out the project as configured. For a period of 7 years from the Effective Date, if additional SFEs do not become available for Belden Place so it can fully build out the project, then Miners may eliminate or reconfigure lot(s) and/or unit(s) in the project accordingly, subject to any then-existing ordinances or restrictions on development and water services, as the Town has deemed necessary and appropriate.
12. Execution Voluntary. Each Party acknowledges that this Agreement is voluntarily made, that such Party has entered into this Agreement after having been advised by legal counsel of such Party's choice. Except for the express representations and/or warranties contained in this Agreement, each Party also expressly assumes the risk that the facts and law may be or become different from the facts and law as believed to exist by such Party in entering into this Agreement.
13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective agents, employees, independent contractors, servants, successors, assigns, heirs, executives, administrators, and all other persons, firms, corporations, associations, or partnerships related to each of them.
14. Entire Agreement; Modification. This Agreement contains the entire agreement of the Parties regarding the subject matter hereof. No change, amendment, or attempted waiver of any of the provisions of this Agreement and no other agreement, statement, or promise made by any Party, which is not contained in this Agreement, shall be binding or valid unless it is set forth in writing and signed by all Parties.
15. Interpretation. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against any Party. The headings contained in this Agreement are for convenience and reference only and shall not be used in the interpretation of this Agreement or any provision hereof.

16. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Colorado, and the venue for any dispute relating to, or arising from, this Agreement shall lie in the District Court for Eagle County, Colorado.

17. The Parties Have Read this Agreement. This Agreement contains important legal commitments with significant legal consequences. Each Party hereby acknowledges and accepts these consequences and represents and warrants to each of the other Parties that the Party has: (i) read and thoroughly understands the provisions of this Agreement; (ii) has had an opportunity to discuss the terms hereof with the Party's legal counsel; and (iii) is executing and delivering this Agreement with full knowledge and understanding of its terms and consequences.

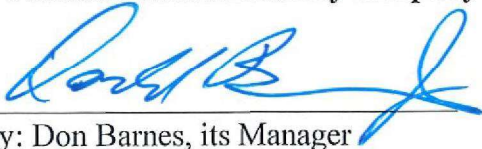
18. Miscellaneous: This Agreement:

- a. May be executed in counterparts and/or by electronic transmission, each of which shall be considered the same as an original, and all of which shall together constitute one document;
- b. Shall, with its remaining provisions, remain enforceable, even if some provisions are declared unenforceable;
- c. Has been jointly prepared and drafted by the Parties and, accordingly, shall not be construed against any single Party;
- d. Is a compromise of disputed matters entered into freely by the Parties to avoid the uncertainty and expense associated with further litigation, and is not to be construed as an admission of liability by any Party, each of whom expressly denies liability or fault;


19. CRE 408. This Agreement is protected by Colorado Rules of Evidence 408. The parties agree that this Agreement and any action taken by either party in furtherance of this Agreement may not be introduced in the Litigation if the Litigation's stay is lifted as provided herein.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

Miners Base Camp, LLC,
a Colorado limited liability company


By: Don Barnes, its Manager

The Town of Minturn


By: Earl Bidez, its Mayor