



RESOLUTION NO. 2018-1010

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE, YAVAPAI COUNTY, ARIZONA, APPROVING A BINDING WAIVER OF ENFORCEMENT BETWEEN THE TOWN OF CAMP VERDE AND BRLS PROPERTIES I, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, RELATING TO APN# 403-23-150A, APPROXIMATELY 38.5 ACRES GENERALLY LOCATED NORTH OF STATE ROUTE 260 AND WEST OF INTERSTATE 17 WITHIN THE CORPORATE LIMITS OF THE TOWN OF CAMP VERDE.

WHEREAS, BRLS is the owner of that certain real property and improvements thereon situated in Yavapai County, Arizona, located at 2051 W. SR 260 in Camp Verde, APN 403-23-150A and legally described on Exhibit "A", which subject property is zoned C-3, Commercial; and

WHEREAS, BRLS purchased the Property in 2015 for the purpose of operating a medical marijuana off-site cultivation facility on the approximate 38.5-acre parcel and currently operates a medical marijuana off-site cultivation facility on part of the Property today and intends to expand its future medical marijuana off-site cultivation facilities across the entire Property; and

WHEREAS, On May 23, 2018, the Camp Verde Town Council adopted a land use law, Ordinance No. 2018 A434, which eliminates medical marijuana off-site cultivation facilities as a permitted use in the C-3 zoning district; and

WHEREAS, Arizona Revised Statutes §12-1134 ("Prop. 207") recognizes a cause of action and just compensation when a municipality adopts a land use law that reduces the existing rights to use the property, when such action diminishes the value of the property and when the cause of action is not barred under A.R.S. § 12-1134.B 1-7; and

WHEREAS, Prop 207 allows a municipality to amend, repeal, or issue to a landowner "a binding waiver of enforcement of the land use law on the owner's specific parcel"; and

WHEREAS, BRLS Properties desires the Property to continue its current medical marijuana off-site cultivation use and to permit expansion of said use within the boundaries of the Property as needed, and the Town acknowledges that such continued use, if regulated by Ordinance No. 2018 A434, would give BRLS Properties a cause of action; and

WHEREAS, The Town and BRLS acknowledge and agree that the Property shall not be subject to the new Ordinance and desire to execute a binding waiver of enforcement of the Ordinance on the subject property; and

The Mayor and Common Council of the Town of Camp Verde, Yavapai County, Arizona do hereby resolve as follows:

1. That certain Binding Waiver of Enforcement dated September 5, 2018, by and between the Town of Camp Verde, a municipal corporation of Arizona (hereinafter the "Town") and BRLS Properties I, LLC, an Arizona an Arizona Limited Liability Company, said waiver being attached hereto and expressly made a part hereof and is attached as Exhibit A, be hereby entered into.

RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE, YAVAPAI COUNTY, ARIZONA ON SEPTEMBER 5, 2018.



Charles C. German, Mayor Date:

Attest:

 9-6-2018

Judith Morgan, Town Clerk Date:

Approved as to form:



Town Attorney

WHEN RECORDED, MAIL TO:

Adam Baugh, Esq.
Withey Morris, PLC
2525 E. Arizona Biltmore Cir., A-212
Phoenix, AZ 85016

Town Clerk
Town of Camp Verde
473 S. Main St Ste 102
Camp Verde, AZ 86322

BINDING WAIVER OF ENFORCEMENT

THIS BINDING WAIVER OF ENFORCEMENT (this "Waiver") is made and entered into this 5th day of September 2018, by and between the Town of Camp Verde, an Arizona municipal corporation (the "Town") and BRLS Properties I, LLC, an Arizona limited liability company ("BRLS").

RECITALS:

A. BRLS is the owner of that certain real property and improvements thereon situated in Yavapai County, Arizona, located at 2051 W. SR 260 in Camp Verde (the "Property") and legally described on Exhibit "A", which said Property is zoned C-3, General Commercial.

B. BRLS purchased the Property in 2015 for the purpose of operating a medical marijuana off-site cultivation facility on the approximate 43-acre parcel.

C. BRLS currently operates a medical marijuana off-site cultivation facility on part of the Property today and intends to expand its future medical marijuana off-site cultivation facilities across the entire Property.

D. On May 23, 2018, the Camp Verde Town Council adopted a land use law, Ordinance No. 2018 A434 (the "Ordinance"), which eliminates medical marijuana off-site cultivation facilities as a permitted use in the C-3 zoning district.

E. BRLS contends the new Ordinance removes a medical marijuana off-site cultivation use from the C-3 zoning district, limits its property rights because it restricts the expansion of a previously permitted use that is currently operating on the Property, reduces the Property's allowed use, and effectively diminishes the value of the Property.

F. The Arizona Revised Statutes §12-1134 (“Prop. 207”) recognizes a cause of action and just compensation when a municipality adopts a land use law that reduces the existing rights to use the property and such action diminishes the value of the property. However, Prop 207 allows a municipality to “amend, repeal, or issue a binding waiver of enforcement of the land use law on the owner’s specific parcel.”

G. The Town and BRLS each desire the Property to continue its current medical marijuana off-site cultivation use and to permit expansion of said use within the boundaries of the Property as needed.

H. The Town and BRLS acknowledge and agree that the Property shall not be subject to the new Ordinance and desire to execute a binding waiver of enforcement (the “Waiver”) of the Ordinance on the Property.

NOW, THEREFORE, for and in consideration of the premises above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and BRLS state, confirm and agree as follows:

1. Incorporation of Recitals. The recitals stated above are true and correct and are incorporated herein.
2. Binding Waiver of Enforcement. The Town and BRLS agree and declare that Ordinance 2018 A434 shall not be enforced nor applicable to the entirety, or any portion of the Property, and as result, the Nonconforming Uses and Structures provisions in Section 102 are not triggered by the Ordinance.
3. Nonconforming Use Provisions. The Town agrees it will not prevent nor prohibit any future expansion of any medical marijuana off-site cultivation use on the balance of the Property under the Town’s Zoning Code. The Town acknowledges and agrees that Section 102.B of the Camp Verde Zoning Ordinance, Nonconforming Uses and Structures, is waived as it relates to any future expansion of any medical marijuana off-site cultivation use on the Property beyond the boundaries of its current operational area as of the date of execution of this Waiver.
4. Future Expansion and Town Approvals. The Town agrees it shall accept any new development and permitting applications related to any future expansion of medical marijuana off-site cultivation uses on the Property under the Town’s Zoning Code, regardless of the adoption of Ordinance 2018 A434, and shall promptly review and approve such plans and permits through its normal course of development and entitlement process.
5. Recordation. This Waiver shall be adopted by Resolution or Ordinance of the Camp Verde Town Council and recorded in its entirety in the Official Records of Yavapai County, Arizona not later than ten (10) days after this Waiver takes effect in recordable form by each of Camp Verde and BRLS.
6. Covenants Running with Land; Inurement. The covenants, conditions, terms and provisions of this Waiver relating to use of the Property shall run with the Property and shall be

binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property.


7. Tolling of Limitations Period. Notwithstanding the foregoing, any and all statutes of limitation relating to claims, notices, litigation or otherwise, whether at law or in equity, and specifically relating to ARS Section 12-1134, which are or may be applicable to any claim by BRLS against the Town arising from the passage by the Town of the Ordinance is hereby tolled until the expiration of two years from the date the Town takes the position that the Ordinance does restrict expansion of BRLS's facilities or BRLS otherwise becomes aware that it has suffered damages as a result of the passage of the Ordinance.

8. Governing Law. This Waiver, and all rights and obligations created hereby, shall be determined and governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, the Parties have executed this Waiver to be effective 30 days after the date and time a resolution approving and adopting this Waiver is approved by the Camp Verde Town Council.


CAMP VERDE:

TOWN OF CAMP VERDE, ARIZONA,
an Arizona municipal corporation

By: 
Its: MAYOR

OWNER:

BRLS Properties I, LLC
An Arizona Limited Liability Corporation

By: 
Its: CEO

LEGAL DESCRIPTION:

A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23 AND A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 14 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 23;

THENCE SOUTH $89^{\circ}32'28''$ WEST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 319.69 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF HIGHWAY 279 AS DESCRIBED IN ORDER OF CONDEMNATION RECORDED IN BOOK 432 OF OFFICIAL RECORDS, PAGE 452, RECORDS OF YAVAPAI COUNTY, ARIZONA AND THE TRUE POINT OF BEGINNING;

THENCE SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 5629.58 FEET, THROUGH A CENTRAL ANGLE OF $14^{\circ}07'22''$, A DISTANCE OF 1387.62 FEET TO THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 24;

THENCE NORTH $89^{\circ}48'49''$ WEST, ALONG SAID SOUTH LINE, 183.67 FEET;

THENCE NORTH $89^{\circ}08'04''$ WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 1324.84 FEET;

THENCE NORTH $01^{\circ}33'53''$ EAST ALONG THE WEST LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 1330.05 FEET;

THENCE NORTH $89^{\circ}32'28''$ EAST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 1009.06 FEET TO THE TRUE POINT OF BEGINNING.