



TOWN OF JEROME

POST OFFICE BOX 335, JEROME, ARIZONA 86331
(928) 634-7943 www.jerome.az.gov

RESOLUTION NO. 597

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF JEROME, ARIZONA, AUTHORIZING A SETTLEMENT AGREEMENT WITH THE CUBAN QUEEN BORDELLO, LLC, JOSH LINDNER AND WINDY JONES

WHEREAS, on March 5, 2020, the Town of Jerome was served with a Notice of Claim by Josh Lindner and Windy Jones regarding their property at 324 Queen Street; and

WHEREAS, Town officials have negotiated with Mr. Lindner and Ms. Jones toward a settlement that will avoid costly litigation; and

WHEREAS, a proposed settlement agreement is attached hereto and made a part hereof;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Jerome, Arizona, that the Town Council has reviewed and hereby approves the attached settlement agreement with the Cuban Queen Bordello, LLC, Josh Lindner and Windy Jones.

APPROVED by a majority vote of the Jerome Town Council on the 14th day of April, 2020.

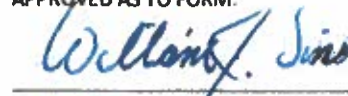
APPROVED:


Christina "Alex" Barber, Mayor

ATTEST:


Candace Gallagher, Town Manager/Clerk

APPROVED AS TO FORM:


William J. Sims, Town Attorney



Jerome Town Hall Located at 600 Clark Street, Jerome Civic Center

RELEASE AND SETTLEMENT AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT (“**Agreement**”) is made and entered into by and between the **Town** of Jerome, a municipal corporation (“**Town**”) and the Cuban Queen Bordello, LLC, an Arizona limited liability company, Windy Jones and Joshua Lindner (collectively, the “**Developer**”) and is dated as of April __, 2020 (“**Effective Date**”).

RECITALS

- A. The **Developer** has been developing **Property** located at 324 Queen Street, Jerome, Arizona (“**Property**”);
- B. The **Developer** sent the **Town** a notice of claim (“**NOC**”) on March 5, 2020 arising out of alleged conduct by **Town** staff that the **Developer** believes constituted a violation of law;
- C. The **Town** contests the allegations in the **NOC**;
- D. The parties, however, agree that it is in the interest of the **Town** and the **Developer** to focus on the development of the **Property** in accordance with the Jerome Town Code and Jerome Town Zoning Code rather than delay the development of the **Property** and expend resources on litigation; and
- E. The Parties entered into a Memorandum of Understanding (“**MOU**”) concerning this dispute dated as of November 18, 2019;
- F. The Parties now wish to settle the dispute concerning the **NOC** and to establish a process to develop the **Property**.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and terms contained herein, it is hereby agreed:

SECTION ONE **Operative Terms**

- 1.1 The **MOU** is hereby terminated.
- 1.2 The **Town** agrees to process the development of the **Property**, and the **Developer** agrees to development of the **Property** in accordance with the Jerome Town Code and Jerome Town Zoning Code.
- 1.3 Parking for the **Property** will be provided pursuant to the following process:
 - 1.3.1 No later than the issuance of a Certificate of Occupancy for the **Property**, the **Developer** must purchase easements for up to five spaces (the “**Off-site Parking Easements**”) in the **Town** owned Clark Street Parking lot.

- 1.3.2 The **Off-site Parking Easements** shall be for the exclusive use of the **Property** and shall run with the land, unless terminated pursuant to this Agreement. Following the purchase of the **Off-site Parking Easements**, the **Developer** may at its cost record the **Off-site Parking Easements**.
- 1.3.3 **Town** agrees to reserve the **Off-site Parking Easements** for purchase by the **Developer** for a period terminating on the date that is four (4) years after the date of the Conditional Use Permit approval (February 11, 2020) for the **Property** (the "**Four-Year Anniversary Date**"). The price for each of the **Off-site Parking Easements** shall be Three Thousand Three Hundred Fifty-Six and Twenty-five cents (\$3,356.25).
- 1.3.4 If the **Developer** does not purchase the Off-site Parking Easements prior to the **Four-Year Anniversary Date**, the **Off-site Parking Easements** will no longer be available for purchase by the **Developer**. Thereafter the **Developer** must obtain other parking spaces as required by Section 510 of the Town Zoning Code for development of the **Property**.
- 1.3.5 If for a period of 365 days, the **Property** is not subject to and being used pursuant to an effective business license or building permit, the **Off-site Parking Easements** shall terminate, and the **Developer** shall be entitled to a refund of the amount initially paid for the **Off-site Parking Easements** prorated based on the remaining term of the **Off-site Parking Easements** relative to a twenty-five year useful life of the **Property** improvements. For example, and by way of illustration without limiting the generality of the preceding sentence, if the **Off-site Parking Easements** terminate five (5) years after the Effective Date, the **Developer** shall be entitled to a refund equal to eighty percent (80%) of the initial purchase price.
- 1.3.6 If the **Town** modifies the parking requirements for the **Town's** C-1 Zoning District such that the **Off-site Parking Easements** are no longer needed for the **Property**, the **Developer** may request that the **Off-site Parking Easements** be extinguished, and the **Developer** shall be entitled to a refund of the amount initially paid for the **Off-site Parking Easements** prorated based on the remaining term of the easements relative to a twenty-five year useful life of the **Property** Improvements. For example, and by way of illustration without limiting the generality of the preceding sentence, if the **Off-site Parking Easements** are extinguished five (5) years after the Effective Date, the **Developer** shall be entitled to a refund equal to eighty percent (80%) of the initial purchase price.

SECTION TWO

Release

2.1 The **Developer**, on behalf of itself, its successors, assigns, agents, representatives, attorneys and all persons acting by, through or under it, for good and valuable consideration, including the consideration referred to in Section 1.3, the receipt and adequacy of which is hereby acknowledged, does hereby release and forever discharge the **Town**, its Council members, employees, attorneys, accountants, and other agents acting on its behalf from any and all claims, causes of action in law or in equity, suits, debts, liens, contracts, agreements,

promises, liabilities, demands, damages, losses, costs, or expenses of any nature whatsoever, arising out of or related to the **Town** and its boards, commissions, employees and agents approval process for the development of the **Property**; provided, however, that the provisions of this Section 2.1 shall not limit the parties' obligations under Section 1.2 of this Agreement.

2.2 The **Town**, on behalf of itself, its successors, assigns, agents, representatives, attorneys and all persons acting by, through or under it, for good and valuable consideration, including the consideration referred to Section 2.1, the receipt and adequacy of which is hereby acknowledged, does hereby release and forever discharge the **Developer**, its officers, directors, employees, attorneys, accountants, and other agents acting on its behalf from any and all claims, causes of action in law or in equity, suits, debts, liens, contracts, agreements, promises, liabilities, demands, damages, losses, costs, or expenses of any nature whatsoever, arising out of or related to the approval process for the development of the **Property**; provided, however, that the provisions of this Section 2.2 shall not limit the parties' obligations under Section 1.2 of this Agreement.

2.3 The Parties will each bear their own attorney's fees, costs, and expenses arising out of the matters set forth in this Agreement and the negotiation and preparation of this Agreement.

SECTION THREE

No Wrongdoing

3.1 The Parties acknowledge that they deny any wrongdoing whatsoever regarding the subject matter of this Agreement. This Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. The Parties expressly understand and agree that nothing in this Agreement constitutes an admission of any wrongdoing or liability on behalf of the Parties, or their agents, affiliates, partners, assigns, successors, and/or subsidiaries.

SECTION FOUR

Binding Effect

4.1 The Parties further agree that this Agreement, and all of its terms, binds and inures to the benefit of the Parties and their successors and assigns. Each reference to the **Developer**, the **Town** includes their successors and assigns. The Parties will cooperate in good faith in performing all acts and executing all documents necessary to carry out the terms of this Agreement.

SECTION FIVE

Opportunity to Review and Confer with Counsel

5.1 The Parties have thoroughly reviewed the terms of this Agreement and represent that they understand its meaning. Each Party has had a full and fair opportunity to confer and receive legal advice from its attorneys with respect to the advisability of entering into this Agreement and the releases provided herein. Each Party provided its respective attorneys a full and fair opportunity to review this Agreement and consulted with its respective attorneys regarding the terms contained herein.

SECTION SIX
Written Modification and Integration

6.1 The Parties represent and warrant that they are not relying on any promises or representations which do not appear in this Agreement. The Parties may amend, modify, supplement, or alter this Agreement only by a writing signed by the Parties. This document is the entire, complete, sole, and only understanding of, by, and between the Parties and there are no independent, collateral, different, additional, or other understandings or agreements, oral or written, or obligations to be performed, things to be done, or payments to be made other than those described herein and no promise, inducement or consideration other than set forth herein has been made or agreed upon.

SECTION SEVEN
Obligation of Good Faith

7.1 This Agreement is made entirely as a compromise and for the purpose of settlement of disputes between the Parties. The Parties acknowledge and agree that this Agreement is entered into in good faith, will be performed in good faith and has no purpose other than to give effect to its terms and conditions and to compromise, settle and extinguish disputes.

SECTION EIGHT
Governing Law and Forum

8.1 The laws of the State of Arizona applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) govern the validity, construction, performance and effect of this Agreement. The Parties may bring any lawsuit to interpret or enforce the terms of this Agreement only in a court of competent jurisdiction in Yavapai County, Arizona. The Parties to this Agreement will be considered the drafters of the same, and no principle of law construing this Agreement against the drafter will be applicable in any lawsuit arising out of the rights and obligations between the Parties.

SECTION NINE
Counterparts

9.1 The Parties may execute this Agreement in counterparts and each executed counterpart shall be effective as the original. All faxed, emailed, scanned, or electronic signatures affirming this Agreement constitute an original. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages.

**SECTION TEN
Communication**

10.1 Any notices sent pursuant to this Agreement will be sent to the following addresses:

Developer: _____

() _____

Windy Jones

Joshua Lindner

Town: Town Manager
Town of Jerome
600 Clark Street
Jerome, Arizona 86331
(928) 634-7943

Any notice sent pursuant to this Section 10 will be sent by United States mail, certified and return receipt requested and will be deemed received three days after deposit in the U.S. Mail. All other communications may be sent by first class mail, facsimile, email, courier (such as FedEx), or hand delivery.

**SECTION ELEVEN
Authority**

11.1 Each of the Parties represents and warrants that it has the authority to approve and execute this Agreement.

**SECTION TWELVE
Waiver**

12.1 The failure of the Parties to demand from the other performance of any act under this Agreement shall not be construed as a waiver of the Parties' right to demand, at any subsequent time, such performance.

SECTION THIRTEEN
Statutory Required Provisions

13.1 This Agreement is subject to termination pursuant to A.R.S. Section 38-511.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the date and year written below.

DEVELOPER:

TOWN:

Cuban Queen Bordello, LLC, an Arizona limited liability company

Town of Jerome, a municipal corporation

By: _____
(sign)

By: Christina R. Barber
(sign)

Name: _____

Name: CHRISTINA "ALEX" BARBER
(print name)

Its: _____

Its: MAYOR
(print title)

Date: _____
(print date)

Date: 4/14/20
(print date)

Windy Jones

(print date)

Joshua Lindner

(print date)