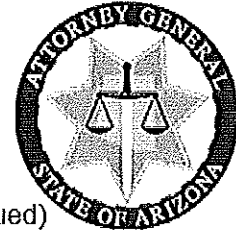




Office of Arizona Attorney General

Mark Brnovich

Legislator Request for Attorney General Investigation of Alleged State-Law Violation by County, City, or Town (Continued)



\*Identify the member(s) of the Legislature submitting this request for investigation (attach additional sheet if necessary):

Representative Paul Boyer

\*Provide a contact person for communications from the Attorney General's Office regarding this request (may be a Legislator listed above or an employee of the Legislature).

\*Name: Paul Boyer

\*Email address: PBoyer@azleg.gov

\*Phone number: 602 926 4173

\*Mailing address: 1700 W. Washington St. Ste. A

Phoenix, AZ 85007

\*The specific question for the Attorney General to investigate is:

Has the Town of Snowflake violated provisions of state law concerning (1) open meetings

requirements, (2) notice requirements for contemplated changes to zoning laws, (3) illegal contract zoning, (4) the right of referendum, and (5) access to public records

\*The name of the county, city, or town that is the subject of this request:

Town of Snowflake, Arizona

\*The specific ordinance, regulation, order, or other official action adopted or taken by the governing body of the county, city, or town and the date thereof:

Approval of Facilities Agreement with, and special use permit to,

Copperstate Farms LLC by the Snowflake Town Council on June 28, 2016

\*The specific Arizona statute(s) and/or constitutional provision(s) with which the action conflicts :

Open meetings laws (A.R.S. 38-431, et seq.); notice and hearing requirements for zoning changes (A.R.S. 9-462.04); contract zoning (common law);

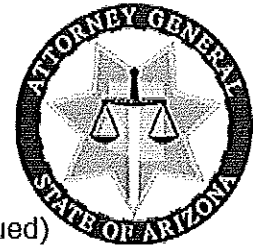
right of referendum (Ariz. Const. art. IV, pt. 1, sec. 1(8)); public records laws (A.R.S. 39-121, et seq.)



Office of Arizona Attorney General

Mark Brnovich

Legislator Request for Attorney General Investigation of Alleged State-Law Violation by County, City, or Town (Continued)



\*All relevant facts of which you are aware (attach separate sheet if necessary):

Please see attached letter for the relevant facts relating to potential violations of the open meetings laws, the notice and hearing requirements for zoning changes, the prohibition on contract zoning, and the right of referendum. In addition, on or around July 27, 2016 a citizen submitted to the Town a public records request for various documents and communications relating to the Copperstate Farms facilities agreement and special use permit. To date, the Town has not provided any materials or information in response to the public records request.

\*All relevant legal authority, including federal and state case law, of which you are aware (attach separate sheet if necessary):

Please see attached letter for the relevant authorities relating to potential violations of the open meetings laws, the notice and hearing requirements for zoning changes, the prohibition on contract zoning, and the right of referendum. Citizens' rights of access to public records are secured by A.R.S. 39-121, et seq.

\*Any litigation involving this issue of which you are aware (include case name, number, and court where filed) :

Prestwich, et al. v. Town of Snowflake (Navajo Superior Court No. CV2016-00278)

Check this box if you are attaching supporting documentation. [checked]

NOTE: This form and other information submitted to the Attorney General's Office is subject to the public records law, A.R.S. § 39-121 et seq.

I, a current member of the Legislature, verify that I and the other Legislators listed on the previous page (if any) are submitting this request for investigation under A.R.S. § 41-194.01.

\*First Name: Paul \*Last Name: Boyer

\*Signature: [Signature] \*Date: 8/11/16

Please submit the completed form to: Arizona Attorney General's Office Attn: Civil Litigation Division/A.R.S. § 41-194.01 1275 West Washington Street Phoenix, Arizona 85007 cldinvestigations@azag.gov

\* required field Rev. 8-2016

PAUL BOYER  
1700 WEST WASHINGTON, SUITE H  
PHOENIX, ARIZONA 85007-2844  
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HEALTH

DISTRICT 20

## Arizona House of Representatives Phoenix, Arizona 85007

August 11, 2016

Arizona Attorney General's Office  
c/o Ryan Anderson  
1275 West Washington Street  
Phoenix, Arizona 85007-2926  
[Ryan.Anderson@azag.gov](mailto:Ryan.Anderson@azag.gov)

Re: Violations of State Law in Snowflake, Arizona

Dear Mr. Anderson:

I am writing on behalf of Ken Krieger, whom our firm represents in opposing the Town of Snowflake's attempts to issue a special use permit (the "SUP") authorizing operation of the world's largest known marijuana cultivation facility (the "Snowflake Greenhouse").

I am writing to bring to your attention certain violations of Arizona law concerning the Snowflake Greenhouse so that you may complete an investigation pursuant to Ariz. Rev. Stat. § 41-194.01 and determine whether the State of Arizona should withhold state shared revenues from the Town of Snowflake. The Town of Snowflake's violations of state law are summarized below.

### Open Meeting Law Violation

Based on local news reports, it appears the details for authorizing the Snowflake Greenhouse may have been negotiated and arranged in violation of Arizona's Open Meeting Laws. A representative of the Snowflake Greenhouse met "with Snowflake Town Manager Brian Richards, Mayor Tom Poscharsky and members of the town council," *see Exhibit 1*, and presumably also had written or telephonic communications with the same individuals, concerning the Snowflake Greenhouse—all apparently outside the Town's duly noticed public meetings. Those meetings and communications may have violated Arizona's Open Meeting law if they included a quorum of the Town Council, *see Ariz. Rev. Stat. § 38-431, et seq.*; purposely included less than a quorum in order to elude Arizona's Open Meeting Law, *see Op. Ariz. Att'y Gen. 75-8*; or used written communications rather than in-person meetings in order to avoid a "meeting," *see Op. Ariz. Att'y Gen. 105-004*.

### Defective Notice

As discussed in the attached Complaint (Exhibit 2) and Motion for a Temporary Restraining Order and Preliminary Injunction (Exhibit 3), the Town of Snowflake failed to provide adequate advance notice of the time and place of its public hearings concerning the SUP. Notice concerning any zoning matter must "be given at least fifteen days before the hearing," *see Ariz. Rev. Stat. § 9-462.04*; Snowflake Town Code § 10-2-2(A) to -(B)(1), and strict compliance with the statutory requirement concerning notice is required, *see McIntyre v. Mohave County*, 127 Ariz. 317, 318, 620 P.2d 696, 697 (1980); *see also Levitz v. State*, 126 Ariz. 203, 205, 613 P.2d 1259, 1261 (1980).

Public notice of the Town of Snowflake Planning and Zoning Commission meeting on June 21, 2016 was provided no earlier than seven days prior to the meeting. Public notice of the Snowflake Town Council's meeting on June 28, 2016 was provided only five days prior to the meeting. Therefore, the Town of Snowflake did not strictly comply with the notice requirements of Ariz. Rev. Stat. § 9-462.04 and Snowflake Town Code § 10-2-2(A) to -(B)(1).

### Contract Zoning

As discussed in the attached Complaint (Exhibit 2) and Motion for a Temporary Restraining Order and Preliminary Injunction (Exhibit 3), the SUP was the product of unlawful "contract zoning." Arizona courts have recognized that "[t]he power to regulate land use through zoning ordinances is vested in municipal legislatures and they cannot bargain away this power." *Davis v. Pima County*, 121 Ariz. 343, 345, 590 P.2d 459, 461 (App. 1978). And "contract zoning" or the bargaining away of a municipality's legislative zoning power has been repudiated by courts nationwide as an

August 11, 2016

Page 2

impermissible bargaining away of a municipality's core police powers. See *Citizens to Save Minnewaska v. New Paltz Central School Dist.*, 95 A.D.2d 532, 534, 468 N.Y.S.2d 920, 922 (3rd Dept. 1983) ("All legislation by contract is invalid in the sense that a Legislature cannot bargain away or sell its powers."); *League of Residential Neighborhood Advocates v. City of Los Angeles*, 498 F.3d 1052, 1057 (9th Cir. 2007) ("Land use regulations . . . involve the exercise of the state's police power, and it is settled that the government may not contract away its right to exercise the police power.").

As described in the attached documents, in exchange for the SUP, Copperstate Farms, LLC (the prospective owner of the Snowflake Greenhouse) has agreed to pay the Town of Snowflake quarterly cash payments of up to \$800,000 per year. The effect of the SUP and the Facilities Agreement is that Copperstate and the Town of Snowflake have entered into a *quid pro quo* arrangement, whereby Copperstate agrees to make monthly cash payments to the Town of Snowflake in consideration for the approval of the SUP. This contractual arrangement between the Town of Snowflake and Copperstate is impermissible. See *Davis*, 121 Ariz. at 345, 590 P.2d at 461 (A municipal legislature "cannot, expressly or impliedly, bargain away its legislative zoning powers.").


#### Undue Burden on the Right to a Referendum

On the evening of July 26, 2016, the Snowflake Town Council held a regular meeting. At the meeting, the Town Council was expected to approve the minutes of the meeting at which the Town Council issued the SUP. The approval of the minutes underlies the constitutional rights of the Snowflake residents; when exercising their constitutional right to refer the SUP to the ballot at the next general election, the residents of Snowflake must attach to their petition either (a) a signed copy of the SUP or (b) the approved minutes of the meeting at which the Town Council authorized the issuance of the SUP. See Ariz. Rev. Stat. §§ 19-121(E), -142; see also *Simpson v. Comm. Against Unconstitutional Takings, L.L.C.*, 193 Ariz. 391, 394, 972 P.2d 1027, 1030 (App. 1999) (citing *Pioneer Trust Co. v. Pima Cty.*, 168 Ariz. 61, 811 P.2d 22 (1991)). Because the Town has no plans to generate a signed copy of the SUP, the residents' constitutional right to circulate a referendum petition depends on the Town's approval of the meeting minutes. And Arizona's Open Meeting Law clearly contemplates the prompt preparation and dissemination of governmental bodies' meeting minutes. See Ariz. Rev. Stat. § 38-431.01 (requiring that public bodies take written meeting minutes and that they be expeditiously made publicly available upon their approval).

In an apparent attempt to burden or deny entirely the public's right to circulate a referendum petition, the Town Council on Tuesday night refused to approve minutes from the meeting at which the SUP was issued. This represents a betrayal of the public trust and an affront to the many Snowflake residents who wish to utilize the referendum process to make their voices heard. And perhaps more importantly, it is an undue burden on the constitutional right to referendum and the statutory requirements for prompt preparation and dissemination of the minutes of public meetings.

I trust the foregoing will be sufficient to permit your office to complete its investigation of potential violations of Arizona law. If you require any further information, however, please do not hesitate to call or write.

Respectfully,

  
\_\_\_\_\_  
Paul Boyer

## **Exhibit 1**

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SEARCH ...

# Greenhouse Facility May Be Used To Grow Marijuana



Photo by Naomi Hatch Copperstate Farms has purchased the

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## RECENT UPDATES

- School board candidates must file by August 10
- Winslow City Council OKs sale of wastewater treatment plant bonds

NutraSweet greenhouse facility in Snowflake, contingent on the approval of the necessary special use permit, for use as a state-of-the-art high-tech marijuana grow facility. On hand for the announcement of the project are (left to right) Retrofit Project Manager Robbie Stone, Highground Public Affairs consultant Doug Cole and Fife Symington IV of Copperstate Farms.

MAY 24, 2016

**By Naomi Hatch**

Copperstate Farms is purchasing the greenhouse facility in Snowflake for use as a state-of-the-art high-tech marijuana grow facility.

“Right off we’ll be hiring over 136 people at roughly double the wage scale of the last people,” said Fife Symington IV of Copperstate Farms, noting that employees will have full benefits.

“My plan is to put about five acres into production, a little over 10 percent of the existing facility, and to grow high quality medicine at a good price,” he said.

“I enjoy being in the community and getting to know the community...,” said Douglas Cole, senior vice president of Highground Public Affairs Consultants, who was in Snowflake May 19 for the announcement.

A study by Elliott D. Pollack & Company shows that the agribusiness has the potential to create 1,227 jobs when it is at full capacity of 40 acres, and will generate more than \$41.8 million in wages and more than \$217.9 million in economic output annually. The five-acre production annual wages will total \$4.9 million.

Symington noted that he got started in the greenhouse/vegetable industry 20 years ago in Mexico, and has more than 850 covered acres. He started a distribution service approximately 10 years ago.

Snowflake Town Council passes \$7 million budget  
Holbrook Schools strive to empower students' success  
Depot Art Series continues  
August 12

#### UPCOMING EVENTS

Dirty Bird Mud Run  
August 27

Taylor Sweet Corn Festival  
September 3

85th Annual Navajo County Fair  
September 14 - September 18

Standin' On The Corner Festival  
September 23 - September 24

Just Cruis'n Car Show  
September 30 - October 1

**View All Events**

“A little over a year ago I decided to take a look at the marijuana industry in Arizona,” said Symington noting that it had been in the news a lot, and he had been spending a week or 10 days each month in Mexico. He began doing research, and realized that most of the production facilities in the state are warehouse facilities that use artificial light and cooling to maintain the temperature.

“I realized that there was a need for what I had learned,” he said, and started developing his own greenhouse in the state. At the same time, NatureSweet pulled out and shut down the Snowflake facility.

Symington was aware of what Eurofresh went through with two bankruptcies, because basically tomatoes that sold for \$15 in winter are now selling for \$10.

When Symington heard the greenhouse was vacant and he looked into purchasing it. On April 19, he signed paperwork to purchase the greenhouse, contingent on getting a special use permit.

Should he receive the proper permitting, he would grow medical marijuana beginning with five acres of the existing facility, and would grow high quality medicine at a good price.

In November 2010, voters approved Proposition 203, which allows the use of medical marijuana as an alternative pain treatment for a number of debilitating medical conditions. The law permitted medical marijuana cultivation facilities, but there were rules adopted to govern the cultivation operations.

“What’s nice about it (the greenhouse facility) is it meets all the provisions of the voter passed initiative of Proposition 203,” said Cole. It meets the setbacks that require the facility to be so far from a school, religious facility, housing and public library. “It meets and exceeds

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Holbrook City Manager  
Greenhouse Facility May Be  
Used To Grow Marijuana  
School board candidates  
must file by August 10  
Rand Henderson  
Holbrook Schools strive to  
empower students' success  
Congressional town hall set  
August 9 in Holbrook

FEATURED LISTINGS



all those requirements, so it's the perfect site," he said.

Cole went on to say that the weather here is perfect for growing this type of product. "The altitude and days of sunshine are perfect for running a year round facility," he said.

In order to be completely transparent, Cole met with Snowflake Town Manager Brian Richards, Mayor Tom Poscharsky and members of the town council. He also met with District III Navajo County Supervisor Jason Whiting and Assistant County Manager Paul Watson. They are meeting with neighbors to give them information and make this transparent. He has met Police Chief Larry Scarber briefly, and will make sure that any suggestions he has are incorporated, explained Symington.

"That's how we'll continue to operate, in a transparent fashion," said Symington.

He further noted that they have been very clear with town and county officials that they are starting with five acres and growing to 10 acres, "because growing beyond that would need a voter initiative to pass." He emphasized that this is a grow facility, not a distribution facility.

Cole explained that the Copperstate Farms facility would have a tremendous economic impact on the town. He said that the fiscal impact study estimates that this will increase 159 jobs in the initial phase of operations, which equates to nearly \$5.7 million in wages and more than \$29.6 million in annual economic output, and has the potential to create 1,227 jobs in the region at full capacity, which would generate more than \$41.8 million in wages and more than \$217.9 million in economic output annually.

Tax revenues were estimated at \$42,100 for Navajo County from the initial five acres of cultivation. It is estimated that the Town of Snowflake would generate \$21,418 in new

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revenues, and the school district and other districts would see an estimated \$162,400 increase in annual revenue.

Copperstate Farms will employ 136 people with wages of \$4.9 million, and generate an economic impact of \$26.7 million. If they were at the full 40-acre capacity it is anticipated it would generate 1,227 jobs.

They are scheduled to go before the Snowflake Planning and Zoning Commission on June 21, and the town council on June 28. If the special use permit is approved, Copperstate is scheduled to open July 19 and start production in December.

Cole said that they will be retrofitting the facility at a cost of approximately \$3 million, with Robbie Stone as the project manager. Other maintenance needs done on the facility, so the goal is to open 90 days after the closing of the sale.

They explained that all employees at the property will go through thorough state and federal background checks. It is expected that they will employ 25 crop workers and two mid-level managers per production acre, who will receive extensive training, and the company will go to great lengths to retain employees with good pay, benefits and a positive work environment.

“We’ll start accepting job applications on July 18. We’ll be launching a website around the first of July called Copperstatefarms.com, so be looking for that website to go live after July 1 and we’ll have specific job applications online that you can fill out online,” said Cole.

Symington and Cole were both born and raised in Arizona.

“This is our state,” said Cole.

“We’re going to make this work,” said Symington.

“It’s your community, and I know why you like living up here,” said Cole. “People are proud of their community and we want to be part of that.”

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## **Exhibit 2**



649 North Fourth Avenue, First Floor  
Phoenix, Arizona 85003  
(602) 382-4078

Kory A. Langhofer, Ariz. Bar No. 024722  
[kory@statecraftlaw.com](mailto:kory@statecraftlaw.com)

Thomas Basile, Ariz. Bar. No. 031150  
[tom@statecraftlaw.com](mailto:tom@statecraftlaw.com)

Roy Herrera, Ariz. Bar No. 032901  
[roy@statecraftlaw.com](mailto:roy@statecraftlaw.com)

*Attorneys for Plaintiffs*

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF NAVAJO

LOWRY FLAKE, MAYLENE FLAKE,  
DANIEL PRESTWICH, AARON  
PRESTWICH, and GEORGE WILKINSON,  
residents of Snowflake, Arizona,

Plaintiffs,

v.

TOWN OF SNOWFLAKE, an unchartered  
town in the State of Arizona

Defendants.

and

COPPERSTATE FARMS, LLC, an Arizona  
limited liability company,

Real Party in Interest.

No. \_\_\_\_\_

VERIFIED SPECIAL ACTION  
COMPLAINT

Plaintiffs hereby allege as follows:

SUMMARY OF THE CASE

1. This action challenges the legal sufficiency of a special use permit (“SUP”), which is premised on a medical marijuana cultivation facilities agreement (the “Facilities Agreement”) between the Town of Snowflake and Copperstate Farms, LLC



1 (“Copperstate”). The SUP will allow Copperstate to establish and operate medical  
2 marijuana cultivation facility on property located within the Town of Snowflake. In  
3 exchange, under the terms of the Facilities Agreement, Copperstate will pay the Town of  
4 Snowflake quarterly payments of up to \$800,000 per year.

5 2. The SUP is invalid for the following reasons:

- 6 a. The Snowflake Town Council did not strictly comply with the notice  
7 requirements imposed by the Arizona Revised Statutes and the  
8 Snowflake Town Code when it voted to approve the SUP;
- 9 b. The decision of the Snowflake Planning and Zoning Commission  
10 rejecting the SUP was not properly or timely appealed to the Town  
11 Council; and
- 12 c. The arrangement contemplated by the SUP and the related Facilities  
13 Agreement constitutes illegal contract zoning.

14 3. Plaintiffs, therefore, seek an order declaring that the SUP is procedurally  
15 defective and substantively invalid, and enjoining the Town of Snowflake from issuing or  
16 implementing the SUP.

17 **JURISDICTION**

18 4. Plaintiffs Lowry and Maylene Flake are residents of the Town of  
19 Snowflake. They own a trailer park located approximately one mile from the Copperstate  
20 property that will house the marijuana cultivation facility.

21 5. Plaintiff Daniel Prestwich is a resident of the Town of Snowflake.

22 6. Plaintiff Aaron Prestwich is a resident of the Town of Snowflake. His home  
23 lies downwind from the Copperstate property and he expects the foul odors emanating  
24 from the Copperstate property will limit his enjoyment of his property.

25 7. George Wilkinson is a resident of the Town of Snowflake. He lives and  
26 works in the same industrial park as the Copperstate property, literally a “stone’s throw”  
27 from the greenhouse.

28







1 County, 127 Ariz. 317, 318, 620 P.2d 696, 697 (1980); *see also Levitz v. State*, 126 Ariz.  
2 203, 205, 613 P.2d 1259, 1261 (1980) (“[T]he general rule governing enactment of zoning  
3 ordinances is that the statutory procedure must be strictly pursued.”).

4 23. The Town of Snowflake provided notice of the Planning and Zoning  
5 Commission’s June 21, 2016 meeting in only three public locations and no earlier than  
6 June 14, 2016.

7 24. Furthermore, the Town of Snowflake provided notice of the Snowflake  
8 Town Council’s June 28, 2016 meeting on the Town’s website just five days prior to the  
9 meeting at which the SUP and Facilities Agreement were approved.

10 25. As a result, the Snowflake Town Council did not strictly comply with the  
11 notice requirements of Ariz. Rev. Stat. § 9-462.04 or Town Code § 10-2-2(A).

12 26. Consequently, the Snowflake Town Council’s approval of the SUP on June  
13 28, 2016 was invalid.

14 *Failure to Appeal*

15 27. Under the Snowflake Town Code, the decision of the Planning and Zoning  
16 Commission is final unless properly and timely appealed to the Town Council.

17 28. “[D]ecisions of the Planning and Zoning Commission may be appealed to  
18 the Town Council.” *See* Snowflake Town Code § 10-2-2(B)(2)(a).

19 29. Appeals may be taken from the Planning and Zoning Commission “by any  
20 member of the Town Council . . . by filing a written notice of appeal with the Town  
21 Manager.” *Id.* § 10-2-2(B)(2).

22 30. “Appeals will only be considered if they are filed within ten (10) working  
23 days after the decision to be appealed was made.” *Id.* § 10-2-3.

24 31. “Decisions [of the Planning and Zoning Commission] are final after the ten  
25 (10) day appeal period has passed, if no appeal has been filed.” *Id.*

26 32. On information and below, no member of the Town Council filed a written  
27 appeal with the Town Manager within the 10-day period.





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**COUNT ONE**

**Insufficient Public Notice**

**Declaratory Judgment and Injunctive Relief (Ariz. Rev. Stat. §§ 12-1831, *et seq.*)**

38. Plaintiffs hereby incorporates by reference the allegations in the foregoing paragraphs 1 through 37 as if fully set forth herein.

39. An actual and justiciable controversy exists regarding the legal sufficiency of the SUP, and a judgment of this Court will end the controversy.

40. Pursuant Ariz. Rev. Stat. § 9-462.04 and Snowflake Town Code § 10-2-2(A) to -(B)(1), formal public notice of the time and place of a public hearing on any zoning matter must “be given at least fifteen days before the hearing.” Strict compliance with the statutory requirement concerning notice is required. *See McIntyre*, 127 Ariz. at 318, 620 P.2d at 697.

41. Public notice of the Town of Snowflake Planning and Zoning Commission meeting on June 21, 2016 was provided no earlier than seven days prior to the meeting. Public notice of the Snowflake Town Council’s meeting on June 28, 2016 was provided only five days prior to the meeting. Therefore, the Town of Snowflake did not strictly comply with the notice requirements of Ariz. Rev. Stat. § 9-462.04 and Snowflake Town Code § 10-2-2(A) to -(B)(1).

42. Accordingly, Plaintiffs seeks declaratory and injunctive relief establishing the legal insufficiency of the Snowflake Town Council’s approval of the SUP on June 28, 2016 and preventing the SUP from going into effect.

**COUNT TWO**

**Failure to Appeal**

**Declaratory Judgment and Injunctive Relief (Ariz. Rev. Stat. §§ 12-1831, *et seq.*)**

43. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs 1 through 42 as if fully set forth herein.

44. An actual and justiciable controversy exists regarding the legal sufficiency of the SUP, and a judgment of this Court will end the controversy.



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45. Under the Snowflake Town Code, decisions of the Planning and Zoning Commission are final unless a member of the Town Council files a written appeal with the Town Manager within 10 days of a decision of the Planning and Zoning Commission. See Snowflake Town Code § 10-2-2(B).

46. No member of the Town Council filed with the Town Manager a proper or timely appeal of the Planning and Zoning Commission's rejection of the SUP.

47. The Town's issuance of the SUP was therefore unlawful.

48. Accordingly, Plaintiffs seeks declaratory and injunctive relief establishing the legal insufficiency of the SUP and preventing the SUP from going into effect.

**COUNT THREE**

**Contract Zoning**

**Declaratory Judgment and Injunctive Relief (Ariz. Rev. Stat. §§ 12-1831, et seq.)**

49. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs 1 through 48 as if fully set forth herein.

50. An actual and justiciable controversy exists regarding the legal sufficiency of the SUP, and a judgment of this Court will end the controversy.

51. Under Arizona law, "[t]he power to regulate land use through zoning ordinances is vested in municipal legislature and they cannot bargain away this power." *Davis*, 121 Ariz. at 345, 590 P.2d at 461.

52. The Town of Snowflake has approved the SUP, which will modify the permissible use of the affected property to allow for the establishment of a medical marijuana cultivation facility. In consideration for the SUP, Copperstate will make quarterly cash payments to the Town of Snowflake under the Facilities Agreement. This *quid pro quo* arrangement between the Town of Snowflake and Copperstate constitutes illegal contract zoning.

53. Accordingly, Plaintiffs seeks declaratory and injunctive relief establishing the legal insufficiency of the SUP and preventing the SUP from going into effect.

1 DEMAND FOR RELIEF

2 54. WHEREFORE, the Plaintiffs demands relief in the following forms:

3 A. A declaration pursuant to Ariz. Rev. Stat. § 12-1831 that the SUP is  
4 not legally sufficient because the Town of Snowflake provided inadequate public notice  
5 prior to their approval by the Snowflake Town Council, because the decision of the  
6 Planning and Zoning Commission was not appealed, and because the SUP constitutes  
7 illegal contract zoning.

8 B. An injunction pursuant to Ariz. Rev. Stat. § 12-1801 and other  
9 applicable law invalidating the SUP and prohibiting the Town of Snowflake from issuing  
10 or implementing the SUP.

11 C. An award of reasonable attorney's fees and costs pursuant to Ariz.  
12 Rev. Stat. §§ 12-348, the private attorney general doctrine, and other applicable law; and

13 D. Such other relief as the Court deems necessary, equitable, proper, and  
14 just.

15 DATED this 18th day of July, 2016.

16 STATECRAFT PLLC

17 By: 

18 Kory A. Langhofer  
19 Thomas J. Basile  
20 Roy Herrera  
21 649 North Fourth Avenue, First Floor  
22 Phoenix, Arizona 85003  
23 *Attorneys for Plaintiffs*  
24  
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Verification

State of Arizona  
County of Navajo } ss.

I, Lowry Flake, being first duly sworn upon his oath, deposes and says:

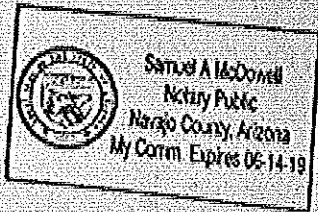
I have read the foregoing Verified Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Complaint to be true, except the matters stated therein on information and belief, which I believe to be true.

*Lowry K. Flake*  
Lowry Flake

Subscribed and sworn to before me this 13<sup>th</sup> day of July, 2016.

*Samuel A. McDowell*  
Notary Public

My Commission Expires:  
6-14-2019



## **Exhibit A**

MEDICAL MARIJUANA  
CULTIVATION FACILITIES AGREEMENT

THIS MEDICAL MARIJUANA CULTIVATION FACILITIES AGREEMENT (the "Agreement") is made as of this 28<sup>th</sup> day of June, 2016 by and between the Town of Snowflake, a municipal corporation of the State of Arizona, (hereinafter referred to as "Town") and Copperstate Farms, LLC, A Wyoming limited liability company (hereinafter referred to as "Copperstate") and is entered with reference to the following:

RECITALS

WHEREAS, the citizens of the State of Arizona have approved the Arizona Medical Marijuana Act (Proposition 203) at the regular general election on November 2, 2010 (A.R.S. §36-2801 et seq);

WHEREAS, the Medical Marijuana Act sets forth the terms, conditions, and authority for the growth, processing, transportation and sale to authorized or permitted persons of medical marijuana;

WHEREAS, recreational use of marijuana may be placed on the ballot or a referendum or may be otherwise enacted, or legal use of marijuana or may be adopted by the citizens by referendum or otherwise adopted by the State of Arizona;

WHEREAS, an Application for a Special Use Permit for Medical Marijuana Cultivation Permit has been filed with the Town of Snowflake on May 19, 2016 by Copperstate (the "Application"); and

WHEREAS, it is the intent of the provisions of this Agreement to provide for the clean, professional and protected exercise of the medical privileges adopted by the citizens; and/or such other uses as may be permitted by the State of Arizona.

AGREEMENTS

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE TOWN AND COPPERSTATE COVENANT AND AGREE AS FOLLOWS:

1. COPPERSTATE COVENANTS AND AGREEMENTS. Copperstate hereby covenants and agrees as follows:



- A. To operate, or lease to others (each a "Tenant Operator") that are properly authorized and licensed to operate a Medical Marijuana Cultivation Facilities (hereinafter "the Facilities") within the Town of Snowflake for the benefit of the residents of Arizona lawfully entitled to obtain medical marijuana pursuant to the Arizona Medical Marijuana Act (A.R.S. §36-2801 et. seq.), the Snowflake Town Code and this Agreement. If recreational use of marijuana is adopted by the citizens by referendum or through legislative enactment, then the terms set forth herein shall also apply to any properly permitted cultivation activities undertaken in connection with such expanded use.
- B. Subject to the grant of applicable Special Use Permits, which shall not be unreasonably withheld by the Town, the Facilities shall be located at the address below:
- 650 North Industrial Drive  
Snowflake, Arizona 85937
- C. The Facilities, as set forth in Subsection 1(B) above, shall comply with the layout and site plan as is set forth in the Application for Special Use Permit, dated May 19, 2016, and any other reasonable terms and conditions determined by the Planning and Zoning Commission and/or the Town Council and accepted by Copperstate.
- D. The Facilities operated pursuant to this Agreement shall be operated in accordance with the laws of the State of Arizona, the rules and regulations of Arizona Department of Health Services ("ADHS") applicable to the Facilities, the Snowflake Town Code, and the "Application for Special Use Permit, dated May 19, 2016," and a "Special Use Permit" dated 28 June, 2016 attached and incorporated herein by this reference, as if set forth in full, except as otherwise provided herein, in which case the terms hereof shall control.
- E. Copperstate agrees to operate the Facilities in compliance with all of the Town building, fire, electrical, water, sewer, zoning, business, parking, signage, and other applicable codes, under police protection oversight. Copperstate further agrees to operate the Facilities in accordance with the conditions of approval of any applicable Special Use Permits as approved pursuant to Section 4-5-3 and Section 10-8-6 of the Snowflake Town Code.
- F. Copperstate agrees to operate, or to cause any Tenant Operator to operate, the Facilities in accordance with any and all applicable Federal and State of Arizona laws, ordinances, rules and regulations relating to employment and/or the employees working in, at or in connection with the Facilities.

- G. Copperstate agrees to use commercially reasonable efforts to obtain and maintain public liability insurance in the amount of Five Million Dollars (\$5,000,000.00) naming town as an additional insured, and in form similarly provided other municipalities, to the extent such form or policy is available on commercially reasonable terms, or as may be subsequently mutually agreed between the parties hereto.

2. TOWN COVENANTS AND AGREEMENTS. The Town hereby covenants and agrees as follows:

- A. To set the necessary public hearings, conduct the necessary inspections, to consider the locations of the Medical Marijuana Cultivation Facilities as provided in Subsection 1(B) above pursuant to the conditional use procedure as set forth in Section 4-5-10 and Section 10-8-6 of the Snowflake Town Code. Provided all terms of this Agreement are met, Town Staff agrees to recommend approval of the Application of Copperstate in writing.
- B. To provide all necessary plan reviews, building permits and building codes inspection services on an expedited basis at no additional charge to Copperstate.
- C. To provide regular police, fire and paramedic protection, at no additional charge to Copperstate. Further to provide enhanced police, fire and paramedic protection, including, but not limited to, direct electronic alarm and video surveillance system connection to the police and fire stations, or as otherwise subsequently mutually agreed by the parties hereto, but at the sole cost of Copperstate as to any such enhanced services provided.
- D. To certify in writing that Copperstate is in compliance with all applicable zoning and business regulations of the Town of Snowflake, addressed to the Arizona Department of Health Services, when applicable, and to otherwise support the Application of Copperstate for the Facilities to be located at the premises identified above in Subsection 1(B).
- E. Assist Copperstate in obtaining necessary and applicable approval and services of any utility operated by the Town or under franchise with the Town.

3. TERM.

- A. The initial term of this Agreement shall be for a period of ten (10) years.
- B. The initial term may be extended by mutual addendum for two (2) additional terms of ten (10) years each, up to a maximum of 30 years total.

- C. In the event the Application is denied, then this Agreement shall terminate for all purposes.

#### 4. LICENSE FEES.

- A. Copperstate agrees to pay all applicable sales and/or use taxes imposed on operations of the Facilities.
- B. Copperstate agrees to pay a Town of Snowflake Business License Fee (the License Fee") as set forth in the Section 5 attached hereto. The License Fee shall not be offset by any existing applicable sales and/or use taxes imposed or collected pursuant to Subsection 4(A). The foregoing notwithstanding, in the event legislation is enacted that allows the Town to: (i) increase existing sales and/or use taxes on Copperstate, the Facility, or any operators of same, (beyond those applicable to other businesses); (ii) to institute additional or new taxes or fees applicable to the Copperstate Facility or any operations; or (iii) in the event Town, of its own accord, shall increase the taxes or fees due as provided in (i) and/or (ii) above, the amount paid by reason of Section 5 below shall be reduced on a dollar for dollar basis for any such increases. Amounts due from Copperstate may be paid or contributed to the Town by any Tenant Operator or other party.

#### 5. PAYMENTS.

- A. License Fee payments shall be made for the fiscal quarter commencing October 1, 2017, with a fiscal year of January 1<sup>st</sup> to December 31<sup>st</sup>. The amount due for each fiscal year shall be based on each net acre or portion thereof under cultivation as of the beginning of each fiscal quarter. Payments of the annual License Fee will be made quarterly, with one-fourth (1/4) due on the last day of each fiscal quarter. Copperstate shall notify the Town of any changes or increases in the per net acre cultivation on a fiscal quarterly basis. Increases or decreases in the net acres under cultivation as determined on such fiscal quarterly basis shall only increase or decrease amounts due for the fraction of remaining fiscal year (i.e. an under cultivation increase of one (1) net acre determined on the first day of April shall cause an increase of three-quarters (¾) of the amount that would have been due if that same net acre had been under cultivation on January 1st of the same fiscal year.)

- B. The License Fee payment schedule shall be as follows:

0 to 10 net acres:	\$10,000 per net acre per year
11 to 30 net acres:	\$20,000 per net acre per year over 10 net acres
31 to 39 net acres:	\$30,000 per net acre per year over 30 net acres
40 net acres or more:	\$800,000 or an average price of \$20,000 per net acre per year, whichever is more.

6. ACKNOWLEDGEMENT AND FLOOD CONTROL. Copperstate acknowledges that Town has disclosed, and Copperstate is aware, that Copperstate's predecessor in title experienced flooding of the Facilities in the past, and that despite flood control improvements in the area, Copperstate assumes the risk of additional flooding events. Town shall use commercially reasonable efforts to continue to use its best reasonable efforts to complete certain flood control and drainage improvements in the area of the Facilities, but that Copperstate further acknowledges that completion of such improvements is dependent on funding sources over which the Town has no control.

7. MISCELLANEOUS.

- A. Copperstate agrees to obtain and maintain liability insurance in the amount of Five Million Dollars (\$5,000,000) in a form acceptable to the Town, or as may be subsequently mutually agreed between the parties hereto.
- B. Any correspondence relating to this Agreement shall be addressed to: Town Manager, Town of Snowflake, 81 W. 1<sup>st</sup> South, Snowflake, Arizona, 85937 and Copperstate Farms, LLC, 5090 N. 40th Street, Suite 265, Phoenix, Arizona 85018, with a copy to Matthew R. Berens, Esq., Berens, Kozub, Kloberdanz & Blonstein, PLC, 7047 E. Greenway Parkway, Suite 140, Scottsdale, AZ 85254.
- C. This Agreement shall be non-assignable without the express written approval of the Town, which will not be unreasonably withheld, conditioned or delayed.
- D. Copperstate agrees to maintain the Facility in a manner that will not create a public nuisance under common law, state, or municipal standards, including the emission of odors. The Town shall, upon notice of such claims of public nuisance, give Copperstate a notice of violation, shall give Copperstate a reasonable time to correct the violation upon to and including a 90-day period. Additionally, Copperstate agrees that within a reasonable time following the commencement of operations at the Facilities, Copperstate will employ the commercially available odor abatement technologies necessary to maintain any odor on the property. Copperstate will test for odor on a regular basis, and make adjustments to its odor abatement system accordingly.
- E. The right to enter and inspect the Facilities is reserved by the Town, and Copperstate hereby consents to such inspections arising:

- (i) According to the State statutory or State regulatory authority including but not limited to ADHS regulations.
  - (ii) To determine number of net acres in use for the propagation/cultivation/harvesting of medical marijuana (or recreation) as permitted by State constitution, statute, or law.
- F. Copperstate shall not exceed the propagation/cultivation/harvesting of 40 acres of medical marijuana (or recreational), without notification and approval by the Town of Snowflake.
- G. Copperstate shall seek a different Special Use Permit separate, apart, and in addition to the Special Use Permit now under application if it builds a separate, new green house facility on the property.
- H. The site shall contain all necessary fire lanes, building separation, water supply for fire suppression, waste removal, and disposal as set forth in State statute and regulations including those regulations adopted by the ADHS and by Town Code. The site shall be subject to inspections by the Snowflake-Taylor Police Department and the Snowflake-Taylor Fire Department. Such inspections are granted by this Agreement, or by the laws permitting such inspections as set forth hereinabove in this sub-section.
- I. Copperstate shall not have or maintain a medical marijuana dispensary in the Town of Snowflake or the Town of Taylor.

TOWN OF SNOWFLAKE  
an Arizona municipal corporation

By: *Tom Poscharsky*  
Tom Poscharsky, Mayor

COPPERSTATE FARMS, LLC,  
a Wyoming limited liability company

By: *J. Fife Symington IV*  
J. Fife Symington IV, Manager

ATTEST:

*Barbara Flake*  
Barbara Flake, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert M. Hall, Town Attorney



## **Exhibit B**



**NOTICE OF A PUBLIC HEARING  
OF THE TOWN OF SNOWFLAKE  
PLANNING AND ZONING COMMISSION**

Notice is hereby given to members of the Town of Snowflake Planning and Zoning Commission and to the general public that the Town of Snowflake Planning and Zoning Commission will hold a Public Hearing on Tuesday June 21, 2016 at 7:00 P.M. IN THE SNOWFLAKE TOWN COUNCIL ROOM located at 81 West 1st South Snowflake, AZ.

Estimated Time 7:00 p.m.

1. Call to Order / Roll Call
2. Prayer and Pledge
3. Approval of Previous Meeting Minutes
4. Planning and Zoning Commission Reports if any.

**Call to the Public** -- *Citizens desiring to speak on a matter that IS NOT on this agenda may do so at this time. Comments shall be limited to three minutes per person and shall be addressed to the Commission as a whole. Pursuant to the Arizona Open Meeting Law, the Commission cannot discuss or act on items presented at this time. At the conclusion of the Call to the Public, individual Commission Members may (1) respond to criticism made by those who have spoken (2) direct staff to review a matter, and (3) direct that a matter be put on a future agenda.*

**5. Open Public Hearing:**

- a. Consideration of a Special Use Permit request by a representative of Copperstate Farms, LLC. Copperstate Farms, LLC is requesting to operate a medical marijuana cultivation facility located at 650 N. Industrial Way. APN# 202-05-064
- b. Consideration of a Special Use Permit requested by a representative of Mountain Time Management. Mountain Time Management is requesting to operate a medical marijuana cultivation facility located at 4929 State Route Highway 77. APN#202-27-033D

**6. Close Public Hearing:**

- a. Discussion of a Special Use Permit request by Copperstate Farms LLC. \*
- b. Discussion of a Special Use Permit request by Mountain Time Management. \*

**7. Adjourn.**

Dated and Posted this 14<sup>th</sup> day of June, 2016

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Dale Call – Planning/Zoning/ Building Safety  
\* Commission action possible on these agenda items.

## Exhibit C



*Town of*  
**SNOWFLAKE**  
*Arizona*

AMENDED

PURSUANT TO ARS 38-431.02, NOTICE IS HEREBY GIVEN TO MEMBERS OF THE SNOWFLAKE TOWN COUNCIL AND TO THE GENERAL PUBLIC THAT THE SNOWFLAKE TOWN COUNCIL WILL HOLD A COUNCIL MEETING & EXECUTIVE SESSION AT 7:00 P.M., JUNE 28, 2016 IN THE SNOWFLAKE FIRE STATION, 325 W 4<sup>TH</sup> SOUTH, SNOWFLAKE, ARIZONA.

\*As indicated in the agenda, the Town Council may vote to go into executive session, which will not be open to the public, to discuss certain matters pursuant to ARS 38-431.03A3 consultation for legal advice with the Town Attorney; A4 consultation with the Town Attorney regarding possible litigation.

--Americans with Disabilities Act (ADA)—The Snowflake Town Council endeavors to ensure the accessibility of its meetings to all persons with disabilities. If you need accommodation for a meeting, please contact the Town Clerk's Office at (928)536-7103 at least 48 hours prior to the meeting.

--Town meeting notices and agendas are posted in the Snowflake Post Office, 761 S 1<sup>st</sup> West; Snowflake Library, 418 S 4<sup>th</sup> West; Snowflake Town Hall and website [www.ci.snowflake.az.us](http://www.ci.snowflake.az.us)

1. CALL TO ORDER/ROLL CALL.

2. PRAYER/PLEDGE

3. MAYOR'S PROCLAMATIONS & ANNOUNCEMENTS

4. CALL TO PUBLIC: Citizens desiring to speak on a matter that IS NOT on this agenda may do so at this time. Comments shall be limited to three minutes per person and shall be addressed to the Town Council as a whole. Pursuant to the Arizona Open Meeting Law ARS 38-431.01H, Council cannot discuss or act on items presented at this time. At the conclusion of the Call to Public, individual Council Members may (1) respond to criticism made by those who have spoken (2) direct staff to review a matter, and (3) direct that a matter be put on a future agenda.

5. CONSENT AGENDA: All items listed below are considered routine. Consent agenda is considered a single item and may be approved by a single motion. Any single item removed from the Consent Agenda at the request of the Council may be considered as a separate item.

A. Approve Council Minutes dated June 8, 2016.

B. Approve One-Day Special Event Liquor License for White Mountain Base Submarine Veterans Golf Tournament at Snowflake Golf Course.

C. Approve Resolution No. 2016-11 Adopt Policy for Purchase from Mayor and Council.

6. DISCUSSION/ACTION ITEMS

A. Consideration & Possible Approval of Special Use Permit for Mountain Time Management.

B. Consideration & Possible Approval of Medical Marijuana Cultivation Facilities Agreement with Mountain Time Management.

C. Consideration & Possible Approval of Special Use Permit & Medical Marijuana Cultivation Facilities Agreement for Copperstate Farms, LLC---Marijuana Cultivation Facility.

D. Consideration & Possible Approval of Medical Marijuana Cultivation Facilities Agreement with Copperstate Farms, LLC.

E. Consideration & Possible Approval of Tentative Budget FY 2016-17. (Brian Richards)

F. EXECUTIVE SESSION: Discussion or consultation with the attorney or attorneys of the public body for legal advice or to consider its position and instruct its attorneys regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation. Pursuant to A.R.S. Sections 38-431.03(A)(3) and 38-431.03(A)(4).

1. Little Colorado River (LCR) Adjudication (Apache County Superior Court – *In Re: The General Adjudication of All Rights to Use Water in the Little Colorado River System and Source (CV 6417, CV 6417-200, CV 6417-201, CV 6417-202)*) and Representation of the LCR Coalition and its Members in Such Litigation

2. Medical Marijuana Cultivation Facilities Agreements.

G. Consideration & Possible Approval to direct staff to sign Letter of Engagement for Legal Services.

7. COUNCIL MEMBER REPORTS—The Council may not propose, discuss, deliberate or take any legal action on the information presented pursuant to ARS 38-431.02.

8. ADJOURNMENT

I, Barbara Flake, certify that the foregoing notice was reposted on Monday, June 27, 2016

## **Exhibit 3**



649 North Fourth Avenue, First Floor  
Phoenix, Arizona 85003  
(602) 382-4078

Kory A. Langhofer, Ariz. Bar No. 024722  
[kory@statecraftlaw.com](mailto:kory@statecraftlaw.com)

Thomas Basile, Ariz. Bar. No. 031150  
[tom@statecraftlaw.com](mailto:tom@statecraftlaw.com)

Roy Herrera, Ariz. Bar No. 032901  
[roy@statecraftlaw.com](mailto:roy@statecraftlaw.com)

*Attorneys for Plaintiffs*

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF NAVAJO

LOWRY FLAKE, *et al.*, residents of  
Snowflake, Arizona,

Plaintiffs,

v.

TOWN OF SNOWFLAKE, an unchartered  
town in the State of Arizona

Defendants.

and

COPPERSTATE FARMS, LLC, an Arizona  
limited liability company,

Real Party in Interest.

No. \_\_\_\_\_

**PLAINTIFFS' MOTION FOR A  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

Pursuant to Arizona Rule of Civil Procedure 65, the Plaintiffs hereby request the entry of a temporary restraining order and preliminary injunction (1) suspending the operation and implementation of the special use permit (the "SUP") issued to Copperstate Farms, LLC ("Copperstate") on or around June 28 2016; (2) prohibiting the Town of Snowflake and its mayor, town council, and town manager, as well as all departments, agencies, offices, and instrumentalities under their authority or control, from issuing or



1 approving any certificates, licenses or permits of any kind pursuant to the SUP pending a  
2 final judgment in this action; and/or (3) providing that any development or improvements  
3 of the affected property, and any investments, contractual obligations or expenses made or  
4 incurred by Copperstate in reliance on the SUP may be undertaken only on an at-risk basis  
5 pending a final judgment in this action.

6 This remedy is necessary for three reasons. First, the Town failed to strictly  
7 comply with the specific notice requirements mandated by state and local law in  
8 connection with its issuance, the SUP. Second, the decision of the Planning and Zoning  
9 Commission rejecting the SUP was not appealed by a member of the Town Council in  
10 writing within 10 days of the Planning and Zoning Commission decision. Third, the SUP  
11 was the product of a *quid pro quo* arrangement between Copperstate and the Town of  
12 Snowflake, whereby the former agreed to make cash payments to the Town explicitly in  
13 consideration of the SUP. Contract zoning has been repudiated by courts nationwide as  
14 an impermissible bargaining away of core sovereign functions; the doctrinal  
15 underpinnings of existing Arizona precedents impel the same conclusion in this State.

16 Emergency preliminary relief from this Court is necessary to avert irreparable  
17 injury to the residents of the Town of Snowflake and to maintain the integrity of its  
18 sovereign powers pending a final disposition on the merits.

19 **I. FACTS**

20 The Plaintiffs are residents of the Town of Snowflake, Arizona. Compl. ¶¶ 4-5.  
21 Copperstate is a limited liability company organized under the laws of the State of  
22 Arizona. *Id.* ¶ 8.

23 The Planning & Zoning Commission noticed a June 21 meeting by issuing on June  
24 14, 2016 a draft agenda that subsequently was posted at the Snowflake Town Hall, the  
25 Snowflake Post Office, and the Snowflake Public Library. On June 21, 2016, the Town of  
26 Snowflake's Planning & Zoning Commission considered and voted against adoption of a  
27 Medical Marijuana Cultivation Facilities Agreement, whereby the Town would grant to  
28 Copperstate the SUP for a marijuana cultivation facility located at 650 North Industrial

1 Way, in consideration of cash payments by Copperstate to the Town totaling  
2 approximately \$800,000 per year (the “Facilities Agreement”). At the same meeting, the  
3 Planning & Zoning Commission voted against issuance of the SUP to Copperstate for a  
4 medical marijuana cultivation facility. *Id.* ¶¶ 11-14, Exs. B.

5 No member of the Snowflake Town Council filed a written appeal with the Town  
6 Manager within 10 days of the Planning and Zoning Commission decision. *Id.* ¶ 15.

7 On June 28, 2016 the Town Council of Snowflake voted to enter into the Facilities  
8 Agreement and approved the issuance of the SUP to Copperstate. Upon information and  
9 belief, the only public notice of the June 28, 2016 Town Council meeting was a meeting  
10 agenda posted to the Town of Snowflake’s website on June 23, 2016. *See id.* ¶¶ 16-18,  
11 Ex. C.

12 **II. ARGUMENT**

13 In considering a motion for preliminary relief, this Court evaluates four factors:

- 14 1. the likelihood that the movant will succeed at trial on the merits,
- 15 2. the possibility of irreparable injury to the movant not remediable by  
16 damages if the requested relief is not granted,
- 17 3. whether the balance of hardships favors the movant, and
- 18 4. whether public policy favors an injunction.

19 *Ariz. Clean Elections Comm’n v. Brain*, 233 Ariz. 280, 288-89, 311 P.3d 1093, 1101-02  
20 (App. 2013); *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 782, 792 (App. 1990); *see also*  
21 *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 410–411, 132 P.3d 1187,  
22 1190–91 (2006).

23 Importantly, the moving party need not establish all the elements set forth above.  
24 Rather, the four factors are considered on a sliding scale, and a movant is entitled to  
25 injunctive relief if it establishes “*either* (a) probable success on the merits and the  
26 possibility of irreparable injury; *or* (b) the presence of serious questions and ‘the balance  
27 of hardships tip sharply’ in his favor.” *Shoen*, 167 Ariz. at 63, 804 P.2d at 792 (emphasis  
28 added); *Smith*, 212 Ariz. at 410–411, 132 P.3d at 1190–91.



1 All these factors support entry of an order enjoining the effectiveness or  
2 implementation of the SUP, or at the very least requiring Copperstate to proceed entirely  
3 on an at-risk basis.

4 **A. The Plaintiffs Are Likely to Succeed on the Merits of Their Claims**

5 The SUP is afflicted with fatal procedural and substantive defects, each of which  
6 provides a sufficient independent basis to enjoin its enforcement or implementation.

7 **1. The Town Failed to Provide the Required Public Notice Before**  
8 **Issuing the SUP**

9 Because the Town did not provide sufficient public notice of the Planning &  
10 Zoning Commission and Town Council meetings at which the SUP was voted upon, the  
11 SUP is invalid. "Strict compliance with statutory requirements concerning the zoning  
12 aspect of the police power is required, and failure to follow the state statutory notice  
13 requirements renders a zoning ordinance void." *McIntyre v. Mohave County*, 127 Ariz.  
14 317, 318, 620 P.2d 696, 697 (1980); *see also Levitz v. State*, 126 Ariz. 203, 205, 613 P.2d  
15 1259, 1261 (1980) ("[T]he general rule governing enactment of zoning ordinances is that  
16 the statutory procedure must be strictly pursued."); *Schwarz v. City of Glendale*, 190 Ariz.  
17 508, 510, 950 P.2d 167, 169 (App. 1997) ("Municipalities must strictly follow the  
18 statutory procedure to enact a zoning ordinance. A court must void a zoning ordinance  
19 enacted by procedures that do not substantially comply with the statutory requirements.").

20 Section 9-462.04(A) of the Arizona Revised Statutes requires a "public hearing on  
21 any zoning ordinance," which must be noticed to the public "at least fifteen days before  
22 the hearing" in a newspaper of general circulation or, if there is no such newspaper, by  
23 posting physical notices on the affected property and in at least ten public places in the  
24 municipality. In certain circumstances, direct notices mailed to affected landowners also  
25 are required. The notice prerequisites of Section 9-462.04 broadly encompass any  
26 municipal act that "changes any property from one zone to another, imposes any  
27 regulation not previously imposed or which removes or modifies any such regulation  
28 previously imposed." *Transamerica Title Ins. Co. Trust Nos. 8295, 8297, 8298, 8299*,

1 8300 & 8301 v. City of Tucson, 157 Ariz. 346, 348, 757 P.2d 1055, 1057 (1988). Town  
2 Code § 10-2-2(A) implements this statutory mandate, and provides that “[a]ny permit for  
3 which a public hearing is required will be noticed in accordance with Arizona Revised  
4 Statutes, section 9-462.04.” Any appeals to the Town Council of decisions by the  
5 Planning and Zoning Commission must “be considered by [the Town Council] at a public  
6 hearing,” see Snowflake Town Code § 10-2-2(B)(1), and are, therefore, subject to the full  
7 notice requirements in the Arizona Revised Statutes.

8 Here, it appears that the only notice of the Planning & Zoning Commission’s June  
9 21 meeting were postings in three public locations (namely, the Snowflake Town Hall and  
10 the local library and post office), which were issued no earlier than June 14 and possibly  
11 as late as June 20. These belated and deficient notices plainly did not strictly, or even  
12 substantially, comply with the directives of Section 9-462.04.

13 In addition, while the statutory mandate applies in the first instance to the Planning  
14 & Zoning Commission, it further provides that “if the planning commission has held a  
15 public hearing, the governing body may adopt the recommendations of the planning  
16 commission without holding a second public hearing” unless one is specifically requested.  
17 See Ariz. Rev. Stat. § 9-462.04(C). A necessary corollary of this provision, however, is  
18 that the governing body must provide for a second, properly noticed hearing if it resolves  
19 not to adopt the Planning & Zoning Commission’s recommendations. Thus, by choosing  
20 to supplant the Planning & Zoning Commission’s denial of Copperstate’s SUP application  
21 and instead undertake its own *de novo* reconsideration of the application, the Town  
22 Council incurred a statutory obligation to conduct a properly noticed meeting. Instead,  
23 however, the Town Council fully abnegated this legal responsibility; the only forewarning  
24 provided to the public was the posting of a meeting agenda on the Town’s website just  
25 five days prior to the June 28, 2016 meeting at which the SUP was granted.

26 Because “Arizona courts have long taken a firm stand demanding strict compliance  
27 with zoning procedures,” *Specht v. City of Page*, 128 Ariz. 593, 598, 627 P.2d 1091, 1096  
28 (App. 1981), and the Town did not substantially – let alone strictly – comply with the

1 notice demands of Ariz. Rev. Stat. § 9-462.04 or Town Code § 10-2-2(A), the SUP is  
 2 without legal effect.

3 **2. The Town Council Did Not Timely Appeal the Planning &  
 Zoning Commission's Decision**

4 A second, independent procedural defect is found in the Town Council's failure to  
 5 timely and properly appeal the Planning & Zoning Commission's denial of its SUP  
 6 application on June 21, 2016.

7 Although the Town Code provides that a SUP may be approved by the Town  
 8 Council "upon recommendation by the planning and zoning commission," § 10-8-6(A), it  
 9 also specifies that appeals of adverse determinations by the Planning & Zoning  
 10 Commission "will only be considered [by the Town Council] if they are filed within ten  
 11 (10) working days after the decision to be appealed was made." *Id.* § 10-2-2(B)(3).  
 12 Appeals may be taken from the Planning and Zoning Commission "by any member of the  
 13 Town Council . . . by filing a written notice of appeal with the Town Manager." *Id.* § 10-  
 14 2-2(B)(2). "Decisions [of the Planning and Zoning Commission] are final after the ten  
 15 (10) day appeal period has passed, if no appeal has been filed." *Id.* § 10-2-3.

16 Because no member of the Town Council filed a written appeal with the Town  
 17 Manager within 10 days of the Planning & Zoning Commission's decision, the matter was  
 18 never properly before the Town Council at the June 28, 2016 meeting, and the Town  
 19 Council's rejection of the Planning & Zoning Commission's recommendation was  
 20 procedurally defective and thus void as a matter of law. *See Pima County v. Clapp*, 23  
 21 Ariz. App. 86, 89, 530 P.2d 1119, 1122 (1975) (county's failure to adhere to its own  
 22 supplementary procedural safeguards was fatal to the validity of resulting zoning  
 23 enactment).

24 **3. The SUP Is the Product of Impermissible Contract Zoning**

25 The Town of Snowflake granted the SUP to Copperstate as a *quid pro quo* for  
 26 payments by Copperstate to the Town of up to \$800,000 per year. *See Compl.* ¶¶ 9-10,  
 27 Ex. A. Because it was born of an illegal "contract zoning" arrangement, the SUP is null  
 28 and void.



1           Contract zoning involves “the process by which a local government enters into an  
2 agreement with a developer whereby the government extracts a performance or promise  
3 from the developer in exchange for its agreement to rezone the property.” 1A Rathkopf,  
4 Zoning and Planning, 29A-25 and 29A-27. Notably, the practice has been repudiated by  
5 numerous courts nationwide and is “disapproved of largely on the basis of the principle  
6 that a municipality may not contract away its police power to regulate on behalf of the  
7 general welfare.” *Id.* See, e.g., *Dacy v. Vill. of Ruidoso*, 114 N.M. 699, 703, 845 P.2d  
8 793, 797 (1992) (“[W]e believe that contract zoning is illegal whenever it arises from a  
9 promise by a municipality to zone property in a certain manner.”); *Cnty. of Volusia v. City*  
10 *of Deltona*, 925 So. 2d 340, 345 (Fla. Dist. Ct. App. 2006) (“[C]ontract zoning has long  
11 been disapproved in Florida because it contracts away the exercise of the entity’s police or  
12 legislative powers.”); *Citizens to Save Minnewaska v. New Paltz Central Sch. Dist.*, 95  
13 A.D.2d 532, 534, 468 N.Y.S.2d 920, 922 (3rd Dept. 1983) (“All legislation by contract is  
14 invalid in the sense that a Legislature cannot bargain away or sell its powers.”); *Mayor*  
15 *and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 814 A.2d 469 (2002)  
16 (contract zoning is “impermissible because it allows a property owner to obtain a special  
17 privilege not available to others, disrupts the comprehensive nature of the zoning plan,  
18 and most importantly, impermissibly derogates the exercise of the municipality’s  
19 powers”); *League of Residential Neighborhood Advocates v. City of Los Angeles*, 498  
20 F.3d 1052, 1057 (9th Cir. 2007) (“Land use regulations . . . involve the exercise of the  
21 state’s police power, and it is settled that the government may not contract away its right  
22 to exercise the police power.”).

23           Although the specific question of contract zoning appears to be an issue of first  
24 impression in Arizona, its illegality derives inevitably from two key doctrinal cornerstones  
25 of zoning law. First, “[t]he power to regulate land use through zoning ordinances is  
26 vested in municipal legislatures and they cannot bargain away this power.” *Davis v. Pima*  
27 *County*, 121 Ariz. 343, 345, 590 P.2d 459, 461 (App. 1978). In other words, the zoning  
28 power is effectively held in trust by legislative bodies on behalf of the populace at large:

1 its exercise may be premised solely on the deliberative application of pre-established  
 2 criteria directed to the public good, not bartered away to a private bidder seeking the  
 3 advancement of its own pecuniary interests. The imperative of insulating the sovereign  
 4 prerogatives of zoning and land use is so compelling that Arizona courts have held them  
 5 beyond the purview of even the initiative process. *See City of Scottsdale v. Superior*  
 6 *Court In & For Maricopa Cnty.*, 103 Ariz. 204, 207-08, 439 P.2d 290, 293-94 (1968)  
 7 (“[T]he initiative process is not available as a mode for amending a comprehensive zoning  
 8 plan. It is an irreconcilable conflict with the due process clause of the United States  
 9 Constitution, 14th amendment and the express provisions of the state statute which  
 10 delegated zoning powers to ‘the governing body of an incorporated city.’” (internal  
 11 citations omitted)). It necessarily follows that a single private entity cannot effectively  
 12 purchase from the legislative body a power withheld even from the electorate itself.

13 Second, “governmental units, like the city and the county, do not inherently have  
 14 the zoning power. The power to zone is part of the police power and may be delegated by  
 15 the State, but the subordinate governmental unit has no greater power than that which is  
 16 delegated.” *Transamerica Title Ins. Co.*, 157 Ariz. at 350, 757 P.2d at 1059; *see also City*  
 17 *of Scottsdale*, 103 Ariz. at 205, 439 P.2d at 291. Accordingly, the ambit of the Town’s  
 18 zoning and land use authority is denoted solely by the terms of Title 9, Chapter 4. This  
 19 catalogue of delegated powers nowhere even indirectly confers an ability to bargain  
 20 zoning enactments for monetary consideration, and to the contrary requires that all  
 21 exercises of the zoning power must be solely “to conserve and promote the public health,  
 22 safety and general welfare.” Ariz. Rev. Stat. § 9-462.01(A).

23 In the same vein, contract zoning is intrinsically inconsistent with the public notice  
 24 and hearing requirements prescribed by Ariz. Rev. Stat. § 9-462.04. Even had it done so  
 25 (and, as discussed above, it did not), the Town’s observance of these formalities would  
 26 have been nothing more than an anemic pretense of compliance. It is clear that issuance  
 27 of the SUP at the June 28 Town Council meeting was a *fait accompli*; the actual process  
 28 by which Copperstate secured its SUP was completed behind closed doors as the company

1 and the Town negotiated their bargain as memorialized in the Facilities Agreement  
2 without public knowledge or input. Because it finds no license in Title 9 and deeply  
3 subverts the public notice and hearing process contemplated by those provisions, this  
4 contract zoning arrangement is necessarily void and unenforceable. *See Dacy*, 114 N.M.  
5 at 703 (“By making a promise to zone before a zoning hearing occurs, a municipality  
6 denigrates the statutory process because it purports to commit itself to certain action  
7 before listening to the public's comments on that action. Enforcement of such a promise  
8 allows a municipality to circumvent established statutory requirements to the possible  
9 detriment of affected landowners and the community as a whole.”).

10 In short, as memorialized in the Facilities Agreement, the Town of Snowflake  
11 granted the SUP in exchange for cash payments by Copperstate to the Town. This is  
12 precisely the kind of reciprocal agreement that has been deemed impermissible by courts  
13 across the nation as illegal contract zoning. *See Davis*, 121 Ariz. at 345, 590 P.2d at 461  
14 (A municipal legislature “cannot, expressly or impliedly, bargain away its legislative  
15 zoning powers.”); *City of New York v. 17 Vista Associates*, 84 N.Y.2d 299, 306, 642  
16 N.E.2d 606, 608-09 (1994) (“We hold that the agreement entered into between the parties,  
17 whereby the plaintiff, in exchange for a predetermined sum of money, would provide to  
18 defendant an expedited and favorable determination as to the [single room occupancy]  
19 status of a building defendant was seeking to purchase, is void as violative of public  
20 policy and is unenforceable.”).

21 **4. The SUP’s Effectiveness Is Tolloed for Thirty Days As A Matter of Law**

22 The appropriateness of preliminary relief is fortified by Ariz. Rev. Stat. § 19-  
23 142(B), which secures the electorate’s right of referendum by providing that “[a] city or  
24 town ordinance, resolution or franchise shall not become operative until thirty days after  
25 its passage by the council and approval by the mayor.” In deciding whether an action is  
26 legislative (and therefore referable) or administrative (and therefore not referable), the  
27 courts look beyond the label attached to the enactment and, instead consider the substance  
28 of the action. *See Pioneer Trust Company of Arizona v. Pima County*, 168 Ariz. 61, 65,

1 811 P.2d 22, 24 (1991) (“If form alone were to govern, a Board could exempt its  
 2 legislative action from referendum simply by labeling the action as something other than  
 3 an ordinance, franchise or resolution.”). To determine whether a city or town’s decision is  
 4 legislative or administrative, courts apply a three party test, which “consider[s] whether  
 5 the action is (1) permanent or temporary. (2) of general or specific (limited) application,  
 6 and (3) a matter of policy creation or a form of policy implementation.” *Redelsperger v.*  
 7 *City of Avondale*, 207 Ariz. 430, 433, 87 P.3d 843, 846 (App. 2004) (citing *Wennerstrom*  
 8 *v. City of Mesa*, 169 Ariz. 485, 489, 821 P.2d 146, 150 (1991)).

9 Although *Redelsperger* held that the special use permit at issue was not  
 10 “legislative” in character, it reaffirmed earlier cases that deemed such permits referable  
 11 when, in light of the prevailing municipal law and attendant factual circumstances, they  
 12 assume a legislative cast. See *Bartolomeo v. Town of Paradise Valley*, 129 Ariz. 409,  
 13 416, 631 P.2d 564, 571 (App. 1981) (holding that “the granting or the refusal to grant  
 14 rezoning by special use permit is a legislative function of the Town Council,” noting that  
 15 such permits were the device by which the town “accommodate[d] new uses” of land);  
 16 *Town of Paradise Valley v. Gulf Leisure Corp.*, 27 Ariz. App. 600, 557 P.2d 532 (App.  
 17 1976).

18 Here, the SUP would convert Snowflake from a quiet town with conservative  
 19 values into the world’s largest cultivator and exporter of marijuana. Moreover, the SUP  
 20 does not merely implement previously approved zoning regulations; instead, it authorizes  
 21 new and transformative use on a scale never before contemplated or approved by the  
 22 Town or its residents. As a result, the measure must be regarded as legislative in nature  
 23 and referable to the voters at the next general election. The issuance of preliminary relief  
 24 hence will allow the Plaintiffs or other Snowflake residents to pursue their right – secured  
 25 by the Arizona Constitution, see art. IV, pt. 1, § 1(8) -- to refer the SUP to a vote of the  
 26 Town’s electorate.

1           **B. The Plaintiffs Will Be Irreparably Injured Absent Preliminary Relief**

2           The possibility of irreparable injury to the Plaintiffs should the SUP be  
 3 implemented warrants the entry of preliminary relief by this Court. *See IB Prop.*  
 4 *Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship*, 228 Ariz. 61, 64, ¶ 8, 263 P.3d  
 5 69, 72 (App. 2011) (noting that plaintiff need only show that injury is “merely possible”).  
 6 There are at least three independent injuries that will redound to the Plaintiffs as a  
 7 consequence of the SUP’s execution.

8           First, the illegal contract zoning agreement between the Town and Copperstate  
 9 that begat the SUP transgresses fundamental principles derived from the Arizona  
 10 Constitution concerning the nature of municipalities’ sovereign powers, and is  
 11 inconsistent with Title 9’s directive that town zoning decisions must be the product of a  
 12 notice and hearing process propelled by public input. The Defendants’ violations of these  
 13 critical components of Arizona’s constitutional infrastructure inflicted injury on the  
 14 Plaintiffs and all Snowflake residents. *See Am. Trucking Ass’n, Inc. v. City of Los*  
 15 *Angeles*, 559 F.3d 1046, 1059 (9th Cir. 2009) (“[C]onstitutional violations cannot be  
 16 adequately remedied through damages and therefore generally constitute irreparable  
 17 harm.”); *cf. Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment  
 18 freedoms, for even minimal periods of time, unquestionably constitutes irreparable  
 19 injury.”).

20           Second, for the reasons outlined above, there is substantial likelihood that the SUP  
 21 can be deemed a legislative act referable to the ballot. To safeguard this constitutional  
 22 right, the Legislature has imposed a thirty-day waiting period as a precondition to a  
 23 municipal enactment’s effectiveness. *See Ariz. Rev. Stat. § 19-142(B)*. This tolling  
 24 requirement implicitly recognizes that allowing the SUP to become effective  
 25 notwithstanding the existence of an extant referendum effort would profoundly impede  
 26 the Plaintiffs’ exercise of their constitutional prerogative. Advocating the maintenance of  
 27 existing conditions is a qualitatively different undertaking from urging the restoration of a  
 28 bygone *status quo ante*; as the SUP is implemented, evolving political and practical

1 exigencies would make it increasingly difficult for the Plaintiffs to effectively advance  
 2 their cause.

3         Particularly in this case -- where implementation of the SUP will lead to significant  
 4 and extensive changes in the use of the subject parcel -- suspension of the SUP is  
 5 indispensable to the Plaintiffs' effective exercise of their constitutional rights. While  
 6 Copperstate does not yet have vested rights in the SUP, should it proceed to develop the  
 7 property in reliance on the SUP, it may become legally impossible for the electorate to  
 8 repeal the SUP and restore the property to its prior condition, even if the SUP is ultimately  
 9 deemed referable and/or this Court determines that it constitutes impermissible contract  
 10 zoning. *See Fid. Nat. Title Ins. Co. v. Pima County*, 171 Ariz. 427, 429, 831 P.2d 426,  
 11 428 (App. 1992) ("The law in Arizona clearly states that a property owner must physically  
 12 construct improvements permitted by the use or incur substantial expenditures toward  
 13 construction or establishment of the use. The physical construction of improvements or  
 14 the expenditure of substantial sums toward the actual construction or establishment of the  
 15 use must be accomplished in reliance on or in conformance with a previously issued  
 16 permit authorizing the commencement of the use or construction."). The provision of  
 17 preliminary relief is thus necessary to ensure a full and comprehensive disposition of the  
 18 Plaintiffs' claims, the availability of effective remedies, and the preservation of the right  
 19 of referendum.

20         Third, Copperstate's development of marijuana cultivation facilities not only  
 21 carries a palpable and significant risk to the Plaintiffs' property values, but also threatens  
 22 to irrevocably alter the character of Snowflake by introducing large-scale commerce in  
 23 federally prohibited drugs to a conservative, family-oriented community. The possibility  
 24 of such harms amply supports preliminary relief. *See IB Prop. Holdings*, 228 Ariz. at 65,  
 25 ¶ 9, 263 P.3d at 73 ("[IB] will suffer irreparable injury if an injunction is not granted  
 26 because the lack of access. . .will reduce occupancy of [IB]'s property, cause loss of  
 27 income and loss of value of the property at a time when [IB] is seeking buyers for the  
 28 property, and the amount of loss will be difficult to measure with reasonable certainty.").

1           **C. The Balance of Hardships Tilts Sharply in Plaintiffs' Favor**

2           In addition to severely impeding the Plaintiffs' constitutionally and statutorily  
3 secured rights, failure to enjoin the effectiveness of the SUP would engender considerable  
4 logistical and practical burdens. As noted above, the implementation of the SUP will  
5 precipitate significant and extensive changes to the property and the Town as a whole that  
6 are, from a functional and legal perspective, effectively irreversible. Thus, even if the  
7 SUP is successfully referred to the ballot, the victory would be pyrrhic and the ability of  
8 the electors of Snowflake to reject the SUP would, for all practical purposes, be  
9 extinguished. Such an inequitable outcome should not be countenanced by the Court.

10           By contrast, the Defendants can adduce no countervailing equitable considerations.  
11 Because the SUP is both procedurally and substantive defective, there is no cognizable  
12 legal interest in its implementation. *Cf. Puente Ariz. v. Arpaio*, No. CV-14-01356, 2015  
13 WL 58671, at \*19 (D. Ariz. Jan. 5, 2015) ("Enjoining the enforcement of laws that are  
14 likely [invalid] will impose little hardship on Defendants."); *United Food & Commercial*  
15 *Workers Local 99 v. Bennett*, 934 F. Supp. 2d 1167, 1216-17 (D. Ariz. 2013)  
16 ("Defendants would suffer no harm in being enjoined from enforcing  
17 unconstitutional...laws, so the balance of hardships tips in favor of the Plaintiffs.").  
18 Further, in the interest of limiting any inconvenience to Copperstate, the Plaintiffs are  
19 even willing to accept preliminary relief that would permit Copperstate to continue its  
20 development of the property, provided only that it assumes the risks of doing so, should  
21 the Plaintiffs ultimately prevail on the merits of this dispute or at the ballot box.

22           **D. Public Policy Favors a Temporary Restraining Order or Injunction**

23           There simply is no substantial public policy interest that is advanced by  
24 implementing a permit that issued in violation of Title 9's procedural prerequisites as well  
25 as the prohibition on contract zoning. In addition, the SUP's sole purpose is to facilitate  
26 the use of Copperstate's property for the cultivation of marijuana. While Arizona law  
27 permits the sale and use of the drug for medicinal purposes under some circumstances, the  
28 production of, and commerce in, marijuana remain unlawful under federal law. *See* 21

1 U.S.C. §§ 841(a), 843(a)(6), 856. Given the substantial questions presented in this action  
2 concerning the procedural and substantive sufficiency of the SUP, the public policy  
3 interest in respecting prevailing federal laws (which in turn are animated by concern for  
4 the deleterious social effects engendered by drug use) militates strongly in favor of  
5 preliminary relief that preserves the *status quo* pending a complete disposition of the  
6 Plaintiffs' claims.

7 **E. Additional Requirements for Preliminary Relief**

8 **1. Notification to Opposing Counsel**

9 Pursuant to Ariz. R. Civ. P. 65(d), undersigned counsel certifies that Defendants  
10 have received notice of this filing. Counsel for the plaintiffs notified counsel for  
11 Copperstate of the likelihood of a lawsuit the day after the Town Council ostensibly  
12 approved the SUP, and counsel for the plaintiffs has provided an electronic copy of this  
13 filing to counsel for Copperstate and to the Town.

14 **2. A Bond Should Not Be Required**

15 Under Rule 65(c), a plaintiff seeking preliminary relief must generally post a bond  
16 "in such sum as the court deems proper." Federal courts applying the federal analogue of  
17 this provision, however, have held that the "court has discretion to dispense with the  
18 security requirement, or to request a mere nominal security, where requiring security  
19 would effectively deny access to judicial review." *Van de Kamp v. Tahoe Reg. Planning*  
20 *Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985); *see also Barahona-Gomez v. Reno*, 167  
21 F.3d 1228, 1237 (9th Cir. 1999). In cases in which a plaintiff is acting in the public  
22 interest, courts routinely waive the bond requirement or impose a nominal bond. *See Van*  
23 *de Kamp*, 766 F.2d at 1325-26. Here, the Plaintiffs are seeking to vindicate the rights of  
24 all Snowflake residents by enforcing the Town's proper adherence to Title 9's notice and  
25 hearing requirements, as well as the fundamental prohibition on contract zoning.  
26 Anything more than a nominal bond would have a chilling effect on efforts to vindicate  
27 public rights, and would deter future judicial review of unconstitutional or invalid  
28 enactments.



1 **III. CONCLUSION**

2 For the foregoing reasons, the Plaintiffs request that the Court enter a temporary  
3 restraining order and/or preliminary injunction (1) suspending the operation and  
4 implementation of the SUP; (2) prohibiting the Town and its mayor, town council, and  
5 town manager, as well as all their departments, agencies, offices, and instrumentalities  
6 under their authority or control, from issuing or approving any certificates, licenses or  
7 permits of any kind pursuant to the SUP pending a final judgment in this action; and/or (3)  
8 providing that any development or improvements of the affected property, and any  
9 investments, contractual obligations or expenses made or incurred by Copperstate in  
10 reliance on the SUP may be undertaken only on an at-risk basis pending a final judgment  
11 in this action.

12 DATED this <sup>15th</sup> 15th day of July, 2016.

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