

When Recorded Return To:  
Town of Prescott Valley  
7501 East Civic Circle  
Prescott Valley, AZ 86314



FDP13-004

**AGREEMENT  
TO WAIVE CLAIM FOR DIMINUTION IN VALUE  
REGARDING ACTION  
PROPOSED BY TOWN OR REQUESTED BY PROPERTY OWNER**

*This Waiver is related to Proposition 207 (Article 2.1 to Chapter 8, Title 12 of the Arizona Revised Statutes) dealing with eminent domain and regulatory takings. The Waiver is as an agreement between the Town and the owners in conjunction with the land use law actions requested by the property owners. Each owner of a fee interest in the subject property is asked to sign the waiver agreement and have the signatures properly notarized. Extra sheets for the Owners signature can be made for multiple owners involved in an application. A legal description should be attached by the applicant. The Town will complete the application number when the application is processed and attach a copy of the completed application.*

This Agreement to Waive Claim for Diminution in Value Regarding Action Proposed by Town or Requested by Property Owner ("Agreement") made as of this 27 day of FEBRUARY, 2013 by and between the Town of Prescott Valley, a municipal corporation of Arizona ("Town") and PRESCOTT VALLEY SHOPPING CENTER LIMITED PARTNERSHIP

("Owner(s)");

WITNESSETH:

WHEREAS, on December 4, 2006, the Governor of Arizona signed into law the Private Property Rights Protection Act (Proposition 207) approved by the voters on November 7, 2006; and

WHEREAS, Proposition 207 added a new Article 2.1 to Chapter 8, Title 12 of the Arizona Revised Statutes (comprising §§12-1131 through 12-1138) dealing with eminent domain and regulatory takings; and

WHEREAS, ARS §12-1134 permits an owner of private real property to seek just compensation from the state or a political subdivision thereof that enacts or applies a land use law which (subject to certain exceptions) reduces existing rights to use, divide, sell or possess said property and thereby reduces the fair market value of the property; and

WHEREAS, "land use law" includes any statute, rule, ordinance, resolution, or law enacted by the state or political subdivision that regulates the use or division of land or any interest in land; and

WHEREAS, ARS §12-1134(I) recognizes that the state or political subdivisions may reach agreements with private property owners to waive claims for diminution in value resulting from land use law actions proposed by the state or political subdivision or requested by the property owners; and

WHEREAS, Arizona courts have recognized the inherent authority of municipal corporations to enter into agreements within the scope of their legislative powers, the same as individuals and other corporations, in matters that appertain to said municipal corporations [see, *Town of Tempe v. Corbell*, 17 Ariz. 1 (1915)]; and

WHEREAS, the Town (through its Common Council) has, on the date first-above written, duly considered and approved this Agreement with the Owner(s) to waive any claims said Owner(s) may have for diminution in value that may result, now or in the future, from the land use law action(s) proposed by the Town or requested by the Owner(s) as more fully set forth herein;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein (and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

SECTION ONE. This Agreement applies to that private real property described in Exhibit "A" attached hereto and expressly made a part hereof ("Property").

SECTION TWO. The land use law action(s) proposed by the Town or requested by the Owner(s) to which this Agreement applies have been designated as follows by the Town's Community Development Department:

TV SHOPPING CENTER - GOODWILL FDP13-004  
and are based on certain application(s), copies of which ("Application(s)) are shown as Exhibit "B" attached hereto and expressly made a part hereof ("Action(s)").

SECTION THREE. By signing this Agreement, the Owner(s) expressly agree(s) and acknowledge(s) that the Owner(s) hereby waive(s) any right to claim diminution in value or claim just compensation for diminution in value of the Property under ARS §12-1134, now or in the future, in relation to the Action(s). This includes (but is expressly not limited to) agreement and consent by the Owner(s) to all conditions that may ultimately be imposed as part of the Action(s).

SECTION FOUR. It is expressly understood by the parties that this Agreement does not add to, detract from, or otherwise modify any discretion, right, power, authority, obligation, or duty of the Town under applicable law with respect to any legislative, administrative, or quasi-judicial action(s).

SECTION FIVE. This Agreement (including any exhibits attached hereto and any addendum) constitutes the entire understanding and agreement of the Owner(s) and the Town and shall supersede all prior agreements or understandings between the Owner(s) and Town regarding the Property. This Agreement may not be modified or amended except by written agreement of the Owner(s) and the Town.

SECTION SIX. This Agreement is made and entered into in Yavapai County, Arizona, and will be construed and interpreted under the laws of the State of Arizona.

SECTION SEVEN. The parties agree that this Agreement may be filed in the Official Records of the County Recorder's Office, Yavapai County, Arizona.

SECTION EIGHT. This Agreement runs with the land and is binding upon all present and future owners of the Property.

SECTION NINE. This Agreement is subject to the cancellation provisions of ARS §38-511.

SECTION TEN. The Owner(s) warrant(s) and represent(s) that the Owner(s) is/are the owner(s) of fee title to the Property, and that no other person(s) has/have any ownership interest(s) in the Property. The person(s) who sign(s) on behalf of the Owner(s) personally warrant(s) and guarantee(s) to the Town that he/she/they have the legal authority to bind the Owner(s) to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representatives the day and year first-above written.

TOWN OF PRESCOTT VALLEY, a  
municipal corporation of Arizona,  
(Town)

\_\_\_\_\_  
Harvey C. Skoog, Mayor

ATTEST:

\_\_\_\_\_  
Diane Russell, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ivan Legler, Town Attorney

STATE OF ARIZONA     )  
  ) ss:  
County of Yavapai     )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by Harvey C. Skoog, Mayor of the Town of Prescott Valley, a municipal corporation of Arizona, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Signature

My Commission Expires:  
\_\_\_\_\_



**EXHIBIT "A"**

**PROPERTY**

## PROPOSED PARCEL DESCRIPTIONS

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWN OF PRESCOTT VALLEY, COUNTY OF YAVAPAI, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 (APN 103-02-731L - NORTH PORTION)

BEGINNING AT THE SOUTHWEST CORNER OF THAT PARCEL DESCRIBED IN BOOK 4389, PAGE 189, AND IS ALSO PARCEL 1A AS DETAILED IN BOOK 176 OF LAND SURVEYS, PAGE 69, BOTH OF YAVAPAI COUNTY OFFICIAL RECORDS, SAID POINT MARKED BY A NAIL AND WASHER ON THE PAVEMENT OF AN ACCESS DRIVEWAY WITHIN THE ORIGINAL PARCEL ONE OF THE TOWN AND COUNTRY SHOPPING CENTER, MARKED RLS 23947, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG THE APPROXIMATE CENTER OF SAID ACCESS DRIVEWAY, S.84°22'25"E., A DISTANCE OF 141.67 FEET TO A NAIL AND WASHER IN THE PAVEMENT MARKED RLS 23947, SAID POINT BEING THE SOUTHEAST CORNER OF THAT PARCEL DESCRIBED IN BOOK 4389, PAGE 189, YAVAPAI COUNTY OFFICIAL RECORDS AND IS ALSO THE SOUTHWEST CORNER OF THAT PARCEL DESCRIBED IN BOOK 4389, PAGE 901, YAVAPAI COUNTY OFFICIAL RECORDS;

THENCE CONTINUE ALONG SAID APPROXIMATE CENTERLINE AND THE SOUTH LINE OF SAID PARCEL, S.84°20'47"E., A DISTANCE OF 59.11 FEET TO A NAIL AND WASHER IN THE PAVEMENT MARKED RLS 23947;

THENCE CONTINUE ALONG SAID SOUTH PARCEL LINE, N.64°42'15"E., A DISTANCE OF 93.70 FEET TO A NAIL AND WASHER IN THE PAVEMENT MARKED RLS 23947;

THENCE ALONG THE EAST LINE OF SAID PARCEL N.00°04'58"E., A DISTANCE OF 88.33 FEET;

THENCE EASTERLY ALONG AN ANGLE POINT IN THE EAST LINE OF SAID PARCEL, S.88°34'47"E., A DISTANCE OF 6.99 FEET TO A POINT ON THE WEST LINE OF THAT PARCEL DESCRIBED IN BOOK 3252, PAGE 119, YAVAPAI COUNTY OFFICIAL RECORDS;

THENCE ALONG SAID WEST LINE, S.00°27'54"W., A DISTANCE OF 65.77 FEET;

THENCE CONTINUE ALONG SAID WEST LINE, S.04°34'39"W., A DISTANCE OF 83.57 FEET TO A POINT OF INTERSECTION WITH THAT PARCEL DESCRIBED IN BOOK 4650, PAGE 704, YAVAPAI COUNTY OFFICIAL RECORDS;

THENCE ALONG SAID PARCEL, N.84°11'28"W., A DISTANCE OF 2.82 FEET;

THENCE CONTINUE ALONG SAID PARCEL, S.06°12'27"W., A DISTANCE OF 90.00 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES N.82°53'17"W., A RADIAL DISTANCE OF 25.54 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID PARCEL, THROUGH A CENTRAL ANGLE OF 82°54'59", A DISTANCE OF 36.96 FEET TO A POINT ON THE NORTH LINE OF A 30-FOOT WIDE ACCESS DRIVE EASEMENT WITHIN A PORTION OF THAT PARCEL DESCRIBED IN BOOK 3252, PAGE 119, YAVAPAI COUNTY OFFICIAL RECORDS;

THENCE ALONG SAID ACCESS DRIVE, N.86°05'48"W., A DISTANCE OF 394.13 FEET TO A POINT THAT LIES 2.0 FEET MORE OR LESS EASTERLY AND 22.2 FEET MORE OR LESS SOUTHERLY FROM THE K-MART BUILDING, SAID POINT MARKED BY A ½" REBAR AND TAG RLS 17564;

THENCE LEAVING SAID ACCESS DRIVE EASEMENT AND SAID PARCEL LINE, N.05°31'23"E., A DISTANCE OF 138.98 FEET TO A POINT LYING 1.8 FEET MORE OR LESS EASTERLY FROM THE K-MART BUILDING;

THENCE S.84°25'40"E., A DISTANCE OF 133.94 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 58,117.38 SQUARE FEET OR 1.33 ACRES, MORE OR LESS.

PARCEL 2 (APN 103-02-758B)

BEGINNING AT THE SOUTHWEST CORNER OF THAT PARCEL DESCRIBED IN BOOK 4389, PAGE 189, AND IS ALSO PARCEL 1A AS DETAILED IN BOOK 176 OF LAND SURVEYS, PAGE 69, BOTH OF YAVAPAI COUNTY OFFICIAL RECORDS, SAID POINT MARKED BY A NAIL AND WASHER ON THE PAVEMENT OF AN ACCESS DRIVEWAY WITHIN THE ORIGINAL PARCEL ONE OF THE TOWN AND COUNTRY SHOPPING CENTER. MARKED RLS 23947, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE N.84°25'40"W., A DISTANCE OF 133.94 FEET TO A POINT LYING 1.8 FEET MORE OR LESS EASTERLY FROM THE K-MART BUILDING;

THENCE N.05°31'23"E., A DISTANCE OF 235.92 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF FLORENTINE ROAD, A TOWN OF PRESCOTT VALLEY RIGHT OF WAY, THE SOUTH LINE OF WHICH IS 34 FEET SOUTH OF THE MONUMENTED CENTERLINE;

THENCE ALONG SAID RIGHT OF WAY, S.84°27'20"E., A DISTANCE OF 134.24 FEET TO A POINT IN THE APPROXIMATE CENTERLINE OF A PAVED ACCESS DRIVEWAY MARKED BY A NAIL AND WASHER IN THE PAVEMENT MARKED RLS 23947;

THENCE ALONG SAID APPROXIMATE CENTERLINE, S.05°35'49"W., A DISTANCE OF 235.98 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 31,638.53 SQUARE FEET OR 0.73 ACRES, MORE OR LESS.

**EXHIBIT "B"**  
**APPLICATION(S)**



Community Development Department  
 7501 E. Civic Circle  
 Prescott Valley AZ 86314  
 Phone (928) 759-3050  
 Fax (928) 772-7829  
 email: comdev@pvaz.net

PLANNING DIVISION - HEARING APPLICATION  COMMERCIAL  
 FINAL DEVELOPMENT PLAN (FDP)

FDP - PAD  Minor Modification  Major Modification

103-02-731 B  
 103 02731 L

Project Name: PRESOTT VALLEY SHOPPING CENTER  
GOODWILL & SHOPS Assessor's Parcel #: \_\_\_\_\_

Site Address: 7620 E. STATE ROUTE 69 Legal: Unit: \_\_\_\_\_ Lot: \_\_\_\_\_

<p><b>Applicant/Owner:</b>  <u>PRESOTT VALLEY SHOPPING CENTER LTD. PARTNERSHIP</u></p> <p><b>Mailing Address:</b>  <u>3001 MAIN STREET, SUITE 2B</u>  <u>PRESOTT VALLEY, AZ. 86314</u></p> <p><b>Phone:</b> <u>602-222-4266</u>  <b>Fax:</b> _____  <b>Email:</b> <u>SCOTT P@ARCHICOM.COM</u></p>	<p><i>For Staff Use Only</i></p> <p><b>Meeting Date:</b> <u>3 / 14 / 13</u></p> <p><b>Application No.:</b> <u>FDP13-004</u></p> <p><b>Township</b> <u>14</u> <b>Section</b> <u>14</u> <b>Range</b> <u>1W</u></p> <p><b>Date Received:</b> _____</p> <p><b>Zoning:</b> <u>C2</u></p> <p><b>Fees &amp; Charges:</b> <u>\$465.00</u></p> <p><b>Receipt #/Date:</b> _____</p> <p><b>Assigned To:</b> <u>Reth</u></p> <p><b>Taken By:</b> <u>Reth</u></p> <p><b>Subdivision:</b> _____</p> <p><b>Site Location/Address:</b> _____</p> <p><b>Total Acreage:</b> <u><del>284</del> 4.5</u></p> <p><b>Total Lots:</b> _____</p>
<p><b>Agent (If different than property owner. Agent letter must accompany submittal):</b>  <u>ARCHICOM ARCHITECTURE &amp; INTERIORS LLC</u>  <u>VINCE DALKE ARCHITECT</u></p> <p><b>Mailing Address:</b>  <u>5055 E. WASHINGTON ST. SUITE 200</u>  <u>PHOENIX, AZ. 85034</u></p> <p><b>Phone:</b> <u>602-222-4266</u>  <b>Fax:</b> _____  <b>Email:</b> <u>SCOTT P@ARCHICOM.COM</u></p>	

Name: Jeff Wasowicz Signature: [Signature] Date: 2/27/13