

When Recorded Return To:
Town of Prescott Valley
FOLDER



**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 30th day of September, 2010, by and between the Town of Prescott Valley, a municipal corporation of Arizona ("Town") and View Point/Prescott Valley LP, an Arizona limited partnership ("Owner");

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:

FDP10-008

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:

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

VIEW POINT/PRESCOTT VALLEY LP, (Owner)
an Arizona limited partnership

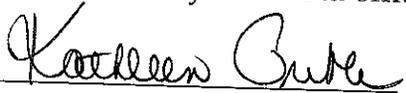
By: WESCAP Investments, Inc.
Its: General Partner

By: 
William E. Spreitzer
Its: President

STATE OF ARIZONA)
) ss:
County of Maricopa)

This foregoing instrument was acknowledged before me this 30th day of September, 2010, by William E. Spreitzer, the President of WESCAP Investments, Inc., an Arizona corporation, the general partner of VIEW POINT/PRESCOTT VALLEY LP, an Arizona limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Signature

My Commission Expires:
June 27, 2011

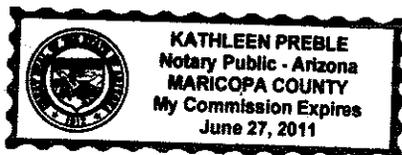


EXHIBIT "A"
PROPERTY

PARCEL 1:

All that portion of the North half of Section 14, Township 14 North, Range 1 West of the Gila and Salt River Meridian, Town of Prescott Valley, Yavapai County, Arizona, being more particularly described as follows:

BEGINNING at the Southwest corner of that parcel described in Book 4112 of Deeds, page 869, Yavapai County Official Records, said point being marked by a 1/2" rebar and Tag RLS 17564, said point being the **TRUE POINT OF BEGINNING**;

THENCE along the South line of said Parcel, South 89°56'36" East, a distance of 149.12 feet to the Northwest corner of that Parcel described in Book 4640 of Official Records, page 686, Yavapai County Official Records;

THENCE along the North line of that Parcel described in Book 4640 of Official Records, page 686, North 89°56'13" East, a distance of 45.00 feet to the Northeast corner thereof;

THENCE leaving said North line and along the East line of said Parcel, South 00°04'17" West, a distance of 322.42 feet to the Southeast corner of said Parcel, said point being the point of curve of a non-tangent curve to the left, of which the radius point lies South 05°11'14" East, a radial distance of 1,441.01 feet;

THENCE Westerly along the arc of the South line of said Parcel, through a central angle of 01°47'59", a distance of 45.26 feet to the Southwest corner thereof;

THENCE along the South line of the Subject Parcel, South 89°56'10" West, a distance of 251.18 feet;

THENCE continue along said South line, South 60°38'17" West, a distance of 48.23 feet to the Southwest corner of the subject parcel;

THENCE leaving said South line, North, a distance of 302.24 feet to the South line of that parcel described in Book 4474 of Official Records, page 797, records of Yavapai County, Arizona;

THENCE along said South line, South 89°59'56" East, a distance of 144.52 feet;

THENCE North 00°03'23" East, a distance of 49.00 feet to the **TRUE POINT OF BEGINNING**.

EXCEPT Oil, Gas, other Hydrocarbon substances, Helium or other substances of a Gaseous Nature, Coal, Metals, Minerals, Fossils, Fertilizers of every name and description, together with all Uranium, Thorium or any other material which is or may be determined by the laws of the United States, or of this State or decisions of court, to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, and the exclusive thereto, on, in or under the above described lands.

Parcel No. 2:

An easement for Drive Areas, Utility Facility and Water and Sewer Facility as recorded in Reciprocal Access and Utilities Easement recorded in Book 4710 of Official Records, page 188, records of Yavapai County, Arizona.



Exhibit "B"

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
FINAL DEVELOPMENT PLAN (FDP)

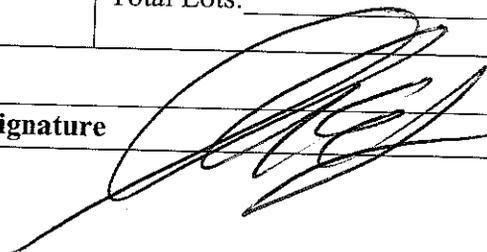
COMMERCIAL

FDP - PAD Minor Modification Major Modification 103-02-778H

Project Name: View Point Senior Comm. Assessor's Parcel #: 103-02-778J

Site Address: View Point II Senior Comm Legal: Unit: Sec Level Lot: _____

Applicant/Owner:		For Staff Use Only	
<u>Fergis & Harding Inc.</u>		Meeting Date:	<u>10 / 14 / 10</u>
Mailing Address: <u>7227 N 16th St. # 212</u> <u>Ph: A2</u> <u>85020</u>		Application No.:	<u>FDPI0-008</u>
Phone: <u>602-279-1693</u> Fax: <u>602-264-2383</u> Email: <u>1cHarding@FergisHarding.com</u>		Township	<u>T. 14 N</u> Section <u>14</u> Range <u>R. 1 W.</u>
Agent (If different than property owner. Agent letter must accompany submittal): <u>SAME AS APPLICANT</u>		Date Received:	<u>9/30/10</u>
Mailing Address:		Zoning:	<u>R2-2</u>
Phone:		Fees & Charges:	<u>\$ 375 + (\$ 20 x 5) = 475</u>
Fax:		Receipt #/Date:	<u>9/30/10</u>
Email:		Assigned To:	<u>JS</u>
		Taken By:	<u>JS</u>
		Subdivision:	_____
		Site Location/Address:	_____
		Total Acreage:	_____
		Total Lots:	_____

Name Chris E Fergis Signature  Date 9/30/10