FD P12-003

When Recorded Return To:
Town of Prescott Valley
FOLDER

PRESCOTT VALLEY

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 28th day of August, 2012, by and between the Town of Prescott Valley, a municipal corporation of Arizona ("Town") and View Point II/Prescott Valley LP, an Arizona 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:

FDP12-003

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.

OWNER:
VIEW POINT II/PRESCOTT VALLEY LP,
an Arizona limited partnership

By: WESCAP Investments, Inc.
Its: General Partner

By: _____
William E. Spreitzer
Its: President

STATE OF ARIZONA)
) ss:
County of ~~Yavapai~~ Maricopa)

On this 28th day of August, 2012 William E. Spreitzer, personally appeared before me,

X who is personally known to me,

_____ whose identity I verified on the basis of _____

_____ whose identity I verified on the oath/affirmation of _____ a credible witness,

to be the signer of the foregoing document, and he/she acknowledged that he/she signed it.

Kathleen Preble
Notary Signature

Kathleen Preble
Notary Public - Arizona
Maricopa County
My Commission Expires
June 27, 2015

My Commission Expires:
June 27, 2015

EXHIBIT "A"

PROPERTY

EXHIBIT "B"

APPLICATION(S)