

**AGREEMENT FOR THE WAIVER OF CLAIMS
FOR DIMINUTION IN VALUE OF PROPERTY**

THIS AGREEMENT FOR THE WAIVER OF CLAIMS FOR DIMINUTION IN VALUE OF PROPERTY (the "Agreement") is made in favor of the City of Scottsdale ("City") by 94th AND SHEA, L.L.C., an Arizona limited liability company ("Owner").

RECITALS

A. Owner is the fee title owner of the property (the "Property") described in Exhibit "A" to this Agreement.

B. Owner acknowledges that he/she has made an application to the City to amend the existing circulation stipulations for case 11-ZN-2002 (the "Owner's Request").

C. Arizona statute ARS § 12-1134.A provides that a city must pay just compensation to a landowner, in some cases, if the city approves a future land use law that reduces the fair market value of the owner's property. This law is sometimes referred to as "Proposition 207" or the "Private Property Rights Protection Act". (ARS 12-1131, et seq.)

D. The Private Property Rights Protection Act (e.g., A.R.S. § 12-1134.I) recognizes that private property owners can enter into agreements with political subdivisions to waive any claim for diminution in value of their property in connection with any action requested by the property owner.

E. City and Owner seek to avoid any potential argument that the City's approval of the Owner's Request constitutes a "diminution in value" of the Property or other harm entitling Owner, now or in the future, to seek compensation from the City under the Private Property Rights Protection Act.

IT IS AGREED AS FOLLOWS:

Owner hereby makes certain acknowledgements and representations (collectively, the "Assurances") in favor of the City as follows:

1. Owner acknowledges that:
 - a. Owner is aware of the Private Property Rights Protection Act. (ARS 12-1131, et seq.)
 - b. Owner is aware that, as a condition of receiving approvals under the City's land use laws, the City may impose various requirements upon the Property, such as requirements for right-of-way dedications, time limitations for development, and other requirements (collectively, the "Requirements"). The Requirements are part of the City's process, under the City's land use laws, that will govern development of the Property.

- c. Owner has independently determined and believes that the application of the City's land use laws to the Property as part of the City's approval of the Owner's Request will not reduce the fair market value of the Property.
2. The undersigned Owner agrees as follows:
 - a. Owner hereby waives and fully releases any and all financial loss, injury, claims and causes of action that Owner may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Private Property Rights Protection Act in connection with the City's approval of the Owner's Request. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Private Property Rights Protection Act as it exists or may be enacted in the near future or that may be amended from time to time.
 - b. Owner hereby agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including reasonable attorney's fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking any potential compensation, damages, attorney's fees or costs under the Private Property Rights Protection Act that they may have, as a result of the City's approval of the Owner's Request, upon the Property now or in the future,
 - c. This Waiver Agreement shall run with the land and shall be binding upon all present and future owners of any interest in the Property.
3. Owner warrants and represents that Owner is the owner of the fee title to the Property.
4. The person who signs this Agreement on behalf of Owner personally warrants and guarantees to City that he has legal power to bind Owner to this Agreement.

Owner: *[Signature]*

ITS MEMBER

STATE OF ARIZONA)
) ss.
 County of Maricopa)

Subscribed, sworn to and acknowledged before me by JOAN W. ROSSO
 on this 16th day of January, 2007.

[Signature]
 Notary Public

My commission expires:

5/24/10

