

207 Waiver

Title

Legal Description

Policy or Appeals

Correspondence Between Legal & Staff

Letter of Authorization

WHEN RECORDED RETURN TO:

City of Scottsdale Case No.24-ZN-2016

CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS

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7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

**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 DAVE GILBERT. a _____ ("Owner").

RECITALS

A. Owner is the fee title owner of property, Parcel No. 215-55-025 located at 15000 N. Hayden Road (the "Property").

B. Owner acknowledges that he/she has made a request to the City for application of its land use laws for the development of the Property and is under no compulsion, economic or otherwise, to enter into this Agreement.

C. Arizona statute ARS § 12-1134.A provides that a city must pay just compensation to a land owner, in some cases, if the city approves a 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) authorizes private property owners to 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 resolve whether the application of the City's land use laws to the Property constitute 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 the following acknowledgements and representations:

1. Owner acknowledges that:

a. The recitals set forth above are true and correct and are incorporated herein by this reference.

b. Owner is aware of the Private Property Rights Protection Act. (ARS 12-1131, et. seq.)

c. Owner has independently determined and believes that the application of the City's land use laws to the Property will not reduce the fair market value of the Property.

d. 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 zoning ordinance stipulations and conditions.

2. The undersigned Owner agrees as follows:

a. The Owner agrees that the stipulations and conditions set forth in Case No. 24-ZN-2016 shall be included as part of the ordinance that will be considered by the Scottsdale City Council. Owner agrees that compliance with the stipulations and conditions set forth in Case No. 24-ZN-2016 will govern development of the property. Owner further understands and agrees that stipulations and conditions may be added or modified during the public hearing process and that those stipulations and conditions will be incorporated into this Agreement.

b. 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 based on the Owner's request in Case No. 24-ZN-2016. This waiver constitutes a complete release of any and all claims and causes of action under the Private Property Rights Protection Act that may arise out of the Owner's request in Case No. 24-ZN-2016.

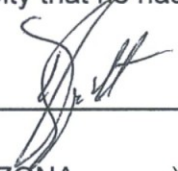
c. Owner hereby agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including reasonable attorney's fees and litigation costs asserted by or resulting from any of the present owners of any interest in the Property seeking any potential compensation, damages, attorney's fees or costs under the Private Property Rights Protection Act that they may have based on the Owner's request in Case No. 24-ZN-2016.

d. This Waiver Agreement shall run with the land and shall be binding upon all present and future owners of any interest in the Property. Owner consents to the recording of this Agreement with the County Recorder in which the Property is located.

e. The Owner agrees that, as of the effective date of this Agreement, he/she has received equal protection of the laws and due process of all claims and requests, and has not suffered any compensable regulatory taking (as those terms and their related claims are defined by Arizona state and federal constitutional jurisprudence).

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.

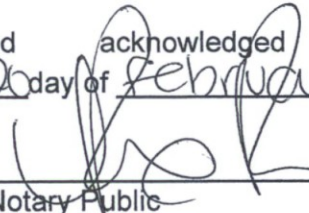
Owner:  Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed, sworn to and acknowledged before me
by David N. Gilbert on this 20 day of February, 2017

My commission expires:

Permanent


Notary Public

Roxana Roohani
Notary Public
#115 - 1433 Lonsdale Ave
North Vancouver, BC V7M 2H9
E-mail: roxana@roohaninotary.com

No Advice Sought or Given.
Attested but Not Drawn by
Roxana Roohani, Notary Public



Chicago Title Insurance Company

Title No.: **AZ-FWPY-IMP-N/A-1-16-C1608935**

CONDITION OF TITLE REPORT
Chicago Title Insurance Company, a Nebraska corporation,
herein called the Company,

SUBJECT TO THE TERMS, LIMITATIONS AND CONDITIONS OF THE APPLICATION FOR THIS CONDITION OF TITLE REPORT, WHICH APPLICATION, OR COPY THEREOF, IS ATTACHED HERETO AND MADE A PART HEREOF

REPORTS

To the party named in Schedule A, that as disclosed by the Title Instruments, the ownership of and the defects liens and encumbrances against the Interest in the Land are as shown in Schedule B.

Any claim or other notice to the Company shall be in writing and shall be addressed to the Company at the issuing office or to:

*Chicago Title Insurance Company Claims Center
PO Box 45023
Jacksonville, Florida, 32232-5023
Attn: Claims Administration*

THIS REPORT IS NOT VALID AND THE COMPANY SHALL HAVE NO LIABILITY HEREUNDER UNLESS THE APPLICATION REFERRED TO ABOVE, OR COPY THEREOF, IS ATTACHED HERETO.

Countersigned:

Natalie Bombardieri

By: _____
Authorized Signature



By

Randy Quirk

Randy Quirk, President

Attest

Michael Gravelle

Michael Gravelle, Secretary

24-ZN-2016
10/21/16

CONDITION OF TITLE REPORT

SCHEDULE A

Date of Report: **September 26, 2016 at 07:30 AM**

1. Name of Party:

DPMG Hayden LLLP

2. The Interest referred to in the Application is:

A FEE

3. The Land referred to in the Application is described as follows:

See Exhibit A attached hereto and made a part hereof.

Issuing agent for Chicago Title Insurance Company

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

Lot 3, SCOTTSDALE INDUSTRIAL AIRPARK NO. 7, according to Book 234 of Maps, page 27, records of Maricopa County, Arizona.

APN: 215-55-025

CONDITION OF TITLE REPORT

SCHEDULE B

Chicago Title Insurance Company reports that Title Instruments, on the date hereof, disclose:

1. Ownership of the Interest is in the name of:

DPMG Hayden, LLLP. an Arizona limited liability limited partnership
2. The following defects, liens and encumbrances (which are not necessarily shown in their order of priority) against the Interest:
 1. Property taxes, which are a lien now due and payable, including any assessments collected with taxes to be levied for the year 2016.
 2. Reservations contained in the Patent

From: The United States of America
Recording Date: November 8, 1913
Recording No: Book 106 of Deeds, page 554

Which among other things recites as follows:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by local customs, laws and decisions of courts and there is reserved a right of way thereon for ditches or canals constructed by the authority of the United States of America.
 3. Water rights, claims or title to water, whether or not disclosed by the public records.
 4. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: Utilities
Recording Date: 07/23/1981
Recording No: Docket 15400, page 574

Thereafter, Partial Release of said easement recorded August 19, 1988 in Recording No. 1988-412803.
 5. Easements, covenants, conditions and restrictions as set forth on the plat recorded in Book 234 of Maps, page 27 and Affidavit of Street Name Correction recorded in Recording No. 2010-540731.
 6. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: Communication and other facilities
Recording Date: 05/25/1982
Recording No: Docket 16046, page 72
 7. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: Drainage and flood control
Recording Date: 08/09/1985
Recording No: 1985-374189

SCHEDULE B
(Continued)

8. Covenants, conditions, restrictions and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording No: 1986-634383
Re-recording No: 1987-027270

Liens and charges as set forth in the above mentioned declaration

9. Easement(s) for the purpose(s) shown below and rights incidental thereto as set forth in a document:

Purpose: Utilities
Recording Date: 07/12/1993
Recording No: 1993-451169

10. Matters contained in that certain document

Entitled: Cross Easement Agreement
Recording Date: 09/08/1994
Recording No: 1994-666848

Reference is hereby made to said document for full particulars.

11. Matters contained in that certain document

Entitled: Easement Agreement
Recording Date: 10/29/1999
Recording No: 1999-1002906

Reference is hereby made to said document for full particulars.

12. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$1,820,000.00
Dated: 03/17/2016
Trustor/Grantor DPMG Hayden, LLLP, an Arizona limited liability limited partnership
Trustee: Chicago Title Agency, Inc., an Arizona corporation
Beneficiary: Firstbank
Recording Date: 03/21/2016
Recording No: 2016-181788

Tax Note:

Year: 2016
Tax Parcel No: 215-55-025
Total Tax: \$36,855.98
First Installment Amount: \$18,427.99
Second Installment Amount: \$18,427.99

SCHEDULE B
(Continued)

3. The following matters are disclosed by name only and the Company, without additional information, is unable to determine whether any or all of these matters are defects, liens or encumbrances against the Interest:
 13. No matters showing of record.

**Owner Certification
Acknowledging Receipt
Of
Notice Of Right To Appeal
Exactions And Dedications**

I hereby certify that I am the owner of property located at:

15000 N. Hayden Rd.

(address where development approval, building permits, or city required improvements and dedications are being required)

and hereby certify that I have received a notice that explains my right to appeal all exactions and/or dedications required by the City of Scottsdale as part of my property development on the parcel listed in the above address.



Signature of Property Owner

09.27.16
Date

AFFIDAVIT OF AUTHORITY TO ACT FOR PROPERTY OWNER

1. This affidavit concerns the following parcel of land:

- a. Street Address: 15000 N. Hayden Rd
- b. County Tax Assessor's Parcel Number 215-55-025
- c. General Location Hayden & Raintree
- d. Parcel Size: 1.671-ac.
- e. Legal Description: See Title

(If the land is a platted lot, then write the lot number, subdivision, name, and the plat's recording number and date. Otherwise, write "see attached legal description" and attach a legal description.)

2. I am the owner of the land or I am the duly and lawfully appointed agent of the owner of the land and have authority from the owner to sign this affidavit on the owner's behalf. If the land has more than one owner, then I am the agent for all of the owners, and the word "owner" in this affidavit refers to all of them.

3. I have authority from the owner to act for the owner before the City of Scottsdale with regard to any and all reviews, zoning map amendments, general plan amendments, development variances, abandonments, plats, lot splits, lot ties, use permits, building permits and other land use regulatory or related matters of every description involving the land, or involving adjacent or nearby lands in which the owner has (or may acquire) an interest and all applications, dedications, payments, assurances, decisions, agreements, legal documents, commitments, waivers and other matters relating to any of them.

4. The City of Scottsdale is authorized to rely on my authority as described in this affidavit until three work days after the day the owner delivers to the general manager of the Scottsdale Planning and Development Services Department a written statement revoking my authority.


5. I will immediately deliver to the general manager of the City of Scottsdale Planning and Development Services Department written notice of any change in the ownership of the land or in my authority to act for the owner.

6. If more than one person signs this affidavit, each of them, acting alone, shall have the authority described in this affidavit, and each of them warrant to the City of Scottsdale the authority of the others.

7. Under penalty of perjury, I warrant and represent to the City of Scottsdale that this affidavit is true and complete. I understand that any error or incomplete information in this affidavit or any applications may invalidate approvals or other actions taken by the City of Scottsdale, may otherwise delay or prevent development of the land and may expose me or the owner to other liability. I understand that people who have not signed this form may be prohibited from speaking for the owner at public meetings or in other city processes.

Name (printed)
JENNIFER ROBERTS

Date
9-27, 2016
_____, 20____
_____, 20____
_____, 20____

Signature


APPEALS OF DEDICATIONS, EXACTIONS, OR ZONING REGULATIONS

POLICY OF THE CITY OF SCOTTSDALE ON APPEALS OF DEDICATIONS, EXACTIONS, OR ZONING REGULATIONS

RIGHTS OF PROPERTY OWNER

In addition to other rights granted to you by the U.S. and Arizona Constitution, federal and state law and city ordinances or regulations, you are hereby notified of your right to appeal the following City actions relating to your property:

- 1) Any dedication or exaction which is required of you by an administrative agency or official of the city as a condition of granting approval of your request to use, improve or develop your real property. This appeal right does not apply to a dedication or exaction required as part of a city legislative act (for example a zoning ordinance) where an administrative agency or official has no discretion to determine the dedication or exaction.
- 2) The adoption or amendment of a zoning regulation that creates a taking of property in violation of Arizona and federal court decisions.

APPEAL PROCEDURE

The appeal must be in writing and specify the City action appealed and the date final action was taken, and it must be filed with or mailed to the hearing officer designated by the city within 30 days after the final action is taken. Address the appeal as follows:

Hearing Officer, C/O City Clerk
3939 Drinkwater Blvd.
Scottsdale, AZ 85251

- ❖ No fee will be charged for filing
- ❖ The City Attorney's Office will review the appeal for compliance with the above requirements, and will notify you if your appeal does not comply.
- ❖ Eligible appeals will be forwarded to the hearing officer, and a hearing will be scheduled within 30 days of receipt by the hearing officer of your request. Ten days notice will be given to you of the date, time and place of the hearing unless you indicate that less notice is acceptable to you.
- ❖ The city will submit a takings impact report to the hearing officer.
- ❖ In an appeal from a dedication or exaction, the City will bear the burden of proving that the dedication or exaction to be imposed on your property bears an essential nexus between the requirement and a legitimate governmental interest and that the proposed dedication or exaction is roughly proportional to the impact of the use, improvement or development you proposed.
- ❖ In an appeal from the adoption or amendment of a zoning regulation, the City will bear the burden of proving that any dedication or exaction requirement in the zoning regulation is roughly proportional to the impact of the proposed use, improvement, or development, and that the zoning regulation does not create a taking of property in violation of Arizona and federal court cases.
- ❖ The hearing officer must render his decision within five working days after the appeal is heard.
- ❖ The hearing officer can modify or delete a dedication or exaction or, in the case of an appeal from a zoning regulation, transmit a recommendation to the City Council.
- ❖ If you are dissatisfied with the decision of the hearing officer, you may file a complaint for a trial de novo with the Superior Court within 30 days of the hearing officer's decision.

If you have questions about this appeal process, you may contact:

City Attorney's Office
3939 Drinkwater Blvd.
Scottsdale, AZ 85251
(480) 312-2405

Please be aware that City staff cannot give you legal advice. You may wish, but are not required, to hire an attorney to represent you in an appeal.

September 26, 2016

Via Hand-Delivery, to:

City of Scottsdale
Planning & Development Services Department
7447 East Indian School Road, Suite 105
Scottsdale, Arizona 85251

Re: Letter of Authorization – NWC of Hayden & Raintree

To Whom It May Concern:

This letter authorizes the firms and companies of Berry Riddell LLC and LVA Design to represent and act on behalf of DPMG Hayden LLLP in connection with the Zoning and Development Review Board applications and related City matters for property located at 15000 N. Hayden Road (APN#215-55-025) the City of Scottsdale, Maricopa County, Arizona.

DPMG Hayden LLLP

By: _____



Its: _____

JENNIFER ROBERTS

24-ZN-2016
10/21/16