

207 Waiver
Title
Legal Description
Policy or Appeals
Correspondence Between Legal & Staff
Letter of Authorization

Legal

WHEN RECORDED RETURN TO:

CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
(_____)

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

City of Scottsdale Case No. _____

23-2N-2016

**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 KB ON 5TH LLC a Limited Liability Corporation ("Owner").

RECITALS

A. Owner is the fee title owner of property, Parcel No(s). 173-48-040 located at 6922 East 5th Avenue (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.23-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.23-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.23-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.23-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.23-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.

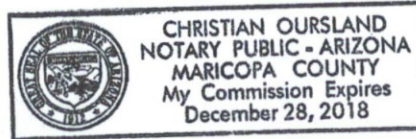
Owner: *[Signature]* Its: MANAGED

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed, sworn to and acknowledged before me
by Christian Oursland on this 23 day of December, 2016.

My commission expires:
12/28/2018

[Signature]
Notary Public





Affidavit of Authority to Act as the Property Owner


1. This affidavit concerns the following parcel of land:

- a. Street Address: 6922 E. 5th Ave., Scottsdale, AZ 85251
- b. County Tax Assessor's Parcel Number: 173-48-046
- c. General Location: Indian School & Goldwater
- d. Parcel Size: 1,995 s.f.
- e. Legal Description: VALLEY PLAZA LOT #16 PLAT 72-28 06.03.57
(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 Director of the Scottsdale Planning & Development Services Department a written statement revoking my authority.
- 5. I will immediately deliver to the Director of the City of Scottsdale Planning & 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 and 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)
BRUCE D. RASKIN
KB ON 5th LLC
MANAGER

Date
8-31, 2016
 _____, 20____
 _____, 20____
 _____, 20____

Signature


Planning and Development Services

7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 ♦ Phone: 480-312-7000 ♦ Fax: 480-312-7088



Owner Authorization Letter

August 23, 2016

RE: 6922 Mixed Use Rezoning
Pre-Application #613-PA-2016
6922 East 5th Avenue
Scottsdale, AZ 85251

To Whom It May Concern,

As the owner of the property located at 6922 East 5th Avenue, I give Starkjames, llc authorization to act as Owner's Agent on the Zoning District Map Amendment application for the above-mentioned project.



Bruce Raskin

6922 East 5th Avenue
Scottsdale, AZ 85251

6925 EAST 5TH AVENUE 110
SCOTTSDALE, ARIZONA 85251
OFFICE 480.994.7340
FAX 480.994.7344
WWW.STARKJAMES.COM

23-ZN-2016
9/2/2016

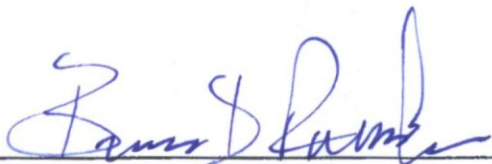
Owner Certification
Acknowledging Receipt
Of
Notice Of Right To Appeal
Exactions And Dedications

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

6922 5th AVE SCOTTSDALE AZ 85251

(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

8/31/16

Date



First American Title

Commitment for Title Insurance

ISSUED BY

First Arizona Title Agency

Commitment

FIRST AMERICAN TITLE INSURANCE COMPANY, ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 180 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

In Witness Whereof, First American Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

Issued by:



**FIRST ARIZONA
TITLE AGENCY**

6263 North Scottsdale Road, Suite 190
Scottsdale, AZ 85250

(This Commitment is valid only when Schedules A and B are attached)

Copyright 2006-2009 American Land Title Association. All rights reserved. The use of this form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org>>.*



First American Title

Commitment for Title Insurance

ISSUED BY

First Arizona Title Agency

Schedule A

File No.: 11-161567

1. Effective Date: August 9, 2016

2. Policy or Policies to be issued:

AMOUNT

- a. ALTA Standard Owner's Policy \$600,000.00
- ALTA Extended Owner's Policy
- ALTA Residential Plain Language Owner's Policy
- ALTA Homeowner's Policy of Title Insurance

Proposed Insured: RASKIN & ASSOCIATES, INC., a Washington corporation

- b. ALTA Standard Loan Policy \$0.00
- ALTA Extended Loan Policy
- ALTA Short Form Residential Loan Policy
- ALTA Residential Limited Coverage Jr. Loan Policy

Proposed Insured:

- c. \$

Proposed Insured:

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple
4. Title to the estate or interest in the land is at the Effective Date vested in: 6922 E. 5th Ave, LLC, an Arizona limited liability company
5. The land referred to in this Commitment is described as follows:
Legal Description: See Exhibit "A"

First Arizona Title Agency as Agent for First American Title Insurance Company
Title Examiner: Bonnie Wilson
Amended: 1st Amendment, August 12, 2016

Exhibit "A"

Real property in the City of **SCOTTSDALE**, County of **MARICOPA**, State of **Arizona**, described as follows:

LOT 16, VALLEY PLAZA, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 72 OF MAPS, PAGE 28.



First American Title

Commitment for Title Insurance

ISSUED BY

First Arizona Title Agency

Schedule BI

File No.: 11-161567

REQUIREMENTS

The following requirements must be satisfied:

1. Payment of the necessary consideration for the estate or interest to be insured.
2. Pay all premiums, fees and charges for the policy.
3. Documents creating the estate or interest to be insured, must be properly executed, delivered and recorded, as follows:
4. Payment of all taxes and/or assessments levied against the subject premises which are due and payable.

NOTE: Taxes are assessed in the total amount of \$4,153.96 for the year 2015 under Assessor's Parcel No. 173-48-040.

5. Furnish a fully executed copy of the Operating Agreement, and any amendments thereto, of 6922 E 5th Ave, LLC, a limited liability company.
6. Record full release and reconveyance of a Deed of Trust securing an original indebtedness in the amount of \$352,717.50 recorded June 25, 2014 as 2014-416685 of Official Records.

Dated: June 24, 2014

Trustor: 6922 E. 5TH AVE., LLC, an Arizona limited liability company

Trustee: MidFirst Bank

Beneficiary: MidFirst Bank

7. Assignment of Leases and Rents recorded June 25, 2014 as 2014-416686 of Official Records will be terminated upon release of the above requirement.
8. Record Deed from 6922 E 5th Ave, LLC, an Arizona limited liability company to Raskin & Associates, Inc., a Washington corporation.
9. All of 2015 taxes are paid in full.



First American Title

Commitment for Title Insurance

ISSUED BY

First Arizona Title Agency

Schedule BII

File No.: 11-161567

EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. **DELETED INTENTIONALLY**
2. Taxes for the full year of 2016.
(The first half is due October 1, 2016 and is delinquent November 1, 2016. The second half is due March 1, 2017 and is delinquent May 1, 2017.)
3. The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land.
4. All matters as set forth in Resolution No. 4698, City of Scottsdale Downtown Enhanced Municipal Services Improvement District No. 17901, recorded as 97-86152 and Resolution No. 6060, recorded in 2002-538464 of Official Records.

PRIVACY POLICY NOTICE

We are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information, particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from public records or from another person or entity. In compliance with Title V of the Gramm-Leach-Bliley Act, we are providing you with this document, which notifies you of the privacy policy and practices of First Arizona Title Agency.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, identity statements, forms, and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial services providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products and service to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Exhibit "A"

Real property in the City of **SCOTTSDALE**, County of **MARICOPA**, State of **Arizona**, described as follows:

LOT 16, VALLEY PLAZA, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 72 OF MAPS, PAGE 28.



Current Planning Services
Long Range Planning Services

NOTICE OF INSPECTION RIGHTS
A.R.S. § 9-833

You have the right to:

- Have the City staff member present a photo ID.
- Have the City staff member state the purpose for the planning inspection and legal authority to conduct it.
- Know the amount of inspection fees if applicable.
- An on-site representative may accompany the City staff member during the inspection except during confidential interviews and may:
 - Receive copies of any documents taken during the inspection.
 - Receive a split of any samples taken during the inspection.
 - Receive copies of any analysis of the samples taken when available.
- Be informed if statements are being recorded.
- Be given notice that any statements may be used in an inspection report.
- Be presented with a copy of your inspection rights.
- Be notified of the due process rights pertaining to an appeal

You are hereby notified and informed of the following:

- The inspection is conducted pursuant to the authority of A.R.S § 9-462.05. and/or Scottsdale Revised Code, Appendix B, Article I. Section 1.203.
- Any statements made by anyone interviewed during this inspection may be included in the inspection report.
- Information on appeal rights related to this inspection is found under Scottsdale Revised Code, Appendix B, Article I. Section 1.801.
- There is no inspection fee associated with this inspection.

I acknowledge I have been informed of my inspection rights. If I decline to sign this form, the inspector(s) may still proceed with the inspection.

If I have any questions, I may contact the City staff member, _____

at the following number _____

Signature: Bruce D. Baskin Date: 8-31-16

Printed Name: BRUCE D. BASKIN (MANAGER) KB ON 5TH LLC

Check box if signature refused

Copy of Bill of Rights left at: _____



Request for Site Visits and/or Inspections Development Application (Case Submittals)

This request concerns all property identified in the development application.

Pre-application No: 613 - PA - 2016

Project Name: 6922 MIXED USE

Project Address: 6922 E. 5th Ave., Scottsdale, AZ 85251

STATEMENT OF AUTHORITY:

1. I am the owner of the property, or I am the duly and lawfully appointed agent of the property and have the authority from the owner to sign this request on the owner's behalf. If the land has more than one owner, then I am the agent for all owners, and the word "owner" refer to them all.
2. I have the authority from the owner to act for the owner before the City of Scottsdale regarding any and all development application regulatory or related matter of every description involving all property identified in the development application.

STATEMENT OF REQUEST FOR SITE VISITS AND/OR INSPECTIONS

1. I hereby request that the City of Scottsdale's staff conduct site visits and/or inspections of the property identified in the development application in order to efficiently process the application.
2. I understand that even though I have requested the City of Scottsdale's staff conduct site visits and/or inspections, city staff may determine that a site visit and/or an inspection is not necessary, and may opt not to perform the site visit and/or an inspection.

Property owner/Property owners agent: KB ON 5TH LLC
BRUCE D RASKIN (MANAGER)

Print Name

Bruce D Raskin

Signature

City Use Only:

Submittal Date: _____ Case number: _____

Planning and Development Services

7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 ♦ Phone: 480-312-7000 ♦ Fax: 480-312-7088