

**WHEN RECORDED, MAIL TO:**

Flagstaff City Clerk  
Stacy Saltzburg  
211 W. Aspen Avenue  
Flagstaff, AZ 86001

Gammage & Burnham  
Attn: Cameron Artigue, Esq.  
40 North Central Avenue, 20th Floor  
Phoenix, Arizona 85004

**BINDING WAIVER OF ENFORCEMENT**

THIS BINDING WAIVER OF ENFORCEMENT (this “Waiver”) is made and entered into this \_\_\_ day of \_\_\_\_\_ 2021, by and between the City of Flagstaff, an Arizona municipal corporation (the “City”), and Northgate Holdings, LLC, an Arizona limited liability company (“Northgate”).

**RECITALS:**

- A. Northgate Holdings, LLC (“Northgate”) is the owner of six parcels of land located north of Ellery Avenue and South of Dupont Avenue on South San Francisco Street in Flagstaff, with Assessor Parcel numbers 103-15-023, 103-15,024, 103-15-025, 103-15-026, 103-15-002, and 103-15-003 (“Northgate Properties”).
- B. The Northgate Properties are zoned Community Commercial (CC) and also have the option to elect T4 Neighborhood 1 (T4N.1) transect zoning.
- C. On November 17, 2020, the Flagstaff City Council adopted a land use law, Ordinance 2020-28, which made various amendments to the Flagstaff Zoning Code.
- D. Northgate was the owner of the Northgate Properties on November 17, 2020.
- E. Arizona Revised Statutes §12-1134 (“Prop 207”) allows a property owner to seek just compensation when a city adopts a land use law that reduces the property owner’s existing rights to use, divide, sell, or possess private real property and such action reduces the fair market value of the property.
- F. On March 30, 2021, Northgate filed a claim for just compensation under Prop 207, asserting that some of the amendments to the Flagstaff Zoning Code adopted by Ordinance 2020-28 reduced its rights to use the Northgate Properties and thereby reduced the fair market value of the Northgate Properties.
- G. In response to a claim for just compensation under Prop 207, a city may reach an agreement

with the property owner on the demanded compensation, deny the demanded compensation and defend such denial in litigation, amend the use law, repeal the land use law, or issue to the property owner a binding waiver of enforcement of the land use law on the owner's specific parcels.

- H. The City and Northgate acknowledge and agree that the Northgate Properties shall not be subject to certain amendments adopted by Ordinance 2020-28 and that a binding waiver of enforcement will be executed by the City to that effect.

NOW, THEREFORE, for and in consideration of the premises above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Northgate state, confirm, and agree as follows:

- 1) Incorporation of Recitals. The recitals stated above are true and correct and are incorporated herein.
- 2) Binding Waiver of Enforcement. The City and Northgate agree and declare that the amendments to the Flagstaff Zoning Code adopted by Ordinance 2020-28 shall not be enforced nor applicable to the entirety, or any portion of the Northgate Properties, and as result, are not triggered by the Ordinance.
- 3) Recordation. This Waiver shall be adopted by Resolution of the Flagstaff City Council and recorded in its entirety in the Official Records of Coconino County, Arizona, not later than ten (10) days after this Waiver takes effect in recordable form by each of the City of Flagstaff and Northgate.
- 4) Covenants Running with Land; Inurement. The covenants, conditions, terms, and provisions of this Waiver relating to use of the Northgate Properties shall run with the properties and shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such properties.
- 5) Governing Law. This Waiver, and all rights and obligations created hereby, shall be determined and governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, the Parties have executed this Waiver to be effective 30 days after the date and time a resolution approving and adopting this Waiver is approved by the Flagstaff City Council.

City of Flagstaff

Owner:

\_\_\_\_\_

Mayor

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest:

\_\_\_\_\_

City Clerk

\_\_\_\_\_

City Attorney