

**WHEN RECORDED, MAIL TO:**

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

Law Office of Tevis Reich, PLLC  
Attn: Tevis Reich, Esq.  
6 E. Dale Ave  
Flagstaff, AZ 86001  
[Tevis@TReichLaw.com](mailto:Tevis@TReichLaw.com)

**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”), on the one hand, and D&L Property, LLC an Arizona Limited Liability Company; Tony & Elyse Cullum, individually; and Nacho Biz, LLC, an Arizona Limited Liability Company (collectively “Owners”) on the other hand:

**RECITALS:**

- A. The Owners each own a single Unit as part of a horizontal property regime in the Dale & Leroux Professional Office Building located in the downtown area of Flagstaff, Arizona at the corner of Dale Avenue and Leroux Street assigned Assessor Parcel numbers 101-35-002, APN 101-35-003, APN 101-35-004 the ownership interests being divided and subject to:

The Final Plat of the Dale & Leroux Professional Office Building at Case 4, Map 19, Coconino County Public Records (hereinafter “Condominiums”).

- B. The Owners further own an undivided one-third interest of the real property and common areas upon which the Condominiums are situated upon legally described as follows:

South 61’ of Lots 7, 8, 9, 10, 11, 12, Block 53, Railroad Addition to the Townsite of Flagstaff, according to Book 1 of maps, page 7B, records of Coconino County, Arizona (hereinafter “Land”).

- C. The Condominiums, together with the Land, shall collectively be referred to herein as the “Property.”

- D. The Property is zoned Community Commercial (CC) and also has the option to elect T4 Neighborhood (T4N.1) transect zoning.
- E. 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 and which is generally known as the “High Occupancy Housing Zoning Code” amendment (“HOH Amendment”). The HOH Amendment became effective March 1, 2021.
- F. The Owners were the owners of the Property on November 17, 2020.
- G. The Arizona’s Private Property Rights Protection Act, A.R.S. §§ 12-1131 through 12-1138 (the “Act”), allows property owners to seek just compensation when a city adopts a land use law that reduces the property owner’s existing rights to develop, use, divide, sell, or possess private real property and such action reduces the fair market value of the real property.
- H. On June 14, 2021, the Owners filed a written demand upon the City of Flagstaff pursuant to A.R.S. § 12-1134 alleging a violation of the Act and demanding just compensation under the Act if the City did not amend, repeal or issue a binding waiver of enforcement upon the Property thereby exempting the Property from the HOH Amendment.
- H. To avoid the assertion of a claim, together with the uncertainty, risks and expense associated with litigation, the City desires to issue and the Owners are willing to accept a binding waiver of enforcement upon the Property making the Property exempt from Ordinance 2020-28 known as the HOH Amendment.

**NOW, THEREFORE**, in consideration of the exchange of promises above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and The Owners state, confirm, and agree as follows:

- 1) Incorporation of Recitals. The recitals stated above are true and correct and are incorporated herein as part of this waiver and agreement.
- 2) Binding Waiver of Enforcement. The City and The Owners agree and declare that the amendments to the Flagstaff Zoning Code known as the HOH Amendment adopted by Ordinance 2020-28 shall not be enforceable against, nor applicable to the Property, either in its entirety or any portion thereof and, as result, the Property shall not be subject to the requirements, conditions, limitations or obligations of the HOH Amendment in any way nor shall the use or development of the Property trigger the HOH Amendment or its requirements, conditions, limitations or obligations in any way. As a result of this Waiver, the Property shall be completely exempt from the requirements, conditions, limitations or obligations of any kind as set forth in the HOH Amendment.

- 3) Recordation. This Waiver shall be adopted by Resolution of the Flagstaff City Council and recorded by the City, in its entirety, in the Official Records of Coconino County, Arizona, not later than ten (10) days after approval and adoption.
- 4) Covenants Running with Land; Inurement. The covenants, conditions, terms, and provisions of this Waiver relating to use of the Property shall run with the Property in perpetuity and shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns.
- 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 upon resolution approving and adopting this Waiver by the Flagstaff City Council.

**City of Flagstaff**

**OWNERS**  
**D&L Property, LLC, an Arizona**  
**Limited Liability Company**  
**(APN 101-35-002)**

\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 Tevis Reich, Trustee of the Reich  
 Family Trust Dated November 28,  
 2005 as Member of D&L Property,  
 LLC  
**(APN 101-35-003)**

\_\_\_\_\_  
 Attest:

\_\_\_\_\_  
 Tony Cullum

\_\_\_\_\_  
 City Clerk

\_\_\_\_\_  
 Elyse Cullum

\_\_\_\_\_  
 City Attorney

**Nacho Biz, LLC, an Arizona  
Limited Liability Company  
APN 101-35-004**

\_\_\_\_\_  
Tony Cullum, *Authorized Member*

\_\_\_\_\_  
Elyse Cullum, *Authorized Member*

STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF COCONINO    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, being duly authorized in their capacity as **Mayor** on behalf of the **City of Flagstaff**, an Arizona Municipal corporation in the State of Arizona.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Coconino        )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2020, by **Tevis Reich, Trustee of the Reich Family Trust Dated November 28, 2005 as Member of D&L Property, LLC.**

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_

STATE OF ARIZONA     )  
  ) ss.  
County of Coconino     )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
2020, by **Tony Cullum and Elyse Cullum.**

My Commission Expires: \_\_\_\_\_

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STATE OF ARIZONA     )  
  ) ss.  
County of Coconino     )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
2020, by **Tony Cullum and Elyse Cullum as authorized members of Nacho Biz, LLC.**

My Commission Expires: \_\_\_\_\_