

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
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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 Peter F. Knadler, Trustee of the Peter F. Knadler Family Living Trust dated August 29, 2018, (“The Knadler Trust”) on the other hand.

RECITALS:

- A. The Knadler Trust is the owner of real property within the city limits of Flagstaff, Arizona, Coconino County with an address of 3100 South Solitaries Canyon Drive, Flagstaff Arizona 86005 (APN 105-10-481A) and further legally described as follows:

Lots 354 and 355, ESTATES AT PINE CANYON, UNIT 5, as shown on the plat thereof, recorded in Instrument No. 3724636, records of Coconino County, Arizona (“Property”).

- B. The Property is zoned Single Family Residential (R1).
- 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 and which is generally known as the “High Occupancy Housing Zoning Code” amendment (“HOH Amendment”). The HOH Amendment became effective March 1, 2021.
- D. The Knadler Trust was the owner of the Property on November 17, 2020.
- E. 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.

- F. On June 14, 2021, The Knadler Trust 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 Knadler Trust 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.
- 2) Binding Waiver of Enforcement. The City and The Knadler Trust 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.

