

WHEN RECORDED, MAIL TO:

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

BINDING WAIVER OF ENFORCEMENT

THIS BINDING WAIVER OF ENFORCEMENT (this “Waiver”) is granted by the City of Flagstaff, an Arizona municipal corporation (the “City”).

RECITALS:

- A. 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.
- B. The respective owners of the following parcels in Flagstaff, (collectively “the HOH Properties”) owned the Properties on the date of enactment listed above:

	APN	Property Owner	Address
1.	104-04-012C	R66R Commercial Properties, LLC	524 East Brannen Avenue
2.	100-19-018	Able Building, LLC	117 North Beaver Street

- C. On March 1, 2022, the Flagstaff City Council adopted Ordinance 2022-04, which made various amendments to the Flagstaff Zoning Code.
- D. The respective owners of the following parcels in Flagstaff, (collectively “the Residential Sustainable Building Incentive Properties”) owned the Properties on the date of enactment listed above:

	APN	Property Owner	Address
1.	104-14-003C	JP325, LLC	2000 East John Wesley Powell Blvd
2.	104-14-001B	JP325, LLC	2000 East John Wesley Powell Blvd

- 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. In May 2022, the owners of the HOH and Residential Sustainable Building Incentive Properties filed with the City a request for just compensation pursuant to Prop 207.
- G. In response to a claim for just compensation under Prop 207, a city may reach an agreement to issue to the property owner a binding waiver of enforcement of the land use law on the owner's specific parcels.

NOW, THEREFORE, the City of Flagstaff does hereby declare as follows:

- 1) Incorporation of Recitals. The recitals stated above are true and correct and are incorporated herein.
- 2) HOH Properties Binding Waiver of Enforcement. 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 HOH Properties.
- 3) Residential Sustainable Building Incentive Properties Binding Waiver of Enforcement. That the amendments to the Flagstaff Zoning Code adopted by Ordinance 2022-04 shall be modified for the Residential Sustainable Building Incentive Properties as follows:
 - a. Section 10-30.70.040(C) shall be satisfied by the submission of a Waste Reduction and Management plan that includes at least two of the following:
 - i. A plan for the recycling or reuse of all paper, cardboard, plastic and metals,
 - ii. A plan for the recycling or reuse of all lumber scraps so that they are diverted from the landfill, or
 - iii. A plan for the diversion of all masonry, gypsum and cementitious materials so that they are diverted from the landfill.
 - b. Section 10-30.70.040(D) shall be satisfied by the installation of electrical runs, including electrical outlets and a minimum 200 amp electrical box, in each home on the property to enable buyers to elect an all-electric home at the time of purchase or convert the home to all electric in the future, and the property owner will also distribute to prospective buyers prior to the election of electric or natural gas appliances for the home written material provided by the City of Flagstaff regarding the benefits of all-electric homes. The requirement to distribute written materials only applies to the first purchaser of each home in the development and not subsequent purchasers.
- 3) Recordation. This Binding Waiver of Enforcement 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.

- 4) Covenants Running with Land; Inurement. The covenants, conditions, terms, and provisions of this Waiver relating to use of the Properties shall run with the 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, this Waiver is approved by the Flagstaff City Council through the adoption of Resolution 2022-__.

City of Flagstaff

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

STATE OF ARIZONA)
COUNTY OF COCONINO)

ACKNOWLEDGMENT

On this _____ day of _____, 202__, before me, a Notary Public, personally appeared Paul Deasy, Mayor of the City Flagstaff, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of the City of Flagstaff, for the purposes therein contained.

Notary Public

My Commission Expires: _____

In full satisfaction of the claim for just compensation filed pursuant to Arizona Revised Statutes §12-1134 on May 4, 2022:

JP325, LLC by its

Date