

**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:

	<b>APN</b>	<b>Property Owner</b>	<b>Address</b>
1.	112-62-107	Goal 42 LLC	2325 West Mission Timber Circle
2.	107-18-141	L & L Flagstaff Development LLC	4100 East Butler Avenue
3.	114-13-023	SA Family Trust U/T.A DTD 8-3-04 Susan Chasin Scharf TTE	4601 East Green Mountain Drive
4.	112-24-011A	Chabad of Flagstaff Inc.	930 West University Avenue
5.	117-06-053	Kent V. Hotsenpiller	2590 North Oakmont Drive
6.	102-08-094	Aaron & Jamie Gustafson	1450 North Fort Valley Road
7.	112-22-008	Daniel David Gitomer	1480 West Shullenbarger Drive
8.	101-08-023	Flagstaff Historical Preservation LLC	604 North Beaver Street
9.	101-01-011C	OIC LLC	900 North San Francisco Street
10.	107-22-064	Mews Living Trust	2500 North Sweet Clover Way
11.	103-19-002	Consolidated Investment Co., Inc.	1300 South Milton Road

- C. On May 5, 2020, the Flagstaff City Council adopted Ordinance 2020-11, which made various amendments to the Flagstaff Zoning Code.
- D. The respective owners of the following parcels in Flagstaff (collectively “the Miscellaneous Amendment Properties”) owned the Properties on the date of enactment listed above:

	APN	Property Owner	Address
1.	103-15-021	Flag Holdings, LLC	418 South Leroux Street
2.	103-15-019	Flag Holdings, LLC	404 South Leroux Street

- 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 June and July 2022, the owners of the HOH and Miscellaneous Amendment 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) Miscellaneous Amendment Properties Binding Waiver of Enforcement. That the amendments to the Flagstaff Zoning Code adopted by Ordinance 2020-11 shall be modified for the Miscellaneous Amendment Properties as follows:
  - a. The minimum lot with requirement for a stacked triplex will remain fifty (50) feet instead of the adopted change of seventy-five (75) feet.
- 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 July 7, 2022:

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Flag Holdings, LLC by its

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Date