PROPERTY EXCHANGE AGREEMENT BETWEEN SOUTHSIDE DEVELOPMENT, LLC AND THE CITY OF FLAGSTAFF

THIS PROPERTY EXCHANGE AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2013 by and between the City of Flagstaff, a municipal corporation organized and existing under the laws of the State of Arizona ("City") and Southside Development, LLC an Arizona corporation ("Developer").

RECITALS

A. WHEREAS, City is the owner of that certain real property generally located at the southwest corner of Butler Avenue and Elden Street, and more particularly described in Exhibit "A," attached hereto ("City Property");

B. WHEREAS, the City Property is currently being used for landscaping and sidewalk purposes and, given its irregular configuration, limited size and unfavorable location, possesses, in isolation, an extremely limited potential for development; and

C. WHEREAS, Developer is the owner of that certain real property located adjacent to the City Property, more particularly described in Exhibit "B," attached hereto ("Developer Property");

D. WHEREAS, in order to fully utilize Developer Property for housing purposes, Developer desires to acquire City Property in order to subdivide the combined properties and construct a six unit townhome development (the "Project");

E. WHEREAS, in exchange for City Property, Developer agrees, at the time of sale to a qualified homebuyer, to transfer the parcel beneath one of the townhome's units to the City and agrees to the imposition of permanent affordability restrictions on the unit itself;

F. WHEREAS, pursuant to A.R.S. § 9-407, the City is authorized to exchange real property for any other property within the City of Flagstaff of substantially equal value;

NOW, THEREFORE, in consideration of the mutual covenants entered between the parties, and in consideration of the benefits to accrue to each, it is agreed as follows:

AGREEMENT

1. **Recitals.** The above recitals are true and correct and are incorporated herein and made a part hereof.

2. **Conveyance of Real Property by City.** Immediately prior to, or concurrent with, the recordation of the Final Plat for the Project, City shall convey title to City Property to Developer in exchange for Developer transferring title to the real property beneath a fully constructed unit of the Project (the "Unit") to City, as set forth in Section 3, below. The method of conveyance shall be by special warranty deed. Documents conveying City Property shall be recorded in the office of the County Recorder of Coconino County, Arizona.

3. **Conveyance of Real Property by Developer.** Concurrent with the sale of the Unit to a Qualified Homebuyer, Developer shall transfer title to the real property beneath the Unit ("Unit Property") to the City. The method of conveyance shall be by warranty deed. Documents conveying title to the real property beneath the Unit shall be recorded in the office of the County Recorder of Coconino County, Arizona. For purposes of this Agreement, "Qualified Homebuyer" means a member(s) of a household earning less than eighty percent (80%) of the current Area Median Income at the time of conveyance.

4. **Terms and Conditions.** This Agreement is subject to the following terms and conditions:

    a. Developer shall do the following:

        1. Construct the Unit in a manner and with materials comparable to the other units in the Project with the exterior appearance of the Unit indistinguishable from that of other units.
        2. Market the Unit to the Eligible Population in a manner substantially similar to the marketing of the other units in the Project. For purposes of this Agreement, "Eligible Population" means those households' seeking homeownership with the potential to be Qualified Homebuyers based on eligibility criteria.
        3. Cooperate with the City in ensuring that the sale of the Unit to a Qualified Homebuyer, the transfer of the Unit Property to the City, and the lease of the Unit Property to a Qualified Homebuyer, are coordinated in such a manner that the close of escrow is not unreasonably delayed.
        4. Developer shall dedicate by plat all right-of-way needed for road improvements including, but not limited to, a bus pull-out area to allow for the loading and unloading of passengers out of the travel lanes of the roadway.

    b. City shall do the following:

        1. Provide an approved permanent affordability application, the "Community Land Trust Program Eligibility Application," to prospective buyers of the Unit as well as certify the eligibility of potential buyers identified by the Developer.
        2. Provide technical assistance related to the marketing of the Unit, as well as provide documentation and technical assistance regarding the City's Land Trust Program.

3. Assist Developer in ensuring that potential buyers within the Eligible Population are aware of available lending programs and resources.

4. Work with the Developer to provide appropriate incentives through the "Incentive Policy for Affordable Housing," as approved by Council.

5. Cooperate with the Developer in ensuring that the sale of the Unit to a Qualified Homebuyer, the transfer of the Unit Property to the City, and the lease of the Unit Property to a Qualified Homebuyer, are coordinated in such a manner that the close of escrow is not unreasonably delayed.

5.   <u>**Costs and Fees.**</u>

     a. City shall bear the cost of any fees and any other closing costs incidental to Developer conveying the Unit Property to the City.

     b. Developer shall bear the cost of any fees and any other closing costs incidental to City conveying the City Property to Developer.

6.   <u>**Consideration.**</u> The Parties agree that City Property and Unit Property are of substantially equal value. The Unit Property, together with Developer's agreement to impose permanent affordability restrictions on the Unit, provide a significant public benefit as a whole and constitute adequate consideration for the City Property, and no monetary consideration shall be exchanged. In order to ensure that value of the Unit Property at the time it is transferred to the City is substantially equivalent to the City Property at the time it is transferred to Developer, Developer agrees to procure a bond guaranteeing the substantial equivalency of the property values during the period lasting from the transfer of the City Property by the City, as set forth in Section 2, above, until the transfer of the Unit Property by the Developer, as set forth in Section 3, above, or the reversion of the City Property back to the City as set forth in Section 10.

7.   <u>**Environmental Matters.**</u> Developer and City covenant that, as of the date of their respective property transfers, they have not placed or brought onto the City Property or the Unit Property, nor permitted to be brought onto the City Property or the Unit Property, hazardous substances [as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601(14)] or materials including, but not limited to, petroleum products, the removal of which is required or the maintenance of which is prohibited or penalized by and applicable local, state, or federal law, ordinance, rule, regulation or requirement, and to the best knowledge of Developer an City, the City Property and the Unit Property are free of all such hazardous substances and materials.

8.   <u>**Condition of Title of Unit Property.**</u> Developer agrees to convey Unit Property to City free and clear of any conflicting liens and encumbrances, leases, assessments, easements, and other possessory or non-possessory interests in the real property, except for recorded public utility easements. At least thirty (30) days prior to conveyance, Developer shall submit a current preliminary title report for Unit Property to confirm the acceptability of title in advance of the actual conveyance.

9.   Agreement Does Not Bind or Commit The Future Actions of the Flagstaff City Council. By entering into this Agreement, the City only agrees to the exchange of properties set forth herein. City staff retains its discretion to recommend denial of any application submitted by Developer related to the Project, and the City Council retains its discretion to deny any application related to the Project forwarded to them. No application shall be approved until the City and City Council has followed all legally required procedures.

10.   Reversion of City Property. The City Property shall revert back to the City, and all the rights and obligations of the parties granted herein shall cease, upon the earlier of the following:

     a.   Developer ceases to use City Property for the Project as described in this Agreement.

     b.   March 26, 2015.

11.   Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party regarding any default by the other party shall impair such right or remedy, or be construed as a waiver. A party's consent or approval or any act by the other party requiring consent approval shall not be deemed to waive or render unnecessary said party's consent to or approval of any subsequent act of the other party. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

12.   Notices. Any notice, demand, request, consent, approval or communication under this Agreement shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed given (a) upon personal delivery or (b) forty-eight (48) hours from deposit of such notice in the United States mail, postage prepaid.

     To City:

     City Manager
     City of Flagstaff
     211 West Aspen Avenue
     Flagstaff, Arizona 86001

     To Developer:

     David Carpenter
     Southside Development, LLC
     495 South River Run Road, Suite 100
     Flagstaff, Arizona 86001

13.   Assignment. Developer shall not assign, transfer, convey or otherwise dispose of this Agreement or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.

14.   Amendment. This Agreement may be amended at any time by the mutual consent of the parties by a written instrument signed by both parties.

15.   Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement, the parties hereto are formally bound to the provisions of this Agreement.

16.   Interpretation. The paragraph headings of this Agreement are for reference and convenience only, are not made part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof. The provisions of this Agreement shall be construed in a reasonable manner to implement the purposes of the parties and of this Agreement.

17.   Indemnification. Developer shall defend, indemnify and hold harmless the City or its agents, officers and employees from any claim, action, or proceeding against the City or its agents, officers or employees arising out of or relating to the City's approval of this Agreement. The City shall promptly notify Developer of any claim, action or proceeding received by the City.

18.   Entire Agreement. This Agreement represents the entire understanding of City and Developer as to the matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to the matters covered in this Agreement.

IN WITNESS WHEREOF, the Parties, duly authorized, have executed this Development Agreement by and through their authorized representatives.

SOUTHSIDE DEVELOPMENT, LLC   CITY OF FLAGSTAFF, an
                                                                            Arizona Municipal Corporation

_____   _____
By: Mayor
Its: _____

                                                                    ATTEST:

                                                                    _____

                                                                    City Clerk

APPROVED AS TO FORM:

_____
City Attorney

State of Arizona   )
) ss
County of Coconino   )

      SUBSCRIBED AND SWORN to before me this ___ day of _____, 2013, by _____ the _____ of SOUTHSIDE DEVELOPMENT, LLC an Arizona Corporation, for and on behalf thereof.

My Commission expires: Notary Public

_____   _____