

# REAL ESTATE PURCHASE AND SALE AGREEMENT

## City of Flagstaff and Evergreen Devco, Inc.

This Real Estate Purchase and Sale Agreement ("Agreement") is entered into by and between the City of Flagstaff, an Arizona municipal corporation ("Seller"), and Evergreen Devco, Inc., a California corporation authorized to do business in the State of Arizona ("Buyer").

### RECITALS

- A. The City, through the development of the Fourth Street Overpass at the intersection of Route 66 and Fourth Street in Flagstaff, Arizona, acquired additional land adjacent to the Overpass.
- B. One of the City Council's long-term goals is the revitalization of the Fourth Street area.
- C. The City issued, with respect to the land adjacent to the Fourth Street Overpass, Request for Proposals No. 2011-48 (the "RFP") for the sale and development of three (3) parcels located at the southeast and southwest corners of the intersection of Fourth Street and Route 66, and northwest corner of Fourth Street and Huntington Drive, adjacent to the Fourth Street Overpass, within the City of Flagstaff and containing thirty-three and one-half (33.5) acres of property consisting of three (3) parcels (the "Parcels").
- D. Buyer responded to the RFP with an offer to purchase the Parcels on certain terms and conditions, which purchase contemplated the acquisition of the property and subsequent development of the Parcels for retail uses.
- E. Seller desires to enter into this Agreement with Buyer in order to sell the Parcels, and Buyer desires to enter into this Agreement in order to set forth the terms and conditions with respect to the acquisition of the Parcels by Buyer.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

#### 1. BUYER'S OFFER

In response to City of Flagstaff Request for Proposals, No. 2011-48, Buyer offers to purchase from Seller those certain parcels of land situated at the southwest and southeast corners of Fourth Street and Route 66, and northwest corner of Fourth Street and Huntington Drive in the City of Flagstaff, County of Coconino and State of Arizona, which contain thirty-three and one-half (33.5) acres of land described in Exhibit A-1 as parcels A, in Exhibit A-2 as parcel B, and in Exhibit A-3 as parcel D, and collectively shown as parcels A, B, and D in Exhibit A-4 (also depicting parcel C which is not being conveyed to Buyer), attached and made a part of this Agreement, together with all rights, privileges, easements and appurtenances thereto ("Property") at the price and upon the terms and conditions set forth in this Agreement.

## **2. PURCHASE PRICE AND PAYMENT**

2.1 Buyer agrees to purchase the Property for **Three Million One Hundred Thousand Dollars (\$3,100,000.00)** ("Purchase Price") and pay such sum, less the Earnest Money, to the Seller at Closing, as defined below. Buyer also agrees to pay all closing costs which are due from Buyer and Seller at closing of escrow.

2.2 The Buyer has deposited with the City **Two Hundred Twelve Thousand Eight Hundred Ninety-Nine and 50/100 Dollars (\$212,899.50)** ("Deposit"), which within five (5) business days of the Opening of Escrow shall be transferred to and deposited with the Escrow Agent to be held as earnest money under this Agreement and placed in a federally insured, interest-bearing account (collectively, the "Earnest Money"). The Buyer shall pay the balance of the Closing Funds in cash or wire transfer of cash credit to Seller at the time of Closing.

2.3 In addition to the Purchase Price, Buyer agrees to use commercially reasonable efforts to accomplish the items set forth in Exhibit E of this Agreement.

## **3. OPENING OF ESCROW; AND DUE DILIGENCE**

**3.1 DUE DILIGENCE PERIOD FOR ENVIRONMENTAL AND TITLE INVESTIGATIONS.** Buyer shall have a period of time beginning on the first day following the date on which Seller communicates to Buyer in writing that Seller has obtained the approval of this Agreement by the Flagstaff City Council and expiring 60 days thereafter ("Due Diligence Period") to conduct an Environmental, Geotechnical, Survey and Title Investigations of the Property and to otherwise assess the physical condition of the Property. During the Due Diligence Period, Buyer may enter onto the Property to undertake any "Environmental, Geotechnical, Survey and Title Investigations," which may include, but not be limited to, a physical inspection of the Property as well as any and all improvements; and as Buyer deems reasonably necessary, a Phase 1 environmental assessment with the scope to be determined by Buyer, at Buyer's expense. Buyer will enter into an environmental right of entry license agreement with Seller before undertaking environmental investigations of the Property. Buyer agrees to indemnify, defend and hold Seller harmless for, from and against any personal injury or property damage claims arising out of Buyer's exercise of the rights granted by this paragraph, unless resulting from Seller's acts or omissions, and this indemnity shall survive the Closing or the cancellation of this Agreement. Notwithstanding the foregoing, Buyer shall have no liability for the mere discovery (but not exacerbation) of environmental conditions on the Property. If any of Buyer's investigations recommend or require additional investigation (including, but not limited to, Phase II testing of the Property), the Due Diligence Period may be extended by mutual consent an additional sixty (60) days. Notwithstanding anything to the contrary contained in this Agreement, at any time on or before the expiration of the Due Diligence Period (as may be extended), Buyer shall have the right, in its sole discretion, to determine whether it will proceed with this transaction or terminate this Agreement for any reason whatsoever. If, on or before the expiration of the Due Diligence Period (as may be extended), Buyer delivers written notice to the City and Escrow Agent that it has determined not to proceed with this transaction, then this Agreement shall terminate on the date of Buyer's delivery of written notice of its election not to proceed. Upon such termination, Escrow Agent shall immediately return

the Earnest Money to Buyer without further instruction. If, at the conclusion of the Due Diligence Period, Buyer has not delivered written notice to the City and Escrow Agent that it has determined not to proceed with this transaction, fifty-thousand dollars (\$50,000.00) of the Earnest Money will be transferred to the Seller. Such amount shall be non-refundable, but shall be applicable (i.e., credited) to the Purchase Price.

3.2 For purposes of this Agreement, the Opening of Escrow ("Opening of Escrow") shall be deemed to be the date on which the Deposit and a fully executed copy of this Agreement are delivered to and accepted by First American Title Insurance Company, 2425 E. Camelback Road, Suite 300, Phoenix, Arizona ("Escrow Agent"). The consummation of the transaction contemplated by this Agreement ("Closing") shall occur on the date which is thirty one (31) days after the date of the Council action on the "Governmental Approvals", as further detailed in Section 3.4, below. The Closing shall occur at the offices of the Escrow Agent, or at such other place as Seller and Buyer may agree in writing. Closing shall be deemed to have occurred when (i) all closing documents contemplated by this Agreement have been delivered to, received by, and executed by the appropriate parties, (ii) all conditions to such Closing contemplated by this Agreement have been satisfied or waived, (iii) the deed required to convey title to the Property to Buyer has been recorded, and (iv) the funds required to be paid under this Agreement have been properly delivered to Escrow Agent and are available for distribution to Seller by Escrow Agent.

3.3 Buyer and Seller employ Escrow Agent to act as their escrow agent in connection with this transaction. Buyer and Seller agree, upon request of Escrow Agent, to execute the standard form escrow instructions used by Escrow Agent with such modifications as are mutually acceptable, except that this Agreement is controlling in the event of any conflict. At Closing, Seller will execute and deliver a written affidavit stating that Seller is not a "foreign person" within the meaning of the Internal Revenue Code (the "Code"). Escrow Agent, as the person responsible for closing the escrow, must file all necessary information regarding this transaction required by the Code, and provide copies to the parties.

3.4 Those matters necessary for Buyer's development of the Property, including a related development agreement, a Regional Plan minor amendment, and zoning map amendment (the "Governmental Approvals") shall have two readings at separate Council meetings, a first and second reading. In addition, prior to a first reading, the Buyer's application for Government Approvals ("Application") will be subject to the City's Inter-Divisional Staff ("IDS") review process. IDS shall provide substantive comments to the Buyer regarding the Application within seventy-eight (78) working days of submittal. Buyer shall have thirty (30) days from receipt of IDS' substantive comments ("Review Period") to determine whether, in its sole discretion, it will proceed with this transaction or cancel this Agreement. If, at the conclusion of the Review Period, Buyer has not delivered written notice to the City and Escrow Agent that it has determined not to proceed with this transaction, fifty-thousand dollars (\$50,000.00) of the Earnest Money will be transferred to the Seller. Such amount will be in addition to the fifty-thousand dollars (\$50,000.00) transferred at the conclusion of the Due Diligence Period, Section 3.1, above, and shall be non-refundable, but shall be applicable (i.e., credited) to the Purchase Price. However, in consideration of those undertakings by Seller related to the processing of Buyer's Application, should Buyer choose to terminate this transaction and cancel this Agreement during the Review Period, pursuant to this Subsection, all documents submitted in support of the Application, including the concept plan and all impact analyses, shall become the property of the City of

Flagstaff, which the City shall accept without any representations or warranty from Buyer. The Closing Date is thirty-one (31) days after the City Council approves the Governmental Approvals on a second reading. Should the City Council impose additional conditions at the first reading of the Governmental Approvals (meaning stipulations or conditions are added or modified by the City Council during the first reading hearing that are in addition to the stipulations and conditions drafted by the City's IDS as a result of the IDS substantive comments referenced above), Buyer shall have fourteen (14) days within which to determine if the additional/modified initial Council terms and conditions are acceptable to Buyer and are consistent with Buyer's submittal materials, negotiated changes and conditions of approval, and whether, in Buyer's sole and absolute discretion, to cancel this Agreement, whereupon the remainder of Buyer's Earnest Money, and any interest accruing thereon, shall be returned to Buyer. If the terms of the Governmental Approvals are not changed at the first reading, but are changed at the second reading, Buyer will have fourteen days from the second reading to determine if the additional/modified final Council terms and conditions of the Governmental Approvals are acceptable to Buyer and are consistent with Buyer's submittal materials, negotiated changes and conditions of approval, and whether, in Buyer's sole and absolute discretion, to cancel this Agreement, whereupon the remainder of Buyer's Earnest Money, and any interest accruing thereon shall be returned to Buyer. If the terms of the Governmental Approvals are not changed at either of the readings (meaning stipulations or conditions were not added or modified by the City Council during the first or second reading hearings), should Buyer choose to cancel this Agreement after the first reading, the remainder of the Earnest Money, and any interest accruing thereon shall not be returned to the Buyer. Further, in consideration of those undertakings by Seller related to the processing of Buyer's Application, should Buyer choose to cancel this Agreement within the fourteen day period after either the first or second reading, pursuant to this Subsection, all documents submitted in support of the Governmental Approvals, including the concept plan and all impact analyses, shall become the property of the City of Flagstaff, which the City shall accept without any representations or warranty from Buyer. The Governmental Approvals will become "Development Entitlements" upon the expiration of any applicable appeals period with no appeal (including judicial challenge, referendum, or injunction) having been filed, or if an appeal (including judicial challenge, referendum, or injunction) is filed, upon resolution of such challenge in favor of the City. If an appeal is filed, the Closing Date shall be delayed on a day for day basis until such time as the appeal is resolved in the City and Buyer's favor. Any delay relative to the Closing Date by judicial challenge, referendum, or injunction filed by parties acting independently of and not under the control of the City will not be deemed a breach of this Agreement or a default by the City or Buyer. If the resolution of any such challenge is not in favor of the City and Buyer, then this Agreement shall be terminated and the remainder of Buyer's Earnest Money shall be returned to Buyer.

#### **4. TAXES**

Real estate taxes shall be prorated at Closing pursuant to Section 8.2 below, with Seller being responsible for taxes related to the period prior to Closing and Buyer being responsible for taxes related to the period after Closing. The obligations set forth in this Section 4 shall survive the Closing.

#### **5. CONVEYANCE AND DEED**

Seller shall convey fee simple title to the Property to Buyer by Quit Claim Deed, subject to all matters of record, in the form attached to this Agreement as Exhibit B.

## **6. SUCCESSORS IN INTEREST**

Wherever referred to in this Agreement, the term "Buyer" shall imply, mean and apply to the Buyer, its successors, assigns or designees; provided, however, that Buyer acknowledges, covenants and agrees that it shall have no right to assign this Agreement or its rights hereunder to any other party without Seller's prior written consent, unless such assignment is to a company owned or controlled by or under common control with Buyer (in which case Buyer will provide written notice of such assignment to Seller). Wherever referred to in this Agreement, the term "Seller" shall imply, mean and apply to the Seller, its successors, assigns or designees.

## **7. TITLE**

Within ten (10) business days after the Opening of Escrow, Buyer shall cause Escrow Agent to deliver to Buyer and Seller a current title commitment pertaining to the Property, together with legible copies of all recorded documents referenced therein (collectively, the "Title Commitment"). Seller may not cause any additional title exceptions to be imposed against the Property without Buyer's prior written consent. If additional title exceptions are added subsequent to the expiration of the Due Diligence Period, Buyer shall have fourteen (14) days after receipt of the new title exceptions within which to accept or object to such additional exceptions. If Buyer's objections cannot be satisfied by Seller, then Buyer shall have the right to cancel this Agreement. If the new title exceptions were caused or approved by Seller, then Buyer shall be entitled to a full refund of the Earnest Money.

## **8. TITLE INSURANCE AND OTHER COSTS**

8.1 Buyer shall pay the premium for a standard ALTA owner's policy of title insurance with a limit of liability in the amount of the Purchase Price, as well as any additional premium for any extended or other coverage obtained by Buyer. Other costs incurred in the transfer of the Property from Seller to Buyer shall be paid in accordance with the customs of real estate transactions presently in effect in Coconino County, Arizona, as determined by Escrow Agent.

8.2 At Closing, current ad valorem and similar taxes relating to the Property shall be prorated as of the date of Closing based on the latest available information.

8.3 Seller shall not make any material or adverse change to the condition of the Property (including the granting of any encumbrances) prior to Closing. All improvements, equipment and fixtures that are on the Property as of Opening of Escrow shall remain on the Property and in the same condition and shall be conveyed at Closing.

## **9. CONDITION OF PROPERTY**

Buyer hereby acknowledges and agrees that it has examined, or will examine and investigate prior to Closing, to Buyer's full satisfaction, the environmental condition and physical condition of the Property, and that Buyer will accept the Property at Closing in its "as is," "where is"

condition, "with all faults," and Buyer hereby releases Seller from any and all liability, cost, expense, claim, obligation or judgment arising or accruing after the Closing, related to the environmental condition or physical condition of the Property or any work or improvement related thereto, and from all obligations arising or accruing after the Closing under any and all applicable state, federal or local laws concerning the Property, including, without limitation, any environmental law, except to the extent caused by Seller or its agents. Buyer has not relied and will not rely on, and Seller is not liable for, any information in any materials, representations or information pertaining to the Property or relating thereto made or furnished by any person representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing.

## **10. ATTORNEY'S FEES**

If any action is brought by either party with respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs as determined by the court and not by the jury.

## **11. REMEDIES**

11.1 In the event of a default by Seller hereunder, which default continues uncured after five (5) days' written notice from Buyer to Seller, Buyer may either waive the default and proceed with the transaction or seek specific performance of Seller's obligations hereunder. If specific performance is unavailable as a remedy (e.g., if Seller has conveyed the Property to another party), Buyer may terminate this Agreement and receive a full refund of the Earnest Money.

11.2 Buyer and Seller acknowledge that any default or breach by Buyer prior to Closing will cause Seller to incur damages and expenses, which are difficult if not impossible to estimate and ascertain with certainty. Therefore, in the event of a default by Buyer hereunder, prior to Closing, which default continues uncured after five (5) days' written notice from Seller to Buyer, the sole and exclusive remedy of Seller shall be to terminate this Agreement and retain as liquidated damages the Earnest Money. Seller waives all other rights and remedies.

## **12. NOTICES**

All notices, terminations, waivers, and other communications hereunder shall be in writing and shall be delivered personally against receipt or shall be sent registered mail, certified mail, or Express Mail service, postage prepaid and return receipt requested, or by a nationally recognized overnight delivery service, addressed to the parties as follows:

**SELLER:**

Purchasing Director  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001

**BUYER:**

Danny Bockting  
Evergreen Devco, Inc.  
2390 E. Camelback Road, Suite 410  
Phoenix, Arizona 85016

WITH A COPY TO:

City Attorney  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001

WITH A COPY TO:

Laura Ortiz  
Evergreen Devco, Inc.  
2390 E. Camelback Road, Suite 410  
Phoenix, Arizona 85016

Any notice in accordance herewith shall be deemed received when delivery is received or refused, as the case may be.

### **13. GOVERNING LAW AND VENUE**

This Agreement shall be administered and interpreted under the laws of the State of Arizona. Buyer hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

### **14. SEVERABILITY**

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions, unless the overall intent of such provision is thereby vitiated.

### **15. TIME OF THE ESSENCE**

The parties expressly agree that time is of the essence with respect to this Agreement.

### **16. ACCEPTANCE CONSTITUTES AGREEMENT**

This offer of the Buyer to purchase the Property, when duly accepted and signed by the Seller, shall constitute the entire agreement between the parties for the sale and purchase of the Property and shall bind and inure to the benefit of the Seller, the Buyer, and their successors and assigns.

### **17. BROKER**

Seller and Buyer hereby represent each to the other that neither party has had any dealings with any broker, finder or other party concerning Buyer's purchase of the Property and that no brokerage commission shall be payable upon the consummation of the sale of the Property from Seller to Buyer.

### **18. CONDEMNATION**

If, on or prior to the Closing Date, a material portion of the Property is the subject of a pending or contemplated taking by eminent domain which has not been consummated, Seller shall notify Buyer within five (5) days of obtaining knowledge of such fact, and Buyer shall have the option to terminate this Agreement upon giving written notice to Seller prior to Closing. In the event Buyer elects to terminate this Agreement, Buyer shall receive a prompt refund of the Earnest

Money, and neither party shall have any further rights or obligations hereunder. If, after receipt of Seller's notice, as aforesaid, Buyer does not exercise its option to terminate this Agreement, the parties hereto shall remain bound hereunder and Seller shall assign and turn over at Closing, and Buyer shall be entitled to receive and keep, all awards for the taking by eminent domain described in said notice.

## **19. SELLER DELIVERABLES**

Ten (10) business days after any reasonable request from Buyer, Seller shall deliver to Buyer copies of any third party reports or other documentation related to the Property which Seller has in its possession or which it may be able to reasonably obtain.

## **20. DEVELOPMENT OF THE PROPERTY**

20.1 Buyer acknowledges that it is purchasing the Property in "as is" condition, subject to the existing zoning.

20.2 The terms of the City of Flagstaff Request for Proposals No. 2011-48 are hereby incorporated by reference and apply to the development of the Property, including but not limited to the following requirements:

20.2.1 Buyer will modify or build two segments of the Flagstaff Urban Trail System ("FUTS") on the Property. Buyer will construct one segment of the FUTS as a high speed trail across the Property with access to the site at the rear. Buyer will modify the existing segment of the FUTS pedestrian and slow speed trail along Route 66, as depicted in Exhibit C, Flagstaff Urban Trail System Conceptual Plan, attached and incorporated by reference. The high speed trail will have access under the Fourth Street Bridge so that users do not have to stop for traffic. Buyer will be required to modify or build 10-foot wide concrete FUTS trails that meet current standards and guidelines for FUTS trails, including associated landscaping,. At closing, Buyer will record an easement against the Property in favor of the City in the form set forth in Exhibit D, Flagstaff Urban Trail.

20.2.2 The Property is not presently zoned for commercial use, and Buyer will be required to apply for a Regional Plan minor amendment and appropriate rezoning in order to develop the property for commercial uses.

20.2.3 Green Building is the use of environmentally sensitive planning, design, specification, labor management, construction, and commissioning processes and technologies, which result in a holistic building strategy that creates a more sustainable structure that contributes to a more sustainable community. Green Building technology should be used whenever possible.

20.2.4 Buyer will include low-flush toilets, well-insulated hot water piping, low-flow showerheads and faucets, and other appliances or devices that minimize water usage.

## **21. COMPLIANCE WITH ALL LAWS**

Buyer will comply with all applicable Federal, State, County and City laws, regulations and policies.

**22. BUSINESS OPERATIONS IN SUDAN/IRAN**

In accordance with Arizona Revised Statutes § 35-397, the Buyer certifies that the Buyer and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the Seller determines that the Providers certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Agreement.

**23. CONFLICT OF INTEREST**

The parties agree that this contract may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

**24. SEVERABILITY**

If any part of this Agreement is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

**25. RESALE**

The Buyer shall not resell the Property, in its entirety, in one transaction, within twenty-four (24) months of the Closing Date for greater than the Purchase Price set forth in Section 2, above, plus an allowable percentage increase of five (5) percent per annum. The parties acknowledge that Buyer intends to sell individual pads or parcels of land within the Property, and such sale of pads or parcels within said twenty-four (24) months is not a violation of this Agreement.

**26. TERM**

Within one hundred twenty (120) days of the executed date of this Agreement, Buyer shall file with the City a complete Large-scale Zoning Map Amendment and minor Regional Plan Amendment application. Further, the outside date for the "Closing," as set forth in Section 3.2, shall occur within twelve (12) calendar months of the date of execution. This Agreement will terminate at the conclusion of the one hundred twenty (120) day period, should Buyer fail to submit a fully completed Large-scale Zoning Map Amendment and minor Regional Plan Amendment application, or at the conclusion of twelve (12) calendar month period, should Closing fail to occur. These time limits may be extended by mutual consent of both parties and for such term as agreed to by both parties.

**27. GOOD FAITH**

The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Agreement.

**28. MEMORANDUM OF AGREEMENT**

Concurrent with the execution of this Agreement, the Parties agree to sign and record a Memorandum of Agreement on the Property setting forth Buyer's rights under this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the Buyer presents this offer, and the Seller has signed the same this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**SELLER, City of Flagstaff**

**BUYER, Evergreen Devco, Inc.**

\_\_\_\_\_  
Gerald W. Nabours, Mayor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

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

Approved as to form:

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

Received and Accepted this \_\_\_\_ day of \_\_\_\_\_, 2013, which date is the "Opening Date" for purposes hereof.

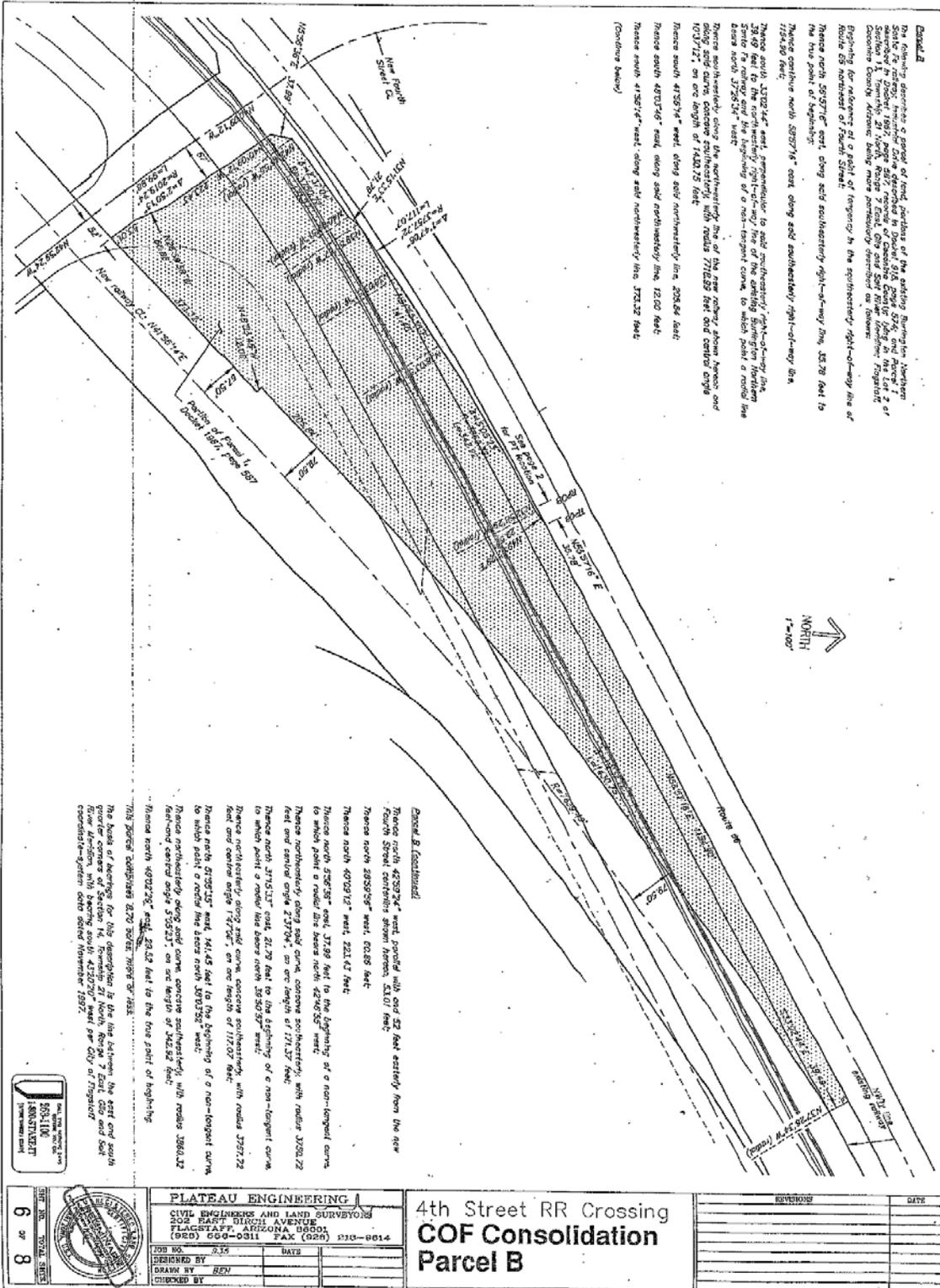
First American Title Company

By: \_\_\_\_\_

Its: \_\_\_\_\_



# EXHIBIT A-2



**Parcel A**  
 The following describes a part of land, portions of the existing Birmingham Northern  
 and the existing New York and New Jersey Railroad, located in Parcel 81A, page 324, and page 1 of  
 Section 1, Township 21 North, Range 7 East, City and Soil from Northern Arizona  
 Coconino County, Arizona, being more particularly described as follows:  
 Beginning for reference at a point of temporary right-of-way line of  
 Route 65 northwest of Fourth Street:  
 Thence north 59°57'16" east, along said southeasterly right-of-way line, 55.78 feet to  
 the true point of beginning;  
 Thence southeasterly north 59°57'16" east, along said southeasterly right-of-way line,  
 774.86 feet;  
 Thence north 43°21'24" east, perpendicular to said southeasterly right-of-way line,  
 28.40 feet to the intersection of the southeasterly right-of-way line and the  
 center line of the existing railroad; thence southeasterly along the  
 center line of the existing railroad, to the beginning of a non-tangent curve, to which point a radial line  
 bears north 37°58'12" east;  
 Thence southeasterly along the northeasterly line of the new right-of-way line, hence out  
 along said curve, concave southeasterly, with radius 7716.89 feet and central angle  
 103°17'12", on an arc length of 1440.25 feet;  
 Thence south 41°59'14" west, along said northeasterly line, 208.64 feet;  
 Thence south 40°13'16" east, along said northeasterly line, 12.00 feet;  
 Thence south 41°28'12" west, along said northeasterly line, 370.32 feet.  
 (Continued below)

**Parcel B (Consolidated)**  
 Thence north 42°59'24" west, parallel with one 52 feet easterly from the new  
 Fourth Street centerline shown herein, 51.01 feet;  
 Thence north 28°58'58" west, 63.88 feet;  
 Thence north 40°29'12" west, 221.47 feet;  
 Thence north 57°58'12" east, 37.89 feet to the beginning of a non-tangent curve,  
 to which point a radial line bears north 42°46'52" west;  
 Thence northeasterly along said curve, concave southeasterly, with radius 3702.22  
 feet and central angle 237°04", on an arc length of 171.37 feet;  
 Thence north 31°51'12" east, 21.79 feet to the beginning of a non-tangent curve,  
 to which point a radial line bears north 28°58'57" west;  
 Thence northeasterly along said curve, concave southeasterly, with radius 3707.72  
 feet and central angle 147°58", on an arc length of 117.07 feet;  
 Thence north 51°08'12" east, 161.45 feet to the beginning of a non-tangent curve,  
 to which point a radial line bears north 30°13'52" west;  
 Thence northeasterly along said curve, concave southeasterly, with radius 3860.32  
 feet and central angle 53°23", on an arc length of 242.82 feet;  
 Thence north 40°12'24" east, 29.52 feet to the true point of beginning.

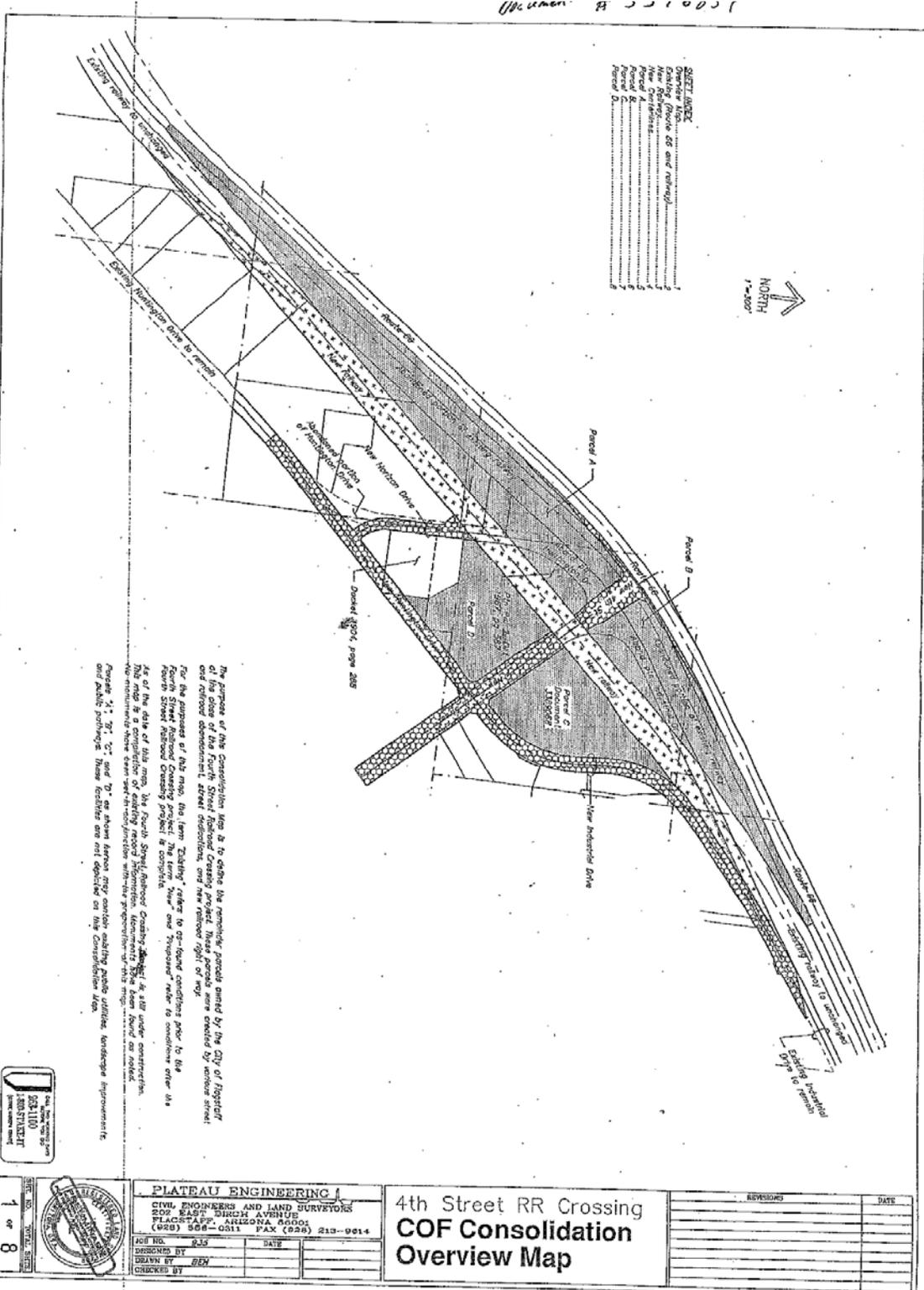
**Parcel C (Former Parcel B)**  
 The basis of bearings for this description is the line between the east end of south  
 quarter corner of Section 14, Township 21 North, Range 7 East, City and Soil  
 recorded in Gormen date order November 1937.

	<b>PLATEAU ENGINEERING</b> CIVIL ENGINEERS AND LAND SURVEYORS 1001 WEST WASHINGTON AVENUE FLAGSTAFF, ARIZONA 86601 (908) 659-0311 FAX (908) 238-0614	4th Street RR Crossing <b>COF Consolidation</b> <b>Parcel B</b>	REVISIONS DATE	
	JOB NO. 1581106 DATE 12/14/11	DESIGNED BY DRAWN BY BEN CHECKED BY	6 of 8	
	THE STATE OF ARIZONA DEPARTMENT OF REVENUE DIVISION OF PROFESSIONAL REGULATION	REGISTERED PROFESSIONAL ENGINEER NO. 1581106 EXPIRES 12/31/12	4th Street RR Crossing <b>COF Consolidation</b> <b>Parcel B</b>	REVISIONS DATE
	THE STATE OF ARIZONA DEPARTMENT OF REVENUE DIVISION OF PROFESSIONAL REGULATION	REGISTERED PROFESSIONAL ENGINEER NO. 1581106 EXPIRES 12/31/12	4th Street RR Crossing <b>COF Consolidation</b> <b>Parcel B</b>	REVISIONS DATE



# EXHIBIT A-4

1000158 11/11/11



The purpose of this Consolidation Map is to obtain the remaining parcels owned by the City of Phoenix out of the scope of the Fourth Street Railroad Crossing project. These parcels were created by various street and railroad consolidation street construction, and have railroad right of way.

For the purposes of this map, the term "existing" refers to on-ground conditions prior to the Fourth Street Railroad Crossing project. The term "New" and "Proposed" refer to conditions other than the existing conditions.

As of the date of this map, the Fourth Street Railroad Crossing project is still under construction. The map is a preliminary map and should not be used for any other purpose. The map is not a final map and should not be used for any other purpose.

These parcels are not depicted on the Consolidation Map.



**PLATEAU ENGINEERING, INC.**  
 CIVIL ENGINEERS AND LAND SURVEYORS  
 202 EAST BIRCH AVENUE  
 PHOENIX, ARIZONA 85016  
 (602) 508-0311 FAX (602) 213-0014

JOB NO. 0-15  
 DATE  
 DESIGNED BY  
 DRAWN BY  
 CHECKED BY

## 4th Street RR Crossing COF Consolidation Overview Map

REVISIONS	DATE

**EXHIBIT B**

City Clerk  
211 W. Aspen Avenue  
Flagstaff, Az 86001

This transaction is exempted  
from the affidavit of value  
requirement by A.R.S. § 11-1134(A)(3)

**QUITCLAIM DEED**

The City of Flagstaff, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona (“Grantor”), in consideration of the receipt of \$10.00 and other valuable consideration hereby remises, releases and quitclaims to Evergreen-Devco, Inc, A California Corporation (“Grantee”), all of the interest of Grantor in the following premises (“Premises”) situated in the City of Flagstaff, Coconino County, Arizona:

THAT PORTION OF THE WEST HALF OF SECTION 13 AND THE EAST HALF OF SECTION 14, TOWNSHIP 21 NORTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, COCONINO COUNTY, ARIZONA SHOWN AS PARCELS A, B AND D, ON CONSOLIDATION MAP, RECORDED IN DOCUMENT NO. 3396857, RECORDS OF COCONINO COUNTY ARIZONA

SUBJECT TO all valid interests, including, but not limited to, current taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record or otherwise.

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

GRANTOR  
City of Flagstaff

By \_\_\_\_\_  
Gerald W. Nabours  
Mayor

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form:

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

STATE OF ARIZONA        )  
  )ss  
County of Coconino        )

On this \_\_\_\_ day of \_\_\_\_, 2013, before me, a Notary Public, personally appeared Gerald W. Nabours, Mayor of the City of 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:

\_\_\_\_\_

Flagstaff, Az 86001



## Exhibit D

### Flagstaff Urban Trail System Easement Form

When recorded, mail to:  
City Clerk  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

#### **FLAGSTAFF URBAN TRAILS SYSTEM EASEMENT**

For valuable consideration, the sufficiency and receipt of which is hereby acknowledged,

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(“Grantor”), hereby grants and conveys unto the CITY OF FLAGSTAFF, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona (“Grantee”), an exclusive easement for a non-motorized public access as part of the Flagstaff Urban Trails System (“Easement”) over and across the real property of Grantor situated in Coconino County, Arizona, and described in **Exhibits A and A-1** (the “Easement Area”), both of which are attached and incorporated by reference into this Easement, under the terms and conditions set forth below.

1. This Easement is granted to enable the Grantee to locate, repair, replace, alter and maintain a non-motorized public access trail system (the “Improvements”) associated with the Flagstaff Urban Trails System. Grantor and Grantee agree to cooperate reasonably, promptly and fully in determining the scope, timing and design of the Improvements.
2. This Easement shall include the rights of ingress and egress across any adjacent property owned or controlled by the Grantor where reasonably required to gain access to the Easement Area for the purposes of repair, alteration, or maintenance of the Improvements. Grantee’s access across said adjacent property shall not interfere with the business operations conducted thereon.
3. The granting of this Easement is made on an exclusive basis to the Grantee for the benefit of the public.
4. This Easement shall include the rights to reasonably remove, alter or maintain vegetation, improvements, or obstructions within the limits of the Easement that conflict with the use of the Easement; provided, however, Grantee shall not remove or alter any improvements without first Grantor with one weeks’ prior written notice of its intent to do so.
5. Upon completion of any removal, alteration or maintenance of the Improvements by Grantee, the Grantee shall have the obligation to restore the attributes of the property disturbed by any such removal, alteration or maintenance (including both the Easement Area and adjacent property) to as near the pre-disturbance condition or better.
6. To the extent permitted by Arizona law, Grantee shall indemnify and hold Grantor harmless

from any liabilities for injuries or damages to persons or property arising out of Grantee's or its officers', agents', employees', licensees', and invitees' (including the public) use of the Easement, the Improvements or presence in the Easement Area.

- 7. The Grantor shall have the right to use and enjoy the property burdened by the Easement, provided such use and enjoyment does not interfere with Grantee's or the public's ability to utilize the Easement granted herein, and further provided that the Grantor shall not construct or permit the erection of any structure or improvement that would interfere with the Easement or the operation of the Trail within the Easement without Grantee's written consent. In addition, Grantor reserves the right to grant additional easements in, on, over or under the Easement Area, provided, however, any such grant of additional easements shall not unreasonably interfere with the rights granted hereunder to Grantee. The determination of whether Grantor's use and enjoyment or proposed construction of any structure or improvement would interfere with the Grantee's or the public's ability to utilize the Easement or the operation of the Trail shall be in the reasonable discretion of the Grantee.

IN WITNESS WHEREOF, Grantor has caused this Flagstaff Urban Trails System Easement to be executed in its name by the undersigned officers this \_\_\_ day of \_\_\_\_\_, 2013.

GRANTOR:

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, on behalf of \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

## **Exhibit E**

1. Buyer will market the site at all ICSC events it attends, including the Real Estate Conventions in Las Vegas and San Diego, in 2013, 2014 and 2015 (and any appropriate extension of time required if significant portions of the Property remain to be developed);
2. Buyer will hire one or more brokers with strong tenant ties to market the Property;
3. Buyer will process the zoning application for all of the Property at one time, and will process site plan approval requests as tenants are ready to move forward.
4. Buyer expects that the Property will be developed in Phases, with the first Phase anticipated to commence at the southwest corner within approximately 12 months following the close of escrow. Buyer further anticipates that the southeast corner of the intersection will be the second Phase and the timing will be user-driven. The portions of the Property located west of the wash and south of the railroad tracks are anticipated to follow in subsequent phases.
5. Buyer will endeavor to attract new businesses that are not within the current trade area of the Property, and will further endeavor to encourage relocations of businesses which are within the current trade area if the relocation will result in a larger building to accommodate the business and/or will result in the business increasing its revenues due to the relocation.