



When recorded, return to:

Evergreen Devco, Inc.
2390 East Camelback Road
Suite 410
Phoenix, Arizona 85016
Attn: Ms. Laura Ortiz

E# 3180253 PG 1 OF 17
Leann H. Kilts, WEBER COUNTY RECORDER
31-Aug-21 0154 PM FEE \$40.00 DEP TN
REC FOR: FIRST AMERICAN TITLE INSURANCE COI
ELECTRONICALLY RECORDED

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made this 31 day of August, 2021, by EVERGREEN-12TH & WASHINGTON, L.L.C., an Arizona limited liability company ("Declarant").

RECITALS

- A. Declarant is the owner of certain real property situated in the City of Ogden, County of Weber, State of Utah, comprising two parcels legally described as "Parcel A" and "Parcel B" on Exhibit "A" attached hereto (collectively, the "Parcels").
- B. Declarant desires to impose certain easements upon the Parcels, and to establish certain covenants, conditions and restrictions with respect to the Parcels, for the mutual and reciprocal benefit and complement of the Parcels and the present and future owners, tenants and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Declarant declares that the Parcels and all present and future owners, tenants and occupants of the Parcels, are subject to the easements, covenants, conditions, and restrictions set forth in this Declaration, so that the Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, Declarant declares, covenants and agrees as follows:

AGREEMENTS

- 1. Definitions. For purposes hereof:
 - (a) "Access Drive" means the driveway located on Parcel A so labeled on the Site Plan.
 - (b) "City" means the City of Ogden, Utah.
 - (c) "Good Condition" means good, clean, orderly, safe, well-marked, and well-lit condition and repair.

- (d) **“Evergreen”** means Evergreen–12th & Washington, L.L.C., an Arizona limited liability company, but not its successors or assigns.
- (e) **“Owner”** or **“Owners”** means Declarant and any and all successors or assigns as the owner or owners of fee simple title to Parcel A and/or Parcel B, whether by sale, assignment, inheritance, operation of law, trustee’s sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on a Parcel or any tenant or subtenant of a Parcel.
- (f) **“Parcel”** or **“Parcels”** means Parcel A and/or Parcel B as shown on the Site Plan.
- (g) **“Permittees”** means the respective employees, agents, contractors, customers, invitees and licensees of an Owner or Tenant.
- (h) **“Site Plan”** means the site plan of the Parcels attached hereto as Exhibit “B” and made a part hereof.
- (i) **“Tenant”** means the holder of the entire leasehold interest in Parcel A or Parcel B, as applicable, entitled to possession thereof under a valid lease with the Owner of the Parcel.
- (j) **“UDOT Access Drive”** means the driveway so labeled on the Site Plan. The UDOT Access Drive shall apply hereunder if to the extent provided in that certain Agreement for a Future Use Cross-Access Easement in favor of the Utah Department of Transportation (the “UDOT Easement”). The Parcels are subject to the UDOT Easement and each Owner and Tenant covenants and agrees to comply with the terms of the UDOT Easement as applicable to such Owner’s or Tenant’s Parcel.
- (k) **“Utility Facilities”** means “wet” and “dry” utilities, systems, structures, mains, conduits, lines and associated installations, including, without limitation, water, sewer, storm sewer, electric, gas, telephone, and cable systems.

2. Easements.

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares that the Parcels, and all Owners (and each Tenant, if applicable) and Permittees of the Parcels, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the Parcels and all present and future Owners (and each Tenant, if applicable) and Permittees of the Parcels:

- (a) An easement for reasonable pedestrian and vehicular access, ingress and egress over and across the Access Drive and the UDOT Access Drive (if and to the extent applicable per the terms of the UDOT Easement), so as to provide for the passage of motor vehicles and pedestrians between the

Parcels intended for such purposes and to and from all abutting streets or rights-of-way furnishing access to the Parcels;

- (b) An easement for the incidental drainage of storm water runoff from one Parcel onto the other Parcel, in minimal volumes consistent with the grading and drainage plan for the Parcels. Otherwise, each Parcel's storm water drainage, retention or detention must be accommodated on-site, within the boundaries of such Parcel; and
- (c) An easement under an area within the first 20 feet of a Parcel which is adjacent to the public right-of-way known as "12th Street" that is adjacent to the Parcels for the installation, construction, use, repair, maintenance, removal and replacement of Utility Facilities. All Utility Facilities must be placed and maintained below the ground level or surface of the Parcel (except for such elements as cannot and are not intended to be placed below the surface, such as transformers and control panels, which must be placed in such location(s) as are reasonably approved by the Owner of the burdened Parcel (and its Tenant, if applicable).

2.2 Indemnification. Each Owner and/or Tenant having rights with respect to an easement granted hereunder agrees to defend, indemnify and hold harmless the Owner and/or Tenant whose Parcel is burdened by the easement for, from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent or intentional acts or omissions of the indemnifying Owner and/or Tenant, or their respective contractors, employees, and authorized agents.

2.3 Reasonable Use of Easements.

- (a) The easements granted herein may only be used and enjoyed by an Owner, its Tenant, if applicable, and their Permittees so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of the other Owner, its Tenant, if applicable, and their Permittees at any time conducted on its Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.
- (b) The Owner of a Parcel served by Utility Facilities and such Owner's Tenant may not unreasonably withhold their consent to the reasonable relocation of all or a portion of the Utility Facilities requested by the Owner (or Tenant, if applicable) of a burdened Parcel, at such requesting Owner's (or Tenant's) sole cost and expense, so long as the Utility Facilities are not interrupted and continue to function as originally designed and constructed and with at least the same capacity as when originally constructed, and the remaining provisions of this paragraph 2.3 are complied with.

- (c) Once commenced, any construction, maintenance or repair undertaken in reliance upon an easement granted herein must be diligently prosecuted to completion, so as to minimize any interference with the business of the other Owner, its Tenant, if applicable, and their Permittees. Except in cases of emergency, the right of any Owner or its Tenant to enter upon a Parcel of the other Owner pursuant to the easements set forth herein, or to prosecute work on such Owner's or Tenant's own Parcel if such work interferes with utility or drainage easements or easements of ingress, egress or access to or in favor of the other Owner's Parcel, shall be undertaken only in a manner calculated to minimize any interference with the business of the other Owner, its Tenant, if applicable, and their Permittees. In such case, no affirmative monetary obligation may be imposed upon the other Owner or its Tenant, and the Owner or Tenant undertaking such work must with due diligence repair at its sole cost and expense any and all damage caused by such work and restore the affected portion of the Parcel upon which such work is performed to a condition that is equal to or better than the condition existing prior to the commencement of such work. In addition, the Owner or Tenant undertaking such work must pay all costs and expenses associated therewith and indemnify and hold harmless the other Owner, its Tenant, if applicable, and their Permittees from all damages, losses, liens or claims attributable to the performance of such work.

- 2.4 Reciprocal Access and Parking. Parcel A and Parcel B are hereby granted the non-exclusive right, privilege and easement over and across the common area of the granting Owner's Parcel for perpetual vehicular parking, vehicular and pedestrian ingress and egress over and across such Parcel for rights of ingress and egress to include such rights for the employees, agents, contractors, customers, vendors, suppliers, visitors and invitees of the Owners.

3. Maintenance.

- 3.1 Unimproved Parcel. Until a Parcel is initially improved, the Owner thereof must maintain its Parcel in Good Condition and take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.

3.2 Improved Parcel.

- (a) Each Owner of a Parcel covenants to keep and maintain in Good Condition, at no expense to the other Owner, all improvements located from time to time on such Owner's Parcel, including, without limitation, the building and related improvements, the Access Drive and the UDOT Access Drive (if and to the extent applicable and if and to the extent per the terms of the UDOT Easement), and all other common area improvements. This obligation includes areas, if any, in immediately contiguous right-of-way, required by the City to be maintained by the Owner.

- (b) Once constructed, in the event of any damage to or destruction of a building or other improvement on any Parcel, the Owner of such Parcel must at no cost or expense to the other Owner and with due diligence either (i) repair, restore and rebuild the building or other improvement to its condition prior to the damage or destruction (or with such changes as do not conflict with this Declaration), or (ii) demolish and remove all portions of the damaged or destroyed building or improvement then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition; provided, however, nothing contained herein invalidates or supersedes a more stringent obligation for repair, restoration and rebuilding contained in a lease or other written agreement between an Owner and its Tenant. Notwithstanding the foregoing, any damage to that portion of the Access Drive located on an Owner's Parcel must be promptly repaired, restored and rebuilt to its condition prior to such damage or destruction (or with such changes as do not conflict with this Declaration). Notwithstanding the foregoing, any damage to that portion of the UDOT Access Drive located on an Owner's Parcel must be promptly repaired, restored and rebuilt to its condition per the terms of the UDOT Easement as and to the extent applicable.
- (c) Only one (1) building intended for occupancy may be constructed on a Parcel.
- (d) The maximum area and maximum height, if any, of the building to be constructed on each Parcel are as per City code requirements and applicable laws.
- (e) Except as expressly provided herein, no Owner or Tenant may cause snow to be shoveled or accumulated from its Parcel (i) onto the Parcel of the other Owner or Tenant, (ii) into the Access Drive or the UDOT Access Drive (as and to the extent applicable), or (iii) into a sufficient number of its own parking spaces as to cause its customers, employees or invitees to park on the Parcel of the other Owner or Tenant.

3.3 Access Drive. The Owner or Tenant of Parcel A is obligated to maintain and repair the entire Access Drive in Good Condition, including reasonable removal of snow and ice in accordance with standards of projects that are similarly situated, at no expense to the other Owner. Once fully constructed, no change to all or any portion of the Access Drive as originally constructed, including, without limitation, any change to any curb cut connecting the Access Drive to adjacent public rights-of-way, is permitted without the prior written consent of all Owners and Tenants.

3.4 Utility Facilities. Each Owner must at all times during the term hereof construct, operate and maintain or cause to be constructed, operated and maintained, in Good Condition, at no expense to the other Owner, any Utility Facilities serving the Parcel of such Owner and from time to time existing on or under the Parcel of the other Owner pursuant to an easement granted herein.

4. Construction and Modification of Improvements.

- 4.1 Access Drive. At the date of recording of this Declaration, the Access Drive or portions thereof exist in an existing condition in connection with the previous use and occupation of Parcel A and Parcel B by a single occupant (the "Existing Access Drive"). After the recording of this Declaration, the Tenant of Parcel A intends to demolish the Existing Access Drive and construct and improve the Access Drive. Prior to commencing such construction, all plans and specifications for such improvements must be approved in writing by Declarant, which approval shall not be unreasonably withheld, conditioned, or delayed. In no event does such approval constitute a representation, certification, or implication of any kind by Declarant as to engineering, structural, or design adequacy, compliance with applicable law, or as to any other matter, whether similar or dissimilar. Once commenced, such improvements must be diligently constructed in a good and workmanlike manner, free and clear of liens and encumbrances for labor or materials, in accordance with applicable law, and substantially in accordance with the approved plans and specifications. No such construction may materially interfere with the use of or conduct of business, if any, on Parcel B.
- 4.2 Interim Use by Parcel B. Notwithstanding paragraph 4.1 to the contrary, if the Tenant of Parcel A does not undertake construction and completion of the Access Drive within 120 days after the date of recording of this Declaration, then, if and to the extent the Owner of Parcel B requires use of the Access Drive (or the Existing Access Drive, as the case may be, if construction on the Access Drive has not commenced) for the use and operation of Parcel B, then the Owner of Parcel B has the right to use the Existing Access Drive or the existing condition of the Access Drive at such time, as applicable and as the case may be, until such time as the Tenant of Parcel A completes the Access Drive. In such event, the Owner of Parcel B and the Tenant of Parcel A shall reasonably coordinate any temporary interim improvements required of the Owner of Parcel B for such access, which such temporary interim improvements shall be at the sole cost and expense of the Owner of Parcel B, and the parties shall provide their respective reasonable cooperation to one another to permit the Owner of Parcel B use of the Existing Access Drive or the existing condition of the Access Drive. Further, in such event, to the extent the Tenant of Parcel A is constructing to the Access Drive or when the Tenant of Parcel A thereafter commences the construction of the Access Drive, the Tenant of Parcel A shall continue to provide to the Owner of Parcel B interim and temporary access over and across the existing conditions of Parcel A to satisfy the use and operation of Parcel B and any fire and emergency access requirements for Parcel B until the Access Drive is constructed. In furtherance thereof, the parties shall reasonably coordinate and cooperate with one another until the Access Drive is constructed. In no event shall the Owner or Tenant of Parcel A be permitted to close the Access Drive or Existing Access Drive when the business of Parcel B requires fire and/or customer access.
- 4.3 No Modifications. Except as otherwise expressly provided herein, once constructed, the Access Drive may in no event be relocated, blocked, closed,

obstructed or removed, without the prior written consent of all Owners and Tenants, which consent may be withheld by any party in its reasonable business judgment (excluding requests for temporary and commercially reasonable interruptions of access, as, for example, in connection with underground easement installation or maintenance, asphalt repaving or resealing, or initial construction, remodeling or reconstruction of improvements, in which event such consent may not be unreasonably withheld or delayed). Once constructed, a smooth and level grade transition must at all times be maintained in and around the Access Drive so as to allow the vehicular and pedestrian access, ingress and egress contemplated by this Declaration.

- 4.4 General. All improvements now or in the future constructed on a Parcel must be constructed, operated and maintained in compliance with all City requirements. Subject to the express requirements of this Declaration and applicable governmental authority, and the requirements of any lease of a Parcel, each Parcel may be developed and improved by an Owner without the consent of the other Owner. Without limiting the generality of the foregoing, each Owner may at its option construct on its Parcel (adjacent to the Access Drive, if applicable), parking spaces, driveways, walkways, landscaping, curbs, gutters, and other improvements typical to shopping center common areas, so long as the use of the Access Drive contemplated by this Declaration is not impaired.

5. Restrictions.

- 5.1 General. Each Parcel must be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation may be made, conducted or permitted on or with respect to all or any portion of a Parcel that is illegal. Neither Parcel A nor Parcel B may be used, in whole or in part, for any of the following: adult book store; adult theatre; adult amusement facility or similar shop selling or displaying sexually explicit or pornographic materials (but these “adult” restrictions are not applicable to a drugstore, or to a full-line bookstore or full-line video store); pawn shop; flea market; massage parlor (except for the provision of massages by licensed massage therapists in conjunction with a beauty salon, nail salon, day spa or any medical use); junk yard; mortuary; funeral parlor; or bar, lounge or night club, provided that the foregoing does not prohibit a restaurant complying with all liquor licensing requirements and other applicable law whose primary business is the preparation and retail sale of food and alcoholic and non-alcoholic beverages for on-site consumption.
- 5.2 Restrictions Burdening Parcel B. Neither all nor any portion of Parcel B may be used for the following purposes: the primary purpose of which is the sale of coffee, blended drinks, smoothies, and/or energy drinks.
- 5.3 Restrictions Burdening Parcel A. Neither all nor any portion of Parcel A may be used for the following purposes: the operation of an oil changing facility.

- 5.4 Sunset of Restrictions. If after first opening for business for a use protected by the use restrictions set forth in paragraphs 5.2 or 5.3 above, such use ceases to be conducted for a period of 12 consecutive months or more for any reason other than (a) strike, lockout or other labor difficulty, fire or casualty, condemnation, war, riot, insurrection, act of God, or other temporary closure beyond the reasonable control of the Owner of the benefited parcel, (b) temporary closure due to the restoration, reconstruction, expansion, alteration or remodeling of the building or other improvements located on the benefited parcel, or (iii) governmental restrictions, the use restrictions for the benefited parcel will terminate.
6. Insurance. Throughout the term of this Declaration, each Owner shall procure and maintain, or cause its Tenant to procure and maintain, commercial general liability insurance against claims for death or bodily injury, personal injury (including contractual liability arising under the indemnification contained in paragraph 2.2 above), or property damage occurring upon such Owner's Parcel, with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence, and a general aggregate of not less than Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any, and naming each other Owner and Tenant (provided the Owner or Tenant obtaining such insurance has been supplied with the name of such other Owner and Tenant in the event of a change thereof) as additional insureds.
7. Taxes and Assessments. Each Owner must pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel.
8. No Rights in Public. Nothing contained herein may be construed as creating any rights in the general public or as dedicating for public use any portion of Parcel A or Parcel B.
9. Remedies and Enforcement.
- 9.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Tenant of any of the terms, covenants, restrictions or conditions hereof, the non-defaulting Owner(s) and Tenant(s) are entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. Each Owner's Tenant has the right, but not the obligation, to enforce this Declaration on behalf of such Owner, or to cure a breach or default hereunder by such Owner, which enforcement or cure must be accepted by all other parties as if effected by the Owner of the Parcel.
- 9.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within 30 days following written notice thereof by a non-defaulting Owner or Tenant (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any non-defaulting Owner or Tenant has the right to perform such obligation contained in this Declaration on behalf of the defaulting Owner and be reimbursed by the

defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Bank of America (or its successors or assigns), plus two percentage points (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of access or other easement rights, and/or (iii) the unauthorized parking of vehicles on a Parcel, any non-defaulting Owner or Tenant may immediately cure the breach and be reimbursed by the defaulting Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percentage points, as above described.

- 9.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner (or to a Tenant in connection with the exercise of its rights set forth in paragraphs 9.1 or 9.2 above) in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the in the official records of the County of Weber, Utah; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the official records of the County of Weber, Utah, prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording the notice of lien must record an appropriate release of such notice of lien and Assessment Lien.
- 9.4 Remedies Cumulative. The remedies specified herein are cumulative and in addition to all other remedies permitted at law or in equity.
- 9.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder entitles any Owner or Tenant to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder defeats or renders invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof are binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.
10. Term. The easements, covenants, conditions and restrictions contained in this Declaration are effective commencing on the date of recordation of this Declaration in the official records of the County of Weber, Utah, and remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the

written consent of all then record Owners and Tenants of Parcel A and Parcel B in accordance with paragraph 11.2 hereof.

11. Miscellaneous.

11.1 Attorneys' Fees. If an Owner or Tenant institutes a legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication is entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.2 Amendment.

(a) This Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all Owners of Parcel A and Parcel B, evidenced by a document that has been fully executed and acknowledged by all such Owners and recorded in the official records of the County of Weber, Utah.

(b) Notwithstanding subparagraph 11.2(a) above to the contrary, no termination of this Declaration, and no modification or amendment of this Declaration may be made without the prior written consent of each then-existing Tenant of a Parcel, not to be unreasonably withheld. The Tenant of Parcel A consents to this Declaration as indicated by its signature below.

11.3 Consents. Wherever in this Declaration the consent or approval of an Owner or Tenant is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof requiring that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner or Tenant under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing. Any consent by an Owner, to be effective, also requires the consent of the Owner's Tenant, if any.

11.4 No Waiver. No waiver of any default of any obligation by any party hereto may be implied from any omission by the other party to take any action with respect to such default.

11.5 No Agency. Nothing in this Declaration may be deemed or construed by any Owner or Tenant or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

11.6 Covenants to Run with Land. Each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein run with the land and create equitable servitudes in favor of the real property benefited thereby, bind every person having any fee, leasehold or other interest therein and inure to the benefit of

the respective parties and their successors, assigns, heirs, and personal representatives.

- 11.7 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.
- 11.8 Separability. Each provision of this Declaration and the application thereof to Parcel A and Parcel B are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein is held to be invalid or to be unenforceable or not to run with the land, such holding will not affect the validity or enforceability of the remainder of this Declaration. If the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the Owners agree to promptly cause such legal description to be prepared.
- 11.9 Time of Essence. Time is of the essence of this Declaration.
- 11.10 Entire Agreement. This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.
- 11.11 Notices. Notices or other communications hereunder must be in writing and must be sent certified or registered U.S. mail, return receipt requested, or by a reputable national overnight courier company, or by personal delivery. Notice is deemed given upon receipt or refusal to accept delivery. Each Owner may change from time to time its address for notice hereunder by like notice to the other Owner. Notice given to any Owner hereunder to be effective must also simultaneously be given to such Owner's Tenant (of which the notifying Owner has notice). The notice addresses of Declarant, the Owner of Parcel B and the Tenant of Parcel A at the date hereof are as follows:

Declarant: EVERGREEN-12TH & WASHINGTON, L.L.C.
c/o Evergreen Devco, Inc.
2390 East Camelback Road
Suite 410
Phoenix, Arizona 85016
Telephone: (602) 808-8600
Attention: Ms. Laura Ortiz
E-mail: lortiz@evgre.com

Owner of Parcel B:

EVERGREEN-12TH & WASHINGTON, L.L.C.
c/o Evergreen Devco, Inc.
2390 East Camelback Road
Suite 410
Phoenix, Arizona 85016
Telephone: (602) 808-8600
Attention: Ms. Laura Ortiz
E-mail: lortiz@evgre.com

Tenant of Parcel

A: BB HOLDINGS CA, LLC
PO Box 1929
Grants Pass, Oregon 97528

or

BB HOLDINGS CA, LLC
110 SW 4th Street
Grants Pass, Oregon 97526

- 11.12 Estoppel Certificates. Each Owner and Tenant, within 10 business days after its receipt of a written request from another Owner or Tenant, agrees to provide the requesting Owner or Tenant a certificate binding upon the certifying Owner or Tenant stating: (a) to the best of such person's knowledge, whether any party to this Declaration is in default or violation of this Declaration and if so identifying such default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to this Declaration as of the date of such certificate.
- 11.13 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Declaration, to the maximum extent permitted by law, will be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.
- 11.14 Mortgage Subordination. Any mortgage or deed of trust affecting a Parcel must at all times be subject and subordinate to the terms of this Declaration, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee sale, acquires title subject to all the terms and conditions of this Declaration.
- 11.15 Delegation. Each Owner reserves the right to delegate to its Tenant on such basis as the Owner and Tenant mutually agree, all or any of the rights or obligations of the Owner contained in this Declaration, and the performance by the Tenant of an obligation of the Owner must be accepted by all parties as if performed by the Owner.

- 11.16 Prescriptive Easements/Adverse Possession. No title, easement or use pertaining to the Parcels or any portion thereof may be established by prescription or adverse possession, the statute of limitations for such purposes being expressly hereby waived.
- 11.17 Ownership of Parcels. The validity and binding effect of this Declaration is not affected or impaired by reason of the ownership of both Parcels by the same person.
- 11.18 Termination of Declarant Liability. At such time as Evergreen or an affiliated entity no longer has any interest in either Parcel, Evergreen is released from any liability as Declarant thereafter arising, and all rights and obligations of Declarant under this Declaration thereupon cease.
- 11.19 Governing Law. The laws of the State of Utah govern the interpretation, validity, performance, and enforcement of this Declaration.

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

EVERGREEN-12TH & WASHINGTON, L.L.C., an Arizona limited liability company

By: Evergreen Development Company-2021, L.L.C., an Arizona limited liability company
Its: Manager

By: Evergreen Devco, Inc., a California corporation
Its: Manager

By: [Signature]
Name: Laura Ortiz
Its: President

STATE OF Arizona)
)ss.
COUNTY OF Maricopa)

On this the 17th day of August, 2021, before me, the undersigned Notary Public in and for said County and State, personally appeared Laura Ortiz, the President of Evergreen Devco, Inc., a California corporation, Manager of Evergreen Development Company-2021, L.L.C., an Arizona limited liability company, Manager of Evergreen-12th & Washington, L.L.C., an Arizona limited liability company, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the instrument in such person's authorized capacity, and that by his or her signature on the instrument the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Signature: Peggy Doane]
Notary Public

My Commission Expires:

June 6, 2022

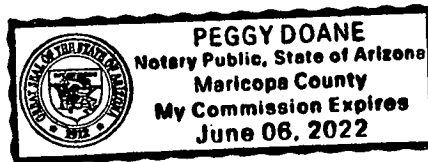


Exhibit "A"
Legal Descriptions

PARCEL A: (DUTCH BROS.):

Beginning at a point on the north right of way line of 12th Street which is 720.50 feet North 89°09'45" West along the monument line and 80.56 feet North 0°50'15" East from the Ogden City Survey Monument in the intersection of Washington Avenue and said 12th Street; running thence North 0°50'15" East 337.84 feet; thence South 89°09'45" East 133.33 feet; thence South 0°50'15" West 293.36 feet; thence South 5°50'15" West 27.93 feet; thence South 0°38'06" West 16.22 feet to said north right of way line; thence North 89°21'18" West 130.96 feet along said line to the point of beginning.

Contains: 44,942 sq. ft. or 1.032 acres.

PARCEL B:

Beginning at a point on the north right of way line of 12th Street which is 720.50 feet North 89°09'45" West along the monument line and 80.56 feet North 0°50'15" East to said north right of way line and 130.96 feet South 89°21'18" East along said line from the Ogden City Survey Monument in the intersection of Washington Avenue and said 12th Street; running thence North 0°38'06" East 16.22 feet; thence North 5°50'15" East 27.93 feet; thence North 0°50'15" East 293.36 feet; thence South 89°09'45" East 116.67 feet; thence South 0°50'15" West 337.00 feet to said north right of way line; thence North 89°21'18" West 119.04 feet along said line to the point of beginning.

Contains: 39,412 sq. ft. or 0.905 acres.

Exhibit "B"
Site Plan

