

**FIRST AMENDMENT
TO REAL ESTATE PURCHASE AND SALE AGREEMENT**

City of Flagstaff and Evergreen – Trax, LLC

THIS FIRST AMENDMENT TO THAT CERTAIN REAL ESTATE PURCHASE AND SALE AGREEMENT (“**First Amendment**”) is entered into this _____ day of _____, 2014, by and between the City of Flagstaff, an Arizona municipal corporation (“**Seller**”) and Evergreen - TRAX, LLC, an Arizona limited liability company (“**Buyer**”), as successor in interest to Evergreen Devco, Inc., a California corporation (“**Original Buyer**”). Buyer and Seller are sometimes referred to herein collectively as the “**Parties.**”

RECITALS

- A. On June 12, 2013, the Seller and Original Buyer entered into a Real Estate Purchase and Sale Agreement (“**Agreement**”) for the purchase and sale of 33.6 acres of real property generally located at the intersection of Route 66 & Fourth Street, within the corporate limits of Flagstaff, Arizona.
- B. On August 13, 2013, Original Buyer assigned, conveyed and transferred to Buyer all of Original Buyer’s right, title and interest in the Agreement.
- C. Seller and Buyer desire to amend the Agreement as hereinafter set forth.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

Section 1. Section 2.1 of the Agreement is hereby amended as follows (proposed new text is indicated with double underline and text proposed for deletion is indicated by strikethrough).

2.1 Buyer agrees to purchase the Property for ~~Three Million One Hundred Thousand Dollars (\$3,100,000.00)~~ Two Million Eight Hundred Eighty One Thousand Dollars (\$2,881,000.00) (“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.

Section 2. Section 20.2.1 of the Agreement is hereby amended as follows (proposed new text is indicated with double underline and text proposed for deletion is indicated by strikethrough).

20.2.1 Buyer will ~~modify or build two~~ a segments of the Flagstaff Urban Trail System (“FUTS”) on the Property. Buyer will construct ~~one~~ this 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 This high speed FUTS 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.~~ Further, Buyer agrees that this high speed FUTS trail shall be 10 feet wide, constructed of concrete, and be built to current City standards and guidelines for FUTS trail construction, 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.

Section 3. Section 26, Term, of the Agreement is hereby amended as follows (proposed new text is indicated with double underline and text proposed for deletion is indicated by strikethrough).

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)~~ fifteen (15) 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)~~ fifteen (15) 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.

Section 4. Except as specifically modified and amended pursuant to the terms of this First Amendment, the Agreement shall remain in full force and effect, and the terms and conditions thereof are hereby ratified and affirmed by the Parties thereto.

Section 5. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 6. This First Amendment is effective as of the date first set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to real Estate Purchase and Sale Agreement as of the date first written above.

City of Flagstaff

Evergreen – TRAX, LLC, an Arizona limited liability company

Gerald W. Nabours, Mayor

By: _____

Attest:

Name: _____

Title: _____

City Clerk

Approved as to form and authority:

City Attorney

STATE OF ARIZONA)
COUNTY OF _____)

ACKNOWLEDGMENT

On this _____ day of _____, 2014, before me, a Notary Public, personally appeared _____, 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 Evergreen – TRAX, LLC, an Arizona limited liability company, for the purposes therein contained.

Notary Public
My Commission Expires: _____