When recorded, mail to:

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

DEVELOPMENT AGREEMENT AND WAIVER
between
City of Flagstaff
and
Evergreen – TRAX, L.L.C.

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into this _____ day of _____, 2014, by and between the City of Flagstaff, an Arizona municipal corporation ("**City**"), and Evergreen - TRAX, LLC, an Arizona limited liability company ("**Developer**"). City and Developer are sometimes referred to herein collectively as the "**Parties**."

RECITALS

A. A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property located in the City.

B. Developer is the owner of approximately 33.6 acres of real property generally located at the intersection of Route 66 & Fourth Street, within the corporate limits of Flagstaff, Arizona, more specifically described and depicted in ***Exhibit "A"*** (the "**Property**").

C. The Property is currently zoned Light Industrial ("**LI**") and Light Industrial – Open ("**LI-O**") and the Developer is requesting a zoning map amendment to Highway Commercial ("**HC**").

D. Under the 2001 Flagstaff Regional Land Use and Transportation Plan, in effect on the date Developer first made application, the Property is currently designated Office/Business Park/Light Industrial and Light/Medium Industrial and the Developer is requesting an amendment to Community/Regional Commercial.

E. The City has an interest in ensuring that the development of the Property complies with City standards for development and engineering improvements, and the City believes that development of the Property pursuant to this Agreement will result in planning, safety, and other benefits to the City and its residents.

F. The Developer acknowledges that development of the Property pursuant to this Agreement will be beneficial and advantageous to the Developer by providing assurances to the Developer that it will have the ability to develop the Property within the City pursuant to this Agreement, under the zoning described in Recital C above, and in accordance with the Conceptual Site Plan.

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G. The City and Developer acknowledge that this Agreement is a development agreement pursuant to the provisions of A.R.S. § 9-500.05.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to fulfill the foregoing objectives, the Parties agree as follows:

1. INCORPORATION OF RECITALS

Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.

2. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

2.1 "**City**" shall mean and refer to the City of Flagstaff, an Arizona municipal corporation, and any successor public body or entity.

2.2 "**Developer**" shall mean and refer to Evergreen - TRAX, LLC, an Arizona limited liability company, and any permitted successor-in-interest or assignee of Evergreen - TRAX, LLC acquiring a specific Phase of the Project as contemplated pursuant to Section 11.14.

2.3 "**Improvements**" shall mean and refer to all the improvements which may be constructed from time to time as part of the Project, including, without limitation, public roads, utilities, driveways, landscaping and other improvements of any type or kind to be built by Developer.

2.4 "**Phase**" shall mean and refer to each separate component or portion of the Project which is or may be developed by Developer pursuant to this Agreement.

2.5 "**Project**" shall mean and refer to the development of the Property for the uses, intensities and densities currently shown in the approved Conceptual Site Plan.

2.6 "**Property**" shall mean and refer to all of the real property which is legally described in ***Exhibit "A"***.

2.7 "**Purchase and Sale Agreement**" shall mean and refer to the Purchase and Sale Agreement entered into between the City and Evergreen Devco, Inc., dated June 12, 2013, assigned to Developer via Assignment and Assumption of Contracts and Intangible Property Agreement dated August 13, 2013, and as amended pursuant to the First Amendment to Purchase and Sale Agreement, dated June 6, 2014, and any further amendments~~(*)~~.

3. CONCEPTUAL SITE PLAN

The City and Developer hereby acknowledge that the City approved the Conceptual Site Plan for the Project on April 3, 2014, attached hereto as ***Exhibit "B"*** and incorporated herein by this reference (the "**Conceptual Site Plan**"). The Conceptual Site Plan sets forth the basic land uses, intensity and density of such uses, relative height, bulk and size of buildings and structures proposed by Developer and approved by the City for development within the Property. Notwithstanding anything contained in the foregoing, however, the City acknowledges that while the Developer intends to develop the Project in general conformance with the Conceptual Site Plan, in order to make the Project economically viable and otherwise feasible, as the Project progresses through formal site plan review, Developer may request modifications to the Conceptual Site Plan and shall incorporate modifications as set forth in this Agreement. The City shall process all submittals made by Developer in conformance with below, and nothing contained herein shall preclude the City from the exercise of its normal review process and requirements in connection with its approval of such submittals. Modifications to the Conceptual Site Plan that exceed the thresholds set forth in Flagstaff Zoning Code Section 10-20.40.090.B.2 shall require a Zoning Map Amendment to process the requested modifications to the approved Conceptual Site Plans.

4. DEVELOPMENT STANDARDS

Development of the Property shall be governed by the City's codes, ordinances, regulations, rules, guidelines, and policies controlling permitted uses of the Property, design review standards, the density and intensity of uses, the maximum height and size of the buildings within the Property, as well as the standards for off-site and on-site public improvements in existence as of the Effective Date of this Agreement, except as modified herein and by the Purchase and Sale Agreement; provided, however, that Developer obtains off-site construction permits for one or more components of the Project within two (2) years following the Effective Date of this Agreement. If Developer fails to obtain any off-site construction permits within this two (2) year period, then development of the Project shall be subject to the City's codes, ordinances, regulations, rules, guidelines, and policies in effect at the time Developer applies for such construction permits. Notwithstanding the above, the Parties expressly acknowledge and agree that the City reserves the right to adopt future ordinances assessing or imposing development fees under the authority of A.R.S. § 9-463.05, which shall be applicable to development of the Property. Developer agrees and understands that upon the Effective Date of this Agreement, all building permits and other fees normally applicable to construction within the City shall apply to the Project.

5. GUIDING PRINCIPLES

The Parties acknowledge that development activities for the Property may extend over several years, and that many of the requirements and procedures provided for in this Agreement contemplate that use of the Property in the future and may be subject to procedures, requirements, regulations, and ordinances not presently in effect, as well as actions and decisions by City staff and officials which cannot be provided for with particularity at the time the

Agreement was executed. With respect to such, the Parties agree that they will act in good faith and with reasonableness in implementing, operating under, and exercising the rights, powers, privileges, and benefits conferred or reserved by this Agreement or by law. However, denying a permit for the Developer's failure to meet the City's criteria for such permit shall not be deemed a breach by the City of this Agreement.

6. PROJECT DESCRIPTION, SITE LAYOUT AND DESIGN STANDARDS

6.1 Commercial Development. The Project, as contemplated by this Agreement and as depicted in the Conceptual Site Plan, will consist of approximately two hundred fifty thousand (250,000) square feet of building space. The site layout of the commercial portion of the Project must conform generally to the arrangement of buildings as depicted in the Conceptual Site Plan. Developer may submit commercial buildings individually or in groups of buildings to the City for development review approval, and the approval process for such submissions will proceed for the building or buildings submitted without the requirement that other buildings proceed through the development review process simultaneously.

6.2 Pedestrian Pathways. Clear, direct, safely lit, and continuous pedestrian pathways are required between public sidewalks and adjacent commercial buildings located within the Project, as generally depicted in the Conceptual Site Plan. In addition, clear, direct, safely lit, and continuous pedestrian pathways are required through private parking lots between adjacent commercial buildings located within the Project. These pedestrian pathways will include a distinct, all-weather surface material, such as stamped or colored concrete, and will be located in conjunction with landscape islands. To the maximum extent feasible, the location of pedestrian pathways shall be coordinated with FUTS access pathways, as described in Section 7.~~2~~3, Flagstaff Urban Trail System, below.

6.3 Design Standards. Developer will follow the City's architectural standards with regard to exterior building materials and colors, which will conform to the City's Design Review standards. Developer will ensure that massing, bulk, and scale of commercial buildings will also conform to these standards.

7. DEVELOPER OBLIGATIONS

7.1 Construction of Public and Other Related Improvements. Prior to issuance of a grading permit for any phase or component of the Project, Developer shall provide security, in a form satisfactory to the City as set forth in the City's Zoning Code, that public and other related improvements will be constructed in accordance with approved plans. Developer shall, at its sole expense, construct or cause to be constructed all public and other related improvements as required by the City's codes, ordinances, and this Agreement, and in accordance with approved specifications, as well as those public and related improvements required by the Arizona Department of Transportation ("**ADOT**") as a condition of approval. Following the construction of the described public improvements, and dedication of same to the City, unless otherwise provided, the City shall assume, at its expense, the maintenance and repairs of all public improvements in accordance with City policies. The Developer agrees that the construction of

the public and other related improvements will coincide with the phased development of the Project.

7.2 Right-of-Way Acquisition. Developer shall be responsible for acquiring the right(s)-of-way necessary for all public improvements required by the State of Arizona~~,~~ Department of Transportation ("ADOT") through good-faith negotiation with the property owner. Developer shall follow the requirements in Title 12 of the Arizona Revised Statutes for acquisition of the property as if the Developer was a government entity obtaining property by eminent domain. Developer will work with the City's Real Estate Manager from the beginning of the negotiation process to ensure compliance with statutes and to expedite the process. Developer will use its best efforts to design the public-improvement project required by ADOT in a method that requires the least amount of property acquisition.

If the Developer is unable to acquire the right(s)-of-way within a reasonable timeframe and after the exercise of reasonable diligence, then Developer shall request in writing that the City initiate eminent-domain proceedings to acquire the right(s)-of-way. The City shall be the arbiter of whether or not the Developer has exhausted its ability to negotiate with the property owner(s), but shall be reasonable in its judgment. Once it has been determined by the City that the Developer has exhausted its ability to negotiate with the property owner(s), the City shall promptly proceed in accordance with the ~~s~~State's eminent domain laws~~,~~ (ARS §12-1111, et. seq.), and use its best efforts to expedite acquisition.

The City's obligation to initiate eminent domain proceedings is contingent upon: 1) ADOT entering into an Agreement with the City that allows the City to exercise eminent domain to acquire right-of-way for the public improvements within ~~the~~ ADOT's jurisdiction; 2) a determination by the City Engineer that the construction plans for the project indicate that~~-~~: a) no property that will be acquired for right-of-way contains a habitable structure,~~-~~ and b) the Developer has used its best efforts to design the public improvements to minimize the amount of property needed for the project~~,~~; and 3) Developer providing funding for all costs of such right(s)-of-way acquisition, including the fair-market value of the subject property, appraisal costs, expert witnesses, legal costs including attorneys' fees, and City staff and administrative costs, as the City may deem necessary and appropriate. The City shall be responsible for choosing the attorneys, appraisers, and any other experts who will handle the eminent domain proceedings, with approval by the Developer. If City's final costs exceed the amount deposited by Developer, Developer shall pay the balance to the City promptly upon request by the City. If ~~c~~City's final costs are less than the amount deposited by Developer, City shall promptly pay the difference to Developer upon a court's issuance of a final order of condemnation.

7.3~~2~~ Flagstaff Urban Trail System ("**FUTS**"). The Developer, at its sole cost and expense, shall construct a concrete high-speed FUTS trail in accordance with City standards, except as modified by the Purchase and Sale Agreement, through a portion of the Property, as generally depicted in the Conceptual Site Plan. This FUTS trail cross section shall consist of a minimum ten foot (10') wide concrete trail, with a minimum two foot (2') wide shoulder adjacent to that portion of the FUTS trail fronting the railroad right-of-way, and a minimum five foot (5') wide landscaping buffer adjacent to that portion of the FUTS trail fronting the Project, except for that portion of the FUTS trail abutting that parking lot directly serving the buildings

designated as "Major A" and "Rest. 1" on the Conceptual Site Plan. This portion of trail need not meet the minimum five foot (5') wide landscaping buffer, and, at the Developer's discretion, may be reduced to two feet (2'). The construction of the FUTS trail shall be phased and coordinated in conjunction with the overall phasing of the Project, as set forth in Section 8, Phasing, below. For any phase of the Project occurring in any one of those sections of the Property designated Area A, B and C on the Conceptual Site Plan, a corresponding section of the FUTS trail, extending the entire length of either Area A, B or C, shall be constructed. In addition, until the entire FUTS alignment has been constructed and opened to the public, Developer agrees to maintain pedestrian and bicycle connectivity between any phase of FUTS construction and the current FUTS alignment. Such temporary connection(s) shall be ten feet (10') in width and paved in accordance with City standards and specifications. Further, Developer agrees to provide three (3) FUTS access pathways through the Project. Such pathways shall serve as a connection between those pedestrian and bicycle resources adjacent to Route 66 and the FUTS trail. FUTS access points shall be located in the general area of the intersection of Route 66 & Arrowhead Avenue, Route 66 & First Street, and Route 66 & Postal Boulevard. FUTS access pathways shall not be gated or otherwise obstructed and shall be open to the general public at all times.

7.4~~3.~~ Outdoor Public Space. Pursuant to Section 10-30.60.060.B.1 of the Flagstaff Zoning Code, Developer agrees that a minimum five percent (5%) of the Property, seventy-two thousand nine hundred sixty-three (72,963) sq. ft. ("**Outdoor Public Space Requirement**"), shall be devoted to outdoor pedestrian amenity areas which shall act as transition spaces between parking areas and the entrance(s) to adjacent commercial buildings. Outdoor pedestrian amenity areas shall include landscaping, structures providing protection from the weather, benches, tables, or other pedestrian friendly features. At the Developer's sole discretion, that portion of the Property necessary for fulfilling Developer's FUTS obligations, forty-seven thousand eight hundred (47,800) sq. ft., may be treated as an offset against the Outdoor Public Space Requirement. Developer agrees that the areas on both sides of the historic trestle bridge, described in Section 7.4~~5~~, below, shall, to the maximum extent feasible, be used as outdoor pedestrian amenity areas.

7.5~~4~~ Trestle Bridge. Developer agrees that the historic trestle bridge spanning the Spruce Avenue Wash, currently connecting those portions of the Property designated Area A and Area C on the Conceptual Site Plan, shall be preserved in its current location and in its current form, and shall be used to provide vehicular and/or pedestrian connectivity between Area A and Area C.

7.6~~5~~ Drive-through Facilities. Developer agrees that drive-through facilities shall be designed to ensure the safe movement of pedestrians from public sidewalks to commercial building entrances, as well as the safe movement of vehicular traffic in parking lots. To the maximum extent feasible, Developer agrees to comply with the "Specific to Uses" requirements as detailed in Section 10-40.60.160, Drive-through Retail, of the City's Zoning Code.

~~7.6 Fourth Street Bridge Spanning Interstate 40 ("**I-40 Bridge**"). In addition to those obligations set forth in Section 7.1, Developer agrees to contribute three hundred twenty thousand dollars ($320,000.00) ("**I-40 Bridge Contribution**") towards I-40 Bridge~~

~~improvements. Such sum constitutes the Developer's pro-rata "fair share" contribution towards mitigating the Project's traffic impact on the I-40 Bridge, in accordance with the City's Transportation Engineering Program Memorandum dated February 20, 2014. Developer's I-40 Bridge Contribution shall be phased in conjunction with the overall phasing of the Project. Prior to the City issuing a building permit for any development occurring in any one of those sections of the Property designated Area A, B , C and D on the Conceptual Site Plan, Developer shall place eighty thousand dollars ($80,000.00) into the City's I-40 Bridge improvement escrow account, for a total of three hundred twenty thousand dollars ($320,000.00). Notwithstanding the foregoing, the Parties agree that if development has not occurred in all four (4) Areas of the Project within ten (10) years of the Effective Date of this Agreement, Developer shall pay the remaining unpaid balance of the I-40 Bridge Contribution on the tenth (10th) anniversary of this Agreement. The Parties agree that should the I-40 Bridge improvements be funded through alternate funding sources, including capital bonding, the three hundred twenty thousand dollars ($320,000.00) in escrowed funds shall be used to retire or repay any outstanding debt obligation(s) the City has incurred related to Fourth Street improvements; to construct, fund or contribute to future improvements along the Fourth Street commercial corridor that benefit, directly, indirectly or in any manner whatsoever, the Project; or to construct, fund or contribute to those pedestrian crossing improvements identified in the pedestrian crossing study, as detailed in Section 7.7, below. Alternate funding sources for I-40 Bridge improvements, if available prior to full payment of the I-40 Bridge Contribution, shall in no way relieve the Developer of their obligations with respect to I-40 Bridge Contribution payment(s). Should alternate funding sources become available prior to full payout, all monies due shall be used for the secondary purposes set forth in this Section. In no event will the Developer be entitled to any credit, refund, or reimbursement of any portion of the funds placed in escrow pursuant to this section. Following the placement of the full I-40 Bridge Contribution into the City's I-40 Bridge improvement escrow account, Developer shall have no further obligations or liability, financial or otherwise, with respect to the I-40 Bridge.~~

7.7~~7~~ Pedestrian Crossing Study and Improvements. Prior to the recording of the Final Plat for the Property, Developer agrees to place One Hundred Seventy-Nine Thousand Dollars and 00/100 ($179,000.00) ("**Pedestrian Study Contribution**") into a dedicated City escrow account to be used for a pedestrian crossing study and any recommended improvements to Route 66 related to the development of the Property. Specifically, these escrowed funds shall be utilized by the City for (i) a pedestrian crossing study which will evaluate the crossing patterns of pedestrians to, through, and from the Project; and (ii) additional pedestrian safety improvements on Route 66, if any, identified in the study. Following the placement of the Pedestrian Study Contribution into the City's dedicated escrow account, Developer shall have no further obligations or liability, financial or otherwise, with respect to the pedestrian crossing study or the installation or maintenance of those improvements identified therein. Should the pedestrian crossing study recommend no improvements or improvements that cost less than the Pedestrian Study Contribution, the monies in the escrow account will be refunded to the City first, up to the City's Fifty-Nine Thousand Dollars ($59,000.00) contribution. Any remaining funds in the escrow account after the refund to the City will be refunded to Developer.

7.8~~8~~ Route 66 Lighting. Developer agrees to implement those measures set forth in the Arizona Department of Transportation Submittal Review Memorandum dated February 8, 2014

("ADOT Memorandum"), attached hereto as ***Exhibit "C"*** and incorporated herein by this reference, detailing those improvements that Developer is obligated to make to ADOT owned fixtures, facilities, improvements, and rights-of-way. In particular, Developer agrees to improve the street lighting along the entire frontage of Route 66 adjacent to the property to a standard of PGP 700 and AASHTO's Roadway Lighting Design Guidelines with a modification to utilize Low Pressure Sodium source of lighting exclusively. Upon acceptance, Developer shall not be responsible for the maintenance, repair, or replacement of those improvements required as a condition of ADOT approval, as set forth in the ADOT Memorandum. The Parties agree that ***Exhibit "C"*** shall be automatically amended, without further action of the Parties, at such time as ADOT provides Developer with a revised Submittal Review Memorandum addressing Developer's obligations in regard to ADOT owned fixtures, facilities, improvements, and rights-of-way resulting from the Project.

7.9~~9~~ Dedication of Public Easements. Public utility and drainage easements with respect to the Project must be identified on the construction plans and dedicated prior to issuance of building permits. Dimensions for these easements must be in accordance with City and ADOT requirements. A minimum fifty foot (50') wide public utility easement, generally located in the area of the Spruce Wash and specifically identified on Sheet SP01 of the Conceptual Site Plan, shall be identified on all relevant construction plans.

7.10~~10~~ Water and Sewer. Water and sewer mains must be designed and extended by Developer at Developer's cost in accordance with the approved water and sewer impact analysis and the 2012 City of Flagstaff Engineering and Design Standards.

7.11~~1~~ Dedication of Public Rights-Of-Way. Public rights-of-way for all streets must be identified on the Final Plat and dedicated with Final Plat approval. Dimensions for these rights-of-way and easements must be in accordance with City standards and requirements.

7.12~~2~~ Existing and Modified Streetscape Landscaping. Existing streetscape landscaping along adjacent public rights-of-way must be maintained, transplanted to equivalent locations, or replaced with landscaping of a similar species in equivalent locations. Existing streetscape landscaping can be used to offset the landscape requirements of the Flagstaff Zoning Code. Pursuant to the Flagstaff Zoning Code, a minimum ten foot (10') wide landscaping buffer adjacent to public thoroughfares, which does not include public right-of-way, is required for those sections of the Property designated Area A, B, C, and D on the Conceptual Site Plan. However, the Parties agree that in Area A, B, or C, the Developer may utilize public right-of-way to meet the ten foot (10') wide landscaping buffer requirement. The Parties agree that a minimum five foot (5') wide buffer, not including a sidewalk, shall be maintained behind public right-of-way when adjacent to buildings. For parking lots fronting the right-of-way, the Developer shall construct a three-and-a-half foot (3.5') high screen wall in combination with the required ten foot (10') wide landscaping buffer requirement.

7.13~~3~~ Zoning. Developer hereby agrees to be subject to all the terms, conditions, and stipulations of City Ordinance No. 2014-14, attached hereto as ***Exhibit "D"*** and incorporated herein by this reference.

7.1~~4~~4 Permits and Building Fees. Developer agrees and understands that upon the Effective Date of this Agreement, all building permits, development fees, and other fees normally applicable to construction within the City shall apply to the Project.

8. PHASING

The Parties acknowledge that development of the Project will be affected by numerous factors outside the control of the Developer, e.g., general economic conditions, interest rates, and market demand. Accordingly, the City acknowledges that the Developer may submit multiple applications from time-to-time to develop and/or construct portions of the Conceptual Site Plan for the Project in phases as long as each phase provides for the logical extension of vehicle and pedestrian connectivity, infrastructure, and utilities through the Project, as approved by the City, in compliance with the terms of this Agreement and other applicable provisions of the City's codes, ordinances, regulations, rules, guidelines, and policies. Further, each phase of this development must be designed and constructed to stand alone in perpetuity per Subdivision Regulation 11-20.130.010.B, as well as the approved water and sewer, traffic, and drainage impact analyses. Specific phasing for the FUTS trail is addressed in Section 7.~~2~~3, Flagstaff Urban Trail System, above.

9. DEVELOPMENT PROCESS

9.1 Diligence in Responding to Approval Requests. The City hereby acknowledges and agrees that development of the Property may occur over a span of a number of years and will require the City's ongoing participation in the review and approval of modifications and amendments to any phasing plans, site plans, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, archaeological and historic preservation review and disposition, and other plans, permit applications, and inspections, which are a part of the City's current building and development requirements (hereinafter collectively called "**Approval Requests**"). The City hereby agrees that, in connection with all such Approval Requests relating to the planning or development of the Property or any portion thereof, and the construction of Improvements thereon, it shall cooperate with Developer in good faith to process all such Approval Requests.

9.2 Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Developer and/or the development of the Property, and hereby authorizes and empowers the City Manager or designee to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law.

10. DEFAULT; REMEDIES

10.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance, and such breach or default continues for a period of thirty (30) days, unless such breach or default cannot be fully resolved in thirty (30) days and such remedy is being diligently pursued, after written

notice thereof from the party not in default hereunder. For purposes of determining default and termination, those Developer obligations set forth in Section 7, Developer Obligations, are severable, and each individual obligation shall terminate upon the successive completion of the individual obligation.

10.2 Dispute Resolution. In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property development. The costs of any such mediation shall be divided equally between the City and the Developer or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the Parties and any party shall be free to initiate litigation upon the conclusion of mediation.

10.3 Developer's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore, as set forth in Section 10.1 above, then, in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may terminate this Agreement by written notice delivered to the City.

10.4 City's Remedies. In the event that the Developer is in default under this Agreement, and the Developer thereafter fails to cure any such default within the time period described in Section 10.1 above, then, in that event, in addition to all other legal and equitable remedies which the City may have, the City may terminate this Agreement by written notice delivered to the Developer.

10.5 Development Rights in the Event of Termination. With the exception of a termination that occurs under Section 10.3 above, upon the termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

10.6 No Personal Liability. No current or former member, official, or employee of the City or Developer when acting within the scope of their official capacity shall be personally liable (a) in the event of any default or breach by the City or Developer, as applicable; (b) for any amount which may become due to the nonbreaching party or its successor or assigns; or (c) pursuant to any obligation of the City or Developer, as applicable, under the terms of this Agreement.

10.7 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or

indirectly, in whole or in part, out of the performance of this Agreement by City or Developer, or nonperformance of this Agreement by the Developer.

11. GENERAL PROVISIONS

11.1 Effective Date and Term. This Agreement shall be effective (the "**Effective Date**") upon execution by the Parties hereto and recordation in accordance with A.R.S. § 9-500.05 (as amended). The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate thirty (30) years from such date.

11.2 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid, or by overnight mail by a reliable overnight delivery service to:

To City:

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

To Developer:

Evergreen – Trax, LLC
c/o Laura Ortiz
Evergreen Devco, Inc
2390 East Camelback, #410
Phoenix, Arizona 85016

With copy to:

Trax Investors, LLC
Robert Karber
2828 N. Central, Suite 1110
Phoenix, Arizona 85004

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered seventy-two (72) hours following deposit with the United States Postal Service in the manner set forth above.

11.3 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

11.4 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

11.5 Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Developer represents to the City that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

11.6 Entire Agreement. This Agreement, including the following exhibits which are incorporated into this Agreement by reference, constitutes the entire agreement between the Parties and supersedes any prior written or oral understandings or agreements between the Parties. This provision applies only to the entirety of this Agreement; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

Exhibit "A" Legal Description of Property
Exhibit "B" Conceptual Site Plans
Exhibit "C" ADOT Submittal Review Memorandum dated February 8, 2014
Exhibit "D" City Ordinance No. 2014-14

11.7 Amendment of the Agreement. This Agreement may be amended, in whole or in part, and with respect to all or any portion of the Property, only with the mutual written consent of the Parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Coconino County Recorder.

11.8 Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

11.9 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. This Agreement has been made and entered into in Coconino County, Arizona.

11.10 Recordation of Agreement and Subsequent Amendment; Cancellation. The City will record this Agreement, and any amendment or cancellation of it, in the official records of the Coconino County Recorder no later than ten (10) days after the City and the Developer execute the Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

11.11 No Partnership; Third-Party. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no

such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

11.12 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official, or employee of the City shall have a personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

11.13 Compliance with All Laws. Developer will comply with all applicable Federal, State, and County laws, as well as with all applicable City ordinances, regulations, and policies.

11.14 Successors and Assigns. Upon prior written notice to City, Developer may assign its interest in this Agreement, in whole or in part, to any entity that controls, is controlled by, or is under common control with Developer (including but not limited to a limited liability company of which the original Developer is a member), who undertakes to proceed with development of the Project. Provided that the assignee has provided City with the name, address, and designated representative of the assignee, and has assumed the rights, liabilities and obligations of Developer under this Agreement pursuant to a written instrument (a true and correct copy of which shall be provided to City), then the assignor shall be released from any obligations or liabilities arising under this Agreement from and after the date of assignment. Neither Developer nor any permitted assignee of Developer may otherwise assign its interest in this Agreement, in whole or in part, without the prior written consent of the City, which consent may be reasonably withheld by the City. This Agreement shall be personal to Developer and its permitted successors and assigns, and shall not run with the land.

11.15 Vested Rights. Nothing in this Development Agreement shall preclude the Developer from claiming that the Developer has vested rights to complete the development of the Project in accordance with currently applicable regulations based on the significant investment and improvements made on the Property by the Developer.

12. WAIVER OF CLAIM FOR DIMINUTION IN VALUE

Developer hereby waives and fully releases any and all financial loss, injury, claims, and causes of action that the Developer may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Private Property Rights Protection Act (the "**Act**"), codified in A.R.S §§ 12-1131 through 12-1138, in connection with the application of the City's existing land use laws and including City Ordinance No. 2011-01 regarding the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act with regard to the subject Property. Developer agrees to indemnify, hold harmless, and defend the City, its officers, employees, and agents, from any and all claims, causes of actions, demands, losses, and expenses, including attorney's fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney's fees or costs

under the Act that they may have, as a result of the application of the City's existing land use laws, including City Ordinance No. 2014-14, upon the Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

City of Flagstaff

_____
Gerald W. Nabours, Mayor

Attest:

_____
City Clerk

Approved as to form and authority:

_____
City Attorney

Evergreen – TRAX, LLC, an Arizona limited liability company

By: TRAX Investors, LLC, an Arizona limited liability company
Its: Manager

By:_____

Name:_____

Its:_____

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, Manager of TRAX Investors, LLC, an Arizona limited liability company, for the purposes therein contained.

_____
Notary Public
My Commission Expires:_____