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RESOLUTION NO. RA-17-2009

RESOLUTION FINDING THE PROJECT PROPOSED BY THE COMMERCIAL VIP AGREEMENT ("CVIP") BETWEEN THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY AND HENNESSEY'S LAS VEGAS, INC. D/B/A LAS VEGAS COUNTRY SALOON (PARTICIPANT) TO BE IN COMPLIANCE WITH AND IN FURTHERANCE OF THE GOALS AND OBJECTIVES OF THE REDEVELOPMENT PLAN AND AUTHORIZING THE EXECUTION OF THE CVIP BY THE AGENCY

WHEREAS, the City of Las Vegas Redevelopment Agency (the "Agency") adopted on March 5, 1986, that plan of redevelopment entitled, to-wit: the Redevelopment Plan for the Downtown Las Vegas Redevelopment Area pursuant to Ordinance 3218, which Redevelopment Plan has been subsequently amended on February 3, 1988, by Ordinance 3339; April 11, 1992, by Ordinance 3637, on November 4, 1996, by Ordinance 4036, on December 17, 2003, by Ordinance 5652 and on May 17, 2006, by Ordinance 5830 (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan identifies and designates an area within the corporate boundaries of the City of Las Vegas (the "Redevelopment Area") as in need of redevelopment in order to eliminate the environmental deficiencies and blight existing therein; and

WHEREAS, the Agency approved on October 20, 2004 the form for the Commercial VIP Agreement, the Commercial VIP Affidavit, and the Commercial VIP Program Manual, in order to provide funding to owners of commercial properties located within the Redevelopment Area for the purpose of making improvements to the exterior of such commercial properties and/or for the development of a vacant parcel with a new commercial building; and

WHEREAS, HENNESSEY'S LAS VEGAS D/B/A LAS VEGAS COUNTRY SALOON (the "PARTICIPANT") has a lease hold interest for real property and improvements located at 425 Fremont Street, 2nd Floor, and which parcel is commonly known as APN 139-34-610-045 (the "Site"); and

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1 WHEREAS, HENNESSEY'S LAS VEGAS, INC d/b/a LAS VEGAS COUNTRY
2 SALOON. (the "PARTICIPANT") is a tenant on the real property located at 425 Fremont
3 Street, 2nd Floor and is undertaking certain exterior improvements to the property in accordance
4 with the Commercial VIP Program; and
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6 WHEREAS, the Agency has considered the findings that no other reasonable
7 means of financing the building, facilities or structures or other improvements on the Site are
8 available; and
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10 WHEREAS, the Governing Body of the Agency has determined that the
11 Commercial VIP Agreement (the "Agreement" and attached hereto as Exhibit A), which
12 provides for the contribution of funds to Participant for making physical, visual improvements
13 to the building on the Site, all as more fully set forth in the Agreement, is in compliance with
14 and in furtherance of the goals and objectives of the Redevelopment Plan; and
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16 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Governing Board of
17 the Agency that the Agreement is hereby approved and determined to be in compliance with
18 and in furtherance of the goals and objectives of NRS 279 and the Redevelopment Plan, and the
19 Chairperson of the Governing Board of the Agency is hereby authorized and directed to
20 execute the Agreement for and on behalf of the Agency, and to execute any and all additional
21 documents (including any Attachments to the Agreement) and to perform any additional acts
22 necessary to carry out the intent and purpose of the Agreement.
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1 THE FOREGOING RESOLUTION and CVIP AGREEMENT was passed,
2 adopted and approved this 7TH day of OCTOBER, 2009.
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4 CITY OF LAS VEGAS
5 REDEVELOPMENT AGENCY

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7 By: 
8 OSCAR B. GOODMAN, Chairman

9 ATTEST:

10 
11 ~~BEVERLY K. BRIDGES, CMC~~
12 SECRETARY VICKY DARLING, Acting Secretary

13 APPROVED AS TO FORM:

14  9/18/09
15 Date

EXHIBIT A

CITY OF LAS VEGAS REDEVELOPMENT AGENCY COMMERCIAL VISUAL IMPROVEMENT AGREEMENT

THIS COMMERCIAL VISUAL IMPROVEMENT AGREEMENT (the "Agreement") is entered into this 16th day of September, 2009, by and between the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body in the State of Nevada (hereinafter referred to as the "Agency") and HENNESSEY'S LAS VEGAS D/B/A LAS VEGAS COUNTRY SALOON ("Participant")

Recitals

WHEREAS, the City of Las Vegas Redevelopment Agency ("Agency") administers and funds and is funded by the Agency for the purposes of improving the physical appearance of, and encouraging reinvestment in existing commercial structures; and

WHEREAS, in furtherance of the Redevelopment Plan (the "Redevelopment Plan") for the City of Las Vegas Redevelopment Area (the "Redevelopment Area"), the Agency approved a Commercial Visual Improvement Program (the "Commercial VIP") for the purpose of assisting property owners and their tenants in the rehabilitation of their buildings in order to revitalize and promote the economic stability of the Redevelopment Area; and

WHEREAS, pursuant to the Agency's Commercial Visual Improvement Program ("Commercial VIP"), the Agency agrees to rebate a portion of the cost of Pre-approved Qualified Exterior Improvements on qualifying commercial properties located within the Redevelopment Area of the City of Las Vegas, up to a maximum of one-half (1/2) of the approved contract cost of such improvements or \$50,000, whichever is lesser; and

WHEREAS, the PARTICIPANT desires to participate in the Commercial VIP pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained herein, the AGENCY and PARTICIPANT do hereby agree as follows:

SECTION 1: SCOPE OF AGREEMENT. The purpose of this agreement is to effectuate the Redevelopment Plan by contributing funds to that certain property; as more particularly described in the "Legal Description of the Site," attached hereto as Attachment " 1 " and incorporated herein by reference (the "Property" or "Site"). Implementation of this Agreement will further the goals and objectives of the Redevelopment Plan. This Agreement is subject to the provisions of the Redevelopment Plan which the City Council of the City of Las Vegas adopted on March 5, 1986, by Ordinance No. 3218, as amended. Said Redevelopment Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein.

SECTION 2: PARTIES TO THE AGREEMENT. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of Nevada (NRS 279.382, et seq.). The principal office of the Agency is located at 400 Stewart Avenue, Las Vegas, Nevada, 89101. "Agency", as used in this Agreement, includes the City of Las Vegas Redevelopment Agency and any assignee of or successor to its rights, powers and responsibilities. The PARTICIPANT warrants it has a valid and binding leasehold interest in (as defined hereinafter), the Site and as demonstrated by Attachment " 2 ", "Proof of Ownership or Leasehold Interest",

which is attached hereto and is incorporated herein by reference. "PARTICIPANT", as used in this Agreement, includes not only the PARTICIPANT as identified in the opening paragraph of this Agreement, but also any assignee of, or successor to, its rights, powers and responsibilities. The Agency and the PARTICIPANT individually may be referred to as "party" or collectively as "parties" hereinafter.

SECTION 3: IMPROVEMENTS TO THE SITE AND PROJECT BUDGET. The PARTICIPANT shall make improvements to the Site, or to the buildings, fixtures or appurtenances thereon, according to the Scope of Work and Tentative Schedule of Improvements, which is attached hereto as Attachment " 3 " and by this reference is made a part hereof. The Scope of Work and Tentative Schedule of Improvements shall provide a line item budget, acceptable to the Agency, for all work to be performed. Within 30 days of execution of this Agreement by the Agency, PARTICIPANT agrees to commence, or cause the commencement of, rehabilitation and improvement of the Site, pursuant to the plans and other documents submitted by PARTICIPANT and approved by Agency in accordance with the CVIP Guidelines. PARTICIPANT shall complete the improvements within 180 days of commencement of work. Additional time may be given upon approval of the Agency, which approval shall not be unreasonably withheld. The improvements to the Site also shall be referred to as the "Project" or "Improvements" hereinafter. The Agency shall maintain a right of access to the Site, provided that the Agency gives the PARTICIPANT a minimum of twenty-four (24) hours written, advance notice prior to entering the Site.

SECTION 4: CONTRACTOR SELECTION REQUIREMENTS. If the Project exceeds \$10,000, then the PARTICIPANT in compliance with NRS 279.478 must obtain three (3) or more competitive bids from properly licensed contractors. If the PARTICIPANT is unable to obtain (3) or more competitive bids, the PARTICIPANT shall provide the Agency, upon request, with documentation detailing when and which licensed contractor(s) were contacted.

SECTION 5: DESIGN REVIEW COMMITTEE. For reviewing the architectural and engineering design of the Project, the Agency has appointed a Design Review Committee comprised of one or more staff members from the following City of Las Vegas municipal departments: Office of Business Development; Planning and Development Department; Land Development, Public Works; Development Coordination, Public Works; and City of Las Vegas Department of Building & Safety. At its discretion, the Agency may solicit input from additional City staff depending on the individual needs of the Project. The Design Review Committee shall meet on an ad hoc basis. The Design Review Committee shall recommend approval or disapproval of the Project Scope of Work. If the Project is disapproved, the Agency shall retain the right to ask the PARTICIPANT to make changes to the proposed Scope of Work.

SECTION 6: COMPLIANCE WITH APPLICABLE DEVELOPMENT STANDARDS. The PARTICIPANT must comply with all development standards applicable to the Scope of Work, including but not limited to, the Zoning Code of the City of Las Vegas, the Building Code of the City of Las Vegas, and the Fire Code of the City of Las Vegas. Additional development standards may apply depending on the specific location of the Site.

SECTION 7: FAILURE TO COMPLETE WORK. If the contractor selected by the PARTICIPANT fails to complete all of the work specified in the Scope of Work, then the Agency may pursue any and all legal and equitable remedies available under this Agreement, as more specifically described in Section 13 hereinafter.

SECTION 8: UNRELATED IMPROVEMENTS. Nothing herein is intended to limit, restrict or prohibit the PARTICIPANT from undertaking any other work in or about the subject premises which is unrelated to Commercial VIP provided for in this Agreement.

SECTION 9: COMPLIANCE WITH THE REDEVELOPMENT PLAN AND EMPLOYMENT PLAN. The Agency finds that the Project as contemplated by this Agreement complies with the Commercial VIP Guidelines and therefore would be deemed a substantial benefit to the Redevelopment Area. The Agency finds that the Project, upon completion, would achieve one or more of the following:

1. Encourage new commercial development;
2. Create or retain jobs for nearby residents;
3. Increase local revenues from private revenue sources;
4. Increase levels of human activity in the Redevelopment Area;
5. Possess attributes that are unique, either as to type of use or level of quality and design;
6. Require for their construction, installation or operation the use of qualified and trained labor; or
7. Demonstrate greater social or financial benefits to the community that would a similar set of buildings, facilities, structures or other improvements not paid for by the Agency.

The Agency has also considered the opinions of persons who reside in the Redevelopment Area or the immediate vicinity of the Redevelopment Area. In addition, the Agency has compared the level of spending proposed by the Agency and the projections of future revenue made on the buildings, facilities, structures or other improvements.

The PARTICIPANT has declared that no other reasonable means of financing are available to undertake the improvements to the Property because the return on investment is not reasonable and the improvements are being financed through cash on hand and/or debt financing through a private lender. Furthermore, the PARTICIPANT would not undertake the full set of improvements contemplated in the Agreement through resources reasonably available to the PARTICIPANT pursuant to the Participant Affidavit and Employment Plan, attached hereto as Attachment " 5 " and by this reference made a part hereof.

The PARTICIPANT has also declared and provided the Agency with an Employment Plan, which is attached hereto as Attachment "5 " and by this reference is made a part hereof. The PARTICIPANT, for itself and its successors and assigns, represents that in the construction of improvements on the Site provided for in this Agreement, the PARTICIPANT shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

SECTION 10: CONFLICTS OF INTEREST AND DISCLOSURE REQUIREMENTS. No member, official or employee of the Agency shall have any 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 personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. The PARTICIPANT warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. No member, official or employee of the Agency shall be personally liable to the PARTICIPANT in the event of any default or breach by the Agency or for any amount which may become due to the PARTICIPANT or on any obligations under the terms of this Agreement. Pursuant to Resolution RA-4-99 adopted by the governing board of the Agency effective October 1, 1999, PARTICIPANT warrants that it has disclosed, on the Disclosure of Principals form attached hereto as Attachment " 4 " and incorporated herein by reference, all persons and entities holding more than 1% (one percent) interest in PARTICIPANT or any principal member of PARTICIPANT. Throughout the term hereof, PARTICIPANT shall notify City in writing of any material change in the above disclosure within 15 (fifteen) days of any such change.

SECTION 11: DEFAULTS AND REMEDIES. Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The nondefaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure same within thirty (30) days of receipt of the notice of default. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the District Court, County of Clark State of Nevada, in any other appropriate court in that county, or in the Federal District Court in the appropriate district of Nevada. The nondefaulting party may also, at its option, cure the breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting party's breach. Further, the nondefaulting party may file legal action to require the defaulting party to specifically perform the terms and conditions of this Agreement. Upon occurrence of an Event of Default by either the PARTICIPANT or the Agency during the existence of this Agreement, the non-defaulting party, at its option, may institute an action for specific performance of the terms and obligations (including the payment of any monetary obligation) of this Agreement. During the existence of this Agreement and upon the occurrence of a PARTICIPANT Event of Default, the Agency shall have the right to terminate, and this Agreement shall so terminate, the date that the written notice of termination is received by the PARTICIPANT or such other date as may be specified in the written notice. In the event of termination of this Agreement by the Agency, the PARTICIPANT agrees to return any and all Agency Funds heretofore paid to the PARTICIPANT pursuant to the provisions of this Agreement within ten (10) calendar days after the termination date. Failure to return any and all Agency Funds paid to the PARTICIPANT shall entitle the Agency to sue the PARTICIPANT for specific performance as provided in this Section and to pursue the Agency's remedies, legal and equitable, for such damages as permitted by law.

SECTION 12: SUBSEQUENT AGENCY APPROVALS. Any approvals of the Agency required and permitted by the terms of this Agreement may be given by the Executive Director of the Agency or such other person that the Agency designates in writing.

SECTION 13: TERM. The term of this Agreement shall end upon the completion of all duties and obligations to be performed by each of the parties hereto.

SECTION 14: SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalidated, it shall be deemed to be severed from this Agreement and the remaining provisions shall remain in full force and effect.

SECTION 15: GOVERNING LAW. The interpretation and enforcement of this Agreement shall be governed in all respects by the laws of the State of Nevada.

SECTION 16: NOTICES. Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to the PARTICIPANT and the Agency at the addresses set forth in this Agreement or at such other address as a party may designate in writing. The date notice given shall be the date on which the notice is delivered, if notice is given by personal deliver, or five (5) calendar days after the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail.

SECTION 17: CAPTIONS. The captions contained in this Agreement are for the convenience of the parties and shall not be construed so as to alter the meaning of the provisions of the Agreement.

SECTION 18: ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS. This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This includes Attachment " 1 " through Attachment " 5 " inclusive, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and the PARTICIPANT and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision. All amendments hereto must be in writing and signed by the appropriate authorities of Agency and the Owner.

SECTION 19: TIME FOR AGENCY TO ACCEPT AGREEMENT. This Agreement has been approved on _____, 2009 by the City of Las Vegas Redevelopment Agency. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency ("Effective Date").

Date of Agency Approval:

_____, 2009.

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By: _____

OSCAR B. GOODMAN, CHAIRMAN
"Agency"

APPROVED AS TO FORM:

J. P. [Signature] 9/16/09
Counsel to the Agency Date

ATTEST:

BEVERLY BRIDGES, CMA
Secretary

HENNESSEY'S LAS VEGAS, INC. D/B/A LAS
VEGAS COUNTRY SALOON

By: _____

PAUL HENNESSEY
Its: President