

TRAFFIC SIGNAL AGREEMENT

THIS TRAFFIC SIGNAL AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 2010, (the "Effective Date") by and between the City of Las Vegas, a municipal corporation of the State of Nevada (the "City") and Decatur 215 LLC, a Delaware limited liability company organized under the laws of the registered as a foreign limited liability company in the State of Nevada as Decatur 215 of Nevada LLC (the "Developer"). City and Developer are individually or collectively referred to herein as "Party" or "Parties."

RECITALS

WHEREAS, Developer has undertaken the construction of the commercial development commonly referred to as Decatur 215 Shopping Center (the "Development"), more specifically known as Assessor's Parcel Numbers ("APN") 125-25-512-001 and 125-25-614-001; and

WHEREAS, Developer constructed a traffic signal at the intersection of Tropical Parkway and Decatur Boulevard (the "Traffic Signal") at a total cost of One Hundred Eighty Six Thousand Five Hundred Ninety Nine Dollars and No Cents (\$186,599.00); and

WHEREAS, Traffic Signal is located at the jurisdictional boundaries equally shared by City and City of North Las Vegas. Therefore, the cost of the City portion of the Traffic Signal is \$93,299.50; and

WHEREAS, Developer paid Traffic Signal Impact Fees ("TSIF") of Ten Thousand Four Hundred Ninety Three Dollars and 15/100 (\$10,493.15) in connection with building permits for three buildings in the Development on APN 125-25-614-001 that is currently owned by Developer and the Owner of APN 125-25-512-001 paid TSIF of Thirty Eight Thousand Eight Hundred Eighty One Dollars and No Cents (\$38,881.00) for construction on APN 125-25-512-001 currently owned by others; and

WHEREAS, City and Developer desire to enter this Agreement, pursuant to the City's Municipal Code, in order for the City to reimburse Developer for certain construction costs and to establish TSIF credits for future development;

NOW, THEREFORE, in consideration of the mutual terms, conditions, and covenants hereinafter set forth, the Parties agree as follows:

TERMS

A. City will reimburse Developer Ten Thousand Four Hundred Ninety Three Dollars and 15/100 (\$10,493.15) for the TSIF paid for by Developer in connection with building permits for three buildings in the Development on APN 125-25-614-001 that is currently owned by Developer. The City shall use commercially reasonable efforts to promptly reimburse Developer upon execution of this Agreement by the City's City Council, and no later than 60 days after the Effective Date.

B. City will credit remaining costs for the Traffic Signal due to the Developer or successors in the Development, Forty Three Thousand Nine Hundred Twenty Five Dollars and 35/100 (\$43,925.35) (the "Credit"), for future construction on remaining pads on either APN 125-25-512-001 or APN 125-25-614-001 as building permits are submitted and approved.

C. Usage of the Credit shall conform to City Municipal Code Section 4.32.100 – Traffic Impact Fee—Credit issuance. After the Credit is exhausted by either Developer or successors in the Development, additional TSIF will be assessed in connection with any building permits that are issued to Developer or successors in the Development in accordance with the City's Municipal Code in effect at the time building permits are submitted and approved. Any unused Credits remaining upon expiration of the term set forth below shall be reimbursed to Developer by means of a cash payment from the City to Developer.

This Credit shall be valid from the Effective Date, until five (5) years after the Effective Date, or until the Credit is exhausted by construction commenced by either Developer or successors in the Development.

REPRESENTATIONS AND WARRANTIES

A. Representations and Warranties by City

City represents and warrants to Developer that as of the date hereof and the date of execution of this Agreement:

1. The City is a municipal corporation of the State of Nevada.
2. The City has all requisite power and authority to enter into and perform its obligations under this Agreement.
3. By proper action of the City, the City's signatories have been duly authorized to execute and deliver this Agreement.
4. To the City's actual knowledge, no condemnation, eminent domain or similar proceedings have been instituted or threatened against the Development.
5. To the City's actual knowledge, there are no legal actions, suits or proceedings pending or threatened before any judicial body or any governmental or quasi-governmental authority against the Development or against City which would inhibit the City's ability to perform its obligations under this Agreement.
6. To the City's actual knowledge, the execution, delivery and performance of this Agreement by the City will not (i) conflict with or be in contravention of any provision of law, order, rule or regulation applicable to the City or the Development, or (ii) result in any lien, charge or encumbrance of any nature on the Development.

7. The execution of this Agreement by the City does not violate any provision of any other agreement to which the City is a party.

8. Except as may be specifically set forth herein, no approvals or consents not heretofore obtained by the City are necessary in connection with the execution of this Agreement by the City or with the performance by the City of its obligations hereunder.

9. As used in this Agreement, the term "the City's actual knowledge" means the actual knowledge of the members of the City Council, the City Manager's Office, the City Attorney's Office, or of the Managers of any of the Departments within the City, without a duty to investigate City files.

10. City acknowledges that Developer may enter separate agreement(s) with purchasers of portions of the Development with the intent to reimburse Developer for the use of the credits applicable to the portion of the Development sold.

B. Representations and Warranties of Developer

Developer represents and warrants to the City that as of the date hereof and the date of property transfer:

1. Developer is a limited liability company duly organized and existing under the laws of the State of Delaware and qualified to do business as a foreign limited liability company in the State of Nevada.

2. Developer has all requisite power and authority to carry out its business as now and whenever conducted and to enter into and perform its obligations under this Agreement.

3. By proper action of Developer, Developer's signatories have been duly authorized to execute and deliver this Agreement.

4. The execution of this Agreement by Developer does not violate any provision of any other agreement or other document to which Developer is a party or otherwise.

5. Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by Developer are necessary in connection with the execution of this Agreement by Developer or with the performance by Developer of its obligations hereunder.

6. Neither Developer nor any of its member (managing or otherwise) is currently a debtor in a case under the Bankruptcy Code (Title 11 U.S.C.), is the subject of an involuntary petition under the Bankruptcy Code, has made an assignment for the benefit of creditors or is insolvent and unable to pay its debts as they become due.

7. Developer acknowledges that he is not the current owner of APN 125-25-512-001 and the owner of APN 125-25-512-001, and not Developer, is eligible to receive any TSIF paid on the parcel.

APPLICABLE LAWS; ATTORNEYS' FEES

A. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. Each party shall bear its own attorneys' fees and court costs in connection with any legal proceeding hereunder.

VENUE

B. Jurisdiction for judicial review under this Agreement shall rest exclusively with the Eighth Judicial District Court, County of Clark, State of Nevada and the United States federal courts for the District of Nevada.

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APPROVAL OF AGREEMENT BY CITY

This Agreement, when executed by Developer and delivered to the City, must be authorized, executed and delivered by the City to be effective. The effective date of this Agreement shall be the date when this Agreement has been signed by both parties, the later date of execution being the effective date.

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

CITY OF LAS VEGAS

By: _____
Oscar B. Goodman, Mayor

ATTEST:

By: _____
Beverly K. Bridges, MMC, City Clerk Date

APPROVED AS TO FORM:

By: John S. Ridilla 4/30/10
Deputy City Attorney Date

John S. Ridilla
Deputy City Attorney

DECATUR 215 LLC, a Delaware limited liability company

By Weingarten Realty Investors, a Texas real estate investment trust, its Manager

By: Timothy M. Frakes

Name: Timothy M. Frakes

Title: Vice President