RESOLUTION NO. 2012-07

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ACCEPTING A TRAFFIC SIGNAL EASEMENT FROM MCO PROPERTIES INC.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. A traffic signal easement in substantially the form attached hereto as Exhibit 1 and incorporated herein by reference, across certain real property, generally located at the southwest corner of Palisades Boulevard and Eagle Ridge Drive, is hereby accepted by the Town of Fountain Hills (the “Town”) from MCO Properties Inc.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, September 6, 2012.

FOR THE TOWN OF FOUNTAIN HILLS: ATTESTED TO:

Linda M. Kavarnagh, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY: APPROVED AS TO FORM:

Kenneth W. Buchanan, Town Manager

Andrew J. McGuire, Town Attorney
EXHIBIT 1
TO
RESOLUTION NO. 2012-07

[Traffic Signal Easement Agreement]

See following pages.
TRAFFIC SIGNAL EASEMENT AGREEMENT

GRANTOR:  MCO Properties Inc., a Delaware corporation
GRANTEE:  Town of Fountain Hills, an Arizona municipal corporation (the “Town”)

THIS TRAFFIC SIGNAL EASEMENT AGREEMENT (this “Agreement”) is entered into on July 18, 2012, by and between the Town and Grantor for the purposes set forth below:

RECITALS

A. Grantor is the record owner of certain real property at the location identified on Exhibit A, attached hereto and incorporated herein by this reference (the “Easement Area”).

B. The Town and Grantor desire to enter into this Agreement for Grantor to grant to the Town a non-exclusive, continuous and perpetual easement together with the necessary right of access, ingress and egress through, over, under, upon, in, across and along the Easement Area (the “Easement”), for purposes of constructing, installing, operating, inspecting, maintaining, repairing, replacing or removing an above-ground traffic signal and all appurtenant at-grade or underground traffic control equipment related thereto (the “Traffic Signal Facilities”).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference and the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Accuracy of Recitals. The parties hereby acknowledge the accuracy of the recitals set forth above.

2. Grant of Easement. The Grantor hereby grants and conveys to the Town the Easement for the construction, installation, operation, inspection, maintenance, repair, replacement or removal of the Traffic Signal Facilities within the Easement Area together with rights of ingress and egress whenever in the Town’s judgment, in its sole and absolute discretion, the same shall be necessary for the convenient and safe exercise of the rights herein granted.

3. Maintenance of the Easement. Grantor shall not install or construct, or authorize to be installed or constructed, any building, structure, or other improvement or obstruction which
shall interfere with or impede the Town’s access to the Easement Area or the Town’s right to maintain the Traffic Signal Facilities in the Easement, nor shall Grantor drill any well, plant any trees, store materials of any kind, or alter ground level by cut or fill, within the limits of the Easement Area, without the prior, written consent of the Town.

4. **Indemnification.** The Town shall, to the extent permitted by law, indemnify and hold Grantor harmless from any and all damages, costs, expenses, attorney fees, claims or liabilities arising from or relating to the Town’s negligence with respect to the use of the Easement Area by the Town, its successors in interest, assigns, agents, employees, visitors or invitees.

5. **Liens and Encumbrances.** The Town represents and warrants that it will maintain the Easement Area free and clear from any liens or encumbrances of any nature whatsoever in connection with Town’s construction of improvements on the Easement Area or the use by Town of the Easement Area.

6. **Running of Benefits and Burdens.** All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the assigns and successors and tenants of the parties hereto.

7. **Attorneys’ Fees.** Either party may enforce this instrument by appropriate legal action and the prevailing party in such litigation may recover as part of its costs in such action reasonable attorneys’ fees and court costs.

8. **Additional Easements.** Nothing contained in this Agreement shall prohibit Grantor from conveying additional easements for access, utility or other purposes through, over, under, upon, in, across and along the Easement Area to the owners of properties which abut the Easement Area or to government or quasi-governmental agencies; provided, however, that no such additional rights or easement shall impair the Town’s use of the Easement herein granted.

9. **Entire Agreement.** This instrument contains the entire agreement between the parties relating to Town’s use of the Easement for Traffic Signal Facilities installation, operation and maintenance. Any oral representations or modifications concerning this instrument shall be of no force or effect, except a subsequent modification in writing, signed by the parties.

10. **Cancellation by Town.** This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511 at which time, the Easement shall be extinguished.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

"Grantor"

MCO PROPERTIES INC., a Delaware corporation

By: [Signature]

Name: Jeremy Hall

Title: President

(ACKNOWLEDGMENT)

STATE OF Arizona ss.
COUNTY OF Maricopa ss.

This instrument was acknowledged before me on July 16, 2012, by Jeremy Hall, as President, of MCO PROPERTIES INC., a Delaware corporation, on behalf of the corporation.

Notary Public in and for the State of Arizona

My Commission Expires:

1-20-13

[SIGNATURES CONTINUE ON FOLLOWING PAGE]
ACCEPTED BY:

"Town"

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

By: 
Kenneth W. Buchanan, Town Manager

ATTEST:

Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

This instrument was acknowledged before me on September 10, 2012, by Kenneth W. Buchanan, Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.

My Commission Expires:

12-05-12
EXHIBIT A
TO
TRAFFIC SIGNAL BASEMENT AGREEMENT

[Traffic Signal Basement Area]

See following page.