

HOFFMAN ESTATES PARK DISTRICT MEMORANDUM # 16-024

To: Administrative and Finance Committee
From: Dean Bostrom, Executive Director
Craig Talsma, Deputy Director/Director of Finance & Administration
Date: February 12, 2016
Re: Windsor Outdoor, LLC Agreement

Background

The District entered into an agreement with Windsor Outdoor, LLC (Windsor) in May of 2014 to sell advertising space on the marquee signs located at 1685 W Higgins Road and 650 W Higgins Road. The signs became operational on November 1, 2014. This agreement is attached in its entirety. Within section 5 - Base Gross Advertising Revenues, Windsor promises to minimally generate full levels of gross advertising revenue as set forth below:

Year one	Nov 2014 – Oct 2015	\$ 90,000
Year two	Nov 2015 – Oct 2016	\$180,000
Year three	Nov 2016 – Oct 2017	\$270,000

If Windsor does not generate these minimal levels of Gross Advertising Revenues, then the District at its discretion, and without providing an opportunity to cure, with no future requirement to Windsor, may terminate this agreement.

Windsor has gone through many changes over the last year and staff continues to meet with them. Windsor has reorganized and is now BRT Outdoor Signs (BRT). Though Windsor did not meet our needs, staff has been continuously communicating our future direction and BRT is acceptable to changes.

Implications

The Gross Advertising Revenue generated by Windsor is as follows:

Year one	Nov 2014 – Oct 2015	\$ 66,464
Year two	Nov 2015 – Oct 2016	\$ 41,192 (to date)

Windsor did not generate the minimal levels of Gross Advertising Revenue, allowing the District to terminate this agreement. Furthermore, Windsor acknowledges that its performance has been unsatisfactory, and agrees to termination of the aforementioned agreement and wishes the opportunity to continue with a new agreement.

The District has also created a FT Advertising and Sponsorship position to represent the District in selling marquee sign space, advertising and sponsorship opportunities. This individual will start on February 22, 2016. Staff believes that the District could still benefit by allowing BRT to work with the Advertising and Sponsorship Manager. Therefore we have discussed this opportunity with BRT. The new agreement, attached, would allow BRT Outdoor to maintain their current clients, if their advertising remains contiguous, and to sell to new prospects and receive 15% commission.

There is no fixed term for the new agreement, and it may be cancelled by either party by providing 30 days written notice.

Recommendation

Staff recommends that the A&F Committee recommend to the full board approval of termination of the agreement between the District and Windsor Outdoor, LLC, and acceptance of the new agreement between the District and BRT Outdoor.

LEASE AGREEMENT

Between

Windsor Outdoor, LLC and Hoffman Estates Park District

This Lease Agreement, dated as of the ___ day of May 2014, shall constitute the agreement (the “**Agreement**”) between Windsor Outdoor, LLC (“**WINDSOR**”), a Delaware limited liability company, and Hoffman Estates Park District (“**HEPD**”), with respect to the exclusive right to lease, manage, operate and sell advertising space on the marquee signs located at:

- Triphahn Center located at 1685 W. Higgins Road, Hoffman Estates and
- Vogelei Park 650 W. Higgins Road, Hoffman Estates (collectively, the “**Billboard Properties**”).

This agreement may be amended from time to time for the inclusion of new locations. The parties hereto agree as follows:

1. **Lease.** During the Term (as hereinafter defined), HEPD shall lease to WINDSOR and WINDSOR shall lease from HEPD the advertising space on the Billboard Properties.

2. **WINDSOR’s Obligations** In consideration for the lease of the advertising space on the Billboard Properties, WINDSOR shall provide the following services (“**Services**”) to HEPD with respect to the Billboard Properties:

- a. **Billboard Management and Maintenance Services.** WINDSOR shall be responsible for the sales, marketing and oversight of the Billboard Properties. Such services shall include, with limitation:
 - i. Management and supervision of the sale of advertising space on the Billboard Properties. Windsor understands and agrees that off-site advertising on each sign face shall not exceed 49% of the total available operational run time, and that on an annual basis Windsor shall provide a slot schedule identifying, on a sign face basis, the slot allocation of off-site advertising (49%), HEPD advertising (41% +/-) and Village of Hoffman Estates advertising (10% +/-). Each slot shall comprise 10 seconds. Should day parting (the selling of advertising slots other than throughout a 24 hour standard day) of off-site advertising become an accepted industry standard during the Term, Windsor and HEPD agree to review and determine the appropriate allocation for offering the day parted advertising.
 - ii. Coordinate and obtain the approval of HEPD and its selected sign vendor in accordance with all District policies (including purchasing approvals) as needed for any maintenance and repairs of the Billboard Properties, which if not covered by the sign manufacturer’s warranty, shall be at HEPD’s expense.
 - iii. Oversight of uploading, maintenance and removal of advertising copies on the Billboard Properties.
 - iv. Such other activities as shall be reasonably required for the adequate operation of the Billboard Properties.
 - v. WINDSOR shall brand and market all Billboard Properties as WINDSOR Billboard Properties, including but not limited to installation of Windsor “Available” ad copy, sales sheets, website placement, media kits and all sales and marketing materials.

- vi. Any unsold or unused designated offsite advertising space shall be provided to HEPD for advertising on a space available basis with that advertising to be removed or added as the advertising space is sold and becomes available.
- b. Representation and Sales. WINDSOR shall have the exclusive right to market and sell advertising space on the Billboard Properties to bona fide purchasers/advertisers (“Advertisers”). WINDSOR shall generate gross advertising revenues (“Gross Advertising Revenues”), as hereinafter defined, of not less than the amounts described in Section 4. WINDSOR shall have the authority to enter into advertising contracts with Advertisers (the “Advertising Contracts”) using the form contract attached hereto as Exhibit A, or where required, using the Advertiser’s contract, provided it does not differ substantially from Exhibit A. WINDSOR has the authority and shall execute Advertising Contracts on behalf of HEPD; however, WINDSOR shall be prohibited from executing Advertising Contracts that (i) provide for advertising in violation of any lease, contractual or use restriction applicable to any of the Billboard Properties that WINDSOR has been notified of in advance (or which may be included in Exhibit B), or (ii) provide for advertising which may be deemed obscene or pornographic, or (iii) provide for the advertising of services/goods/products in direct competition with, or prohibited by, HEPD, as listed in Exhibit B, as may be amended from time to time. “Gross Advertising Revenues” shall be defined as the total amount of revenue collected by WINDSOR pursuant to Advertising Contracts for off-site advertising on the Billboard Properties.
- c. Billing & Collection. WINDSOR shall be responsible for the maintenance of all books and records in connection with the sale of advertising space on the Billboard Properties, including but not limited to: managing artwork design, posting and scheduling of advertising materials, tracking availability of advertising space, tracking rotations required under advertising contracts and the allocation schedule described in Section 2(a)(i), and tracking expenses related to the sales and graphic design for advertising on the Billboard Properties. WINDSOR shall undertake customary collection steps in connection with the Advertising Contracts, provided, however, HEPD may, in its sole discretion, at any time after a payment under an Advertising Contract is more than ninety (90) days past-due, assume responsibility from WINDSOR for all then present and further collection efforts; however, it is under no obligation to do so. In the event HEPD assumes responsibility for all then present and future collection efforts, it shall retain its Rent from monies collected and pay to WINDSOR its share of Gross Advertising Revenues, less the cost of collections, no later than thirty (30) days after receipt of the same. Uncollected advertising revenue shall not be calculated as a part of Gross Advertising Revenue.
- d. FOIA. WINDSOR agrees to maintain all records related to the operation and sales of advertising space on the Billboard Properties for HEPD in compliance with the Illinois Freedom of Information Act (“Act”), 5 ILCS 140/1, *et seq.* WINDSOR shall produce, without cost to the HEPD, records which are responsive to a request received by HEPD under the Act so that HEPD may provide records to those requesting them within the time frame mandated under the Act. HEPD shall e-mail to WINDSOR, and confirm receipt by telephone, each request for records it receives under the ACT no later than twenty-four (24) hours after HEPD receives the same. WINDSOR shall deliver to HEPD unredacted copies of all documents responsive to the request no later than forty eight (48) hours after the request was submitted to HEPD. If additional time is necessary to compile records in response to a request, then WINDSOR shall so notify HEPD and if possible, HEPD shall request an extension so as to comply with the Act. In the event that HEPD is found to have not complied with the Act based upon WINDSOR’s failure to produce documents to HEPD, then WINDSOR shall indemnify

and hold HEPD harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties. Under no circumstances shall WINDSOR be liable or responsible to HEPD for any fines, costs, attorney's fees or penalties that are assessed against HEPD for violating the Act if WINDSOR has produced all responsive documents to HEPD in a timely manner, and said violation is the result of HEPD's failure to produce documents, failure to cite or improperly citing exemptions, failure to produce documents in a timely manner, the redaction of information from documents which is subject to disclosure, or failure to adhere to any other prescription of the Act.

3. **Cooperation.** WINDSOR shall assist HEPD with the overall maintenance and repair of the Billboard Properties by being principally responsible for monitoring the condition and operation of the LED/Digital displays of the Billboard Properties on a "24/7" basis, and notifying HEPD of any issue therewith. This 24/7 monitoring is provided through the sign manufacturer and WINDSOR as they have individuals on staff to help coordinate efficiently any needed repairs to the four (4) sign faces. HEPD will be responsible for any non-warranted covered costs to repair the signs, and Windsor shall obtain approval for the expenditure of any funds for said repairs. HEPD expressly authorizes its Executive Director to negotiate and execute repair and maintenance contracts with third-parties on its behalf provided the overall cost does not involve an expenditure in excess of \$20,000. All other contracts and expenditures shall be submitted and approved by the Board of Commissioners of HEPD. WINDSOR shall notify HEPD of all expenses necessary for advance approval which HEPD shall approve or disapprove of in a timely manner. HEPD shall be responsible for the payment of any and all costs associated with the operation of the HEPD Billboard Properties, including but not limited to: permit fees, lease costs, development costs, illumination, repairs and maintenance, tree trimming, maintenance agreements and extended warranties.

4. **Term.** The term of this Agreement (the "**Initial Term**") shall commence upon the completion of construction of the signs (the "**Commencement Date**") and shall continue until the third anniversary of the Commencement Date (the "**Expiration Date**"). This Agreement shall automatically be extended under the same terms and conditions as herein specified from year to year (each, a "**Renewal Term**"), unless cancelled by either party in writing upon not less than ninety (90) days prior to the end of the Initial term or any Renewal Term as the case may be. The Initial term as well as any Renewal Term shall be the "**Term**" of this Agreement. Provided, however, HEPD has the right to terminate this agreement based upon under performance by WINDSOR in generating Gross Advertising Sales, as set forth in Section 4.

5. **Base Gross Advertising Revenues.** Based upon the tiered schedule for the three (3) years of this agreement, WINDSOR has promised to minimally generate the full levels of Gross Advertising Revenues for the following years ("**Base Gross Advertising Revenues**"):

Year One	\$ 90,000
Year Two	\$180,000
Year Three	\$270,000

If WINDSOR does not generate these minimal levels of Gross Advertising Revenues, then HEPD at its discretion, and without providing an opportunity to cure, with no future requirement to WINDSOR, may terminate this Agreement. If this Agreement terminates early, WINDSOR shall be entitled to retain all outstanding Fees earned. HEPD shall not be authorized to terminate this agreement based upon under performance by WINDSOR if the deficiency is due, in part, to malfunction of Billboard Properties and HEPD's failure to repair and maintain same, or any one of them, after notice has been proved to HEPD by WINDSOR. During each Renewal Term, the Base Gross Advertising Revenue Level shall increase by 5% from the preceding Term or Renewal Term.

Rent and Fees.

- a. **WINDSOR Fee.** WINDSOR shall be entitled to retain: Twenty percent (20%) of the annual Gross Advertising Revenue up to t \$249,999 ; Twenty five percent (25%) of next \$99,999 of annual Gross Advertising Revenue; and Thirty percent (30%) of any Gross Advertising Revenue exceeding \$350,000 resulting from the sale by WINDSOR of the outdoor advertising space on the HEPD Billboard Properties during the Term of this Agreement (the "**WINDSOR Fee**"). WINDSOR will be entitled to retain the WINDSOR Fee for any and all Gross Advertising Revenue arising from Advertising Contracts entered into during the Initial Term of the Agreement and any Renewal Term, for the full length of said Advertising Contracts, provided such Advertising Contracts do not extend more than six (6) months beyond the Expiration Date or any Renewal Term Expiration Date and despite any cancellations pursuant to Section 6 below or any other termination of the Agreement other than a material breach of this Agreement by WINDSOR. For purposes of this Agreement, "**WINDSOR Costs**", which shall be borne solely by WINDSOR, shall include any fees or commissions due to any sales representatives or agents for WINDSOR or to any third-party sales representatives or agents employed or engaged by WINDSOR on its behalf or for the benefit of HEPD pursuant to this Agreement with respect to which a WINDSOR Fee is earned.
 - b. **Payment of Rent:** Within fifteen (15) days of the end of each calendar month (each a "Payment Period") during the Initial Term and/or Renewal Term of this Agreement, WINDSOR shall pay to HEPD rent in the amount of the Gross Advertising Revenues less the WINDSOR Fee (the "Monthly Payment"). For the first eleven (11) Monthly Payments the Windsor Fee shall be calculated at 20% of the Payment Period's Gross Advertising Revenues. Together with each Monthly Payment WINDSOR shall send a reasonably detailed billing statement on the basis of collections during such period. The first Payment Period shall be for any portion of the calendar month in which this Agreement is fully executed if other than the first (1st) day of such month. For the 12th and final Monthly Payment Period of each year of the Initial Term or Renewal Term of this Agreement, WINDSOR shall pay to HEPD the Gross Advertising Revenues actually received less the WINDSOR Fee, calculated by multiplying the annual Gross Advertising Revenue by the percentage applicable per Section 5(a), minus the total of WINDSOR's Fees retained for the prior 11 Monthly Payments.
6. **Default.** If either party shall default under any of the material terms of this Agreement, which default shall not have been cured within fifteen (15) days after written notice thereof to the other party, the non-defaulting party may terminate this Agreement upon an additional fifteen (15) days notice. If the termination of this Agreement is the result of a material breach by WINDSOR for which there is no cure, WINDSOR shall not be entitled to any WINDSOR Fee beyond the date of such default. Defaults under any other material contract by WINDSOR will be treated as a default under this agreement. Neither party shall be liable for consequential or economic damages of the other, and any damages payable to the other as a result of a default shall be limited to any fees, income, rent or revenue (hereinafter "Revenue") received from Advertisers. The Parties' obligations under this Agreement are not general obligations, but shall be special limited obligations of the Parties payable solely from Revenue. The parties expressly disclaim any right to indirect or consequential damages.
7. **Entire Agreement.** The provisions of this Agreement contain the entire agreement between the parties hereto as to the subject matter herein and may not be changed, altered or modified, except in writing and signed by both parties.
8. **No Assignment.** Neither the agreement nor any of WINDSOR's rights or obligations hereunder may be assigned, subcontracted or delegated without HEPD's prior written consent.

9. **Governing Law.** The Agreement shall be subject to the laws of the State of Illinois. Venue for any dispute arising hereunder shall be in the Circuit Court of Cook County, Illinois.

10. **Dispute Resolution.** Any party to this Agreement may bring an action, including a summary or expedited proceeding, in any court having jurisdiction over such action.

11. **Indemnification.**

a. To the fullest extent permitted by law, WINDSOR shall protect, indemnify, defend and hold harmless HEPD, and its directors, officers, agents and employees (the "HEPD Group") for, from and against any and all liability, expense or damage of any kind or nature including reasonable legal fees and expenses, arising from or related to any suits, claims or demands, on account of any matter, claim, or controversy arising out of WINDSOR'S Services, including but not limited to any breach of this Agreement and alleged advertising injury or violation of intellectual property rights, whether in suit or not (each, an "**Indemnified Matter**) provided, however, such indemnification obligation shall not apply if the matter, claim or controversy arises out of the willful misconduct or gross negligence of the HEPD Group in carrying out its obligations under this agreement. Upon receiving knowledge of an Indemnified Matter, HEPD shall give notice of the matter to WINDSOR.

b. To the fullest extent permitted by law, HEPD shall protect, indemnify, defend and hold harmless WINDSOR, and its directors, officers, agents and employees (the "WINDSOR Group") for, from and against any and all liability, expense, injury or damage of any kind or nature including reasonable legal fees and expenses, arising from or related to any suits, claims or demands, including those of third-parties, on account of any matter, claim, or controversy arising out of the manner of performing construction or maintenance of the signs, the condition of real property, or HEPD acts or omissions for which HEPD is held liable under the laws of the State of Illinois, provided, however, such indemnification obligation shall not apply if the matter, claim or controversy arises out of the negligence or failure of WINDSOR in carrying out its obligations under this agreement. Upon receiving knowledge of such a matter, WINDSOR shall give notice of the matter to HEPD. Nothing herein shall be construed as a waiver of HEPD's immunities and defenses provided by law.

12. **Notices.** All notices relating to the Agreement shall be directed as follows unless otherwise changed in writing by either party:

WINDSOR:

J. Todd Sanders, President
Windsor Outdoor, LLC
625 Plainfield Rd, Suite 142
Willowbrook, IL 60527

HEPD:

Executive Director
Hoffman Estates Park District
1685 W. Higgins Road
Hoffman Estates, IL

13. **Insurance.** Prior to the commencement of and during the course of the provision of services and/or materials to or for any of the Billboard Properties pursuant to this Agreement, WINDSOR shall have in force and maintain during the Term the types of insurance set forth hereinafter:

a. A comprehensive general liability insurance policy in form acceptable to HEPD covering the Services being provided hereunder in an amount not less than Two Million and No/100 Dollars (\$2,000,000) for bodily injury and Two Million and No/100 Dollars (\$2,000,000) for property damage; and

- b. Comprehensive automotive bodily injury and property damage insurance in form acceptable to HEPD for business use covering all vehicles operated by WINDSOR, its officers, agents, and employees in connection with the services, with a combined single limit of not less than Two Million and No/100 Dollars (\$2,000,000) (including an extension of hired and non-owned coverage); and
- c. Workers' compensation insurance for WINDSOR's employees with statutory coverage and Employer's Liability Insurance, in an amount not less than One Hundred Thousand and No/100 Dollars (\$100,000) per disease and per accident.

HEPD and its officers, directors, agents, and employees shall be named as primary, non-contributory additional insureds thereunder (with the exception of the workers' compensation insurance).

14. **Warranty; Delivery.** HEPD hereby covenants and warrants that the Board of Commissioners of the Hoffman Estates Park District shall pass a resolution setting forth the appropriate findings mandated by Section 10-7(e) of the Park District Code, ratifying and approving this Agreement, and authorizing its President to execute the same. Said resolution shall also provide for the express authority of HEPD's Executive Director to negotiate and execute contracts on its behalf as set forth in Section 2. HEPD shall deliver a certified copy of said resolution to WINDSOR with an executed copy of this Agreement.

15. **Duties Excluded.** Nothing under this Agreement shall obligate or require WINDSOR to inspect, maintain or repair the real property associated with the Billboard Properties, or the construction or integrity of the structural components of the Billboard Properties, provided WINDSOR shall exercise ordinary care in the performance of the Services. Provided, however, should WINDSOR become aware of any such issue in the course of its activities under this Agreement, it shall provide written notice to HEPD no later than seventy two (72) hours after it has knowledge of the same, or sooner in the case of an immediate threat to the health and safety of persons or property.

16. **Independent Contractor.** Nothing in this agreement shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture, co-ownership, principal-agent, employer-employee, or any other relationship aside from an independent contractor relationship between HEPD on the one hand and WINDSOR on the other.

17. **Non-Exclusivity.** HEPD acknowledges and agrees that during the Term of the Agreement, WINDSOR shall and is authorized to market and sell outdoor advertising space on billboard properties owned and/or operated by WINDSOR (the "WINDSOR Billboard Properties"). The marketing and sales efforts of WINDSOR with regard to the WINDSOR Billboard Properties shall not constitute a breach of the Agreement provided that such efforts do not materially diminish or affect WINDSOR's obligation to sell Advertising Contracts for the HEPD Billboard Properties as required in Section 1(a) above. HEPD and WINDSOR will mutually cooperate and coordinate on activities required to operate the HEPD Billboard Properties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

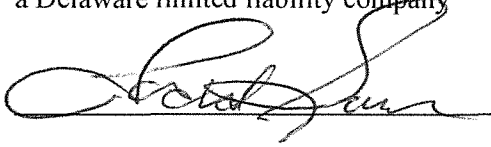
Hoffman Estates Park District



By: Dean R. Bostrom

Its: President/Executive Director/Secretary

Windsor Outdoor, LLC
a Delaware limited liability company



By: Todd Sanders

Its: President

EXHIBIT A

WindsorOutdoor

CONTRACT AGREEMENT

ADVERTISER: _____

CONTRACT #: _____

PRODUCT _____ DATE: _____

3/20/2014

AGENCY: None

LOCATION NUMBER	LOCATION DESCRIPTION	SIZE:	LEASE TERM	Net 4-week PAYMENT	TOTAL PAYMENT

TOTAL CONTRACT PAYMENT

Special Conditions:

Installation design, production and installation of client approved artwork.

Illumination: 24 Hours

In consideration for the payments listed above, the undersigned hereby authorizes and directs Windsor Outdoor to display and maintain the advertising copy specified above, for which the Agency and/or Advertiser, joint and severally, agree to pay Windsor the fees, all in accordance with the conditions set forth on the back of this agreement.

ACCEPTED AND AGREED TO BY:

ADVERTISER/AGENCY: _____

BILLING ADDRESS: _____

PHONE: _____

FAX: _____

CONTACT / TITLE: _____

SIGNATURE _____

DATE _____

Windsor Outdoor, LLC

625 Plainfield Rd
Suite #142

Willowbrook, IL 60527

PHONE: 847-928-5985

FAX: 847-671-1967

CONTACT / TITLE: Todd Sanders/President

SIGNATURE _____

DATE _____

EXHIBIT A

CONTRACT TERMS

The Advertising Agency/Advertiser (hereafter called "the Advertiser" hereby authorizes and directs Windsor Outdoor, LLC ("Windsor") to post and maintain advertising copy upon the faces of the billboard signs listed on the front of this agreement, for which the Advertiser agrees to pay Windsor all fees listed on the front of this agreement in accordance with and governed by the following terms and conditions.

1.0 ARTWORK AND DELIVERY OF MATERIALS: Advertiser will furnish Windsor artwork for copy to be produced by Windsor at the Advertiser's request and expense, at least 30 days prior to the scheduled posting date.

Finished materials provided by the Advertiser must be produced according to Windsor's specifications for copy installation and delivered to Windsor or Windsor's designated installer at least 10 days prior to the scheduled posting date. Windsor reserves the right to reject material that it deems, in Windsor's sole discretion, to be objectionable. Any such rejection shall not affect the Advertiser's obligation to pay the fees contemplated by the Agreement. Advertiser covenants and warrants that it has the authority and approval to use, display and advertise the matters depicted in the artwork to be posted, and that any copyrighted material or trademarks to be displayed thereon or depicted therein are used with the express authority of third-parties owning or holding interests in the same.

2.0 COPY INSTALLATION: Unless otherwise specified on the front of this agreement and agreed upon by both parties, Windsor agrees to provide the original materials installation of Advertiser furnished materials at the commencement of the advertising start date as listed on the front of this agreement. This installation shall be subject to the industry standard of within five days of the specified start date. Any additional installation or copy change requests will be paid to Windsor by the Advertiser.

3.0 EXTENSIONS AND EMBELLISHMENTS: Advertiser may, subject to Windsor's approval and at the Advertiser's sole cost and expense payable to Windsor, which approval will not be unreasonably withheld, cause Windsor to add extensions, special treatments or embellishments or to alter any sign face during the Agreement term, provided that such extensions or embellishments do not violate any law or any agreement between Windsor, the Advertiser and/or a third party.

4.0 ILLUMINATION: Subject to events which are beyond the control of Windsor, Windsor shall illuminate the sign location(s) indicated on the front of this agreement. Such illumination shall begin one-half hour after sunset and shall end at midnight. In the event that Windsor fails to provide illumination for any such signs and such failure is solely within the control of Windsor, then and only in such event, the net monthly fee attributable to such sign location shall be reduced by an amount equal to 10% of the per diem fee which is allocated, pursuant to the schedule, to such sign for each day the sign is not illuminated. In addition, in the case of governmental or utility actions which result in total and permanent elimination of such illumination, the monthly fee attributable to such location shall be reduced by an amount equal to 10% of the per diem fee which is allocated, pursuant to the schedule, to such sign. Other than the reasons stated above, there shall be no reduction in the fees payable by the Advertiser.

5.0 RIGHTS OF ADVERTISER: Neither the Advertiser nor their respective agents or employees shall be entitled to have access to any of the signs or sign structures without the prior written consent of Windsor, which consent may be withheld by Windsor for any reason. This Agreement creates a license only for the Advertiser to use the sign faces described in this agreement. Advertiser acknowledges that the Advertiser will not claim at any time any interest or estate of any kind or extent whatsoever in the real property wherein the sign is located and that the Advertiser's rights herein shall be limited to the Agreement to use the portion of the sign face display area herein described.

6.0 PAYMENTS: Advertiser shall make all payments to the order of Windsor Outdoor, LLC., 9950 W. Lawrence Ave, Ste 108, Schiller Park, IL 60176. If the Advertiser fails to pay any amounts due within seven (7) days of the due date, the Advertiser shall pay to Windsor interest on the amount due from the date due until the date paid at a rate equal to 1.5% per month. In addition, if the Advertiser shall fail to pay any fee within fourteen (14) days after the same is due, the Advertiser shall be obligated to pay a late payment charge equal to 10% of the payment which was not paid when due in order to reimburse Windsor for its additional administrative costs.

7.0 TAXES: Windsor shall be responsible for and pay all taxes except for use, sales and professional service taxes which the Advertiser shall pay and Windsor will include in its monthly invoice.

8.0 DEFAULT: In the event of any failure of the Advertiser to pay any fee or any amount due for more than ten (10) days after notice or non-payment, or in the event of any failure to perform any other of the terms, conditions or covenants of this Agreement more than thirty (30) days after written notice of such default shall have been given; or if the Advertiser, or any guarantor of the Agreement shall become insolvent, or file any debtor proceedings or have taken against it or a petition for reorganization, or for the appointment of a receiver or trustee, or the assignment for the benefit of the creditors, or if the Advertiser shall fail to provide the artwork described in Section 1.0 hereof, or if the Advertiser shall have been in default in the payment of any fee or other amount due hereunder more than two (2) times and because of such defaults Windsor shall have served upon the Advertiser two (2) or more 10-day notices (a default of this provision shall be deemed non-curable), then and in the event of any one of more of the foregoing events, Windsor, in addition to any other rights or remedies it may have, shall have the immediate right to terminate the Advertiser's right to the use of the sign face, all without service of notice or

resort to legal process. **9.0 REMEDIES:** Should Windsor elect to declare a default of hereinabove contemplated, Windsor may either terminate this Agreement or Windsor may, from time to time, at its election, without terminating this Agreement, remove the advertising material from the sign face and enter into agreements with other parties with respect to the sign face at such fees and upon such other terms and conditions as Windsor in its sole discretion may deem advisable. All fees received by Windsor from such other parties, shall be applied: first, to pay for the cost of the removal of the Advertiser's advertising materials; second, to pay the cost of concessions, abatements, attorney's fees or any other costs and expenses incurred by Windsor arising out of such default; third, to pay costs of alterations and repairs; and fourth, to the fees due and unpaid hereunder. If the fees received from such other parties during any month, shall be less than that paid during that month, Advertiser shall pay any such deficiency to Windsor immediately upon demand.

10.0 ATTORNEY'S FEES: In any dispute between the parties resulting in litigation, the prevailing party shall be entitled to costs, expenses and reasonable attorneys' fees.

11.0 DISCLAIMER OF CONSEQUENTIAL DAMAGES: The parties expressly disclaim any right to indirect, consequential damages.

12.0 CANCELLATION: This agreement may be canceled upon the following:

12.1 Windsor shall have the right, in its discretion, to terminate, that portion of this Agreement, (without liability to Windsor), relating to any sign location or locations which Windsor is unable to use or operate because of any one or more of the following: 1) acts of God; 2) fire or destruction of the sign structures; (3) shortages of labor or materials; 4) present or future laws, ordinances, orders, rules or regulations which prohibit the signs or restrict their use; or 5) termination, of any of the leases or easement agreements underlying the sign structure locations.

13.0 INDEMNIFICATION:

13.1 Windsor shall indemnify, defend and hold harmless the Advertiser including their officers, directors, employees and agents against any claims, losses, damages, judgments or costs, including reasonable attorneys' fees, incurred by the Advertiser (excluding indirect, consequential or incidental damages) in connection with any cause of action against the Advertiser, arising from any loss or damage to property or persons due solely and exclusively to the construction, maintenance and removal of the signs. Advertiser shall promptly advise Windsor in writing of any claim and Windsor shall defend or compromise the same at Windsor's expense.

13.2 Advertiser assumes sole responsibility for all artwork, copy and materials provided to Windsor, and shall indemnify and defend Windsor and the Hoffman Estates Park District, their officers, directors, employees and agents against any claims, losses, damages, judgments and costs, including reasonable attorney's fees, incurred by then (excluding indirect, consequential or incidental damages) in connection with the violation of any of the provisions of this Agreement and in connection with any claim of suit alleging libel, invasion of privacy, copyright infringement or any cause of action arising from the display of the artwork, copy or materials unless said claim or suit arises solely from a material error or omission by Windsor in posting the materials or reproducing the copy. Windsor will promptly advise Advertiser in writing of any claim and Advertiser shall defend or compromise the same at Advertiser's expense.

14.0 LEGAL CAPACITY: This agreement is not binding unless accepted by an officer of Windsor, and by an officer of the Advertiser. Each party warrants and represents to the other that they have legal capacity and authority to enter into and perform this agreement.

15.0 ENTIRE AGREEMENT: This contract embodies the entire agreement between the parties and supersedes and terminates without further rights or obligations all prior agreements and understandings relating to the subject matter hereof. This contract may be amended only in writing signed by all parties.

16.0 ASSIGNMENT: This contract may not be assigned by the Advertiser without the written permission of Windsor which Windsor will not unreasonably withhold. In the event of any such assignment, the Advertiser shall not be relieved of its obligation under this Agreement. If this contract is entered into by an agency on behalf of an advertiser, the agency may assign this agreement to the advertiser provided it is the same advertiser on the front of this Agreement. Upon assignment, the agency shall promptly send Windsor a copy of the signed assignment and acceptance of this assignment. Windsor shall have the right to sell or assign this Agreement without notice of consent of the Advertiser.

17. CAPTIONS / SEVERABILITY / GOVERNING LAW:

17.1 The captions and paragraph numbers appearing in this agreement are for convenience only and in no way limit or enlarge the scope of meaning of the language.

17.2 If any provision of this Agreement is found or rendered invalid, it shall not affect the remaining terms.

17.3 Illinois law shall govern this interpretation and enforcement of the Agreement.

EXHIBIT B

- Spas (i.e. massage studios, wellness spas)
- Physical Rehabilitation Centers
- Wellness Centers
- Personal Training Studios
- Dance Studios
- Early Learning Centers/Preschools
- Fitness Centers
- Golf Courses
- Banquet Facilities
- Martial Arts Studios
- Other Park Districts
- YMCA Ads
- Youth Athletic Clubs/Leagues
- Gymnastic Business
- Aquatic/Water Parks
-
- 4811-9249-8458, v. 10

MARQUEE SIGN ADVERTISING/LEASE AGREEMENT

This lease agreement, dated _____, outlines terms for marquee sign advertising between Hoffman Estates Park District (HEPD) and BRT Outdoor, LLC (BRT).

- I. Term of Agreement: Ongoing. This agreement may be cancelled by either party at any time by providing written notice of 30 calendar days.
- II. Marquee Signs: This agreement pertains to two (2) marquee signs, with locations detailed below.
 - 1685 W. Higgins Road, Hoffman Estates, IL 60192 (Triphahn Center)
 - 650 W. Higgins Road, Hoffman Estates, IL 60192 (Vogelei Park)
- III. Advertisement: BRT shall have a non-exclusive right to market and sell advertising space on the aforementioned marquee signs in nine-to-ten (9-10) second slots. Advertising slots shall be limited to acceptable clientele as determined by HEPD. All advertising space agreements obtained by BRT are subject to final approval by an HEPD representative: either the Full-Time Advertising and Sponsorship Manager or the Deputy Director.
- IV. Final Approval: Agreements obtained by BRT are not considered finalized until written authorization from HEPD is received. Once submitted for approval, HEPD shall have ten (10) business days to review. If granted, a finalized agreement secured by BRT shall constitute a "BRT client".
- V. Payment Collection: BRT is responsible for collecting payment from BRT clients. BRT shall forward said payments to HEPD, less earned commission as specified in item VI, along with a statement of total monies collected/commissions earned. In the event of late or non-payment by a BRT client, BRT assumes the BRT client's financial obligations to HEPD.
- VI. Commission Payment: HEPD agrees to pay BRT 15% of the total contract value for each advertising agreement entered into by a BRT client that is subsequently approved by HEPD.
- VII. Existing Clients: BRT has the exclusive right to market to clients who currently purchase advertising space on one of the aforementioned marquee signs, provided that all of the following conditions are met:
 - the client was initially contacted and secured by either BRT or Windsor Outdoor, LLC;
 - the client currently rents advertising space; and,
 - the client maintains a current advertising rental on one or both of the marquee signs.

If the client allows its advertising space rental agreement to expire, it shall revert to a "New Client."
- VIII. New Clients: BRT has a non-exclusive right to market and sell to new clients who do not currently rent advertising space on the marquee signs, provided the new client is not

currently in negotiation with an HEPD representative. If BRT receives notice, either written or verbal, from either the new client or HEPD, that the new client is currently negotiating an advertising space agreement with an HEPD representative, BRT shall immediately cease discussions with that client. If BRT is found to be in violation of this paragraph three (3) times over the term of this agreement, HEPD shall have the right to cancel this agreement immediately.

- IX. Current Negotiations: It is understood that as of the drafting of this agreement, BRT is in negotiation with one or more potential client(s) for the sale of advertising space on the marquee signs. Any agreement(s) presented to HEPD for final approval prior to March 1, 2016 will yield a BRT client, provided that final approval from HEPD is obtained.
- X. Lease Agreement Terms: While BRT is free to utilize its own form(s) to secure rentals of advertising space on the marquee signs, any such forms must comply with the terms and conditions contained within HEPD's internal agreement for marquee sign advertising. HEPD will make every reasonable effort to ensure BRT has a copy of the current HEPD agreement, a copy of which is attached as Exhibit A.
- XI. Indemnification: To the extent permitted by law, BRT shall indemnify, save, defend, and hold harmless HEPD, including its officers, officials, agents, volunteers, and employees, from and against any and all liabilities, obligations, claims, damages, penalties, wage and hour claims, causes of action, costs and expenses (including reasonable attorney and paralegal fees) which HEPD may become obligated to by reason of any accident, bodily injury, death or persons, civil or constitutional rights violation, or loss or damage to tangible property, or any claim made under federal or state law arising directly or indirectly in connection with, or as a result of this agreement.
- XII. Assignment: This agreement may not be assigned by BRT without the express written permission of HEPD. In the event of any such assignment, BRT shall not be relieved of its obligation(s) under this agreement.

This Agreement represents the entire understanding between the parties and may be modified only by a written document signed by both parties. Illinois Law shall govern the interpretation and enforcement of this agreement.

BRT OUTDOOR, LLC

HOFFMAN ESTATES PARK DISTRICT

BY: _____
SIGNATURE

BY: _____
SIGNATURE

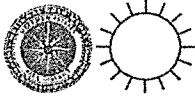
PRINT NAME / TITLE

PRINT NAME / TITLE

DATE: _____

DATE: _____

EXHIBIT A



HOFFMAN ESTATES PARK DISTRICT

CONTRACT FOR MARQUEE SIGN ADVERTISING

Advertiser: _____

Product: _____

Representative/capacity: _____

Address: _____

Phone: _____

Email: _____

HEPD Contact: _____

Sign Location(s): _____

Slot(s) / Flip(s): _____

Rotation / Duration: _____

Duration: _____

Total Payment: _____

Payment due date/schedule: _____

SPECIAL CONSIDERATIONS (IF APPLICABLE):

IN CONSIDERATION FOR THE TOTAL PAYMENT ABOVE, HEPD AGREES TO DISPLAY AND MAINTAIN THE ADVERTISING MATERIAL SPECIFIED ABOVE, AS PROVIDED TO HEPD. ADVERTISER AGREES THIS CONTRACT IS BOUND BY THE TERMS ON THE BACK OF THIS PAGE, NOTED "MARQUEE SIGN ADVERTISING TERMS AND CONDITIONS".

Advertiser Signature _____

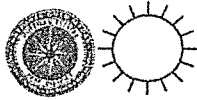
Date _____

Print Name: _____

HEPD Representative _____

Date _____

Print Name: _____



HOFFMAN ESTATES PARK DISTRICT

MARQUEE SIGN ADVERTISING TERMS AND CONDITIONS

The Advertiser hereby authorizes and directs Hoffman Estates Park District "HEPD" to post and maintain advertising upon the face of the marquee sign(s) listed on the front of this agreement, for which the Advertiser agrees to pay HEPD all fees listed on the front of this agreement in accordance with and governed by the following terms.

1. **ARTWORK AND DELIVERY OF MATERIALS:** Advertiser will furnish HEPD artwork for copy and to be produced at the Advertiser's request and expense, at least 30 days prior to the scheduled posting date. Finished materials provided by the Advertiser must be produced according to the HEPD's specifications for copy installation and delivered to HEPD's designated representative at least 15 days prior to the posting date. HEPD reserves the right to reject material that it deems, in HEPD's sole discretion, to be objectionable. Any such rejection shall not affect the Advertiser's obligation to pay the fees specified in the Agreement.
2. **EDITS:** Advertiser may, subject to HEPD's approval and at the Advertiser's sole cost and expense payable to HEPD, which approval will not be unreasonably withheld, cause HEPD to edit the advertising material during the Agreement term.
3. **RIGHTS OF ADVERTISER:** Neither the Advertiser, nor their respective agents or employees, shall be entitled to have access to any of the signs or sign structures without the prior written consent of HEPD. This agreement creates a license for the Advertiser to post advertising material on the digital sign faces only. Advertiser acknowledges that the Advertiser has no interest or estate of any kind in the real property wherein the sign is located.
4. **PAYMENTS:** Advertiser shall make all payments to: Hoffman Estates Park District, 1685 W. Higgins Road, Hoffman Estates, IL 60169. If Advertiser fails to pay any amount due within fourteen (15) days of the due date, HEPD will issue a written notice of delinquent payment, and the Advertiser shall pay interest on the amount due from the due date until date paid at a rate equal to 3.00% per month.
5. **DEFAULT:** In the event of any failure of Advertiser to pay any amount due for more than thirty (30) days after notice of delinquent payment as indicated in item #4, the Advertiser shall be deemed in default of this contract and HEPD shall have the right to terminate this agreement, with written notice.
6. **TAXES:** HEPD shall be responsible for any taxes except for use, sales, and professional service taxes, which the Advertiser shall pay to HEPD.
7. **CANCELLATION:** HEPD shall have the right, in its discretion, to terminate that portion of this Agreement (without liability to HEPD), relating to any sign location or locations which HEPD is unable to use or operate because of any one or more of the following: act of God; fire or destruction of the sign structures; present or future laws, ordinances, orders, rules, or regulations which prohibit the signs or restrict their use; or termination of any of the leases or easement agreements underlying the sign structure locations.
8. **INDEMNIFICATION:** Advertiser assumes sole responsibility for all artwork, copy and materials provided to HEPD. Advertiser shall indemnify HEPD at Advertiser's expense in connection with the violation of any of the provisions of this Agreement. Advertiser shall indemnify HEPD in any claim of suit arising from the display of advertising material, artwork, or copy or materials, including but not limited to claims of libel, invasion of privacy, and copyright infringement unless said claim or suit arises solely from a material error or omission by HEPD in posting the materials or reproducing the copy. HEPD will promptly advise Advertiser in writing of any claim brought to the attention of HEPD.
9. **ACCEPTANCE OF AGREEMENT:** This agreement is not binding unless accepted by an officer of Advertiser and the Deputy Director / Director of Administration and Finance for HEPD.
10. **ENTIRE AGREEMENT:** This contract embodies the entire agreement between the parties and supersedes all prior agreement and understandings relating to the subject matter hereof. This contract may only be amended, in writing, signed by both parties.
11. **ASSIGNMENT:** This contract may not be assigned by the Advertiser without the express written permission of HEPD. In the event of any such assignment, the Advertiser shall not be relieved of its obligation(s) under this agreement.
12. **SEVERABILITY:** If any provision of this Agreement is found invalid, it shall not affect the remaining terms.
13. **GOVERNING LAW:** Illinois Law shall govern the interpretation and enforcement of this agreement.