CITY CLERK
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C-9632
01/14/2015

LICENSE AGREEMENT
(Glendale Media Center)

This LICENSE AGREEMENT ("**Agreement**") is made and entered into by and between the City of Glendale, an Arizona municipal corporation ("**City**") and Inwindow Outdoor, LLC, a Limited Liability Corporation authorized to do business in New York, ("**Licensee**") (collectively "**Parties**") to be effective on the date it is fully executed by all Parties.

RECITALS

A. The City is the owner of certain real property commonly known as the Glendale Media Center and controls outdoor advertising on said property located at 9494 West Maryland Avenue, Maricopa County Parcel No. 102-01-033E, Glendale, Arizona, as more fully described in Exhibit A, attached hereto. A portion of the south facing exterior wall of said property, as depicted on Exhibit B, will be licensed for use pursuant to this Agreement ("**License Area**").

B. The National Football League ("**NFL**") owns, produces and controls its annual professional football championship game known as the Super Bowl and its annual all-star exhibition game known as the Pro Bowl (together the "**Events**") and all rights relating thereto on an exclusive, worldwide basis.

C. The 2015 Pro Bowl is scheduled to be played on January 25, 2015, and Super Bowl XLIX is scheduled to be played on February 1, 2015, both at the University of Phoenix Stadium near the License Area.

D. The Licensee is the owner and operator of an advertising company representing Pepsi Co., an official NFL Partner, and desires to utilize the License Area to place a building wrap advertisement on behalf of its client shown in Exhibit B.

F. Licensee and City desire for Licensee to use the License Area in accordance with the terms set forth below.

G. Licensee and City desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. INCORPORATION OF RECITALS. The above recitals are true and correct and are incorporated into and shall constitute a part of this Agreement.

2. LICENSE. The City hereby grants to Licensee the right to use the License Area only for the purpose of installing and displaying an outdoor building wrap advertising the Pepsi brand during the Term of this Agreement ("**Permitted Use**") and no other use; and, subject to the provisions and conditions of this Agreement:

   2.1. Access. During the Term of this Agreement, Licensee will have non-exclusive access to the License Area only as described in § 5, "Licensee's Operations" for the Permitted Use.

   2.2. Project Manager. Upon execution of this Agreement, City and Licensee will each designate a project manager to coordinate the parties' performance under this Agreement. Each project

manager will devote such time and effort to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or to work related to the Licensee's use.

2.3. Rights, Use Requirements, and Restrictions.

a. Licensee's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the License Area.

b. Licensee's rights under this Agreement are subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or the Licensee's use of the License Area.

c. Licensee may use the License Area only for the Permitted Use and no other use.

d. Licensee's Permitted Use includes the following:

1. Removing existing window graphic, as depicted on Exhibit B, on the south facing windows of the License Area;

2. Preparing the exterior of the building and windows of the License Area for new application;

3. Applying a temporary, removable building wrap material to the exterior of the building on the License Area. Final design must be approved by the NFL and City prior to application and must prominently display "Glendale, Arizona".

4. Removing the temporary building wrap material and cleaning the building and windows to restore them to their original condition, no wear and tear excepted, at the conclusion of the Term;

5. Replacing the City's window graphic in accordance with the specifications identified in § 4.2 no later than 5:00p.m. on February 6, 2015; and,

6. All other uses directly related to the Permitted Use.

2.4. "AS-IS" Acceptance. Licensee warrants that it has studied and inspected the License Area, obtained any information and professional advice the Licensee has determined to be necessary related to this Agreement, and therefore accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in § 12, including any warranties or representations by the City as to its condition or fitness for any use.

2.5. Limitation on Grant. The Parties do not by this instrument intend to create a lease, easement, or other real property interest or vest with Licensee any real property interest in the License Area and nothing express or implied in this Agreement grants Licensee any right or authority to enter, occupy, or use any property that is not solely owned by the City and fully described herein.

2.6. Rights Reserved

a. Licensee acknowledges that its use of the License Area is subject and subordinate to the City's use of the License Area.

b. City may, at all times, enter upon the License Area for any lawful purpose, provided the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area.

3. **TERM**.

3.1. License Period. This Agreement shall commence on January 19, 2015 ("**Commencement Date**") and end on February 6, 2015 ("**Term**"), unless terminated earlier as provided in this Agreement. The Effective Date of the License Agreement shall be the date it is fully executed by all Parties.

3.2. Surrender of Possession

a. Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and to exercise the privileges and rights granted by this Agreement cease, and it must surrender and leave the License Area in as good condition as it was provided to Licensee, including removal of personal property from the License Area, and removal of any paper, litter or trash.

b. Except in the case of inclement weather, acts of God, or domestic terrorism, if Licensee fails to remove any of its property and replace the City's window graphic by 5:00p.m. on February 6, 2015 as required by § 2.3.d.5, the Licensee agrees that the City shall, at the Licensee's sole expense, remove or cause to have removed Licensee's property, including but not limited to the building wrap, and replace or cause to have replaced the City's window graphic, as defined in § 4.2.

c. In the event the City takes action pursuant to § 3.2.b, Licensee shall pay, within five (5) days of receiving notice from the City that it has acted, a five-thousand dollar ($5,000.00) penalty in addition to reimbursing the City's costs incurred pursuant to § 3.2.b.

3.3. Hold-Over. In the event Licensee continues to occupy the License Area after the expiration or termination of this Agreement, Licensee shall pay a penalty of five hundred dollars ($500.00) per day for each day held over up to five (5) days. Beginning on the sixth (6th) hold over day, Licensee shall pay a penalty of five thousand dollars ($5,000) per day for each day held over.

4. **LICENSE FEES AND CONSIDERATION**

For its right to use the License Area, the City accepts the following consideration as full remuneration for the Licensee's use in accordance with the License Agreement to be paid on or before the Commencement Date of this agreement with certified funds or wire transfer:

4.1. Licensee shall pay a total sum of fifty-thousand dollars ($50,000.00) for use of the License Area as follows:

a. $49,853.46 – Use Fee
b. $116.51 – Plan Review Fee
c. $30.03 – Banner Permit Fee

4.2. Licensee shall arrange and pay for any and all goods and services necessary to replace the City's existing window graphic including removal of material, glass cleaning, and equipment rental, all in accordance with the existing graphic specifications: thirty-six feet (36') wide by twenty-four feet (24') high, four color process on clear focus perforated vinyl, printed to fit between window mullions/grid, and surveyed to ensure appropriate fit. Final design review and specifications are subject to the city's approval prior to installation and must be received five (5) business days in advance of the intended installation date and no later than January 30, 2015

4.3. In consideration for its use of the License Area, Licensee will include "Glendale, Arizona" prominently on the temporary building wrap advertisement being placed in the Licensee Area on behalf of its client.

5. LICENSEE'S OPERATIONS

5.1. Generally

a. Licensee must at all times have on-call and at the City's access an active, qualified and experienced representative to supervise the Permitted Use and who is authorized to act for the Licensee in matters pertaining to all emergencies and the execution of the Permitted Use. Licensee will provide the City with the name and 24-hour telephone number for the Licensee Project Manager.

b. Licensee, at all times during the Term of this Agreement, must operate and maintain the License Area in a clean and orderly condition and use commercially reasonable care in the use of the License Area so as not to constitute a nuisance, jeopardize the public safety, sell or distribute alcohol or illegal drugs, permit nudity, or allow any other unlawful activity.

c. The Licensee is responsible for obtaining and paying for all utilities and equipment necessary in connection with the Permitted Use of the License Area.

d. In addition to any permits or approvals from City, Licensee will procure, at its sole cost, any license, permit or approval of any other governmental agency having jurisdiction over the License Area necessary for the Permitted Use of the License Area ("**Governmental Approvals**"). Licensee's obligations under this Agreement shall be subject to receipt of all Governmental Approvals. Each Party will cooperate with the other in good faith to obtain the Government Approvals, and City will promptly execute all applications and other documentation necessary for Licensee to obtain the Governmental Approvals. Licensee shall reimburse City within ten (10) days for any penalties or fines resulting from Licensee's failure to comply with any Governmental Approvals.

5.2. Improvements and Services

a. Licensee's Contractors

1. Licensee may use contractors and suppliers in its reasonable discretion in the performance of Improvements and Services. Licensee is responsible for ensuring the Licensee's contractor(s) or other agents performing work at the License Area shall maintain the minimum insurance requirements identified in this License. The insurance policies shall be endorsed to contain the City of Glendale, its officers, officials, employees, and volunteers as an additional insured in connection with its Permitted Use and Improvements and Services and any other work or operations.

2. Licensee's Improvements and Services must be designed and materials and labor purchased at the Licensee's sole expense. In the event Licensee or its Contractors cause damage to City owned property, the Licensee is responsible for reporting the claim to the applicable insurance company.

3. In no event is the City obligated to compensate the Licensee or any contractor or supplier in any manner for any of the Licensee's Improvements or Services or other work performed by the Licensee or any contractor in connection with the Permitted Use or during or related to this Agreement.

4. Licensee must timely pay for all labor, materials, and work, and all professional and other services related to its operations within the License Area, and will defend, indemnify and hold harmless the City against all related claims caused by Licensee and no liens against the License Area shall be permitted.

5. All work performed on the License Area by the Licensee or any sub-contractors must be performed in a workmanlike manner, as reasonably determined by the City, and will be diligently pursued to completion and in conformance with all building codes and similar rules.

5.3. Insurance

a. Licensee and any and all Contractors shall procure and maintain until all obligations have been discharged the minimum insurance requirements as outlined below in connection with its Permitted Use and Improvements and any other work or operations in the License Area. The insurance requirements contained herein are minimum requirements and in no way limit the indemnity covenants contained in the License. The City in no way warrants that the minimums are sufficient to protect Licensee or its Contractors as they are free to purchase additional insurance as they deem necessary.

Minimum Insurance Requirements

1. Workers' Compensation Insurance as required by the State of Arizona with Statutory Limits. This policy shall include Employer's Liability insurance with limits no less than $1,000,000 per accident for bodily injury or disease.

2. Commercial General Liability Insurance on an occurrence basis that includes property damage, fire damage legal liability, bodily injury, personal and advertising injury, products and completed operations and contractual liability with limits not less than $2,000,000 per occurrence, $4,000,000 aggregate and $100,000 fire damage liability.

3. Automobile Liability Insurance that includes bodily injury and property damage for any owned, hired and non-owned vehicles with a combined single limit not less than $1,000,000.

b. Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona with an AM Best rating not less than A-, VII by AM Best.

c. The General and Automobile liability policies shall contain or be endorsed to contain the City of Glendale, its officers, officials, employees and volunteers as additional insureds with respect to liability arising out of Licensee's Permitted Use and Improvements and any other work or operations in the License Area.

d. Licensee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

e. As commercially reasonable and at any time, City's Risk Manager may alter the requirements above or determine additional insurance is necessary for Licensee's operations.

f. Notice of Cancellation. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

g. Licensee and any and all Contractors shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the required insurance coverage. All certificates and endorsements are to be received by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

h. Waiver of Subrogation. Licensee hereby grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to make reasonable efforts to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

i. Notices to the City. The Licensee will provide the City, without request, copies of any petition or application related to any filing by the Licensee of bankruptcy, receivership or trusteeship and any notices received from regulatory agencies pertaining to the operations of the Billboard.

6. Damage or Destruction. The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of Licensee, except for such loss or damage as is caused by the sole negligence or fault of the City or its officers, employees or agents.

7. **INDEMNIFICATION AND LIMITATION OF LIABILITY**.

7.1. Licensee will defend, indemnify and hold harmless the City, its officers, officials, and employees, and agents (collectively, the "City") from and against any and all losses, damages, claims, actions, liabilities for bodily injury or personal injury (including death) or loss or damage to tangible or intangible property (collectively, "Claims") of whatever nature, including attorney's fees, court costs, expert witness fees, costs of litigation or expenses, cost of claim processing and investigation, caused in whole or in part that arise out of any act or omission of Licensee or its agents, employees and invitees (collectively, "Licensee") in connection with Licensee's, or related to Licensee's owners, officers, directors, agents or contractors, Permitted Use and operations in the License Area and that result directly or indirectly in any type of injury to or death of any person or the damage to or loss of any property, or that arise out of Licensee's use, activities or operations, including the failure of the Licensee to comply with any provision of this Agreement (collectively "Licensee's Conduct").

a. City will in all instances, except for loss, damages or claims resulting from the sole negligence or fault or gross negligence of City, be defended and indemnified by Licensee against any and all Claims arising out of Licensee's Conduct. Licensee will be responsible for primary loss investigation, defense and judgment costs where the indemnification is applicable. City will give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this section, although timing of such notice will not diminish Licensee's duty to defend and indemnify unless such timing actually prejudices Licensee's ability to defend, and the Licensee will have the right to compromise and defend the same to the extent of its own interest.

b. City shall cooperate with Licensee and its counsel in such defense.

c. City may, but does not have the duty to, participate in the defense of any Claim with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations hereunder.

d. Licensee's obligations under this Agreement survive any termination of this Agreement or the Licensee's use or activities in the License Area.

e. In consideration for the use of the premises, the Licensee agrees to waive all rights of subrogation against the City, its officers, officials, employees, and agents arising from Licensee's use, activities, operations or occupancy of the premises.

7.2. Limitation of Liability. In no event is either party liable or obligated to the other party or any third party for any special, incidental, exemplary, consequential, punitive or indirect damages regardless of the form of action, whether under theory of contract, tort (including negligence), strict liability or otherwise, even if informed of the possibility of any such damages in advance. The foregoing limitation on liability shall not apply to claims for which a party is obligated to provide indemnity under this Agreement, claims arising from fraud, gross negligence or willful misconduct of a party, claims for breach of confidentiality, or claims of infringement of intellectual property rights.

7.3. The indemnity obligations in this section shall survive expiration or termination of this Agreement.

8. **TAXES AND LICENSES**

8.1. Licensee must pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City.

8.2. Licensee must, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

9. **RULES AND REGULATIONS.** Licensee must at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its use and activity or operations on the License Area, including all laws, ordinances, rules and regulations adopted after the Effective Date. Licensee must display to the City, upon request, any permits, licenses or other evidence of compliance with all laws.

10. TERMINATION

10.1. For Cause

a. Either party may terminate this Agreement in the event that the other party breaches this Agreement and fails to promptly remedy such breach within forty-eight (48) hours after receipt of notice from the other party. Notice must be made to either party's Project Manager, which notice may be verbal if provided on-site at the License Area to the other party's representative but must be followed up with an email to the other party's Project Manager documenting the deficiency.

b. In the event either party fails to perform any of its obligations under this Agreement and such failure continues for forty-eight (48) hours and will impair the Permitted Use of the License Area, either party shall, in addition to all other rights and remedies available, have the right, but not the obligation, to perform the obligations of the offending party and collect from such, or set-off against amounts otherwise due, all sums actually expended to effect such cure.

c. Licensee may terminate this Agreement in the event of any of the following:

1. Prior to the use of the License Area, Licensee reasonably determines that the License Area is no longer technically compatible for its use or that it does not intend to use the License Area for its intended purposes.

2. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area.

d. The City may terminate this Agreement and seek damages in the event of any of the following:

1. The failure of Licensee to perform any of its obligations under this Agreement;

2. The filing of any lien against the License Area because of any act or omission of the Licensee that is not discharged or fully bonded within 30 days of receipt of actual notice by the Licensee.

3. If the Licensee at any time and for any reason fails to maintain all insurance coverage required by this Agreement, alternatively, and at its sole discretion, the City may secure the required insurance at the Licensee's expense which will be immediately due and payable.

11. **DEFAULT**. Failure by a Party to take any authorized action upon default by the other party of any of the other party's breach of a term, covenant, condition or obligation of this Agreement, or the failure to declare any default or breach immediately upon occurrence thereof or delay in taking any action in connection therewith, shall not waive such default or breach or such covenant, term, or condition or any subsequent default or breach thereof.

12. CITY'S REPRESENTATIONS AND WARRANTIES

The City represents and warrants to the Licensee that:

12.1. It has the full right, power, and authority to execute this Agreement;

12.2. The City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

12.3. The City shall deliver the License Area to Licensee on the Commencement Date.

12.4. The City will not take any action inconsistent with Licensee's use of the License Area during the term of this Agreement.

12.5. The City has not and will not contract with, authorize or permit any vendors, merchants, lessees or other third parties to have access to or make any use of the License Area during the Term of this Agreement.

12.6. Advertising. The City will not issue any permit or otherwise grant permission for any temporary sign on the License Area to persons other than Licensee or the NFL.

13. **HAZARDOUS WASTE**

13.1. Licensee must not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or any other federal, state or local law pertaining to hazardous waste or toxic substances.

13.2. Licensee must not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by the Arizona Department of Health Services.

13.3. Licensee must defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the License Area attributable to or caused in any way by the Licensee, and immediately notify the City of any hazardous waste or toxic substance at any time discovered or existing upon the License Area.

13.4. Licensee must promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems on the License Area.

14. **PARTIES' PERSONNEL**. Each party's personnel are, and shall at all times remain, employees or contractors of such party, and each party shall exercise control over the conduct of their personnel and shall pay all wages, employee benefits and related expenses to the full extent required by law including, without limitation, all governmental employment taxes and unemployment insurance.

15. **INDEPENDENT CONTRACTOR**. Nothing herein shall be deemed or construed to create a partnership, joint venture or agency relationship between the parties. Licensee is strictly an independent contractor subject to no control by City other than as expressly provided herein.

16. **NOTICES**. Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

To City:	City of Glendale Attn: Brenda S. Fischer, City Manager 5850 W Glendale Avenue Glendale, AZ 85301 Email: Citymanager@glendaleaz.com
with copy to:	City of Glendale Attn: Michael D. Bailey, City Attorney 5850 West Glendale Avenue Glendale, AZ 85301 Email: mbailey@glendaleaz.com
To Licensee:	Inwindow Outdoor, LLC Attn: Steve Birnhak 636 Broadway, Ste. 1218 New York, NY 10012 Email: steve@inwindowoutdoor.com

16.1. Either party may designate in writing a different address for notice purposes pursuant to this section.

16.2. Any notice or other communication directed to a party to this Agreement shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) delivery to the address of the party, addressed to the party; or (c) if given by certified or registered U.S. Mail, return receipt requested, 72 hours after deposit with the United States Postal Service, addressed to the party.

17. **ASSIGNMENT**. Neither Party may assign or sublease any of its interest, rights, or obligations of this Agreement hereunder without the prior written consent of the other Party. Any attempted assignment, delegation, or transfer without the necessary consent will be void.

18. **SEVERABILITY**. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.

19. **IMMIGRATION LAW COMPLIANCE**.

19.1. Licensee, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

19.2. Any breach of warranty under this section above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

19.3. City retains the legal right to inspect the records of Licensee or subcontractor employee who performs work under this Agreement to ensure that Licensee or any subcontractor is compliant with the warranty under this section.

19.4. City may conduct random inspections, and upon request of the City, Licensee must provide copies of papers and records demonstrating continued compliance with the warranty under this

section. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

19.5. Licensee agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon it and expressly accrue those obligations directly to the benefit of the City. Licensee also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

19.6. Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

19.7. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

20. **CONFLICTS**. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

21. **GOVERNING LAW; CHOICE OF FORUM**. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.

22. **MISCELLANEOUS**.

22.1. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties, and supersedes all representations, statements or prior agreements and understandings both written and oral with respect to the matters contained in this Agreement and exhibits hereto. No person has been authorized to give any information or make any representation not contained in this Agreement.

22.2. The parties have participated jointly in the drafting of this Agreement, and agree that it shall be interpreted, applied, and enforced according to the fair meaning of its terms and not be construed strictly in favor or against either party, regardless of which party may have drafted any of its provisions. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

22.3. No provision of this Agreement may be waived or modified except by a written agreement signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Agreement shall be binding upon and inure to the benefit of each party, and its successors and assigns.

23. **COUNTERPARTS**. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile (or other commonly-used electronic means (e.g., PDF) shall be effective as delivery of a manually executed counterpart of this Agreement.

[Signatures on following page.]

EXECUTED to be effective on the date the agreement is fully executed by all Parties.

CITY OF GLENDALE, an Arizona municipal corporation

Brenda S. Fischer, City Manager

Date: 1-13-15

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

Countersigned Separately

INWINDOW OUTDOOR LLC, a BLANK corporation

_____

By:
Its:

Date: _____

STATE OF _____)
) ss.
County of _____)

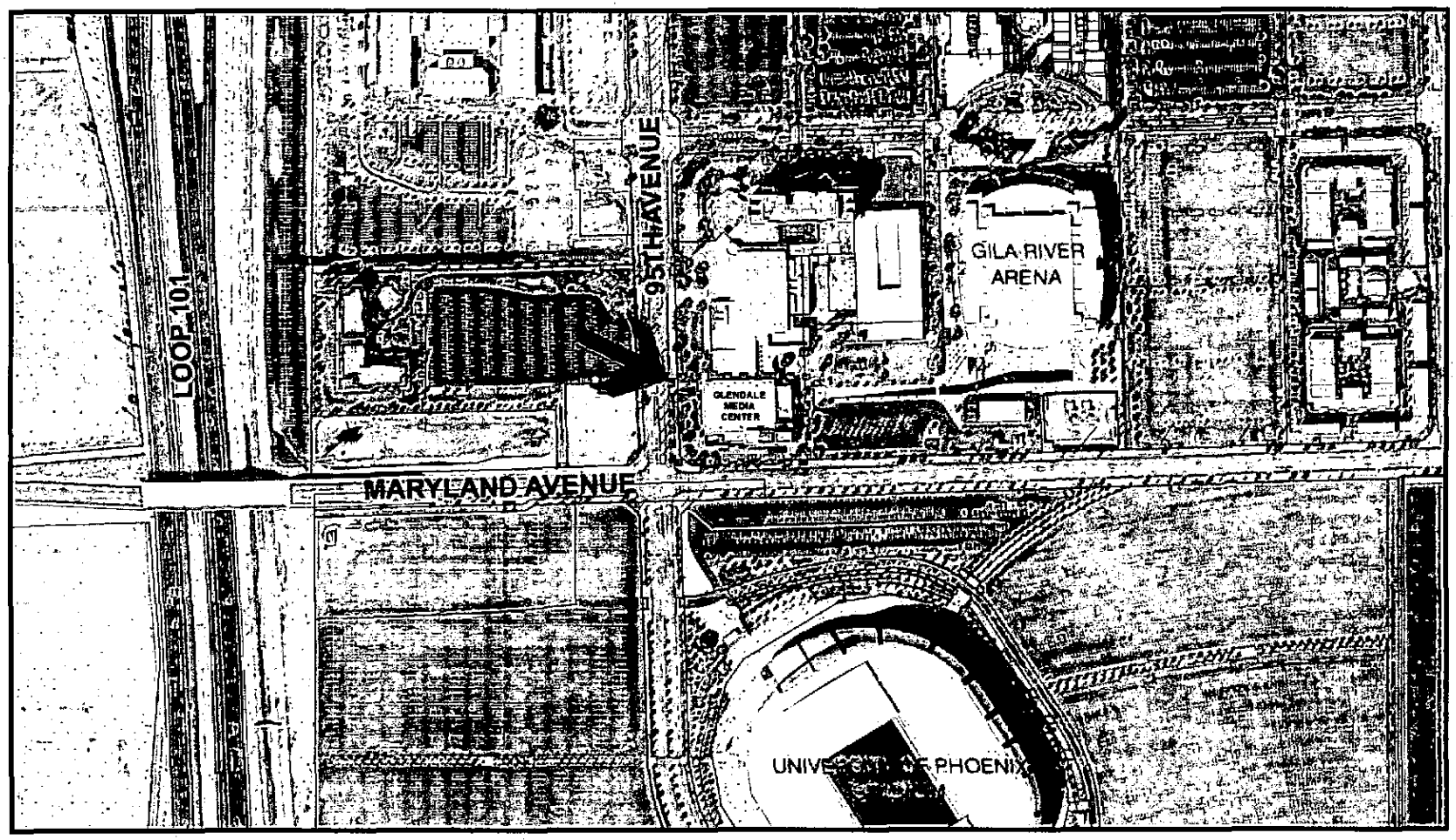
The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____in his/her capacity as authorized representative of INWINDOW OUTDOOR, LLC.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A
Property Description



GLENDALE

EXHIBIT A

GLENDALE MEDIA CENTER
9494 W. Maryland Avenue / 102-01-33E

N

Aerial Date: November 2012

EXHIBIT B
License Area and Approved Design

CONTENT PROOF | CLIENT: Inwindow Outdoor - Renaissance Hotel Glendal - South Face | JOB #: 29585 | DATE: 01.08.2015

OPTION 2

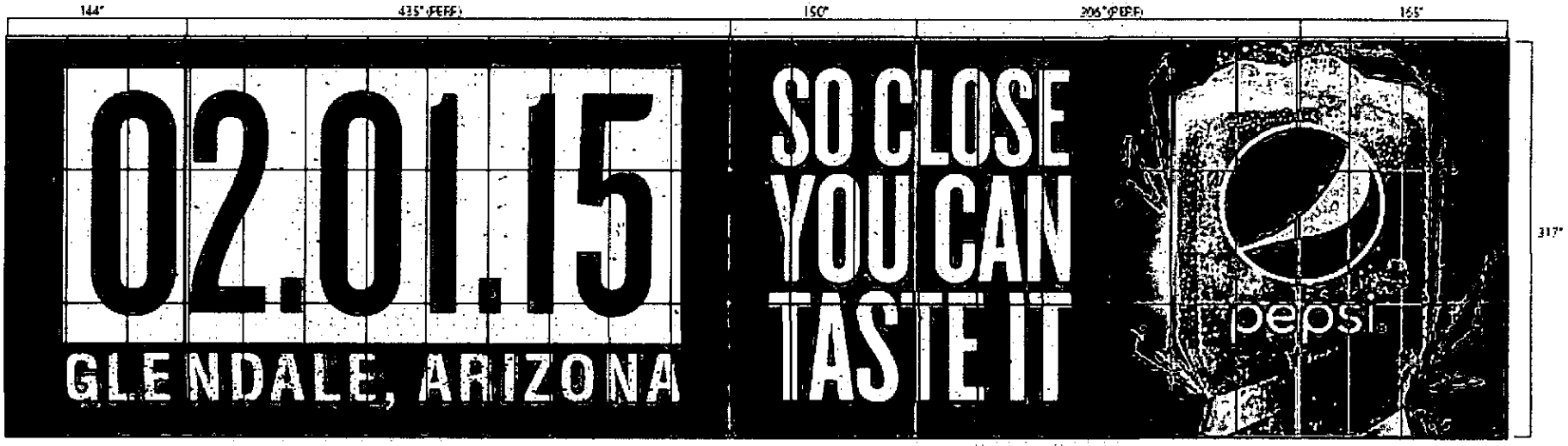
29585-3_1
317" x 144"
x 1

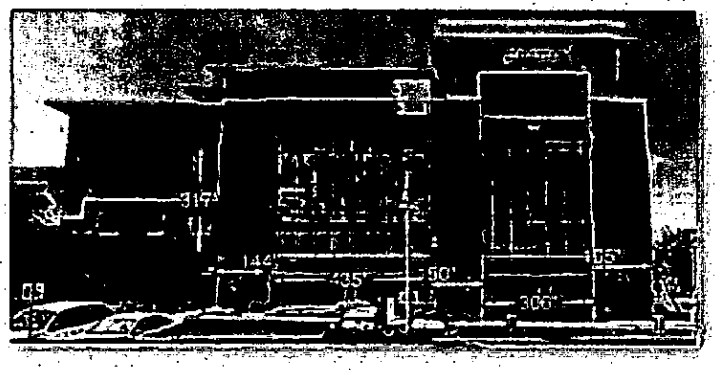
29585-4_1
317" x 435"
x 1

29585-3_2
317" x 150"
x 1

29585-4_2
317" x 306"
x 1

29585-3_3
317" x 165"
x 1





PROOF #: 2 | REP: Jared Smith | DESIGNER: Marcus Masaro | GO TO PRESS!

COLOR PROOF: ○ Not Needed ○ Matchprint ○ Actual Material

This image is an artistic representation of what your graphics will look like. Outdoor Media™ reserves the right to slightly modify certain measurements and/or areas to accommodate production and installation.

☐ APPROVED ☐ RE-PROOF

X

Signature | Date

LICENSE AGREEMENT
(Glendale Media Center)

This LICENSE AGREEMENT ("**Agreement**") is made and entered into by and between the City of Glendale, an Arizona municipal corporation ("**City**") and Inwindow Outdoor, LLC, a Limited Liability Corporation authorized to do business in New York, ("**Licensee**") (collectively "**Parties**") to be effective on the date it is fully executed by all Parties.

RECITALS

A. The City is the owner of certain real property commonly known as the Glendale Media Center and controls outdoor advertising on said property located at 9494 West Maryland Avenue, Maricopa County Parcel No. 102-01-033E, Glendale, Arizona, as more fully described in Exhibit A, attached hereto. A portion of the south facing exterior wall of said property, as depicted on Exhibit B, will be licensed for use pursuant to this Agreement ("**License Area**").

B. The National Football League ("**NFL**") owns, produces and controls its annual professional football championship game known as the Super Bowl and its annual all-star exhibition game known as the Pro Bowl (together the "**Events**") and all rights relating thereto on an exclusive, worldwide basis.

C. The 2015 Pro Bowl is scheduled to be played on January 25, 2015, and Super Bowl XLIX is scheduled to be played on February 1, 2015, both at the University of Phoenix Stadium near the License Area.

D. The Licensee is the owner and operator of an advertising company representing Pepsi Co., an official NFL Partner, and desires to utilize the License Area to place a building wrap advertisement on behalf of its client shown in Exhibit B.

F. Licensee and City desire for Licensee to use the License Area in accordance with the terms set forth below.

G. Licensee and City desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. INCORPORATION OF RECITALS. The above recitals are true and correct and are incorporated into and shall constitute a part of this Agreement.

2. LICENSE. The City hereby grants to Licensee the right to use the License Area only for the purpose of installing and displaying an outdoor building wrap advertising the Pepsi brand during the Term of this Agreement ("**Permitted Use**") and no other use; and, subject to the provisions and conditions of this Agreement:

   2.1. Access. During the Term of this Agreement, Licensee will have non-exclusive access to the License Area only as described in § 5, "Licensee's Operations" for the Permitted Use.

   2.2. Project Manager. Upon execution of this Agreement, City and Licensee will each designate a project manager to coordinate the parties' performance under this Agreement. Each project

manager will devote such time and effort to the project as may be necessary for timely, good faith and convenient coordination among all persons involved with the project and compliance with this Agreement. The City's project manager will not be exclusively assigned to this Agreement or to work related to the Licensee's use.

2.3. Rights, Use Requirements, and Restrictions.

a. Licensee's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the License Area.

b. Licensee's rights under this Agreement are subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the License Area or the Licensee's use of the License Area.

c. Licensee may use the License Area only for the Permitted Use and no other use.

d. Licensee's Permitted Use includes the following:

1. Removing existing window graphic, as depicted on Exhibit B, on the south facing windows of the License Area;

2. Preparing the exterior of the building and windows of the License Area for new application;

3. Applying a temporary, removable building wrap material to the exterior of the building on the License Area. Final design must be approved by the NFL and City prior to application and must prominently display "Glendale, Arizona".

4. Removing the temporary building wrap material and cleaning the building and windows to restore them to their original condition, no wear and tear excepted, at the conclusion of the Term;

5. Replacing the City's window graphic in accordance with the specifications identified in § 4.2 no later than 5:00p.m. on February 6, 2015; and,

6. All other uses directly related to the Permitted Use.

2.4. "AS-IS" Acceptance. Licensee warrants that it has studied and inspected the License Area, obtained any information and professional advice the Licensee has determined to be necessary related to this Agreement, and therefore accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in § 12, including any warranties or representations by the City as to its condition or fitness for any use.

2.5. Limitation on Grant. The Parties do not by this instrument intend to create a lease, easement, or other real property interest or vest with Licensee any real property interest in the License Area and nothing express or implied in this Agreement grants Licensee any right or authority to enter, occupy, or use any property that is not solely owned by the City and fully described herein.

2.6. Rights Reserved

a. Licensee acknowledges that its use of the License Area is subject and subordinate to the City's use of the License Area.

b. City may, at all times, enter upon the License Area for any lawful purpose, provided the action does not unreasonably interfere with the Licensee's use or occupancy of the License Area.

3. **TERM**.

3.1. License Period. *This Agreement shall commence* on January 19, 2015 (**"Commencement Date"**) and end on February 6, 2015 (**"Term"**), unless terminated earlier as provided in this Agreement. The Effective Date of the License Agreement shall be the date it is fully executed by all Parties.

3.2. Surrender of Possession

a. Upon the expiration or termination of this Agreement, the Licensee's right to occupy the License Area and to exercise the privileges and rights granted by this Agreement cease, and it must surrender and leave the License Area in as good condition as it was provided to Licensee, including removal of personal property from the License Area, and removal of any paper, litter or trash.

b. Except in the case of inclement weather, acts of God, or domestic terrorism, if Licensee fails to remove any of its property and replace the City's window *graphic by 5:00p.m.* on February 6, 2015 as required by § 2.3.d.5, the Licensee agrees that the City shall, at the Licensee's sole expense, remove or cause to have removed Licensee's property, including but not limited to the building wrap, and replace or cause to have replaced the City's window graphic, as defined in § 4.2.

c. In the event the City takes action pursuant to § 3.2.b, Licensee shall pay, within five (5) days of receiving notice from the City that it has acted, a five-thousand dollar ($5,000.00) penalty in addition to reimbursing the City's costs incurred pursuant to § 3.2.b.

3.3. Hold-Over. In the event Licensee continues to occupy the License Area after the expiration or termination of this Agreement, Licensee shall pay a penalty of five hundred dollars ($500.00) per day for each day *held over up to* five (5) days. Beginning on the sixth (6th) hold over day, Licensee shall pay a penalty of five thousand dollars ($5,000) per day for each day held over.

4. **LICENSE FEES AND CONSIDERATION**

For its right to use the License Area, the City accepts the following consideration as full remuneration for the Licensee's use in accordance with the License Agreement to be paid on or before the Commencement Date of this agreement with certified funds or wire transfer:

4.1. Licensee shall pay a total sum of fifty-thousand dollars ($50,000.00) for use of the License Area as follows:

a. $49,853.46 – Use Fee
b. $116.51 – Plan Review Fee
c. $30.03 – Banner Permit Fee

4.2. Licensee shall arrange and pay for any and all goods and services necessary to replace the City's existing window graphic including removal of material, glass cleaning, and equipment rental, all in accordance with the existing graphic specifications: thirty-six feet (36') wide by twenty-four feet (24') high, four color process on clear focus perforated vinyl, printed to fit between window mullions/grid, and surveyed to ensure appropriate fit. Final design review and specifications are subject to the city's approval prior to installation and must be received five (5) business days in advance of the intended installation date and no later than January 30, 2015

4.3. In consideration for its use of the License Area, Licensee will include "Glendale, Arizona" prominently on the temporary building wrap advertisement being placed in the Licensee Area on behalf of its client.

5. LICENSEE'S OPERATIONS

5.1. Generally

a. Licensee must at all times have on-call and at the City's access an active, qualified and experienced representative to supervise the Permitted Use and who is authorized to act for the Licensee in matters pertaining to all emergencies and the execution of the Permitted Use. Licensee will provide the City with the name and 24-hour telephone number for the Licensee Project Manager.

b. Licensee, at all times during the Term of this Agreement, must operate and maintain the License Area in a clean and orderly condition and use commercially reasonable care in the use of the License Area so as not to constitute a nuisance, jeopardize the public safety, sell or distribute alcohol or illegal drugs, permit nudity, or allow any other unlawful activity.

c. The Licensee is responsible for obtaining and paying for all utilities and equipment necessary in connection with the Permitted Use of the License Area.

d. In addition to any permits or approvals from City, Licensee will procure, at its sole cost, any license, permit or approval of any other governmental agency having jurisdiction over the License Area necessary for the Permitted Use of the License Area ("**Governmental Approvals**"). Licensee's obligations under this Agreement shall be subject to receipt of all Governmental Approvals. Each Party will cooperate with the other in good faith to obtain the Government Approvals, and City will promptly execute all applications and other documentation necessary for Licensee to obtain the Governmental Approvals. Licensee shall reimburse City within ten (10) days for any penalties or fines resulting from Licensee's failure to comply with any Governmental Approvals.

5.2. Improvements and Services

a. Licensee's Contractors

1. Licensee may use contractors and suppliers in its reasonable discretion in the performance of Improvements and Services. Licensee is responsible for ensuring the Licensee's contractor(s) or other agents performing work at the License Area shall maintain the minimum insurance requirements identified in this License. The insurance policies shall be endorsed to contain the City of Glendale, its officers, officials, employees, and volunteers as an additional insured in connection with its Permitted Use and Improvements and Services and any other work or operations.

2. Licensee's Improvements and Services must be designed and materials and labor purchased at the Licensee's sole expense. In the event Licensee or its Contractors cause damage to City owned property, the Licensee is responsible for reporting the claim to the applicable insurance company.

3. In no event is the City obligated to compensate the Licensee or any contractor or supplier in any manner for any of the Licensee's Improvements or Services or other work performed by the Licensee or any contractor in connection with the Permitted Use or during or related to this Agreement.

4. Licensee must timely pay for all labor, materials, and work, and all professional and other services related to its operations within the License Area, and will defend, indemnify and hold harmless the City against all related claims caused by Licensee and no liens against the License Area shall be permitted.

5. All work performed on the License Area by the Licensee or any sub-contractors must be performed in a workmanlike manner, as reasonably determined by the City, and will be diligently pursued to completion and in conformance with all building codes and similar rules.

5.3. Insurance

a. Licensee and any and all Contractors shall procure and maintain until all obligations have been discharged the minimum insurance requirements as outlined below in connection with its Permitted Use and Improvements and any other work or operations in the License Area. The insurance requirements contained herein are minimum requirements and in no way limit the indemnity covenants contained in the License. The City in no way warrants that the minimums are sufficient to protect Licensee or its Contractors as they are free to purchase additional insurance as they deem necessary.

Minimum Insurance Requirements

1. Workers' Compensation Insurance as required by the State of Arizona with Statutory Limits. This policy shall include Employer's Liability insurance with limits no less than $1,000,000 per accident for bodily injury or disease.

2. Commercial General Liability Insurance on an occurrence basis that includes property damage, fire damage legal liability, bodily injury, personal and advertising injury, products and completed operations and contractual liability with limits not less than $2,000,000 per occurrence, $4,000,000 aggregate and $100,000 fire damage liability.

3. Automobile Liability Insurance that includes bodily injury and property damage for any owned, hired and non-owned vehicles with a combined single limit not less than $1,000,000.

b. Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona with an AM Best rating not less than A-, VII by AM Best.

c. The General and Automobile liability policies shall contain or be endorsed to contain the City of Glendale, its officers, officials, employees and volunteers as additional insureds with respect to liability arising out of Licensee's Permitted Use and Improvements and any other work or operations in the License Area.

d. Licensee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

e. As commercially reasonable and at any time, City's Risk Manager may alter the requirements above or determine additional insurance is necessary for Licensee's operations.

f. Notice of Cancellation. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

g. Licensee and any and all Contractors shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the required insurance coverage. All certificates and endorsements are to be received by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

h. Waiver of Subrogation. Licensee hereby grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to make reasonable efforts to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

i. Notices to the City. The Licensee will provide the City, without request, copies of any petition or application related to any filing by the Licensee of bankruptcy, receivership or trusteeship and any notices received from regulatory agencies pertaining to the operations of the Billboard.

6. Damage or Destruction. The City has no obligation to reimburse the Licensee for the loss of or damage to fixtures, equipment or other personal property of Licensee, except for such loss or damage as is caused by the sole negligence or fault of the City or its officers, employees or agents.

7. **INDEMNIFICATION AND LIMITATION OF LIABILITY.**

7.1. Licensee will defend, indemnify and hold harmless the City, its officers, officials, and employees, and agents (collectively, the "City") from and against any and all losses, damages, claims, actions, liabilities for bodily injury or personal injury (including death) or loss or damage to tangible or intangible property (collectively, "Claims") of whatever nature, including attorney's fees, court costs, expert witness fees, costs of litigation or expenses, cost of claim processing and investigation, caused in whole or in part that arise out of any act or omission of Licensee or its agents, employees and invitees (collectively, "Licensee") in connection with Licensee's, or related to Licensee's owners, officers, directors, agents or contractors, Permitted Use and operations in the License Area and that result directly or indirectly in any type of injury to or death of any person or the damage to or loss of any property, or that arise out of Licensee's use, activities or operations, including the failure of the Licensee to comply with any provision of this Agreement (collectively "Licensee's Conduct").

(3)

a. City will in all instances, except for loss, damages or claims resulting from the sole negligence or fault or gross negligence of City, be defended and indemnified by Licensee against any and all Claims arising out of Licensee's Conduct. Licensee will be responsible for primary loss investigation, defense and judgment costs where the indemnification is applicable. City will give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this section, although timing of such notice will not diminish Licensee's duty to defend and indemnify unless such timing actually prejudices Licensee's ability to defend, and the Licensee will have the right to compromise and defend the same to the extent of its own interest.

b. City shall cooperate with Licensee and its counsel in such defense.

c. City may, but does not have the duty to, participate in the defense of any Claim with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations hereunder.

d. Licensee's obligations under this Agreement survive any termination of this Agreement or the Licensee's use or activities in the License Area.

e. In consideration for the use of the premises, the Licensee agrees to waive all rights of subrogation against the City, its officers, officials, employees, and agents arising from Licensee's use, activities, operations or occupancy of the premises.

7.2. Limitation of Liability. In no event is either party liable or obligated to the other party or any third party for any special, incidental, exemplary, consequential, punitive or indirect damages regardless of the form of action, whether under theory of contract, tort (including negligence), strict liability or otherwise, even if informed of the possibility of any such damages in advance. The foregoing limitation on liability shall not apply to claims for which a party is obligated to provide indemnity under this Agreement, claims arising from fraud, gross negligence or willful misconduct of a party, claims for breach of confidentiality, or claims of infringement of intellectual property rights.

7.3. The indemnity obligations in this section shall survive expiration or termination of this Agreement.

8. **TAXES AND LICENSES**

8.1. Licensee must pay any leasehold tax, possessory-interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the License Area under authority of this Agreement, including any such tax assessable on the City.

8.2. Licensee must, at its own cost, obtain and maintain in full force and effect during the term of this Agreement all licenses and permits required for all activities authorized by this Agreement.

9. **RULES AND REGULATIONS.** Licensee must at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its use and activity or operations on the License Area, including all laws, ordinances, rules and regulations adopted after the Effective Date. Licensee must display to the City, upon request, any permits, licenses or other evidence of compliance with all laws.

10. **TERMINATION**

10.1. For Cause

a. Either party may terminate this Agreement in the event that the other party breaches this Agreement and fails to promptly remedy such breach within forty-eight (48) hours after receipt of notice from the other party. Notice must be made to either party's Project Manager, which notice may be verbal if provided on-site at the License Area to the other party's representative but must be followed up with an email to the other party's Project Manager documenting the deficiency.

b. In the event either party fails to perform any of its obligations under this Agreement and such failure continues for forty-eight (48) hours and will impair the Permitted Use of the License Area, either party shall, in addition to all other rights and remedies available, have the right, but not the obligation, to perform the obligations of the offending party and collect from such, or set-off against amounts otherwise due, all sums actually expended to effect such cure.

c. Licensee may terminate this Agreement in the event of any of the following:

1. Prior to the use of the License Area, Licensee reasonably determines that the License Area is no longer technically compatible for its use or that it does not intend to use the License Area for its intended purposes.

2. Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining the Licensee's use of any portion of the License Area.

d. The City may terminate this Agreement and seek damages in the event of any of the following:

1. The failure of Licensee to perform any of its obligations under this Agreement;

2. The filing of any lien against the License Area because of any act or omission of the Licensee that is not discharged or fully bonded within 30 days of receipt of actual notice by the Licensee.

3. If the Licensee at any time and for any reason fails to maintain all insurance coverage required by this Agreement, alternatively, and at its sole discretion, the City may secure the required insurance at the Licensee's expense which will be immediately due and payable.

11. **DEFAULT**. Failure by a Party to take any authorized action upon default by the other party of any of the other party's breach of a term, covenant, condition or obligation of this Agreement, or the failure to declare any default or breach immediately upon occurrence thereof or delay in taking any action in connection therewith, shall not waive such default or breach or such covenant, term, or condition or any subsequent default or breach thereof.

12. **CITY'S REPRESENTATIONS AND WARRANTIES**

The City represents and warrants to the Licensee that:

12.1. It has the full right, power, and authority to execute this Agreement;

12.2. The City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the City.

12.3. The City shall deliver the License Area to Licensee on the Commencement Date.

12.4. The City will not take any action inconsistent with Licensee's use of the License Area during the term of this Agreement.

12.5. The City has not and will not contract with, authorize or permit any vendors, merchants, lessees or other third parties to have access to or make any use of the License Area during the Term of this Agreement.

12.6. Advertising. The City will not issue any permit or otherwise grant permission for any temporary sign on the License Area to persons other than Licensee or the NFL.

13. **HAZARDOUS WASTE**

13.1. Licensee must not produce, dispose, transport, treat, use or store any hazardous waste or toxic substance upon or about the License Area subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., or any other federal, state or local law pertaining to hazardous waste or toxic substances.

13.2. Licensee must not use the License Area in a manner inconsistent with any regulations, permits or approvals issued by the Arizona Department of Health Services.

13.3. Licensee must defend, indemnify and hold the City harmless against any loss or liability incurred by reason of any hazardous waste or toxic substance on or affecting the License Area attributable to or caused in any way by the Licensee, and immediately notify the City of any hazardous waste or toxic substance at any time discovered or existing upon the License Area.

13.4. Licensee must promptly and without a request by the City provide the City's Environmental Program Manager with copies of all written communications between the Licensee and any governmental agency concerning environmental inquiries, reports or problems on the License Area.

14. **PARTIES' PERSONNEL**. Each party's personnel are, and shall at all times remain, employees or contractors of such party, and each party shall exercise control over the conduct of their personnel and shall pay all wages, employee benefits and related expenses to the full extent required by law including, without limitation, all governmental employment taxes and unemployment insurance.

15. **INDEPENDENT CONTRACTOR**. Nothing herein shall be deemed or construed to create a partnership, joint venture or agency relationship between the parties. Licensee is strictly an independent contractor subject to no control by City other than as expressly provided herein.

16. **NOTICES**. Except as otherwise provided, all notices required or permitted to be given under this Agreement may be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

To City:	City of Glendale Attn: Brenda S. Fischer, City Manager 5850 W Glendale Avenue Glendale, AZ 85301 Email: Citymanager@glendaleaz.com
with copy to:	City of Glendale Attn: Michael D. Bailey, City Attorney 5850 West Glendale Avenue Glendale, AZ 85301 Email: mbailey@glendaleaz.com
To Licensee:	Inwindow Outdoor, LLC Attn: Steve Birnhak 636 Broadway, Ste. 1218 New York, NY 10012 Email: steve@inwindowoutdoor.com

16.1. Either party may designate in writing a different address for notice purposes pursuant to this section.

16.2. Any notice or other communication directed to a party to this Agreement shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) delivery to the address of the party, addressed to the party; or (c) if given by certified or registered U.S. Mail, return receipt requested, 72 hours after deposit with the United States Postal Service, addressed to the party.

17. **ASSIGNMENT**. Neither Party may assign or sublease any of its interest, rights, or obligations of this Agreement hereunder without the prior written consent of the other Party. Any attempted assignment, delegation, or transfer without the necessary consent will be void.

18. **SEVERABILITY**. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations; in the event of material prejudice, then the adversely affected party may terminate this Agreement.

19. **IMMIGRATION LAW COMPLIANCE**.

19.1. Licensee, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

19.2. Any breach of warranty under this section above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

19.3. City retains the legal right to inspect the records of Licensee or subcontractor employee who performs work under this Agreement to ensure that Licensee or any subcontractor is compliant with the warranty under this section.

19.4. City may conduct random inspections, and upon request of the City, Licensee must provide copies of papers and records demonstrating continued compliance with the warranty under this

section. Licensee agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

19.5. Licensee agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon it and expressly accrue those obligations directly to the benefit of the City. Licensee also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

19.6. Licensee's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

19.7. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

20. **CONFLICTS**. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

21. **GOVERNING LAW; CHOICE OF FORUM**. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section. If any litigation or arbitration between the City and the Licensee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.

22. **MISCELLANEOUS**.

22.1. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties, and supersedes all representations, statements or prior agreements and understandings both written and oral with respect to the matters contained in this Agreement and exhibits hereto. No person has been authorized to give any information or make any representation not contained in this Agreement.

22.2. The parties have participated jointly in the drafting of this Agreement, and agree that it shall be interpreted, applied, and enforced according to the fair meaning of its terms and not be construed strictly in favor or against either party, regardless of which party may have drafted any of its provisions. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

22.3. No provision of this Agreement may be waived or modified except by a written agreement signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Agreement shall be binding upon and inure to the benefit of each party, and its successors and assigns.

23. **COUNTERPARTS**. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile (or other commonly-used electronic means (e.g., PDF) shall be effective as delivery of a manually executed counterpart of this Agreement.

[Signatures on following page.]

Countersigned Seperately JEM

EXECUTED to be effective on the date the agreement is fully executed by all Parties.

CITY OF GLENDALE, an Arizona municipal corporation

_____

Brenda S. Fischer, City Manager

Date:_____

ATTEST:

_____

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

_____

Michael D. Bailey, City Attorney

INWINDOW OUTDOOR, LLC, a BLANK corporation

By: Steve Birnbak
Its: Inwindow Outdoor, CEO

Date: 1/12/15

STATE OF New York)
County of New York) ss.

The foregoing instrument was acknowledged before me this 12 day of Jan, 2015, by Steven Birnbak in his/her capacity as authorized representative of INWINDOW OUTDOOR, LLC.

Notary Public

My Commission Expires:
08/05/2017

WILLIAM D GIBBONS
Notary Public - State of New York
NO. 01GI6286844
Qualified in New York County
My Commission Expires Aug 5, 2017

EXHIBIT A
Property Description

GLENDALE

EXHIBIT A

GLENDALE MEDIA CENTER
9494 W. Maryland Avenue / 102-01-33E

N

Aerial Date: November 2012

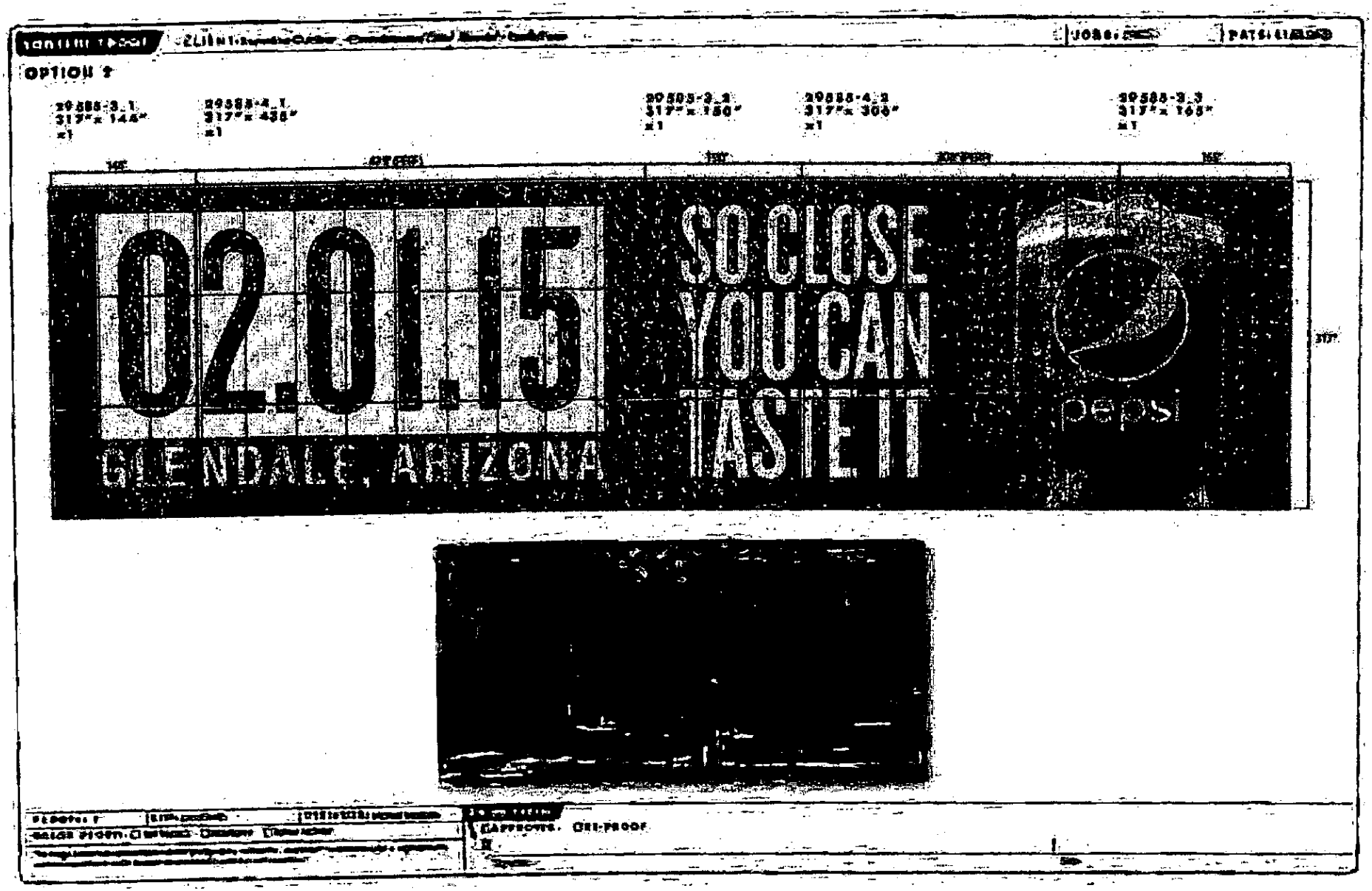



EXHIBIT B
License Area and Approved Design