FIRST AMENDMENT
TO
JOINT OCCUPANCY LEASE AGREEMENT BETWEEN
SAN LEANDRO UNIFIED SCHOOL DISTRICT AND
AMERICAN DIGITAL OUTDOOR, LP

THIS FIRST AMENDMENT is made this ____ day of _____, 2014, by and between the **San Leandro Unified School District**, a California public school district ("District") and **American Digital Outdoor, LP**, a California limited partnership ("Lessee"). The District and Lessee may be individually referred to herein as "Party" or collectively as "Parties."

RECITALS

WHEREAS, the District owns real property located at **2599 Teagarten Drive, San Leandro, CA and commonly known as the Burrell Field and Pacific Sports Complex** ("Site").

WHEREAS, the District and Lessee entered into a "Joint Occupancy Lease Agreement" ("Agreement"), dated November 19, 2013, to allow Lessee to erect, construct, install, place, operate, maintain, service, relocate and remove one (1) double-sided outdoor digital advertising sign(s), including supporting structures, illumination facilities and connections, back-up panels, service ladders and other appurtenances and ancillary equipment.

WHEREAS, the District and Lessee now intend to mutually amend the Agreement to allow Lessee to erect, construct, install, place, operate, maintain, service, relocate and remove "fee-producing infrastructure facilities," pursuant to Government Code sections 5956 *et seq.*, in the form of one (1) double-sided outdoor digital advertising sign(s), including supporting structures, illumination facilities and connections, back-up panels, service ladders and other appurtenances and ancillary equipment.

WHEREAS, pursuant to Government Code section 5956.2, the District, in its discretion, deems it appropriate to utilize the authority granted by Chapter 14 of Division 6 of Title 1 of the California Government Code.

WHEREAS, in accordance with Government Code section 5956.5, Lessee's Improvement shall be operated at fair and reasonable prices to the user of Lessee's infrastructure facility services.

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, District and Lessee agree as follows:

A. The following is added to section 2 entitled "Term":

2.2. The Term shall not be extended beyond thirty-five (35) years.

B. The following replaces all of Article 3 entitled "Rent":

3. **Rent.**

3.1 Rent shall be comprised of the Service Charge and the User Fee, both as further described herein.

3.1.1. **Service Charge.** For and in consideration of the use of the Premises, Lessee shall pay to District during the initial Term of ten (10) years, **Ten Thousand Dollars ($10,000)** per month ("Service Charge").

3.1.1.1. Within thirty (30) days of the issuance of any required permits or approvals with conditions acceptable by Lessee by the City of San Leandro, California Department of Transportation, the California Coastal Commission, and any

entity that enforces the California Environmental Quality Act or any other required governmental approval or permit required to allow the twenty four hour operation of Lessee's Activities (the "Permits"), Lessee shall pay to District the first ten (10) years of the Service Charge (One Million Two Hundred Thousand Dollars ($1,200,000).

3.1.1.2. The Service Charge for years eleven through twenty (11 – 20) shall be **Twelve Thousand Dollars ($12,000)** per month, which shall be paid by Lessee on the _____ day of each month.

3.1.2. **User Fee.** Lessee shall pay to District a user fee that shall be based on the gross advertising revenue generated from the Improvements, as more specifically indicated herein ("User Fee").

3.1.2.1. Each year within sixty (60) days of the anniversary date of the Commencement Date (commencing sixty (60) days after the first anniversary of the Commencement Date), Lessee shall pay to District thirty-three percent (33%) of the gross advertising revenue for the preceding year ("District Percentage Revenue"), as indicated below, less the annual Service Charge amount for the preceding year. For example, if 33% of the gross advertising revenue for the preceding year is $2,120,000 (District Percentage Revenue), then Lessee shall pay to District $2 million ($2,120,000 (District Percentage Revenue) - $120,000 (Service Charge) = $2,000,000).

3.1.2.2. The Lessee shall utilize the remaining sixty-seven percent (67%) of the gross advertising revenue as follows ("User Fee Component Calculation"):

- Direct and indirect capital outlay costs for the Improvements, which Lessee shall pay at no expense to the District;
- Direct and indirect costs associated with operations, which Lessee shall pay at no expense to the District;
- Direct and indirect user fee collection costs, if any, which Lessee shall pay at no expense to the District;
- Direct and indirect costs of administration of the Improvements, which Lessee shall pay at no expense to the District;
- Reimbursement for the direct and indirect costs of maintenance of the Improvements, which Lessee shall pay at no expense to the District; and
- The negotiated reasonable return on investment to the Lessee, which is the gross advertising revenue less the District Percentage Revenue as reduced by the Service Charge and the costs enumerated above.

Each year within thirty (30) days of the anniversary date of the Commencement Date, Lessee shall provide District a report certified by Lessee's chief financial officer that substantiates and summarizes the User Fee Component Calculation.

3.2. The gross advertising revenue shall be calculated by utilizing all revenues collected by Lessee from sales or contracts between Lessee and any firm(s), entity(ies), and individual(s) for use of the Improvements placed on the Premises for advertising purposes. Lessee may deduct from the

gross advertising revenue the costs incurred for any third party advertisement agency's commissions, if applicable.

3.2.1. Annual District Percentage Revenue reports submitted to District shall be certified by the chief financial officer of Lessee.

3.3. Lessee acknowledges that late payment by Lessee to District of any portion of the Rent (i.e., the Service Charge and User Fee) will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any portion of the Rent or any other sum due from Lessee by 4:00 p.m. on the day that shall be the tenth (10^{th}) day after the amount is due, Lessee shall pay to District, in addition to all Rent, a late charge equal to five percent (5%) of the overdue amount or the maximum amount allowed by law, whichever is less ("Late Charge"). The Parties hereby agree that the Late Charge represents a fair and reasonable estimate of the costs District will incur by reason of late payment by Lessee. Acceptance of any Late Charge by District shall in no event constitute a waiver of Lessee's default with respect to an overdue amount, or prevent District from exercising any of its other rights and remedies granted hereunder.

3.4. **Recording Keeping and Right of Audits**. Lessee shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Lessee transacted under this Agreement. Lessee shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Lessee shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts at District's expense from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Percentage Revenue. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Lessee and shall conduct audit(s) during Lessee's normal business hours, unless Lessee otherwise consents**. [**The Lessee shall prepare an annual audited report certified by Lessee's chief financial officer accounting for the income received and expenses to operate the Lessee's Improvements.] NOTE The Lessee shall make that report available to any member of the public for a cost not to exceed the cost of reproduction of the report.

3.5. **Additional Rent**. Lessee shall pay any taxes, costs, expenses, fees, assessments, levies, possessory interest taxes, late charges, and other charges and governmental fees, general and special, ordinary and extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever and related to the gross advertising revenue together with all interest and penalties that may accrue thereon in the event of Lessee's failure to pay such amounts, and all reasonable damages, costs, and attorneys' fees and expenses which District may incur by reason of any default of Lessee or failure on Lessee's part to comply with the terms of this Agreement, which prior to or during the Term of this Agreement, are assessed, levied, or imposed as the result of the construction of the Lessee Improvement's or the operation of the outdoor advertising sign structure at the Premises ("Additional Rent"). In the event of nonpayment of Additional Rent by Lessee, and following a thirty (30) day written notice and cure period to Lessee, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the monthly Rent. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

3.6. To the extent existing public utility infrastructure is necessarily required to be modified, relocated, or removed in order for Lessee's Improvements to be constructed, the cost of modification, relocation, or removal of the existing infrastructure shall be borne by the Lessee and included as a recoverable capital cost of the Lessee's Improvements.

C. The following is added to section 7 entitled "Lessee Improvements":

7.5. After the date of this Agreement, Lessee shall maintain adequate financial resources to design, build, and operate Lessee's Improvements.

D. The following is added to section 8 entitled "Maintenance and Repairs":

8.3. Lessee shall maintain the facility in good operating condition at all times, including at the time the facility reverts to the District.

E. Replace section 12.1.4 with the following:

12.1.4 Environmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA") [which includes payment or reimbursement of District's legal expenses related to obtaining CEQA clearance not to exceed Fifteen Thousand Dollars ($15,000) for the costs related to filing a Notice of Exemption. If the District is required to take additional actions to obtain CEQA clearance (e.g., preparing, approving and defending a negative declaration or an environmental impact report), Lessee shall pay District's reasonable legal expenses up to an agreed-upon amount.] OK? ; and/or

F. Section 13 of Exhibit "B" is deleted in its entirety and replaced with the following:

Labor Code Requirements: Lessee or Lessee's contractor as applicable shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1 (commencing with Section 1720), including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000). Copies of the prevailing rate of per diem wages are on file with the District. Lessee specifically acknowledges and understands that if the District, the State and/or their designee operates a labor compliance program on this Project, that Lessee shall perform the Work of the Project while complying with all the applicable provisions of that labor compliance program.

G. The following is added to section 22 entitled "Termination":

22.4 In the event of termination or default during the Term of this Agreement, the District may buyout the Lessee's interest in the Improvements. OK? AT A MINIMUM IT SHOULD SAY AT A MUTUALLY AGREED UPON PRICE

H. The balance of the Agreement is reaffirmed except as expressly modified herein.

The parties hereto have executed this First Amendment as of the date set forth above.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2014	Dated: _____, 2014
San Leandro Unified School District	**American Digital Outdoor, LP**
By: _____	By: _____
Print Name: _____	Print Name: _____
Print Title: _____	Print Title: _____