

Prepared by and after recording return to:
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Oklahoma City, Oklahoma 73134
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The Oklahoma City Abstract & Title Co.
P.O. Box 260
Oklahoma City, Oklahoma 73101-0260
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Grantor:
Glenn R. Scales
1141 SE Grand Boulevard, Suite 107
Oklahoma City, Oklahoma 73129

Grantee:
Zoom Capital, LLC
P.O. Box 720360
Oklahoma City, Oklahoma 73134
405-520-6188



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County of Oklahoma
Oklahoma County Clerk
Carolynn Caudill

**STATE OF OKLAHOMA
COUNTY OF OKLAHOMA**

PERPETUAL EASEMENT AGREEMENT AND ASSIGNMENT OF LEASE

THIS PERPETUAL EASEMENT AGREEMENT (the "**Agreement**") is entered into as of the 3rd day of February, 2011, (the "**Effective Date**") by and between Glenn R. Scales and Dea K. Scales, husband and wife, Oklahoma residents whose mailing address is 1141 SE Grand Boulevard, Suite 107, Oklahoma City, Oklahoma 73129; ("**Grantor**"), and Zoom Capital, LLC, an Oklahoma limited liability company whose mailing address is P.O. Box 720360, Oklahoma City, Oklahoma 73134 ("**Grantee**"). Sometimes Grantor and Grantee are referred to in this Agreement individually as a "**party**" and collectively as the "**parties**."

This Agreement affects certain real property described as: Billboard Easement, Access Easement, Utility Easement, and Visibility Easement, located on a certain portion of real estate (the "**Premises**"). A metes and bounds description of the Premises is attached hereto and incorporated herein as **Exhibit "A."**

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

1. **Perpetual Easements.** Grantor represents and warrants that it is the owner in fee simple of the Premises free and clear of all liens, and hereby grants, conveys, and warrants to Grantee, and Grantee hereby expressly reserves to itself and to its heirs, successors and assigns, the following four (4) irrevocable and perpetual easements (hereinafter called the "**Easements**") being more fully described as follows:

a. **Billboard Sign Structure Easement.** An exclusive easement over, under, and above that portion of the area of the Premises described as the "**Billboard Easement**" as more particularly described in **Exhibit "B,"** which is attached hereto and incorporated herein, on which a billboard structure is presently located for the purposes of Grantee and/or its agents to exclusively construct, install, repair, replace, operate, utilize, lease, and maintain thereon the billboard sign structure(s), appurtenances, and ancillary equipment, including, without limitation, any and all rights to income generated from any and all leasing of the

billboard sign structure, appurtenances, and/or ancillary equipment (hereinafter called the "**Billboard**"). The Billboard Easement legal description shall be modified as necessary by Grantor to accurately reflect the location of the Billboard. It is the intention of the parties that the Billboard Easement shall follow the location of the Billboard, in that should the Billboard be required to be relocated due to a governmental or quasi-governmental eminent domain or other takings action, or due to the requirements of any applicable permitting authority, then without payment of any further consideration from Grantee Grantor shall modify the legal description of the Billboard Easement to provide for the new location of the Billboard, with the new Billboard Easement retaining all appurtenant easements described herein below.

b. Access Easement. An easement of ingress and egress from the abutting Bryant Avenue/I-35 and I-44 Interchange Frontage Road over and across those portions of the real estate owned by Grantor as depicted on the attached **Exhibit "B"** as are from time to time improved for vehicular access, for the purposes of vehicles operated by Grantee and/or its agents to gain ingress and egress exclusively for constructing, erecting, installing, repairing, replacing, operating, utilizing, leasing and maintaining thereon the Billboard, (the "**Access Easement**");

c. Utility Easement. An easement of ingress and egress over, under, and/or above those portions of the real estate owned by Grantor as depicted on **Exhibit "B"** in which the utilities described below are presently located, for the installation, operation and maintenance of any electricity supply and connections, or other utility facility, line or connection that may be reasonably necessary or appropriate in order to afford adequate illumination, maintenance, repair, operation, construction and/or replacement of the Billboard, (the "**Utility Easement**");

d. Visibility Protection Easement. Grantor, its successors and assigns, agree not to implement or to allow, to the extent Grantor's consent is required, the construction, placement, or erection of any structures on those portions of the Premises or the storage of any objects on those portions of the Premises, or the planting or growth of any landscaping, beyond any that currently exists or its normal replacement on those portions of the Premises, that blocks, obstructs, hinders, or impairs the visibility of any portion of the Billboard for viewing by the traveling public along the adjacent public road/interstate/highway/byway, or to do or allow any other similar act that would materially diminish the value, use, and purpose of said Billboard as an advertising device (the "**Visibility Protection Easement**"). The Visibility Protection Easement is limited to those portions of the Premises more particularly described and depicted on the attached **Exhibit "C."**

2. Maintenance of Sign Structure. Grantee, and not Grantor, will at all times bear responsibility for the repair and maintenance of the Billboard and for any other appurtenances thereto; provided, however, Grantor shall be responsible for any damage due solely to the acts or omissions of Grantor, or anyone acting by, through or under Grantor.

3. Self Help. In addition to every other right or remedy provided at law or equity, in the event Grantor fails or refuses to perform or comply with any of the terms, conditions, covenants, easements or obligations of this Agreement which are solely within its control to perform or cause compliance, Grantee may, without liability for failure to do so, take whatever action it may deem necessary to cure such default or breach, or otherwise affect compliance with this Agreement, provided that Grantee will have given Grantor at least ten (10) days', or such additional time as is

commercially reasonable due to the nature of the default or cure, written notice of its intention to do so, and provided that Grantor will have failed to correct said default or breach within said period. The reasonable and necessary expense of such cure will be payable by Grantor to Grantee upon demand by Grantee, and, if not paid within five (5) days of Grantee mailing said demand for payment, will bear interest until paid at a rate that is equal to two percent (2%) above the Wall Street Journal, Midwest Edition, prime rate published in the "Money Rates" table for corporate loans by selected U.S. banks ("Prime Rate") at the time of the payment demand or on the immediately following date of publication if the date of payment demand falls on a date the Wall Street Journal is not published. If, at any time during the term of this Agreement, the Wall Street Journal discontinues the publication of the Prime Rate, then, in such event, Grantee will have the right to select a reasonably comparable, standard that is a nationally recognized prime rate of interest then available, that is established by a major regional or national bank, and that would provide substantially the same result, which alternate rate will be substituted for the Prime Rate in each place called for in this Agreement. In addition, Grantee is hereby granted a lien against the Premises to secure the payment of all sums due and payable by Grantor to Grantee under this agreement, which lien maybe foreclosed by suit.

4. **Injunctive Relief.** In the event of any threatened or actual violation by Grantor, its successors and/or assigns, or any of them individually, of any of the terms, conditions, covenants, easements or obligations of this Agreement, Grantee, and its respective successors and/or assigns, will also have, in addition to the right to collect damages from Grantor, the right to enjoin said threatened or actual violation, in any court of competent jurisdiction.

5. **No Cancellation.** These Easements are irrevocable, perpetual and permanent, and no breach of this Agreement by Grantee will entitle Grantor to rescind, cancel or otherwise terminate this Agreement. However, this limitation will not affect in any manner any other rights or remedies that Grantor, its successors and/or assigns, may have by reason of any breach by Grantee of this Agreement.

6. **Amendment.** This Agreement may be modified, terminated, or canceled only by the written consent of the parties, evidenced by a document that has been fully executed, notarized, and recorded in the records of the county of state wherein the Premises is situated.

7. **Environmental Covenants.** Grantor represents and warrants that the Premises is free of Hazardous Substances (as hereinafter defined) as of the date of this Agreement. Grantee and Grantor each agrees that, in connection with its use and respective activities in, on or about the Premises, it will be responsible for compliance with any and all environmental laws, that now or in the future apply to that party's use or respective activities conducted in, on or about the Premises.

8. **Covenants.** Grantor covenants and warrants the following:

a. The Premises and their present use and condition do not violate any applicable deed restrictions or other covenants, restrictions or agreements, site plan approvals, zoning or subdivision regulations or urban redevelopment plans applicable to the Premises, as modified by any duly issued variances;

b. There is no action or proceeding (zoning or otherwise) or governmental investigation pending, or, to the knowledge of the Grantor, threatened against or relating to

the Grantor, the Premises or the transaction contemplated by this Agreement, nor, to the knowledge of the Grantor, is there any basis for such an action;

c. Grantor covenants and agrees that Grantee will, at all times, have the peaceable and quiet enjoyment of the Easements without any manner of hindrance from Grantor or any person or persons claiming the Premises by through or under the Grantor;

d. Grantor covenants not to lease or otherwise convey any of the Premises or parcel contiguous to the Premises (only in the event it is owned by Grantor) to any other billboard company; and,

e. Grantor acknowledges that each of the representations, warranties and agreements made by it in this section and elsewhere in this Agreement is material to the Grantee.

9. **Indemnification.** Grantee shall indemnify, protect and save harmless Grantor from all damages to persons or property by reason of accidents resulting from the negligent or intentional acts of Grantee and Grantee's agents, employees, or workers in the construction, erection, installation, repair, replacement, operation, utilization and maintenance of any portion of said Billboard. Grantee does not, however, indemnify nor assume any responsibility or liability for any other damages to persons or property, including but not limited to, damages resulting solely from the negligent acts or willful misconduct of Grantor's employees, agents, tenants, invitees and/or guests. Further, Grantee shall indemnify and hold harmless Grantor from and against all claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable attorney fees, arising out of, or in connection with (x) any Environmental Contamination caused by or attributable to Grantee's activities on the Premises; (y) the ownership, operation, or use of the Billboard or the Easements, except to the extent caused solely by the negligence or intentional acts of Grantor, its agents, employees, or contractors; and (z) any breach of Grantee of any provision of this agreement. Grantor shall indemnify and hold harmless Grantee from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable attorney fees arising out of or in connection with (i) any production, storage, transportation, treatment, spillings, infiltration, disposal by Grantor, or other presence upon the Premises or any adjoining property as a result of any activity by Grantor, of any hazardous substance, hazardous waste, or other toxic material now or in the future regulated by state or federal law, including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act as such legislation currently exists or is later amended or replaced (the "**Environmental Contamination**"); (ii) the ownership, operation, or use of the Premises by Grantor or anyone claiming by, through, or under Grantor, except to the extent caused by the negligence or intentional acts of Grantee, its managers, members, officers, directors, agents, employees, or contractors; and, (iii) any breach by Grantor of any provision of this Agreement. Grantee will annually provide Grantor and, if requested, any lender of Grantor evidence of liability insurance in commercially reasonable amounts from time to time which name Grantor and any such lender as additional insureds.

10. **No Relationship of Agent or Principal.** Nothing construed in this Agreement will be deemed or construed by either party, or by any third party, to create the relationship of agent or principal, or limited or general partner, or joint ventures, or any other association between the parties other than Grantor or Grantee.

11. **Enforceability.** All terms, conditions, covenants, easements or obligations of this Agreement will be binding upon and inure to the benefit of the parties, and to their respective heirs,

successors and/or assigns. Grantee will have the absolute and unconditional right to assign or sublease its rights hereunder at its sole discretion. All provisions of this Agreement, including the benefits and burdens, will run with the land and are imposed upon the Premises as equitable servitudes in favor of Grantee.

12. **Subordination.** Any ground lease, mortgage or deed of trust affecting any portion of the Premises will, at all times, be subject and subordinate to the terms of this Agreement; and any party foreclosing any such ground lease, mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or in lieu of trustee's sale will acquire title subject to all of the terms and provisions of this Agreement. Grantor represents and warrants to Grantee that there is no presently existing mortgage or deed of trust lien on the Premises, other than a mortgage that is listed on **Schedule 1** and that is expressly subordinate to the lien of this Agreement; if Schedule 1 is not attached, then Grantor represents and warrants there is no presently existing mortgage or deed of trust lien on the Premises.

13. **Notices.** All notices or other communications that may be given or are required to be given by either party to the other party must be in writing and must be sent by certified U.S. Mail, postage prepaid and return receipt requested, to Grantor and/or Grantee at their respective mailing addresses listed hereinabove. All notices that are sent by mail will be deemed effective on the third business day after the date of posting. From time to time the parties may, by written notice in the manner set forth above, change their address for purpose of receiving further notice.

14. **Exhibits.** Each and every one of the exhibits referenced in this Agreement is attached or will be attached to this Agreement prior to the signing of this Agreement and is and will be construed to be made a part of this Agreement by such reference or other mention in the same manner and with the same effect as if each exhibit was set forth in full and at length each time it is referred to or otherwise mentioned.

15. **Time is of the Essence.** In all instances where either party is required under this Agreement to pay any amount or do any act at a particular indicated time or within any indicated period of time, it is understood that time is of the essence. All performance dates, time schedules, and conditions precedent to exercising any right will be strictly adhered to without delay except where otherwise expressly provided. In computing any period of time by days as provided in this Agreement, the date of the act, event, or default from which the designated period of time begins to run will not be included. The last day of any time period stated in this Agreement falls on either a Saturday or Sunday or falls on a legal holiday recognized by the United States Postal Service, then the duration of such time period will be extended so that it ends on the next succeeding day that is not a Saturday, Sunday, legal holiday recognized by the United States Postal Service.

16. **Counterparts/Recording.** This Agreement may be signed in multiple counterparts, each of which will be in recordable form and be an original, and all such counterparts together will represent but one and the same instrument; but in making proof of this Agreement it will not be necessary to produce or account for more than one such counterpart. This Agreement becomes effective when one or more of the counterparts has been signed by each of the parties and delivered to the other party. The parties agree that this Agreement shall be duly recorded in the real estate records of the county and state recorder's office where the Premises is situated promptly following the execution of this Agreement.

17. **Entire Agreement.** It is expressly agreed by the parties, as a material consideration for the signing of this Agreement, that this Agreement is intended by the parties to be the final, complete, and exclusive embodiment of their agreement regarding the subject matter of this Agreement; that there are and were, no oral representations, warranties, understandings stipulations, agreements, promises, or any facts and circumstances surrounding the relationship of the parties pertaining to this Agreement or any expressly mentioned written documents that are not incorporated in writing in this Agreement, and none will be binding. No construction or inference is to be derived from any such oral statements, prior written matter, or facts and circumstances surrounding the relationship of the parties. This Agreement speaks for itself and no facts and circumstances outside the four corners of this Agreement, which are not specifically incorporated into this Agreement, will be used in the interpretation of this Agreement.

18. **Authority.** Each party warrants that it has the right, power and authority necessary to execute this Agreement through its authorized officers or agents as applicable to Grantor. The person executing this Agreement on behalf of Grantor warrants that he is a duly authorized officer or agent of such party and has all power and authority necessary to execute this Agreement.

19. **General Rules of Construction.** This Agreement will not be strictly construed either for or against any party, but this Agreement will be interpreted in accordance with the general tenor of the language of this Agreement in an effort to reach an equitable result. No remedy or election given by any provision in this Agreement will be deemed exclusive unless so indicated, but each will, wherever possible, be cumulative with all other remedies in law or equity. The parties acknowledge that this Agreement has been freely negotiated by each of the parties and that each party (and its counsel, if any) has had the opportunity to review and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

20. **Legal Construction.** If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable under present or future laws effective during the Term in any respect, and the basis of the bargain between the parties is not destroyed or rendered ineffective thereby, such invalidity, illegality, or unenforceability, to the extent possible, will not affect any other provision of this Agreement. Moreover, so far as is reasonable and possible, effect will be given to the intent manifested by the portion held invalid, illegal, or unenforceable. It is further the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision invalid, illegal, or unenforceable and the other of which would render the provision valid, legal, or enforceable, then the provision will have the meaning that renders it valid, legal, or enforceable.

21. **Applicable Law.** Notwithstanding the fact that any or all of the parties is now or may become a resident or citizen of a different country or state, this Agreement is to be construed under and in accordance with the internal laws of the state where the Premises is situated for contracts made or to be performed therein, without giving effect to the principles of conflicts of law thereof, and all monetary obligation of the parties (including, without limitation, any monetary obligation of Grantor or Grantee for damages for any breach of the respective covenants, duties, or obligations of Grantor or Grantee under this Agreement) are performable exclusively in such county and state. This Agreement is also to be construed under the laws of the United States pertaining to

transactions in such county and state.

22. **Attorney's Fees.** If either party employs attorneys to protect or enforce its rights under this Agreement and prevails, the non-prevailing party agrees to pay the prevailing party's reasonable costs so incurred (including, but not limited to attorney's fees, and all other litigation costs and expenses, including, but not limited to, deposition costs, travel, and expert witness fees, incident to any suit, action, proceeding, threatened suit or action, inquiry, or investigation or the defense of any claim), in addition to any other relief to which the prevailing party may be entitled. The term "prevailing party," as used in this section includes, without limitation, a party in whose favor a final judgment or decree is entered.

23. **Assignment of Lease.** Grantor hereby assigns to Grantee that certain billboard lease agreement (the "**Lease**" previously referenced hereinabove) more particularly described as being dated September 14, 2005 by and between The Lamar Companies ("**Lessee**") and Glen Scales, being the same person as Grantor herein ("**Lessor**"); a Memorandum of Lease Agreement evidencing the Lease between Lessor and Lessee is filed in the land records of the Oklahoma County Court Clerk in Book 9865 beginning at Page 1856. The Parties hereby agree as follows:

a. Grantor does hereby grant, sell, assign and convey unto Grantee, and Grantee hereby acknowledges receipt of all of Grantor's right, title and interests in and to the Lease, to have and to hold, together with all of the rights and appurtenances thereto in any way belonging unto the Grantor, its successors and assigns, forever;

b. There exists no default under the Lease, and Grantor is unaware of any pending or threatened default under the Lease;

c. Grantor hereby represents and warrants that said Lease being assigned hereunder is free and clear of all liabilities, obligations and encumbrances;

d. Grantee hereby agrees that from this day forward, Grantee shall be liable for the obligations of Grantor in connection with the terms and conditions set forth in said Lease, except to the extent that such obligation arise with respect to any period of time prior to the Effective Date, in which case Grantor shall remain liable for such obligation;

e. Grantor hereby agrees to indemnify, protect, defend and save harmless, Grantee, Grantee's partners, contractors, agents and employees (collectively, the "**Indemnities**") from and against any and all liability (statutory or otherwise), claims, suits, demands, damages, judgments, costs, fines, penalties, interest and expenses (including reasonable counsel and other professional fees and disbursements incurred in any action or proceeding), to which Indemnitees may be subject or suffer arising from, or in connection with the Lease with respect to any time period prior to the Effective Date.

24. **Additional Necessary Documents.** Grantor agrees to execute, upon the reasonable request of Grantee, such additional documents or instruments which become necessary to effectuate the conveyance of the Easements and/or the Assignment of the Lease.

25. **Waiver of Interest.** Grantor hereby waives any and all rights it may have in the Easements, and any and all interests Grantor may have in the Lease being assigned, including, without limitation, any and all profits and income generated under the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Perpetual Easement Agreement and Assignment of Lease as of the day and year first written above.

GRANTORS:

Glenn R. Scales

GLENN R. SCALES

Dea K. Scales

DEA K. SCALES

GRANTEE:

ZOOM CAPITAL, LLC

By: Fariborz Mazaheri

Fariborz Mazaheri, Managing Member

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Personally appeared before me, the undersigned authority in and for the said county and state, on this, the 3rd day of February, 2011, within my jurisdiction, the within named Glenn R. Scales and Dea K. Scales, husband and wife, who acknowledged that he executed the above and foregoing instrument.

My commission expires:



Jackie Hatton
Jackie Hatton Notary Public

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

Personally appeared before me, the undersigned authority in and for said county and state, on this the 3rd day of February, 2011, within my jurisdiction, the within named Fariborz Mazaheri, who acknowledged that he is the Managing Member of ZOOM CAPITAL, LLC, an Oklahoma limited liability company, and that for and on behalf of said limited liability company and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized to do so.

My commission expires:



Jackie Hatton
Jackie Hatton Notary Public

EXHIBIT "A"**EXHIBIT "A"****LEGAL DESCRIPTION**

A part of the South Half (S/2) of the Southeast Quarter (SE/4) of Section One (1), Township Twelve (12) North, Range Three (3) West of the Indian Meridian in Oklahoma County, Oklahoma being more particularly described as follows: COMMENCING at the Northeast corner of the South half of the Southeast Quarter of said Section 1, THENCE South 89°44'27" West along the North line of the South half of the Southeast Quarter of said Section 1, a distance of 873.95 feet to the Northerly right-of-way line of Interstate Highway No. 35, said point also being the point or place of beginning; THENCE continuing South 89°44'27" West, along the North line of the South half of the Southeast Quarter of said Section 1 a distance of 1142.60 feet; THENCE South 00°35'07" East and parallel to the West line of the Southeast Quarter of said Section 1, a distance of 400.62 feet to the North right-of-way line of Interstate Highway No. 35; THENCE South 82°33'37" East. Along said North right-of-way line a distance of 129.91 feet; THENCE North 77°30'24" East, along said North right-of-way line, a distance of 271.43 feet to a point in a curve; THENCE Northeasterly along said North right-of-way line on a curve to the left, having a radius of 2406.48 feet, an arc distance of 785.50 feet; THENCE North 50°51'02" East along North right-of-way line, a distance of 43.64 feet to the point or place of beginning.

SAID PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A tract of land lying in the South Half (S/2) of the Southeast Quarter (SE/4) of Section One (1), Township Twelve (12) North, Range Three (3) West of the Indian Meridian in Oklahoma County, Oklahoma being more particularly described as follows: COMMENCING at the Northeast corner of the South half of the Southeast Quarter of said Section 1, THENCE South 89°40'34" West along the North line of the South half of the Southeast Quarter of said Section 1, a distance of 873.95 feet to the Northerly right-of-way line of Interstate Highway No. 35, said point also being the POINT OF BEGINNING; THENCE continuing South 89°40'34" West, along the North line of the South half of the Southeast Quarter of said Section 1 a distance of 1142.60 feet; THENCE South 00°35'07" East parallel with the West line of the Southeast Quarter of said Section 1, a distance of 388.82 feet to the North right-of-way line of Interstate Highway No. 35 as established per REPORT OF THE COMMISSIONERS recorded in Book 3910, Page 840; THENCE South 82°33'37" East along said North right-of-way line a distance of 130.29 feet; THENCE North 77°30'24" East, along said North right-of-way line, a distance of 271.43 feet to a point in a curve; THENCE Northeasterly along said North right-of-way line on a curve to the left, having a radius of 2406.48 feet, an arc distance of 785.17 feet (said curve being sub-tended by a chord bearing North 65°22'14" East, 781.69 feet); THENCE North 50°51'02" East along North right-of-way line, a distance of 43.64 feet to the point or place of beginning.