

RESOLUTION No. 10 – 108

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO A RETAIL ADVERTISING AGREEMENT WITH THE MIAMI HERALD MEDIA COMPANY FOR ADVERTISING AT THE \$50,000.00 REVENUE CONTRACT LEVEL; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Florida State Statutes, the City of Doral is obligated to publish certain legal advertisements in papers of general circulation; and

WHEREAS, the rates of said advertisements can be reduced by entering into Retail Advertising Agreements with media venues to advertise at certain revenue contract levels which guarantee a lower rate per advertisement in exchange for a minimum amount of spending; and

WHEREAS, Staff respectfully requests that the City Council authorize the City Manager to negotiate and enter into an agreement with the Miami Herald Media Company (Exhibit "A") for advertising at the \$50,000.00 revenue contract level for a 52-week period commencing on the effective date of the contract.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby authorizes the City Manager to negotiate and enter into an agreement with the Miami Herald Media Company (Exhibit "A") for advertising at the \$50,000.00 revenue contract level for a 52-week period commencing on the effective date of the agreement.

Section 2. This Resolution shall take effect immediately upon adoption.

The foregoing resolution was offered by Councilman Cabrera who moved its adoption. The motion was seconded by Councilman DiPietro and upon being put to a vote, the vote was as follows:

| | |
|-----------------------------|-----|
| Mayor Juan Carlos Bermudez | Yes |
| Vice Mayor Robert Van Name | Yes |
| Councilman Pete Cabrera | Yes |
| Councilman Michael DiPietro | Yes |
| Councilwoman Sandra Ruiz | Yes |

PASSED and ADOPTED this 9th day of June, 2010.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY



JIMMY MORALES, ESQ., CITY ATTORNEY

EXHIBIT "A"

The Miami Herald Media Company

(Referred to as "MHMC")

One Herald Plaza, Miami, Florida 33132-1693

RETAIL ADVERTISING AGREEMENT

Advertiser: _____ Address: 8300 NW 53 St Suite 100
Company: City Of Doral City/State/Zip: Doral, FL 33166
Term of Agreement. 1st Run Date: 1st day of _____, 200__ or Date _____ until: Contract End Date: _____

RETAIL ADVERTISING IN THE MIAMI HERALD, BROWARD EDITION OF THE MIAMI HERALD AND EL NUEVO HERALD

REVENUE SPENDING CONTACT (SELF-RENEWING)

The Advertising rates charged by MHMC and paid for by the Advertiser will be the applicable MHMC published rate card rate for advertisers at the \$50,000 revenue spending contract level in effect at the time of publication of each advertisement. If the \$50,000 spending contract level is not fulfilled, the rates shall be adjusted to the applicable rate as provided under the Advertiser's advertising agreement with MHMC and MHMC's standard rate card. All other advertising will be billed by MHMC and paid for by Advertiser at the applicable rates in the MHMC rate card in effect at time of publication. Premium charges apply as outlined in MHMC rate cards. Contracts cannot be rebated. All advertising terms & conditions apply.

FREQUENCY CONTRACT (NOT SELF-RENEWING)

| | |
|---------------------------|---|
| ____ HERALD TV WEEK | Publish advertising ____ times within a maximum of ____ weeks |
| ____ PREPRINT ADVERTISING | Publish advertising ____ times within a maximum of ____ weeks |
| ____ WEEKEND | Publish advertising ____ times within a maximum of ____ weeks |
| ____ COMICS | Publish advertising ____ times within a maximum of ____ weeks |
| ____ TROPICAL LIFE | Publish advertising ____ times within a maximum of ____ weeks |
| ____ OTHER: _____ | Publish advertising ____ times within a maximum of ____ weeks |

FLEXIBLE FREQUENCY CONTRACT (NOT SELF-RENEWING)

Flexible Frequency Part Run ROP contracts entitle advertiser to the frequency level stated above for any combination of advertisements in any of the following products: Neighbors Miami-Dade & Broward Weekend Broward Tropical Life Viernes
Broward Local Broward Business Monday Sabores Viva Mas
Other _____

____ FLEXIBLE FREQUENCY Publish advertising ____ times within a maximum of ____ weeks

For part run packages, (Auto Care, Restaurant, Everything for Kids, Business Builder and Health & Fitness) the same frequency rates apply, however the 3-part package counts as only one appearance for frequency contract fulfillment purposes

Frequency contract advertisers may receive the corresponding Part run frequency rate for all above listed product, but any such part run advertising will not count toward satisfying a full run frequency commitment.

Payment Terms. All invoices (including applicable sales taxes) are due on the 20th of the month following insertion(s) and if not paid by the 30th day of the month following the date of insertion(s) will be late (except for accounts designated by MHMC as weekly which are due within 7 days of the invoice date). Late amounts will bear interest at the maximum rate allowed by law. Advertiser shall pay all applicable taxes. If any invoice is not timely paid, then MHMC reserves the right to suspend its performance at any time and/or cancel this Agreement without notice. In the event of such a cancellation, all charges for advertising since the 1st Run Date will be re-invoiced to reflect the Corrected Rate, as described herein. All disputes of any kind must be reported in writing to MHMC no later than 30 days from the date the invoice containing such disputed item or such item will be deemed correct and conclusively accepted by Advertiser. Advertiser waives any claim after said 30-day period. Submission of a written dispute notice by Advertiser shall not relieve Advertiser of its obligation to timely pay all undisputed amounts. Credits, refunds or payments must be used or claimed within 2 years from the date of such credit, refund or payment or shall be deemed to have been earned and correctly applied or paid. Unless agreed in writing, multiple discounts shall not apply for the same advertising purchase. MHMC is not obligated to extend credit to Advertiser unless in writing. If Advertiser breaches this Agreement, Advertiser agrees to pay all of MHMC's collection agency fees and expenses, investigation, court and litigation expenses along with attorney fees equal to the greater of: (i) 25% of the amount owed, or (ii) the amount awarded by the court. Sunday circulation and advertising rates will apply to the following holidays: New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day and Day after Super Bowl.

Obligations of Advertiser. Advertiser agrees to indemnify MHMC for any and all costs, claims, damages, and/or liability claimed against or incurred by MHMC as a result of MHMC's publication of any ad copy submitted by Advertiser (or submitted on behalf of Advertiser) to MHMC. Advertiser represents, warrants and guarantees that any ad copy so submitted to MHMC is accurate, truthful and in compliance with all copyright laws and all other applicable laws and regulations.

Waiver of Jury Trial. In any action to enforce or interpret this Agreement, Advertiser and MHMC waive a trial by jury.

Additional Terms and Conditions. This Agreement is subject to: (i) the Advertising Terms and Conditions attached hereto; (ii) the applicable MHMC rate card; and, (iii) MHMC's publication deadlines, policies and procedures, all as amended by MHMC from time to time. Rates may be amended by MHMC upon 30 days' written notice to Advertiser.

Agreed and Accepted in Miami, Florida, to be effective as of the 1st Run Date set forth above.

A legible facsimile copy of this Agreement when fully executed shall be considered an original copy of this Agreement.

Advertiser: _____

THE MIAMI HERALD MEDIA COMPANY

By: _____

By: _____

(Must be signed by Principal of Firm)

Title: _____

Advertising Manager

Print Name: _____

MHMC Internal Use Only:
Account No: _____
Agency: _____

Sales Rep Name: _____
New Account Renewal

Rev 10-13-08

ADVERTISING TERMS AND CONDITIONS

Contract Terms. Advertiser must consume and pay for the minimum space indicated herein within one year from the 1st Run Date (the "Minimum Amount"). If Advertiser fails to satisfy the Minimum Commitment, Advertiser shall not be entitled to the rates or discounts set forth herein and will be retroactively billed for all advertising during the Term at the applicable then current standard published rate card rate (the "Corrected Rate"). Advertiser will pay MHMC any such Corrected Rate balance immediately. Advertiser agrees to pay this Corrected Rate in addition to all amounts paid or payable by Advertiser under this Agreement. Payment of any Corrected Rate does not count toward the Minimum Commitment.

Earned Rating/Agreement Review. Advertiser will be billed at the Earned Rate for advertising purchased after the initial term. "Earned Rate" means the rate applicable to the lineage, revenue or frequency level reached by Advertiser at the conclusion of the then-expiring term of the Agreement. If Advertiser satisfies the lineage, revenue or frequency level required of its contract and qualifies for a lower Earned Rate, it will be billed at the lower Earned Rate beginning the next billing period. No advertiser will receive an automatic rebate on past advertising purchases solely by qualifying for a lower Earned Rate during the contract term. Revenue and lineage agreements are automatically renewed for successive 12-month periods at the Earned Level unless (i) Advertiser failed to meet the contract requirements in any 12-month period or, (ii) either party gives written notice of cancellation at least 30 days prior to the anniversary date of the Agreement. MHMC reserves the right to review the volume of advertising placed on a quarterly basis and cancel this contract at its sole discretion, if advertising placed falls ___% or more below the quarterly average of lineage or revenue needed to fulfill the twelve-month contract amount. Failure of MHMC to review the volume of advertising or cancel the contract for any reason shall not be deemed a waiver of the right to cancel in the future or to impose any applicable rate adjustments.

Ownership of Ads. MHMC retains all rights of ownership in and to all advertisements designed or created by MHMC. Advertiser grants MHMC a non-exclusive license to publish all camera-ready advertisements provided by Advertiser (or provided on Advertiser's behalf) to MHMC. MHMC is not obliged to return ads or ad materials to Advertiser and MHMC is not responsible for any damage or loss to any ads, copy, drawings, art or any other materials provided by Advertiser.

Copyrights. Advertiser hereby grants a non-exclusive license to MHMC for all copyrights and ownership rights in any advertisement of Advertiser submitted for insertion in any publication of MHMC, including the right to publish, reproduce, display, adapt, transmit, or produce derivative works in any medium, including any digital electronic medium. Advertiser authorizes MHMC to bring suit in MHMC's discretion and at MHMC's expense for any unauthorized use, reproduction, display, distribution, or performance of advertisement as it appears in the Newspapers or for its unauthorized alteration.

Acceptance/Rejection of Advertising. MHMC reserves the right to revise, alter or reject any advertisement for any reason whatsoever, or to omit ads without notice. MHMC may cancel any ad at its sole discretion, even if previously accepted for publication. Advertising copy not timely submitted by Advertiser will be excluded. Special position for advertising is not guaranteed but may be available for a premium and if agreed to in writing.

Publication Errors and Omissions. MHMC is not liable for any omission of all or any portion of any ad, nor is MHMC responsible for orders, cancellations or corrections given by telephone, facsimile or telegraph. MHMC is also not liable for any error in a published ad unless an advertising proof is requested in writing, Advertiser clearly marks any error in the advertising proof for corrections, and MHMC is notified of the error in sufficient time before publication, in which case Advertiser's sole remedy is an appropriate credit to the extent of the error up to the cost of the first insertion of the error (if there is more than one incorrect insertion, credit shall be allowed only for the first incorrect insertion).

MHMC's Rights Regarding Mechanical Specifications. MHMC reserves the right to alter any advertising material due to press/production requirements. This reservation of right includes the Newspaper's right to reduce the size of any advertisement as long as the advertisement maintains the same proportion of the entire page. Advertising will be billed based on the space reserved/ordered.

Unavoidable Nonperformance. MHMC is not liable for failure to publish ads or distribute its publications because of flood, fire, riots, strikes, terrorists, storms, shortages of material, orders of government, failure of transportation, acts of God or other causes beyond MHMC's control. In such an event, this Agreement will be extended for a period equal to the time during which such performance was not possible.

Miscellaneous. Florida law shall govern the enforcement and interpretation of this Agreement, without regard to any conflict of law principles. The parties agree to submit to the exclusive jurisdiction of a court of competent jurisdiction located in Miami-Dade County, Florida. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. A legible facsimile copy of this Agreement when fully executed shall be considered an original copy of this Agreement. Advertiser represents and warrants to MHMC that: (i) no additional consents, approvals or corporate actions are necessary for Advertiser to enter into this Agreement; (ii) execution of this Agreement by Advertiser will not cause a breach or default in any other agreement to which Advertiser is a party; and, (iii) Advertiser is not insolvent. In the event of a filing by or against Advertiser of a petition under the Bankruptcy Code, in its sole discretion, MHMC may (i) discontinue Advertiser's advertising; (ii) demand advance payment; or, (iii) terminate all agreements with Advertiser. This Agreement and any exhibits attached hereto contain the entire understanding between the parties and supersede any prior written or oral understandings, as well agreements, between them regarding the subject matter. This Agreement shall not be modified except in writing signed by the parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successor and assigns. The Agreement may not be assigned (by operation of law or otherwise) by Advertiser. In the event that any provision contained in this Agreement or the application thereto to any circumstance is for any reason held to be invalid or unenforceable, such provision shall be ineffective to the minimum extent of such invalidity or unenforceability and the remainder of this Agreement will remain valid and enforceable according to its terms.

LIMITATION OF LIABILITY. IN THE EVENT OF ANY ALLEGED BREACH BY MHMC OF THE AGREEMENT OR ANY OTHER CLAIMS BY ADVERTISER OR ANY OTHER PARTY, MHMC SHALL IN NO EVENT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES SHALL MHMC BE LIABLE FOR DAMAGES IN EXCESS OF THE LESSER OF AN AMOUNT WHICH (I) EXCEEDS OF THE COST OF THE ADVERTISEMENT; OR, (II) THE AMOUNT ACTUALLY PAID BY ADVERTISER TO MHMC. MHMC'S PAYMENT OF SUCH AMOUNT SHALL BE ADVERTISER'S EXCLUSIVE REMEDY AND AGREED UPON LIQUIDATED DAMAGES. MHMC HEREBY DISCLAIMS ANY WARRANTIES NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT AND ADVERTISER WAIVES ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR OTHERWISE.