

# The Miami Herald Publishing Company

(Referred to as "MHPC")

A Division of Knight-Ridder, Inc.  
One Herald Plaza, Miami, Florida 33132-1693

## RETAIL ADVERTISING AGREEMENT

### Advertiser:

Company: City of Miami Beach \_\_\_\_\_

Address: 1700 Convention Center Drive

City/State/Zip: Miami Beach, FL 33139

Term of Agreement. 1<sup>st</sup> Run Date: 1<sup>st</sup> day of Jan 2006 or Date \_\_\_\_\_ until: Contract End Date: Dec. 31, 2006

RETAIL ADVERTISING IN THE MIAMI HERALD AND THE BROWARD EDITIONS OF THE MIAMI HERALD.

### BULK LINEAGE (AUTOMATIC ANNUAL RENEWALS)

\_\_\_\_\_ Retail Bulk advertising in the MIAMI HERALD with a minimum of \_\_\_\_\_ inches annually.  
\_\_\_\_\_ Retail Bulk Advertising in EL NUEVO HERALD with a minimum of \_\_\_\_\_ inches annually.  
\_\_\_\_\_ Retail Bulk Advertising in the MIAMI HERALD/EL NUEVO HERALD COMBO with a minimum of \_\_\_\_\_ inches annually.

### FREQUENCY (NOT SELF-RENEWING)

#### FULL RUN PRODUCTS

\_\_\_\_\_ HERALD TV WEEK  
Publish advertising \_\_\_\_\_ times within a maximum of \_\_\_\_\_ weeks.  
\_\_\_\_\_ INTERNATIONAL EDITION  
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 (Full Page)  
Publish advertising \_\_\_\_\_ times within a maximum of \_\_\_\_\_ weeks.

#### PART RUN PRODUCTS

\_\_\_\_\_ x \_\_\_\_\_ FLEXIBLE FREQUENCY  
Publish advertising 52 times within a maximum of \_\_\_\_\_ weeks.  
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  
-Dade/Broward Weekend  
-Broward Food  
-Broward Tropical Life  
-Broward Local  
-Other \_\_\_\_\_  
-Broward Business Monday  
-Viernes  
-De Fiesta/Estilo  
-Sabores  
-Viva Mas

*For part run packages, (Auto Care, Knife & Fork, Everything for Kids, Distinctive Dining, and Broward Health & Fitness), the same frequency rates apply, however the 3-part package counts as only one appearance for frequency contract fulfillment purposes.*

Full Run 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 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 MHPC 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 MHPC 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 MHPC 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. MHPC is not obligated to extend credit to Advertiser unless in writing. If Advertiser breaches this Agreement, Advertiser agrees to pay all of MHPC'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 and Christmas Day.

**Obligations of Advertiser.** Advertiser agrees to indemnify MHPC for any and all costs, claims, damages, and/or liability claimed against or incurred by MHPC as a result of MHPC's publication of any ad copy submitted by Advertiser (or submitted on behalf of Advertiser) to MHPC. Advertiser represents, warrants and guarantees that any ad copy so submitted to MHPC 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 MHPC waive a trial by jury.

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

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

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

### MHPC Internal Use Only:

Account No: \_\_\_\_\_  
Agency: \_\_\_\_\_

Sales Rep Name: \_\_\_\_\_

New Account  Renewal

Advertiser: \_\_\_\_\_  
By: \_\_\_\_\_

(Must be signed by Principal of Firm)

Title: YUS KOPPEZ

By: \_\_\_\_\_  
Advertising Manager

Print Name: PROCUREMENT DIRECTOR

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

M. J. Collins 1-17-06  
City Attorney Date

**MHPC Internal Use Only:**

Account No: \_\_\_\_\_

Agency: \_\_\_\_\_

Sales Rep Name: \_\_\_\_\_

New Account  Renewal

## ADVERTISING TERMS AND CONDITIONS

**Contract Terms.** Advertiser must consume and pay for the minimum space indicated herein within one year from the 1<sup>st</sup> Run Date (the "Minimum Amount"). Part-run lineage will be credited to full-run contract achievement at a ratio of 25%. El Nuevo Herald is credited on a 100% level for Real Estate, and 25% level for Employment). 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", previously referred to as "SHORTRATE"). Advertiser will pay MHPC 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.** Advertisers will be billed at the earned rate for advertising purchased. Earned Rate means the lineage or inch level reached by Advertiser at the conclusion of the then expiring term of the Agreement. If an advertiser satisfies the lineage, revenue or frequency level required of their contract and qualifies for a lower earned rate, they will be billed 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. Bulk Lineage agreements are automatically renewed for successive 12-month periods at the Earned Level unless (i) Advertiser failed to meet the lineage/frequency 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. MHPC 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 MHPC 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.** MHPC retains all rights of ownership in and to all advertisements designed or created by MHPC. Advertiser grants MHPC a non-exclusive license to publish all camera-ready advertisements provided by Advertiser (or provided on Advertiser's behalf) to MHPC. MHPC is not obliged to return ads or ad materials to Advertiser and MHPC 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 MHPC for all copyrights and ownership rights in any advertisement of Advertiser submitted for insertion in any publication of MHPC, including the right to publish, reproduce, display, adapt, transmit, or produce derivative works in any medium, including any digital electronic medium. Advertiser authorizes MHPC to bring suit in MHPC's discretion and at MHPC'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.** MHPC reserves the right to revise, alter or reject any advertisement for any reason whatsoever, or to omit ads without notice. MHPC 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.** MHPC is not liable for any omission of all or any portion of any ad, nor is MHPC responsible for orders, cancellations or corrections given by telephone, facsimile or telegraph. MHPC 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 MHPC 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).

**MHPC's Rights Regarding Mechanical Specifications.** MHPC 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.** MHPC 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 MHPC'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 MHPC 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, MHPC 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 MHPC OF THE AGREEMENT OR ANY OTHER CLAIMS BY ADVERTISER OR ANY OTHER PARTY, MHPC SHALL IN NO EVENT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES SHALL MHPC 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 MHPC. MHPC'S PAYMENT OF SUCH AMOUNT SHALL BE ADVERTISER'S EXCLUSIVE REMEDY AND AGREED UPON LIQUIDATED DAMAGES. MHPC 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.

A handwritten signature in black ink, appearing to be the initials 'gl', is written over a horizontal line.