



*The Publication for New and Established Homeowners™*

***HOMESTEADER ENTERPRISES, INC.***

***PUBLISHING AGREEMENT***

**To publish a *Homesteader* newspaper**

January, 2009

# **HOMESTEADER ENTERPRISES, INC.**

## **PUBLISHING AGREEMENT**

### **TABLE OF CONTENTS**

Chapter	Page
1. Grant and Territory .....	3
2. Term and Renewal. ....	5
3. Proprietary Marks .....	6
4. Your Duties .....	7
5. HEI's Duties .....	10
6. Fees. ....	12
7. Operating Manual and Guidance .....	12
8. Relationship of the Parties - Indemnification . .	13
9. Confidential Information - Exclusive Relationship .	14
10. Operating Standards and Procedures. ....	14
11. Insurance .....	15
12. Interest and Application of Payments. ....	15
13. Transfer. ....	16
14. Termination .....	17
15. Post-Termination Obligations. ....	18
16. Miscellaneous .....	20
Schedules	
Personal Guarantee	25
Schedule A (Territory)	26
Schedule B (Employment Agreement)	27
Schedule C (Advertising Agreement)	30

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Homesteader Enterprises, Inc., a Massachusetts corporation with its principal place of business located at Knox Trail Office Building, 2352 Main St., Concord, Massachusetts 01742

(hereinafter "HEI") and \_\_\_\_\_ of  
*(name)*

\_\_\_\_\_  
*(address)*

\_\_\_\_\_ hereinafter called "You."  
*(phone)*

WHEREAS HEI has developed a distinctive system for the establishment and operation of businesses that publish periodically local newspapers primarily for new homeowners and local merchants (hereinafter the "System"); and

WHEREAS You desire to employ the System for the establishment and operation of such a business subject to the terms and conditions set forth herein within the Territory described below and at the above address ("Outlet");

NOW THEREFORE, in consideration of the promises and undertakings set forth herein, the parties hereby agree as follows.

**1. TERRITORY.**

- A. GRANT OF TERRITORY. Subject to the terms and conditions hereof, HEI hereby grants to You the right to establish and operate a business which may publish and distribute a local edition of "THE HOMESTEADER" newspaper in and for Publisher's Territory (described below) and sell print advertising to and by local merchants therefor. Publisher hereby undertakes the obligation to establish and operate such a business at the address specified above (or such other address as the parties may specify) and to use in connection therewith (and with no other business) the proprietary mark: "THE HOMESTEADER" and/or such other names, marks and commercial symbols as HEI may designate from time to time (hereinafter the "Marks") and its methods as they now exist and as they may be changed, improved and further developed by HEI from time to time (hereafter the "Publishing Business"). You shall not grant sublicenses or other rights hereunder.
- B. TERRITORY. The Territory is described in Schedule A attached hereto (hereinafter "Territory"). You are responsible for developing to the maximum extent possible the Publishing Business within the Territory.

1. Limited Exclusivity. So long as You comply fully with this Agreement, except as otherwise provided herein, during the term HEI shall not operate or allow another to operate in the Territory, a business that publishes “THE HOMESTEADER” or any other directly competitive publication under any name or mark. Notwithstanding the foregoing, however, You recognize that HEI may engage in certain promotional activities in the Territory (such as the pursuit of such National Accounts as HEI may designate) but otherwise may not solicit customers in the Territory.

A “National Account” means a customer or customer referral source with national or regional locations (as HEI may determine in its sole discretion) which HEI (or its designee) may pursue for some or all System Publishers. If HEI requests, in order to avoid multiple approaches by System Publishers, You shall deal with any such National Account (or potential National Account) in such manner as HEI may direct. HEI shall determine the prices to be charged and the terms to be offered to any National Account for advertising (and other goods or services if any).

Further, You acknowledge that outside the Territory, HEI may use and allow others to use the Marks and operate or allow others to operate such businesses and engage in such activities as it deems appropriate.

2. Name of Edition. The name of the edition of “THE HOMESTEADER” to be published by You during the term shall be:

“THE HOMESTEADER - \_\_\_\_\_ Edition.”

Such name shall appear in a manner approved by HEI on each copy of each issue of “THE HOMESTEADER” published by You. You may not modify the name of such edition without the advance written consent of HEI which may be withheld or withdrawn in its sole discretion for any reason.

3. Territorial Rules. In addition to the following, You shall comply with all policies and procedures HEI may set forth in the Operating Manual (described below) or otherwise in writing regarding territorial rights and responsibilities.
  - a. Exercise Best Efforts in Territory. You shall exercise best efforts to solicit customers and develop subscribers in the Territory and to develop business in the Territory. You shall distribute your publication in all towns in the territory. If any towns or zip codes are not receiving the paper within your territory for more than twelve months following commencement of your publication, HEI may restrict your territory to the areas then covered, and may reassign the uncovered areas to another.
  - b. No Distribution Outside Territory. You shall not mail, distribute or otherwise arrange for delivery or distribution of any issues, editions or copies of “THE HOMESTEADER” outside the Territory except in pursuit of advertising accounts and in such event not more than 50 copies per month.
  - c. Solicitation of Customers. You shall not solicit or otherwise attempt to generate revenue from customers with no business location in the Territory unless expressly permitted in advance by HEI. You acknowledge that if You successfully solicit a customer with no

- business location in the Territory, HEI may reassign any such customer(s) to another at such time and in such manner as HEI deems appropriate with no compensation to You.
- d. **Multilocation Customers.** You may solicit any Multilocation Customer (customers with more than one place of business) so long as such customer has at least one place of business in the Territory. If more than one Publisher of HEI (including affiliates of HEI) pursues the same Multilocation Customer, HEI shall assign the customer to one of them in its sole discretion in accordance with its then-applicable policies therefor which decision shall be final and binding.
  - e. **Multiple Edition Advertisements (MEA).** You acknowledge that during the term certain customers may wish to advertise in editions of “THE HOMESTEADER” other than Yours and that certain customers serviced by other Publishers of HEI (or by HEI or HEI’s affiliate) may wish to advertise in Your edition of “THE HOMESTEADER.” Under such circumstances, if You accept an MEA for publication in Your edition or if You wish to place an MEA in another edition of “THE HOMESTEADER,” You shall be bound by HEI’s rules, policies and procedures applicable to multiple edition advertisements (as they may change from time to time) including without limitation those applicable to: (i) commissions payable; (ii) freedom to accept/reject advertisements; (iii) operating procedures; (iv) payment terms; and (v) suggested rates for other System editions.
- C. **COMMENCEMENT OF OPERATIONS.** You shall commence operations hereunder by filing a DBA (“doing business as”) Certificate or equivalent registration with the authorities in Your city or town or by soliciting potential customers not later than twenty (20) business days following the date of this Agreement. You shall report such commencement date to HEI by telephone and in writing immediately thereafter. In the absence of such a communication by You, You shall be deemed to have commenced operation of the Business on such twentieth business day. Further, if You fails so to commence operations HEI may give You written notice of such failure. If You fail to commence such operations within thirty (30) days following the date of delivery of such notice, HEI may notify You that this Agreement is terminated.

In addition, unless You and HEI agree otherwise, You shall view the training videos available on HEI’s website no later than thirty days from the date of this Agreement.

## **2. TERM AND RENEWAL.**

- A. **TERM.** Subject to the termination provisions hereof, the term of this Agreement shall run for a period of ten (10) years from the date of this Agreement set forth above.
- B. **RENEWAL.** Upon the expiration of the initial term, the Agreement may be renewed for another ten (10) year term at Your election so long as You satisfy the following conditions:
  - 1. You shall have complied with this Agreement during the term and shall be in compliance at the time of renewal;
  - 2. You shall execute HEI’s then-current form of Agreement and such ancillary agreements as HEI then may require of its new publishers, which agreements may contain less favorable terms;

3. You shall give HEI at least (180) days written notice of Your intention to renew the Agreement;
4. You shall pay HEI a renewal fee of \$2,500; and
5. You shall furnish HEI with a release of all claims against HEI, its affiliates and their respective directors, officers, employees, agents and principals in such form as it may require.

### **3. PROPRIETARY MARKS.**

You acknowledge that the trademark: “THE HOMESTEADER” and such other trademarks, service marks and commercial symbols as HEI may introduce hereafter for use by you (herein the “Marks”) are valid marks and the sole property of HEI’s affiliate. You acknowledge that all good will associated with the Marks including any good will which may arise through your efforts shall inure to the benefit of HEI’s affiliate. You shall use the Marks solely in the manner permitted and for the purposes contemplated by this Agreement.

- A. HEI shall take such action as it deems appropriate in its sole discretion to protect and preserve the integrity and good will inherent in the Marks. The preceding shall not be construed, however, to create any obligation on the part of HEI to protect or defend Your use of any Mark. You shall not contest or aid in contesting the validity or ownership of the Marks during the term or thereafter.
- B. You understand and agree that your use of the Marks is nonexclusive. Except as stated otherwise in Section 1.B, HEI may use the Marks and allow others to use the Marks in such manner as it deems appropriate.
- C. You shall notify HEI promptly of any claim, demand or suit based upon or arising from, or of any attempt by any other person or firm to use any Mark without proper authority. You shall promptly notify HEI of any litigation instituted by You or by any person or firm or governmental agency against You in connection with any Mark. HEI may, in its sole discretion, undertake the defense or prosecution of any such litigation, and in such event You shall execute such documents and do such acts and things as may in the opinion of counsel for HEI be necessary to carry out such defense or prosecution, either in the name of HEI or You, as HEI shall elect and at its expense.
- D. In connection with its use of the Marks You covenant as follows:
  1. To operate, advertise and promote the Publishing Business under the Marks only without use of additional names or words unless permitted by HEI;
  2. To adopt and use the Marks solely as prescribed by HEI including proper use of any trademark registration notices;
  3. To carry out the Publishing Business under the Marks in accordance with HEI’s standards as the same may be communicated to You and in connection therewith, You shall not use the Marks in your firm, proprietorship, corporate or partnership name nor shall You use any telephone, telephone number or directory listing associated with any Mark for any business or purpose other than in connection with the operation of the Publishing Business.

- E. You shall inform all parties with whom you do business that You are an independently owned and operated publisher in such manner as HEI deems appropriate.

#### 4. YOUR DUTIES.

In connection with your operation of the Publishing Business You agree as follows.

- A. Compliance with HEI's Standards. You are an independent businessperson with the right to control all aspects and details of the operation of the Publishing Business subject to this Agreement and HEI's standards, specifications and procedures which apply to similar HEI-publishing and/or company-operated businesses. You shall be free to hire and discharge personnel at your discretion. You may establish your hours of operation consistent with customary practices in the local community and HEI's standards. Further, You shall be free to determine the basis on which compensation and fringe benefits, if any, shall be made available to your personnel. In order to maintain uniformity of products and services among publishers, avoid customer confusion and meet HEI's high standards of quality, You may use such methods as you deem appropriate, subject however, to such rules, policies, standards and procedures as may be prescribed by HEI from time to time generally for all similar publishers and/or company-operated businesses.
  - 1. Image of Editions. Your edition of "THE HOMESTEADER" shall conform fully to HEI's standards and specifications therefor including without limitation those applicable to the newspaper's format (e.g. tabloid), design, layout, column width, print style, trademark usage and color as well as advertising and editorial content. Such standards and specifications may appear in the Operating Manual or in other writings of HEI.
  - 2. Content of Editions. In its sole and absolute discretion, HEI may direct You to cease publication of any matter which it deems inappropriate or otherwise substandard. Further, HEI may require that You submit any proposed issue to HEI for review and approval prior to publication and in such event You shall comply with HEI's requirements in all respects.
  - 3. Advertising/Promotional Material. All sales documents, rate cards (except for pricing), advertising and promotional material which You intend to use in the operation of the Publishing Business must be approved for use by HEI (or its designee) in writing prior to use by You unless approved previously by HEI. HEI shall have five (5) business days following its receipt of same to communicate to You such approval or lack of approval and in the absence thereof HEI's approval shall be deemed not to have been given. Notwithstanding anything to the contrary in this Agreement, You shall be free to establish and charge such prices for your products and services as you deem appropriate.
  - 4. Enhance Good Will of "THE HOMESTEADER." You shall avoid any act or omission which may tend to detract from or otherwise adversely affect (in HEI's view) your Publishing Business, any Mark or the good will associated therewith.
  - 5. Equipment, Supplies and Related Items. You shall equip the Outlet with such computer equipment (compatible with HEI's hardware and software), telephone and/or facsimile equipment as well as such other equipment, furniture, fixtures and furnishings as shall meet HEI's standards and specifications as set forth in the Operating Manual (described below in

Section 7) or otherwise in writing by HEI. You shall use only forms, invoices, stationery, paper supplies and related items which meet HEI's standards.

HEI may establish additional standards or requirements in connection with the System or the Publishing Business including the newspaper publication and its manner of operation. You shall comply promptly with all of HEI's standards and requirements in connection therewith and/or Your performance hereunder, as the same may be enhanced, diminished, modified or eliminated from time to time, at Your expense.

- B. Sales Procedures. You shall comply with HEI's standards and procedures for consummating sales with customers including pricing (considering ad size, advertising frequency and whether the ad will be placed in multiple editions but subject always to Your freedom to charge rates you deem appropriate for Your edition), content, meeting deadlines and payment. Except in cases involving multiple edition advertisements, You shall use the form of Advertising Agreement attached at Schedule C when consummating such sales.
1. Multiple Edition Advertisement (MEA) Procedures. If You wish to accept or place a MEA, You shall comply with HEI's rules and procedures applicable to such advertisements as set forth in the Operating Manual or otherwise in writing by HEI including those regarding payment of commissions to other publishers of editions of "The Homesteader" (which may include an affiliate of HEI). You may refuse to publish any MEA.
  2. Updating HEI. You shall notify HEI promptly in writing of any change in Your prices or rate structure as well as changes in circulation of Your edition.
- C. Payment of Ongoing Expenses. You shall pay when due all expenses incurred in establishing and operating the Publishing Business unless expressly otherwise provided herein including without limitation, paper supplies, printing costs, utilities, advertising and all other expenses incurred in connection therewith. HEI shall not be responsible for any debt arising out of the operation of the Publishing Business, unless otherwise provided herein or expressly agreed to by the parties.
- D. Publication/Circulation/Sales Requirements.
1. Monthly Publication. Commencing no later than the fourth month of operations hereunder, You shall publish and circulate (as required under subsection 2. below) not less than one issue of "THE HOMESTEADER" each month during the term. Failure by You to so publish and circulate issues of "THE HOMESTEADER" for two consecutive months shall be grounds for termination of this Agreement on written notice to You without giving You an opportunity to cure.
  2. Database and Minimum Circulation. You shall develop a database of readers and others in the Territory to whom issues of "THE HOMESTEADER" will be circulated including new homeowners, other homeowners, customers, potential customers, subscribers and others (hereinafter the "Database"). You and HEI shall own the Database jointly as it may be modified from time to time. You shall furnish HEI with copies of the Database and any information contained therein promptly on request. During the term You shall continuously develop and enhance the Database at your expense. Each month You must update the database for all new homeowners moving in during the most recently available monthly period, and shall mail not less than 2,000 copies (and shall distribute not less than 5,000

copies) of each issue of "THE HOMESTEADER" to those listed in the Database including new homeowners, subscribers and others in the Territory.

3. Sales Quotas and Minimum Royalties. You shall exercise best efforts to promote, develop and enlarge the Publishing Business. In the Territory, You shall collect revenue from sales to customers of advertisements and related items of no less than the following amounts in each twelve month period during the term:
  - (a) First twelve months, \$12,000;
  - (b) Second twelve months, \$24,000;
  - (c) Third twelve months, \$36,000;
  - (d) Fourth twelve months and each twelve months thereafter, \$40,000.

Should You fail to meet the above quotas, HEI may terminate You. You can cure such default by paying royalties to HEI as if You had achieved such results.

CAUTION! While it considers the above quotas to be reasonable, HEI neither warrants, guarantees or represents that You will achieve comparable results. You may not do as well. You hereby accept the risk of not doing as well.

- E. Record-Keeping and Reporting. You shall maintain full and complete records and accounts regarding the Publishing Business and the business transacted pursuant to this Agreement in accordance with accounting procedures and other standards of HEI. All of your records, papers and accounts pertaining to the Publishing Business shall be kept and maintained by You in a safe place for a period of not less than seven years. You shall furnish HEI with such reports and information at such times as HEI shall request, including without limitation, the following:
  1. Monthly Reports. Each month within 25 days of the Publication Date for each issue of "THE HOMESTEADER" You shall furnish HEI in such form as HEI may require with: (i) all customer invoices (for any product or service) issued by You during the month prior to the Publication Date; (ii) one marked copy of such issue with Your Gross Billed Revenue (as defined in Section 6 below) marked immediately next to each advertisement in the issue; (iii) five (5) extra copies of the issue; (iv) a Royalty Report (also known as a Billed Income and Expense report) showing all Gross Billed Revenue from all sources; (v) Request for Royalty Credit (Credit Memo) in regard to customers that have not paid debts owing to You as to which HEI received a Royalty and which You have determined are uncollectible; and (vi) such other reports as HEI may request. The term: "Publication Date" shall mean the first day of each month unless You report otherwise to HEI in writing with at least 30 days notice and in such event the Publication Date for the month following the month in which notice is given then shall be the date selected by You so long as approved by HEI. The Publication Date may not be changed by You more than once in any twelve month period without HEI's consent.
  2. Operations Records. You shall provide HEI, when and in such form as HEI reasonably may require, with other reports regarding operations of the Publishing Business, including

accounting or tax statements, copies of contracts with customers, lists of subscribers, and lists of customers.

3. You are responsible for furnishing HEI with complete, accurate and timely records and information. You must comply with HEI's Operating/Training Manual regarding all record-keeping and reporting hereunder.
  4. **Right of Inspection.** In order to maintain quality control and compliance with applicable law, HEI may inspect Your records and the Publishing Business to determine if You are performing in accordance with this Agreement, without providing any prior notice to You. HEI may audit Your records at any time and at its expense. If such audit discloses that You have underreported any sales or revenue information by five percent (5%) or more during any period of three months or more, then You shall pay any and all amounts owed to HEI, interest thereon, plus the cost of the audit (including all costs incurred directly or indirectly by HEI in connection with any such audit). Further, HEI may visit Your office and may interview Your employees and customers at any time to determine if You are so performing hereunder.
- F. **Space for HEI in Your Editions.** You shall reserve for HEI's use (for advertisements, editorials or otherwise) at no charge to HEI not less than five per cent (5%) of the total space available in each issue of "THE HOMESTEADER" published by You. You shall publish such advertisements, articles and/or other matter as HEI may request so long as they are received by You not later than two weeks prior to the Publication Date. HEI's right to use such space is not cumulative.
- G. **Full Time and Best Efforts.** Except as otherwise approved by HEI in writing in advance, You shall devote full-time and best efforts to the operation of the Publishing Business conducted pursuant to this Agreement. You shall not engage a sales manager or other employee to supervise such business in Your absence during regular business hours without the advance written approval of HEI which may be revoked at any time by HEI on 30 days written notice. You shall offer for sale only such services and products as are authorized by HEI. You shall not offer any other product or service for sale to the public without first obtaining HEI's consent in writing.
- H. **Products and Services Offered.** You will offer all products and services authorized and approved by HEI. You will produce local sales literature and set pricing for all products and services sold by You in Your territory.

## **5. HEI'S DUTIES**

- A. **Right to Use Marks.** HEI shall grant You the right to use the Marks in strict accordance with this Agreement as provided herein.
- B. **Training.** HEI shall provide training on video tape, available for viewing on licensee's home computer. Training videos may not be shown to anyone who is not a party to this agreement or who has not signed an employment agreement with licensee. HEI reserves the right to charge its then-current fee for any additional personnel who receive additional training at HEI's Concord office or elsewhere as provided by HEI.

You acknowledge and agree that You have substantial knowledge and/or experience in sales, editorial, or publishing, and accordingly, You do not anticipate receiving from HEI extensive or significant training hereunder.

You shall be responsible for all other expenses incurred in connection with such training including without limitation travel to/from the training, food, lodging, employee wages, workers' compensation insurance and other fringe benefits. HEI reserves the right to change the duration, content and location of the training programs in its sole discretion at any time. You must attend or view all such training programs within thirty days of signing this Agreement (unless HEI and You agree otherwise) and complete training to HEI's satisfaction. If You fail to do so, HEI reserves the right to terminate this Agreement.

- C. Assistance. HEI shall furnish You with assistance and guidance in the operation of the Publishing Business in such manner and at such times as HEI deems appropriate in its sole discretion. HEI shall maintain a telephone line for use by its publishers to facilitate such communications. HEI is under no obligation to visit You during the term or otherwise to provide personalized assistance to You. If You request a visit or such assistance and if HEI deems it appropriate, HEI shall provide a qualified representative at a mutually agreeable time and place and in such event, You shall pay HEI all expenses (including travel, meals, lodging, etc.) incurred in connection therewith as well as its then-current per diem charges therefor as HEI may require.
- D. Editorial/Graphics Packages. HEI will exercise reasonable efforts to furnish You periodically (not necessarily monthly, but at least ten times per year) with editorial packages for inclusion in Your edition of "THE HOMESTEADER." The content of such packages will vary and may include items such as articles, artwork, photographs, and the like as HEI deems appropriate. HEI need not furnish specific articles or columns and may change or substitute same in its sole discretion. You need not publish or use HEI's editorial packages. You acknowledge that You must carefully proofread all such editorial packages before use. HEI assumes no responsibility for the quality of writing or artwork in any editorial package. In addition, HEI will furnish You with an initial package of graphics items with such content as it deems appropriate but which is anticipated to include Mark-bearing items, clip art, cartoon art and/or other miscellaneous graphics.
- E. Operating Manual. HEI shall loan You an Operating/Training Manual as provided in Section 7 below. Said Manual may be delivered electronically.
- G. Initial Supplies. HEI shall furnish You with electronic files for rate cards, advertising agreement forms, business cards, and stationery, and an initial supply (in such reasonable quantity as HEI deems appropriate) of issues of "The Homesteader" to be used as samples by You in the Publishing Business. You will have to modify electronic files to add your local information.
- H. Ongoing Supplies or Services. As HEI may make available to You in its sole discretion, You may purchase from HEI at its then current prices clip art books, lay-out grids, presentation folders, novelty items (e.g. "Homesteader" T-shirts), telemarketing services, graphic arts services, and such other goods and services as HEI deems appropriate.

## **6. FEES.**

In consideration of the Publishing Business and rights granted hereunder, You shall pay to HEI an initial fee of Four Hundred Dollars (\$400). Six months following opening for or commencing business as described in Section 1(C) above, You agree to pay HEI Three Thousand Dollars (\$3,000). In addition, You agree to pay a Royalty Fee of 10% of gross revenue as detailed below.

You may terminate this Agreement by giving notice within six months of the execution of this Agreement (See Section 15 below). If You comply with all post-termination obligations as outlined in this agreement, HEI will waive the \$3,000 payment due. If notice of termination is not received or if all post-termination obligations are not carried out by You, then the \$3,000 payment will be due and fully earned by HEI.

**Royalty.** In consideration of Your right to use the Marks in accordance with this Agreement, You shall pay to HEI a Royalty Fee equal to ten percent (10%) of Your Gross Billed Revenues, subject to any reduction for bad debts approved by HEI as described in Section 4.E.1. above. As used in this Agreement, the term “Gross Billed Revenues” shall mean and include all of Your gross receipts from any source including customers and operation of the Publishing Business collected by or for You less discounts, sales taxes actually collected and paid to the taxing authorities and multiple edition advertisement commissions approved by HEI. If an advertisement or other product or service is paid for in kind (e.g. by barter) rather than in cash, You shall pay a Royalty thereon based on Your rate card rate therefor or if there is no such rate the fair market value thereof as HEI may determine in its discretion. Such payment shall be due each month on the date You are required to submit Monthly Reports to HEI under Section 4.E. above. You shall submit to HEI a Royalty Report in such form as HEI may require, together with each Royalty payment. No Royalty payments will be due for the first three (3) issues published.

In the event You or Your affiliate shall establish, operate or participate, directly or indirectly, in any business or enterprise which is directed wholly or partially at new homeowners, which is offered in conjunction with Homesteader products or services, or which derives in part from use of any Confidential Information (as described below in Section 9), then You shall:

- (i) notify HEI in writing not less than thirty (30) days before doing so; (ii) pay HEI ten percent (10%) of all gross revenues payable to and/or received by You (or Your affiliate) therefrom; and (iii) furnish HEI with such reports, documents and information as HEI may request regarding such business or enterprise. HEI (or its affiliates) may participate directly or indirectly in businesses or enterprises similar or identical to any which You may bring to HEI’s attention as required above without compensating You therefor.

## **7. OPERATING MANUAL.**

HEI will loan You during the term of the Agreement one copy of its “Operating Manual” (a/k/a the “Manual”). The Operating Manual will contain mandatory and suggested specifications, standards, policies and/or operating procedures prescribed from time to time by HEI for the operation of the Publishing Business and information about Your other obligations under this Agreement. HEI has the right to modify the Operating Manual from time to time to reflect changes in the specifications, standards, policies and/or operating procedures prescribed for publishers using the System. If You are furnished with a “hard copy” of the Manual, You must keep Your copy of the Operating Manual current. The master copy maintained by HEI at its principal office will be controlling in the event of a dispute about the contents of the Operating Manual.

## **8. RELATIONSHIP OF THE PARTIES/INDEMNIFICATION.**

- A. Relationship of Parties. The parties agree that this Agreement does not create a fiduciary relationship between them, that You and HEI are and shall be independent contractors, and that nothing in this Agreement is intended to make either party a general or special agent, legal representative, joint venturer, partner or employee of the other party for any purpose. You shall conspicuously identify Yourself in all dealings with Your customers, subscribers, readers, suppliers, public officials and others as the owner of the Publishing Business under an agreement from HEI, and shall place such other notices of independent ownership in issues of “THE HOMESTEADER” and on such signs, forms, stationery, advertising and other materials as HEI may require from time to time.

You shall not make any express or implied agreements, guarantees or representations, or incur any debt in the name of or on behalf of HEI. HEI shall not be obligated by or have any liability under any agreements or representations made by You, nor shall it be obligated for any damages to any person or property directly or indirectly arising out of the operation of the Publishing Business.

HEI shall have no liability for any value added, use, excise, property or other taxes, whether levied upon You, Your Publishing Business or its assets, nor in connection with sales made, services performed or business conducted by You except as otherwise provided herein or as required by law.

- B. Indemnification. You agree to indemnify and hold HEI, its affiliates, and their respective stockholders, directors, officers, employees, agents, successors and assignees harmless against, and to reimburse them for, any loss, liability, expense or damages (actual or consequential), and all reasonable costs and expenses of defending any claim brought against any of them or any action in which any of them is named as a party (including without limitation, reasonable accountants’, attorneys’ and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses), which any of them may suffer, sustain or incur by reason of, arising from or in connection with Your ownership or operation of the Publishing Business (including any liability for taxes), or by reason of the transfer of any

interest in this Agreement, the Territory, the Publishing Business or the ownership of your Publishing Business.

The indemnities and assumptions of liabilities and obligations in this Agreement shall continue in full force and effect after and notwithstanding the expiration or termination of this Agreement.

## **9. CONFIDENTIAL INFORMATION/EXCLUSIVE RELATIONSHIP.**

- A. Confidential Information. HEI has a proprietary interest in certain confidential information and know-how including lists and identities of customers and potential customers, lists and identities of readers and subscribers, methods, techniques, formats, specifications, procedures, information and systems for the development and operation of businesses using the System (the “Confidential Information”). Certain Confidential Information will be disclosed to or learned by You in connection with Your ownership and operation of the Publishing Business. The Confidential Information is made available to You by HEI solely on the condition that You (and each of Your owners) agree, and each does hereby agree, that You (and each of Your owners): (1) will not use the Confidential Information in any other business or capacity; (2) will maintain the absolute confidentiality of the Confidential Information during and after the term; (3) will not make unauthorized disclosure of any portion of the Confidential Information disclosed in written form; and (4) will adopt and implement all procedures prescribed from time to time by HEI to prevent unauthorized use or disclosure of the Confidential Information, including without limitation, restrictions on disclosure thereof to Your employees and contractors, and the use of nondisclosure clauses in employment agreements or service contracts with such persons. See Schedule B attached hereto for an example of such an agreement.
- B. Exclusive Relationship. You acknowledge and agree that HEI would be unable to protect the Confidential Information against unauthorized use or disclosure if You were permitted to hold interests in any other business competitive with a business that publishes “THE HOMESTEADER,” any business substantially similar thereto or any business offering marketing services to businesses targeted at new homeowners or similar or competitive products or services. Therefore, during the term of this agreement, neither You (nor any of Your owners, if applicable) shall have any direct or indirect interest as an owner, investor, partner, lender, director, officer, employee, consultant, representative or agent, or in any other capacity, in any business competitive with a business that publishes “THE HOMESTEADER,” any business substantially similar thereto or any business offering marketing services to businesses targeted at new homeowners or similar or competitive products or services except for other businesses approved by HEI and the ownership for investment purposes only of publicly traded securities representing one percent (1%) or less of the number of outstanding shares of that class of securities.

## **10. OPERATING STANDARDS AND PROCEDURES.**

- A. Specifications, Standards and Operating Procedures. You shall at all times provide professional, efficient and courteous service to all customers, readers and subscribers and shall, in all dealings with the public, customers, readers, subscribers, suppliers and HEI, adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You acknowledge that the operation of the Publishing Business in compliance with HEI's high standards is important to HEI and others operating under the System. You agree to comply with all of HEI's mandatory specifications, standards, and operating procedures relating to the operation of the Publishing Business. Mandatory specifications, standards, and operating procedures prescribed from time to time by HEI in the Operating Manual or otherwise communicated to You in writing shall constitute provisions of this Agreement as if fully set forth herein. All references herein to this Agreement shall include all such mandatory specifications, standards and operating procedures.
- B. Compliance with Laws and Good Business Practices. You shall secure and maintain in force all required licenses and permits relating to the operation of the Outlet and the Publishing Business, and shall operate such business in full compliance with all applicable laws, ordinances and regulations. You acknowledge Your obligation to investigate all applicable laws and regulations thoroughly before commencing operations hereunder. All advertising and promotion used by You shall be completely factual and conform to the highest standards of ethical advertising, and shall meet specifications issued by HEI from time to time. You agree to refrain from any business or advertising practice which may be harmful to the business of HEI, the good will associated with the Marks, or other Publishers under agreement with HEI. You shall notify HEI in writing within five (5) days of the commencement of any action, suit or proceeding, or of the receipt of any notice, or of the issuance of any order, writ, injunction, award or decree of any court, agency or governmental unit, which asserts or finds a violation by You of any law, ordinance or regulation or which may adversely affect the operation, financial condition or reputation of HEI, You, or other Publishers of HEI.

## **11. INSURANCE.**

During the term hereof, You shall obtain and maintain insurance coverage in accordance with HEI's current insurance requirements with insurance carriers acceptable to HEI. The coverage shall commence when You commence operations hereunder and shall include coverage for commercial general liability and motor vehicle liability, including personal injury and property damage coverage in such amounts and with such types of policies as HEI shall direct in the Manual or otherwise in writing. You also shall carry such workers' compensation insurance as may be required by applicable law for Your personnel. You shall maintain bonds on Your personnel in forms and amounts, and written by a carrier or carriers, acceptable to HEI, if HEI so requires. HEI shall be listed as an additional named insured on such policies.

## **12. INTEREST AND APPLICATION OF PAYMENTS.**

- A. Interest. Except as otherwise provided herein, all amounts which You owe to HEI shall bear interest after due date at the highest applicable legal rate for open account business credit, not to exceed one and one-half percent (1.5%) per month. You acknowledge that this section shall not constitute HEI's agreement to accept such payments after same are due or a commitment by HEI to extend credit to, or otherwise finance Your operation of the Publishing Business. Further, You acknowledge that Your failure to pay all such amounts when due shall constitute grounds for termination of this Agreement. HEI may also elect to withhold services until payments are brought up to date.
- B. Application of Payments. HEI shall have sole discretion to apply any payments received from You, or any indebtedness of HEI to You to any past due indebtedness of You to HEI or its affiliates.

### **13. TRANSFER.**

- A. Transfer By HEI. This Agreement and HEI's interest under it are fully assignable by HEI.
- B. You Can Transfer With HEI's Consent. You understand and acknowledge that the rights and duties created by this Agreement are personal to You (or Your owners) and that HEI has granted the Territory to You in reliance upon the individual or collective character, skill, aptitude, attitude, business ability and financial capacity of You (or Your owners). Accordingly, neither this Agreement nor the Business (or any interest therein), nor any part or all of the ownership of Your Business (or any interest therein) may be transferred without the prior written approval of HEI, and any such transfer without such approval shall constitute a breach hereof and convey no rights to or interests in this Agreement, the Territory, or the Publishing Business.
- C. Conditions For Approval Of Transfer. If You are in full compliance with this Agreement, HEI shall not unreasonably withhold its approval of a transfer that meets all the requirements of this Section 13. The proposed transferee (and each of its owners, if applicable) must be of good moral character and otherwise meet HEI's then applicable standards for System Publishers.
  - 1. Standard Transfer Fee. With respect to any proposed transfer other than a transfer to or among the existing owners, You must pay HEI a transfer fee of \$2,500. A lesser amount may be charged at HEI's sole discretion.
  - 2. Other Conditions. A transfer of ownership or rights to the assets or income of the Publishing Business may be made only in conjunction with a transfer of the Territory. If the transfer is of this Agreement, the Territory, or a controlling interest in Your Business, or is one of a series of transfers which in the aggregate constitute the transfer of this Agreement, the Territory or a controlling interest in Your Business, all of the following conditions must be met prior to or concurrently with the effective date of the transfer:
    - a. You must pay all amounts owed to HEI, and its affiliates, if any, which are then due and unpaid;
    - b. the transferee must have sufficient business experience, aptitude, and financial resources to operate the business;

- c. You must train the transferee or You must pay HEI's then-current fee to conduct training;
  - d. You (and each of Your owners, if applicable) must execute a general release, in a form satisfactory to HEI, of any and all claims against HEI, its affiliates, and their officers, directors, employees and agents;
  - e. You may not transfer this Agreement or the Territory created hereby unless You have developed and are operating a Homesteader publication business thereunder.
- D. You may transfer to a wholly-owned corporation so long as the corporation agrees to assume and be bound by all the terms and conditions of this Agreement and You (and each of Your owners) shall continue to be personally bound by this Agreement, jointly and severally. Transfers of interests in such corporation will be subject to the provisions of this Section 13.
- E. Death or Disability. Upon Your death or permanent disability, the executor, administrator, or other representative of such person shall transfer Your interest in this Agreement to a third party approved by HEI. Such disposition shall be completed within a reasonable time, not to exceed six (6) months from the date of death or permanent disability, and shall be subject to all the terms and conditions applicable to transfers contained in this Section 13. Failure to so transfer the interest in this Agreement and the Territory or such interest within the specified period shall constitute a breach of this Agreement.
- F. Commission. In the event HEI procures a purchaser for the Publishing Business or any other interest or asset transferable under this Section 13, You agree to pay HEI, in addition to all other amounts due to HEI for any reason, a commission equal to ten percent (10%) of the total purchase price payable in connection with such transfer subject to a minimum of \$1,000 and a maximum of \$10,000. Such commission shall be paid to HEI by You in cash at time of closing unless otherwise agreed by HEI in writing.

## **14. TERMINATION.**

You may terminate this Agreement by sending written notice to HEI giving HEI 120 days notice, and must comply with all post-termination obligations as set forth in this Agreement. You must continue publication until the termination takes effect and must take all steps necessary to preserve the goodwill of the publication and marks. If you cannot continue publication during the notice period, HEI may do so at your expense, and may charge reasonable management fees in connection therewith.

HEI shall have the right to terminate this Agreement by delivering a notice to You stating that HEI elects to terminate this Agreement as a result of any of the breaches set forth below. Such termination shall be effective upon delivery of such notice, or, if applicable, upon failure to cure, to HEI's satisfaction, any such breach, by the expiration of any time period within which such breach may be cured in accordance with the provisions set forth below. It shall be a breach of this Agreement if You (or any of Your owners):

- (a) fail to timely pay any fees, payments for purchases or other amounts due to HEI or its affiliates;
- (b) abandon the operation of the Publishing Business which shall be deemed to have occurred if You fail to publish issues of "THE HOMESTEADER" in two consecutive months;

- (c) have made any material misrepresentation or omission in the application for the Territory or Business;
- (d) are convicted of or plead no contest to a felony or other offense likely to adversely affect the reputation of HEI, Your Business, or the System;
- (e) fail, for a period of ten (10) days after notification of noncompliance, to comply with any federal, state or local law applicable to You or the operation of the Publishing Business;
- (f) make an unauthorized transfer of an interest in this Agreement, the Territory, the Publishing Business or any interest therein, or an ownership interest in Your Business;
- (g) make any unauthorized use or disclosure of any Confidential Information or of the Operating Manual or makes any unauthorized use of any of the Marks;
- (h) fail to comply with any provision of this Agreement or any mandatory specification, standard, or operating procedure prescribed by HEI or fail to comply with any other agreement with HEI or its affiliates;
- (i) fail on two or more separate occasions within any period of twelve (12) consecutive months to comply with the same obligation under this Agreement, or fail on four (4) or more separate occasions within any twelve (12) consecutive month period to comply with any provision of this Agreement whether or not such failures to comply are corrected after notice thereof is delivered to You;
- (j) fail to commence operation of the Publishing Business when required and HEI gives You written notice of such failure in accordance with Section 1.C.;
- (k) are declared bankrupt or insolvent by any court, make an assignment for the benefit of creditors, suffer the appointment of a Receiver for any portion of Your business, become financially unable to continue in business or to pay Your debts as they come due in the ordinary course of business, or if a petition in bankruptcy is filed by or against You;
- (l) fail to meet quotas as required under Section 4.D.3. in any twelve month period and do not make minimum royalty payments in lieu of meeting the quota; or
- (m) fail to pay operating expenses in a timely fashion.

You shall have the right to cure a breach under subparagraph (a) within ten (10) days after the delivery of HEI's notice and shall have the right to cure a breach under subparagraphs (h), (j) and (m) within thirty (30) days after delivery of such notice.

## **15. POST-TERMINATION OBLIGATIONS.**

- A. **Marks and Confidential Information.** You (and each of Your owners) agree that after the termination or expiration of the Agreement, You (and each of Your owners) will: (a) not disclose to any other person or use, directly or indirectly, any Confidential Information disclosed to or otherwise learned by You; (b) not use any Mark or colorable imitation thereof, or any other commercial symbol suggesting or indicating a connection with HEI or "THE HOMESTEADER," in any manner or for any purpose; (c) immediately furnish to HEI any materials in Your possession containing any Mark, Confidential Information, or otherwise relating to the System, including but not limited to the Operating Manual and any lists or compilations of customers, potential customers, subscribers and/or readers which You acknowledge are jointly owned by HEI; (d) cancel all fictitious or assumed name or equivalent registrations including any Mark; and (e) furnish to HEI, within ten (10) days after the effective

date of the termination or expiration evidence satisfactory to HEI of their compliance with the foregoing obligations.

- B. Continuing Obligations. All obligations of HEI and You (and each of Your owners) which expressly or by their nature survive the termination or expiration of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination, and until they are satisfied or by their nature expire.
- C. Payment of Amounts Owed to HEI. Unless otherwise permitted by HEI within fifteen (15) days after the date of termination or expiration, You shall pay any amounts owed to HEI and its affiliates which are then unpaid.
- D. Covenant Not to Compete. You (and each of Your owners) agrees that for a period of 36 months commencing on the date of termination or expiration of this Agreement, You (and each of Your owners), shall not have any direct or indirect interest as an owner, investor, partner, lender, director, officer, employee, consultant, representative or agent, or in any other capacity, in any business competitive with a business that publishes THE HOMESTEADER," any business substantially similar thereto, any business offering marketing services to businesses targeted at new homeowners or similar or competitive products or services, within 100 miles of the borders of the Territory nor within 100 miles of the business location of any other System Publisher, except for other businesses approved by HEI and the ownership for investment purposes of publicly traded securities that represent one percent (1%) or less of the number of outstanding shares of that class of securities.
  - 1. You (and each of Your owners) acknowledge and agree that a violation of this Section 15.D will cause irreparable damage to HEI, the exact amount of which may not be reasonably or accurately ascertainable, and therefore, You (and each of Your owners) do hereby consent that in such event, HEI shall be entitled to injunctive relief to restrain You (and each of Your owners and anyone acting on Your or their behalf) from violating the covenants contained in Sections 9 and 15 of this Agreement. If You and/or any of Your owners are so restrained or enjoined from competing, the 36 month period shall run from the later of the date You and/or Your owner(s) actually cease to compete or the effective date of the court order.
  - 2. Each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. You (and each of Your owners) agree that HEI may, in its sole discretion, reduce the scope of any covenant contained in this Section 15 or any portion thereof without their consent, effective immediately upon receipt by You of written notice thereof; and You (and each of Your owners, if applicable) shall comply promptly with any covenant as so modified.
  - 3. Consistent with Section 9.A. hereof You shall require Your employees and independent contractors to execute an agreement similar to that contained in Schedule B attached hereto in favor of both You and HEI and shall furnish HEI with an executed copy promptly following its execution upon request of HEI.
- E. Assignment of Telephone Number(s)/Listings. You will take all such action as may be required to cancel all assumed name or equivalent registrations relating to its use of any Mark(s) and to

notify the telephone company and all listing agencies of the termination or expiration of Your right to use any telephone number or any classified and other telephone directory listings associated with any Mark(s) and/or with the Outlet and to authorize transfer of same to or at direction of HEI. You acknowledge that as between HEI and You, HEI has the sole right to and interest in all telephone numbers and directory listings associated with any Mark(s) or the Outlet, and You authorize and appoint HEI as Your attorney in fact to direct the telephone company and/or all listing agencies to transfer the same to or at the direction of HEI.

- F. Upon expiration or termination hereof, You shall return to HEI in good condition all manuals furnished by HEI including the Operating Manual as well as all lists and compilations of customers, subscribers and readers serviced by You, and shall destroy or turn over to HEI all advertising material, stationery, printed forms and all other items containing any Mark or otherwise relating to the operation of Your business, if any, in Your possession. You shall not copy or retain copies of such materials, lists or compilations, either directly or indirectly unless such retention is necessary to comply with law.
- G. Right to Take Over Advertising Contracts. HEI shall have the option (but not the obligation) to service and succeed to Your interest in all advertising contracts with Your former customers that reasonably would expect their advertisements to have been published in Your edition of The Homesteader following cessation of publication by You. In that event, HEI may continue to publish Your edition or make other publication arrangements satisfactory to HEI and applicable customers. Under such circumstances HEI shall succeed to all Your accounts receivable for those advertising contracts which HEI elects to service. You shall cooperate fully with HEI by advising such customers that all payments due under such contracts (except amounts due to You for advertisements actually published by You), should be sent to HEI in such manner as HEI deems appropriate. Further, if HEI elects to service customers who have paid You in full for publication of advertisements in the future, You shall pay HEI on demand amounts received by You (or, if paid in kind, the cash value thereof according to Your most current rate card) for such remaining advertisements or make such other arrangements as HEI deems satisfactory therefor.

You shall provide HEI with all materials, files, and correspondence from all present and former advertisers, including camera-ready versions of advertisements, electronic versions where available, customer and prospective customer lists, advertising agreements, circulation databases of readers, and any and all other items necessary to publish The Homesteader in the Territory.

## **16. MISCELLANEOUS.**

- A. Severability and Substitution of Valid Provisions. Each provision of this Agreement and any portion thereof shall be considered severable and if, for any reason, any such provision of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which HEI is a party, that ruling shall not impair the operation of, or have any other effect upon, such other portions of this Agreement as may remain otherwise intelligible. Such other portions shall continue to be given full force and effect and bind the parties hereto, although any portion held to be invalid shall be deemed not to be a part of this Agreement from the date the time for appeal expires, if HEI is a party thereto, otherwise upon Your receipt of a notice of non-enforcement thereof from HEI. To the extent that any

provision of Section 9.B or Section 15.D. is deemed unenforceable by virtue of its scope in terms of area, length of time, and/or business activity prohibited, but could be made enforceable by reducing any or all thereof, You and HEI agree that same shall be enforced to the fullest extent permissible under applicable law.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of this Agreement than is required hereunder, or the taking of some other action not required hereunder, or if under any applicable and binding law or rule of any jurisdiction any provision of this Agreement or any specification, standard or operating procedure prescribed by HEI is invalid or unenforceable, the prior notice and/or other action required by such law or rule shall be substituted for the comparable provisions hereof, and HEI shall have the right, in its sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable.

- B. No Waiver. Either party may unilaterally waive or reduce any obligation of or restriction upon the other party under this Agreement, effective upon delivery of written notice thereof to the other, or upon such other effective date stated in the notice of waiver. Whenever this Agreement requires HEI's prior approval or consent, You shall make a timely written request therefor, and such approval shall be obtained in writing.

HEI makes no warranties or guarantees upon which You may rely, and assumes no liability or obligation to You, by granting any waiver, approval or consent to You, or by reason of any neglect, delay or denial of any request therefor. Any waiver granted by HEI shall be without prejudice to any other rights which either party may have, will be subject to continuing review by HEI, and may be revoked, in HEI's sole discretion, at any time and for any reason, effective upon delivery to You of ten (10) days' prior written notice.

Neither party shall be deemed to have waived or impaired any right, power or option reserved by this Agreement by virtue of (a) any custom or practice of the parties at variance with the terms hereof; (b) any failure, refusal or neglect of HEI or You to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder, including, without limitation, any mandatory specification, standard or operating procedures; (c) any waiver, forbearance, delay, failure or omission by HEI to exercise any right, power or option; or (d) the acceptance by HEI of any payments due from You after any breach of this Agreement.

Except as otherwise provided in this Agreement, neither party shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (1) transportation shortages or inadequate supply of material or energy; (2) compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state, or municipal government or any department or agency thereof; (3) acts of God; (4) fires, strikes, embargoes, war or riot; or (5) any other similar event or cause. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance in whole or in part, as may be reasonable.

- C. Injunctive Relief. Nothing herein shall bar HEI or You from obtaining injunctive relief or specific performance under customary equity rules, including applicable rules for obtaining restraining orders and preliminary injunctions. You agree that HEI may have injunctive relief without bond, but upon due notice, and Your sole remedy, in the event of the entry of such injunction, shall be the dissolution of such injunction, if warranted, upon due hearing (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived hereby).
- D. Cumulative Rights. The rights of the parties under this Agreement are cumulative, and no exercise of any right under this Agreement by either party shall preclude the exercise or enforcement by either party of any other right which that party is entitled to enforce under this Agreement or under applicable law.
- E. Costs and Attorneys' Fees. If HEI incurs legal fees or other expenses as a result of any breach by You of Your obligations under this Agreement, then HEI shall be entitled to recover from You the amount of all such legal fees and other expenses. If either party is required to enforce this Agreement in a judicial or other legal proceeding, the party prevailing in such proceeding shall be entitled to reimbursement of its costs and expenses, including reasonable accounting fees, expert witness fees and legal fees.
- F. Governing Law/Venue Selection/Arbitration.

Except to the extent governed by the U.S. Trademark Act of 1946, this Agreement shall be governed by the laws of Massachusetts.

Any claim arising out of or related to this Agreement, or any breach thereof, including without limitation, any claim that this Agreement, or any part thereof, is invalid, illegal, unenforceable, or otherwise void or voidable, shall be subject to binding and final arbitration before, and in accordance with the Commercial Rules of the American Arbitration Association. Judgment on any arbitration award may be entered in any court having valid jurisdiction thereof, provided however, that this provision shall not be construed to limit any right that HEI may have to apply to any court of competent jurisdiction for injunctive, equitable or similar relief. Massachusetts substantive law shall be applied by the arbitrators and this requirement shall be deemed jurisdictional. This arbitration provision shall be deemed self-executing. Any arbitration proceeding to be conducted hereunder shall take place at the office of the American Arbitration Association nearest to HEI's principal office. If any party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such party notwithstanding said failure to appear. You hereby waive any objection You may have to the use of arbitration to resolve disputes as described above or to the venue selected therefor.

Should You fail to pay all or part of the balance due on the territory fee (\$3,000), HEI shall be entitled to seek collection through an appointed collection agency and/or may seek a judgment in a Massachusetts Court of competent jurisdiction, whose decision shall be binding on You. If HEI goes to court to collect the balance due on the territory fee, it shall also be entitled to sue for all monies owed and monetary damages.

- G. Construction. Section headings in this Agreement are for convenience only, and shall not affect interpretation. An "owner" of Your Business includes any person, natural or otherwise, with a direct or indirect legal or beneficial ownership interest or voting power in Your Business. This

Agreement: (i) is the entire agreement of the parties with respect to its subject matter; (ii) can be amended only in writing signed by both parties; (iii) shall, except as otherwise herein provided, bind and inure to the benefit of the parties and their respective successors and assigns; (iv) may be executed in any number of counterparts; and (v) does not confer any rights or remedies upon any person not a party hereto except as expressly otherwise provided herein.

- H. Remedial Restrictions. Notwithstanding anything to the contrary in this Agreement, You accept the following remedial restrictions on the liability of HEI (including its owners, directors, officers, employees, representatives and affiliates) in connection with any claim(s) or cause(s) of action by You, Your owners and/or affiliates which may arise out of or in connection with the business relationship created hereunder.
1. Limit on Recoverable Damages and Expenses. The total liability of HEI (including its owners, directors, officers, employees, representatives and affiliates) for damages of any kind (including amounts for attorney fees, costs and related expenses) shall not exceed the total amount of money paid to HEI by You, Your owners and/or affiliates during the term.
  2. Time Limit on Asserting Claims. Any and all such claim(s) and cause(s) of action, shall be barred and unenforceable if not formally commenced as required by this Agreement within one (1) year of the later of the date the act(s) or omission(s) giving rise to such claim(s) or cause(s) of action actually took place or the date such claim(s) or cause(s) of action reasonably should have been discovered with the exercise of due diligence. (This provision shall not apply to monies owed HEI by You).
- I. Notices. All written notices and any payments permitted or required by the provisions of this Agreement shall be deemed to be delivered at the time delivered by hand, one (1) business day after transmission by any electronic system, two (2) business days after being sent via overnight mail (i.e., UPS, FedEx), or three (3) business days after being placed in the U.S. Mail by registered or certified mail, addressed to the party to be notified at its address given on the first page of this Agreement, or at such other business address of which the notifying party shall have been notified from time to time in accordance with this Section. Any required payment or report not actually received by HEI during regular business hours on the date due, or properly placed in the U.S. Mail and postmarked by postal authorities at least two (2) business days prior thereto, shall be deemed delinquent. No party shall refuse to receive a written notice which is given in compliance with this Agreement. Any such refusal shall be deemed to be a receipt of such notice.
- J. Acknowledgments. You (and each of Your owners) have read this Agreement and understand and accept the terms, conditions, and covenants contained in this Agreement as being necessary to maintain HEI's standards and thereby to protect and preserve the good will of the Marks and the System. You represent that You have conducted an independent investigation of the business venture described in this Agreement, and recognize that it involves business risks and that its success is dependent upon Your own business abilities. HEI expressly disclaims making, and You acknowledge that You have not received or relied upon, any representation or guaranty, express or implied, as to the revenues, profits or success of the venture described in this Agreement. This is the entire agreement between the parties and there are no other representations or statements of any force or effect which induced the parties to enter into this Agreement. You acknowledge that You have not received or relied upon any representations about the Business (or otherwise) by

HEI, or its officers, directors, employees, or agents, that are contrary to the terms hereof. You acknowledge that in all of their dealings with You, the officers, directors, employees and agents of HEI act only in a representative capacity and not in an individual capacity. You further acknowledge that this Agreement is solely between You and HEI. You further represent to HEI, as an inducement to its entry into this Agreement, that You have made no misrepresentation in obtaining the Publishing Business or Your Territory, including no misrepresentations on your Application..

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement in \_\_\_\_ counterparts on the day and year first above written.

**HOMESTEADER ENTERPRISES, INC. (HEI):**

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

Title: \_\_\_\_\_

**Witnesses:**

\_\_\_\_\_  
\_\_\_\_\_

**PUBLISHERS/OWNERS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FOR CORPORATIONS ONLY**

For Publisher's Corporation, As to Applicable Provisions Only:

(PUBLISHER OWNER) \_\_\_\_\_

(PUBLISHER OWNER) \_\_\_\_\_

(PUBLISHER OWNER) \_\_\_\_\_

PERSONAL GUARANTEE OF OFFICERS, SHAREHOLDERS AND  
DIRECTORS OF A CORPORATION OR PARTNERS OF A PARTNERSHIP

We, the undersigned, each of whom is an officer, shareholder, director or partner of \_\_\_\_\_ (corporate name), to induce Homesteader Enterprises, Inc. (“HEI”) to enter into the attached Agreement, including all exhibits attached thereto (hereinafter the “Agreement”), waiving demand and notice, hereby jointly and severally, personally guarantee the full payment and performance of the obligations of \_\_\_\_\_ (corporate name) under such agreement as if each of us were that corporation or partnership.

The undersigned expressly agree that the validity of this Guarantee and each of our obligations hereunder shall not, under any circumstances whatsoever, be terminated, affected or impaired by reason of the assertion by HEI or its successor against such corporation or partnership of any of the rights or remedies reserved to it by the Agreement.

The undersigned further agree that this Guarantee shall remain and continue in full force and effect as to any renewal, modification or extension of the Agreement and any assignment or transfer of the Agreement by HEI, whether or not any or all of us shall have received any notice of or consent to such renewal, modification, extension, assignment or transfer.

Failure of HEI to insist upon strict performance or observance of any of the terms, provisions or covenants of the Agreement or to exercise any right therein contained shall not be construed as a waiver or relinquishment of any such term, provision, covenant or right and the same shall continue and remain in full force and effect. Receipt by HEI of payment with knowledge of the breach of any provision of the Agreement shall not be termed a waiver of such breach.

The undersigned further agree that their liability under this guarantee shall be primary and that in any right of action which may accrue to HEI under the Agreement, HEI may, at its option, proceed against any or all of the undersigned without having commenced any action against or having obtained any judgment against the corporation or partnership.

This Guarantee is intended to take effect as a sealed instrument.

Dated: \_\_\_\_\_

Signed:

Print Name:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

## SCHEDULE A

Your Territory is described as follows:

*(Please describe your territory below. Each territory should consist of about 250,000 general population. Use town names, zip codes, counties, or parts of counties, along with the estimated population of each.)*

*(This is for publishers to use with people they hire to protect our confidential information.)*

## SCHEDULE B

### EMPLOYMENT AGREEMENT

AGREEMENT dated \_\_\_\_\_, 20\_\_\_\_, between

\_\_\_\_\_, hereinafter called the Employer, and

\_\_\_\_\_, hereinafter called the Employee. In consideration of Employee's employment on the terms and conditions set forth herein, the parties agree as follows:

1. **Employment.** The Employer hereby employs and/or continues to employ the Employee and the Employee hereby accepts or continues to accept employment upon the terms and conditions hereinafter set forth and for such wages and other compensation as may from time to time be agreed upon between them. The Employee shall devote his/her full business time, attention, and energy to the business of the Employer, and shall not, during the time this Agreement is in effect, engage in any other business activity, whether or not such other business activity is pursued for gain, profit or other pecuniary advantage, without Employer's prior written consent.
2. **Term.** This Agreement shall remain in full force and effect as long as the employment of the Employee by the Employer continues, and for such additional time thereafter as is necessary to assure compliance with the provisions of this Agreement which are binding after the termination of the Employee's employment. It is mutually agreed that the terms of this Agreement shall remain in full force and effect regardless of any changes which may subsequently occur in the Employee's remuneration or area and/or scope of responsibility. The employment of Employee by the Employer may be terminated at the will of either party at any time, with or without cause, upon notice to the other party.
3. **Duties.** The Employee is engaged to perform such acts as are incidental to the operation of "THE HOMESTEADER" newspaper business under the HEI System in Employer's reasonable view. The precise services of the Employee may be extended or curtailed, from time to time, at the direction of the Employer. In the performance of all his/her duties, the Employee agrees to abide by, and to emulate, the standards of quality which have been established and/or which may be practiced, by the Employer in its operations.
4. **Restrictive Covenant.** During the Employee's employment and for a period of one year after the termination of the Employee's employment, the Employee will not, within any municipality in which a customer of Employer, Homesteader Enterprises, Inc., any of its affiliates or its local Publishers may be located, with whom the Employee has had contact during the existence of this contract, directly or indirectly, own, manage, operate, control, be employed by, participate in, or be connected in any manner with the ownership, management, operation or control of any

business competitive with the business conducted by the Employer. Employee recognizes and agrees that, in the highly competitive business in which the Employer is engaged, personal contact is of great importance in securing and retaining customers and referral sources. Therefore, Employee further agrees that upon termination of his/her employment for any reason, s/he will not, for a period of one year thereafter, solicit the business of any person, company, or firm with which the Employee has had contact while in the employ of Employer or known by Employee to be a present or former client, customer or subscriber of the Employer upon his/her termination for the purpose of seeking business competitive to that of Employer or Employer's HEI (Homesteader Enterprises, Inc. of Concord, Massachusetts) or for any other purpose related thereto.

During and after the Employee's employment the Employee shall not use in any capacity or disclose to any unauthorized third party without the consent of Employer any trade secrets or information of Employer or Homesteader Enterprises, Inc. or any of their affiliates, designated as confidential by the Employer, the Employer's HEI or any affiliate thereof, or known or reasonably believed to be confidential by Employee including without limitation, all lists of and compilations of information regarding customers, potential customers, subscribers and readers of "THE HOMESTEADER."

5. Assignment. The rights and obligations of Employer under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Employer.
6. Invalidity of Provisions. If any covenant or part thereof, or other provision of this Agreement, is invalid, illegal, or incapable of being enforced, by reason of any rule of law or public policy, all other conditions and provisions of this Agreement shall, nevertheless, remain in full force and effect, and no covenant or provision shall be deemed dependent upon any other covenant or provision unless so expressed herein. If, moreover, any provision of this Agreement shall for any reason be held to be overbroad as to time, geographical scope, activity or subject, it shall be deemed amended to the extent necessary for such provision to be held valid and enforceable.
7. Enforcement of Provisions. Employee consents that an order, either temporary or permanent, may be made in any suit in equity brought for the purpose of enjoining him or her from violating any of the provisions of this Agreement or in any other action at law which by advice of counsel for the Employer may be brought to enforce its rights under this Agreement. The provisions of this paragraph shall be cumulative with, or in addition to, specific remedies set forth in other paragraphs. Employer's HEI, Homesteader Enterprises, Inc. of Concord, Massachusetts (or its assignee or successor) shall be a third party beneficiary hereof with the independent right to enforce this Agreement.
8. Controlling Law. This Agreement shall be interpreted in accordance with Massachusetts law.

In Witness Whereof the parties have executed this Agreement on the \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_\_.

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“Employer”

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“Employee”

Employee’s Home Address: \_\_\_\_\_

\_\_\_\_\_

Employee’s Home Phone: \_\_\_\_\_

Employee’s SS#: \_\_\_\_\_

*(This is for publishers to use as their Advertising Agreement. Any modifications to this form must be approved by HEI in advance.)*

SCHEDULE C

THE HOMESTEADER - \_\_\_\_\_ EDITION

*The Publication for New Homeowners*

(Your address and phone number)

*Each edition independently owned and operated.*

ADVERTISING AGREEMENT

\_\_\_\_\_ (Advertiser) of \_\_\_\_\_ (Advertiser's Address) ("Advertiser") agrees to advertise in THE HOMESTEADER ® - \_\_\_\_\_ EDITION for \_\_\_\_\_ issue(s) starting with the \_\_\_\_\_ (date of issue) issue. The size of the advertisement is \_\_\_\_\_ page and the rate is \$\_\_\_\_\_ per issue.

"THE HOMESTEADER" \_\_\_\_\_ EDITION guarantees a monthly circulation of approximately 5,000 new or prospective homeowner households every month. It is published on or about the \_\_\_\_\_ of each month ("Publication Date").

The cost quoted above is guaranteed not to increase during the term of this Agreement so long as Advertiser does not reduce the size or frequency and otherwise complies with this Agreement. Advertiser may increase the size of the advertisement and retain the frequency discount.

Advertiser is responsible for the content of each advertisement. Advertiser must inform us promptly of errors or changes in any advertisement, which must be received from Advertiser by the closing date which is two (2) weeks prior to Publication Date. No such changes may be made after the closing date (or the next business day if applicable.)

Limitation of Liability. We are liable/responsible for errors made by "THE HOMESTEADER" \_\_\_\_\_ EDITION in type we set in an amount no greater than the actual value of the space occupied by the error. Instead of cash compensation, at our option Advertiser may be compensated (and the error may be rectified) solely through repeat publication of the advertisement with corrections. We shall not be liable for any other damages (actual or consequential) which may be sustained by Advertiser. Where there are multiple insertions (for advertisements contracted to run in more than one monthly issue), our responsibility/liability is limited to the first insertion (monthly issue) only except in cases where Advertiser gave timely written notice of the changes to be made and such changes were not made because of our negligence or intentional misconduct. We shall not be liable for failing to publish an advertisement for any reason or for failing to print, publish or circulate all or part of any issue in which an advertisement is contained, or for publication of an advertisement past the Publication Date.

Cancellation of any advertisement must be in writing and received by us at least 30 days prior to the Publication Date for the issue for which the cancellation is to become effective. Cancellation may result in an increase in the rate charged to Advertiser based on frequency as follows: all advertising on a three-time, six-time, twelve-time or other frequency rate basis shall be charged a higher rate based on reduced frequency (e.g. the one-time rate if ad runs less than three months, the three-time rate if ad runs less than six months and the six-time rate if ad runs less than twelve months) for all ads that were charged at a frequency discount but canceled prior to completion of the schedule for which the discount was given. Charges are determined based on our current rates as set forth in our most recent Rate Card. All terms and conditions in our most current Rate Card are incorporated herein.

ADVERTISER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND OUR MOST CURRENT RATE CARD. In the event of a conflict between the terms of this Agreement and the terms of the Rate Card, then the terms of the Rate Card shall control.

After all advertisements contracted for by Advertiser have appeared in "THE HOMESTEADER" \_\_\_\_\_ EDITION this Agreement shall continue in effect and Advertiser's advertisement shall appear on a monthly basis in such edition at the above rate unless Advertiser directs otherwise in writing. In such event, Advertiser's cancellation to the advertisement must be received by us no later than four weeks prior to the Publication Date. Advertiser's modifications to the advertisement must be received by us no later than two weeks prior to the Publication Date.

Charges payable by Advertiser hereunder are due on the above date unless we state otherwise in writing. Any outstanding balance not paid within 30 days of invoice date is subject to a finance charge of 1.5% per month (18% per annum). Further, Advertiser agrees to be liable for and to pay all costs of collection incurred by "THE HOMESTEADER" \_\_\_\_\_ EDITION including court costs and attorney fees.

This is the Entire Agreement between the parties, no other promise or representation being of any force or effect or otherwise having induced Advertiser to enter into this Agreement. This Agreement cannot be modified except in writing signed by the parties hereto.

\_\_\_\_\_  
(Name of Publisher)

\_\_\_\_\_  
(Advertiser)

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

FIRST MONTHLY INSTALLMENT  
(\$ \_\_\_\_\_)

Company Name, Billing Address and Phone:

PAID BY: \_\_\_ cash \_\_\_ check

\_\_\_\_\_

DIRECTORY INFORMATION

Type of Directory Listing (FREE)

Service  Contractor  Professional

Heading: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

“THE HOMESTEADER” \_\_\_\_\_ EDITION

*Each edition independently owned and operated.*

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