

BILL NO. 3128

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CHAMBER OF COMMERCE AND THE CITY OF BRANSON PERTAINING TO INTERNET DOMAIN NAMES, AND AUTHORIZING THE MAYOR TO ENTER INTO THE AGREEMENT.**

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**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:**

- Section 1:** The Board of Aldermen hereby approves the annual renewal of the Agreement with the Chamber of Commerce in substantially the form attached as Exhibit "1".
- Section 2:** The Board of Aldermen hereby approves the fee structure presented by the Chamber of Commerce as required by the Agreement as attached as Exhibit "2"
- Section 3:** This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

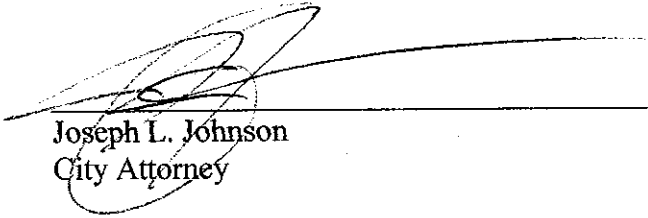
Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Louis E. Schaefer  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Joseph L. Johnson  
City Attorney

## DOMAIN NAME LICENSE AGREEMENT

This Agreement is made and entered into this 20 day of January, 2004 by and between City of Branson, Missouri, a Fourth Class Missouri Municipality ("Licensor") and the Branson Lakes Area Chamber of Commerce, a Missouri not-for-profit corporation ("Licensee").

Licensor is the owner of Internet domain names www.ExploreBranson.com, www.ExploreBranson.net, and www.ExploreBranson.org. (collectively, the Domains).

Licensee is the Licensor's contractual vendor providing out of market marketing services for Licensor pursuant to the parties' tourism tax marketing agreement dated \_\_\_\_\_ ("Marketing Agreement").

Since at least December 1999, Licensee has used the Domains in conjunction with these services.

Therefore, for good and valuable consideration, including the promises and mutual covenants set forth in this Agreement and the Marketing Agreement and the Marketing Agreement, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. **License.** Licensor hereby grants to Licensee a revocable exclusive worldwide license to use the Domains in connection with and in furtherance of Licensee's provision of out of market marketing services on behalf of Licensor via the Internet. Licensor also grants Licensee a revocable, non-exclusive worldwide license to provide hypertext links to the Domains and to authorize others to do the same. This Agreement and the license granted hereunder shall commence on the date hereof and shall continue until terminated in accordance with the provisions of this Agreement.
2. **Conditions of Use.**
  - (a) Licensee hereby acknowledges Licensor's right, title and interest in and to the Domains, Licensor's exclusive right to use and license the use of the Domains. Licensee agrees not to claim any title to the Domains or any right to use the Domains except as permitted by this Agreement, and shall not contest or deny the validity or enforceability of Licensor's rights in the Domains.
  - (b) Licensee shall at no time adopt or use, without Licensor's prior written consent, any variation of the Domains, including translations, or any domain name or mark likely to be similar to or confusing with the Domains.
  - (c) The provisions of this Section 2 shall survive any termination of this Agreement.

- (d) Licensee shall comply at all times at its sole expense with all applicable laws and regulations pertaining to the development, creation, promotion, sale, license and distribution of its services used in conjunction with the Domains.
- (e) The parties acknowledge that Licensee, in performing its duties as Licensor's marketing vendor under the parties Marketing Agreement, may generate revenue through the sale of advertisements placed on Licensor's Domains. Parties agree that to the extent that Licensee derives any revenues either through the sale of advertisements on the Domains or through the sale of any properties or information related to Licensor's Domains, said revenues shall be placed under the control of Licensor. Prior to Licensee selling any advertisements or other information derived from the Domains, Licensee shall present the proposed fee structure which Licensee intends to charge for the next contract year to the Board of Aldermen for their approval. The funds shall be used to defray or offset any expenses incurred in the creation, maintenance or upkeep of Licensor's Domains. On or before September 30<sup>th</sup> of each year, Licensee shall render to the Board of Aldermen a complete accounting detailing expenses which Licensee incurred in the maintenance and operation of Licensor's Domains and Licensee shall also account for all revenues derived from the sale of advertisements or other properties or information related to Licensor's Domains. To the extent that such accounting demonstrates that there exists a surplus as of September 30<sup>th</sup> of each year (the last day of Licensor's fiscal year) then such sums may be applied, at Licensor's sole discretion, to the monies annually appropriated by Licensor to Licensee under the parties' Marketing Agreement. These additional funds may only be used for the Marketing purposes. In the event that the parties' by Licensor Marketing Agreement terminates or is not renewed at the end of any contract term, then all funds contained in the account described within this paragraph shall be transferred by Licensor to Licensor's general fund and the account shall be closed.

**3. Warranty Disclaimer and Indemnification.**

- (a) LICENSOR SHALL HAVE NO LIABILITY TO LICENSEE FOR OR IN RESPECT OF ANY CLAIM BY ANY THIRD PARTY THAT LICENSEE'S USE OF THE DOMAINS PURSUANT TO THIS AGREEMENT INFRINGES UPON OR OTHERWISE VIOLATES ANY PROPRIETARY OR OTHER RIGHTS OF SUCH THIRD PARTY.
- (b) Licensee shall defend, indemnify and hold harmless Licensor and its elected officials, employees, agents and affiliates from any and all loss, liability, claim, damage, or expense, of whatever kind, caused or resulting, in whole or in part, from injury or damage to any person (including death) or damage to, or the infringement, loss, or destruction of, any property (including without limitation the tangible, intangible and intellectual property and including the loss of use),

whatever the cause may be, arising under or related to this Agreement and/or Licensee's use of the Domains.

4. **Termination.**

- (a) This Agreement shall have an initial term of one year from the date it is executed. The term shall thereafter automatically renew annually so long as the parties Marketing Agreement is also renewed by the Board of Aldermen. If the Board of Aldermen fails to renew said Marketing Agreement, this agreement shall automatically terminate as of the date of termination of the parties' Marketing Agreement. In no event, shall this Agreement, other than Section 2 (a-d), survive after termination of the Parties' Marketing Agreement.
- (b) Either party shall have the right to terminate this Agreement upon the following:
  - (i) if either Licensor or Licensee defaults in the performance or observance of any of the terms or conditions of this Agreement or any related agreement between the parties and such default is not remedied within thirty (30) calendar days after written notice specifying the nature of the default is received by the defaulting party, then the nondefaulting party shall have the right to terminate this Agreement by written notice to the defaulting party;
  - (ii) if any of the following events occur: (1) Licensee's insolvency or the making by Licensee of an assignment for the benefit of its creditors; (2) the filing by or against Licensee, the entry of an order for relief against Licensee in any voluntary or good faith involuntary proceeding under any bankruptcy, insolvency, reorganization or receivership law, including, but not limited to, the Bankruptcy Code, or an admission seeking relief as therein allowed, which filing or order shall not have been vacated within sixty (60) calendar days from the entry thereof; (3) the appointment of a receiver for all or a substantial portion of Licensee's property and such appointment shall not be discharged or vacated within sixty (60) calendar days of the date thereof; (4) the assumption of custody, attachment or sequestration by a court of competent jurisdiction of all or a significant portion of all of Licensee's property, then Licensor shall have the right to terminate this Agreement by written notice to Licensee. No assignee for the benefit of creditors, receiver, liquidator, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking custody over the assets or business of Licensee shall have any right to continue performance of this Agreement, and this Agreement may not be assigned by operation of law.

- (c) The exercise of any right of termination under this Section shall not affect any rights which have accrued prior to termination, and shall be without prejudice to any other legal or equitable remedies to which the terminating party may be entitled by reason of such rights.

5. **Effects of and Procedure on Termination.**

- (a) **Non-sale Termination.** Upon the termination of this Agreement for any reason, all rights of Licensee granted hereunder shall terminate and automatically revert to Licensor and Licensee shall immediately discontinue the use of the Domains and thereafter shall no longer use or have the right to use the Domains or any variations or simulations thereof, or any word, domain or mark similar thereto, or to (directly or indirectly) develop, create, market, distribute, sell, license or advertise any goods or services in connection with the Domains. Licensee acknowledges that Licensee's failure to comply with the above obligations upon termination of this Agreement shall result in immediate and irreparable damage to Licensor and to any of the rights of any subsequent Licensee. Licensee acknowledges and admits that there is not adequate remedy at law for such failure, and agrees that in the event of such failure, Licensor shall be entitled to equitable relief by way of temporary and permanent injunction and such other and further relief as any court with jurisdiction may deem just and proper.

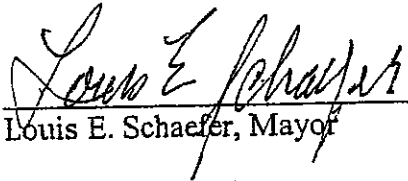
6. **Relationship of the Parties.** The relationship of Licensee to Licensor is that of an independent contractor and neither Licensee nor its agents or employees shall be considered employees of Licensor. This Agreement does not constitute and shall not be construed as creating a partnership or joint venture or grant of a franchise between Licensor and Licensee. This Agreement shall not be construed as authority for either party to act for the other party in any agency or other capacity or to make commitments of any kind for the account of or on behalf of the other, except to the extent and for the purposes provided in the parties Marketing Agreement and as provided herein.
7. **Assignment.** Neither this Agreement nor all or any portion of the rights licensed to Licensee shall be assigned by either party without prior consent of the other party.
8. **Merger.** This Agreement constitutes the entire understanding of the parties hereto concerning use of the Domains, all prior understandings having been merged herein. This Agreement cannot be modified or amended except by a writing signed by the parties hereto. To the extent that the parties have previously set forth terms of understanding regarding use of the Domains in the parties' Marketing Agreement, this agreement supercedes the Marketing Agreement with respect to the licensing and the use of Licensor's Domains.
9. **Governing Law; Jurisdiction; Exclusive Venue.** This Agreement shall be governed by, and interpreted under the laws of the State of Missouri applicable to contracts made

and to be performed therein, without giving effect to the principles of choice or conflicts of law. Except in respect to an action commenced by a third party in another jurisdiction, the parties hereto agree that any legal suit action, or proceeding arising out of or relating to this Agreement must be instituted in a federal or state court which has jurisdiction for the City of Branson and Taney County Missouri, and the parties hereby irrevocably submit to the jurisdiction of any such court and waive any objection to the laying of venue in, or the inconvenience of such forum.

10. **Waiver.** No waiver by any party of any breach of any provision hereof shall constitute a waiver of any other breach of that or any other provision hereof.
11. **Attorneys' Fees.** In any action between the parties to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover expenses, including reasonable attorneys' fees.

Licensor, City of Branson

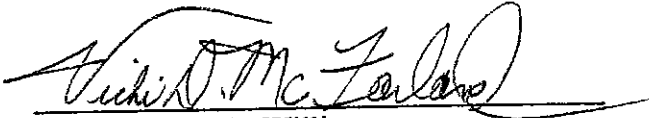
Licensee, Branson Lakes Area  
Chamber of Commerce

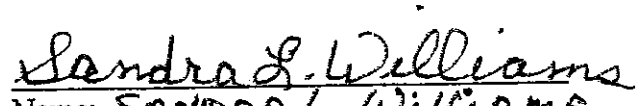
  
\_\_\_\_\_  
Louis E. Schaefer, Mayor

  
\_\_\_\_\_

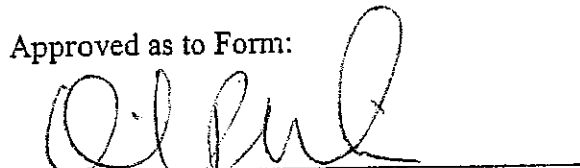
Attest:

Attest:

  
\_\_\_\_\_  
Name: ~~Sandra L. Williams~~  
Title: ~~City Clerk~~

  
\_\_\_\_\_  
Name: SANDRA L. WILLIAMS  
Title: City CLERK

Approved as to Form:

  
\_\_\_\_\_  
Daniel R. Wichmer  
City Attorney

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PO Box 1897 • Branson, MO 65616

# Explorebranson.com Rate Sheet

Prices listed are per month ~ Minimum contract is six months

Product	Rate Per Month
Business Listing/Link	\$7.50
Additional Listings	\$5.00
Logo with Business Listing	\$5.00
Enhanced Business Listing - 25 word min/75 word max	\$0.35 per word
Tile Ad - Main Page	\$55.00
Tile Ad - Sub Page	\$50.00
"Book It" Button	\$25.00 one time set up fee
Preferred Rotation - 1 <sup>st</sup> category fee only	\$100.00

Main Pages	Sub Pages
What's New	<p>Browse (Categories)</p> <p>Browse Listings</p> <p><i>Volume discount: 12 month contracts of \$500 or more per month receive a 10% discount on contract.</i></p>
Live Shows	
Attractions	
Shopping	
Dining	
Lodging	
Camping/RV Parks	
Lakes	
Outdoor Adventures	
Golf	
Vacation Planning Services	
Groups, Reunions & Meetings	
Real Estate & Relocation	
Community & Economic Development	
Business Listings	
Just For Kids	
Special Offers/Contests	
View My Itinerary	
Drop Down Menus	
Spring	
Summer	
Fall	
Christmas	
Winter	

**Technical Specifications:**

File Format - JPEG or GIF only  
 File Size - no greater than 4K  
 Logo Dimensions - 3000 sq. pixels (100 x 30, 60 x 50, etc.)  
 Tile Dimensions - 120 pixels wide by 60 pixels tall  
 Animation Time - 6 seconds maximum

**New Contracts and Additions:**

Deidre McCormick  
 417-334-4084 ext. 307  
 417-337-5887 Fax  
[dmccormick@bransoncvb.com](mailto:dmccormick@bransoncvb.com)

**Renewal Contracts:**

Crystal Richerson  
 417-334-4084 ext. 314  
 417-334-4139 Fax  
[cricherson@bransoncvb.com](mailto:cricherson@bransoncvb.com)