

RESOLUTION NO. 09 – 88

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT IN THE VIEWPOINT OUTDOOR, LLC V. CITY OF DORAL LITIGATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Viewpoint Outdoor, LLC (“VIEWPOINT”) is a sign company that has presented applications to construct 35 billboard signs for commercial and non-commercial speech at various locations throughout the City of Doral (the “CITY”); and

WHEREAS, VIEWPOINT filed a lawsuit against the CITY in U.S. District Court captioned Viewpoint Outdoor, LLC. v. City of Doral, Case No. 08-22541-CIV-JORDAN (the “Lawsuit”), challenging the constitutionality of the CITY’s former and current sign ordinances; and

WHEREAS, VIEWPOINT and the CITY each wish to avoid the continuing expense and risk of a lawsuit, and have negotiated a settlement agreement with respect to the Lawsuit; and

WHEREAS, the City Council hereby finds it to be in the best interests of its citizens to authorize the City Manager to enter into an agreement settling the claims raised in the Lawsuit;

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

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The City Council hereby authorizes the City Manager to enter into a settlement agreement, substantially in the form of Exhibit A hereto, to the lawsuit in the

U.S. District Court captioned Viewpoint Outdoor, LLC. v. City of Doral, Case No. 08-22541-CIV-JORDAN. The City Council further authorizes the City Manager and the City Attorney to take such actions as may be necessary to implement the settlement agreement and terminate the Lawsuit.

Section 3. This resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Councilwoman Ruiz who moved its adoption. The motion was seconded by Councilman Van Name and upon being put to a vote, the vote was as follows:

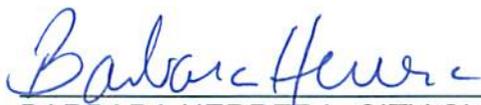
Mayor Juan Carlos Bermudez	Yes
Vice Mayor Michael DiPietro	Yes
Councilmember Peter Cabrera	Yes
Councilwoman Sandra Ruiz	Yes
Councilmember Robert Van Name	Yes

PASSED AND ADOPTED this 8th day of July, 2009.



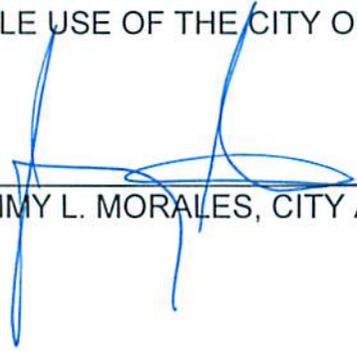
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE CITY OF DORAL:



JIMMY L. MORALES, CITY ATTORNEY

EXHIBIT "A"

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF DORAL
AND VIEWPOINT OUTDOOR, LLC.**

THIS AGREEMENT is entered into this 8th day of July, 2009, by and between VIEWPOINT OUTDOOR, LLC. ("VIEWPOINT"), a Florida limited liability corporation, its successors and assigns, whose address is 265 N.E. 24th Street, Suite 501, Miami, Florida 33137 and the CITY OF DORAL, a Florida municipal corporation, whose address is 8300 N.W. 53rd Street, Suite 100, Doral, Florida 33166 ("CITY"), as follows:

RECITALS

VIEWPOINT is a sign company that has presented applications to construct 35 billboard signs for commercial and non-commercial speech at various locations throughout the CITY; and

VIEWPOINT filed a lawsuit against the CITY in U.S. District Court, VIEWPOINT. v. City of Doral, Case No. 08-22541-CIV-JORDAN/McALILEY (the "Lawsuit"), challenging the constitutionality of the CITY's former and current sign ordinances; and

VIEWPOINT and the CITY each wish to avoid the continuing expense and risk of a lawsuit; and

VIEWPOINT has agreed to withdraw all previous applications and in exchange, the CITY shall grant VIEWPOINT all necessary permits and approvals within the jurisdiction of the CITY to allow VIEWPOINT to construct twelve billboard signs along the limited access highways within the city limits of the CITY; and

The CITY is entering into this Agreement as a compromise of a disputed claim and the CITY does not admit any liability; and

The parties agree that this is a settlement of a disputed claim as to the validity of the former sign ordinance and a disputed claim as to the right of VIEWPOINT to pursue applications under the former sign ordinance, and

VIEWPOINT and the CITY each have full authority to enter into this Agreement and have followed all necessary procedures and have obtained all necessary approvals and ratifications prior to execution of this Agreement; and

This Agreement has been duly noticed and has been approved at a public hearing; and



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Both parties consider it to be in their best interests and in the interests of the citizens and property owners of the CITY to approve this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree each with the other as follows:

Section 1. Recitals. The recitals above are true and correct.

Section 2. Construction of Signs. VIEWPOINT shall be permitted to construct twelve (12) billboard sign structures, containing up to three (3) LED faces, (the "Viewpoint Signs") at locations within the current city limits of the CITY, subject to meeting applicable regulations not in conflict with this Agreement, in accordance with the following conditions:

- a. The Viewpoint Signs shall be located within 150 feet of the edge of the limited access highways, more specifically, SR 826 (Palmetto Expressway); SR 836 (Dolphin Expressway); and The Florida Turnpike, and shall be placed so as to be primarily visible from the traffic lanes on the limited access highways.
- b. The Viewpoint Signs shall have no more than two (2) sign faces.
- c. The Viewpoint Signs must meet the Florida Department of Transportation ("FDOT") permitting requirements. The size, shape and height of the Viewpoint Signs shall be in accordance with the FDOT permitting requirements and shall not exceed FDOT limitations.
- d. The shape of the Viewpoint Signs shall be back-to-back or "V" shape on a monopole base.
- e. Viewpoint Signs may be illuminated with lighting that is consistent with standard lighting used in the industry; however, no sign shall be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device, or signal, nor shall the illumination interfere with drivers or shine directly onto adjoining property. The illumination shall not be provided by flashing lights, rotating lights or strobe lights.
- f. No Viewpoint Signs on the structures shall emit noise.
- g. Viewpoint Signs may not display words such as "Stop" or "Danger" in such a manner to appear to require stopping or to imply the presence of danger, nor may sign copy imitate official signs (such as stop signs, interstate signs, etc.).
- h. For all LEDs, the message must remain static for at least 5 seconds.
- i. No part of the sign structure, excluding the lighting mechanisms, shall be within 10 feet of any property line adjacent to the highway.
- j. The zoning for each sign structure location must be commercial, industrial, or office, or meet the criteria of unzoned commercial/industrial property as that term is defined in Florida Statutes Section 479.01(23) (2008).
- k. Each sign face on a sign structure shall be completely covered when a message is posted. If the message is smaller than the sign face's dimensions, skirting or screening shall be used to cover the balance of the sign face.
- l. For security purposes, the ladder for each pole shall begin no lower than 15 feet from the ground.


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- m. Gateway Corridors. No Viewpoint Signs shall be constructed within 1000 feet of the following intersections, hereinafter referred to as the Gateway corridors:
 - i. Dolphin Expressway & Palmetto Expressway;
 - ii. Dolphin Expressway & NW 87th Avenue;
 - iii. Dolphin Expressway & NW 107th Avenue;
 - iv. Palmetto Expressway & NW 25th Street;
 - v. Palmetto Expressway & NW 36th Street;
 - vi. Palmetto Expressway & NW 58th Street;
 - vii. The Florida Turnpike & NW 41st Street.
- n. Spacing Requirements.
 - i. No Viewpoint Sign shall be located within 1000 feet of another billboard sign on the same side of the limited access highway, facing in the same direction.
 - ii. No Viewpoint Sign shall be located within 500 feet of the property line of platted lot utilized for a residential use, as that term is defined in the City of Doral Zoning Code.
 - iii. No Viewpoint Signs shall be located adjacent to the Florida Turnpike between NW 41st Street and NW 90th Street.

Section 3. Damage or Destruction of Viewpoint Signs. All Viewpoint Signs must be maintained in a safe manner and in compliance with FDOT requirements that were in existence at the time the Viewpoint Signs were built and the Florida Building Code. Any sign that must be replaced due to damage or destruction will be re-permitted, if necessary, for the same location.

Section 4. Sign Content. VIEWPOINT shall not erect any sign advertising any establishment or business that could reasonably be characterized as providing adult entertainment, nor shall any sign contain sexually graphic materials, or contain any material that appeals to prurient interests. No sign shall contain any of the following: obscene language or language that describes sexual conduct; graphics that depict sexual conduct, human genitalia or buttocks which are not fully covered, or female breasts which are not covered below the top of the areola; or graphics which depict scenes or images which could reasonably be construed a being obscene or which appeal to prurient interests. There shall be no X-rated movies, X-rated products or X-rated services, tattoo parlors, bail bondsmen, massage parlor advertising, pawn shops, adult movie houses or adult entertainment centers placed upon any sign unless prior approval is obtained from the CITY. No advertising will be allowed to contain material which is immoral, lascivious, obscene, and indecent, in bad taste or violates community standards of decency. There shall be no alcoholic beverage advertising on any sign that is within one-quarter mile of a hospital or an elementary, middle or high school.

Section 5. Compensation. Permitting fees shall be paid as follows:

- a. The permitting fee for each of the Viewpoint Signs is \$75,000 per Viewpoint Sign, which is non-refundable except as otherwise provided in Section 5(c). \$37,500 shall be due within 10 days of the issuance of the building permit or the FDOT tag, whichever is later. The remaining \$37,500 shall be due within 10 days of the issuance of a certificate of use and occupancy.


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- b. For each Viewpoint Sign which is converted to an LED, the permitting fee for the LED conversion and/or construction shall be \$150,000, which is non-refundable except as otherwise provided in Section 5(c). \$75,000 shall be due within 10 days of the issuance of the building permit for the LED conversion. The remaining \$75,000 shall be due within 10 days of the issuance of a certificate of use and occupancy.
- c. Reduction in Permitting Fees. The permitting fees as set forth in this paragraph shall be reduced by 25% for every additional billboard sign permitted in the City which is not included in this Agreement, unless additional signs are permitted in the current City limits pursuant to an order by a court of competent jurisdiction. For example, if the City permits a total of 14 billboard signs in the City, the permitting fee for a Viewpoint Sign shall be reduced from \$75,000 to \$56,250. This provision shall apply retroactively to require the refund to Viewpoint of the amount required by the reduction in fees as set forth in this Section.
- d. Existing Billboard Signs. Section 6(c) shall not apply to the existing Clear Channel Outdoor, Inc. billboard sign located on the Palmetto Expressway North of 58th Street. Section 6(c) shall apply to all other billboard signs in the City. The parties agree that there are no other billboard signs in the current City limits.

Section 6. Approvals. The CITY shall process all necessary permits for the VIEWPOINT Signs in accordance with the amended sign ordinance as provided in Section 18 of this Agreement as follows:

- a. Viewpoint will submit an FDOT Form 575-010-04 (the "FDOT Form") to the City, which will be stamped on the date received. The City's signature on FDOT Form 575-010-04 shall constitute approval of the location of the sign, and no further approvals from the City shall be required for the location of the Viewpoint Sign. Viewpoint shall comply with all applicable building codes for construction and maintenance of the sign structures.
- b. All FDOT Forms shall be processed within 10 business days after submittal to the CITY for the approval of a location for a Viewpoint Sign,
- c. Together with the FDOT Form, VIEWPOINT shall provide the CITY with engineered drawings of the Viewpoint Sign structures, and a specific purpose survey of the property on which the sign is to be located, showing the proposed location for the sign structure.
- d. If the applicable building codes prohibit the location of a Viewpoint Sign after the FDOT form is approved by the CITY, Viewpoint shall have the right to submit a revised FDOT Form for another sign within 1000 feet of the original location, which revised FDOT Form will be deemed filed as of the date of the FDOT form for the original location.


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- e. Building permits for the Viewpoint Signs shall be processed within 30 days of the City's receipt of a complete application. If an FDOT tag has not been issued, but is required in accordance with Chapter 479 of the Florida Statutes, the building permit shall be issued with a condition that construction of the Viewpoint Sign shall not commence prior to issuance of the FDOT tag, provided the application meets all other of applicable building codes for construction and maintenance of the sign structures.
- f. The sign structures shall be subject to the City's building permitting and inspection process for structures within the CITY. The parties further agree that the CITY's ordinances shall be applied in a reasonable manner to allow erection and maintenance of the sign structures, with the understanding that the intent of this provision is to provide rules to govern the ongoing relationship between the parties and the ongoing maintenance and repair of the sign structures, but it is not the intent of this provision that the CITY's ordinances be used to prevent the erection or maintenance of the sign structures or to prevent the furtherance of the intent of this Agreement.

Section 7. Section 6 Annexation. The City has a pending application to annex all of Section 6, Township 53 South, Range 40 East (the "Section 6 Annexation Area"). If the application to annex the Section 6 Annexation Area is approved, and the City decides, after review of a traffic analysis and aesthetic study, to allow additional billboard signs in the Section 6 Annexation Area, the City shall either

- a. Reimburse Viewpoint in accordance with Section 5(c) of this Agreement, unless additional signs are permitted within the Section 6 Annexation Area pursuant to an order by a court of competent jurisdiction; OR
- b. Viewpoint shall be allowed to construct billboard signs in the Section 6 Annexation Area under the same terms and conditions of Sections 2 through 6 of this Agreement, except that the total number of signs in the Section 6 Annexation will be dictated by the results of the traffic analysis and aesthetic study.

Section 8. Pending Litigation. In order to minimize the effect of the potential construction of the 35 signs originally applied for by VIEWPOINT under the CITY's then existing sign ordinance, the CITY and VIEWPOINT agree that permits for the Viewpoint Signs described herein are the only permits that shall be issued to VIEWPOINT and that the applications previously submitted shall be permanently withdrawn, with prejudice, within ten (10) days of the execution of this Agreement. VIEWPOINT agrees that neither VIEWPOINT, nor its shareholders, directors, officers, or employees, will, either directly or indirectly, pursue any challenge to the CITY's sign ordinance.

Section 9. Term. The initial term of this Agreement shall commence upon execution of this Agreement by both parties and shall continue until the date that is 20 years after the date of the issuance of the first building permit for a Viewpoint Sign. The Viewpoint Signs shall be permitted for a period of 20 years, and all permits and approvals shall be automatically renewed for an additional 20 years, provided VIEWPOINT is not in default hereunder, unless VIEWPOINT notifies the CITY otherwise, in writing. Upon expiration of the term, or renewal


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term if applicable, of this Agreement, VIEWPOINT shall at its cost, remove the sign structures, unless agreed otherwise in writing between the CITY and VIEWPOINT.

Section 10. Dismissal of Lawsuits. Within five days after approval of this Agreement by Resolution of the City Council, or the execution of this Agreement by the City, whichever is later, VIEWPOINT shall dismiss any and all lawsuits VIEWPOINT has filed against the CITY, with prejudice. The Notice of Dismissal shall provide that neither party retains any claims against the other party except for any claim related to enforcement of this Agreement. At the time of dismissal of the lawsuits, VIEWPOINT shall pay the CITY's attorney's fees incurred in the defense of the lawsuit.

Section 11. Authority. This Agreement shall be binding upon the parties hereto, their successors and assigns. The parties agree that there are no third party beneficiaries of this Agreement. VIEWPOINT and the CITY each have full authority to enter into this agreement and implement this agreement for all applications, locations and signs referenced herein and have followed all necessary procedures for this Agreement to be legal and binding.

Section 12. Default. VIEWPOINT shall be in default if VIEWPOINT shall fail to pay any permitting fee or otherwise comply with the terms of this Agreement.

- a. Application. Except as otherwise specifically described herein, the terms of this Agreement shall be applied separately to each completed Viewpoint Sign as if there were twelve separate agreements, one for each sign structure. Any default hereunder shall only be as to the sign structure to which the default applies and shall not affect the other sign structures.
- b. Content Default. Notwithstanding the foregoing, Viewpoint shall have two (2) days to cure a default of Section 4 of this Agreement.
- c. Notice of Default. The City shall provide notice of default to Viewpoint, upon which Viewpoint shall have 30 days to cure the alleged default. Viewpoint shall be in compliance with this Agreement if the actions necessary to cure the default are initiated within thirty (30) days of the notice by the City. The cure period shall be extended by mutual agreement of the parties.
- d. Reservation of Remedies. After the third occurrence in any calendar year of a default as set forth in this paragraph, either party may pursue all available remedies, including, but not limited to, removal of the Viewpoint Signs or specific performance of this Agreement.
- e. Breach by City. Viewpoint shall provide notice of default to the CITY, upon which the CITY shall have 30 days to cure the alleged default. The CITY shall be in compliance with this Agreement if the actions necessary to cure the default are initiated within thirty (30) days of the notice by Viewpoint. The cure period shall be extended by mutual agreement of the parties. In the event of a breach by the CITY, and after Notice opportunity to cure as set forth in this paragraph, VIEWPOINT may pursue all available remedies, including, but not limited to, specific performance of this Agreement.


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Section 13. Settlement of Claim. VIEWPOINT understands that the only reason the CITY is allowing the construction of the Viewpoint Signs described herein is for the settlement of disputed claims under the former sign ordinance and that the CITY does not admit any liability in this Settlement Agreement.

Section 14. Most Favored Nation. In the event the City shall reach a settlement with any other billboard owner, Viewpoint may elect to be governed by all terms, conditions, covenants, and restrictions contained in that settlement agreement. If Viewpoint so elects to be governed, it shall give written notification of its election to the City Attorney or his/her designee within 60 days of Viewpoint's receipt of notification of such agreement. The election shall be effective as of the date of the election and shall not be retroactive.

Section 15. Public Policy. VIEWPOINT, its successors and assigns, and the CITY, will not take any legal action to contend that this Settlement Agreement is illegal, unconstitutional or void as against public policy and both parties agree to take all actions to insure the intent of this Agreement is carried out. VIEWPOINT, its successors and assigns, and the CITY further agree to waive any rights they have under any law, federal, state or local, to challenge the conditions contained in this Agreement.

Section 16. Public Service Announcements. Viewpoint will, if space is available on LEDs, provide public, educational, and government materials display to the City within the limits of the City of Doral. Viewpoint shall be entitled to remove the City's copy as locations are sold to full-paying advertisers.

Section 17. Assignment of Agreement. The rights and obligations of VIEWPOINT hereunder, and of any successor in interest, are fully assignable as provided herein, and the assignee of all such rights and obligations shall become completely responsible for the fulfillment thereof. VIEWPOINT, or such successor in interest, shall be released from any further liability or obligation hereunder immediately upon any such assignment.

- a. Any assignment of the rights and obligations of this Agreement shall be in writing, with a copy provided to the CITY.
- b. No assignment shall be valid if VIEWPOINT, or the then current successor in interest, is in default of this Agreement at the time of such assignment. VIEWPOINT may only assign the rights and obligations hereunder to an assignee that is able to fulfill VIEWPOINT's rights and obligations herein.
- c. Any such assignment shall be subject to the approval of the CITY, which approval may not be unreasonably withheld, conditioned, or delayed. Such approval may be granted by the City Council and must be granted or withheld, in writing, within 60 days of the written request for approval of the assignment. If approval of the assignment is withheld, the CITY shall provide specific information in the written denial describing the basis for the denial. The CITY hereby agrees that an assignment to any of the following shall not require


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approval by the CITY and shall be valid without written approval: CBS Outdoor, Inc. its successors and wholly-owned subsidiaries; Carter Outdoor, its successors and wholly-owned subsidiaries, and ClearChannel Outdoor, Inc., its successors and wholly-owned subsidiaries. A copy of the documents assigning the rights and assuming the obligations under this Agreement shall be provided within 10 days of the execution of the documents.

Section 18. Relocation of Signs. The parties acknowledge that it is possible that VIEWPOINT may not be able to obtain all necessary approvals or permits for location(s) originally chosen by VIEWPOINT for placement of signs or that, after a sign is erected, the sign may need to be relocated because of blockage from buildings or trees, other construction issues, or causes or circumstances beyond VIEWPOINT's control. In such an event, subject to meeting applicable regulations that are not in conflict with the terms of this Agreement, VIEWPOINT shall be entitled to obtain a permit for a different location within the area bordering a limited access highway as described in Section 2 of this Agreement and to locate the sign, if not already erected, or relocate a sign that has been already erected, on such different location. The alternative location shall be a substitute for, and not in addition to, the previous location and must comply with all applicable FDOT permitting requirements, including all spacing requirements and all provisions of this Agreement.

Section 19. Force Majeure. Failure by VIEWPOINT to perform any act required of VIEWPOINT hereunder on a timely basis shall not be deemed a breach or failure to perform by VIEWPOINT, if such failure is the direct result of, or due to, revolutions, insurrections, riots, wars, acts of enemies or of terrorism, acts of God, floods, national emergency, strikes, shortage or curtailment of material, labor, transportation, or utility services, or of any labor or production difficulty, state or federal recession or depression, or any cause beyond VIEWPOINT's control or without VIEWPOINT's fault or negligence (hereinafter referred to as "force majeure"). Any time for performance of any act by VIEWPOINT shall be extended by the duration of any force majeure. The permitting fees for any sign structure shall not be due for any month in which there is no advertiser on the sign structure due to force majeure. The term of this Agreement shall be extended for the number of months during which there is no advertiser on the sign structure due to force majeure.

Section 20. Sign Ordinance Redraft. The CITY will act in good faith to draft, consider, and adopt a new sign ordinance by January, 2010. Although VIEWPOINT will have no direct role in this process, the CITY agrees to consider VIEWPOINT's comments and suggestions in arriving at the final text. VIEWPOINT agrees to compensate its attorneys for assisting the CITY to redraft its sign ordinance to the extent such assistance is requested by the CITY. Such assistance shall not exceed twenty (20) hours of attorney billing. VIEWPOINT also hereby waives any and all objection that it might have had to any conflict of interest presented by this work. If the requirements for locating and permitting billboard signs set forth in the amended ordinance are less restrictive than this Agreement, the terms of the amended ordinance shall govern.

Section 21. Entire Agreement. This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof. It is the final expression of agreement between


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the parties, thus, neither party shall be entitled to rely upon any conflicting oral representations, assurances, claims or disclaimers, made either prior to or simultaneous with the execution of this Agreement.

Section 22. Attorney's Fees and Costs. Each party shall bear its own attorney's fees and costs in completing the terms of this Agreement. In the event of a dispute hereunder, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees.

Section 23. Indemnification. VIEWPOINT shall, at its expense, defend, indemnify, and hold harmless the CITY from any cost, claim, action, liability or damage, including attorney's fees, of any kind arising from any challenge by any third party to the terms of this Agreement or resulting from the signs. VIEWPOINT agrees to defend any such action and the CITY agrees to cooperate with VIEWPOINT in such defense. VIEWPOINT agrees to add the CITY as an additional insured on any insurance obtained with regard to the sign structures.

Section 24. Notice. All notices, demands, and any other communication provided for herein shall be given in writing and shall be personally delivered, sent by United States Certified Mail, or nationally recognized overnight mail carrier, return (or delivery) receipt requested, postage prepaid and sent to the address provided in the introductory paragraph of this Agreement. Provided, however, that any party may, from time to time, give notice to the other parties of some other address to which notices to such party shall be sent, in which event notices to such party shall be sent to such address. Notice shall be deemed to be effectively given hereunder when personally delivered with certificate or affidavit of service or with proof of delivery.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date written above.

Witness

VIEWPOINT OUTDOOR, LLC.

Elizabeth Bernardo

Elizabeth Bernardo
(Please Print or Type Name)

By: [Signature]

Santiago D. Echemendia

Its: Member

[Signature]
Maryluisa Resendiz

(Please Print or Type Name)

CITY OF DORAL

By: [Signature]
Yvonne Soler, City Manager

[Signature]
CITY

[Signature]
VIEWPOINT

Attest:

By: Barbara Herrera
Barbara Herrera, City Clerk

Approved as to Form and Legal Sufficiency:

By: Jimmy L. Morales
Jimmy L. Morales, City Attorney