

ORDINANCE NO. 118

AN ORDINANCE GRANTING A FRANCHISE TO AMERICAN CABLEVISION OF KANSAS CITY, INC., ITS SUCCESSORS, TRANSFEREES, AND ASSIGNS, FOR A TERM OF FIFTEEN YEARS, THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY OF WESTWOOD HILLS, KANSAS, AND TO USE AND OCCUPY THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES OF SAID CITY FOR SUCH PURPOSES, AND PROVIDING FOR PAYMENT TO SAID CITY.

WHEREAS, an application has been received by the City of Westwood Hills, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas, from a corporation which desires to provide community antenna television service to subscribers residing within the corporate limits of said City; and

WHEREAS, the Governing Body of the City of Westwood Hills, Kansas, finds such service to be desirable and that the same will contribute to the public welfare of the residents of said City; and

WHEREAS, such applicant requires and desires to use the public streets, alleys, easements and other public ways within said City for the location of cables, wires, poles, and other appurtenances necessary to the operation of such a system; and

WHEREAS, the Governing Body of said City finds that American Cablevision of Kansas City, Inc., is willing to accept the grant of the franchise herein awarded and conferred to said party, and that said party can provide to the residents of said City a useful and desirable service for the benefit of the public welfare of said residents; and

WHEREAS, the Federal Communications Commission has adopted Franchise Standards applicable to authorizations granted to Community Antenna Television Systems by municipalities, which standards are found at 47 C.F.R. 76.31; and

WHEREAS, the legal, character, financial, technical and other qualifications of American Cablevision of Kansas City, Inc., and the adequacy and feasibility of its construction arrangements have been approved by the Governing Body of said City as a part of a full public proceeding affording due process, all consistent with 47 C.F.R. 76.31 (a)(1);

*Being Res. City Atty of Westwood*

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF Westwood Hills, KANSAS:

Section 1.            SHORT TITLE

This ordinance shall be known as and may herein and hereafter be cited as "American Cablevision of Kansas City, Inc. CATV Franchise Ordinance".

Section 2.            DEFINITIONS

The following terms, phrases, words and their derivations shall have for the purposes of this ordinance the meanings herein stated; provided that when not inconsistent with the context, words used in the present tense shall include the future, and words in the plural shall include the singular number, and words in the singular number shall include the plural number; provided further that the word "shall" is to be construed as mandatory and not simply directive:

- A. "City" shall mean that the City of Westwood Hills, Kansas, a municipal corporation, or its successors, and shall include when appropriate to the use of the term in context, the territorial boundaries of the City as now constituted or as shall hereafter exist;
- B. "Governing Body" shall mean the present legislative body of the City of Westwood Hills, Kansas, or any successor to the legislative power of said present Governing Body;
- C. "Franchise" shall mean and include the right to conduct and operate a community antenna television system within the City subject to the terms and conditions hereinafter stated in the above captioned ordinance;
- D. "Franchisee" shall mean American Cablevision of Kansas City, Inc., or its successors, transferees or assigns which is granted the franchise, the terms and conditions of which are provided herein;
- E. "Street" shall mean any public street, roadway, highway, alley, or other public right-of-way now or hereafter subject to the jurisdiction and regulation of the City of Westwood Hills, Kansas as provided by the laws of the State of Kansas and any subsequent amendments thereof;
- F. "Community Antenna Television System" hereinafter referred to as "CATV system" shall mean an electronic system with properties and facilities so constructed as to be used for the interception and receipt of electromagnetic radiation, and the transmission and distribution of same to subscribers by means of cables and other related facilities;
- G. "Subscriber" shall mean any person who receives from the franchisee herein named the services of said franchisee's CATV system or any other services provided by the franchisee;
- H. "Person" shall mean any individual or association of individuals, or any firm, corporation or other business organization;

- I. "Gross Annual Receipts" shall mean and include any and all compensation and other legal consideration of any form whatsoever and any contributing grant or subsidy received directly or indirectly by the franchisee herein named from subscribers or users of said franchisee's services given in payment for said services received by said persons within the City; provided that said Gross Annual Receipts shall include any other revenues attributable to CATV and related operations in the City by said franchisee from sources not otherwise enumerated herein; provided further that the Gross Annual Receipts of said franchisee shall not include any taxes on services furnished by said franchisee which are imposed directly upon any subscriber by the United States of America, or any state, city, or other political subdivision of the State of Kansas and collected by said franchisee on behalf of and for the benefit of any such government or political subdivision.

In the event the franchisee shall receive any revenue from any advertisement disseminated to subscribers both within and without the City, Gross Annual Receipts shall, with respect to such advertisement, include an amount derived by multiplying such revenue by a fraction, the numerator of which is the number of subscribers in the City reached by such advertisement and the denominator of which is the total number of subscribers reached by such advertisement;

- J. "Channel" means a bank of frequencies in the electromagnetic spectrum which is capable of carrying either one audio-video television signal and a number of non-video signals, or several hundred non-video signals.

### Section 3. GRANT OF NONEXCLUSIVE FRANCHISE.

The City of Westwood Hills, Kansas, hereby grants unto the franchisee herein named a nonexclusive franchise to construct, erect, operate and maintain a CATV system within the City, and in so doing to use the streets of the City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining, and retaining in, on, under, upon, or across any such streets, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to a CATV system, and in addition, so to use, operate and provide for all or part of such facilities by service offerings obtained from any franchised or operating utility company providing service within the City.

The authority hereby granted to conduct a CATV system within the City and to use and to occupy the streets thereof is not and shall not be deemed an exclusive right or permission, and the City expressly reserves the right to grant other nonexclusive franchises to persons, firms, corporations or other business organizations, to construct, operate, and maintain other CATV systems within the City; but no such additional franchises shall in any way affect the rights or obligations of the franchisee herein named and set forth in this ordinance.

### Section 4. PROGRAMMING SERVICES

Franchisee shall transmit and distribute to its subscribers such electromagnetic radiation as are now, and may hereafter be, authorized by the Federal Communications Commission or any other administrative agency of the United States, the several states, or political subdivisions thereof having jurisdiction to regulate such activity.

Initially, franchisee shall provide those programming services listed in the attached Exhibit A and such other programming services as may be herein required. Except as herein provided, franchisee shall have the right to make such changes in the programming services provided as may be reasonably necessary or desirable; notice of all such changes in programming services shall be filed with the City Clerk of the City promptly. Programming services offered on the Westwood Hills CATV system shall not be materially less than the services offered on the franchisee's Kansas City, Missouri CATV system, without good reason.

Upon receipt of the requisite authority from the Federal Communications Commission, franchisee shall also provide the signals for the commercial stations in Topeka, Kansas, channels 13 and 27. This programming service shall not be terminated without the approval of the Governing Body so long as franchisee has the authority to carry said signals.

Franchisee shall, at its sole and exclusive cost, interconnect its Westwood Hills CATV system with the CATV system now operated by Telecable of Overland Park, Inc. in Johnson County, Kansas ("Telecable"). By means of such interconnect, franchisee shall provide on the Westwood Hills CATV system all programming originated locally by Telecable which involves or relates to governmental or community affairs, matters of public interest, educational matters and programming, the State of Kansas or Johnson County, Kansas. Franchisee's obligations to interconnect with Telecable shall be subject to obtaining Telecable's consent; franchisee shall use its best efforts to obtain such consent.

Franchisee has included in the list of programming services which will be initially provided, as set forth on the attached Exhibit A, several channels which are available for public and government access. Franchisee may change the particular channels and the number of channels that are available for government access and one channel for public access, unless the Governing Body consents to the termination of such service.

#### Section 5.           TERM OF FRANCHISE

The term of the franchise herein granted shall commence on the first day of the first month next following the date upon which the franchisee herein named accepts and agrees to the terms and conditions set forth in this franchise ordinance and shall continue for a term of fifteen (15) years from said date, as provided herein. At the end of said fifteen (15) year term the franchise may be renewed for an additional five (5) year term in the following manner: The franchisee must request such renewal by application in writing filed with the City Clerk during the last year of said fifteen (15) year term but no later than ninety (90) days prior to the end of said term. Such application shall be approved unless the Governing Body determines within sixty (60) days following receipt thereof that the performance of franchisee has not been satisfactory.

#### Section 6.           FRANCHISE PAYMENTS

The franchisee herein named shall pay to the City during the term of said franchise a sum equal to three (3) percent on all Gross Annual Receipts; provided that payment of said sum will be made semiannually, with a payment being due on October 1 with respect to all receipts for the first six calendar months and a payment being due on April 1 with respect to all receipts during the last six calendar months. Late payments shall bear interest at the rate of ten (10) percent per annum until paid.

Section 7.

AUDIT AND REPORTING

On or before April 1 of each year during the term of this franchise, the franchisee named herein shall file in the office of the City Clerk of the City a financial statement prepared by a Certified Public Accountant or person otherwise satisfactory to the City, showing the gross annual receipts of said franchisee during the preceeding calendar year, said receipts to be determined as defined herein; provided that within ninety (90) days following termination of said franchise for any reason whatsoever the franchisee shall submit to the office of the City Clerk of the City a financial statement of said franchisee as hereinbefore required, showing the gross receipts of said franchisee for the period that has elapsed since the end of the period covered by the last such financial statement; provided further that within ninety (90) days following the termination or forfeiture of said franchise, said franchisee will pay to the City a sum equal to the percentage of said gross annual receipts as have accrued to said franchisee for the aforementioned period; provided further that the City reserves the right to independently audit said franchisee's gross annual receipts from which its franchise payments are computed, and any discrepancy between said audit and that filed by the franchise with the City Clerk of the City which results in the City's receiving a lesser sum than that which is due and owing from said franchisee will be determined and paid forthwith to the City; provided further that the City's acceptance of any payment determined as hereinbefore provided to be deficient shall not be construed as a release of liability from the City or an accord and satisfaction of any claim the City may have for additional sums owed by said franchisee as hereinbefore provided.

Section 8.

SUBSCRIBER'S RATE SCHEDULE

The rates which franchisee will initially charge for its services shall be as set forth in the attached Exhibit B. These rates shall remain in effect for a period of one (1) year from the date of first subscriber service to Westwood Hills. Thereafter, franchisee may make such rate changes as are reasonably necessary and desirable. All such changes in rates shall be filed with the City Clerk ten (10) days prior to the effective date of such changes.

Section 9.

FRANCHISEE'S OPERATING REGULATIONS

Franchisee shall commence operation of its CATV system within the City in accordance with the same rules and regulations as in effect in its Kansas City, Missouri CATV system, a copy of which shall be filed with the City Clerk not less than thirty (30) days prior to the date on which franchisee commences operation of its CATV system in the City. If reasonably necessary, franchisee may establish different rules and regulations regarding operations in the City. In that event, franchisee shall file in the office of the City Clerk the proposed additional rules and regulations for operations within the City for approval by the Governing Body of the City; provided that if the Governing Body has not filed with said franchisee its written objection to any or all of the said proposed rules and regulations within thirty (30) days after the same shall have been filed, said proposed rules and regulations shall be deemed approved; provided further that said franchisee may thereafter modify or change such rules and regulations by filing such changes for approval as hereinbefore provided.

Section 10.

NOTICE TO PARTIES

Whenever, under the terms of this franchise ordinance, either party hereto shall be required or permitted to give notice to the other, such notice shall be in writing, and if said notice is to be served upon the City, it shall be delivered either by first class United States mail addressed to the office of the City Clerk of said City or by personal delivery of the same to said person or his duly authorized agent for receiving the same, and if said notice is to be served upon the franchisee, it shall be delivered either by first-class United States mail addressed to an officer or the resident agent of said franchisee at the registered office of the franchisee in the State of Kansas, or by personally delivering the same to such person or to such other person as said franchisee shall from time to time direct. Notices delivered by United States mail addressed as set forth herein shall be deemed given on the date deposited in the United States mail.

Section 11.                    FILINGS WITH REGULATORY AGENCIES

Franchisee shall file with the Federal Communications Commission a registration and such applications and supporting documents as shall be necessary to obtain the requisite authority to enable franchisee to construct and operate its CATV system in Westwood Hills, as provided herein, and to enable franchisee to provide on such CATV system the signals of the commercial stations in Topeka, Kansas, channels 13 and 27. Franchisee shall use its best efforts to obtain the requisite authority to construct and operate its CATV system in Westwood Hills and to provide on said CATV system the signals of channels 13 and 27.

Franchisee shall file in the office of the City Clerk of the City, copies of any and all petitions, applications and communications submitted or filed by the franchisee with the Federal Communications Commission and with any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting the operation of a community antenna television system so far as the same affects or will affect franchisee's service or operation within the City.

Section 12.                    FRANCHISEE'S DUTY TO COMPLY WITH STATE AND FEDERAL LAW

Notwithstanding any other provisions of this franchise ordinance to the contrary, the franchisee shall at all times comply with all laws and regulations of the United States and the several states and any political subdivision thereof, and any administrative agency thereof, having jurisdiction to regulate community antenna television systems. Franchisee's failure to comply with any law or regulation governing the operation of its CATV system in the City may result in a forfeiture of the privileges conferred by this franchise ordinance when so determined by the Governing Body of said City as adopted by ordinance at one of its regular meetings.

Section 13.                    LOCATION OF FRANCHISEE'S PROPERTIES IN THE PUBLIC WAY

The franchisee in the construction of its facilities to provide service to its subscribers shall use the existing poles and other properties of franchised public utility companies operating within the City, and said franchisee shall not construct, erect, or maintain any supporting poles or other properties within the public streets of the City for the operation of its CATV system except upon the express consent and permission of the City given in writing by the Mayor of the City; provided that said franchisee shall not be prohibited from relocating its facilities if the poles and other properties on or upon which said facilities attach and are affixed are relocated

by the owners of said properties, nor shall the franchisee be prohibited from constructing, operating, and maintaining its facilities upon other poles and properties of said franchised public utility companies as may hereinafter be constructed; provided further that wherever within the City all other public utilities facilities are located underground, it shall be the obligation of said franchisee to construct, operate and maintain its properties underground, provided further that if existing aerial facilities of all franchised public utility companies are relocated underground, said franchisee shall forthwith relocate its properties, formerly attached thereto, underground in such places; however, the City reserves the right to permit or require said franchisee to maintain its existing facilities above ground in said locations whenever its Mayor shall so direct the same in writing to said franchisee.

Section 14. RELOCATION OF FRANCHISEE'S PROPERTY

Whenever the City or a franchised public utility company operating within the City shall request of the franchisee the relocation or reinstallation of any of its properties along and within any of the streets of the City, said franchisee shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet said request and the cost of such relocation, removal, or reinstallation of said properties shall be the exclusive obligation of said franchisee; and upon request of any person holding a validly issued building or moving permit of the City, said request having been given in writing to said franchisee not less than forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, said franchisee shall temporarily raise, lower, or relocate its wires or other property as may be required for said person to exercise rights and privileges of its permit, and said franchisee may require said person to make payment in advance for any expenses incurred by said franchisee pursuant to said person's request.

Section 15. FRANCHISEE'S DUTY TO REMOVE ITS PROPERTY FROM CITY

Upon the occurrence of any of the following events:

- A. franchisee ceases to use any part or all of its CATV system in the City for a continuous period of twelve (12) months;
- B. franchisee fails to construct its CATV system in the City, as herein provided; or
- C. the franchise herein granted to franchisee is revoked as herein provided;

the City may by written notice require franchisee to remove within ninety (90) days part or all of the property and equipment used by franchisee in the operation of the CATV system in the City; provided, however, that franchisee shall not be required to remove property and equipment located underground where removal of such property and equipment is not practicable and the continued presence of such property and equipment does not adversely affect the City or its residents. The Mayor may declare abandoned any property and equipment of franchisee which has not been removed from the City within the time period provided above.

Section 16. PROPERTY ABANDONED BY THE FRANCHISEE

Any property declared by the Mayor to be abandoned by said franchisee as hereinabove or hereinafter provided shall become the property of the City and said franchisee agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to the City; provided that any notice given said franchisee by the Mayor of the City, as provided in Section 15 hereof, shall be deemed notice to any other persons claiming interest in said property of the franchisee, and said persons shall be subject to all the provisions hereinbefore provided in Sections 15 and 16 hereof. All costs and expenses incurred by the City in removing such abandoned property within six (6) months after the date said property is declared abandoned shall be paid by franchisee.

Section 17.                   STANDARDS FOR CONSTRUCTION OF FRANCHISEE'S FACILITIES

A.   Construction of Facilities:

1.       The construction of the properties and facilities of said franchisee's CATV system shall conform, at least, to the standards of the National Electrical Code of the National Board of Fire Underwriters for the latest edition thereof at the time any such properties and facilities shall be constructed or reconstructed; provided further that said construction shall be in conformance with all laws and regulations of the United States of America and the several states and any political subdivisions thereof, or any administrative agency thereof, having jurisdiction to regulate the construction of said CATV system.
2.       All transmissions and distribution structures, lines, and equipment erected by the franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, easements and swales, sidewalks, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, easements and swales, sidewalks, alleys or other public ways and places.
3.       The franchisee shall have the authority to trim trees which are located upon and overhang the public streets and other public ways of said City so as to prevent the branches of such trees from coming into contact with the franchisee's properties; provided that the City may require, through its Mayor, that such work be done by the City or other persons whom it shall be designate and the expense of such work shall be assessed and charged to the franchisee.
4.       The franchisee shall not construct or reconstruct any of its CATV system located upon, over, under, or within the public streets or public ways of the City without first having submitted to the Mayor of the                   City a written description of its planned improvement and having received a permit for such improvement from the City Clerk; such approval shall not be unreasonably withheld.
5.       Prior to installation, franchisee shall file with the City Clerk of the city true and accurate maps or plats showing the location at



which franchisee proposes to install property and equipment within the City. These maps and plats shall be kept continuously up-to-date.

Section 18.

STANDARDS FOR OPERATING AND MAINTAINING FRANCHISEE'S CATV SYSTEM

A. Operational Standards

Franchisee's CATV system shall be constructed, operated, and maintained in accordance with the highest accepted standards of the Community Antenna Television Industry to insure that the subscriber receives the highest quality of service. The following enumerated criteria may be considered in determining franchisee's satisfactory compliance with the provisions of this Section: (1) the system shall be constructed in accordance with the same technical specifications as apply in the franchisee's Kansas City, Missouri, franchise; and (2) the franchisee shall at all times comply with all applicable technical standards of the Federal Communications Commission regarding construction and operation of CATV systems.

B. Maintenance of System

Consistent with 47 C.F.R. 76.31(a)(5), the franchisee will limit failures to a minimum by locating and correcting malfunctions promptly but in no event longer than 24 hours after notice has been given except said time shall be extended during such time as performance of this obligation is prevented by an act of God or the same is otherwise made impossible because of circumstances over which the franchise has no control; provided further that the franchisee will maintain and provide to its subscribers a convenient office in Kansas City, Missouri which shall be available to said subscribers during normal business hours of every day, Monday through Friday inclusive, for the purpose of receiving complaints or requests for repairs, adjustments, or other service caused by some failure or malfunction of the system, and that franchisee shall provide its subscribers with facilities for receiving complaints and requests for service during those times when said office is not open (24-hours per day, seven days per week).

Section 19.

CONSTRUCTION OF CATV SYSTEM

Franchisee shall commence construction of its CATV system in Westwood Hills within six (6) months after it has first provided cable television service to subscribers in Kansas City, Missouri. Franchisee shall activate the Westwood Hills CATV system and provide initial cable television service to subscribers in Westwood Hills within twelve (12) months after it has first provided cable television service to subscribers in Kansas City, Missouri. Franchisee shall complete construction of the Westwood Hills CATV system within six (6) months after it has first provided cable television service to subscribers in Westwood Hills, Kansas.

The construction of the CATV system and the activation thereof, shall not be deemed to be in default where delays are not caused by the franchisee and are due to war, insurrection, civil disturbance, strikes, lock-outs, riots, floods, governmental restrictions and priorities, embargoes, litigations, tornados, unusually severe weather or acts or failure to act of the City or any other governmental agency or

entity, or to other causes beyond the control of the franchisee. The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes only with the written consent of the City, which consent shall not be unreasonably withheld.

Section 20. RIGHTS RESERVED TO THE CITY

Without limitation upon the rights which the City might otherwise have, the City does hereby expressly reserve the following rights, powers and authorities:

- A. The right to exercise the governmental powers, now or hereafter, vested in, or granted to, said City;
- B. The right to grant additional CATV franchises within said City as provided in Section 3 hereof;
- C. The right of the Governing Body of the City to determine questions of fact arising from the interpretation and enforcement of the terms, condition, and provisions of this franchise ordinance, and that such determinations shall be binding upon the parties hereto.

Section 21. CITY'S FAILURE TO ENFORCE THE TERMS AND CONDITIONS OF THIS FRANCHISE

The City's failure to enforce any remedy for noncompliance by the franchisee of the terms and conditions of this franchise ordinance shall not constitute a waiver of the City's rights hereunder, and said franchisee shall continue to perform its obligations as herein provided.

Section 22. CONDITIONS FOR REVOCATION OF FRANCHISE

In addition to all other rights and powers herein reserved or otherwise enjoyed by the City, the City reserves as an additional and separate remedy, the right to revoke the franchise herein granted and all rights and privileges of said franchisee conferred hereunder upon the occurrence of any of the following events:

- A. That franchisee fails to remedy within thirty (30) days following the date upon which written notice is given of said franchisee's failure to comply with the provisions of this franchise ordinance, whether the same be committed by act or omission, the violation set forth in said notice; or
- B. That any provision of this franchise ordinance is adjudged by a court of competent jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body of the City to constitute such a material consideration for the granting of said franchise as to cause the same to become null and void; or
- C. That franchisee is adjudged as bankrupt, or becomes insolvent, or suffers a transfer of its properties pursuant to an action of its creditors upon an instrument or judicial declaration securing said creditor's interest in said properties, and thereafter the same be not redeemed by said franchisee within thirty (30) days from the date of said transfer, or said franchisee

is otherwise unable or unwilling to pay its debts and obligations as the same accrue; or

- D. That franchisee commits an act of fraud or deceit against the City in obtaining the grant of the franchise herein conferred, or upon being granted said franchise, franchisee commits such an act against said City; or
- E. That franchisee transfers or attempts to transfer any of its properties for the purpose of preventing the City from purchasing or acquiring the same as the City may herein be entitled so to do; or
- F. That the City condemns by the lawful exercise of its power of eminent domain all of the properties of said franchisee located within the City; or
- G. That franchisee challenges or adjudicated, in a court of competent jurisdiction, any claim against the City, alleging that any provision, term, or condition of the franchise herein granted is unreasonable, arbitrary, or void, or that the City did not have the power or authority to make such provision, term, or condition in enacting this franchise ordinance; or
- H. That franchisee gives to any person, firm, corporation or other business association, preference or advantage over some other person in assessing and levying its rates and charges, or in serving its subscribers, or in enforcing its rules and regulations, or in any other respect;

provided that, no revocation except for the reason of condemnation, as provided in subparagraph "F" hereof, shall be effective unless, or until, the Governing Body of the City shall find, at a regular or special meeting that there has occurred one of the events described above under which the City is authorized to revoke the franchise granted by this ordinance to franchisee; provided further that, the revocation of the franchise shall become effective only upon the enactment of an ordinance by the Governing Body of the City adopted not sooner than a date thirty (30) days following the date on which written notice is given to the franchisee of any alleged act or omission for which said franchise may be revoked, as herein provided.

#### Section 23.      SERVICE TO SCHOOLS AND OTHER PUBLIC FACILITIES

Upon the request of any private, parochial or public elementary or secondary school or any college or university located in Westwood Hills, Kansas, said franchisee shall furnish a single service drop to such institution free of installation charge. Upon request of the Governing Body, franchisee shall furnish a service drop to City Hall, free of installation charge.

#### Section 24.      EMERGENCY USE OF FRANCHISEE'S SYSTEM

The franchisee intends to provide an emergency alert system on its Kansas City, Missouri, CATV system. The franchisee shall cooperate with officials of the City and of Kansas City, Missouri, to establish a joint plan under which the emergency alert system will be made available to authorized officials of both cities.

#### Section 25.      FRANCHISEE'S DUTY TO SECURE LIABILITY INSURANCE

Franchisee shall obtain and maintain in full force and effect throughout the term of this franchise, at franchisee's sole and exclusive expense, a comprehensive general liability insurance policy insuring franchisee, the City, and the City's elective and appointive officials (including the Mayor and members of the governing body), employees and agents and members of boards and commissions, from and against all claims by any person whatsoever for loss or damage from personal injury, death, or property damage caused or alleged to have been caused by the operation of franchisee under the franchise herein granted for an amount not less than \$500,000 for personal injury or death to any one person and \$1,000,000 for personal injury or death of two or more persons in any one occurrence and \$300,000 for damages to property for any one occurrence. Said insurance policy shall not be cancellable until the City has had at least fifteen (15) days prior written notice of such cancellation. Franchisee shall file with the City Clerk of the City, concurrently with its acceptance of the franchise herein granted, evidence that franchisee has obtained such liability insurance policy.

Section 26. FRANCHISEE'S PERFORMANCE BOND

The franchisee shall concurrently with the filing of its acceptance of this franchise as provided herein and at all times thereafter maintain in full force and effect during the term of this franchise, at franchisee's sole and exclusive expense, a corporate surety bond in a company and in a form approved by the the City Attorney of the City, in an amount not less than \$25,000 and conditioned upon franchisee's faithful performance of the provisions, terms, and conditions of the franchise herein granted and conferred by this franchise ordinance. The amount of this bond may be reduced to \$10,000 after franchisee has completed construction of the Westwood Hills CATV system. In the event franchisee shall fail to meet any of its obligations to construct the Westwood Hills CATV system within the time periods provided in Section 19 for commencement of construction, initial service and completion of construction, or in the event the City shall exercise its right to revoke the franchise of the franchisee as provided herein other than by reason of the City's acquiring the franchisee's properties by condemnation, then, and in that event, the City shall be entitled to recover under the terms of said bond the full amount thereof. Such recovery is intended as liquidated damages, it being recognized that actual damages resulting from the occurrence of such events will be impossible to determine.

Section 27. FRANCHISEE IS WITHOUT REMEDY AGAINST THE CITY

The franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this franchise ordinance, or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant all, or any part, of the franchise herein granted; provided that said franchisee expressly acknowledges that it accepted the franchise herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of the City to grant the franchise herein conferred upon said franchisee; provided further that the franchisee acknowledges by its acceptance of the franchise that it has not been induced to enter into this franchise upon any understanding, or promise, whether given verbally or in writing, by or on behalf of the City, or by any other person concerning any term or condition of this franchise not expressed herein; provided further that the franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, term, and conditions hereof and is willing to and does accept all of the

risk attendant to said provisions, terms and conditions hereof, and that said franchisee agrees that in the event of any ambiguity therein, or in the event there be any dispute between the parties hereto regarding the meaning thereof, the same shall be construed strictly against said franchisee and in favor of the City.

Section 28.                    LIMITATION UPON FRANCHISEE'S RIGHT TO TRANSFER THIS    FRANCHISE

The franchise herein granted to said franchisee shall be deemed a privilege to be held in personal trust by said franchisee and it shall not in any event be sold, transferred, leased, assigned, or otherwise disposed of, in whole or in part, either by forced or voluntary sale, merger, or consolidation without the prior consent of the Governing Body of the City as expressed by resolution adopted at one of its regular or special meetings and then only upon such conditions as may therein be set forth; provided that said franchisee shall not have any rights arising from the franchise herein granted and conferred which may be transferred or disposed of voluntarily or involuntarily without the consent of the Governing Body of the City as hereinbefore provided; provided further that any transfer, assignment, or other distribution of any rights arising out of and conferred by this franchise shall be made only by an instrument in writing, a duly executed copy of which shall be filed in the office of the City Clerk of the City within five (5) days after such transfer or assignment shall have been executed or effected, and shall set forth the consent thereto given by the Governing Body of the City; provided further that notwithstanding the provisions hereinabove set forth, the franchisee shall have the right at any time to mortgage the whole of its system, or any part thereof, provided that any such mortgage, security interest or any other encumbrance upon said franchisee's properties, shall be upon the express condition that the rights of any such mortgagee, creditor or other secured party, shall be secondary and subservient to the rights of the City as set forth in this franchise ordinance, including the right of the City to purchase all, or a part of, said franchisee's CATV system, and any division of said system by foreclosure or other legal process pursuant to the action of any mortgagee, creditor or other secured party of the franchisee, shall not affect the rights of the City to purchase the whole of said system.

Section 29.                    FRANCHISEE'S DUTY TO INDEMNIFY THE CITY

At the time the franchisee files its acceptance hereof, it shall furnish to the City an indemnity agreement executed by the franchisee and its parent corporation, American Television and Communications Corporation, indemnifying the City against any and all claims, demands, actions, suits and proceedings by other persons against any and all liability to such other persons by reason of liability for damages arising out of any action or omission by said franchisee, including without limitation a failure to obtain consent from the owner, authorized distributors and licensees of programs transmitted or distributed by the franchisee under its CATV system and against any loss, cost, expense or damages resulting therefrom and including reasonable attorney's fees incurred in the defense of any such action.

Section 30.                    SEVERABILITY

Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be thereby affected, subject to the City's right to revoke this franchise as provided herein.

Section 31.

TIME IS OF THE ESSENCE

Whenever this franchise shall set forth any time for any action to be performed by or on behalf of the franchisee, such time shall be deemed of the essence and any failure of the franchisee to perform within the time so specified shall be sufficient grounds for the City to revoke the franchise herein granted.

Section 32.

ACCEPTANCE

This ordinance and its terms and provisions shall be accepted by written instrument ("Acceptance") executed, acknowledged and filed by franchisee in the office of the City Clerk. In such Acceptance, franchisee shall: (1) state and express franchisee's acceptance of this ordinance and its terms, conditions and provisions; (2) agree to abide by, observe and perform all of the terms, conditions and provisions of this ordinance; and (3) declare that the statements and recitals in this ordinance are correct and that franchisee has made and does make the agreements, statements and admissions recited in this ordinance. Such Acceptance shall be filed in the office of the City Clerk of the City within thirty (30) days after this ordinance takes effect, unless the Governing Body, by resolution, extends the time for filing such Acceptance. If the time for filing such Acceptance is so extended, such Acceptance shall be filed within the period as extended. Franchisee's failure to timely file such Acceptance shall cause the City's grant of franchise contained herein to be deemed revoked and without further force and effect, whereupon this ordinance shall be deemed void and of no further force and effect.

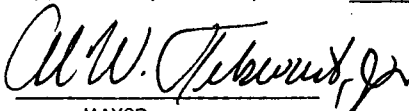
Section 33.

TAKE EFFECT

This ordinance shall be published in the official City newspaper once each week for three (3) consecutive weeks and shall take effect and be in force sixty (60) days after the date of the last such publication.

Passed by the City Council the 7 day of April, 1980.

Approved by the Mayor the 7 day of April, 1980.

  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

EXHIBIT B

AMERICAN CABLEVISION OF KANSAS CITY, INC.

RATES

	<u>Installation</u>	<u>Monthly</u>
Basic Cable TV Service, first outlet	\$20.00*	\$7.50
Basic Cable TV Service, Extra Outlet	10.00**	2.50
FM Service, without cable outlet	20.00*	7.50
FM Service, with cable outlet	10.00**	2.50
Antenna Switch	At Cost	
Reconnect	10.00	
Relocate	10.00	
Collection Charge	5.00	
Pay TV, Installation Charge	20.00*	
Service Charge:		
Home Box Office		6.95
Take Two		3.95
Parental Guidance Key (Optional)		1.00

Commercial Rates: To be negotiated, but not to exceed prevailing residential rates.

\* Shall be waived during first 30 days service is available, and may be waived or reduced throughout the term of the franchise for marketing purposes on a non-discriminatory basis.

\*\* Waived if done at the same time as another connection.

In addition, ACKC will require a \$10.00 converter deposit, subject to the following general policy.

The converter(s) are and shall remain the property of American Cablevision of Kansas City, Inc. Upon termination for whatever reason of cable service to the subscriber, the subscriber will agree to return the converter to ACKC in the same operating condition as when received, reasonable wear and tear expected, and ACKC agrees to return to the subscriber his deposit (without interest) within 30 days thereafter. Interest will not be paid on such deposits. Should any charges due from subscriber to ACKC remain due at the time service is terminated, the deposit may also be used as partial or full payment of these charges.

EXHIBIT A

AMERICAN CABLEVISION OF KANSAS CITY, INC.

Programming Services

Community Information Service: Billboards, Classified Ads, Consumer Shopping Guide,  
Senior Citizen' Newswire

WDAF (4) Kansas City

KCMO (5) Kansas City

Christian Broadcasting Network

\* Take 2

Cable 8: Movies/Madison Square Garden

KMBC (9) Kansas City

Newstime Slo-Scan Video News

WGN (9) Chicago

Children's Channel

Kansas City Cultural Channel

\* Home Box Office

KYFC (50) Kansas City

Automated Time & Weather/FM Music

WTCG (17) Atlanta

PTL Religious Programming

KCPT (19) Kansas City

Program Guide/Preview Channel

Automated National & International Newswire

Future Services

Educational Access/Kansas City Library

Government Access

PBS Captioned Programming for the Hearing Impaired

Alternate ETV Programming

Automated Sports and Financial Reports /FM Music

Kansas City Higher Education Network

Kansas City Health/Medical Channel

Missouri and Kansas State Newswires

KBMA (41) Kansas City

Spanish International Network

Color Weather Radarscope

C-SPAN/Locally Deleted Network Programs

Leased Access

Color Bars/Future Services

\* An added charge is made for these services. See Exhibit B for subscribe rates.



DIETRICH, DAVIS, DICUS, ROWLANDS & SCHMITT

ATTORNEYS AT LAW

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KANSAS CITY, MISSOURI 64105

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LOUIS A. HUBER, III  
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LINDA J. GERSHON  
DONALD G. SCOTT  
ROY K. DIETRICH  
JESSE L. CHILDERS  
COUNSEL

January 2, 1981

Ronald Reuter, Esq.  
Wagner, Leek & Mullins  
4101 West. 54th Terrace  
Shawnee Mission, Kansas 66205

Re: Mission Woods, Kansas and Westwood Hills,  
Kansas Cable Television Franchise Ordinances

Dear Mr. Reuter:

At the request of Virgil Reed I am enclosing herewith a copy of the Cable Television Franchise Ordinance which American Cablevision of Kansas City, Inc. proposes for Mission Woods, Kansas, and a copy of the Cable Television Franchise Ordinance which American Cablevision of Kansas City, Inc. proposes for Westwood Hills, Kansas.

Please note that Exhibit A is not included in these materials. Exhibit A will be forwarded to you under separate cover by Virgil Reed.

Very truly yours,

DIETRICH, DAVIS, DICUS, ROWLANDS & SCHMITT

By

*J. Stephen McCarter*  
J. Stephen McCarter

JSM:psa

Encs.

cc: Mr. Virgil Reed

AN ORDINANCE GRANTING A FRANCHISE TO AMERICAN CABLEVISION OF KANSAS CITY, INC., ITS SUCCESSORS, TRANSFEREES, AND ASSIGNS, FOR A TERM OF FIFTEEN YEARS, THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY OF WESTWOOD HILLS, KANSAS, AND TO USE AND OCCUPY THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES OF SAID CITY FOR SUCH PURPOSES, AND PROVIDING FOR PAYMENT TO SAID CITY.

WHEREAS, an application has been received by the City of Westwood Hills, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas, from a corporation which desires to provide community antenna television service to subscribers residing within the corporate limits of said City; and

WHEREAS, the Governing Body of the City of Westwood Hills, Kansas, finds such service to be desirable and that the same will contribute to the public welfare of the residents of said City; and

WHEREAS, such applicant requires and desires to use the public streets, alleys, easements and other public ways within said City for the location of cables, wires, poles, and other appurtenances necessary to the operation of such a system; and

WHEREAS, the Governing Body of said City finds that American Cablevision of Kansas City, Inc., is willing to accept the grant of the franchise herein awarded and conferred to said party, and that said party can provide to the residents of said City a useful and desirable service for the benefit of the public welfare of said residents; and

WHEREAS, the Federal Communications Commission has adopted Franchise Standards applicable to authorizations granted to Community Antenna Television Systems by municipalities, which standards are found at 47 C.F.R. 76.31; and

WHEREAS, the legal, character, financial, technical and other qualifications of American Cablevision of Kansas City, Inc., and the adequacy and feasibility of its construction arrangements have been approved by the Governing Body of said City as a part of a full public proceeding affording due process, all consistent with 47 C.F.R. 76.31(a)(1);

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD HILLS, KANSAS:

#### Section 1. SHORT TITLE

This ordinance shall be known as and may herein and hereafter be cited as "American Cablevision of Kansas City, Inc. CATV Franchise Ordinance".

#### Section 2. DEFINITIONS

The following terms, phrases, words and their derivations shall have for the purposes of this ordinance the meanings herein stated; provided that when not inconsistent

with the context, words used in the present tense shall include the future, and words in the plural shall include the singular number, and words in the singular number shall include the plural number; provided further that the word "shall" is to be construed as mandatory and not simply directive:

- A. "City" shall mean that the City of Westwood Hills, Kansas, a municipal corporation, or its successors, and shall include when appropriate to the use of the term in context, the territorial boundaries of the City as now constituted or as shall hereafter exist;
- B. "Governing Body" shall mean the present legislative body of the City of Westwood Hills, Kansas, or any successor to the legislative power of said present Governing Body;
- C. "Franchise" shall mean and include the right to conduct and operate a community antenna television system within the City subject to the terms and conditions hereinafter stated in the above captioned ordinance;
- D. "Franchisee" shall mean American Cablevision of Kansas City, Inc., or its successors, transferees or assigns which is granted the franchise, the terms and conditions of which are provided herein;
- E. "Street" shall mean any public street, roadway, highway, alley, or other public right-of-way now or hereafter subject to the jurisdiction and regulation of the City of Westwood Hills, Kansas, as provided by the laws of the State of Kansas and any subsequent amendments thereof;
- F. "Community Antenna Television System" hereinafter referred to as "CATV system" shall mean an electronic system with properties and facilities so constructed as to be used for the interception and receipt of electromagnetic radiation, and the transmission and distribution of same to subscribers by means of cables and other related facilities;
- G. "Subscriber" shall mean any person who receives from the franchisee herein named the services of said franchisee's CATV system or any other services provided by the franchisee;
- H. "Person" shall mean any individual or association of individuals, or any firm, corporation or other business organization;
- I. "Gross Annual Receipts" shall mean and include any and all compensation and other legal consideration of any form whatsoever and any contributing grant or subsidy received directly or indirectly by the franchisee herein named from subscribers or users of said franchisee's services given in payment for said services received by said persons within the City; provided that said Gross Annual Receipts shall include any other revenues attributable to CATV and related operations in the City by said franchisee from sources not otherwise enumerated herein; provided further that the Gross Annual Receipts of said franchisee shall not include any taxes on services furnished by said franchisee which are imposed directly upon any subscriber by the United States of America, or any state, city, or other political subdivision of the State of Kansas and collected by said franchisee on behalf of and for the benefit of any such government or political subdivision.

In the event the franchisee shall receive any revenue from any advertisement disseminated to subscribers both within and without the City, Gross Annual Receipts shall, with respect to such advertisement, include an amount derived by multiplying such revenue by a fraction, the numerator of which is the number of subscribers in the City reached by such advertisement and the denominator of which is the total number of subscribers reached by such advertisement;

- J. "Channel" means a bank of frequencies in the electromagnetic spectrum which is capable of carrying either one audio-video television signal and a number of non-video signals, or several hundred non-video signals.

### Section 3. GRANT OF NONEXCLUSIVE FRANCHISE

The City of Westwood Hills, Kansas, hereby grants unto the franchisee herein named a nonexclusive franchise to construct, erect, operate and maintain a CATV system within the City, and in so doing to use the streets of the City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining, and retaining in, on, under, upon, or across any such streets, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to a CATV system, and in addition, so to use, operate and provide for all or part of such facilities by service offerings obtained from any franchised or operating utility company providing service within the City.

The authority hereby granted to conduct a CATV system within the City and to use and to occupy the streets thereof is not and shall not be deemed an exclusive right or permission, and the City expressly reserves the right to grant other nonexclusive franchises to persons, firms, corporations or other business organizations, to construct, operate, and maintain other CATV systems within the City; but no such additional franchises shall in any way affect the rights or obligations of the franchisee herein named and set forth in this ordinance.

### Section 4. PROGRAMMING SERVICES

Franchisee shall transmit and distribute to its subscribers such electromagnetic radiation as are now, and may hereafter be, authorized by the Federal Communications Commission or any other administrative agency of the United States, the several states, or political subdivisions thereof having jurisdiction to regulate such activity.

Initially, franchisee shall provide those programming services listed in the attached Exhibit A and such other programming services as may be herein required. Except as herein provided, franchisee shall have the right to make such changes in the programming services provided as may be reasonably necessary or desirable; notice of all such changes in programming services shall be filed with the City Clerk of the City promptly. Programming services offered on the Westwood Hills CATV system shall not be materially less than the services offered on the franchisee's Kansas City, Missouri CATV system, without good reason.

Upon receipt of the requisite authority from the Federal Communications Commission, franchisee shall also provide the signals (that do not duplicate locally available commercial broadcast programming) for the commercial stations in Topeka, Kansas,

channels 13 and 27. This programming service shall not be terminated without the approval of the Governing Body so long as franchisee has the authority to carry said signals.

Franchisee shall, at its sole and exclusive cost, interconnect its Westwood Hills CATV system with the CATV system now operated by Telecable of Overland Park, Inc., in Johnson County, Kansas ("Telecable"). By means of such interconnect, franchisee shall provide on the Westwood Hills CATV system all programming originated locally by Telecable which involves or relates to governmental or community affairs, matters of public interest, educational matters and programming, the State of Kansas or Johnson County, Kansas. Franchisee's obligations to interconnect with Telecable shall be subject to obtaining Telecable's consent; franchisee shall use its best efforts to obtain such consent.

Franchisee has included in the list of programming services which will be initially provided, as set forth on the attached Exhibit A, several channels which are available for public and government access. Franchisee may change the particular channels and the number of channels that are available for such purpose; however, at least one channel shall be kept available for government access and one channel for public access, unless the Governing Body consents to the termination of such service.

#### Section 5. TERM OF FRANCHISE

The term of the franchise herein granted shall commence on the first day of the first month next following the date upon which the franchisee herein named accepts and agrees to the terms and conditions set forth in this franchise ordinance and shall continue for a term of fifteen (15) years from said date, as provided herein. At the end of said fifteen (15) year term the franchise may be renewed for an additional five (5) year term in the following manner: The franchisee must request such renewal by application in writing filed with the City Clerk during the last year of said fifteen (15) year term but no later than ninety (90) days prior to the end of said term. Such application shall be approved unless the Governing Body determines within thirty (30) days following receipt thereof that the performance of franchisee has not been satisfactory.

#### Section 6. FRANCHISE PAYMENTS

The franchisee herein named shall pay to the City during the term of said franchise a sum equal to three (3) percent on all Gross Annual Receipts; provided that payment of said sum will be made semiannually, with a payment being due on October 1 with respect to all receipts for the first six calendar months and a payment being due on April 1 with respect to all receipts during the last six calendar months. Late payments shall bear interest at the rate of ten (10) percent per annum until paid.

#### Section 7. AUDIT AND REPORTING

On or before April 1 of each year during the term of this franchise, the franchisee named herein shall file in the office of the City Clerk of the City a financial statement prepared by a Certified Public Accountant or person otherwise satisfactory to the City; provided, however, that if said financial statement is prepared by the same person who prepares financial statements required to be submitted to the City of Kansas City, Missouri, pursuant to the CATV franchise ordinance between franchisee and the City of Kansas City, Missouri, said financial statement shall be deemed

to be prepared by a person satisfactory to the City, and if the City shall desire that another financial statement be prepared by some other person, such financial statement shall be prepared at the City's expense. Such financial statement shall show the gross annual receipts of said franchisee during the preceeding calendar year, said receipts to be determined as defined herein; provided that within ninety (90) days following termination of said franchise for any reason whatsoever the franchisee shall submit to the office of the City Clerk of the City a financial statement of said franchisee as hereinbefore required, showing the gross receipts of said franchisee for the period that has elapsed since the end of the period covered by the last such financial statement; provided further that within ninety (90) days following the termination or forfeiture of said franchise, said franchisee will pay to the City a sum equal to the percentage of said gross annual receipts as have accrued to said franchisee for the aforementioned period; provided further that the City reserves the right to independently audit at its own expense said franchisee's gross annual receipts from which its franchise payments are computed, and any discrepancy between said audit and that filed by the franchisee with the City Clerk of the City which results in the City's receiving a lesser sum than that which is due and owing from said franchisee will be determined and paid forthwith to the City; provided further that the City's acceptance of any payment determined as hereinbefore provided to be deficient shall not be construed as a release of liability from the City or an accord and satisfaction of any claim the City may have for additional sums owed by said franchisee as hereinbefore provided.

#### Section 8. SUBSCRIBER'S RATE SCHEDULE

The rates which franchisee will initially charge for its services shall be as set forth in the attached Exhibit B. These rates shall remain in effect for a period of one (1) year from the date of first subscriber service to Westwood Hills. Thereafter, franchisee may make such rate changes as are reasonably necessary and desirable. All such changes in rates shall be filed with the City Clerk ten (10) days prior to the effective date of such changes.

#### Section 9. FRANCHISEE'S OPERATING REGULATIONS

Franchisee shall commence operation of its CATV system within the City in accordance with the same rules and regulations as in effect in its Kansas City, Missouri CATV system, a copy of which shall be filed with the City Clerk not less than thirty (30) days prior to the date on which franchisee commences operation of its CATV system in the City. If reasonably necessary, franchisee may establish different rules and regulations regarding operations in the City. In that event, franchisee shall file in the office of the City Clerk the proposed rules and regulations for operations within the City for approval by the Governing Body of the City; provided that if the Governing Body has not filed with said franchisee its written objection to any or all of the said proposed rules and regulations within thirty (30) days after the same shall have been filed, said proposed rules and regulations shall be deemed approved; provided further that said franchisee may thereafter modify or change such rules and regulations by filing such changes for approval as hereinbefore provided.

#### Section 10. NOTICE TO PARTIES

Whenever, under the terms of this franchise ordinance, either party hereto shall be required or permitted to give notice to the other, such notice shall be in writing, and if said notice is to be served upon the City, it shall be delivered either by

first class United States mail addressed to the office of the City Clerk of said City or by personal delivery of the same to said person or his duly authorized agent for receiving the same, and if said notice is to be served upon the franchisee, it shall be delivered either by first-class United States mail addressed to an officer or the resident agent of said franchisee at the registered office of the franchisee in the State of Kansas, or by personally delivering the same to such person or to such other person as said franchisee shall from time to time direct. Notices delivered by United States mail addressed as set forth herein shall be deemed given on the date deposited in the United States mail.

#### Section 11. FILINGS WITH REGULATORY AGENCIES

Franchisee shall file with the Federal Communications Commission a registration and such applications and supporting documents as shall be necessary to obtain the requisite authority to enable franchisee to construct and operate its CATV system in Westwood Hills, as provided herein, and to enable franchisee to provide on such CATV system the signals of the commercial stations in Topeka, Kansas, channels 13 and 27. Franchisee shall use its best efforts to obtain the requisite authority to construct and operate its CATV system in Westwood Hills and to provide on said CATV system the signals of channels 13 and 27; provided, however, that the providing by franchisee of the portions of the signals of channels 13 and 27 that do not duplicate locally available commercial broadcast programming shall be considered providing the signals of channels 13 and 27.

Franchisee shall file in the office of the City Clerk of the City, copies of any and all petitions, applications and communications submitted or filed by the franchisee with the Federal Communications Commission and with any other federal or state regulatory commission or agency having jurisdiction in respect to any matter affecting the operation of a community antenna television system so far as the same affects or will affect franchisee's service or operation within the City.

#### Section 12. FRANCHISEE'S DUTY TO COMPLY WITH STATE AND FEDERAL LAW

Notwithstanding any other provisions of this franchise ordinance to the contrary, the franchisee shall at all times comply with all laws and regulations of the United States and the several states and any political subdivision thereof, and any administrative agency thereof, having jurisdiction to regulate community antenna television systems. Franchisee's failure to comply with any law or regulation governing the operation of its CATV system in the City may result in a forfeiture of the privileges conferred by this franchise ordinance when so determined by the Governing Body of said City as adopted by ordinance at one of its regular meetings.

#### Section 13. LOCATION OF FRANCHISEE'S PROPERTIES IN THE PUBLIC WAY

The franchisee in the construction of its facilities to provide service to its subscribers shall use the existing poles and other properties of franchised public utility companies operating within the City, and said franchisee shall not construct, erect, or maintain any supporting poles or other properties within the public streets of the City for the operation of its CATV system except upon the express consent and permission of the City given in writing by the Mayor of the City; provided that said franchisee shall not be prohibited from relocating its facilities if the poles and other properties on or upon which said facilities attach and are affixed are relocated by the owners of said properties, nor shall the franchisee be prohibited from con-

structing, operating, and maintaining its facilities upon other poles and properties of said franchised public utility companies as may hereinafter be constructed; provided further than wherever within the City all other public utilities facilities are located underground, it shall be the obligation of said franchisee to construct, operate and maintain its properties underground, provided further that if existing aerial facilities of all franchised public utility companies are relocated underground, said franchisee shall forthwith relocate its properties, formerly attached thereto, underground in such places; however, the City reserves the right to permit or require said franchisee to maintain its existing facilities above ground in said locations whenever its Mayor shall so direct the same in writing to said franchisee.

#### Section 14. RELOCATION OF FRANCHISEE'S PROPERTY

Whenever the City or a franchised public utility company operating within the City shall request of the franchisee the relocation or reinstallation of any of its properties along and within any of the streets of the City, said franchisee shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet said request and the cost of such relocation, removal, or reinstallation of said properties shall be the exclusive obligation of said franchisee; and upon request of any person holding a validly issued building or moving permit of the City, said request having been given in writing to said franchisee not less than forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, said franchisee shall temporarily raise, lower, or relocate its wires or other property as may be required for said person to exercise rights and privileges of its permit, and said franchisee may require said person to make payment in advance for any expenses incurred by said franchisee pursuant to said person's request.

#### Section 15. FRANCHISEE'S DUTY TO REMOVE ITS PROPERTY FROM CITY

Upon the occurrence of any of the following events:

- A. franchisee ceases to use any part or all of its CATV system in the City for a continuous period of twelve (12) months;
- B. franchisee fails to construct its CATV system in the City, as herein provided; or
- C. the franchise herein granted to franchisee is revoked as herein provided;

the City may by written notice require franchisee to remove within ninety (90) days part or all of the property and equipment used by franchisee in the operation of the CATV system in the City; provided, however, that if franchisee shall cease to use part of its CATV system in the City for a continuous period of twelve (12) months and shall continue to use other parts of its CATV system in the City, the City shall have the right to require removal of only that part of the CATV system which has not been used for said continuous period of twelve (12) months; provided further that franchisee shall not be required to remove property and equipment located underground where removal of such property and equipment is not practicable and the continued presence of such property and equipment does not adversely affect the City or its residents. The Mayor may declare abandoned any property and equipment of franchisee which has not been removed from the City within the time period provided above.



## Section 16. PROPERTY ABANDONED BY THE FRANCHISEE

Any property declared by the Mayor to be abandoned by said franchisee as hereinabove or hereinafter provided shall become the property of the City and said franchisee agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to the City; and provided further that any notice given said franchisee by the Mayor of the City, as provided in Section 15 hereof, shall be deemed notice to any other persons claiming interest in said property of the franchisee, and said persons shall be subject to all the provisions hereinbefore provided in Sections 15 and 16 hereof. All costs and expenses incurred by the City in removing such abandoned property within six (6) months after the date said property is declared abandoned shall be paid by franchisee.

## Section 17. STANDARDS FOR CONSTRUCTION OF FRANCHISEE'S FACILITIES

### A. Construction of Facilities:

1. The construction of the properties and facilities of said franchisee's CATV system shall conform, at least, to the standards of the National Electrical Code of the National Board of Fire Underwriters for the latest edition thereof at the time any such properties and facilities shall be constructed or reconstructed; provided further that said construction shall be in conformance with all laws and regulations of the United States of America and the several states and any political subdivisions thereof, or any administrative agency thereof, having jurisdiction to regulate the construction of said CATV system.
2. All transmissions and distribution structures, lines, and equipment erected by the franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, easements and swales, sidewalks, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, easements and swales, sidewalks, alleys or other public ways and places.
3. The franchisee shall have the authority to trim trees which are located upon and overhang the public streets and other public ways of said City so as to prevent the branches of such trees from coming into contact with the franchisee's properties.
4. The franchisee shall not construct or reconstruct any of its CATV system located upon, over, under, or within the public streets or public ways of the City without first having submitted to the Mayor of the City a written description of its planned improvement and having received a permit for such improvement from the City Clerk; such approval shall not be unreasonably withheld.
5. Prior to installation, franchisee shall file with the City Clerk of the City true and accurate maps or plats showing the location at which franchisee proposes to install property and equipment within the City. These maps and plats shall be kept continuously up-to-date.

## Section 18. STANDARDS FOR OPERATING AND MAINTAINING FRANCHISEE'S CATV SYSTEM

### A. Operational Standards

Franchisee's CATV system shall be constructed, operated, and maintained in accordance with the highest accepted standards of the Community Antenna Television Industry to insure that the subscriber receives the highest quality of service. The following enumerated criteria may be considered in determining franchisee's satisfactory compliance with the provisions of this Section: (1) the system shall be constructed in accordance with the same technical specifications as apply in the franchisee's Kansas City, Missouri, franchise; and (2) the franchisee shall at all times comply with all applicable technical standards of the Federal Communications Commission regarding construction and operation of CATV systems.

### B. Maintenance of System

Consistent with 47 C.F.R. 76.31(a)(5), the franchisee will limit failures to a minimum by locating and correcting malfunctions promptly but in no event longer than 24 hours after notice has been given except said time shall be extended during such time as performance of this obligation is prevented by an act of God or the same is otherwise made impossible because of circumstances over which the franchisee has no control; provided further that the franchisee will maintain and provide to its subscribers a convenient office in Kansas City, Missouri which shall be available to said subscribers during normal business hours of every day, Monday through Friday inclusive, for the purpose of receiving complaints or requests for repairs, adjustments, or other service caused by some failure or malfunction of the system, and that franchisee shall provide its subscribers with facilities for receiving complaints and requests for service during those times when said office is not open (24-hours per day, seven days per week).

## Section 19. CONSTRUCTION OF CATV SYSTEM

Franchisee shall commence construction of its CATV system in Westwood Hills within twelve (12) months after the effective date of this franchise agreement. Franchisee shall activate the Westwood Hills CATV system and provide initial cable television service to subscribers in Westwood Hills when construction of the Kansas City, Missouri CATV system is at a point which permits interconnection of the Kansas City, Missouri and the Westwood Hills CATV systems so as to provide signals to Westwood Hills. Franchisee shall complete construction of the Westwood Hills CATV system within six (6) months after it has first provided cable television service to subscribers in Westwood Hills, Kansas.

The construction of the CATV system and the activation thereof shall not be deemed to be in default where delays are not caused by the franchisee and are due to war, insurrection, civil disturbance, strikes, lock-outs, riots, floods, governmental restrictions and priorities, embargoes, litigations, tornados, unusually severe weather or acts or failure to act of the City or any other governmental agency or entity, or to other causes beyond the control of the franchisee. The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes only with the written consent of the City, which consent shall not be unreasonably withheld.

## Section 20. RIGHTS RESERVED TO THE CITY

Without limitation upon the rights which the City might otherwise have, the City does hereby expressly reserve the following rights, powers and authorities:

- A. The right to exercise the governmental powers, now or hereafter, vested in, or granted to, said City;
- B. The right to grant additional CATV franchises within said City as provided in Section 3 hereof.

## Section 21. CITY'S FAILURE TO ENFORCE THE TERMS AND CONDITIONS OF THIS FRANCHISE

The City's failure to enforce any remedy for noncompliance by the franchisee of the terms and conditions of this franchise ordinance shall not constitute a waiver of the City's rights hereunder, and said franchisee shall continue to perform its obligations as herein provided.

## Section 22. CONDITIONS FOR REVOCATION OF FRANCHISE

In addition to all other rights and powers herein reserved or otherwise enjoyed by the City, the City reserves as an additional and separate remedy the right to revoke the franchise herein granted and all rights and privileges of said franchisee conferred hereunder upon the occurrence of any of the following events:

- A. That franchisee fails to remedy within thirty (30) days following the date upon which written notice is given of said franchisee's failure to comply with the provisions of this franchise ordinance, whether the same be committed by act or omission, the violation set forth in said notice; or
- B. That franchisee is adjudged as bankrupt, or becomes insolvent, or suffers a transfer of its properties pursuant to an action of its creditors upon an instrument or judicial declaration securing said creditor's interest in said properties, and thereafter the same be not redeemed by said franchisee within thirty (30) days from the date of said transfer, or said franchisee is otherwise unable or unwilling to pay its debts and obligations as the same accrue; or
- C. That franchisee commits an act of fraud or deceit against the City in obtaining the grant of the franchise herein conferred, or upon being granted said franchise, franchisee commits such an act against said City; or
- D. That franchisee transfers or attempts to transfer any of its properties for the purpose of preventing the City from acquiring the same as the City may herein be entitled so to do; or
- E. That the City condemns at fair market value by the lawful exercise of its power of eminent domain all of the properties of said franchisee located within the City; or
- F. That franchisee gives to any person, firm, corporation or other business association, preference or advantage over some other person in assessing

and levying its rates and charges, or in serving its subscribers, or in enforcing its rules and regulations, or in any other respect;

provided, that no revocation except for the reason of condemnation, as provided in subparagraph "E" hereof, shall be effective unless, or until, the Governing Body of the City shall find, at a regular or special meeting, that there has occurred one of the events described above under which the City is authorized to revoke the franchise granted by this ordinance to franchisee; provided further that the revocation of the franchise shall become effective only upon the enactment of an ordinance by the Governing Body of the City adopted not sooner than a date thirty (30) days following the date on which written notice is given to the franchisee of any alleged act or omission for which said franchise may be revoked, as herein provided.

#### Section 23. SERVICE TO SCHOOLS AND OTHER PUBLIC FACILITIES

Upon the request of any private, parochial or public elementary or secondary school or any college or university located in Westwood Hills, Kansas, and provided such private, parochial or public elementary or secondary school, college or university is located within three hundred (300) feet from the cable system, franchisee shall furnish a single service drop to such institution free of installation charge. Upon request of the Governing Body and provided City Hall is located within three hundred (300) feet from the cable system, franchisee shall furnish a service drop to City Hall, free of installation charge. Installations over three hundred (300) feet from the cable system will be installed for a predetermined time and material charge.

#### Section 24. EMERGENCY USE OF FRANCHISEE'S SYSTEM

The franchisee intends to provide an emergency alert system on its Kansas City, Missouri, CATV system. The franchisee shall cooperate with officials of the City and of Kansas City, Missouri, to establish a joint plan under which the emergency alert system will be made available to authorized officials of both cities.

#### Section 25. FRANCHISEE'S DUTY TO SECURE LIABILITY INSURANCE

Franchisee shall obtain and maintain in full force and effect throughout the term of this franchise, at franchisee's sole and exclusive expense, a comprehensive general liability insurance policy insuring franchisee, the City, and the City's elective and appointive officials (including the Mayor and members of the governing body), employees and agents and members of boards and commissions, from and against all claims by any person whatsoever for loss or damage from personal injury, death, or property damage caused or alleged to have been caused by the operation of franchisee under the franchise herein granted for an amount not less than \$500,000 for personal injury or death to any one person and \$1,000,000 for personal injury or death of two or more persons in any one occurrence and \$300,000 for damages to property for any one occurrence. Said insurance policy shall not be cancellable until the City has had at least fifteen (15) days prior written notice of such cancellation. Franchisee shall file with the City Clerk of the City, concurrently with its acceptance of the franchise herein granted, evidence that franchisee has obtained such liability insurance policy.

## Section 26. FRANCHISEE'S PERFORMANCE BOND

The franchisee shall concurrently with the filing of its acceptance of this franchise as provided herein and at all times thereafter maintain in full force and effect during the term of this franchise, at franchisee's sole and exclusive expense, a corporate surety bond in a company and in a form approved by the City Attorney of the City, in an amount not less than \$25,000 and conditioned upon franchisee's faithful performance of the provisions, terms, and conditions of the franchise herein granted and conferred by this franchise ordinance. The amount of this bond may be reduced to \$10,000 after franchisee has completed construction of the Westwood Hills CATV system. In the event franchisee shall fail to meet any of its obligations to construct the Westwood Hills CATV system within the time periods provided in Section 19 for commencement of construction, initial service and completion of construction, or in the event the City shall exercise its right to revoke the franchise of the franchisee as provided herein other than by reason of the City's acquiring the franchisee's properties by condemnation, then, and in that event, the City shall be entitled to recover under the terms of said bond the full amount thereof. Such recovery is intended as liquidated damages, it being recognized that actual damages resulting from the occurrence of such events will be impossible to determine.

## Section 27. FRANCHISEE ACKNOWLEDGEMENTS

Franchisee (1) expressly acknowledges that it accepted the franchise herein granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the franchise herein conferred upon said franchisee; (2) acknowledges by its acceptance of the franchise that it has not been induced to enter into this franchise upon any understanding, or promise, whether given verbally or in writing, by or on behalf of the City, or by any other person concerning any term or condition of this franchise not expressed herein; and (3) acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to and does accept all of the risk attendant to said provisions, terms and conditions hereof.

## Section 28. LIMITATION UPON FRANCHISEE'S RIGHT TO TRANSFER THIS FRANCHISE

The franchise herein granted to said franchisee shall be deemed a privilege to be held in personal trust by said franchisee and it shall not in any event be sold, transferred, leased, assigned, or otherwise disposed of, in whole or in part, either by forced or voluntary sale, merger, or consolidation without the prior consent of the Governing Body of the City as expressed by resolution adopted at one of its regular or special meetings and then only upon such conditions as may therein be set forth; provided that said franchisee shall not have any rights arising from the franchise herein granted and conferred which may be transferred or disposed of voluntarily or involuntarily without the consent of the Governing Body of the City as hereinbefore provided; provided further that any transfer, assignment, or other distribution of any rights arising out of and conferred by this franchise shall be made only by an instrument in writing, a duly executed copy of which shall be filed in the office of the City Clerk of the City within five (5) days after such transfer or assignment shall have been executed or effected, and shall set forth the consent thereto given by the Governing Body of the City; provided further that notwithstanding the provisions hereinabove set forth, the franchisee shall have the right at any time to mortgage the whole of its system, or any part thereof, provided that any such mortgage, security interest or any other encumbrance upon said franchisee's properties, shall be upon the express condition that the rights of any such mortgagee,

creditor or other secured party, shall be secondary and subservient to the rights of the City as set forth in this franchise ordinance.

#### Section 29. FRANCHISEE'S DUTY TO INDEMNIFY THE CITY

At the time the franchisee files its acceptance hereof, it shall furnish to the City an indemnity agreement executed by the franchisee and its parent corporation, American Television and Communications Corporation, indemnifying the City against any and all claims, demands, actions, suits, proceedings and liability for damages arising out of any action or omission by said franchisee, including without limitation a failure to obtain consent from the owner, authorized distributors and licensees of programs transmitted or distributed by the franchisee under its CATV system and against any loss, cost, expense or damages resulting therefrom and including reasonable attorney's fees incurred in the defense of any such action.

#### Section 30. SEVERABILITY

Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be thereby affected.

#### Section 31. TIME IS OF THE ESSENCE

Whenever this franchise shall set forth any time for any action to be performed by or on behalf of the franchisee, such time shall be deemed of the essence and any failure of the franchisee to perform within the time so specified shall be sufficient grounds for the City to revoke the franchise herein granted.

#### Section 32. ACCEPTANCE

This ordinance and its terms and provisions shall be accepted by written instrument ("Acceptance") executed, acknowledged and filed by franchisee in the office of the City Clerk. In such Acceptance, franchisee shall: (1) state and express franchisee's acceptance of this ordinance and its terms, conditions and provisions; (2) agree to abide by, observe and perform all of the terms, conditions and provisions of this ordinance; and (3) declare that the statements and recitals in this ordinance are correct and that franchisee has made and does make the agreements, statements and admissions recited in this ordinance. Such Acceptance shall be filed in the office of the City Clerk of the City within thirty (30) days after this ordinance takes effect, unless the Governing Body, by resolution, extends the time for filing such Acceptance. If the time for filing such Acceptance is so extended, such Acceptance shall be filed within the period as extended. Franchisee's failure to timely file such Acceptance shall cause the City's grant of franchise contained herein to be deemed revoked and without further force and effect, whereupon this ordinance shall be deemed void and of no further force and effect.

#### Section 33. TAKE EFFECT

This ordinance shall be published in the official City newspaper once each week for

three (3) consecutive weeks and shall take effect and be in force sixty (60) days after the date of the last such publication.

Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 1981.

Approved by the Mayor the \_\_\_\_ day of \_\_\_\_\_, 1981.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

EXHIBIT B

AMERICAN CABLEVISION OF KANSAS CITY, INC.

RATES

	<u>Installation</u>	<u>Monthly</u>
Basic Cable TV Service, first outlet	\$20.00*	\$7.50
Basic Cable TV Service, extra outlet	10.00**	2.50
FM Service, without cable outlet	20.00*	7.50
FM Service, with cable outlet	10.00**	2.50
Antenna Switch	At Cost	
Reconnect	10.00	
Relocate	10.00	
Collection Charge	5.00	
Pay TV, Installation Charge	20.00*	
Service Charge:		
Home Box Office		6.95
Take Two		3.95
Parental Guidance Key (Optional)		1.00

Commercial Rates: To be negotiated, but not to exceed prevailing residential rates.

\* Shall be waived during first 30 days service is available, and may be waived or reduced throughout the term of the franchise for marketing purposes on a non-discriminatory basis.

\*\* Waived if done at the same time as another connection.

In addition, ACKC will require a \$10.00 converter deposit, subject to the following general policy.

The converter(s) are and shall remain the property of American Cablevision of Kansas City, Inc. Upon termination for whatever reason of cable service to the subscriber, the subscriber will agree to return the converter to ACKC in the same operating condition as when received, reasonable wear and tear excepted, and ACKC agrees to return to the subscriber his deposit (without interest) within 30 days thereafter. Interest will not be paid on such deposits. Should any charges due from subscriber to ACKC remain due at the time service is terminated, the deposit may also be used as partial or full payment of these charges.



AN ORDINANCE AWARDED TO AMERICAN  
CABLEVISION OF KANSAS CITY, INC., FIFTEEN (15)  
YEAR NON-EXCLUSIVE FRANCHISE TO  
CONSTRUCT, OWN, OPERATE AND MAINTAIN  
A COMMUNITY ANTENNA TELEVISION SYSTEM  
WITHIN THE CITY OF \_\_\_\_\_, KANSAS

SETTING FORTH CONDITIONS ACCOM-  
PANYING THE GRANTING OF SAID FRANCHISE;  
PROVIDING FOR CITY REGULATION AND USE  
OF THE COMMUNITY ANTENNA TELEVISION  
SYSTEM; PRESCRIBING PENALTIES FOR  
VIOLATION OF THE ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF \_\_\_\_\_  
STATE OF KANSAS

SECTION 1. Definitions

For the purpose of this Ordinance, the follow-  
ing terms, phrases, words, and their derivation shall have  
meaning given herein. When not inconsistent with the context,  
words used in the present tense include the future, words in  
the plural number include the singular number, and the words  
in the singular number include the plural number. The word  
"shall" is always mandatory and not merely directory.

a. "City" is the City of \_\_\_\_\_, KANSAS

b. "CABLE TELEVISION SYSTEM", hereinafter  
referred to as "CATV System" or "system", means a system of  
coaxial cables or other electrical conductors and trans-  
mission equipment used or to be used primarily to receive  
television or radio signals directly or indirectly off-the-air  
and other related services and transmit them to subscribers  
for a fee.

c. "Company" or "Grantee" shall be American Cablevision of KANSAS CITY, INC., or anyone who succeeds it in accordance with the provisions of this Ordinance.

d. "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.

e. "FCC" is the Federal Communications Commission or its successor agency.

f. "Gross Annual Receipts" shall mean and include any and all compensation and other legal consideration of any form whatsoever and any contributing grant or subsidy received directly or indirectly by the franchisee herein named from subscribers or users of said franchisee's services given in payment for said services received by said persons within the City; provided that said Gross Annual Receipts shall include any other revenues attributable to CATV and related operations in the City by said franchisee from sources not otherwise enumerated herein; provided further that the Gross Annual Receipts of said franchisee shall not include any taxes on services furnished by said franchisee which are imposed directly upon any subscriber by the United States of America, or any state, city, or other political subdivision of the State of Kansas and collected by said franchisee on behalf of and for the benefit of any such government or political subdivision.

In the event the franchisee shall receive any revenue from any advertisement disseminated to subscribers both within and without the City, Gross Annual Receipts shall, with respect to such advertisement, include an amount derived by multiplying such revenue by a fraction, the numerator of which is the number of subscribers in the City reached by such advertisement and the denominator of which is the total number of subscribers reached by such advertisement;

g. "Street" shall mean the surface of, and the space above and below, any public street, road, highway, freeway, right-of-way, easement, alley, court, sidewalk, parkway, drive or other public property, hereafter existing as such within the City.

h. "Subscriber" shall mean any person or entity receiving for any purpose the Cable television services of the Company herein.

i. "Basic Service" shall mean the simultaneous delivery by the company to television receivers (or any other suitable type of audio-video communication receivers), of all subscribers and to all locations in the City, of all signals of over-the-air television broadcasts required to be carried on the cable television system by the FCC; the Company Channel (s); and the Access Channel (s) except those which may be designated for special purposes by the Council or its authorized representative; and Additional Services offered at the option of the Company.

## SECTION 2. Grant of Non-Exclusive Franchise

The City hereby grants to the Company the non-exclusive franchise, right, privilege, authority and easement for a period of fifteen (15) years from the effective date hereof, renewable for an additional fifteen (15) year period as provided herein, unless sooner terminated pursuant to the provisions of this Ordinance, to construct, erect, suspend, install, renew, maintain, and otherwise own and operate throughout the City, in, upon, along, across, above, over and under the streets, alleys, easements, public ways and public places as now laid out or dedicated, and all extensions thereof, and additions thereto, in the City a system of poles, wires, cables, underground conduits, ducts,

things, and any and all other fixtures, appliances and appurtenances necessary for the installation, ownership, maintenance and operation in the City of a cable television (CATV) system either separately or in conjunction with any public utility maintaining the same in the City. This franchise shall further include the right, privilege, easement, and authority to construct, erect, suspend, install, lay, renew, repair, maintain and operate such poles, wires, cables, underground conduits, manholes, ducts, trenches, fixtures, appliances and appurtenances for the purpose of distribution of services to inhabitants within the limits of the City. Without limiting the generality of the foregoing, this franchise shall and does hereby include the right, in, over and upon the streets, sidewalks, alleys, easements, public grounds and places in the City for the purpose of installing, erecting, operating or in any other way acquiring the use of, as by leasing, all poles, lines and equipment necessary to operate a CATV system and the right to make connections to subscribers, the right to repair, replace and enlarge and extend said lines, equipment and connections. The rights are granted herein by the City after due consideration of the legal, character, financial, technical, and other qualifications of the Company, and the adequacy and feasibility of its construction arrangements, in a full public proceeding which included notice of the consideration of the Company's construction policy, and the City approved the Company's qualifications as a part of said public proceeding which afforded due process.

SECTION 3. ~~Compliance with Applicable Laws and Ordinances~~  
The Company shall at all times during the life of this Ordinance be subject to all lawful exercise of the policy power by the City and to such reasonable regulation by the City as the City shall hereafter provide. The Company shall comply with all laws, statutes, codes, ordinances, rules, or regulations applicable to its business including those of the Federal Communications Commission, and will comply with Equal Employment Opportunity Act.

SECTION 4. Effective Date and Term

This Ordinance shall take effect and be in full force after final passage and publication hereof, as provided by law, and said Ordinance shall continue in full force and effect for a term of fifteen (15) years upon the terms and conditions set forth herein. An option for renewal, for an additional fifteen (15) year period under the terms and conditions mutually agreeable to both parties, may be exercised by the Company by giving the City notice in writing of its election to exercise this option, which notice shall be given not less than one (1) year nor more than five (5) years prior to the expiration of the term of this Ordinance. Such a renewal shall be granted by the City after consideration of the Company's qualifications and after full public proceedings affording due process. This Ordinance, when accepted by the Company, shall be and become a valid and binding contract between the City and the Company, but this Ordinance shall be void unless the Company shall, within thirty (30) days after passage and publications of same by the City, file with the City Clerk of the City its unconditional acceptance of the

SECTION 5. Cable Television Service Area

a. This Ordinance provides for service to the present territorial limits of the City, and to any area added thereto during the term of this agreement.

b. The Company shall be required to provide service at regular installation rates to all existing and future residential units located within 150 feet of a public right-of-way, and served by aerial utilities, provided there are at least 50 homes per cable mile.

c. The Company shall provide service at regular installation rates to all existing residential structures within 150 feet of a public right-of-way, which are served by underground utilities and located within City boundaries at the date of this Ordinance, provided there are at least 60 homes per cable mile. The Company may require that at least 35 homes per cable mile agree to take service, and prepay installation charges, before it constructs plant pursuant to this paragraph. Future residential units served by underground utilities and otherwise meeting the requirements of this paragraph will be served at regular installation rates provided the requirements of Section 13.e are met.

d. Businesses, and residential structures not within the service area defined in this section, may be served at the option of the Company, and subscribers shall pay the special rates published by the Company.

SECTION 6.      Liability of Company - Indemnification

It is expressly understood and agreed by and between the Company and the City that the Company shall hold the City harmless from all losses sustained by the City by reason of any suit, judgment, execution, claim or demand resulting from the construction, operations or maintenance by the Company of its cable television system in the City. The Company shall, prior to the commencement of construction of the system, file with the City Clerk and at all times thereafter maintain in full force and effect for the term of such permit, at Company's sole expense, a general comprehensive liability insurance policy, in protection of the City, its officers, boards, commissions, agents and employees, in a company authorized to do business in the State of Kansas, and in a form satisfactory to the City Attorney, protecting the City and all persons against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of Company under such permit in the minimum amounts of:

- \$ 250,000.00 for property damage to any one person;
- \$ 500,000.00 for property damage in any one occurrence;
- \$ 500,000.00 for personal injury to any one person;
- \$1,000,000.00 for personal injury in any one occurrence.

SECTION 7.      Faithful Performance Bond

The Grantee shall, concurrently with its acceptance of this permit, file with the City Clerk and at

all times thereafter maintain in full force and effect during the continuance of this permit, at Grantee's sole expense, a corporate surety bond with a responsible company licensed to do business in the State of Kansas, in the initial amount of \$25,000.00, renewable annually, and conditioned upon the faithful performance of Grantee, and upon the further condition that in the event Grantee shall fail to comply with any one or more of the provisions of this Ordinance, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal of any property of the Grantee as prescribed hereby, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, said condition to be a continuing obligation for the duration hereof and thereafter until the Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of this permit by the Grantee or from its exercise of any privilege or right herein granted. The bond shall provide that at least thirty (30) days' prior written notice of intention not to renew, cancellation, or material change, be given to the City by filing the same with the City Clerk. Upon completion of construction of the system as required herein, the amount of said bond shall be reduced to \$10,000.



in the City. Franchisee shall commence construction of its CATV system in Mission Hills within six (6) months after it has first provided cable television service to subscribers in Kansas City, Missouri. Franchisee shall activate the Mission Hills CATV system and provide initial cable television service to subscribers in Mission Hills within twelve (12) months after it has first provided cable television service to subscribers in Kansas City, Missouri. Franchisee shall complete construction of the Mission Hills CATV system within six (6) months after it has first provided cable television service to subscribers in Mission Hills, Kansas.

The construction of CATV system and the activation thereof, shall not be deemed to be in default where delays are not caused by the franchisee and are due to war, insurrection, civil disturbance, strikes, lock-outs, riots, floods, governmental restrictions and priorities, embargoes, litigations, tornados, unusually severe weather or acts of failure to act of the City or any other governmental agency or entity, or to other causes beyond the control of the franchisee. The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes only with the written consent of the City, which consent shall not be unreasonably withheld.

#### SECTION 10. Special Services

a. The Company shall furnish, upon request, one outlet for each local school, municipal office building or facility within its service area and not more than one hundred and fifty (150) feet from the Company's existing service facilities. An initial connection to each such building will be made free of charge; additional connections will be made for the cost of time and materials only. In no case will there be a monthly charge for service to such buildings.

SECTION 8. Service Standards and Requirements

a. The Company shall maintain its service in accordance with the accepted standards of the industry, so as to provide its subscribers with the highest possible level of quality and reliability. The Company shall maintain a business office and service facilities within the City of Kansas City, Missouri. All subscribers will be informed of the telephone numbers and location (s) of such offices and facilities so as to make possible the filing of inquiries and service complaints as easily as possible. A listed full-time telephone service number shall be maintained.

b. The Company shall employ sufficient persons to provide prompt response to all inquiries and complaints within twenty-four (24) hours after receipt, except in the event of disaster or other conditions beyond the control of Grantee. The Company shall maintain records of all service complaints. Such records shall include the name and address of the subscriber, the date and time at which the complaint was received, the nature of the complaint, the resolution of the complaint and the date and time of such resolution.

SECTION 9. Time of Construction and Service

Within thirty (30) days of the effective date of this franchise, the Company shall diligently pursue acquisition of all necessary certificates, permits, licenses and agreements which are required to construct a CATV system.

→b The franchisee intends to provide an emergency alert system on its Kansas City, Missouri, CAIV system. The franchisee shall cooperate with officials of the City and of Kansas City, Missouri, to establish a joint plan under which the emergency alert system will be made available to authorized officials of both cities.

#### SECTION 11.     Safety Requirements

a. The Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public.

b. The Company shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Safety Code and local ordinances which are applicable.

c. All structures and all lines, equipment, and connections in, or over, under and/or upon the streets, sidewalks, alleys, and public ways or places of the City wherever situated or located, shall be kept and maintained at all times in a safe, suitable, substantial condition, and in good order and repair.

#### SECTION 12.     New Developments

It shall be the policy of the City to amend this Ordinance liberally, upon application of the Company, when necessary to enable the Company to respond to changes in Federal Communications Commission regulations, and to

take advantage of any developments in the field of transmission of television signals and related services which will afford it an opportunity more effectively, efficiently, or economically to serve its customers.

SECTION 13.     Conditions on Street Occupancy

a. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners whose land may adjoin any of the said streets, alleys, or other public ways and places.

b. In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Company shall, at its own cost and expense and in a manner approved by the City's appropriate authority, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.

c. If at any time during the period of this Ordinance the City shall lawfully elect to alter or change the grade or alignment or rerouting of any street, sidewalk, alley, or other public way, the Company, upon reasonable notice by the City shall remove and relocate its poles, wires, cable, underground conduits, manholes, and other fixtures at its own expense.

d. Any poles or other fixtures placed in any public way by the Company shall be placed in such manner as not to interfere with the usual travel on such public way.

e. In all areas of the City where the wires, cables and other facilities of the power company and the telephone company are located underground, the Company will locate its facilities underground. Utility trenches opened by the City or by others subject to any City permit, license, or other authority shall, as a condition of such permit, license, or authority, be made available at no cost to the Company for installation of CATV facilities as desired by the Company; at least 72 hours advance notice of time of actual trench opening shall be provided to the Company.

f. The Company shall have the authority, under the supervision of the City's appropriate authority, to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cable of the Company.

g. The Company shall, at the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of the building. The expense of such temporary removal, raising or lowering of the wires, shall be paid by the person requesting the same, and the Company shall have

authority to require such payment in advance. The Company shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire change.

SECTION 14.     Prohibition of Discriminatory or Preferential Practices

Except as hereinbefore provided, the Company shall not, in its rates, charges, service facilities, promotional campaigns, rules, regulations, or in any other respect, make or grant preference or advantages to any subscriber, or other user or potential user of its System, nor subject any person to any prejudice or disadvantage. Connection charges may be waived during construction and during special promotions on a non-discriminatory basis.

SECTION 15.     Open Access

The entire System of the Company shall be operated upon a principle of fairness and equal accessibility to its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or other entities having a legitimate use for the System; and no such user shall be arbitrarily excluded by the Company from its use; allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same.

SECTION 16.     Removal of Facilities Upon Request

Upon termination of service to any subscriber, the Company shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

SECTION 17.     Assignability

a. The Company shall not at any time sell or assign its rights and privileges under this Ordinance and the cable television system located in the City to any other person, firm or corporation without the approval of the governing body. Such assignment shall not be approved until the assignee shall have agreed in writing with the City to become responsible for the full performance of all the conditions, liabilities, covenants and obligations contained in this Ordinance and until such assignment shall have been approved by the City, provided such approval shall not be unreasonably withheld.

b. Nothing in this Section shall be deemed to prohibit a mortgage or pledge of the permit, System, or any part thereof, for financing purposes; nor does it prohibit the sale of the Company's stock in compliance with applicable laws.

SECTION 18.     Gross Revenue

Within ninety (90) days following the end of the Company's fiscal year, the Company shall file with the

City a certified report showing gross subscriber revenues of the Company from subscribers throughout the City since the preceding report.

Section 19

Franchise Fee

The franchisee herein named shall pay to the City during the term of said franchise a sum equal to three (3) percent on all Gross Annual Receipts; provided that payment of said sum will be made semi-annually, with a payment being due on October 1 with respect to all receipts for the first six calendar months and a payment being due on April 1 with respect to all receipts during the last six calendar months. Late payments shall bear interest at the rate of ten (10) percent per annum until paid.

a. The right is hereby reserved to the City to adopt, in addition to the provisions contained herein and in existing applicable agreements, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the right herein granted.

b. The City shall have the right, during the life of this Ordinance, to install and maintain free of charge upon the poles of the Company any wire and pole fixtures necessary for a police alarm system, or traffic control system on the condition that such wire and pole fixtures do not interfere with the CATV operation of the Company.

c. The City shall have the right to inspect the maps, plans, and other like materials of the Company at any time during normal business hours.



d. The City shall have the right to review all construction or installation work performed subject to the provisions of this Ordinance and make such inspections as it shall find necessary to insure compliance with the terms of this Ordinance and other pertinent provisions of law. The Company shall make quarterly construction status reports from the date of grant of the FCC Certificate of Compliance until the completion of construction.

SECTION 21. Maps and Plats

The Company shall, upon request, file with the City Clerk true and accurate maps of plats of all existing installations.

SECTION 22. Forfeiture of Ordinance

If the Company shall fail to comply with any of the provisions of this grant or shall default in any of its undertakings or obligations hereunder and shall fail within sixty (60) days after receipt of written notice from the City to correct such default or non-compliance, then the City shall have the right, after a full and complete hearing, to revoke any or all rights and privileges granted hereunder provided, however, that default or non-compliance resulting from factors beyond the reasonable control of the Company shall not be sufficient grounds for revocation.

## Programming Services

Franchisee shall transmit and distribute to its subscribers such electromagnetic radiation as are now, and may hereafter be, authorized by the Federal Communications Commission or any other administrative agency of the United States, the several states, or political subdivisions thereof having jurisdiction to regulate such activity.

Initially, franchisee shall provide those programming services listed in the attached Exhibit A and such other programming services as may be herein required. Except as herein provided, franchisee shall have the right to make such changes in the programming services provided as may be reasonably necessary or desirable; notice of all such changes in programming services shall be filed with the City Clerk of the City promptly. Programming services offered on the Mission Hills CATV system shall not be materially less than the services offered on the franchisee's Kansas City, Missouri CATV system, without good reason.

Upon receipt of the requisite authority from the Federal Communications Commission, franchisee shall also provide the signals for the commercial stations in Topeka, Kansas, channels 13 and 27. This programming service shall not be terminated without the approval of the Governing Body so long as franchisee has the authority to carry said signals.

Franchisee shall, at its sole and exclusive cost, interconnect its Mission Hills CATV system with the CATV system now operated by Telecable of Overland Park, Inc. in Johnson County, Kansas ("Telecable"). By means of such interconnect, franchisee shall provide on the Mission Hills CATV system all programming originated locally by Telecable which involves or relates to governmental or community affairs, matters of public interest, educational matters and programming, the State of Kansas or Johnson County, Kansas. Franchisee's obligations to interconnect with Telecable shall be subject to obtaining Telecable's consent; franchisee shall use its best efforts to obtain such consent.

Franchisee has included in the list of programming services which will be initially provided, as set forth on the attached Exhibit A, several channels which are available for public and government access. Franchisee may change the particular channels and the number of channels that are available for such purpose; however, at least one channel shall be kept available for government access and one channel for public access, unless the Governing Body consents to the termination of such service.

## Section 24

### Erection, Removal and Joint Use of Poles

a. No poles, conduits, or other wire-holding structures shall be erected or installed by the Grantee.

b. Where poles, conduits, or other wire-holding structures of any public utility company are available for use by the Grantee, the Grantee shall use such poles, conduits and structures if the permission and consent of such public utility company may be obtained by the Grantee and if the terms of the use available to the Grantee are just and reasonable.

d. Where City-owned utility poles are available for use of the Grantee, the Grantee shall pay to the City the rate of \$3.00 per annum for the use of such poles, when used by Grantee.

Section 25

Rates

The rates which franchisee will initially charge for its services shall be as set forth in the attached Exhibit B. These rates shall remain in effect for a period of one (1) year from the date of first subscriber service to \_\_\_\_\_. Thereafter, franchisee may make such rate changes as are reasonably necessary and desirable provided that rates for service in the City shall not exceed those for Company's Services in Kansas City, Missouri. All such changes in rates shall be filed with the City Clerk ten (10) days prior to the effective date of such changes.

SECTION 26.

System Security - Tampering with CATV Equipment -

Theft of Service

The Grantee shall have the right at all times to take any and all legal action it deems necessary to preserve the security of its cable television system and to assure appropriate use thereof by its subscribers. In addition to the foregoing rights reserved to the Grantee, any person who willfully or maliciously damages, or causes to be damaged, any wire, cable, conduit, apparatus or equipment of the Grantee, or who commits any act with intent to cause damage to any wire, cable, conduit, apparatus or equipment of the Grantee, or who taps, tampers with, or connects any wire or device to a wire, cable, conduit or equipment of the Grantee with intent to obtain a signal or impulse therefrom without authorization of the Grantee, or who converts Grantee's equipment to their own use for the purpose of obtaining any service without payment, or who willfully attempts to defraud the Grantee by non-payment of service fees, shall be fined up to \$200.00 per occurrence.

SECTION 27. Separability

If any section, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 28. Duration and Acceptance of the Ordinance

a. This Ordinance and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage and publication hereof, as provided by law, and any franchise permitted or operated hereunder shall continue in force and effect for a term of fifteen (15) years, provided that within thirty (30) days after the date of the passage of the Ordinance, the Company shall file with the City Council its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by the appropriate officials of the Company before a notary public or other officer entitled by law to administer oaths.

b. Should the Company fail to comply with subsection (a) above, it shall acquire no rights, privileges or authority under this Ordinance whatever.

PASSED: \_\_\_\_\_

CITY OF \_\_\_\_\_

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

# AMERICAN CABLEVISION OF KANSAS CITY, INC.

## Programming Services

Community Information Service: Billboards, Classified Ads, Consumer Shopping Guide, Senior Citizens' Newswire

WDAF (4) Kansas City

KCFB (5) Kansas City

Christian Broadcasting Network

\* Take 2

Cable 8: Movies/Madison Square Garden

KHBC (9) Kansas City

Newstime Slo-Scan Video News

WGN (9) Chicago

Children's Channel

Kansas City Cultural Channel

\* Home Box Office

KYFC (50) Kansas City

Automated Time & Weather/FM Music

WTCC (17) Atlanta

PTL Religious Programming

KCPT (19) Kansas City

Program Guide/Preview Channel

Automated National & International Newswire

Future Services

Educational Access/Kansas City Library

Public Access

Government Access

FBS Captioned Programming for the Hearing Impaired/

Alternate ETV Programming

Automated Sports and Financial Reports/FM Music

Kansas City Higher Education Network

Kansas City Health/Medical Channel

Missouri and Kansas State Newswires

KBMA (41) Kansas City

Spanish International Network

Color Weather Radarescope

C-SPAN/Locally Deleted Network Programs/PTL

~~Programming from KTVH (2) C-SPAN~~

Leased Access

Color Bars/Future Services

\* An added charge is made for these services. See Exhibit B for subscriber rates.

# EXHIBIT B

## AMERICAN CABLEVISION OF KANSAS CITY, INC.

### RATES

	Installation	Monthly
Basic Cable TV Service, first outlet	\$20.00*	\$7.50
Basic Cable TV Service, Extra Outlet	10.00**	2.50
FM Service, without cable outlet	20.00*	7.50
FM Service, with cable outlet	10.00**	2.50
Antenna Switch	At Cost	
Reconnect	10.00	
Relocate	10.00	
Collection Charge	5.00	
Pay TV, Installation Charge	20.00*	
Service Charge:		
Home Box Office		6.95
Take Two		3.95
Parental Guidance Key (Optional)		1.00

Commercial Rates: To be negotiated, but not to exceed prevailing residential rates.

\* Shall be waived during first 30 days service is available, and may be waived or reduced throughout the term of the franchise for marketing purposes on a non-discriminatory basis.

\*\* Waived if done at the same time as another connection.

In addition, ACKC will require a \$10.00 converter deposit, subject to the following general policy.

The converter(s) are and shall remain the property of American Cablevision of Kansas City, Inc. Upon termination for whatever reason of cable service to the subscriber, the subscriber will agree to return the converter to ACKC in the same operating condition as when received, reasonable wear and tear expected, and ACKC agrees to return to the subscriber his deposit (without interest) within 30 days thereafter. Interest will not be paid on such deposits. Should any charges due from subscriber to ACKC remain due at the time service is terminated, the deposit may also be used as partial or full payment of these charges.

ORDINANCE NO. 116

AN ORDINANCE GRANTING A FRANCHISE TO AMERICAN CABLEVISION OF KANSAS CITY, INC., ITS SUCCESSORS, TRANSFEREES, AND ASSIGNS, FOR A TERM OF FIFTEEN YEARS, THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY OF WESTWOOD HILLS, KANSAS, AND TO USE AND OCCUPY THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES OF SAID CITY FOR SUCH PURPOSES, AND PROVIDING FOR PAYMENT TO SAID CITY.

WHEREAS, an application has been received by the City of Westwood Hills, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas, from a corporation which desires to provide community antenna television service to subscribers residing within the corporate limits of said City; and

WHEREAS, the Governing Body of the City of Westwood Hills, Kansas, finds such service to be desirable and that the same will contribute to the public welfare of the residents of said City; and

WHEREAS, such applicant requires and desires to use the public streets, alleys, easements and other public ways within said City for the location of cables, wires, poles, and other appurtenances necessary to the operation of such a system; and

WHEREAS, the Governing Body of said City finds that American Cablevision of Kansas City, Inc., is willing to accept the grant of the franchise herein awarded and conferred to said party, and that said party can provide to the residents of said City a useful and desirable service for the benefit of the public welfare of said residents; and

WHEREAS, the Federal Communications Commission has adopted Franchise Standards applicable to authorizations granted to Community Antenna Television Systems by municipalities, which standards are found at 47 C.F.R. 76.31; and

WHEREAS, the legal, character, financial, technical and other qualifications of American Cablevision of Kansas City, Inc., and the adequacy and feasibility of its construction arrangements have been approved by the Governing Body of said City as a part of a full public proceeding affording due process, all consistent with 47 C.F.R. 76.31 (a)(1);

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF Westwood Hills, KANSAS:

Section 1. SHORT TITLE

This ordinance shall be known as and may herein and hereafter be cited as "American Cablevision of Kansas City, Inc. CATV Franchise Ordinance".

Section 2. DEFINITIONS

The following terms, phrases, words and their derivations shall have for the purposes of this ordinance the meanings herein stated; provided that when not inconsistent with the context, words used in the present tense shall include the future, and words in the plural shall include the singular number, and words in