

#6  
1st Reading  
May 16, 1987

STATE OF TEXAS  
COUNTY OF HENDERSON  
CITY OF LOG CABIN

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BE IT ORDINANED BY THE  
CITY COUNCIL OF THE  
TOWN OF LOG CABIN;

GRANT OF EXCLUSIVE FRANCHISE AND  
EASEMENT FOR CATV SYSTEM UTILITY PURPOSES

A Franchise granting to *H.&B. Operating Co./dba Albert Hobbs* its successors and assigns, the right, privilege, and authority for a term of fifteen (15) years, to erect, maintain, own and operate a community antenna "CATV System" in *The City of Log Cabin* to erect, maintain, own and operate its poles, towers, anchors, wires, cables, electronic conductors, conduits, manholes, and other structures and appurtenances in, over, under, along, and across the present and future public streets, highways, alleys, bridges, easements, and other public ways and compensation for the rights, privileges and franchise conferred hereunder: Prescribing the conditions governing the operation of the business insofar as it affects the use of public property for the purpose of such business: Prescribing rules and regulations generally for the installation, maintenance, and operation of said system and business.

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Section 1. Short Title.

This Franchise shall be known and may be cited as The City of Log Cabin and H.&B. Operating Co. Franchise.

Section 2. Definitions.

For the purpose of the Franchise the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

A. "Additional Services" shall mean any communications services other than regular subscriber service and pay television or carrier for its subsidiaries, affiliates of any other person engaged in communications services, including, but not limited to, burglar alarm, data or other electronic intelligence transmission, facsimile reproduction, meter reading and home shopping. Additional programming on the

Educational Access Channels, which programming is included in Regular subscriber service.

B. "Anniversary Date" shall commence with the date of the last signature below which will also commence the Franchise.

C. "Grantor" shall mean The City of Log Cabin, also referred to as "City", is the person or entity granting Franchise, whether the City Council of an incorporated municipal government, owner/developer of a private development, or homeowners association.

D. "CATV System" shall mean a system of cables, wires, lines, towers, wave guides, microwave and laser beams, and any associated converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying and distributing by audio, video and other forms of electronic or electric signals to and from subscribers and locations in the Franchise Area.

E. "Channels" shall mean a band of frequencies, six megahertz wide, in the electro-magnetic spectrum which are capable of carrying either audio-video television signals or non-video signals, or both.

F. "City" shall mean the area known as Log Cabin whether an incorporated municipal government, private development, or homeowners association.

G. "City Council" Shall mean the present governing body of an incorporated municipal government.

H. "Converter" shall mean an electronic device which converts signals to a frequency which by an appropriate channel selector, also permits a Subscriber to view delivered signals.

I. "Educational Access Channels" shall mean channels on the CATV System which are reserved for carriage of program matter originated by local educational authorities. Providing such channels are economically feasible to provide, Grantee may collect a fee from any entity wishing access to such channels.

J. "Federal Communications Commission" or FCC shall mean that agency as presently constituted by the United States Congress with Jurisdiction over CATV matters.

K. "Franchise Area" shall mean the entire "City of Log Cabin", whether incorporated or unincorporated, as surveyed and registered in local county or state records, as well as any property that may become annexed, incorporated, or developed in any way with the Franchise Area.

L. "Franchise Year" shall mean any twelve-month period commencing on an anniversary date and extending to the day immediately proceeding the next subsequent Anniversary Date.

M. "Grantee Channels" shall mean the Channels on the CATV System which are reserved for carriage of program material originated locally by the Grantee.

N. "Grantee" shall mean H.&B. Operating Co./dba Albert Hobbs a sole proprietor, Henderson County, Texas.

O. "Gross Basic Revenues" shall mean all revenues collected by the Grantee for Basic Subscriber Service. Gross Basic Revenues shall not include any taxes which are imposed on any subscriber or user of the CATV System by any governmental body including copyright, royalty, and fees for premium or "pay television."

P. "Pay Television" shall mean the delivery over the CATV System of programming to Subscribers for a fee of charge over and above the rate for "Basic Subscriber Service", on a fee per program basis.

Q. "Person" shall mean any person, firm partnership, association, corporation, company or organization of any kind.

R. "Public Access Channels" shall mean Channels on the CATV System which are reserved for carriage of program material in the public interest provided that it is economically feasible for Grantee to provide such channels on the CATV System. A fee may be collected by Grantee for such channels, if they exist, by any entity wishing access to them.

S. "Basic Subscriber Service" shall mean the simultaneous delivery by Grantee to television receivers, or any other suitable type of audio-video communication receivers, of that service regularly provided to all of its Subscribers including broadcast signal authorized for carriage by the FCC, but excluding any additional or Pay Television.

T. "Street" shall mean the surface or the space above and below any public or private street, road, highway, alley, bridge, sidewalk or other public place or way now or hereafter held by Grantor for the purpose of public travel and including other easements or rights of way now held or hereafter held by Grantor which shall entitle Grantee to the use thereof for the purpose of installing, maintaining, and transmitting CATV System signals over poles, wires, cables, conductors, conduits, manholes, amplifiers, appurtenances, attachments and other structures, equipment and facilities as

may be necessary and pertinent to a CATV System.

U. "Subscriber" shall mean any person who receives any service delivered by the CATV System.

V. "User of CATV System" shall mean a person who utilizes the CATV System to produce or to transmit programs or other communications to subscribers.

W. "Head-In Site" shall be location of Grantee's down link equipment, consisting of receiving dish, tower, antennas, building, construction supplies, and other equipment deemed necessary by Grantee.

### Section 3. Grant of Authority

There is hereby granted to H.&B. Operating Co. the right, privilege and Franchise to have, acquire, construct, reconstruct, maintain use and operate in, over, and under and along the present and future streets of Franchise Area as well as other easements and rights-of-way held by Grantor all necessary or desirable poles, towers, anchors, wires, cables, electronic conductors, underground conduits, manholes and other structures, and appurtenances necessary for the construction, maintenance and operation of a CATV System in the Franchise Area.

### Section 4. Term of Franchise and Renewal

A. Initial Term. Upon the filing with Grantor by Grantee of the written acceptance, this franchise shall be in full force and effect for a term and period of fifteen (15) years commencing concurrently with the granting of this Franchise.

B. Renewal. At not less than twelve (12) months prior to the expiration date of this Franchise, Grantor shall determine if Grantee's performance has been satisfactory in accordance with the terms and conditions imposed by this Franchise, at which time Grantor will renew Grantee's Franchise for an additional fourteen (14) year period.

### Section 5. Additions to Franchise Area by Annexation or Purchase.

The Franchise Area shall include any territory which is annexed or purchased by Grantor during the term of this Franchise.

### Section 6. Use, Rental or Lease of Utility Poles and Facilities.

There is hereby granted to Grantee the authority to contract with Grantor or any appropriate board or agency

thereof or with the holder or owner of any utility franchise in the Franchise Area for the use, rental or lease of its poles, underground conduits and other structures and facilities for the purpose of extending carrying or laying Grantee's wires, cables, electronic conductors and other facilities and appurtenances necessary or desirable in conjunction with the operation of its CATV System. Grantor agrees that any public utility owning or controlling such poles or underground conduits may, without amendment to its Franchise, allow and is encouraged to allow, Grantee to make such use thereof pursuant to any agreement reached between such utility and Grantee.

#### Section 7. Compliance with applicable laws.

The work done and activity in connection with the construction, reconstruction, maintenance, operation of repair of Grantee's CATV System shall be subject to and governed by all present and future laws, rules and regulations of The State of Texas and the United States of America, including the FCC and any other federal agency having jurisdiction.

#### Section 8. Conditions of Street Occupancy

A. Use. All structures, wires, cables, equipment and facilities erected or maintained by Grantee within Franchise Area shall be located as to cause minimum interference with the proper and intended use of the streets and with the rights or reasonable convenience of the owners or occupiers of property which adjoins any of such streets.

B. Restoration. The surface of any street disturbed by Grantee in laying, constructing, maintaining, operating, using, extending, removing, replacing, or repairing its CATV System shall be restored by Grantee immediately after the completion of the work, at its cost and expense, to as good a condition as before the commencement of the work and maintained by Grantee to the satisfaction of Grantor for one year from the date of completion of such work. No street shall be encumbered by construction, maintenance, removal, restoration or repair work by Grantee for longer period than shall be necessary to execute such work. If there is any unreasonable delay by Grantee in restoring and maintaining streets after such excavation or repairs have been made, Grantor shall have the right to restore or repair the same and to require Grantee to pay the reasonable cost of such restoration to repair.

C. Relocation. Whenever by reason of the construction, repair, maintenance, relocation, widening, raising or lowering of the grade of any street of the Franchise Area or by location or manner of construction, reconstruction, maintenance or repair of any public property, structure or

facility by Grantor, with the exception of Head-In Site, it shall be deemed necessary by Grantor for Grantee to move, relocate, change, alter or modify any of its facilities or structures, such change, relocation, alteration or modification shall be promptly made by Grantee, at its cost and expense, when directed in writing to do so by Grantor, without claim or right of reimbursement of cost or damages against Grantor. In the event Grantee, after such notice, fails or refuses to commence, pursue or complete such relocation work within a reasonable time Grantor shall have the authority, but not the obligation, to remove or abate such structures or facilities and to require Grantee to pay to Grantor the reasonable cost of such removal or abatement, all without compensation or liability for damages to Grantee.

D. Temporary Removal of Wire for Building Moving. Upon written request of any person holding a building moving permit issued by Grantor, Grantee shall remove, raise or lower its wires and cables temporarily to permit the moving of houses, buildings or other bulky structures; the reasonable expenses of such temporary removal, raising or lowering shall be paid by the benefited person, and Grantee may require payment in advance for such removal. Grantee is without obligation to remove, raise or lower its wires and cables until such payment shall have been made. Grantee shall be given not less than seventy-two (72) hours advance written notice to arrange for such temporary wire and cable adjustments.

E. Tree Trimming. Grantee will from time to time, and at his own discretion, particularly during initial construction, have the right, without notification to Grantor or individual property owner, to trim or remove trees or vegetation from on, along, beside or under the cable stringing path. Grantee will always strive to trim or remove only the amount necessary to complete initial construction, and to allow for proper clearance to CATV System lines. However, Grantee will NOT be held liable by Grantor or any individual property owner for damages incurred to, but not limited to, trees, vegetation, esthetics, or property values for such trimming within the Franchise Area.

F. Placement of Fixtures. Grantee shall not place poles, towers or similar fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main, drainage facility or sanitary sewer.

#### Section 9. Installation Schedule.

A. Permits, licenses and Certificates. Within one hundred eighty (180) days after the acceptance of this Franchise, Grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business including, but not limited to,

utility joint use agreements, and permits, licenses, authorizations and certificates to be granted by duly constituted local, state and federal government installation and operation of CATV System.

B. Start of Construction. Within three hundred sixty (360) days after obtaining all necessary permits, licenses, authorizations and certificates, and after completion of sufficient make-ready work by utility companies in connection with use of utility poles and facilities, Grantee shall commence construction and installation of its CATV System, subject to the conditions of this Franchise.

C. Initial Rendering of Service. Within twenty four (24) months after Start of Construction, Grantee shall have extended service to the Franchise Area.

#### Section 10. Operational Standards.

Grantor shall require that Grantee's CATV System shall be installed, maintained and operated in accordance with the highest accepted standards of the industry to the end that the Subscriber may receive the best and most desirable form of service. Toward accomplishment of this purpose Grantee and its CATV System shall meet the following minimum standards and service offerings.

A. Compliance with FCC Rules. Grantee shall comply with present and future rules and regulations of the FCC in connection with and relation to the operation of its CATV System.

B. Quality of Color Signals. Grantee's CATV System shall be capable of transmitting and passing the entire color television spectrum without the introduction of material degradation of color intelligence and fidelity.

C. Rated for Continual Operation. Grantee's CATV System shall be designed and rated for twenty-four hour a day continuous operation.

D. Quality of Picture. Grantee's CATV System shall be capable of and shall produce a picture upon any Subscriber's television screen in black and white or color, provided the Subscriber's television set is capable of producing a color picture, proper sound, and assuming the standard production television set is in good repair and the television broadcast signal transmission is satisfactory. In any event, the picture produced shall be as good as the state-of-the-art allows.

E. Channel Capacity. Grantee's CATV System shall be designed for a minimum channel capacity of thirty-five (35) television channels. However, the actual channel line-up,

and number of channels supplied on the CATV System will be determined by Grantee.

F. Temperature Range. Grantee's CATV System shall be capable of operating throughout the air temperature range of -20 degrees F. to 100 degrees Fahrenheit without degradation of audio or video fidelity.

G. Standard of Care. Grantee shall at all times employ a high standard of care and shall install, maintain and use approved methods and devices for preventing failures or accidents which are likely to cause damages, injuries or nuisances to the public.

H. Service and Repair. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause.

I. Service Calls. Grantee shall respond to all service calls as promptly as possible, but, in all events, within a reasonable time which shall be seventy-two (72) hours after notice thereof except during times of general breakdown due to weather or other catastrophe.

#### Section 11. Compliance with State and Federal Laws.

Notwithstanding any other provision of this Franchise to the contrary, Grantee shall at all times comply with all laws, rules and regulations of the state and federal government and any administrative agencies thereof. If Grantee determines that a material provision of this Franchise does in fact conflict with such state or federal law, or regulation, he shall have the right to modify any provision hereof to such reasonable extent as may be necessary to carry out the full intent and purpose of this Franchise.

#### Section 12. Employment Requirements.

Grantee shall afford equal opportunity in employment to all qualified persons. No person shall be discriminated against in employment because of race, color, religion, national origin or sex.

#### Section 13. Payment to Grantor.

A. Amount and Time. As compensation for the right privilege and Franchise herein conferred, Grantee shall pay to Grantor each year during the term of the Franchise a sum equal to Three (3%) percent of Grantee's Gross Basic Revenues for such year. Such payments shall be made quarterly. Grantee shall file with Grantor within sixty (60) days after the expiration of each quarter of each calendar year, or portion thereof, during which this Franchise is in effect, a



statement prepared according to accepted accounting practice showing The Gross Basic Revenues of Grantee's CATV System during the preceding quarter of the calendar year. Such statement shall be accompanied by Grantee's payment to Grantor of Three (3%) percent of such Gross Basic Revenues for such quarter.

#### Section 14. Records and Reports.

A. Books of Account. Grantee shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. All such books of accounts and records shall be maintained at Grantee's principal offices.

B. Annual Report. An annual report showing the number of Subscribers as of that year's Anniversary Date of the Franchise and Gross Revenue and Regular Subscriber Service revenue received by Grantee for the preceding calendar year, prepared and certified to by an officer of Grantee, and such other information a Grantor shall request with respect to the properties and expenses related to Grantee's CATV System, shall be submitted by Grantee with Grantor within ninety (90) days following the end of each calendar year or portion thereof during which this Franchise is in effect. Grantor shall hold all reports and documents filled by Grantee in connection with the CATV System in strictest confidence, releasing no information to any employees or any outside parties without written permission from Grantee.

#### Section 15. Grantee's Rules.

Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonable necessary to enable Grantee to exercise its rights and to perform its obligations under this Franchise and to assure an uninterrupted service to all Subscribers; provided, however, such rules, regulations, terms and conditions shall not be in conflict with any of the provisions of this Franchise, the laws of the State of Texas, and the United States of America, and the rules and regulations of the FCC and any other federal agency having jurisdiction. A copy of Grantee's rules will be available upon request.

#### Section 16. Rates.

Grantee shall set forth the initial rates it will charge its Subscribers upon commencing service. Thereafter, the rates shall be changed when appropriate in accordance with the provisions of this section. Any rate established shall be reasonable, just and fair to the public, and shall provide the Grantee a return upon its investment reasonably sufficient to:

- A. Assure confidence in Grantee's financial soundness.
- B. Support its credit and attract necessary capital for efficient and economical management.
- C. Provide a return to equity owners commensurate with current returns on investment in other enterprises having corresponding risks.

No rate established shall afford any undue preference or advantage among Subscribers, but separate rates may be established for separate classes of Subscribers.

Changes in initial rates shall be made as follows:

- A. For the first year (1) after the date of the Franchise, there shall be no changes in initial rates.
- B. After one (1) year, Grantee may make a change in rates by filing a statement of rate modification with Grantor at least thirty (30) days prior to the proposed effective date of the modification. Grantor shall have forty-five (45) days to show just cause why new rates should not be approved. If Grantor does not elect to review the proposed modifications, the new rates proposed by Grantee shall become effective on the proposed date.

#### Section 17. Discontinuance of Service.

A. Grantee may disconnect installations and discontinue service to a subscriber who fails to pay his bill within fifteen (15) days of rendition. A reconnect charge, plus amounts past due, must be paid to resume service.

B. Disconnection of Installation Because of Deceit. Grantee may disconnect installations and discontinue service as well as seek prosecution to a Subscriber who operates or attempts to operate one or more than one television set at any one time on an installation for which no service fees are being paid, or permits anyone else to do the same; provided, however, television serviceman may disconnect or reconnect the terminal unit on the rear of the television receiver for the purpose of repairing or replacing receiver equipment at the request of a Subscriber.

#### Section 18. Distant extension of Distribution Cable.

In the event that a potential Subscriber's premises are located at such a distance from a distribution cable end that Grantee deems it is not economically feasible to provide service at the rates established; the potential Subscriber, would be required to pay the cost, in advance, of labor and materials to extend service to his location. In no event shall it be deemed "not economically feasible" to extend a

distribution cable a distance of two hundred (200) feet or less.

Section 19. Prohibition of Discriminatory or Preferential Practices.

In its rates or charges, or in making available the services or facilities of the CATV System, or in its rules or regulations, or in any other respect; Grantee shall not make or grant preference or advantage to any Subscriber or potential Subscriber or user of CATV System or potential User of CATV System and shall not subject any such person to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscriptions to the CATV System or other legitimate uses thereof.

Section 20. Damage to Subscriber equipment.

This section is intended to exclude Grantee from any liability for damages to Subscriber equipment that may be attached to CATV System such as, but not limited to: television receivers, video cassette recorders "VCR'S", radio receivers, speakers, computers, telephone equipment, homes, ect.

Grantor and Subscribers are warned and understand that there are potential hazards, although slight, from connecting to CATV System that may include:

- A. Electrical damage to equipment or persons from "surges" or lightning.
- B. Wind damage caused by trees falling across lines and pulling CATV System lines away from house.
- C. Many other unforeseen circumstances or "Acts of God".

Section 21. Lease of Head-In Site.

Grantor agrees to lease to Grantee a small parcel of land or "lot" within the Franchise Area, for Ten Dollars (\$10.00) per year, the adequacy of which is hereby acknowledged, for a period of time to run concurrently with the term of this Franchise, for the purpose of a Head-In Site. The location of this site will be determined by Grantee, when the design of the system is prepared, but generally, the site must be centrally located to the populous areas of the Franchise Area.

Section 22. Assignment of Franchise.

The rights, privileges and Franchise granted hereunder may be assigned by Grantee, in whole or in part when the assignee has filed with Grantor an instrument, reciting the fact of such assignment, accepting the terms of this

Franchise, and agreeing to comply with all of the provisions hereof. No consent shall be required for such an assignment.

Section 23. Acceptance of Franchise.

Within thirty (30) days from the effective date of this Franchise, which is the date on the signatures below, Grantee shall file with Grantor a written statement accepting this Franchise.

Section 24. Exclusive Franchise.

To protect the financial investment of Grantee, the Franchise is to be exclusively granted to H.&B. Operating Co. to the exclusion of all others to own and operate a CATV System or similar service within the Franchise Area. No other franchise of any kind may be awarded for a CATV System or similar service within the Franchise Area.

Section 25. Granting of Franchise.

I/We, The City of Log Cabin, having fully read, understand, and agree to the terms of this Franchise, do hereby grant to H.&B. Operating Co. the right to own and operate this Franchise serving with a CATV System the area known as Log Cabin Estates, in the county of Henderson, in the State of Texas in the United States of America. This Franchise will be in full force and effect, and the Anniversary Date will commence with the date of the last signature below, (Grantor or Grantee).

ORDINANCE NUMBER 6, PASSED AND APPROVED  
THIS 15<sup>th</sup> DAY, October MONTH, 1987

Seal

Grantor Clifford E Harmer  
Mayor Clifford Harmer  
Attest Nancy J. Hackel  
City Secretary

(Acknowledgment)

State of Texas  
County of Henderson

This instrument was acknowledged before me on  
this 15<sup>th</sup> day of October, 1987, by \_\_\_\_\_

Notary Public, State of Texas  
Notary's name (printed)

Nancy J. Hackel  
Notary's Commission expires 9-16-89

\* \* \* \* \*

Dated \_\_\_\_\_

Seal

Grantee \_\_\_\_\_

(Acknowledgment)

State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_  
day of \_\_\_\_\_, 198\_\_, by \_\_\_\_\_

Notary Public, State of \_\_\_\_\_  
Notary's name (printed)

Notary's Commission expires \_\_\_\_\_