

<p>Village President P. Sean Michels</p> <p>Village Clerk Cynthia Galbreath</p> <p>Village Administrator Brent M. Eichelberger</p>	 <p>10 S. Municipal Drive Sugar Grove, Illinois 60554 Phone: 630-466-4507 Fax: 630-466-4521</p>	<p>Village Trustees</p> <p>Robert Bohler Kevin Geary Mari Johnson Rick Montalto Thomas Renk</p>
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April 05, 2011  
Regular Board Meeting  
6:00 P.M.

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Public Hearings
  - a. FY 2011-12 Budget
5. Appointments and Presentations
  - a. Proclamation: Administrative Professionals Day
  - b. Proclamation: National Public Library Week
6. Public Comment on Items Scheduled for Action
7. Consent Agenda
  - c. Approval: Minutes of the March 15, 2011 Meeting
  - d. Approval: Vouchers
8. General Business
  - a. Ordinance: Granting a Special Use For a Health Club at 769 N. Heartland Drive Division 1
  - b. Ordinance: Granting Variances for a Proposed Expansion of an Existing Building at 1961 W. US Highway 30 – Scot Industries
  - c. Ordinance: Granting a Special Use to Allow a Chemical Processing Facility at 1960 Bucktail Lane
  - d. Ordinance: Granting a Variance for Building Materials at 1960 Bucktail Lane
  - e. Resolution: Authorizing Execution of a Cable Franchise Agreement
  - f. Ordinance: Authorizing Execution of a Cable Television Franchise Agreement Between the Village of Sugar Grove, Illinois and MCC Illinois, LLC d/b/a Mediacom Communications.
9. New Business
  - a. None
10. Reports
  - a. Staff Reports
  - b. Trustee Reports
  - c. Presidents Report
11. Public Comments
12. Airport Report
13. Closed Session: Land Acquisition, Personnel, Litigation
14. Adjournment

Committee of the Whole Meeting - Cancelled

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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** RICH YOUNG, COMMUNITY DEVELOPMENT DIRECTOR  
MIKE FERENCAK, VILLAGE PLANNER  
**SUBJECT:** ORDINANCE: SPECIAL USE AND VARIANCE FOR A CHEMICAL  
PROCESSING FACILITY AT 1960 BUCKTAIL LANE IN THE  
SUGAR GROVE INDUSTRIAL PARK  
**AGENDA:** 4/5/2011 REGULAR VILLAGE BOARD MEETING  
**DATE:** APRIL 1, 2011

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**ISSUE**

Should the Village Board consider a Special Use and Variance for a proposed chemical processing facility at 1960 Bucktail Lane. The use would consist of chemical storage, repackaging, and distribution. Outdoor acid, solvent, and fuel tanks, a railcar unloading platform, and truck loading docks would also be part of the use. Exterior improvements, including additional pavement are proposed with these requests.

**DISCUSSION**

This project was not reviewed at a Committee of the Whole meeting. The applicant, Producers Chemical Co., is requesting a Special Use to allow a chemical processing facility and related outdoor accessory uses on Lot 9 of Sugar Grove Industrial Park Unit 2. Lot 9 is a currently vacant 8.5 acre site with a vacant 40,080 square foot building (including 4,040 square foot mezzanine) and 8,000 square foot outdoor canopy. The applicant is also requesting a Variance for building materials for the enclosure of the outdoor canopy. The applicant proposes metal siding which is not allowed by the Zoning Ordinance.

Producers Chemical Co. is currently located in Batavia and would like to relocate to this site as it provides more interior storage space.

The project was published with two other Variances (for drive aisle width and parking quantity), but through changes made to the design those Variances are no longer requested. The background and details of the project can be found in the Plan Commission's staff report (attached).

## REQUEST

The specific requests are as follows:

1. Special Use for chemical processing (chemical storage, repackaging, and distribution) including outdoor acid / solvent / fuel tanks, pipe support / railcar unloading platform, pursuant to Section 11-10-2 and 11-13-12 of the Sugar Grove Zoning Ordinance.
2. Variance to waive the building wall material requirement thereby allowing a metal siding product on the proposed addition (a proposed enclosed canopy), pursuant to Section 11-10-7-E-1 of the Sugar Grove Zoning Ordinance.

A public hearing was held on this request on March 16, 2011 in front of the Plan Commission. A couple of the nearby property owners spoke at the public hearing. Terry Richards, the owner of the mini self-storage buildings on either side of this lot, questioned how the water collected in the proposed dock would be handled prior to being drained to the detention pond. The applicant responded that batch releases will take place to check the water quality before draining. Everett Whildin, the owner of the mostly agricultural property south and east of this lot, questioned whether chemicals could be released into the Aurora Airport branch of the Welch Creek behind this property (which flows south through Duganwoods Estates subdivision and park to Welch Creek proper). The applicant responded that this facility is actually safer than most since all chemical storage will have containment berms surrounding them (whether inside the building or outside in the storage tanks) so spillage into the creek should not be a concern. There were also quite a few persons in attendance that were either Producers Chemical Co. employees, Sugar Grove residents, or both.

The Plan Commission voted 7-0 to approve each of the two requests for this project, subject to the 13 conditions staff had recommended. The plans to be distributed to the Village Board are not ready at the time of the writing of this report. Therefore the draft ordinances cannot be completed by staff. The plans and draft ordinances will be delivered to the Village Board on Monday. Listed below are the conditions from the Plan Commission. In discussions with the applicant, it appears that all conditions from the Plan Commission are being addressed in the plans.

1. The Special Use shall substantially conform to:
  - A. the Site / Floor / Ground Sign Elevation Plan, titled "Facility Plan & Section - North" and "Facility Plan – South", by Kestrel Management Services, LLC, sheet 3 and 4, dated February 2011, last revised March 10, 2011;

B. the Architectural Elevation / Loading Dock Elevation / Railcar Unloading Platform Elevation / Outdoor Storage & Fence Elevation Plans, titled "Elevations" by Kestrel Management Services, LLC, sheets 5 and 6, dated February 2011, last revised March 10, 2011;

C. the Landscape Plans, not yet submitted,

D. the Engineering Plans, not yet submitted,

except as such plans may be revised to conform to Village codes and ordinances and the conditions below.

2. All building setback lines shall be added to the plan, prior to Village Board review.
3. Handicap accessible parking space sign details shall be added to the plan, prior to Village Board review.
4. The drive aisle widths shall be dimensioned on the plan, prior to Village Board review.
5. The septic field shall be shown on the plans with its setback from pavement. Any design changes necessitated by the interaction between the pavement and septic field shall be reviewed by staff, prior to Village Board review.
6. All parking setback lines should be added to the plan, prior to Village Board review.
7. A Landscape Plan shall be submitted and reviewed by staff, prior to Village Board review.
8. The north elevation drawing shall be provided for the railcar unloading platform and pipe supports, prior to Village Board review.
9. The existing diesel fuel tanks shall be screened by a fence and shown on the plans screened, prior to Village Board review.
10. Drawings showing landscape screening of the loading dock area shall be provided (by removing a triangular area of existing pavement), prior to Village Board review.
11. The review comments from the Village engineering consultant in the letter dated March 9, 2011 shall be addressed. Engineering Plans shall be submitted and reviewed by the Village engineering consultant and staff, prior to Village Board review.

12. The Plat of Survey scale error shall be corrected, prior to Village Board review.
13. The outdoor storage tanks and railcar unloading platform are acknowledged and approved in the locations and sizes shown on the various plans as accessory uses.

The Plan Commission also asked several questions at the public hearing. The summarized questions and applicant answers follow:

- a) Are chemical drums cleaned on site? No, they are not.
- b) Is there any mixing of chemicals on site? There are no true chemical reactions taking place, but there will be some blending of chemicals. Blending basically involves mixing chemicals where the person mixing them does not require a degree or special skills.
- c) Are any fumes or smells produced? No, all the tanks are built to contain the fumes.
- d) What kind of history does Producers Chemical Co. have with their Batavia site? They have had no major spills in their 44 years in Batavia.
- e) What is the most hazardous part of the operation? The point when the bulk chemicals are off-loaded.
- f) What is the hazard level of the chemicals? None of them are any more flammable than gasoline, but there is a larger quantity of them than at most businesses. Also, acids and solvents have their own unique hazards of course. Oxidizers may expand fires too.
- g) Why do they want to move to this site? This site provides more space (inside storage space). It is not due to any problems with the Batavia site or City of Batavia.
- h) Will the railroad spur be utilized immediately? No, at some point in the future. The railcar unloading system will be a top-load, air pressure design to prevent spills.
- i) Will there be on-site security? No, but there will be 24-hour cameras.
- j) Will there be any loud or audible noises produced by motors, fans, etc? No.
- k) How much truck traffic is generated? They have 5 trucks of their own typically doing up to 2 trips per day plus 5-10 deliveries or pick-ups by others per day.
- l) Can Bucktail Lane and Dugan Road handle the truck weight? They would meet any truck weight restrictions on Bucktail Lane and then Dugan Road north to US Route 30. This is the route the trucks would go.
- m) What hours are they open? 7 am to 5 pm.
- n) Can a tour of the either the existing Batavia site or this site (when opened) be provided? Yes, they would be glad to for both.
- o) Will there be overnight or long-term parking of trucks / vehicles? Yes, but only in the loading docks which will be screened at the front.
- p) Will any lighting be needed? The building includes existing wall-pack

- (building-mounted) lights. There are no plans to add parking lot light poles.
- q) Will a fence for an outdoor storage yard be needed? There will not be outside storage, other than the tanks which will be fenced in groups and the loading dock which will be screened from the front view of the property.
  - r) Will the Fire District have 24-hour access to the building? Yes, there can be a key box provided. Emergency contact information can also be provided.

On March 31, 2011, the Sugar Grove Fire Protection District met with the applicant on site and learned more about the planned use and operations of the building. The Fire District has determined they have concerns with this proposed use. As relayed to staff by the Fire District, the concerns can be summarized as follows:

- 1) In a chemical emergency, the Fire District would likely evacuate a one-half mile radius surrounding this site as a first step until it can be determined the chemical/s involved. Staff is attempting to determine the likelihood of this occurring by getting data on the number of emergencies that have happened at their current facility. Please note at their current facility most chemicals are stored outside though so there may be a different containment risk involved.
- 2) Their high-hazard occupancy classification under the Fire and Building Codes is not limited to the enclosed canopy area due to their internal processes in the building. The high-hazard occupancy will in fact encompass most of the building. Internal processes include the way they are handling the chemicals, the locations they are keeping them, the amount of them, etc. Therefore, the applicant will need to address numerous Fire and Building Code requirements for this occupancy. These requirements are specifically related to the high hazard occupancy.

Due to the concern of the Sugar Grove Fire Protection District, staff proposes to add an additional condition:

- 14. All Fire District and Building Division concerns shall be addressed prior to issuance of a building permit.

The following items are attached for your information:

- 1. Draft Special Use and Variance Ordinances (will be provided Monday)
- 2. Minutes of the March 16, 2011 Plan Commission (not yet available)
- 3. Staff Report to the March 16, 2011 Plan Commission
- 4. Area Map
- 5. Various Plans (will be provided Monday)

## **COSTS**

There is no cost associated with this proposal. All costs have been paid for by the petitioner.

**RECOMMENDATION**

That, if satisfied with the proposed conditions, the Board approve of an Ordinance granting a Special Use to allow a chemical processing facility and an Ordinance granting a Variance for building materials at 1960 Bucktail Lane subject to the conditions in the draft ordinances (to be provided Monday)

Or

That, if more items should be addressed and answered prior to any approval, the Board table the Ordinances to the April 19, 2011 meeting.

**VILLAGE OF SUGAR GROVE  
KANE COUNTY, ILLINOIS**

**ORDINANCE NO. 20110405C**

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**An Ordinance  
Granting a Special Use  
for a chemical processing facility  
at 1960 Bucktail Lane  
in the Village of Sugar Grove, Kane County, Illinois  
(Producers Chemical Co.)**

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Adopted by the  
Board of Trustees and President  
of the Village of Sugar Grove  
this 5th day of April, 2011.

Published in Pamphlet Form  
by authority of the Board of Trustees  
of the Village of Sugar Grove, Kane County,  
Illinois, this 5th day of April, 2011.

**ORDINANCE NO. 20110405C**

**AN ORDINANCE GRANTING  
A SPECIAL USE  
FOR A CHEMICAL PROCESSING FACILITY  
AT 1960 BUCKTAIL LANE  
IN THE VILLAGE OF SUGAR GROVE  
(Producers Chemical Co.)**

**BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**WHEREAS**, the Village of Sugar Grove is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution and, pursuant to the powers granted to it under 65 ILCS 5/1-1 *et seq.*; and,

**WHEREAS**, Producers Chemical Co. has requested a Special Use for a chemical processing facility (chemical storage, repackaging, and distribution), including outdoor acid / solvent / fuel tanks, pipe support / railcar unloading platform, at 1960 Bucktail Lane on property legally described in SECTION ONE; and,

**WHEREAS**, a public hearing has been conducted on the request by the Plan Commission of the Village of Sugar Grove on March 16, 2011, and the Commission recommended 7-0 conditional approval of the Special Use; and

**WHEREAS**, the Village Board has reviewed the request and has deemed that approval of the Special Use would be in compliance with the Zoning Ordinance of the Village of Sugar Grove.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**SECTION ONE: SPECIAL USE**

The subject property described in **Exhibit A** is hereby granted a Special Use pursuant to Section 11-10-2-B of the Village of Sugar Grove Zoning Ordinance. Said Special Use is conditioned upon compliance with the conditions enumerated on **Exhibit B** which is attached and made a part of this ordinance.

**SECTION TWO: REPEALER**

That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict.

**SECTION THREE: SEVERABILITY**

Should any provision of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect the same as if the invalid provision had not been a part of this ordinance.

**SECTION FOUR: EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, this 5th day of April, 2011.

\_\_\_\_\_  
P. Sean Michels  
President of the Board of Trustees  
of the Village of Sugar Grove, Kane  
County, Illinois

	Aye	Nay	Absent
Bohler	___	___	___
Geary	___	___	___
Johnson	___	___	___
Renk	___	___	___
Montalto	___	___	___

ATTEST: \_\_\_\_\_  
Cynthia L. Galbreath  
Clerk, Village of Sugar Grove

**EXHIBIT A- LEGAL DESCRIPTION**

LOT 9 IN SUGAR GROVE INDUSTRIAL PARK UNIT 2, A SUBDIVISION IN PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 7, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 7, 1986 AS DOCUMENT 90K041512, IN THE VILLAGE OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

## **EXHIBIT B- CONDITIONS OF APPROVAL**

1. The Special Use shall substantially conform to:
  - A. the Site / Floor / Ground Sign Elevation Plan, titled “Facility Plan & Section - North” and “Facility Plan – South”, by Kestrel Management Services, LLC, sheet 3 and 4, dated February 2011, last revised March 10, 2011;
  - B. the Architectural Elevation / Loading Dock Elevation / Railcar Unloading Platform Elevation / Outdoor Storage & Fence Elevation Plans, titled “Elevations” by Kestrel Management Services, LLC, sheets 5 and 6, dated February 2011, last revised March 10, 2011;
  - C. the Landscape Plans, not yet submitted,
  - D. the Engineering Plans, not yet submitted,except as such plans may be revised to conform to Village codes and ordinances and the conditions below.
2. All building setback lines shall be added to the plan, prior to issuance of a building permit.
3. Handicap accessible parking space sign details shall be added to the plan, prior to issuance of a building permit.
4. The drive aisle widths shall be dimensioned on the plan, prior to issuance of a building permit.
5. The septic field shall be shown on the plans with its setback from pavement. Any design changes necessitated by the interaction between the pavement and septic field shall be reviewed by staff, prior to issuance of a building permit.
6. All parking setback lines shall be added to the plan, prior to issuance of a building permit.
7. A Landscape Plan shall be submitted and reviewed by staff, prior to issuance of a building permit.
8. The north elevation drawing shall be provided for the railcar unloading platform and pipe supports, prior to issuance of a building permit.
9. The existing diesel fuel tanks shall be screened by a fence and shown on the plans screened, prior to issuance of a building permit.
10. Drawings showing landscape screening of the loading dock area shall be provided (by removing a triangular area of existing pavement), prior to issuance of a building permit.
11. The review comments from the Village engineering consultant in the letter dated March 9, 2011 shall be addressed. Engineering Plans shall be submitted and reviewed by the Village engineering consultant and staff, prior to issuance of a building permit.

12. The Plat of Survey scale error shall be corrected, prior to issuance of a building permit.
13. The outdoor storage tanks and railcar unloading platform are acknowledged and approved in the locations and sizes shown on the various plans as accessory uses.
14. All Fire District and Building Division concerns shall be addressed, prior to issuance of a building permit.

**VILLAGE OF SUGAR GROVE  
KANE COUNTY, ILLINOIS**

**ORDINANCE NO. 20110405E**

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**An Ordinance  
Granting a Variance for Land at  
1960 Bucktail Lane  
in the Village of Sugar Grove, Kane County, Illinois  
(Producers Chemical Co.)**

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Adopted by the  
Board of Trustees and President  
of the Village of Sugar Grove  
this 5<sup>th</sup> day of April, 2011.

Published in Pamphlet Form  
by authority of the Board of Trustees  
of the Village of Sugar Grove, Kane County,  
Illinois, 5th day of April, 2011.

**ORDINANCE NO. 20110405E**

**AN ORDINANCE GRANTING  
A VARIANCE FOR LAND  
1960 BUCKTAIL LANE  
IN THE VILLAGE OF SUGAR GROVE, KANE COUNTY, ILLINOIS  
(PRODUCERS CHEMICAL CO.)**

**BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**WHEREAS**, the Village of Sugar Grove is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution and, pursuant to the powers granted to it under 65 ILCS 5/1-1 *et seq.*; and,

**WHEREAS**, Producers Chemical Co. has petitioned for a Variance to waive the building wall material requirement thereby allowing a metal siding product on the proposed addition (the proposed enclosure of the existing canopy), on property legally described in SECTION ONE; and,

**WHEREAS**, a public hearing has been conducted on the requests by the Planning Commission of the Village of Sugar Grove on March 16, 2011, and the Commission recommended 7-0 approval of the Variance; and,

**WHEREAS**, the Village Board has reviewed this request and has deemed that the approval of the Variance would be in compliance with the Zoning Ordinance of the Village of Sugar Grove.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**SECTION ONE: VARIANCE**

The subject property described in **Exhibit A** is hereby granted a Variance to waive the building wall material requirement thereby allowing a metal siding product on the proposed addition (the proposed enclosure of the existing canopy), pursuant to Section 11-10-7-E-1 of the Sugar Grove Zoning Ordinance.

**SECTION TWO: REPEALER**

That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict.

**SECTION THREE: SEVERABILITY**

Should any provision of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect the same as if the invalid provision had not been a part of this ordinance.

**SECTION FOUR: EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, this 5th day of April, 2011.

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P. Sean Michels  
President of the Board of Trustees  
of the Village of Sugar Grove, Kane  
County, Illinois

	Aye	Nay	Absent
Bohler	___	___	___
Geary	___	___	___
Johnson	___	___	___
Renk	___	___	___
Montalto	___	___	___

ATTEST:

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Cynthia L. Galbreath  
Clerk, Village of Sugar Grove

**EXHIBIT A- LEGAL DESCRIPTION**

LOT 9 IN SUGAR GROVE INDUSTRIAL PARK UNIT 2, A SUBDIVISION IN PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 7, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 7, 1986 AS DOCUMENT 90K041512, IN THE VILLAGE OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

**VILLAGE OF SUGAR GROVE  
KANE COUNTY, ILLINOIS**

**ORDINANCE NO. 2011040B**

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**An Ordinance  
Granting Variances for Land at  
1961 W. US Highway 30  
in the Village of Sugar Grove, Kane County, Illinois  
(Scot Industries)**

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Adopted by the  
Board of Trustees and President  
of the Village of Sugar Grove  
this 5th day of April, 2011.

Published in Pamphlet Form  
by authority of the Board of Trustees  
of the Village of Sugar Grove, Kane County,  
Illinois, 5th day of April, 2011.

**ORDINANCE NO. 20110405B**

**AN ORDINANCE GRANTING  
VARIANCES FOR LAND AT  
1961 W. US HIGHWAY 30  
IN THE VILLAGE OF SUGAR GROVE, KANE COUNTY, ILLINOIS  
(Scot Industries)**

**BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**WHEREAS**, the Village of Sugar Grove is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution and, pursuant to the powers granted to it under 65 ILCS 5/1-1 *et seq.*; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to reduce the interior side building setback requirement for the addition from 75 feet to 60 feet along the east property line at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to reduce the parking quantity requirement from 160 spaces to 70 spaces, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to waive the building wall material requirement thereby allowing a metal siding product on the proposed addition, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to waive the building wall articulation requirement thereby allowing unarticulated walls on the north, west, and east of the addition, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to waive the foundation planting requirement thereby allowing for no landscaping next to the west wall of the addition, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to reduce the west buffer landscaping requirement thereby allowing for no shrubs along the west property line near the addition, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to waive the north buffer landscaping requirement thereby allowing for no trees and no shrubs along the north of the developed portion of the property, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to waive the east buffer landscaping requirement thereby allowing for no trees and no shrubs along the east property line near the addition, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to waive the parkway tree requirement thereby allowing for no parkway trees along Dugan Road near the addition, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to waive the loading area screening requirement thereby allowing for no screening of the loading areas at the north end of the addition, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, Scot Industries has petitioned for a Variance to waive the outdoor storage / trash screening requirement thereby allowing for no screening of the outdoor storage / trash areas at the north end of the addition, at 1961 W. US Highway 30, on property legally described in SECTION ONE; and,

**WHEREAS**, a public hearing has been conducted on the requests by the Planning Commission of the Village of Sugar Grove on March 30, 2011, and the Commission recommended 5-0 conditional approval of each of the Variances; and,

**WHEREAS**, the Village Board has reviewed this request and has deemed that the approval of the Variance would be in compliance with the Zoning Ordinance of the Village of Sugar Grove.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

## **SECTION ONE: VARIANCES**

The subject property described in **Exhibit A** is hereby granted variances to reduce the interior side building setback of 75 feet to 60 feet for the addition, to reduce the parking quantity requirement of 160 spaces to 70 spaces, to waive the building wall material requirement thereby allowing a metal siding product on the addition, to waive the building wall articulation requirement thereby allowing unarticulated walls on the north, west, and east of the addition, to waive the foundation planting requirement for the addition, to reduce the west buffer landscaping requirement for the addition to required trees only (no shrubs required), to waive the north buffer landscaping requirement for the addition, to waive the east buffer landscaping requirement for the addition, to waive the parkway tree requirement for the addition, to waive the loading area screening requirement for the north end of the addition, and to waive the outdoor storage / trash screening requirement for the north end of the addition, pursuant to Sections 11-10-4-C, 11-12-5, 11-10-7-E-1, 11-10-7-E-2, 11-10-7-G-1-d, 11-10-7-G-1-a (two parts), 11-10-7-G-1-b, 12-6-11, 11-10-7-C, and 11-10-7-I of the Sugar Grove Zoning and Subdivision Ordinances, respectively. Said Variances are conditioned upon compliance with the conditions enumerated on **Exhibit B** which is attached and made a part of this ordinance.

**SECTION TWO: REPEALER**

That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict.

**SECTION THREE: SEVERABILITY**

Should any provision of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect the same as if the invalid provision had not been a part of this ordinance.

**SECTION FOUR: EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, this 5th day of April 2011.

\_\_\_\_\_  
P. Sean Michels  
President of the Board of Trustees  
of the Village of Sugar Grove, Kane  
County, Illinois

	Aye	Nay	Absent
Bohler	___	___	___
Geary	___	___	___
Johnson	___	___	___
Renk	___	___	___
Montalto	___	___	___

ATTEST: \_\_\_\_\_  
Cynthia L. Galbreath  
Clerk, Village of Sugar Grove

## EXHIBIT A- LEGAL DESCRIPTION

THAT PART OF THE FOLLOWING LEGAL DESCRIPTION LOCATED IN SECTION 18, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN AND THAT PART OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 18, AND PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHWEST FRACTIONAL QUARTER OF SAID SECTION 19; THENCE NORTH 01 DEGREES 02 MINUTES WEST ALONG THE EAST LINE OF SAID NORTHWEST FRACTIONAL QUARTER 893.0 FEET; THENCE SOUTH 89 DEGREES 25 MINUTES WEST 554.4 FEET; THENCE NORTH 00 DEGREES 32 MINUTES 45 SECONDS WEST ALONG A LINE WHICH IF EXTENDED WOULD INTERSECT THE NORTH LINE OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 18 AFORESAID, 1164.24 FEET EASTERLY OF THE NORTHWEST CORNER THEREOF, 1293.79 FEET TO THE CENTER LINE OF U.S. HIGHWAY ROUTE NO. 30, FOR THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 32 MINUTES 45 SECONDS WEST ALONG THE EXTENSION OF THE LAST DESCRIBED COURSE, 3075.23 FEET TO A LINE DRAWN PARALLEL WITH AND 50.0 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE SOUTH 89 DEGREES 37 MINUTES WEST ALONG SAID PARALLEL LINE, 1164.41 FEET TO THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE SOUTH 00 DEGREES 21 MINUTES EAST ALONG SAID WEST LINE AND ALONG THE WEST LINE OF SAID NORTHWEST FRACTIONAL QUARTER 3135.70 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF BURLINGTON NORTHERN, INC. LANDS; THENCE SOUTH 66 DEGREES 42 MINUTES EAST ALONG SAID RIGHT OF WAY LINE 83.13 FEET TO A LINE DRAWN SOUTH 84 DEGREES 44 MINUTES WEST OF THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES 44 MINUTES EAST, 1102.83 FEET TO THE POINT OF BEGINNING, (EXCEPT THAT PART LYING NORTHERLY OF A LINE DRAWN PARALLEL WITH AND 1300.0 FEET NORMALLY DISTANT SOUTH OF THE NORTH LINE OF SAID SOUTHWEST FRACTIONAL QUARTER OF SECTION 18), IN SUGAR GROVE TOWNSHIP, KANE COUNTY, ILLINOIS AND CONTAINING 50.419 ACRES.

AND ALSO EXCEPT THAT PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 19; THENCE NORTH 00 DEGREES 46 MINUTES 02 SECONDS WEST (NORTH 01 DEGREES 02 MINUTES WEST, DEED) ALONG THE EAST LINE OF SAID NORTHWEST FRACTIONAL QUARTER 893.0 FEET; THENCE SOUTH 89 DEGREES 40 MINUTES 58 SECONDS WEST (SOUTH 89 DEGREES 25 MINUTES WEST, DEED) 554.4 FEET; THENCE NORTH 00 DEGREES 16 MINUTES 47 SECONDS WEST (NORTH 00 DEGREES 32 MINUTES 45 SECONDS WEST, DEED) ALONG A LINE WHICH IF EXTENDED WOULD INTERSECT THE NORTH LINE OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, 1164.24 FEET EASTERLY OF THE NORTHWEST

CORNER THEREOF, 1293.52 FEET (1293.79 FEET, DEED) TO THE CENTER LINE OF U.S. ROUTE 30 FOR THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 16 MINUTES 47 SECONDS WEST ON THE EXTENSION OF THE LAST DESCRIBED COURSE 40.14 FEET; THENCE SOUTH 85 DEGREES 00 MINUTES 23 SECONDS WEST, PARALLEL TO THE CENTERLINE OF U.S. ROUTE 30, 599.36 FEET TO A SURVEY DISC; THENCE WESTERLY ON A TANGENTIAL CURVE CONCAVE TO THE NORTH, RADIUS 1597.30 FEET, CENTER OF CIRCLE OF CURVE BEARS NORTH 04 DEGREES 59 MINUTES 37 SECONDS WEST, 583.55 FEET, CENTRAL ANGLE 20 DEGREES 55 MINUTES 56 SECONDS, TO THE WEST LINE OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 19; THENCE SOUTH 00 DEGREES 04 MINUTES 38 SECONDS EAST (SOUTH 00 DEGREES 21 MINUTES EAST, DEED) ON SAID WEST LINE 106.12 FEET, TO THE NORTHERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN, INC. LANDS; THENCE SOUTH 66 DEGREES 26 MINUTES 19 SECONDS EAST (SOUTH 66 DEGREES 42 MINUTES EAST, DEED) ALONG SAID RIGHT OF WAY 83.05 FEET (83.13 FEET, DEED) TO A LINE DRAWN SOUTH 85 DEGREES 00 MINUTES 23 SECONDS WEST (SOUTH 84 DEGREES 44 MINUTES WEST, DEED) FROM THE POINT OF BEGINNING; THENCE NORTH 85 DEGREES 00 MINUTES 23 SECONDS EAST 1102.87 FEET (1102.83 FEET, DEED) TO THE POINT OF BEGINNING IN THE TOWNSHIP OF SUGAR GROVE, KANE COUNTY, ILLINOIS AS MONUMENTED AND SHOWN ON THE PLAT OF HIGHWAYS, RECORDED AS DOCUMENT NUMBER \_\_\_\_\_, IN THE OFFICE OF THE RECORDER, KANE COUNTY, ILLINOIS. CONTAINING 1.514 ACRES, MORE OR LESS, OF WHICH 1.249 ACRES, MORE OR LESS, WERE PREVIOUSLY DEDICATED OR USED FOR PUBLIC HIGHWAY PURPOSES. SITUATED IN THE COUNTY OF KANE, IN THE STATE OF ILLINOIS.

AND ALSO EXCEPT THAT PART OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID QUARTER; THENCE SOUTH 00 DEGREES 21 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF THE SAID QUARTER, 1300.00 FEET FOR THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 37 MINUTES 00 SECONDS EAST, 1168.69 FEET; THENCE SOUTH 00 DEGREES 32 MINUTES 45 SECONDS EAST, 353.36 FEET; THENCE SOUTH 89 DEGREES 07 MINUTES 20 SECONDS WEST, 1169.94 FEET TO A POINT IN THE SAID WEST LINE; THENCE NORTH 00 DEGREES 21 MINUTES 00 SECONDS WEST ALONG THE SAID WEST LINE, 363.40 FEET TO THE POINT OF BEGINNING, ALL IN THE TOWNSHIP OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

AND ALSO EXCEPT THAT PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN KANE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER; THENCE ON AN ASSUMED BEARING OF SOUTH 00 DEGREES 15 MINUTES 42 SECONDS EAST, ON THE WEST LINE OF SAID NORTHWEST QUARTER, 48.27 FEET TO THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, THENCE SOUTH 00

DEGREES 12 MINUTES 59 SECONDS EAST, ON THE WEST LINE OF SAID NORTHWEST QUARTER, 290.32 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 47 MINUTES 01 SECONDS EAST, PERPENDICULAR TO THE LAST DESCRIBED COURSE, 33.00 FEET TO A 5/8" REBAR WITH AN ALLIED CAP STAMPED "STATE OF ILLINOIS DIVISION OF HIGHWAYS ROW CORNER IPLSC 89", AND TO THE EAST RIGHT OF WAY LINE OF DUGAN ROAD; THENCE SOUTH 30 DEGREES 11 MINUTES 22 SECONDS EAST, 127.65 FEET TO A 5/8" REBAR WITH AN ALLIED CAP STAMPED "STATE OF ILLINOIS DIVISION OF HIGHWAYS ROW CORNER IPLSC 89", AND TO A POINT ON THE NORTH RIGHT OF WAY LINE OF U.S. ROUTE 30 THAT IS 65.62 FEET EAST OF THE EAST RIGHT OF WAY LINE OF SAID DUGAN ROAD, AS MEASURED ON SAID NORTH RIGHT OF WAY LINE, SAID NORTH RIGHT OF WAY LINE BEING PARALLEL WITH AND 40.00 FEET NORTH OF THE CENTERLINE OF SAID U.S. ROUTE 30; THENCE WEST ON SAID NORTH RIGHT OF WAY LINE, BEING A 1597.30 FOOT RADIUS CURVE CONCAVE NORTHERLY, 99.85 FEET, THE CHORD OF SAID CURVE BEARS NORTH 75 DEGREES 59 MINUTES 58 SECONDS WEST, 99.83 FEET TO THE WEST LINE OF SAID NORTHWEST QUARTER; THENCE NORTH 00 DEGREES 12 MINUTES 59 SECONDS WEST, ON SAID WEST LINE, 86.06 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 0.139 ACRE, MORE OR LESS, OF WHICH 0.069 ACRE, MORE OR LESS, HAS BEEN DEDICATED OR USED FOR PUBLIC HIGHWAY PURPOSES.

## **EXHIBIT B- CONDITIONS OF APPROVAL**

1. The approval of 11 Variances for 1961 W. US Highway 30 shall substantially conform to the Plans, titled “Scot Industries Building Addition”, by Newcomb General Contractor, Sheets T-100, C-100, C-101, C-201, C-301, C-401, C-501, C-601, L-101, A-101, A-102, and A-201, variously dated October 15, 2010 or December 21, 2010, date stamped received March 22, 2011, except as such plans may be revised to conform to Village Codes and Ordinances and the conditions below, all of which shall be resolved prior to issuance of a building permit.
2. The property lines shall be dimensioned.
3. The building setback along Dugan Road shall be revised to 40 feet.
4. The Site Data and Parking Data tables shall be corrected as described in the Plan Commission report.
5. The parking row counts in the three central rows of spaces shall be corrected to accurately reflect the number of spaces in each row.
6. An additional Standard ADA space with accessible aisle shall be added to the plan for a total of 3 Standard ADA spaces, each with their own accessible aisle. The Van ADA space shall be removed. (This should result in 70 total parking spaces).
7. All parking setback lines shall be added to the plan with dimensions to nearest pavement provided.
8. Roof-top, wall-mounted, and ground-based vents, HVAC equipment, meters, etc. shall be screened. The plans shall be revised to show these items and to confirm how they will be screened.
9. A Photometric Plan or information shall be provided on any proposed lighting. Any proposed lighting should be identified on the plans with foot candle levels and light type, etc. All lighting, including existing, shall be shielded to point down at the ground.
10. Landscaping shall be focused at the south end of the site where it will have more visual impact for more people entering the Village.
11. All Engineering, Building, and Fire comments shall be addressed prior to issuance of a building permit.

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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** JUSTIN E. VANVOOREN, FINANCE DIRECTOR  
**SUBJECT:** FY 11-12 BUDGET PUBLIC HEARING  
**AGENDA:** APRIL 5, 2011 REGULAR BOARD MEETING  
**DATE:** MARCH 31, 2011

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**ISSUE**

Shall the Village hold the Public Hearing for the FY 11-12 Budget and schedule the adoption of the FY 11-12 Budget.

**DISCUSSION**

The Board has had two Budget workshops to this point. The Illinois Municipal Code states in Article 8, Division 2, Section 9.9, "The corporate authorities shall make the tentative annual budget conveniently available to public inspection for at least ten days prior to the passage of the annual budget, by publication in the journal of the proceedings of the corporate authorities or in such other form as the corporate authorities may prescribe. Not less than one week after the publication of the tentative annual budget, and prior to final action on the budget, the corporate authorities shall hold at least one public hearing on the tentative annual budget, after which hearing or hearings the tentative budget may be further revised and passed without any further inspection, notice or hearing. Notice of this hearing shall be given by publication in a newspaper having a general circulation in the municipality at least one week prior to the time of the hearing." The notice of the public hearing for the Budget was published in the March 24, 2011 Elburn Herald. The Budget is scheduled for passage at the April 19, 2011 Regular Board Meeting.

**COST**

The Village will spend approximately \$30 on publishing the public hearing notice, account 01-56-6503, Publishing. The budget for the account was \$612.00 for fiscal year 2010 – 2011, which currently has expenditures of \$437.00.

## **RECOMMENDATION**

That the Village Board holds the Public Hearing to obtain public comments regarding the FY 11-12 Budget and approves of the formal adoption of the Budget Ordinance being placed on April 19, 2011 Regular Board Meeting agenda for approval.

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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** JUSTIN E. VANVOOREN, FINANCE DIRECTOR  
**SUBJECT:** RESOLUTION: EXTENDING THE VILLAGE OF SUGAR GROVE  
CABLE COMMUNICATIONS FRANCHISE  
ORDINANCE: AUTHORIZING EXECUTION OF  
A CABLE TELEVISION FRANCHISE AGREEMENT  
**AGENDA:** APRIL 5, 2011 REGULAR BOARD MEETING  
**DATE:** APRIL 1, 2011

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**ISSUE**

Shall the Village Board approve the Cable Communications Franchise renewal with Mediacom.

**DISCUSSION**

The Village Board last discussed the Cable Communications Franchise at the October 5, 2010 Regular Board Meeting when it approved an extension through December 31, 2010.

The term of the original grant of the Franchise commenced on September 7, 1999 and reached its expiration date on September 7, 2009 and has been extended twice through December 31, 2010. An additional extension from December 31, 2010 through the effective date of the agreement needs to be approved to ensure there is no lapse between agreements.

Attached is a summary of the provisions in the new Cable Communications Franchise between the Village of Sugar Grove and Mediacom. A summary of questions and comments received from residents since notification of the franchise agreement being on the agenda for approval is also attached. The actual agreement has not been included in your packet, but is available on-line or by request.

LeeAnn Herrera, Sr. Manager of Government Affairs, will be in attendance representing Mediacom, and Stuart Chapman, President of Municipal Services Associates, will be representing the Village's consultant.

## **COSTS**

Costs associated with negotiation of the Cable Television Franchise Renewal are expected to total approximately \$6,000. Costs of \$5,348.25 have been incurred through April 1, 2011 from account 01-56-6309. This amount was not budgeted in fiscal year 2010 – 2011. The Village also spent funds in fiscal year 2009 – 2010 for other tasks related to the franchise renewal.

## **RECOMMENDATION**

That the Village Board approve by consensus Resolution No. 20110405FIR extending the Village of Sugar Grove Cable Communications Franchise.

That the Village Board approve by consensus Ordinance No. 20110405FI1 authorizing execution of a Cable Television Franchise Agreement between the Village of Sugar Grove, Illinois and MCC Illinois, LLC d/b/a Mediacom Communications.

## **Village of Sugar Grove Cable Franchise Agreement – Summarized Questions and Comments**

- 1) Does Sugar Grove receive any compensation from Mediacom?  
The Village does receive franchise fees from Mediacom.
  
- 2) Does the Village currently have another cable choice other than Mediacom?  
No. The agreement is non-exclusive which simply means that any company that would like to provide cable television service in Sugar Grove shall be granted a Franchise under substantially similar terms and conditions as the Mediacom's Franchise Agreement. Or simply put the franchise agreement allows anyone to service Sugar Grove. Additionally the Village does not discourage nor has turned away another provider.
  
- 3) Mediacom has poor cable television service.  
Mediacom is required to follow the Illinois Cable and Video Customer Protection Law adopted by the Village. Violations may be subject to liquidated damages.
  
- 4) Mediacom has poor channel selection and internet service.  
It should be noted that this agreement pertains only to the provision of cable television service. Due to State, Federal and FCC rules and regulations the Village cannot regulate any other services (phone & internet), programming or tiers of service offered by Mediacom Communications.



**VILLAGE OF SUGAR GROVE, ILLINOIS**

**RESOLUTION NO. 20110405FIR**

**A RESOLUTION EXTENDING THE VILLAGE OF SUGAR GROVE  
CABLE COMMUNICATIONS FRANCHISE**

**WHEREAS**, MCC of Illinois LLC, (d/b/a Mediacom Communications) ("Franchisee"), successor to Triax Midwest Associates, L.P., owns, operates and maintains a cable television system ("System") in the Village of Sugar Grove, Illinois (the "Franchise Authority") pursuant to Ordinance No. 729 dated August 3, 1999 (the "Franchise"), and Franchisee is the duly authorized holder of the Franchise; and

**WHEREAS**, the term of the original grant of the Franchise commenced on September 7, 1999 and reached its expiration date on September 7, 2009; and

**WHEREAS**, the term of the original and subsequent extension of the Franchise commenced on September 7, 2009 and reached its expiration date on December 31, 2010; and

**WHEREAS**, the Village Board of the Village of Sugar Grove finds and hereby declares that it is desirable and in the best interests of the Village to continue to franchise a cable television system; and

**WHEREAS**, the Franchisee and the Village have been engaged in an informal renewal process in accordance with Section 626(h) of Title VI of the Communications Act of 1934, as amended; and

**WHEREAS**, the parties continue to reserve all rights under the formal procedures of Section 626 of Title VI of the Communications Act of 1934, as amended, and do not waive any rights related thereto; and

**WHEREAS**, the amount of time required to conclude negotiations and allow for public review has extended beyond the original expiration date of the Franchise and all extensions; and

**WHEREAS**, negotiations for a franchise renewal between the Franchisee and the Village have proceeded in good faith and have now concluded, and both parties agree to and recommend an extension, beginning retroactively from December 31, 2010 to the effective date of the new cable television franchise.

**NOW, THEREFORE, BE IT RESOLVED** by the Village Board of Trustees of the Village of Sugar Grove, Illinois, that the Village hereby authorizes the extension of the Village of Sugar Grove Cable Communications Franchise from December 31, 2010 to the effective date of the renewed Franchise.

**BE IT FURTHER RESOLVED** that it is an express condition of the grant of the extension provided herein that the Village and the Franchisee each fully preserve and retain any and all rights, claims, actions, causes of action, or defenses which either may have heretofore acquired under the original franchise grant.

**BE IT FURTHER RESOLVED** that neither Party by the passage and approval of this Resolution, waives or relinquishes any rights, which either has or might have under the original franchise grant or under any federal or state statutes.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, on the 5<sup>th</sup> day of April, 2011.

\_\_\_\_\_

P. Sean Michels, President of the Board of Trustees  
of the Village of Sugar Grove, Kane County, Illinois

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

Cynthia Galbreath, Village Clerk

	Aye	Nay	Absent	Abstain
Trustee Robert E. Bohler	_____	_____	_____	_____
Trustee Kevin M. Geary	_____	_____	_____	_____
Trustee Mari Johnson	_____	_____	_____	_____
Trustee Rick Montalto	_____	_____	_____	_____
Trustee Thomas Renk	_____	_____	_____	_____

Approved by Franchisee:

MCC of Illinois,  
LLC. \_\_\_\_\_

(d/b/a Mediacom Communications)

By its:

\_\_\_\_\_

Title:

\_\_\_\_\_

Dated:

\_\_\_\_\_

## **Village of Sugar Grove Cable Franchise Agreement – Summary of Provisions**

The franchise agreement between the Village and MCC Illinois, LLC (“Mediacom”) allows Mediacom to operate of its cable system in Sugar Grove consistent with current law, regulation, and technology, and in ways that meet the cable-related needs and interests of the community, taking into account the cost of meeting those needs.

- Term – 10 years from the date of acceptance of the Village and Mediacom.
- Definition of gross revenues – Substantially expanded from the existing agreement.
- Non-exclusive – Allows the Village to grant other franchises
- System design – Expandable if the market demands more services. The system will be interactive and provide closed captioning for the hearing-impaired.
- Staffing and maintenance – Emergency system and repair staff able to respond to interruptions anytime, and maintain a sufficient staffing level to respond to customer inquiries, complaints, and service requests is required.
- Performance Security – Three types of bonds or letters of credit are required: General performance: \$25,000. Construction involving cutting, boring or trenching: additional \$25,000. Major plant project involving more than 1/6 of total plant mileage: \$100,000.
- Construction standards – Cable burial is required where other utilities have buried or will bury their plant. Permits are required for all work in the right-of-way. System plant will be required to meet Village electrical and safety codes. Mediacom will also comply with tree preservation standards and are required to restore damaged property.
- Customer service – Required to follow the Illinois Cable and Video Customer Protection Law adopted by the Village. Violations may be subject to liquidated damages.
- Franchise fees – Will pay franchise fees quarterly instead of annually. Franchise fee records may be audited by the Village.
- Liquidated damages – Required to pay liquidated damages of up to \$100.00 per day, per violation for up to 90 days in the event of a franchise violation.
- Access programming – Educational access programming from Waubensee Community College will continue. Beginning on January 1, 2012, the Village may request a Government Access Channel to be shared with the Village of Elburn. The Villages will be in charge of planning, policies and resources, content, and seeking operating funds. The Villages may seek operating funds from grants, fees or charges, in-kind contributions, or sponsorships that do not involve the sale of commercial time.
- Access programming capital grant support – Initial capital support to Sugar Grove of \$6,000 paid within 90 days of the request of the grant. Recovery of the grant will be through a \$.20/subscriber/month fee in accordance with federal law. The fee will continue for the duration of the franchise agreement to allow the Village to acquire additional equipment.
- Emergency override – Sugar Grove will have access to the federal and state Emergency Alert System (through Kane County Office of Emergency Management).
- Service to public facilities – One outlet of basic cable service to local government buildings and schools.
- Material breach and revocation – List of material breaches of the franchise that may be subject to liquidated damages or revocation of the franchise.

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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** RICH YOUNG, COMMUNITY DEVELOPMENT DIRECTOR  
MIKE FERENCAK, VILLAGE PLANNER  
**SUBJECT:** ORDINANCE: REQUEST FOR SPECIAL USE FOR A  
PROPOSED HEALTH CLUB AT 769 N. HEARTLAND DRIVE IN  
SUGAR GROVE RESEARCH PARK  
**AGENDA:** APRIL 5, 2011 REGULAR VILLAGE BOARD MEETING  
**DATE:** APRIL 1, 2011

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**ISSUE**

Should the Village Board consider a Special Use for a proposed health club at 769 N. Heartland Drive, Lot 10 in the Sugar Grove Research Park.

**DISCUSSION**

This project was not reviewed at a Committee of the Whole meeting. The applicant, Division One Fitness, is requesting a Special Use to allow a health club that would occupy two of the six units within this existing multi-tenant building that sits on a 2.25 acre lot. Division One Fitness is currently located at 472 N. State Route 47 and is looking to relocate to this site, as it provides a larger space. No exterior improvements are proposed with this request. The attached plans are only provided for reference. The background and details of the project can be found in the Plan Commission's staff report (attached).

**REQUEST**

The specific requests are as follows:

1. Special Use for a health club, pursuant to Section 11-10-2-B of the Sugar Grove Zoning Ordinance.

A public hearing was held on this request on March 16, 2011 in front of the Plan Commission. There was no public comment. The Plan Commission voted 6-0 with 1 abstention to approve the request, subject to 4 conditions. Listed below are the conditions from the Plan Commission.

1. The Special Use is limited to Units E and F of the building at 769 N. Heartland Drive and cannot be expanded unless the Special Use is amended.
2. The applicant shall secure all required building permits prior to any interior modifications or exterior sign installation.
3. The applicant shall secure a certificate of occupancy prior to occupancy.
4. The existing Global Flooring signs shall be removed prior to issuance of a certificate of occupancy.

The Plan Commission also was concerned with the amount of light provided on the site at night. Since the Plan Commission meeting, staff has checked both the site and original photometric plan. Staff found that there are three parking lot light poles, four ground-mounted flood lights, and seven wall pack lights (mounted on the building) on the site. Staff does not believe that any additional lighting improvements are necessary.

The following items are attached for your information:

1. Draft Special Use Ordinance
2. Minutes of the March 16, 2011 Plan Commission (not yet available)
3. Staff Report to the March 16, 2011 Plan Commission
4. Area Map
5. Photo of tenant space
6. Site Plan dated April 16, 2003
7. Floor Plan dated August 11, 2005

## **COSTS**

There is no cost associated with this proposal. All costs have been paid for by the petitioner.

## **RECOMMENDATION**

That the Board approve of an Ordinance granting a Special Use to allow a health club at 769 N. Heartland Drive subject to the conditions in the attached Ordinance.

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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** RICH YOUNG, COMMUNITY DEVELOPMENT DIRECTOR  
MIKE FERENCAK, VILLAGE PLANNER  
**SUBJECT:** ORDINANCE: VARIANCES FOR A PROPOSED ADDITION AT  
1961 W. US HIGHWAY 30 (SCOT INDUSTRIES)  
**AGENDA:** 4/5/2011 REGULAR VILLAGE BOARD MEETING  
**DATE:** APRIL 1, 2011

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### **ISSUE**

Should the Village Board consider Variances for a proposed expansion of the existing building at 1961 W. US Highway 30. The requested Variances relate only to the portion of the site that is proposed for improvement at this time.

### **DISCUSSION**

This project was not reviewed at a Committee of the Whole meeting. The applicant, Scot Industries, is requesting 11 Variances related to a proposed expansion of the existing building at 1961 W. US Highway 30. The 11 Variances consist of the 6 published and listed below (the 5<sup>th</sup> Variance is actually composed of 6 separate Variances). The site consists of two parcels that are not part of a platted subdivision. The existing building sits on both parcels. The parcels total 37.96 acres.

Scot Industries would like to expand the building to provide room for the additional growth they have been experiencing.

The background and details of the project can be found in the Plan Commission's staff report (attached).

### **REQUEST**

The specific requests are as follows:

1. Variance to waive the building wall material requirement thereby allowing a metal siding product on a proposed 90,517 square foot addition to an existing building, pursuant to Section 11-10-7-E-1 of the Sugar Grove

Zoning Ordinance.

2. Variance to waive the building wall articulation requirement and thereby allow unarticulated walls on the addition to the existing building, pursuant to Section 11-10-7-E-2 of the Sugar Grove Zoning Ordinance.
3. Variance to reduce the interior side building setback from 75 feet to 60 feet along the east property line, pursuant to Section 11-10-4-C of the Sugar Grove Zoning Ordinance.
4. Variance to reduce the parking space quantity requirement for the existing building with proposed addition to an amount less than is required, pursuant to Section 11-12-5 of the Sugar Grove Zoning Ordinance.
5. Variance to waive or reduce multiple landscape screening requirements of the M-1 District for the addition, pursuant to Sections 11-10-7-G-1, 11-10-7-C, 11-10-7-I of the Sugar Grove Zoning Ordinance.
6. Variance to waive or reduce the parkway tree requirement for the addition, pursuant to Section 12-6-11 of the Sugar Grove Subdivision Ordinance.

A public hearing was held on this request on March 30, 2011 in front of the Plan Commission. There was no public comment.

The Plan Commission voted 5-0 to approve each of the 6 requests for this project, subject to the 8 conditions staff had recommended with one modification by the Plan Commission. The draft ordinances will be delivered to the Village Board on Monday. The applicant agrees with the draft conditions. Listed below are the conditions from the Plan Commission:

1. The property lines shall be dimensioned.
2. The building setback along Dugan Road shall be revised to 40 feet.
3. The Site Data and Parking Data tables shall be corrected as described in the Plan Commission report.
4. The parking row counts in the three central rows of spaces shall be corrected to accurately reflect the number of spaces in each row.
5. An additional Standard ADA space with accessible aisle shall be added to the plan for a total of 3 Standard ADA spaces, each with their own accessible aisle. The Van ADA space shall be removed. (This should result in 70 total parking spaces).

6. All parking setback lines shall be added to the plan with dimensions to nearest pavement provided.
7. Roof-top, wall-mounted, and ground-based vents, HVAC equipment, meters, etc. shall be screened. The plans shall be revised to show these items and to confirm how they will be screened.
8. A Photometric Plan or information shall be provided on any proposed lighting. Any proposed lighting should be identified on the plans with foot candle levels and light type, etc. All lighting, including existing, shall be shielded to point down at the ground.

The Plan Commission also asked questions and had comments at the public hearing. The summarized questions / comments and applicant answers follow:

- a) How many employees are at the site? 67
- b) Do Scot Industries trucks use Dugan Road? No.
- c) How many trucks do you have? 9, they are all parked in front.
- d) Additional lighting should be provided at the rear of the site.
- e) Scot Industries is located near the west entrance to the Village and should be landscaped well.

The Plan Commission added the following condition:

9. Landscaping shall be focused at the south end of the site where it will have more visual impact for more people entering the Village.

Since the Plan Commission meeting, staff determined the following condition should be added:

10. All Engineering, Building, and Fire comments shall be addressed prior to issuance of a building permit.

The following items are attached for your information:

1. Draft Variance Ordinances (will be provided Monday)
2. Minutes of the March 30, 2011 Plan Commission (not yet available)
3. Staff Report to the March 30, 2011 Plan Commission
4. Area Map
5. Various Plans dated October 15, 2010 and December 21, 2010, date stamped March 22, 2011

**COSTS**

The CD Dept. paid for the public noticing costs. The newspaper publication was \$440.00 from account 01-55-6503. There were also costs for the certified mailings of approximately \$100.00. Application fees were also waived.

**RECOMMENDATION**

That the Board approve of an Ordinance granting Variances for a proposed expansion of the existing building at 1961 W. US Highway 30 subject to the conditions in the draft ordinances (to be provided Monday)

**VILLAGE OF SUGAR GROVE, ILLINOIS  
CABLE TELEVISION FRANCHISE AGREEMENT**

**THIS CABLE TELEVISION FRANCHISE AGREEMENT** (the "Agreement") is made and entered into as of the effective date of \_\_\_\_\_, 2011 (the "Effective Date") by and between the Village of Sugar Grove, a unit of local government organized under the laws of the State of Illinois, (the "Franchising Authority") and MMC Illinois, LLC, a Delaware Limited Liability Company d/b/a Mediacom Communications (the "Grantee").

**WHEREAS**, the Grantee has applied for renewal of its non-exclusive Franchise (the "Prior Franchise") to provide cable television service in the Village of Sugar Grove; and

**WHEREAS**, the Franchising Authority has reviewed the performance of the Grantee under the Prior Franchise, has analyzed and considered the technical ability, financial condition, and legal qualifications of the Grantee to operate a cable television system, and has ascertained the cable-related needs and interests of the community, taking into account the costs of meeting such needs and interests; and

**WHEREAS**, the Franchising Authority has relied upon the Grantee's representations and has, after such consideration, analysis, and deliberation as required by applicable law, has approved and found sufficient the technical, financial, and legal qualifications of the Grantee, and has determined that the Grantee intends through the terms and conditions of this Agreement to meet the cable-related needs and interests of the community; and

**WHEREAS**, after adequate public notice, based on Grantee's representations and information, and in response to Grantee's request for renewal, the Village President and Board of Trustees of the Village of Sugar Grove have determined that, subject to the provisions of the Cable Communications Ordinance of the Village of Sugar Grove (the "Cable Communications Ordinance") and the terms and conditions set forth herein, the grant of a renewed non-exclusive Franchise to Grantee, to supersede the prior franchise (Ordinance No. 729, approved August 3, 1999), is consistent with the public interest, and therefore has enacted Ordinance No. 20110405F11 more than thirty (30) days after the filing of Grantee's request for renewal; and

**WHEREAS**, the Franchising Authority and the Grantee have reached agreement on the terms and conditions set forth herein;

**NOW, THEREFORE** in consideration of the Village's grant of a new Franchise to the Grantee and the Grantee's promise to provide cable television service to residents of the Village pursuant to and consistent with the Cable Communications Ordinance, the terms and conditions set forth herein, and other good and valuable consideration, the receipt and adequacy are hereby acknowledged;

## THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

### SECTION 1: DEFINITIONS

For the purposes of this Section, the following phrases, terms, words, and their derivations shall have the meaning as stated herein. When not inconsistent with the context, words in the present tense shall include the future, words indicating a plural number shall include the singular number and words in the singular number include the plural number. The word "shall" and "will" are mandatory, and not directory. The word "may" is permissive. Words not defined shall be given their common and ordinary meaning. Unless a section provides otherwise, references to statutory enactments shall include any and all amendments thereto and any successor provisions. All capitalized words defined herein, and all other capitalized words utilized within this Agreement, shall have the meaning ascribed to them in the Cable Act unless said terms are not defined in the Cable Act, whereupon the definition shall be controlled by this Agreement. In the event of conflict between this Agreement and the Cable Act, the Cable Act definition shall control. Where there is a conflict between the Franchise Agreement and the Cable Communications Ordinance, the Franchise Agreement shall prevail. Where the Franchise Agreement is silent, the terms of the Cable Communications Ordinance and the Cable Act shall control.

**ACT:** Shall mean the Communications Act of 1934, the Telecommunications Act of 1996, the Cable Communications Policy Act of 1984 as amended by the Cable Consumer Protection and Competition Act of 1992 (47 U.S.C. § 521 et. seq.) as now or hereinafter amended.

**BASIC CABLE SERVICE:** Shall mean any service tier which includes the retransmission of local television broadcast signals.

**BOARD:** "Board" or "Village Board" shall mean the Village of Sugar Grove President and Board of Trustees.

**CABLE ADMINISTRATOR:** Shall mean that individual who has been appointed by the Village Administrator to oversee and administer the Cable Communications Ordinance and any Franchise Agreement.

**CABLE COMMUNICATIONS ORDINANCE:** Shall mean Ordinance No. 20090519F11, the Village of Sugar Grove Cable Communications Ordinance, as may be amended from time to time consistent with the terms and conditions of this Franchise.

**CABLE OPERATOR:** Any Person or Persons, who provide Cable Services over a Cable System and directly or through one or more affiliates, owns a significant interest in such Cable System, or who otherwise controls, or is responsible or, through any arrangement, the management and operation of such Cable System.

**CABLE SERVICE or SERVICE:** Shall mean (1) The one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**CABLE SYSTEM:** “Cable Communications System”, “Cable System”, or “System”, shall mean a facility, consisting of a set of closed transmission paths, and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject in whole, or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent that such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (D) an Open Video System that complies with 47 U.S.C. § 573, or; (E) any facilities of any electric utility used solely for operating its electric utility systems.

**CHANNEL:** Shall mean a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

**COMPLAINT:** Means any written or verbal communication from any Person, individual, business, unit of government that is not the Franchising Authority, or institution, however communicated, to the Franchising Authority regarding a matter or matters pertaining to the Cable Service or other cable-related function of the Cable System or Franchise.

**CONSTRUCT:** Shall mean (i) the installation of cables, lines, fiber optic cables, connection boxes, power supply boxes, or facilities that are in or cross any Right-of-Way within the Village for use as part of a Cable System, or (ii) the connection of other facilities directly or indirectly to previously existing cables, lines, fiber optic cables, connection boxes, power supply boxes or facilities that are in or cross any Right-of-Way within the Village for use as part of a Cable System.

**CONTROL:** “Control” or “Controlling Interest” means actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person or entity (except underwriters during the period in which they are offering securities to the public) of 50 percent or more of a Cable System or the Franchise under which the System is operated. A change in the Control or Controlling Interest of an entity which has Control or a Controlling Interest in a Grantee shall constitute a change in the Control or Controlling Interest of the System under the same criteria. Control or Controlling Interest as used herein may be held simultaneously by more than one Person or group of Persons.

**CONVERTER:** A device provided by the Cable Operator to Subscribers for the purpose of decoding or changing the frequency of signals to a suitable Channel or Channels which the television receiver is able to deliver at designated dial locations.

**DWELLING UNIT:** Shall mean any house, apartment, building, or group of buildings in which a person lives.

**EDUCATIONAL ACCESS CHANNEL:** Shall mean the Waubonsee Community College educational access channel.

**FCC:** Shall mean the Federal Communications Commission and any legally constituted federal successor regulatory body, or agency.

**FEEDER CABLE:** Shall mean the cable that takes signals in a Cable System from the trunk line to a node, or similar appurtenance that serves a cluster of Dwelling Units and to which Subscriber taps are attached.

**FRANCHISE:** Shall mean the same as found in 47 U.S.C. § 522(9), i.e., an initial authorization or renewal thereof, including a renewal of an authorization which has been granted subject to 47 U.S.C. §546, issued by the Village of Sugar Grove, whether such authorization is designated as Franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorized the construction or operation of a Cable System within the corporate boundaries of the Village of Sugar Grove.

**FRANCHISE AGREEMENT:** Shall mean this contractual agreement entered into between the Village and the Grantee hereunder which is enforceable by the Village and said Grantee and which sets forth the rights and obligations between the Village and said Grantee in connection with the Franchise.

**FRANCHISE AREA:** Shall mean the entire geographic area of the Village of Sugar Grove now or in the future, including any property annexed to the Village of Sugar Grove.

**FRANCHISE FEE:** Shall include any tax, fee, or assessment of any kind imposed by the Village or other governmental entity on the Grantee or cable Subscriber, or both, solely because of its status as such. A Franchise Fee shall not include any tax, fee, or assessment of general applicability including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against the Grantee or Subscribers; Payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in the support of, the use of Public, Educational, or Governmental Access facilities; Capital costs which are required by the Franchise to be incurred by Grantee for Public, Educational, or Governmental Access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, or; any fee imposed under Title 17, U.S. Code.

**FRANCHISING AUTHORITY:** Shall mean the Village Board of the Village of Sugar Grove.

**GOVERNMENT ACCESS CHANNEL:** Shall mean one future digital Channel to be shared with the Village of Elburn and located on the digital basic tier and to be used for noncommercial governmental use as more fully described in Section 17.

**GRANTEE:** Shall mean MCC Illinois LLC, a Delaware Limited Liability Company, its assigns, transferees or lawful successors.

**GROSS REVENUES:** Shall mean all consideration of any kind or nature in accordance with generally acceptable accounting principles ("GAAP"), including, without limitation, cash, credits, property, and in-kind contributions received by the Grantee for the operation of a Cable System to provide Cable Service within the Grantee's Cable Service area within the Village.

A. Gross Revenues shall include the following:

1. Recurring charges for Cable Service.
2. Event-based charges for Cable Service including, but not limited to, pay-per-view and video-on-demand charges.
3. Rental of set top boxes and other Cable Service equipment.
4. Service charges related to the provision of Cable Service, including but not limited to activation, installation, and repair charges.
5. Administrative charges related to the provision of Cable Service, including but not limited to service order and service termination charges.
6. Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
7. A pro rata portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the Grantee's network to provide Cable Service within the Village. The allocation shall be based on the number of subscribers in the Village divided by the total number of Subscribers in relation to the relevant regional or national compensation arrangement.
8. Compensation received by the Grantee that is derived from the operation of the Grantee's network to provide Cable Service with respect to commissions that are received by the Grantee as compensation for promotion or exhibition of any products or services on the Grantee's network, such as a "home shopping" or similar channel
9. In the case of a Cable Service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the Grantee's revenue attributable to the other services, capabilities, or applications shall be included in Gross Revenue unless the Grantee can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

B. Gross Revenues do not include any of the following:

1. Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
2. Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the Grantee to the extent the refund, rebate, credit, or discount is attributable to Cable Service.
3. Regardless of whether the services are bundled, packaged, or functionally integrated with Cable Service, any revenues received from services not classified as Cable Service, including, without limitation, revenue received from telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the Grantee to noncable service in accordance with the Grantee's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.
4. The sale of Cable Services for resale in which the purchaser is required to collect the Franchise Fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay the fee with respect to the service.
5. Any tax or fee of general applicability imposed upon the Subscribers or the transaction by a city, State, federal, or any other governmental entity and collected by the Grantee and required to be remitted to the taxing entity, including sales and use taxes.
6. Security deposits collected from Subscribers.
7. Amounts paid by Subscribers to "home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the Cable Service.

C. Revenue of an affiliate of a Grantee shall be included in the calculation of Gross Revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the Grantee has the effect of evading the payment of the fee which would otherwise be paid by the Cable Service.

D. Where there is a conflict between this Section and Ordinance 20080318B of the Sugar Grove Municipal Code regarding the definition of Gross Revenues under the Cable/Video Service Provider Fee Ordinance or its application, the provisions of this Agreement shall prevail.

**HEADEND:** The control center of a cable television system, where signals are amplified, converted, processed, and combined into a common cable along with any origination cablecasting, for transmission to subscribers. The term generally includes antennas, preamplifiers, frequency converters, demodulators, processors, and other related equipment.

**INSTALLATION:** Shall mean the connection of the Cable System from Subscriber Drop cables to Subscribers' terminals.

**INTERACTIVE ON-DEMAND SERVICES:** Shall mean a service providing video programming to Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

**JULIE:** Shall mean The Joint Utility Locating Information for Excavators utility notification program.

**MODIFICATION:** Shall mean any Modification, Modification agreement, or amendment to the Franchise Agreement entered into and between the Grantee and the Village and made a part of the Franchise Agreement.

**NORMAL BUSINESS HOURS:** Shall mean those hours during which most similar businesses in the geographic area of the Village are open to serve customers.

**PERSON:** Shall mean any individual, firm, corporation, company, partnership, association, joint venture, trust, or organization of any kind and the lawful trustee, successor, transferee, assignee, or personal representative thereof.

**RIGHT-OF-WAY:** Shall mean any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements and easements dedicated for compatible uses, in which the Village has the right and authority to authorize, regulate, or permit the location of facilities other than those of the Village. "Right-of-Way" or "Rights-of-Way" shall not include any real or personal Village property that is not specifically described in the previous two (2) sentences and shall not include Village buildings, fixtures, and other structures or improvements regardless of whether they are situated in the Right-of-Way.

**SCHOOLS:** Any public or private elementary School, secondary Schools, junior college, or university facility which conducts classes or provides instruction services which has been granted a certificate of recognition by the Illinois State Board of Education.

**SNOW DROP:** Shall mean the temporary drop to the Subscriber's house that is placed above ground during the winter months.

**SUBSCRIBER:** Shall mean any Person who legally receives Cable Service.

**SUBSCRIBER DROP:** Means a cable which connects the ground block on the Subscriber's residence to the nearest Feeder Cable of the Cable System.

**VILLAGE:** Means the Village of Sugar Grove and all the territory within its present and future corporate boundaries and including any area over which the Village exercises its jurisdiction.

## **SECTION 2: GRANT OF NON-EXCLUSIVE FRANCHISE**

**Section 2.1: Grant of Operation.** The Village of Sugar Grove hereby grants to the Grantee the non-exclusive right and privilege to construct, erect, install, maintain, or operate in, upon, along, across, over, and under Rights-of-Way in the Village, poles, wires, cables, underground conduits, manholes, and other television conductors, fixtures, and appurtenances necessary for the maintenance, repair, and operation of a Cable System for the interception, production, sale, and distribution of audio, video, data, and radio signals.

**Section 2.2: Right of Village to Grant Other Franchises.** This Franchise and the right it grants to use and occupy the public Right-of-Way shall not be exclusive, and the Village reserves the right to grant other franchises for similar uses or for other uses of the public Right-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time, with or without a franchise, subject to applicable state law, as such law may be amended from time to time. In the event that the Franchising Authority finds that it is in the best interest of the community to grant another additional cable Franchise, the Franchising Authority shall follow the procedures set forth in 65 ILCS 5/11-42-11, as may be hereafter amended, in awarding another additional cable Franchise, and shall grant said second Franchise under substantially similar terms and conditions as the initial Franchise. The Franchising Authority shall not permit any Person to provide services similar to those provided by Grantee in the Franchise Area without first having secured a non-exclusive franchise from the Franchising Authority or an applicable authorization from the State to provide video service. The Franchising Authority agrees that any grant of additional Franchises, or the grant of an authorization to provide video or Cable Service by the Illinois Commerce Commission to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Franchise Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein in accordance with the requirements of 65 ILCS 5/11-42-11(e).

**Section 2.3: Acceptance of Franchise.** By accepting this Agreement, the Grantee:

- A. Acknowledges and accepts the Village's legal right to issue and enforce the Agreement pursuant to Federal, State, and Local law; and
- B. Agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, that this Agreement was freely and voluntarily given by the Grantee without duress or coercion and that it will not raise any claim to the contrary.
- C. Agrees, that except to the extent there is a conflict with the terms of this Agreement, the terms, conditions, requirements, and restrictions in the Cable Communications Ordinance, Ordinance No. 20090519, shall be a part of this Agreement, and this shall be the entire agreement to the extent permitted by State or Federal law. Grantee and the Village agree that the Village may through the lawful exercise of its police powers amend the Cable Communications Ordinance and the general ordinances of the Village provided that the Village provide the Grantee with no less than thirty (30) days advance written notice and

the revisions do not alter the material provisions of this Agreement, nor increase the obligations or limit the benefits of the Grantee in this Agreement.

D. Agrees, by acceptance, that except to the extent there is a conflict with the terms of this Agreement, that it will comply with all lawful terms, conditions, requirements, and restrictions of ordinances of the Village of Sugar Grove currently in effect, to the extent permitted by State or Federal law.

E. That it has carefully and completely read all of the terms and provisions of this Agreement, and acknowledges that, to the best of its knowledge, each provision is lawful and enforceable. If either party believes that the terms of this Agreement or any Village law or regulation conflicts with any state or federal law, or regulation, that party will notify the other party within a reasonable period of time upon learning of the conflict.

#### **Section 2.4: Police Powers; Reservation of Rights**

A. All rights and privileges granted herein are subject to the police powers of the Village and its rights under applicable laws and regulations to exercise its governmental powers to their full extent and to regulate the Grantee and the construction, maintenance, repair, and operation of the Grantee's Cable System, including, but not limited to, the right to adopt, amend, and enforce ordinances and regulations as the Village shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting, and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce existing and future ordinances and regulations containing, specifically Right-of-Way (Ordinance No. 20080318C), cable television customer protection and service standards (Ordinance No. 20080318B), the Cable Communications Ordinance (Ordinance No. 20090519F11), the Public, Educational and Governmental (PEG) Support Fee Ordinance (Ordinance No. 20080318A), telecommunications and utility ordinances, and if applicable, rate regulation provisions; provided however, the Village shall provide Grantee thirty (30) days written notice in advance of enacting or passing any proposed ordinance, amended ordinance or regulation. The adoption and enforcement of any of the aforementioned ordinances or regulations, now or in the future, shall be subject to the provisions of state and federal law.

B. Subject to this Agreement, the Village reserves every right and power which is required to be reserved or provided by any ordinance of the Village, and the Grantee by its acceptance of this Franchise, agrees to be bound thereby and to comply with any lawful action or requirements of the Village in its exercise of such rights and powers which have been or may be enacted or established as long as it is not in conflict with FCC regulations or Federal law and consistent with the terms and conditions of this Agreement.

#### **Section 2.5: Consistency with Other Documents and Laws by Reference.**

This Agreement and any ordinance adopting this Agreement supplement and harmonize the regulatory framework set forth in the Cable Ordinance, State Law, and the Cable Act; and this Agreement and any ordinance adopting this Agreement shall at all times be read and construed for consistency and compatibility with the provisions of the Cable Ordinance, State Law, and the Cable

Act as read and interpreted in concert with each other. In the event of inconsistency between the terms of this Agreement and the terms contained in the Cable Ordinance, State Law, or the Cable Act, the terms contained in this Agreement shall prevail to the extent permitted by law.

For the purposes of this Agreement, the parties understand and agree that the following provisions or parts thereof, of the Cable Ordinance shall not be applicable unless otherwise provided by law:

Section 2.6, Definitions. Definition of Cable Provider or Video Provider shall be inapplicable in its entirety.

Section 2.11, Definitions. Definition of Competitive Franchise Applicant shall be inapplicable in its entirety.

Section 2.15, Definitions. Definition of Corporate Authority shall be inapplicable in its entirety.

Section 2.22, Definitions. Definition of Franchise Application shall be inapplicable in its entirety.

Section 2.29, Definitions. Definition of Gross Revenues Sections A.10 and B.4 shall be inapplicable in their entirety.

Section 2.31, Definitions. Definition of Holder shall be inapplicable in its entirety.

Section 2.32, Definitions. Definition of ICC shall be inapplicable in its entirety.

Section 2.35, Definitions. Definition of Leased Access Channel shall be inapplicable in its entirety.

Section 2.40, Definitions. Definition of PEG Access Support Fee shall be inapplicable in its entirety.

Section 2.45, Definitions. Definition of Service Line Drop shall be inapplicable in its entirety.

Section 2.46, Definitions. Definition of Service Provider Fee shall be inapplicable in its entirety.

Section 2.50, Definitions. Definition of Video Provider shall be inapplicable in its entirety.

Section 3.1, Franchise Required, Subsection F shall be inapplicable in its entirety.

Section 3.7, Content of Franchise Applications shall be inapplicable in its entirety.

Section 3.8, Representation; Background Information shall be inapplicable in its entirety.

Section 9.1, Causes for Revocation, shall be inapplicable in its entirety.

Section 9.2, Notice, Time to Correct and Hearing shall be inapplicable in its entirety.

Section 11.1(C), Quarterly and Annual Reports shall be inapplicable in its entirety.

Section 12.3, Records to be Provided to Village, shall be inapplicable in its entirety.

Section 13.2, FCC Technical Requirements, Subsections A and D shall be inapplicable in their entirety.

Section 13.5 (C), Auxiliary Power, shall be inapplicable in its entirety.

Section 13.7, Emergency Override, shall be inapplicable in its entirety.

Section 13.9, Service Interruptions, shall be inapplicable in its entirety.

Section 14.18, Failures of Performance, shall be inapplicable in its entirety.

Section 16, Service to Residents and Businesses in the Franchise Area, shall be inapplicable in its entirety.

Section 18.3, Universal Service, shall be inapplicable in its entirety.

Section 18.4, Community and Educational Access Channels, shall be exempt in its entirety.

Subject to the terms and conditions contained herein, the Grantee shall comply with all generally applicable, lawfully enacted local ordinances, rules and regulations. However, Grantee shall be subject to compliance and enforcement with all local laws, rules, and regulations under the terms of such laws, rules, and regulations. Specifically, the Village does hereby pursuant to law declare its intent to and shall enforce the Right-of-Way and customer service and privacy protections as described hereinbelow, and specifically the Village's Right-of-Way Ordinance (Ordinance No. 20080318C) also cited as Chapter 7-5-10 of the Sugar Grove Municipal Code, adopted March 18, 2008, and the Cable and Video Customer Protection Law pursuant to Ordinance No. 20080318A) also cited as Chapter 3-9-1 of the Sugar Grove Municipal Code, enacted March 18, 2008 as both are referenced herein.

### **SECTION 3: TERM OF AGREEMENT**

**Section 3.1: Franchise Term.** The terms of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be ten (10) years from the Effective Date of this Agreement, unless terminated sooner as provided in the Cable Communications Ordinance. The Agreement and the Franchise granted hereunder shall become effective upon the date of acceptance by the Grantee and Grantor.

### **SECTION 4: SERVICE AREA OF FRANCHISE**

The Franchising Authority hereby extends to the Grantee the privilege of operating the Cable System in any and all areas within the corporate limits of the Village as it exists now and as it may exist during the term of this Agreement. In the event that the Village annexes land adjacent to the Village boundaries, the Franchising Authority shall provide written notification to the Grantee pursuant to the requirements of Section 28 herein below, of such annexations when they become effective. As of the Effective Date of this Franchise, the corporate limits of the Village are those shown on the map found in Appendix A.

### **SECTION 5: RETRANSMISSION OF SIGNALS WITHIN A STRUCTURE**

Installation or Subscriber use of Cable System service which involves the retransmission of the signal or signals to multiple reception points within a structure shall be negotiated between the Grantee and the owner of the structure.

### **SECTION 6: MODIFICATION OF FRANCHISE**

A. In the event that the Grantee seeks a modification of this Agreement, the Grantee and the Franchising Authority shall follow the requirements and procedures set forth in applicable law. Modifications to this Agreement shall be requested by the Grantee in writing. The Franchising Authority may request additional information pertinent to making an informed decision, and review the

request for modification in a timely manner. Approval of the modification by the Village Board shall be written and made in ordinance form.

B. Modifications involving the Educational or Governmental Access Channel may be subject to informal negotiation between the Village and the Grantee. Upon recommendation from the Cable Administrator, Educational or Governmental Access Channel modifications shall be referred to the Village Board for review and approval.

## **SECTION 7: SYSTEM IMPROVEMENTS**

**Section 7.1: General System Description.** The Cable System shall meet or exceed the following characteristics:

A. A minimum of 750 MHz on all active components Upon demonstration to the Grantee of market demand for additional Cable Services based upon survey data collected by the Grantee or the Village, the Grantee shall expand its passive components to a minimum of at least 1 GHz; and

B. Bi-directional activation with a clean return path.

C. Grantee shall continue to pass through the portions of the television signal that provide closed captioning data for the hearing-impaired. For hearing-impaired Subscribers, the Grantee shall provide information concerning the availability of equipment to facilitate the reception of services for the hearing impaired. In addition, the Grantee must have means available, and a publicly-listed telephone number for such means, that will allow hearing or speech impaired Persons to contact the Grantee.

## **Section 7.2: Continuous Operation, Emergency Maintenance, and Staffing.**

A. Continuous Operation: Grantee shall operate and maintain said Cable System in a manner which will enable continuous twenty-four (24) hour operation of all services as required herein. The Grantee's Cable System shall be equipped with sources of auxiliary power at the Headend established by the Grantee for the purpose of continuation of service in the event of repairs, maintenance, power interruptions or power outages in accordance with Grantee's design.

B. Emergency Maintenance: The Grantee shall keep an emergency system and repair staff, capable of responding to and repairing System malfunctions or interruptions, on a twenty-four (24) hour basis.

C. Staffing: The Grantee must provide a sufficient staff, including its own employees, and at its sole discretion, contract labor, in order to respond efficiently to customer inquiries, Complaints, and requests for service either over the phone, or at the Subscriber's residence.

D. Service Interruption: The Grantee may interrupt service, when necessary, to cable Subscribers for the purposes of alteration, maintenance, repair or emergencies. Grantee shall create such interruptions at such time as will cause the least amount of inconvenience to its Subscribers, and unless such

interruption is unforeseen and immediately necessary, it shall give written notice to the Village of interruptions which affect Subscribers for a period in excess of six (6) hours.

**Section 7.3: System Characteristics.** The Grantee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

A. **Industry-accepted Equipment.** The System shall use equipment generally used in high-quality, reliable, modern systems of similar design. The Grantee shall provide backup power to the Headend. The Grantee shall comply with all applicable laws and regulations concerning Cable System compatibility with receivers and recording devices.

B. **Scrambling.** The Grantee shall comply with all FCC regulations regarding scrambling or other encryption of signals.

C. **No Deterioration to Access Signals.** The System shall be so constructed and operated so that there is no significant deterioration in the quality of access signals received at the demarcation point from the Franchising Authority or its access channel designee, either upstream or downstream, as compared with any other Channel on the System. Deterioration refers to any signal problem, including, but not limited to, hum, co-Channel interference, pixellation on digital Channels created as a result of signal ingress, egress, or other causes, and other forms of interference.

D. **Customer Equipment for Lease or Sale.** Subject to applicable law or regulation, as part of the System, the Grantee shall offer every Subscriber the opportunity to use equipment that allows Subscribers to view a program on one Channel while recording a program on another Channel.

**Section 7.4: Extension of Service**

A. **Line Extensions to Residences:** The Grantee shall extend, at its sole expense, Service to any part of the Franchise Area where there is a density of twenty (20) homes per cable mile as measured from the closest active equipment source from which a signal meeting FCC technical requirements could be provided to the affected homes, but no longer than from one hundred twenty-five (125) feet of its trunk or node and where the area is not served by any other state or locally authorized video service provider delivering service through facilities located within the Right-of-Way subject to the following installation schedule:

1. For potential Subscriber requests for service from January 1 through March 31 of any year, Grantee shall extend its Cable System to the area meeting the density standard no later than September 30 of such calendar year.
2. For potential Subscriber requests for service from April 1 through October 31 of any year, Grantee shall extend its Cable System to an area meeting the density standard no later than June 30 of the subsequent calendar year.
3. For potential Subscriber requests for service from November

1 through December 31 of any year, Grantee shall extend its Cable System to an area meeting the density standard no later than September 30 of the subsequent year following such request.

Grantee shall extend its Cable System to Subscribers at no cost other than the usual connection fee for all Subscribers requesting a Standard Installation where the density standards of this section are satisfied. A Standard Installation shall mean a service drop of no more than one hundred twenty-five (125) feet, with no boring, that does not require disruption of pavement or similar surfaces, providing the standard signal strength for residences, using a standard residential drop cable, which currently consists of RG-6 cabling.

B. **Line Extensions to Businesses:** Grantee shall extend the Cable System, upon request by local businesses within the Franchise Area where the area is not served by any other state or locally authorized video service provider delivering service through facilities located within the Right-of-Way. Grantee shall extend the Cable System to those businesses requiring a Standard Installation if the Installation meets the criteria set forth in subsection (A) hereinabove provided that the Grantee may assess additional costs to any customer where the commercial installation requires additional time or expense.

C. **Line Extensions to Schools and Public Buildings:** The Grantee shall extend service to any School or public building, including buildings belonging to the Village, in the Franchise Area upon request of the School district, the Village, other governmental unit, or owner of the public building. The initial one hundred twenty-five (125) feet of the line extension from the Cable System feeder, trunk or node, shall be performed at the Grantee's sole expense. The Grantee may charge the School district, other governmental unit, or building owner the cost of labor and materials for extensions of more than one hundred twenty-five (125) feet. Installations of line extensions to Schools or public buildings shall be performed within the same time period as set forth in Subsection A hereinabove. Should additional time be needed, the Grantee shall request an extension in writing to the Village and the building owner showing the reasons requiring the need for additional time.

D. Where density and proximity requirements provided in this Section have been met and applicable right of entry agreements have been received, Grantee shall not exclude any multiple Dwelling Unit facilities located in the Village from having the ability to receive Cable Services, including but not limited to, apartment buildings, condominium complexes (including duplexes, townhouses and rowhouses), and senior citizen congregate housing. Nothing prevents Grantee from recouping from a property management firm the reasonable expenses necessary to serve the facility.

#### **Section 7.5: Periodic Testing and Compliance With FCC Standards**

A. Grantee shall comply with all Cable System testing regulations for video and audio signal quality and signal leakage as specified in Title 47, Section 76, Subpart K of the Code of Federal Regulations. Upon request, Grantee shall provide the Franchising Authority with copies of its FCC proof-of-performance tests in accordance with Section 13.2 of the Cable Communications Ordinance. In

the event that the FCC should delete or repeal the requirements of 47 C.F.R. § 76(K), the Village and the Grantee agree to incorporate similar standards into this Agreement. Upon request by the Franchising Authority, the Grantee shall provide a copy of any Cable System performance tests conducted pursuant to such similar standards within thirty (30) days after the end of the calendar year, or after the date of request, whichever comes first.

B. The Village may require special testing of a location or locations within the Cable System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or non-compliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The Village shall endeavor to arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers caused by such testing.

Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate, at its sole expense, and if necessary, correct problems or complaints that may necessitate testing. If such Complaints or problems have been addressed to the Village's satisfaction, then no further testing shall be ordered.

C. If, after such notice, the Village wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at the Village's expense by a qualified engineer selected by the Village, and Grantee shall cooperate in such testing. If the tests reveal that the problem was caused by a violation of FCC technical standards, the cost of such testing shall be at Grantee's sole expense. In the event that no violation of FCC technical standards was found to have occurred, such testing shall be at the Village's sole expense. The Village will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to the Grantee or Subscribers.

D. The Grantee shall test any new or substantially rebuilt portion of a Cable System after the portion of the Cable System is made available for service to Subscribers as a part of its next regularly scheduled Proof-of-Performance tests. Technical performance tests shall be conducted by the Grantee to demonstrate full compliance with FCC technical standards. Such tests shall be performed by, or under the supervision of an engineer with proper training and experience. Upon request, a copy of the report shall be submitted to the Cable Administrator describing test results, instrumentation, calibration, and test procedure, and the qualifications of the engineer responsible for the tests. The Proof-of-Performance test results from the new or substantially rebuilt portion of the Cable System shall meet the requirements of this subsection. At the option of the Village, reasonable additional tests may be required, at the expense of the Grantee, if the Grantee is unable to meet FCC technical standards based upon the results of technical performance tests or Proof-of-Performance tests. Any additional tests shall be conducted under the supervision of an engineer with proper training and experience.

**Section 7.6: New Services and Technologies.** This Agreement may not restrain or prohibit Grantee from adding new services and/or technologies to the Cable System as they become available. The Grantee shall notify the Village before it launches new categories of Subscriber services. This provision shall not be construed to require the Grantee to provide new categories of Subscriber services.

**Section 7.7: Performance Security and Security Fund**

A. Purpose. The Grantee shall establish a Security Fund in a form and in an amount as set forth in this section. The Security Fund shall be continuously maintained in accordance with this section at the Grantee's sole cost and expense. The Security Fund shall serve as security for:

1. The faithful performance by the Grantee of all the requirements of this Section;
2. Any expenditure, damage, or loss incurred by the Village occasioned by the Grantee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the Village issued pursuant to this chapter; and
3. The payment by Grantee of all liens and all damages, claims, costs, or expenses that the Village may pay or incur by reason of any action or nonperformance by Grantee in violation of this Section including, without limitation, any damage to public property or restoration work the Grantee is required by this Section to perform that the Village must perform itself or have completed as a consequence solely of the Grantee's failure to perform or complete, and all other payments due the Village from the Grantee pursuant to this Section or any other applicable law.

B. Form and Amount. Grantee shall furnish a performance bond or letter of credit (the "Security Fund"), which may include, but not be limited to, construction bonds, labor, and material bonds, in the amount of twenty-five thousand dollars (\$25,000.00) for compensation for damages resulting from the Grantee's nonperformance as specified in this Franchise, or any applicable local law. For construction projects involving cutting of streets, including directional boring and trenching, Grantee shall provide an additional twenty-five thousand dollars (\$25,000.00) construction bond on a per project basis. For projects involving more than one-sixth (1/6) of the total Cable System plant mileage, regardless of whether such plant is installed aerially or underground, the amount of the performance bond, letter of credit or security fund shall be no less than one hundred thousand dollars (\$100,000.00) on a per project basis. In any legal action concerning the bonds provided for in this Section, the prevailing party shall be entitled to recover its reasonable costs, including attorney's fees.

Any performance surety bond or letter of credit provided pursuant to this subsection shall, at a minimum:

1. Provide that it will not be canceled without thirty (30) days prior written notice to the Village and the Grantee;

2. Not require the consent of the Grantee prior to the collection by the Village of any amounts covered by it; and
3. Shall provide a location convenient to the Village and within the State of Illinois at which it can be drawn.

Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the Village, with each phase consisting of construction of facilities in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the Village Public Works Director may, in the exercise of sound discretion, allow the Grantee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the Security Fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this subsection (C) for any single phase.

C. Withdrawals. The Village, upon thirty (30) days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this subsection, may withdraw an amount from the Security Fund, provided that the Grantee has not reimbursed the Village for such amount within the thirty (30) day notice period. Withdrawals may be made if the Grantee:

1. Fails to make any payment required to be made by the Grantee hereunder;
2. Fails to pay any liens relating to the facilities that are due and unpaid;
3. Fails to reimburse the Village for any damages, claims, costs or expenses which the Village has been compelled to pay or incur by reason of any action or non-performance by the Grantee; or
4. Fails to comply with any provision of this chapter that the Village determines can be remedied by an expenditure of an amount in the Security Fund.

D. Replenishment. Within thirty (30) days after receipt of written notice from the Village that any amount has been withdrawn from the Security Fund, the Grantee shall restore the Security Fund to the amount specified in subsection (C) hereof.

E. Closing and Return of Security Fund. Upon completion of the work authorized under the permit, the Grantee shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the Village for failure by the Grantee to comply with any provisions of this chapter or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the Village to the extent necessary to cover any reasonable costs, loss or damage incurred by the

Village as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the Grantee.

F. Rights Not Limited. The rights reserved to the Village with respect to the Security Fund are in addition to all other rights of the Village, whether reserved by this chapter or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the Village may have. Notwithstanding the foregoing, the Village shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated.

G. Collection Upon Revocation. In the event this Franchise is revoked by reason of default of the Grantee, the Village shall be entitled to collect from the performance surety bond, or letter of credit that amount which is attributable to any damages sustained by the Village as a result of said default or revocation.

H. Return Upon Expiration of Franchise Term or Revocation. The Grantee shall be entitled to the return of the performance surety bond, letter of credit, or portion thereof, as remains on deposit after the expiration of the term of the Franchise or revocation for default thereof, provided the Village has not notified the Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.

**Section 7.8: Reservation of Rights.** The rights reserved to the Village herein are in addition to all other rights of the Village, whether reserved herein or authorized by applicable law, and no action, proceeding, or exercise of a right with respect to the aforesaid security will affect any other right the Village may have.

Neither the filing of a security with the Village, nor the receipt of any damages recovered by the Village thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages, either to the full amount of the security or otherwise.

## **SECTION 8: CONSTRUCTION STANDARDS**

**Section 8.1: Notice of Proposed Construction and Timetable.** Where the Grantee intends to construct, reconstruct, or upgrade more than one-third (1/3) of the total mileage of Cable System plant within the Franchise Area, the Grantee shall provide to the Franchising Authority, a schedule for construction, reconstruction, or upgrade, including Grantee's best estimate of a timetable for the completion of said construction.

**Section 8.2: Adherence to Electrical and Safety Codes.** The Grantee shall comply with the requirements of Section 13.3 of the Cable Communications Ordinance as originally approved by the Village regarding adherence to electrical and safety codes.

**Section 8.3: Permit and Inspection Requirements.** For work in the Right-of-Way conducted by the Grantee, the requirements of Section 7-5-1 through 7-5-23 of the Sugar Grove Municipal Code (Ordinance No. 20080318C) shall apply. In the event that the Grantee proposes to perform work in the Right-of-Way that includes excavation of property, the requirements of Section

7-2-1 through 7-2-10 of the Sugar Grove Municipal Code (Ordinance No. 380) shall apply.

**Section 8.4: Overhead and Underground Installation.**

A. Aerial cable locations shall comply with Chapter 7-5-16 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance (Ordinance No. 20080318C).

B. In all sections of the Franchise Area where the cables, wires, or other like facilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground. The Grantee shall comply with the provisions of Ordinance No. 20080318C, particularly Chapter 7-5-16 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance regarding underground installation of system plant and appurtenances. With respect to any cables, wires, and other like facilities constructed and installed by Grantee aboveground, Grantee shall, at its sole expense, reconstruct and reinstall cables, wires or other facilities underground pursuant to any project under which the cables, wires, or other facilities of all like utilities are placed underground within an area. At such time that a Grantee must relocate its System plant due to road or highway improvement, it shall relocate its plant in accordance with timetables established by the Village and shall relocate its lines in a manner as to avoid interference with road improvements and other utilities at no cost to the Village. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Right-of-Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the Village shall not be considered to be public or private funds. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Right-of-Way as necessary any property of the Grantee, provided:

(A) the expense of such is paid by said Person benefitting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice by the permit holder to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permit relocation.

C. Underground installations shall be in compliance with all applicable construction and safety codes. Construction, operation, maintenance, and repair of facilities shall be in accordance with applicable state laws and regulations, and with sound practices of the cable television industry. All safety practices required by the Illinois Occupational Safety and Health Act and the federal Occupational Safety and Health Act, along with other applicable laws shall be used during construction, repair and maintenance of facilities.

D. The Grantee shall notify the public prior to commencing any construction, other than emergency repair work, that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety

of the public generally. Written notice of such construction work shall be delivered to the Village at least one week prior to commencement of that work. Notice shall be provided to those Persons most likely to be affected by the work in at least one of the following ways: by telephone (if the Subscriber is a customer of Grantee's phone service), in person, by Certified United States mail, return receipt requested or by overnight courier, or by distribution of flyers to local residences. In the event that Grantee must enter a building or other structure and the owner, manager, or resident is not readily available, it must schedule an appointment at the reasonable convenience of the owner or resident. Entry into a building or other structure shall only be allowed if there is a Person affiliated with the owner or resident who is eighteen (18) years of age or older. The notice and scheduling of appointment provisions of this section shall not apply if the Grantee is investigating possible cable signal theft.

**Section 8.5: Grounding.** The Grantee shall comply with the grounding standards stated in Section 13.6 of the Cable Communications Ordinance.

**Section 8.6: Outage Prevention.** Grantee shall warrant against downtime due to Cable System outages on critical Cable System functions. In the event that a significant number of outages are found to be present in the Cable System, and, after the Franchising Authority has provided the Grantee with adequate notice and opportunity to cure said outages, and a significant number of outages continue to occur, the Grantee shall develop a plan which shall have the goal of minimizing the number of outages and shall present such plan to the Franchising Authority prior to implementation.

**Section 8.7: Emergency Removal of Plant.** If, at any time, in case of fire or other disaster within the Village, it shall become necessary to cut or move any of the wires, cables, amplifiers, power supplies, appliances, or appurtenances of the Grantee, the Village shall not be liable for cutting or moving, provided, a disinterested contractor, agreed to by the Village and the Grantee, determines that it was necessary for the Village to cut or move any wires, cables, amplifiers, power supplies, appliances, or appurtenances of the Grantee. Nothing herein shall be construed to preclude liability for willful or wanton acts.

**Section 8.8: Damage to Village Property.** Where any damage is caused to any Village property during construction, reconstruction, installation, or maintenance by Grantee, the Grantee shall be responsible for actual costs of such repairs including all service and materials after twenty (20) days prior written notice to Grantee providing an opportunity to cure. The charges shall be paid within forty-five (45) days of the date of billing, or the Village, at its option, may withdraw the cost of such repairs from the Security Fund established in Section 7.7 of this Agreement.

**Section 8.9: Restoration of Property.**

A. **Tree Preservation.** The Grantee shall comply with the Village's lawful standards for trees, including, but not limited to, preservation, mutilation, trimming, pruning, abuse, and protection pursuant to Sections 7-4-1 through 7-4-14 and Section 7-5-17 of the Sugar Grove Municipal Code, as may be amended from time to time, provided, however the Grantee shall notify the Village of such trimming and then shall have the authority to trim trees or other natural

growth in order to access and maintain the Cable System.

B. Restoration. The Grantee shall comply with the requirements of Chapter 7-5-19 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance, Ordinance No. 20080318C regarding cleanup and restoration of property. Where areas of grass have been disturbed, Grantee shall replace said affected grassy areas with sod or seed, as soon as is feasible. In the event that the grass dies before the end of the first season, Grantee shall repair the grass one time or replace the grass one time at its expense.

C. Wiring. In the event that a Subscriber requests Grantee to remove cable home wiring from Subscriber's residence, Grantee shall be responsible for removing wiring to the demarcation point at the ground block on the exterior of the Dwelling Unit. Grantee shall pay for any damage caused as a result of Grantee's unintentional negligent installation or removal of wiring. Grantee shall comply with the provisions of Title 47, Section 76.802 of the U.S. Code of Federal Regulations concerning the disposition of cable home wiring.

**Section 8.10: Construction Delays.** At such time where Grantee fails to complete construction required pursuant to this Agreement, Grantee shall notify the Franchising Authority of the delay within ten (10) calendar days from the occurrence of the delay, and shall indicate the cause or causes for the delay. Upon receipt of notification by the Grantee of the delay, the Franchising Authority and the Grantee may agree to extend the construction completion date. In the event that the delay continues beyond the control of the Grantee, and extends beyond the agreed-upon date, the Franchising Authority and the Grantee may agree to establish a new date for resumption of construction or service.

### **Section 8.11: Installations at Dwelling Units**

A. Construction and placement of an aerial Subscriber Drop or Service Line Drop connected to a Dwelling Unit shall be at the direction of the Subscriber or the Village. Grantee shall be responsible for securing the written authorization for the method employed and shall keep said authorization on file until the expiration of its Franchise Agreement.

B. A Subscriber shall have the option to have the Grantee connect a standard Subscriber Drop to the Dwelling Unit by either:

1. Connection of the aerial Drop to the Dwelling Unit at a minimum of twelve (12) feet above the ground level; or,
2. Attachment of the Drop to the side of the utility pole and buried from the base of the utility pole to the Dwelling Unit at a depth of no less than six inches (6").

## **SECTION 9: CUSTOMER SERVICE**

**Section 9.1: Customer Service Standards.** The Grantee shall comply with the Cable and Video Customer Protection Law (220 ILCS 5/22-501) authorizing the Village to enforce all of the customer service and privacy protection standards of this law. The Village shall enforce the customer service and privacy protections

with respect to Complaints received from residents as provided by the Cable and Video Customer Protection Law pursuant to Ordinance No. 20080318A, enacted March 18, 2008. Infractions of this ordinance shall be subject to liquidated damages and procedures as specified in Section 14 hereinbelow. Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Ordinance shall be incorporated into this Agreement by reference. However, any amendment that makes its provisions optional for adoption by the Village shall not be incorporated into this Agreement by reference without formal action by the Village Board.

**Section 9.2: Customer Service Complaint and Outage Records.** Subject to Grantee's obligations pursuant to law to maintain the privacy of certain information, the Grantee shall prepare and maintain records of all complaints received and the resolution of such complaints, including the date of such resolution. Such records shall be on file at the office of the Grantee. The Grantee shall provide the Village with a written summary of such complaints and their resolution upon request. Based upon their review, the Village Administrator and the Village Board may request further communication from the Grantee regarding information from the aforementioned logs and records.

## **SECTION 10: RATE REGULATION**

### **Section 10.1: Reservation of Rights**

The parties recognize that the FCC has declared that Grantee is subject to effective competition in the Village. Notwithstanding, the Village reserves its rights to regulate rates for the Basic Service Tier of Cable Service and equipment of the Grantee if allowed by the FCC in the future. In the event that the Village is allowed to regulate rates, the Village and the Grantee shall abide by all applicable laws, rules, regulations, and orders with regards to rates and regulations promulgated by the FCC and the Village. The Village and the Grantee agree that any amendment or modification by the FCC or the Congress of the United States of rules regarding rates and regulation now or hereafter amended, shall apply to this Franchise Agreement.

**Section 10.2: Basic Cable Service.** Grantee is committed to continuing to provide a lower-cost tier of Cable Service that includes the retransmission of local broadcast television signals and the Governmental and Educational Access Channels. This service is currently offered as "Broadcast Basic." The Grantee shall publicize the availability of this service tier periodically each year.

## **SECTION 11: FRANCHISE FEES, USAGE OF FEES AND OTHER SUPPORT**

### **Section 11.1: Amount, Payment and Required Information.**

A. As part of the consideration supporting the award of this Franchise Agreement, and the Village's permission to use the public Right-of-Ways of the Village, during the term of this Franchise, Grantee shall pay to Village an amount equal to five percent (5%) of Grantee's annual Gross Revenues or an amount equal to the maximum percentage permitted by law, of the Grantee's annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area, whichever is greater; provided, however, that the

Grantee shall not be compelled to pay any higher percentage of franchise fees than any other Cable Operator or video service provider, under state authorization or otherwise, providing service in the Franchise Area. Franchise Fees on Cable Service that is bundled with other services shall be paid as provided by applicable state and/or federal law.

B. The Village may require the Grantee to collect and remit Franchise Fees that include amounts collected from Subscribers and amounts collected from non-Subscriber revenues in accordance with applicable federal laws and regulations.

C. To the extent permitted by law, and in accordance therewith, increases in Franchise Fees levied by the Village shall be effective ninety (90) days after written notice is given to Grantee. Franchise Fees shall be paid quarterly and delivered to the Village Clerk either by hand, by certified United States Mail, or by a reputable overnight courier service, such as UPS or Federal Express. The quarterly anniversary shall be March 31, June 30, September 30, and December 31. Payment shall be made within forty-five (45) days from the aforementioned anniversary dates. Grantee shall file with each Franchise Fees payment, a complete and accurate written statement signed by an officer of Grantee identifying in detail sources and amounts the Gross Revenues received by Grantee under GAAP during the preceding period for which payment is made. Grantee shall file a report signed by an authorized representative detailing the following separate categories of revenue for the period of the payment: installation, basic service, expanded basic service, digital service tiers, cable guides, premium services, pay-per-view, a la carte channels, video-on-demand service, bulk revenue, equipment rental, home shopping commissions, advertising revenues, late payment fees, miscellaneous and franchise fees. Grantee may, at its option, identify further specific categories of revenue.

D. The Grantee shall file with each Franchise Fees payment, a complete and accurate written statement signed by an officer of Grantee identifying in detail sources and amounts the Gross Revenues received by Grantee during the preceding period for which payment is made. Upon the request by the Franchising Authority no later than April 30 of any year during the term of this Agreement, the Grantee shall file, an annual financial report, signed by a certified public accountant, clearly showing the accumulated total Gross Revenues under GAAP for the prior year. The report shall identify the same categories of revenue as included in Section (B) above.

The Certified Public Accountant may be a Grantee employee in a financially-related responsibility of the company, and shall certify that the report is true, complete, and correct.

E. For each whole or partial year that this Agreement or any extension thereof is in effect, the Franchise Fees due to the Village shall be paid on a quarterly basis as specified hereinabove. To avoid evasion of Franchise Fees, to the extent that discounts reduce revenues that are subject to inclusion for purposes of calculating Franchise Fees, a Grantee may not unfairly or unlawfully allocate discounts for bundled services.

**Section 11.2: Acceptance of Payment.** The acceptance of any payment required hereunder by the Village shall not be construed as an acknowledgment that the amount paid is the correct amount due nor shall such acceptance of payment be construed as a release of any claim which the Village may have for further or additional sums due and payable.

**Section 11.3: Request for Corporate Report.** Upon request by the Village, the Grantee shall provide a report which shall contain a listing of the Grantee's directors, officers, partners and/or shareholders who own directly or indirectly, at least five percent (5%) of the interest in the Grantee or its parent. The Grantee may refer the Village to a corporate report listing directors, officers, partners, and/or shareholders published on its Internet website. Where Grantee or its parent is a publicly-traded stock company, the filing by the Grantee with the Franchising Authority of a copy of the annual report to stockholders shall constitute compliance with the provisions of this Section. Where Grantee or its parent is a publicly-traded stock company subject to Securities and Exchange Commission (SEC) reporting requirements, the availability of its SEC filings on the Internet shall constitute compliance with this Section.

**Section 11.4: No Limitation of Liability.** Nothing in this Franchise shall be construed to limit the liability of Grantee for all applicable federal, state, and local taxes. Payment of the Franchise Fee by Grantee to Village shall not be considered in the nature of a tax or assessment, but shall be in addition to any and all taxes and assessments which are now or hereinafter required to be paid by any law to the Village.

**Section 11.5: Late and Final Payments.** In the event that the Grantee has not made a payment due to the Village on or before the applicable due date fixed in any Section of this Agreement, such Franchise Fee or other fee which remains unpaid in whole or in part after the date specified herein shall be delinquent. For any Franchise Fee or other fee payments owed by the Grantee which are not made on or before the due dates, the Grantee shall make such payments including interest, at a monthly rate of one and one-half (1 ½ ) percent. If an additional amount is due as a result of the recomputation, the Village shall send the Grantee a written notice and opportunity to cure in accordance with the provisions of this Agreement. In the event that the Grantee's Franchise is subject to termination, sale, transfer, or revocation, the Grantee shall be subject to the conditions established for expiration or revocation as stated in Section 23 of this Agreement.

## **SECTION 12: FRANCHISE FEE AUDITS/AGREED-UPON PROCEDURES**

### **Section 12.1: Right of Franchising Authority to Inspect and Audit Franchise Fees**

A. The Franchising Authority shall have the right of audit and agreed-upon procedures, and the right to require re-computation of any amounts determined to be payable under this Section and Section 11.3 of the Cable Communications Ordinance, as of the effective date of the Ordinance whether the records are held by the Grantee, an affiliate, or any other entity that collects or receives funds related to the Grantee's operations in the Village. The Grantee shall furnish to the Village upon request by the Village Administrator or his/her

designee, such additional reports, documents, and information necessary to enable the Village to verify the payments made to it by the Grantee.

1. The Village shall have the right to inspect and copy records subject to a confidentiality agreement and the rights to audit and to re-compute any amounts determined to be payable under this Agreement.
2. The Grantee shall be responsible for making available to the Village for inspection and analysis all records necessary to confirm the accurate payment of Franchise Fees, without regard to by whom they are held. The Grantee shall maintain such records for four (4) years.

B. The Franchising Authority shall provide Grantee with no less than twenty-one (21) calendar days' notice of the Franchising Authority's intent to conduct an inspection of Grantee's financial records. Grantee shall comply with the request of the Franchising Authority and make available all such records as are reasonably required at a mutually-agreed upon location.

C. The cost of said audit or agreed-upon procedures shall be borne by the Grantee if it is properly determined through the audit or agreed-upon procedures that the Grantee's annual payment due to the Village for the preceding year is increased by five (5) percent or more; otherwise, such costs shall be borne by the Franchising Authority as a cost incidental to the enforcement of the Franchise.

**Section 12.2: Payments of Amounts Due.** Any additional amount due as a result of such audit or agreed-upon procedures shall be paid within thirty (30) days following written notice to the Grantee by the Franchising Authority which notice shall include a copy of the audit report or the agreed-upon procedures report. If re-computation results in additional revenue to be paid to the Village, such amount shall be subject to interest at the monthly rate of one and one half percent (1 ½%).

## **SECTION 13: MAINTENANCE OF BOOKS AND RECORDS**

### **Section 13.1: Requirement to Maintain Specific Books and Records.**

Grantee shall maintain all revenue records pertaining to the operation of the Cable System necessary to the enforcement of this Franchise Agreement in a manner such that material relevant to the Franchise Area can be obtained.

### **Section 13.2: Records Required of Grantee.**

A. Upon notice to the Grantee, the Village shall have the right, during Normal Business Hours, dates, and frequency, to inspect of the Grantee's records, documents, and engineering records and documents in connection with compliance with the Franchise necessary for the enforcement of this Franchise Agreement. The Grantee shall fully cooperate in allowing the Village to conduct such inspections. Grantee shall provide records required by this Franchise, State or Federal law.

B. Grantee shall maintain all records pertaining to the operation of the Cable System necessary to the enforcement of the Franchise Agreement and the Ordinance as of the effective date in a manner such that material relevant to the Franchise Area can be obtained. Grantee shall not maintain its only records concerning the Cable System within the Franchise Area in aggregate form which commingles such records with those of Cable Systems in other communities to the extent that Grantee's records for the Franchise Area cannot be separately distinguished. This Section shall not apply to records generated by a third party not affiliated with the Grantee with respect to Cable System programming or operations.

C. Where Grantee is unable to locate books and records specific to the Franchise Area at a location which is either within the Village of Sugar Grove, or within the two hundred (200) mile restriction, Grantee may locate such books and records at a remote location which is set forth by Grantee with the provision that in the event that the Franchising Authority, or its designee requests to inspect such records, Franchising Authority shall provide no less than ten (10) calendar days' notice to Grantee to inspect such records. If such records are not located in the metropolitan Chicago area and travel to review such documents is necessary, the Village shall have the right to seek and obtain reimbursement for all documented expenses (e.g., airfare, meals, lodging, car rental, public transportation, overnight courier charges, parking, and tolls) reasonably incurred by the Village or its designee for inspection of the Grantee's records.

**Section 13.3: Records to be Provided to Village.** The Grantee shall provide, upon request with written notice, the Franchising Authority with the following:

A. Pursuant to FCC rules, the Grantee shall file with the Village any reports, petitions, applications, or correspondence submitted to or received from the FCC by the Grantee or its affiliates that relate specifically to the Cable System or a group of Cable Systems of which the Grantee's Cable System is a part or are reasonably likely to affect the operations of the Grantee in the Franchise Area. The Grantee shall also file with the Village any other petitions, applications, reports, and communications filed with the Securities and Exchange Commission, or any other federal or state governmental entity having jurisdiction with respect to any matter specifically affecting the Cable System. Said documents shall be filed with the Village at the same time that they are filed with any other agency.

B. A quarterly summary of service calls tendered by Subscribers to the Grantee. Such summary record shall include the number of service calls received and an identification of the substance of the service calls.

C. Upon request, those reports required to demonstrate compliance with customer service obligations and standards established under state law as adopted under Ordinance No. 20080318A .

D. **Snow Drop and Temporary Drop Report.** Upon request, Grantee will provide a monthly report for all temporary Subscriber Drops installed, including "Snow Drops", including location, the date of Installation, and the date of burial.

**Section 13.4: Records Retention; Privacy.** The Grantee shall take all steps that may be required to ensure that it is able to provide the Village all information which must be provided or may be requested under the Cable Communications Ordinance or this Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Section shall be read to require a Grantee to violate 47 U.S.C. §551 or 220 ILCS 5/22-501(p). Grantee shall be responsible for redacting any data that federal or state law prevents it from providing to the Village. The Village retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least four (4) years unless otherwise agreed to in writing.

#### **SECTION 14: LIQUIDATED DAMAGES**

A. Because the Grantee's failure to comply with certain provisions of this Agreement will result in injury to the Village, and because it will be difficult to estimate the economic extent of such injury, the Village and the Grantee agree to the following liquidated damages for the following violations of this Agreement, which represent both parties' best estimate of the damages resulting from the specific violation. Such damages shall be assessed from the date on which the Village gives written notice to the Grantee pursuant to Section 14(C) hereinbelow, but shall not be applied except according to the procedures specified in Section 14(C). Liquidated damages can only be imposed by the Village after the period afforded to the Grantee to cure said violations and any extension thereof has passed and the violation remains uncured or undisputed subject to the provisions of Subsection (F), the Village, in its sole discretion, may charge to and collect from the Grantee the following liquidated damages for a period of up to ninety (90) days in the event of an uncured Franchise violation:

1. For failure to provide data, documents, reports, or information or to cooperate with the Village during a Cable System review or as otherwise provided herein, the liquidated damage amount shall be one hundred dollars (\$100.00) per day for each day, or part thereof, such failure occurs or continues.
2. For failure to comply with construction standards, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, such failure occurs or continues.
3. For violation of customer service standards as set forth in Chapter 3-9-1 of the Sugar Grove Municipal Code and Ordinance No. 20080318A, as incorporated in Section 9.1 of this Agreement, the liquidated damage amount shall be defined by Illinois law.
4. For failure to provide the implementation and utilization of the access Channels, or the funding of capital equipment, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, such failure occurs or continues.

5. For failure to file, obtain, or maintain any required security instrument or insurance certificate in a timely fashion, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day or part thereof.
6. For failure to restore damaged Village property, weather permitting, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, in addition to the cost of the restoration as required under the Village Right-of-Way Ordinance (Ordinance No. 20080318C) as incorporated hereinabove.
7. For violation of any other provision of this Franchise or applicable Federal, or State law or regulation, where enforcement is expressly delegated to the Village, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, such violation continues.

B. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate liquidated damage amount can be imposed.

C. Whenever the Village finds that the Grantee has violated one or more terms, conditions, or provisions of this Franchise, a written notice shall be given to Grantee informing it of the alleged violation and stating with specificity the basis of the alleged violation. The Grantee shall have thirty (30) days from the receipt of such notice in which to cure such violation. The Grantee may notify the Village in writing within fourteen (14) days from the date of notice during the cure period that there is a dispute as to whether a violation or failure has in fact occurred. The Grantee shall specify with particularity the matters disputed and the basis for dispute which shall toll the running of any time frames herein.

D. In the event that the Grantee disputes one or more violations of this Agreement, the Village shall hear Grantee's dispute through the following process no more than ten (10) days from the date of the Village's receipt of Grantee's notice of dispute of the violation:

1. Meeting with the appropriate Village staff on an informal basis to discuss the disputed matter(s) and set a plan for resolution of the dispute.
2. In the event that Village staff and the Grantee are unable to resolve the disputed matter(s), the Village Board shall establish an Ad-Hoc Committee of members of the Village Board to hear the dispute and decide upon a method or methods of resolving the dispute that shall provide Grantee due process and the right to call and to cross examine witnesses and to present evidence.

3. Should the Grantee seek to appeal the decision of the Ad-Hoc Committee, it may appeal the committee's decision to the entire Village Board of Trustees at a Village Board meeting not less than ten (10) days following the issuance of the Committee's decision.

E. If the Grantee has failed to cure, and has provided good cause for its failure to resolve the problem during the curative period set by the Village, or upon receipt of a notice of dispute from the Grantee, the Grantor may extend the time for cure. Where the Grantee has elected to have its dispute heard by a Village Board Ad-Hoc Committee or by the entire Village Board to review the Grantee's dispute of non-compliance, the Village must provide the Grantee with due process and the right to call and cross examine witnesses and to present evidence with at least ten (10) days written advance notice of the Ad-Hoc Committee or Village Board meeting subject to compliance with the Illinois Open Meetings Act. The Village Board shall preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing and shall issue its determination, based upon the evidence presented at the hearing of whether there was a violation of the Franchise. The determination shall be in writing and shall include a written finding of fact, decision, and order, including any imposition of liquidated damages.

F. In the event that the Ad-Hoc Committee, or the Village Board determines that a violation has taken place, and the Grantee has failed to cure the violation after notice and opportunity to cure the violation has been provided, the Village Board may impose liquidated damages as provided in this Franchise. Liquidated damages shall accrue retroactively to the date of the meeting where such damages were imposed. The Grantee shall pay any liquidated damage amount assessed in accordance with this Agreement within thirty (30) days of a final order by the Village Board. In the event that Village staff, the Ad-Hoc Committee, or the Village Board determines that no violation has taken place, or that corrective action has been taken and the violation has been cured, the Village shall rescind the notice of violation. The Grantee may appeal a final decision of the Village Board to a court of competent jurisdiction, in which case the final decision shall be stayed pending the appeal.

## **SECTION 15: INDEMNIFICATION AND INSURANCE**

### **Section 15.1: Indemnification Provisions**

A. By occupying or constructing facilities in the Right-of-Way, the Grantee shall be deemed to agree to defend, indemnify, and hold the Village and its elected and appointed officials and officers, employees, agents, and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses, and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act, or misconduct of the Grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the Rights-of-Way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Franchise Agreement; provided, however that the Grantee's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses, or

expenses arising out of or resulting from the negligence, misconduct or breach of this Agreement by the Village, its officials, officers, employees, agents or representatives.

B. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in defense of any litigation by their own counsel at their sole expense. Such participation shall not under any circumstances relieve Grantee from its duties of defense against liability or of paying any judgment entered against such indemnified party.

1. In order for the Franchising Authority to assert its rights to be indemnified, defended, and held harmless, Franchising Authority must with respect to each claim:
  - a. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right.
  - b. Afford Grantee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding, and
  - c. Fully cooperate with the request of Grantee, at Grantee's expense, in its participation in and compromise, settlement, or resolution or other disposition of such claim or proceedings subject to the provisions herein.

## **Section 15.2: Insurance Provisions**

A. The Grantee shall comply with the requirements for insurance as set forth in Section 7-5-8 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance, Ordinance No. 20080318C as originally approved, except Grantee shall not be required to comply with Section 7-5-8(C) of the Ordinance No. 20080318C and shall not be required to provide any insurance policy to the Franchising Authority.

B. A copy of Certificates of Insurance identifying the policy or policies, coverages, and named insureds and naming the Village as an additional named insured shall be sent to Village as provided for herein.

C. Grantee shall be responsible for the payment of all premiums on said policy or policies. In the event that Grantee intends not to renew said policy or policies, not to replace the same, or to materially alter or change the same, Grantee shall provide at least sixty (60) days written notice of its intentions to be delivered by certified United States Mail to the Village.

## **SECTION 16: CABLE PROGRAMMING**

**Section 16.1: Categories of Service to be Provided.** To the extent not pre-empted by federal law, Grantee shall provide on the Cable System all Over-the-Air broadcast stations required to be carried by federal law or FCC

regulations. Grantee shall provide a wide range and diversity of programming for Subscribers residing within the Franchise Area. In accordance with Federal law, the programming decisions shall be within the discretion of the Grantee. Except as expressly permitted by law, the Grantee shall not exercise any editorial control over the content of programming on the access Channel, except for such programming as the Grantee may produce or cablecast on such Channel. Categories of programming comparable in quality, mix, and level to be provided by Grantee to Subscribers shall include, but not be limited to the following:

- A. Local, regional, national, and international news, sports, and weather programs
- B. Music video and concert programs
- C. Educational programming
- D. Public affairs and public service programming
- E. Classic and contemporary movies
- F. General entertainment programming
- G. Ethnic and foreign language programming
- H. Children's programming
- I. Financial and business-related programming

**Section 16.2: Programming Tier for Congregate Housing.** The Grantee may provide a customized tier of service for congregate housing facilities located in the Franchise Area. For the purpose of this Section, congregate housing facilities may include nursing homes and long term care facilities, apartment complexes, and hotels or motels. The Grantee may apply bulk billing rates for the customized tier of service that are at a lower rate than the rate charged to individual customers for the same level of service.

## **SECTION 17: PUBLIC, EDUCATIONAL, & GOVERNMENTAL (PEG) PROGRAMMING**

**Section 17.1: Future Government Access Channel.** Commencing January 1, 2012, the Village shall have the option of requesting, for the purpose of meeting the community's need for PEG access programming, one (1) Government Access Channel on the digital basic service tier (the "Government Access Channel") to be shared with the Village of Elburn, Illinois, throughout the remaining term of this Franchise. As of the effective date of this Franchise, the Village is not controlling and operating said Government Access Channel. Prior to making the request, the Village shall create a staff-developed plan, acceptable to Grantee and approved by the Village Board, for operating and funding the Government Access Channel (the "Operational Plan"). Upon making the request, the Village and Grantee shall meet to discuss and mutually agree upon an implementation plan to activate said channel, consistent with this Section and applicable law.

**Section 17.2: Rules and Designated Provider for Future Government Access Channel.** In the event of implementation, the Village may authorize a designated access provider to control, operate, and manage the use of the Village specific access facilities, including without limitation, the operation of the Village's specific access channel. The Village or its designee may formulate rules for the operation of the Village's specific access channel, consistent with the Franchise. Nothing herein shall prohibit the Village from authorizing itself to be a designated access provider.

**Section 17.3: Programming of Future Government Access Channel.** It is expressly understood that the Village and/or its designee shall bear sole responsibility for determining the quality, type and acceptability of programming on the Government Access Channel. Any such permitted programming shall be in accordance with FCC regulations. The Village shall dedicate the time, personnel and other resources needed to operate the Government Access Channel designated herein. In the event that the Village terminates its operation of the Government Access Channel, including all programming on the Channel, as of the effective date of termination of operations and programming, the Village will not be responsible for providing the time, personnel, and other resources necessary for the operation of the Channel. However, the aforementioned shall not apply should a Village-designated entity assume operation and programming of the Government Access Channel on behalf of the Village as noted hereinabove.

**Section 17.4: Responsibility for Programming the Future Government Access Channel.** Prior to the cablecast of any program on the Government Access Channel, the Village shall require any producer of programming to provide written certification in a form and substance acceptable to the Village that the Person has obtained all necessary copyright clearances to air the program material, including clearance on all components and which releases, indemnifies, and holds harmless the Village, the Grantee, and their respective employees, officers, agents, and assigns from any liability, cost, damages, and expenses, including all expenses for legal fees, arising or connected in any way with said program. The Village shall defend and hold Grantee harmless of any liability arising out of the use and control of the Government Access Channel. The content of programs on the Government Access Channel shall not be controlled by the Grantee. In the event that Grantee controls, operates, and supervises the Government Access Channel, Grantee shall be exempt from the requirements of this Subsection.

**Section 17.5: Editorial Control.** Except as expressly permitted by federal law, the Grantee shall not exercise any editorial control over the content of programming on the designated Government Access Channel, except for such programming as the Grantee may produce and cablecast on such Channel.

**Section 17.6: Non-Commercial Programming.**

A. The Government Access Channel dedicated to the use and control of the Village shall be utilized for noncommercial programming and purposes and without any charges by the Village to any Subscriber. The Village shall have the right to utilize its access Channels to provide residents with any non-commercial service considered in the public interest. For the purpose of this Agreement, the term "non-commercial" shall be construed to allow the operator of an access Channel to seek monetary or in-kind support from a public or private source or sources. Such support may include, but not be limited to, grants, budgetary allocations, stipends, fees or charges for transcripts, tape reproductions, or other costs related to the production or reproduction of a program or programs, or other similar support. Said support shall be directly related to the governmental purposes promoted by the Future Government Access Channel.

B. In the case of a grant, stipend, in-kind contribution or other form of support provided by a public or private source or sources, an acknowledgment of the contribution of the source may be shown on the Channel in accordance with the policies established by the Village provided that commercial advertising for the source shall not be allowed. Programming cablecast on the Future Government Access Channel shall not be considered origination cable-casting for purposes of the Grantee's compliance with Title 47, Section 76, Subpart G of the FCC rules and regulations unless otherwise determined by the FCC with respect to the Grantee. Use of such Channels is not "for profit" or "commercial" solely because an access programmer or access Channel manager has more revenues than expenses, or because the activity in which it is engaged is provided on a for-profit basis by private entities in other communities or the Village. Nothing shall prevent the Village from authorizing charges to users or viewers to pay for services such as fees for video class instruction or charges to recover the cost of special use equipment, or as they may be required to charge under applicable law.

**Section 17.7: Channel Availability Timetable.** The Grantee shall observe the following timetable for implementing the Future Government Access Channel:

A. Within six (6) months, of the Franchising Authority's notice to the Grantee that it is ready to utilize the Future Government Access Channel space and facilities to develop and cablecast government access programming, Grantee shall install two-way capability to permit origination of programming from the Elburn Village Hall. In the event that two-way capability does not currently exist, the Grantee shall activate the return capability not later than June 30, if the request is submitted to Grantee on or before January 1, or the Grantee shall activate the return capability no later than January 1 if the request is received on or before June 30.

1. The dedicated connection required by this Sections shall be designed and built to include all equipment, but not limited to transmitters, receivers, modulators, processors, drops, and wiring in order to enable the sending of signals to the Headend on said Channel.
2. Grantee shall ensure that programming received via upstream feeds is retransmitted as sent by the future Government Access Channel programmer without changing the attributes of the signal in such a way as to effectively degrade the output by an incremental amount greater than the deterioration in commercial channels as quantitatively measured in FCC technical standards, including, but not limited to, co-Channel interference and other forms of interference, hum, distortions, degradation of chroma and luminance, pixellation, and imperfections.

**Section 17.8: Reclamation of Channel by Grantee.** Because the Village and Grantee agree that a blank or under-utilized Access Channel is not in the public interest. The Grantee may program unused time on the Government Access Channel subject to reclamation from the Village upon no less than sixty (60) days' notice. The programming of the Government Access Channel with character generation or playback of previously aired programming shall not constitute unused time. Character generation containing out-of-date or expired information for a period of fourteen (14) days shall be considered unused time. Unused time

shall also be considered to be a period of time, in excess of six hours, where no programming of any kind can be viewed on the PEG Channel resulting in the display of a blank screen. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

**Section 17.9: Future Capital Support for Government Access Channel.**

A. Upon requesting the future Government Access Channel, the Village Board may request in writing an initial capital contribution grant of up to Six Thousand dollars (\$6,000.00) (the "Initial Capital Grant"), which shall be paid upon ninety (90) days of the request. These funds shall be used by the Village for capital expenditures related to future government access programming including, without limitation, for government access related equipment purchases, and construction costs. Grantee shall recover the Initial Capital Grant from Subscribers through a \$0.20 per Subscriber per month PEG fee (the "PEG Fee").

When Grantee has fully recovered the Initial Capital Grant, Grantee will continue to collect the PEG Fee from subscribers and remit the proceeds to the Village on an annual basis for the remaining initial term of this Franchise, so long as the Village is following the Operational Plan. As a condition for collection and remittance of the PEG fee, the Village shall provide the Grantee with a summary report of programming produced and attached copies of receipts for capital equipment expenditures no later than ninety (90) days from the end of the calendar year following receipt of the initial capital grant. This report shall also include the status and progress made on goals or objectives cited in the Village's plan for PEG Channel operations.

B. It is recognized by the parties that the Grantee has the right under 47 C.F.R. §76.922 to pass through the costs of the future capital support contained herein, and the Grantee may, at its discretion, include a monthly amount per Subscriber on its monthly billing statements. Such capital support shall not exceed more than the monthly amount per Subscriber as determined from the amount of the grant stated hereinabove.

C. The Village shall reimburse the Grantee for all capital grants in the event that the Village creates or joins a communications utility that directly provides Cable Services in competition with those Cable Services provided by the Grantee in the Village during the term of the Franchise. This Section shall not apply to the Village's membership or participation in the Northern Illinois Telecommunications Triangle, Northern Illinois University Network (NIUNET), the Illinois Municipal Broadband Communications Association, or other publicly-funded organization that provides broadband voice and data services within the corporate limits of the Village.

D. Upon the Grantee's written request, the Village shall submit a report annually on the use of the Village specific access channel and capital contribution. The Village shall submit a report to the Grantee within one hundred twenty (120) days of a written request. The Grantee may review the records of the Village regarding the use of the capital contribution.

**Section 17.10: Educational Access Channel.** Grantee agrees to continue to provide Subscribers a feed of the Waubonsee Community College Educational Access Channel on the digital basic service tier for the duration of this Franchise.

## **SECTION 18: EMERGENCY OVERRIDE**

A. Any Emergency Alert System (“EAS”) provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the Franchising Authority will be only in accordance with the applicable state and local plans in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the Franchising Authority will hold the Grantee, its employees, officers, and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorney’s fees and costs. As of the Effective Date of this Agreement, the Village participates in the use of the EAS by way of notification from the Village Police or Fire Departments to the Kane County Office of Emergency Management (KCOEM), which in turn, follows the procedures set forth in the State of Illinois EAS Plan. In the event that the Village alters its notification procedures to KCOEM, or should KCOEM inform the Village that it has changed its notification procedures under the State EAS Plan, the Village shall send written notification to the Grantee advising it of such changes.

B. Willful or wanton failure of the EAS to perform on the Cable System in the event of an public emergency declared by the President of the United States, the Governor of Illinois, the Chairperson of the Kane County Board, or the Village President or his or her designee, unless such failure is beyond the control of the Grantee, shall be a material breach of this Agreement and shall be subject to a damage amount of seven hundred fifty dollars (\$750.00) per occurrence.

## **SECTION 19: SERVICE TO PUBLIC FACILITIES**

### **Section 19.1: Service to Public Facilities.**

A. The Grantee shall provide, at no charge, one outlet of Basic Cable Service to Village and other local government buildings and Schools pursuant to the requirements of Chapter 3-9-1 of the Sugar Grove Municipal Code (Ordinance No. 20080318A) incorporating 220 ILCS 5/22-501(f)(1-2). The Grantee shall provide Cable Service to any School, library, or government buildings that are constructed during the term of this Agreement subject to the line extension provisions of this Agreement. A listing of such Schools, government buildings, and public institutions as of the Effective Date of this Agreement that are subject to Installation of Cable Service are identified in Appendix B. It is understood that there may be government buildings in existence today where Cable Service is not desired at this time, however, Cable Service shall be requested at a later date through a written request to the Grantee.

B. Upon notice and consent by Grantee to insure signal integrity, signal leakage, and commercial use concerns, the institution being served may further distribute within the municipal building, School, library, or facility any Cable Service that it lawfully receives, consistent with the mission of the institution. Such further distribution shall be at the expense of the Village, if the building is owned or leased by the Village, or at the expense of the School, or other institution being served.

C. The Grantee shall also provide, at no charge, one Converter, decoder, or similar equipment if necessary for Subscriber equipment (such as television sets) to receive Basic Cable Service at each such outlet, with all capabilities or options afforded at a given time by the Cable System. Grantee shall ensure that all signals are provided at such outlets with sufficient strength that they can be further amplified to distribute them throughout the site.

## **SECTION 20: FRANCHISE EVALUATIONS AND PERIODIC FRANCHISE REVISITATIONS**

### **Section 20.1: Franchise Evaluations.**

A. The Franchising Authority may, at any time during the term of this Agreement, evaluate performance of the Grantee for purposes of determining compliance with this Agreement and the Cable Communications Ordinance, and to provide for consideration of technological, legal, or regulatory changes in the state of the art of cable television. The Franchising Authority and the Grantee may hold performance evaluation sessions at any time during the term of the Franchise and as may be required by State and Federal law. Evaluation meetings shall be open to the public. Sessions that are open to the public shall be publicized in accordance with the Illinois Open Meetings Act. The Franchising Authority shall be responsible for notifying the Grantee in writing, at least sixty (60) days in advance of any performance evaluation sessions.

B. The Village and the Grantee shall mutually cooperate and shall provide such information and documents as the Village and Grantee deem necessary to perform their review in order that a review of the Cable System can be performed.

C. Topics which may be discussed during the evaluation process or at evaluation sessions shall include, but not be limited to the following: Service rate structures, free services, discounted services, Franchise Fees, penalties, applications of new technologies, repair and maintenance services, billing procedures, service provided by Customer Service Representatives, system performance, programming offered, programming desired by Subscribers, Subscriber complaints, rights of privacy, above and below-ground extension of cables and equipment, rulings and decisions of the Federal Communications Commission, Federal and State Courts of Law affecting Cable Service, and Grantee or Village rules. The Franchising Authority shall provide Grantee with a listing of topics for discussion twenty-one (21) days prior to the date of a scheduled evaluation session.

D. Franchise evaluation sessions and meeting shall be conducted in accordance with the Illinois Open Meetings Act and shall be in accordance with provisions established in Section 4.1 of the Cable Communications Ordinance in the form originally approved by the Village.

E. In the event that the evaluation of the Grantee's performance under the Franchise reveals evidence indicating inadequate performance of the Cable System which seems to constitute a violation of FCC technical requirements, the Franchising Authority may require the Grantee to conduct tests and assessments within thirty (30) days following notice to the Grantee of the violation to locate the

source of system deficiencies and to specify remedies to correct such deficiencies. The Grantee shall reasonably cooperate with the Franchising Authority in performing such testing and shall prepare results and a report if requested within thirty (30) days after completion of the tests. Such report shall include the following:

1. A statement of the problem, complaint, or suspected deficiency which prompted the need for testing and assessment;
2. The system component or components that were tested;
3. Date, place, and time where such testing took place;
4. Equipment used in the testing and procedures employed to carry out such tests or assessments;
5. Methods used to remedy identified problems, deficiencies, or suspected violations of FCC technical standards, and the status of resolution of such problems, deficiencies, or suspected violations.

The Franchising Authority may utilize an independent consultant with experience and knowledge of cable television systems engineering who has no affiliation with the Grantee, to supervise Grantee in conducting tests and assessments of the Cable System. The consultant shall sign all records of tests and assessments conducted upon the Cable System, develop a report based on the findings of such tests and assessments, and provide the Village Board with a report interpreting the results of the tests and assessments to include recommendations of actions which would remedy problems or deficiencies uncovered during the course of such testing and assessments.

Where said testing determines that problems, deficiencies, or violations of the Franchise exist, Franchising Authority shall provide Grantee with notice of said problems, deficiencies, or Franchise violations, and provide an appropriate time period, which shall not be less than thirty (30) days, for the Grantee to cure said problem, deficiency, or violation. If the tests reveal that the problem was caused by a violation of FCC technical standards, the cost of such testing shall be at Grantee's sole expense. In the event that no violation of FCC technical standards was found to have occurred, such testing shall be at the Village's sole expense. The Village will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to the Grantee or Subscribers. The Franchising Authority's rights under this Section shall be limited to requiring tests, assessments, and reports concerning subjects and characteristics based on complaints, suspected deficiencies, or other evidence when and under such circumstances as the Franchising Authority has sufficient grounds to believe that such complaints, suspected deficiencies, or other evidence requires that tests be performed to protect Cable System Subscribers against substandard Cable Service.

F. If, at the conclusion of the review, the Village makes specific, written findings of fact that show that the Grantee has not complied with the requirements of this Franchise Agreement, and has failed to correct such violation after a written notice and opportunity to cure has been provided, the Village may assess remedies in accordance with the procedures for Franchise violations as described in Section 14 and Section 23 of this Agreement.

**SECTION 21: MODIFICATIONS TO COMMUNICATIONS AND CABLE ACTS.**

In the event that the Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, the Illinois Cable and Video Competition Law of 2007 or the Illinois Cable and Video Customer Protection Law of 2007 are modified or amended in any manner that is mandatory, or the FCC or the State of Illinois modifies or alters any of its regulations pertaining to cable television which may affect any provision(s) of this Franchise Agreement, such provisions shall remain in effect until the effective date of such modifications, amendments, or alterations. The Franchising Authority and the Grantee, upon notice that said modifications, amendments, or alterations may affect any provision(s) of this Agreement and prior to the effective date of said modifications, amendments, or alterations, or as soon thereafter as practical, may meet in good faith to amend this Franchise Agreement accordingly.

**SECTION 22: TRANSFERS, DELEGATIONS, AND ASSIGNMENTS OF OWNERSHIP**

The Grantee and the Franchising Authority shall follow the procedures for transfers, delegations, and assignments of ownership of the Cable System as set forth in Sections 8.1 through 8.11 of the Cable Communications Ordinance, as of the Effective Date of this Agreement, except where otherwise provided in this Agreement. In the event of a transfer or change in actual working Control, the transferee shall become a signatory to this Agreement.

**SECTION 23: MATERIAL BREACH AND REVOCATION**

A. In addition to all other rights and powers retained by the Village under the Cable Communications Ordinance and this Agreement or otherwise, the Village reserves the right to terminate the Franchise and all rights and privileges of a Grantee hereunder in the event of an uncured substantial breach of its terms and conditions which remain uncured after notice to the Grantee, and an opportunity to cure subject to the procedures outlined below. Material provisions shall include all labeled as such and all others, which under the facts and circumstances indicated, constitute a significant portion of this Franchise Agreement. A material breach by a Grantee shall include, but shall not be limited to the following:

1. Repeated failure, after notice and opportunity to cure, to comply with the material provisions of this Agreement, such as payment of Franchise Fees and the PEG Fee.
2. Repeated failure to cure material violations of this Agreement within a specified time after notice from the Village.
3. Failure to restore service after seventy-two (72) consecutive hours of interrupted service, provided the Grantee's failure to restore system-wide service is not caused by circumstances or events beyond the Grantee's control.
4. Material fraud or misrepresentation in the negotiation or renegotiation of the Franchise.
5. Failure to maintain required insurance coverage.
6. Wanton or reckless violation of federal, state, or local privacy requirements.
7. Transfer of the Franchise without Village Board consent.
8. Grantee Abandonment of the Franchise. A Grantee shall be deemed to have abandoned its Franchise if it willfully refuses

or is unable to operate the Cable System as granted by this Franchise Agreement where there is no event beyond the Grantee's control that prevents the operation of the Cable System, and where operation would not endanger the health or safety of the public or property. Grantee may not abandon the Cable System or any portion thereof without compensating the Village for damages resulting from the abandonment. The Village may recover from Grantee damages for all costs of the removal of the Cable System.

B. Notice of substantial breach: Written notice shall be given to a Grantee setting forth with specificity:

1. The nature of the substantial breach or default by the Grantee;
2. A written demand that a Grantee correct the violation;
3. Notice that any failure to correct the remedy within thirty (30) days or such other period and as may be stipulated in a Franchise Agreement or as the parties may agree, and to diligently pursue the completion of the breach or default, may be cause for revocation of the Franchise, or lesser sanctions.

C. The Grantee shall respond within thirty (30) days in writing to the Village after receipt of a notice of breach or violation and shall provide any and all information and documentation in support of its response. The Grantee's response may include a statement:

1. That it contests the Village's notice of breach or violation and requests an opportunity to be heard as provided herein.
2. That corrective action has been implemented by the Grantee and the breach or violation has been cured.
3. That corrective action has been implemented by the Grantee and is being actively and diligently pursued, accompanied with a written corrective action plan that includes the estimated time period in which the breach or violation will be cured.

D. No provision of this Section shall be deemed to delay, bar, or otherwise limit the right of the Village or Grantee to seek or obtain judicial relief to enforce the provisions of this Agreement.

E. In the event Grantee continues operation of all or any part of the Cable System beyond the revocation or expiration of this Agreement, Grantee shall pay to the Village the compensation set forth in Section 11.5 hereinabove at the rate in effect at the time of such revocation or expiration, and in the manner set forth herein, together with any taxes it would have been required to pay had its operation been duly authorized in addition to any damages or other relief to which the Village may be entitled in Section 14 hereinabove.

F. Whenever the Village finds that the Grantee has violated one or more terms, conditions, or provisions of this Franchise, a written notice shall be given to Grantee informing it of the alleged violation and stating with specificity the basis of the alleged violation. The written notice shall include the nature of the

breach or default by the Grantee; a written demand that a Grantee correct the violation; and, notice that any failure to correct the remedy within thirty (30) days or such other period as may be stipulated in the Franchise Agreement or as the parties may agree, may result in penalties, liquidated damages, revocation, or other sanctions, and that the Grantee shall diligently pursue the correction of the breach or default.

G. The Grantee shall have thirty (30) days from the receipt of such notice in which to cure such violation. The Grantee may notify the Village in writing within fourteen (14) days from the date of notice during the cure period that there is a dispute as to whether a violation or failure has in fact occurred. The Grantee shall specify with particularity the matters disputed and the basis for dispute which shall toll the running of any time frames herein. The Grantee may provide any and all information and supporting documentation in support of its response.

H. In the event that the Grantee disputes one or more violations of this Agreement, the Village shall hear Grantee's dispute through the following process no less than ten (10) days from the date of the Village's receipt of Grantee's notice of dispute of the violation:

1. Meeting with the appropriate Village staff on an informal basis to discuss the disputed matter(s) and set a plan for resolution of the dispute.
2. In the event that Village staff and the Grantee are unable to resolve the disputed matter(s), the Village Board shall establish an Ad-Hoc Committee of members of the Village Board to hear the dispute and decide upon a method or methods of resolving the dispute that shall provide Grantee due process and the right to call and to cross examine witnesses and to present evidence.
3. Should the Grantee seek to appeal the decision of the Ad-Hoc Committee, it may appeal the committee's decision to the entire Village Board of Trustees at a Village Board meeting not less than twenty (20) days following the issuance of the Committee's decision. The Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. If a hearing officer has been designated, the hearing officer shall hear the relevant evidence, preserve a record and submit written findings and a recommendation to the Village Board for the Board make the appropriate determination. Based upon the evidence presented, the Village Board or the hearing officer shall render the findings and a decision and issue them in writing. The Village Board may continue the hearing in order to allow the Grantee to comply with any lesser liquidated damage imposed by the Village Board in order to correct any breaches or violations. The Village Board shall preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing and shall issue its determination, based upon the evidence presented at the hearing of whether there was a violation of the Franchise. The determination shall be in writing and shall include a written finding of fact, decision, and order, including any imposition of liquidated damages.

In the event that the Village Board determines that cause exists to revoke the Franchise, it shall send notice of revocation within ten (10) business days of the Village's determination. In the event that the Village Board is persuaded after a Grantee's opportunity to be heard in a public meeting that it has committed a violation for which a lesser sanction other than revocation is warranted, the Village Board may, after giving Grantee an opportunity to be heard, order Grantee to remedy the violation within a reasonable period of time specified by the Village Board; assess liquidated damages against the Grantee in accordance with Section 14 hereinabove and to exercise any other remedy provided in this Agreement or the Cable Communications Ordinance; or impose any lesser sanction permitted by this Agreement. The Village shall not exercise any right without a resolution approved by the Village Board.

I. If the Grantee has failed to cure, and has provided good cause for its failure to resolve the problem during the curative period set by the Village, or upon receipt of a notice of dispute from the Grantee, the Grantor may extend the time for cure. The Village shall not unreasonably deny an extension of time to remedy the violation. Should the Village grant the extension, the Grantee shall proceed to remedy the violation within the extended time period prescribed, provided that Grantee also informs the Village on a regular basis of the steps being taken to remedy the violation. Where the Grantee has elected to have its dispute heard by a Village Board Ad-Hoc Committee or by the entire Village Board to review the Grantee's dispute of non-compliance, the Village must provide the Grantee with at least ten (10) days written advance notice of the Ad-Hoc Committee or Village Board meeting subject to compliance with the Illinois Open Meetings Act.

J. In the event that the the Ad-Hoc Committee, or the Village Board determines that a violation has taken place, and the Grantee has failed to cure the violation after notice and opportunity to cure the violation has been provided, the Village Board may impose assessment of liquidated damages, or revocation. as provided in this Franchise. Liquidated damages shall accrue retroactively to the date of the meeting where such damages were imposed. In the event that Village staff, the Ad-Hoc Committee, or the Village Board determines that no violation has taken place, or that corrective action has been taken and the violation has been cured, the Village shall rescind the notice of violation. The Grantee may appeal a final decision of the Village Board to a court of competent jurisdiction, at which time the final decision shall be stayed pending the appeal.

K. The Village Board may, upon good cause shown, and upon its own motion, impose any lesser sanction permitted by this Agreement, or as such lesser sanction is permitted at law or in equity, or waive any damage or penalty.

L. All remedies under this Agreement and the Cable Communications Ordinance are cumulative unless otherwise expressly stated. The exercise of a remedy or the payment of liquidated damages or penalties shall not relieve the Grantee of its obligations to comply with this Franchise Agreement or applicable law.

M. Recovery by the Village of any amounts under insurance, a security fund, performance bond, or letter of credit, or otherwise does not limit Grantee's duty to indemnify the Village in any way; nor shall such recovery relieve Grantee of

its obligations under this Agreement, limit the amounts owed to the Village, or in any respect prevent the Village from exercising any other right or remedy it may have. Provided, however, that a single recovery may only be derived from any and all sources of security.

N. The Village President and the Village Board shall be the sole entity to make a final determination under this Agreement regarding the revocation of the Grantee's Franchise subject to Grantee's right to judicial review of any such decision.

O. If the Grantee is providing telecommunications services as defined by the Cable Act in conjunction with Cable Services, and, in the event that the Grantee's Franchise to provide Cable Services is revoked under the conditions of this Section of this Agreement, Grantee shall be allowed to retain its Cable System plant. However, Grantee shall be required to cease the provision of all Cable Services.

#### **SECTION 24: NO BAR OR WAIVER OF RIGHTS; INTERVENTION**

A. Neither the granting of the Franchise nor any provision governing the Franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the Village.

B. The Village may seek to intervene in any act or other proceeding to which the Grantee is a party, in accordance with applicable law or regulation as it relates to this Franchise.

#### **SECTION 25: DELEGATED AUTHORITY**

The Village may delegate to an advisory body or other Person authority to administer the Franchise and monitor the performance of the Grantee pursuant to the Franchise; provided, however, that any and all ultimate enforcement authority shall be exercised only by the Village Board. The Grantee shall cooperate with any such delegee of the Village Board.

#### **SECTION 26: FORCE MAJEURE**

Whenever a period of time is provided for in the Cable Communications Ordinance or the Franchise Agreement, for either the Village or the Grantee to do or perform any act or obligation, including obtaining permits, licenses, or access to poles and conduits, neither party shall be liable for any delays due to war, riot, insurrection, rebellion, fire, flood, storm, earthquake, tornado, orders of a court of competent jurisdiction, any act of God, failure of a utility provider to provide pole attachments on reasonable terms or conditions therefore, or any cause beyond the control of said party. In such event, said time period shall be extended for the amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond the Grantee's control" if committed, omitted, or caused by the Grantee or its employees, officers, or agents, or a subsidiary, affiliate, or parent of the Grantee, or by any corporation or other business entity that holds a Controlling Interest in the Grantee, whether held directly or indirectly. Further, the failure of a Grantee to obtain financing, or to pay any money due from it to any Person, including the Village, for whatever reason, shall not be an act or omission which is beyond the control of the Grantee.

**SECTION 27: COMPLIANCE WITH STATE BIDDING STATUTES**

Through the acceptance of this Agreement, and in accordance with Illinois State Statutes regarding public contracts, the Grantee and the Village certify that neither party is in violation of Illinois State Statutes concerning bid rigging or bid rotation as stated in 720 ILCS 5/33(E)(3-4).

**SECTION 28: SERVICE OF NOTICE**

A. For purposes of this Franchise Agreement, Grantee authorizes and appoints the Senior Manager of Government Affairs, MCC Illinois, LLC d/b/a/ Mediacom Communications Corporation, with offices located at 3900 26<sup>th</sup> Avenue, Moline, Illinois 61265 to act as its registered agent and represents to the Franchising Authority that such agent is authorized to accept notice and service on its behalf.

B. Grantee shall notify the Franchising Authority in writing, thirty (30) days after any change in the registered agent or representative(s) referenced hereinabove.

C. Any notice or service served upon Grantee's registered agent shall also be provided to the Legal representatives at the addresses specified below. All notices or other written communications required to be provided to Franchising Authority or Grantee under any provision of this Agreement, shall be deemed to be received by the recipient thereof only when said notices or other written communications are actually received in the office of the recipient at the following addresses:

Franchising Authority: Office of the Village Administrator  
Village of Sugar Grove  
10 South Municipal Drive  
Sugar Grove, Illinois 60554

Mickey, Wilson, Weiler, Renzi  
and Andersson, P.C.  
P.O. Box 787  
Aurora, Illinois 60506

Grantee: MCC Illinois, LLC  
d/b/a Mediacom Communications  
Corporation  
Senior Manager of Government Affairs  
3900 26<sup>th</sup> Avenue  
Moline, Illinois 61265

MCC Illinois, LLC  
d/b/a Mediacom Communications  
Corporation  
Legal Counsel  
100 Crystal Run Road  
Middletown, New York 10941

Except as otherwise provided in this Agreement, all written notices regarding any matter concerning this Agreement, the Cable Communications Ordinance, or any of the other ordinances of the Village shall be sent by the Village by either certified United States Mail, return receipt requested; by overnight mail services, such as Federal Express, with a delivery confirmation signature, or by facsimile transfer ("Fax"), or by electronic mail ("e-mail") with a written copy of such e-Mail subsequently provided. Notice shall be deemed to have been given based upon the date of transmittal, however, this shall not preclude the Village from allowing a Grantee to act upon such notice, where action is applicable, within a specified time period starting from the date of receipt by the party to which the notice was sent.

**SECTION 29: ORAL MODIFICATION**

This Franchise Agreement shall not be changed, modified, or amended in whole or in part except in writing and signed by all of the parties unless such changes are a direct result of a change in applicable state law or federal regulation.

**SECTION 30: TIME IS OF THE ESSENCE**

Whenever any material provision of this Franchise Agreement shall set forth any time for any act to be performed by the Grantee, such time shall be deemed to be of the essence.

**SECTION 31: SEVERABILITY**

The provisions of this Franchise Agreement are severable, and if any provision or application is held to be illegal, unconstitutional, or invalid, such holding shall not affect the remaining provisions which can be given effect without the invalid provision or application. In the event that any provision of this Agreement becomes invalid, the Village and the Grantee may amend this Agreement upon mutual consent.

**SECTION 32: ENTIRE CONTRACT**

This Franchise Agreement, including appendices, constitutes the entire contract between the parties and there are no other understandings, oral and written, relating to the subject hereof. This Agreement supersedes any prior understandings or the prior franchise agreement.

**SECTION 33: OBLIGATIONS TO CONTINUE THROUGHOUT TERM**

Unless otherwise specifically stated, all obligations under this Franchise Agreement shall continue throughout the entire term or extension of this Franchise Agreement.

**SECTION 34: HEADINGS**

Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Franchise Agreement.

**SECTION 35: WAIVER OF REQUIREMENTS**

A. The Village may, on its own motion, or at the request of the Grantee, for good cause shown, waive any requirement or requirements of this Franchise Agreement.

B. The Village shall have the right to waive any provision of this Agreement. However, any waiver shall be restricted to the particular subject matter

of the waiver, and in no way shall be considered precedent for any other waiver, nor shall the Village be obligated to consider any request for a similar waiver. Further, the Village reserves the right to deny any waiver.

C. The failure of the Village or Grantee on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right, compliance or performance has specifically been waived in writing. No delay or omission of the Village or Grantee to exercise any right or remedy shall be considered to be a waiver of or acquiescence in any default. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural Grantee or Village bestowed upon it under Federal or State law or statute unless such waiver is expressly stated herein.

**SECTION 36: NO WAIVER OF RIGHTS BESTOWED BY VIRTUE OF LAW**

Neither the Village nor the Grantee waives or releases rights bestowed upon them by virtue of law or statute.

**SECTION 37: GOVERNING LAW**

This Franchise Agreement shall be governed by the applicable laws and agencies of the United States Government, and if applicable, the laws of the State of Illinois. Venue shall be in the Circuit Court of Kane County, Illinois, Sixteenth Judicial Circuit, or the United States District Court, Northern District of Illinois, Eastern Division.

Accepted By:  
MCC Illinois, LLC  
d/b/a Mediacom Communications Corporation  
a Delaware Limited Liability Company  
By: MCC Illinois, LLC  
Subject to applicable federal, state  
and local law

Village of Sugar Grove, Illinois

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

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

P. Sean Michels  
Village President

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Cynthia L. Galbreath  
Village Clerk

**APPENDIX A**  
**MAP OF FRANCHISE AREA**

PLEASE SEE 2011 ZONING MAP

**APPENDIX B  
LIST OF PUBLIC INSTITUTIONS**

<b>Institution Name</b>	<b>Address</b>
Village of Sugar Grove	10 South Municipal Drive
Sugar Grove Public Library District	125 South Municipal Drive
Village of Sugar Grove – Public Works	601 Heartland Drive
Sugar Grove Fire Protection District	15 South Municipal Drive
Sugar Grove Park District	61 Main Street
Kaneland Middle School *	1601 Esker Drive
John Shields Elementary School *	85 South Main
Sugar Grove Community House	141 Main Street
Sugar Grove Township	54 Snow Street
Sugar Grove Township Road District	70 South 1 <sup>st</sup> Street
Waubonsee Community College District #516	Route 47 at Waubonsee Drive

\* Kaneland Community Unit School District #302



**VILLAGE OF SUGAR GROVE, ILLINOIS**

**ORDINANCE NO. 20110405F11**

**AN ORDINANCE AUTHORIZING EXECUTION OF  
A CABLE TELEVISION FRANCHISE AGREEMENT  
BETWEEN THE VILLAGE OF SUGAR GROVE, ILLINOIS  
AND  
MCC ILLINOIS, LLC d/b/a MEDIACOM COMMUNICATIONS**

**WHEREAS**, the Village of Sugar Grove, an Illinois municipal corporation, is allowed pursuant to 65 Illinois Compiled Statutes 5/11-42-11 and pursuant to Section 626 of the Cable Communications Act of 1984, as amended (47 U.S.C §546) to grant or renew one or more non-exclusive franchises to operate, construct, maintain, and improve a cable television system within the Village of Sugar Grove; and

**WHEREAS**, pursuant to Ordinance No. 20090519F11, the Village of Sugar Grove Cable Communications Ordinance, the Village of Sugar Grove and MCC Illinois, LLC, have been meeting for the purpose of renewing the franchise; and

**WHEREAS**, the parties have reached an agreement, a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, all requirements set forth in Ordinance No. 20090519F11, Section 7 have been met, including an opportunity for public comment; and

**WHEREAS**, a copy of the Agreement shall be located in the office of the Village Clerk.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF SUGAR GROVE, ILLINOIS:**

**Section 1:** That the Village Board of Trustees of the Village of Sugar Grove, Illinois hereby approves the Franchise Agreement with MCC Illinois, LLC d/b/a Mediacom Communications, attached hereto as Exhibit "A." The Village President and Village Clerk are hereby authorized to execute the Agreement and any other documents necessary to effectuate this Agreement on behalf of the Village of Sugar Grove.

**Section 2:** That the effective date of the Franchise Agreement shall be no later than forty-five (45) calendar days from the date upon which the Village President has signed the Agreement.

**Section 3:** That this ordinance shall become effective immediately upon its passage.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, on the 5<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
P. Sean Michels, President of the Board of Trustees  
of the Village of Sugar Grove, Kane County, Illinois

ATTEST: \_\_\_\_\_  
Cynthia Galbreath, Village Clerk

	Aye	Nay	Absent	Abstain
Trustee Robert E. Bohler	_____	_____	_____	_____
Trustee Kevin M. Geary	_____	_____	_____	_____
Trustee Mari Johnson	_____	_____	_____	_____
Trustee Rick Montalto	_____	_____	_____	_____
Trustee Thomas Renk	_____	_____	_____	_____

Draft of 11/18/10**VILLAGE OF SUGAR GROVE, ILLINOIS  
CABLE TELEVISION FRANCHISE AGREEMENT**

**THIS CABLE TELEVISION FRANCHISE AGREEMENT** (the "Agreement") is made and entered into as of the effective date of , 2010 (the "Effective Date") by and between the Village of Sugar Grove, a unit of local government organized under the laws of the State of Illinois, (the "Franchising Authority") and MMC Illinois, LLC, a Delaware Limited Liability Company d/b/a Mediacom Communications with its principal place of business located at 1102 North 4th Street, Chillicothe, Illinois, 61523-0334 (the "Grantee").

**WHEREAS**, the Grantee has applied for renewal of its non-exclusive Franchise (the "Prior Franchise") to provide cable television service in the Village of Sugar Grove; and

**WHEREAS**, the Franchising Authority has reviewed the performance of the Grantee under the Prior Franchise, has analyzed and considered the technical ability, financial condition, and legal qualifications of the Grantee to operate a cable television system, and has ascertained the cable-related needs and interests of the community, taking into account the costs of meeting such needs and interests; and

**WHEREAS**, the Franchising Authority has relied upon the Grantee's representations and has, after such consideration, analysis, and deliberation as required by applicable law, has approved and found sufficient the technical, financial, and legal qualifications of the Grantee, and has determined that the Grantee intends through the terms and conditions of this Agreement to meet the cable-related needs and interests of the community; and

**WHEREAS**, after adequate public notice based on Grantee's representations and information and in response to Grantee's request for renewal, the Village President and Board of Trustees of the Village of Sugar Grove have determined that, subject to the provisions of Ordinance No. 20090519FI1, the Cable Communications Ordinance of the Village of Sugar Grove (the "Cable Communications Ordinance") and the terms and conditions set forth herein, the grant of a renewed non-exclusive Franchise to Grantee, to supersede Ordinance No. 729, approved August 3, 1999 ("the Prior Franchise), is consistent with the public interest, and therefore has enacted Ordinance No. 2010 FI1 more than thirty (30) days after the filing of Grantee's request for renewal; and

**WHEREAS**, the Franchising Authority and the Grantee have reached agreement on the terms and conditions set forth herein;

**NOW, THEREFORE** in consideration of the Village's grant of a new Franchise to the Grantee and the Grantee's promise to provide cable television service to residents of the Village pursuant to and consistent with the Cable Communications Ordinance, the terms and conditions set forth herein, and other good and valuable consideration, the receipt and adequacy are hereby acknowledged;

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

**SECTION 1: DEFINITIONS**

For the purposes of this Section, the following phrases, terms, words, and their derivations shall have the meaning as stated herein. When not inconsistent with the context, words in the present tense shall include the future, words indicating a plural number shall include the singular number and words in the singular number include the plural number. The word "shall" and "will" are mandatory, and not directory. The word "may" is permissive. Words not defined shall be given their common and ordinary meaning. Unless a section provides otherwise, references to statutory enactments shall include any and all amendments thereto and any successor provisions. All capitalized words defined herein, and all other capitalized words utilized within this Agreement, shall have the meaning ascribed to them in the Cable Act unless said terms are not defined in the Cable Act, whereupon the definition shall be controlled by this Agreement. In the event of conflict between this Agreement and the Cable Act, the Cable Act definition shall control. Where there is a conflict between the Franchise Agreement and the Cable Communications Ordinance, the Franchise Agreement shall prevail. Where the Franchise Agreement is silent, the terms of the Cable Communications Ordinance and the Cable Act shall control.

ACT: Shall mean the Communications Act of 1934, the Telecommunications Act of 1996, the Cable Communications Policy Act of 1984 as amended by the Cable Consumer Protection and Competition Act of 1992 (47 U.S.C. 521 et. seq.) as now or hereinafter amended.

BASIC CABLE SERVICE: Shall mean any service tier which includes the retransmission of local television broadcast signals ~~and any public, educational, and governmental access channels regardless of means or technology.~~ **OK 8/30**

BOARD: "Board" or "Village Board" shall mean

the Village of Sugar Grove President and Board of Trustees.

CABLE ADMINISTRATOR: Shall mean that individual who has been appointed by the Village Administrator to oversee and administer the Cable Communications Ordinance and any Franchise Agreement.

CABLE OPERATOR: Any Person or Persons, who provide Cable Services over a Cable System and directly or through one or more affiliates, owns a significant interest in such Cable System, or who otherwise controls, or is responsible or, through any arrangement, the management and operation of such Cable System.

CABLE SERVICE: Shall mean (1) The one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service ~~as provided in 47 U.S.C §522(6) and as amended from time to time.~~ **OK 8/30**

CABLE SYSTEM: "Cable Communications System", "Cable System", or "System", shall mean a facility, consisting of a set of closed transmission paths, and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject in whole, or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of § 621 (c) of this title) to the extent that such facility is used in the transmission of

video programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (D) an Open Video System that complies with Section 653 of the Cable Act (P.L. 104-104), or; (E) any facilities of any electric utility used solely for operating its electric utility systems.

CHANNEL: Shall mean A a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel (as television channel is defined by the Commission by regulation). **OK 8/30**

~~COMMUNITY ACCESS :~~ ~~Shall mean a Channel or Channels set aside and so~~  
~~CHANNEL:~~ ~~designated for the use of Schools and related educational institutions, units of local government, and the public, which may include facilities and equipment for the use of such Channel.~~  
**Delete OK 11/2**

COMPLAINT: Means any written or verbal communication from any Person, individual, business, unit of government that is not the Franchising Authority, or institution, however communicated, to the Franchising Authority regarding a matter or matters pertaining to the Cable Service or other cable-related function of the Cable System or Franchise. **OK 8/30**

CONSTRUCT: Shall mean (i) the installation of cables, lines, fiber optic cables, connection boxes, power supply boxes, or facilities that are in or cross any Right-of-Way within the Village for use as part of a Cable System, or (ii) the connection of other facilities directly or indirectly to previously existing cables, lines, fiber optic cables, connection boxes, power supply boxes or facilities that

are in or cross any Right-of-Way within the Village for use as part of a Cable System.

CONTROL: "Control" or "Controlling Interest" means actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person or entity (except underwriters during the period in which they are offering securities to the public) of 50 percent or more of a Cable System or the Franchise under which the System is operated. A change in the Control or Controlling Interest of an entity which has Control or a Controlling Interest in a Grantee shall constitute a change in the Control or Controlling Interest of the System under the same criteria. Control or Controlling Interest as used herein may be held simultaneously by more than one Person or group of Persons.

CONVERTER: A device provided by the Cable Operator to Subscribers for the purpose of decoding or changing the frequency of signals to a suitable Channel or Channels which the television receiver is able to deliver at designated dial locations.

DWELLING UNIT: Shall mean any single-family or multiple-family residential or business place of occupancy.

~~EDUCATIONAL ACCESS- Shall mean a non-commercial Educational Access Channel or Channels set aside and so designated for the use of Schools. Delete OK 11/2~~

CHANNEL:  
FCC: Shall mean the Federal Communications Commission and any legally constituted federal successor regulatory body, or agency, ~~or successor~~. **OK 9/23**

FEEDER CABLE: Shall mean the cable that takes signals in a Cable System from the trunk line to a node, or similar appurtenance that

serves a cluster of residential and/or commercial Dwelling Units and to which Subscriber taps are attached.

FRANCHISE: Shall mean the same ~~meaning~~ as found in 47 U.S.C. 522(9), i.e., an initial authorization or renewal thereof, including a renewal of an authorization which has been granted subject to Section 626 of the Cable Act, issued by the Village of Sugar Grove, whether such authorization is designated as Franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorized the construction or operation of a Cable System within the corporate boundaries of the Village of Sugar Grove. **Delete OK 9/23**

FRANCHISE AGREEMENT: Shall mean this contractual agreement entered into between the Village and the Grantee hereunder which is enforceable by the Village and said Grantee and which sets forth the rights and obligations between the Village and said Grantee in connection with the Franchise.

FRANCHISE AREA: Shall mean the entire geographic area of the Village of Sugar Grove now or in the future, including any property annexed to the Village of Sugar Grove.

FRANCHISE FEE: Shall include any tax, fee, or assessment of any kind imposed by the Village or other governmental entity on the Grantee or cable Subscriber, or both, solely because of its status as such. A Franchise Fee shall not include any tax, fee, or assessment of general applicability including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against the Grantee or Subscribers; Payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in the support of, the

use of Public, Educational, or Governmental Access facilities;

Capital costs which are required by the Franchise to be incurred by Grantee for Public, Educational, or Governmental Access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, or; any fee imposed under Title 17, U.S. Code.

FRANCHISING AUTHORITY: Shall mean the Village Board of the Village of Sugar Grove, ~~and any administrative staff which the Village Board designates to have responsibility over the supervision of the Village's cable television Franchise.~~ **Delete OK 9/23**

GRANTEE: Shall mean MCC Illinois LLC, a Delaware Limited Liability Company, its ~~employees, subsidiaries, assignees~~ assigns, transferees or lawful successors. **OK 9/23**

GROSS REVENUES: Shall mean all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the Grantee for the operation of a Cable System to provide Cable Service within the Grantee's Cable Service area within the Village.

- A. Gross Revenues shall include the following:
1. Recurring charges for Cable Service.
  2. Event-based charges for Cable Service including, but not limited to, pay-per-view and video-on-demand charges.
  3. Rental of set top boxes and other Cable Service equipment.
  4. Service charges related

to the provision of Cable Service, including but not limited to activation, installation, and repair charges.

5. Administrative charges related to the provision of Cable Service, including but not limited to service order and service termination charges.
6. Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.

7. A pro rata portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the Grantee's network to provide Cable Service within the Village. The allocation shall be based on the number of subscribers in the Village divided by the total number of Subscribers in relation to the relevant regional or national compensation arrangement.

8. Compensation received by the Grantee that is derived from the operation of the Grantee's network to provide Cable Service with respect to commissions that are received by the Grantee as compensation for promotion or exhibition of any products or services on the Grantee's network, such as a "home shopping" or similar channel ~~subject to Subsection (b)(ix)~~. **Delete OK 9/23**
9. In the case of a Cable Service

that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the Grantee's revenue attributable to the other services, capabilities, or applications shall be included in Gross Revenue unless the Grantee can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

~~10. The Franchise Fees collected from Subscribers pursuant to *City of Dallas, Texas v. FCC*, 118 F.3d. 393 (5<sup>th</sup> Cir. 1997) and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena" case, *City of Pasadena, California, et al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues*, CSR 5282 R, Memorandum Opinion and Order, 16 FCC Red. 18192 (2001), and *In re: Texas Coalition of Cities for Utility Issues v. FCC*, 56 F. 3d. 151 ~~324 F. 3d. 802~~ (5<sup>th</sup> Cir. 2003).~~

**Delete OK 9/23**

- B. Gross Revenues do not include any of the following:
1. Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
  2. Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the Grantee to the extent the refund, rebate, credit, or discount is attributable to Cable Service.

3. Regardless of whether the services are bundled, packaged, or functionally integrated with Cable Service, any revenues received from services not classified as Cable Service, including, without limitation, revenue received from telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the Grantee to noncable service in accordance with the Grantee's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.
4. The sale of Cable Services for resale in which the purchaser is required to collect the Franchise Fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay the fee with respect to the service.
5. Any tax or fee of general applicability imposed upon the Subscribers or the transaction by a city, State, federal, or any other governmental entity and collected by the Grantee and required to be remitted to the taxing entity, including sales and use taxes.
6. Security deposits collected from Subscribers.
7. Amounts paid by Subscribers to

"home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the Cable Service.

- C. Revenue of an affiliate of a Grantee shall be included in the calculation of Gross Revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the Grantee has the effect of evading the payment of the fee which would otherwise be paid by the Cable Service.
- D. Where there is a conflict between this Section and Ordinance 20080318B of the Sugar Grove Municipal Code regarding the definition of Gross Revenues under the Cable/Video Service Provider Fee Ordinance or its application, the provisions of this Agreement shall prevail.

HEADEND:

The control center of a cable television system, where signals are amplified, converted, processed, and combined into a common cable along with any origination cablecasting, for transmission to subscribers. ~~System usually~~ The term generally includes antennas, preamplifiers, frequency converters, demodulators, processors, and other related equipment. **OK 9/23**

INSTALLATION:

Shall mean the connection of the Cable System from Subscriber Drop cables to Subscribers' terminals

INTERACTIVE ON-DEMAND

Shall mean a service providing video programming to SERVICES:  
Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

JULIE:

Shall mean The Joint Utility Locating

Information for Excavators utility notification program.

MODIFICATION: Shall mean any Modification, Modification agreement, or amendment to the Franchise Agreement entered into and between the Grantee and the Village and made a part of the Franchise Agreement.

NORMAL BUSINESS HOURS: Shall mean those hours during which most similar businesses in the geographic area of the Village are open to serve customers.

ORDINANCE: Shall mean Ordinance No. 20090519FI1, the Village of Sugar Grove Cable Communications Ordinance, as may be amended from time to time.

~~PEG or PEG CHANNEL:~~ ~~Shall mean an acronym for Public, Educational, and Governmental. Means (A) Channel capacity designated for public, educational, or governmental (PEG) use; and (B) facilities and equipment for the use of such Channel capacity. OK 11/2~~

PERSON: Shall mean any individual, firm, corporation, company, partnership, association, joint venture, trust, or organization of any kind and the lawful trustee, successor, transferee, assignee, or personal representative thereof.

RIGHT-OF-WAY: Shall mean any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements and easements dedicated for compatible uses, in which the Village has the right and authority to authorize, regulate, or permit the location of facilities other than those of the Village. "Right-of-Way" or "Rights-of-Way" shall not include any real or personal Village property that is not specifically described in the previous two (2) sentences and shall not include Village buildings, fixtures, and other structures or improvements regardless of whether they are situated in the Right-

of-Way.

SCHOOLS: Any public or private elementary School, secondary Schools, junior college, or university facility which conducts classes or provides instruction services which has been granted a certificate of recognition by the Illinois State Board of Education.

SERVICE: Shall mean the provision of "Cable Service" to Subscribers and the interaction of Subscribers with the Grantee pursuant to 65 ILCS 5/11-42-11 *et seq.* and 220 ILCS 5/70 22-501. Also see "Cable Service."

SNOW DROP: Shall mean the temporary drop to the Subscriber's house that is placed above ground during the winter months.

STATE CABLE  
FRANCHISE LAW: Shall mean statutes allowing municipalities to award Franchises to Cable Operators as found in 65 ILCS 5/11-42-11 *et seq.*, the Illinois Cable and Video Competition Law of 2007 as found in 220 ILCS 5/21-100 *et seq.*, and the Illinois Cable and Video Customer Protection Law as found in 220 ILCS 5/22-501 *et seq.* **OK 9/23**

SUBSCRIBER: Shall mean ~~the Village of Sugar Grove or~~ any Person who legally receives Cable Service, To the extent that the Village receives Cable Service from the Grantee at one or more of its facilities, the Village shall be considered a Subscriber under the terms and conditions of this Agreement. ~~regardless of whether or not a fee is paid for such services.~~ **OK 11/2**

SUBSCRIBER DROP: Means a cable which connects the ground block on the Subscriber's residence to the nearest feeder cable of the Cable System.

VILLAGE: Means the Village of Sugar Grove, ~~State of Illinois,~~ and all the territory within its present and future corporate

boundaries and including any area over which the Village exercises its jurisdiction. **Delete OK 9/23**

~~VILLAGE BOARD:— Means the Village President and the Board of Trustees. **Delete OK 9/23**~~

## **SECTION 2: GRANT OF NON-EXCLUSIVE FRANCHISE**

### **Section 2.1: Grant of Operation**

The Village of Sugar Grove hereby grants to the Grantee the non-exclusive right and privilege to construct, erect, install, maintain, or operate in, upon, along, across, over, and under Right-of-Ways ~~and public places now laid out or dedicated, and all extensions thereof and thereto,~~ in the Village, poles, wires, cables, underground conduits, manholes, and other television conductors, fixtures, and appurtenances necessary for the maintenance, repair, and operation of a Cable System for the interception, production, sale, and distribution of audio, video, data, and radio signals. **Delete OK 9/23**

### **Section 2.2: Right of Village to Grant Other Franchises**

This Franchise and the right it grants to use and occupy the public Right-of-Way shall not be exclusive, and the Village reserves the right to grant other franchises for similar uses or for other uses of the public Right-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time, with or without a franchise, subject to applicable state law, as such law may be amended from time to time. In the event that the Franchising Authority finds that it is in the best interest of the community to grant ~~a second another~~ additional cable Franchise, the Franchising Authority shall follow the procedures set forth in ILCS 65 5/11-42-11, as may be hereafter amended, in awarding ~~a second another additional~~ cable Franchise, and shall grant said second Franchise under substantially similar terms and conditions as the initial Franchise. The Franchising Authority shall not permit any Person to provide services similar to those provided by Grantee in the Franchise Area without first having secured a non-exclusive franchise from the Franchising Authority or an applicable authorization from the State to provide video service. The Franchising Authority agrees that any grant of additional Franchises, or the grant of an authorization to provide video or Cable Service by the Illinois Commerce Commission to provide services similar to those provided by

the Grantee pursuant to this Agreement to any other entity shall cover the entire Franchise Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein in accordance with the requirements of 65 ILCS 5/11-42-11(e). **OK 11/2**

### **Section 2.3: Acceptance of Franchise**

By accepting this Agreement, the Grantee:

- A. Acknowledges and accepts the Village's legal right to issue and enforce the Agreement pursuant to Federal, State, and Local law; and
- B. Agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, that this Agreement was freely and voluntarily given by the Grantee without duress or coercion and that it will not raise any claim to the contrary.
- C. Agrees, that except to the extent there is a conflict with the terms of this Agreement, the terms, conditions, requirements, and restrictions in the Cable Communications Ordinance, Ordinance No. 20090519F11, shall be a part of this Agreement, and this shall be the entire agreement to the extent permitted by State or Federal law. Grantee and the Village agree that the Village may amend the Cable Communications Ordinance and the general ordinances of the Village provided that the revisions do not alter the material provisions of this Agreement, nor increase the obligations or limit the benefits of the Grantee in this Agreement. **OK 11/16.**
- D. Agrees, by acceptance, that except to the extent there is a conflict with the terms of this Agreement, that it will comply with all lawful terms, conditions, requirements, and restrictions of ordinances of the Village of Sugar Grove currently in effect, to the extent permitted by State or Federal law.
- E. That it has carefully and completely read all of the terms and provisions of this Agreement, and acknowledges that, to the best of its knowledge, each provision is lawful and enforceable. If the Grantee believes that the terms of this Agreement or any Village law or regulation conflicts with any

state or federal law, or regulation, the Grantee will notify the Village immediately upon learning of the conflict.

**Section 2.4: Police Powers; Reservation of Rights**

- A. All rights and privileges granted herein are subject to the police powers of the Village and its rights under applicable laws and regulations to exercise its governmental powers to their full extent and to regulate the Grantee and the construction, maintenance, repair, and operation of the Grantee's Cable System, including, but not limited to, the right to adopt, amend, and enforce ordinances and regulations as the Village shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting, and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce existing and future ordinances and regulations containing, specifically Right-of-Way (Ordinance No. 20080318C), cable television customer protection and service standards (Ordinance No. 20080318B), the Cable Communications Ordinance (Ordinance No. 20090519FI1), the Public, Educational and Governmental (PEG) Support Fee Ordinance (Ordinance No. 20080318A), telecommunications and utility ordinances, and if applicable, rate regulation provisions. The adoption and enforcement of any of the aforementioned ordinances or regulations, now or in the future, shall be subject to the provisions of state and federal law.
- B. Subject to this Agreement, the Village reserves every right and power which is required to be reserved or provided by any ordinance of the Village, and the Grantee by its acceptance of this Franchise, agrees to be bound thereby and to comply with any lawful action or requirements of the Village in its exercise of such rights and powers which have been or may be enacted or established as long as it is not in conflict with FCC regulations or Federal law.

**Section 2.5: ~~Incorporation of Consistency with Other Documents and Laws by Reference~~ OK 9/23**

This Agreement and any ordinance adopting this Agreement

supplement and harmonize the regulatory framework set forth in the Cable Ordinance, State Law, and the Cable Act; and this Agreement and any ordinance adopting this Agreement shall at all times be read and construed for consistency and compatibility with the provisions of the Cable Ordinance, State Law, and the Cable Act as read and interpreted in concert with each other. In the event of inconsistency between the terms of this Agreement and the terms contained in the Cable Ordinance, State Law, or the Cable Act, the terms contained in this Agreement shall prevail to the extent permitted by law. For the purposes of this Agreement, the parties understand and agree that the following provisions or parts thereof, of the Cable Ordinance shall not be applicable unless otherwise provided by law:

Section 2.6, Definitions. Definition of Cable Provider or Video Provider shall be inapplicable in its entirety.

Section 2.11, Definitions. Definition of Competitive Franchise Applicant shall be inapplicable in its entirety.

Section 2.15, Definitions. Definition of Corporate Authority shall be inapplicable in its entirety.

Section 2.22, Definitions. Definition of Franchise Application shall be inapplicable in its entirety.

Section 2.29, Definitions. Definition of Gross Revenues Sections A.10 and B.4 shall be inapplicable in their entirety.

Section 2.31, Definitions. Definition of Holder shall be inapplicable in its entirety.

Section 2.32, Definitions. Definition of ICC shall be inapplicable in its entirety.

Section 2.35, Definitions. Definition of Leased Access Channel shall be inapplicable in its entirety.

Section 2.40, Definitions. Definition of PEG Access Support Fee shall be inapplicable in its entirety.

Section 2.45, Definitions. Definition of Service Line Drop shall be inapplicable in its entirety.

Section 2.46, Definitions. Definition of Service Provider Fee shall be inapplicable in its entirety.

Section 2.50, Definitions. Definition of Video Provider shall be inapplicable in its entirety.

Section 3.1, Franchise Required, Subsection F shall be inapplicable in its entirety.

Section 3.7, Content of Franchise Applications shall be inapplicable in its entirety; ~~and.~~

Section 3.8, Representation; Background Information shall be inapplicable in its entirety.

Section 9.1, Causes for Revocation, shall be inapplicable in its entirety.

Section 9.2, Notice, Time to Correct and Hearing shall be inapplicable in its entirety. (OPEN)

Section 11.1(C), Quarterly and Annual Reports shall be inapplicable in its entirety.

Section 12.3, Records to be Provided to Village, shall be inapplicable in its entirety.

Section 13.2, FCC Technical Requirements, Subsections A and D shall be inapplicable in their entirety.

Section 13.5 (C), Auxiliary Power, shall be inapplicable in its entirety.

Section 13.7, Emergency Override, shall be inapplicable in its entirety.

Section 13.9, Service Interruptions, shall be inapplicable in its entirety.

Section 14.18, Failures of Performance, shall be inapplicable in its entirety.

Section 16, Service to Residents and Businesses in the Franchise Area, shall be inapplicable in its entirety.

Section 18.3, Universal Service, shall be inapplicable in its entirety.

Section 18.4, Community and Educational Access Channels, shall be exempt in its entirety.

#### **Mediacom Proposed Language exempting Secs. 9.2 - QUESTION**

The Grantee shall comply with all generally applicable, lawfully enacted local ordinances, ~~state, and federal laws,~~ rules and regulations. However, Grantee shall be subject to compliance and enforcement with all local laws, rules, and regulations under the terms of such laws, rules, and regulations. **OK 11/16** Specifically, the Village does hereby pursuant to law declare its intent to and shall enforce the Right-of-Way and customer service and privacy protections as described hereinbelow, and specifically. ~~The Grantee shall comply with~~ the Village's Right-of-Way Ordinance (Ordinance No. 20080318C) also cited as Chapter 7-5-10 of the Sugar Grove Municipal Code, adopted March 18, 2008, and the Cable and Video Customer Protection Law pursuant to Ordinance No. 20080318A) also cited as Chapter 3-9-1 of the Sugar Grove Municipal Code, enacted March 18, 2008 as both are referenced herein. **OK 9/23**

### **SECTION 3: TERM OF AGREEMENT**

#### **Section 3.1: Franchise Term**

The terms of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be years from the Effective Date of this Agreement, unless terminated sooner as provided in the Cable Communications Ordinance. The Agreement and the Franchise granted hereunder

shall become effective upon the date of acceptance by the Grantee and Grantor. **OPEN ISSUE**

#### **SECTION 4: SERVICE AREA OF FRANCHISE**

##### **Section 4.1: Franchise Area Delete OK 9/23**

The Franchising Authority hereby extends to the Grantee the privilege of operating the Cable System in any and all areas within the corporate limits of the Village as it exists now and as it may exist during the term of this Agreement. In the event that the Village annexes land adjacent to the Village boundaries, the Franchising Authority shall provide written notification to the Grantee pursuant to the requirements of Section 28 hereinbelow, of such annexations when they become effective. As of the Effective Date of this Franchise, the corporate limits of the Village are those shown on the map found in Appendix A.

#### **SECTION 5: RETRANSMISSION OF SIGNALS WITHIN A STRUCTURE**

Installation or Subscriber use of Cable System service which involves the retransmission of the signal or signals to multiple reception points within a structure shall be negotiated between the Grantee and the owner of the structure.

#### **SECTION 6: MODIFICATION OF FRANCHISE**

A. In the event that the Grantee seeks a modification of this Agreement, the Grantee and the Franchising Authority shall ~~follow the requirements and procedures set forth in Sections 5.1 through 5.5 of the Cable Communications Ordinance as well as the following:~~ modify this Franchise Agreement in accordance with applicable state and federal law. Modifications to this Agreement shall be requested by the Grantee in writing, and indicate if such modification is being made under the provisions of Section 625 of the Cable Act (47 U.S.C. §545) or other statute. The Franchising Authority may request additional information pertinent to making an informed decision, and review the request for

modification in a timely manner. Approval of the modification by the Village Board shall be written and made in ordinance form.

~~A. In the event that modification provisions of the Cable Act, as the same may be amended from time to time, are repealed or are otherwise not applicable, a Franchise may be modified to the extent permitted by applicable law, according to the standard set forth in subsection (B) below and in other applicable provisions of this Agreement.~~

B. Any m-Modifications to involving a Franchise Agreement PEG Channel shall: may be subject to informal negotiation between the Village and the Grantee. Upon recommendation from the Cable Administrator, PEG Channel modifications shall be referred to the Village Board for review and approval.

- ~~1. Be requested in writing through an application by the Grantee.~~
- ~~2. Include a statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 C.F.R. §545, and, if so, a demonstration that the requested modification meets the standards established in 47 C.F.R. §545.~~
- ~~3. Be subject to review by the Franchising Authority.~~
- ~~4. Include any other information that the applicant or the Village believes is necessary for the Village to make an informed determination on the application for modification;~~
- ~~5. Require the approval of the Village Board in the form of an ordinance.~~
- ~~6. If approved, be amended to the Franchise Agreement.~~

OK 11/2

## **SECTION 7: SYSTEM IMPROVEMENTS**

### **Section 7.1: General System Description**

~~A.~~ The Cable System shall ~~have~~ meet or exceed the following characteristics: **OK 8/30**

~~1A.~~ A minimum of 860 750 MHz **OK 8/30** on all active components Upon demonstration to the Grantee of market demand for additional Cable Services based upon survey data collected by the Grantee or the Village, the Grantee shall expand its passive components to a minimum of ~~and~~ at least 1 GHz ~~on all passive components;~~ and **OK 11/2**

~~2B.~~ Bi-directional activation with a clean return path.

~~3C.~~ Grantee shall continue to pass through the portions of the television signal that provide closed captioning data for the hearing-impaired. For hearing-impaired Subscribers, the Grantee shall provide information concerning the availability of equipment to facilitate the reception of services for the hearing impaired. In addition, the Grantee must have means available, and a publicly-listed telephone number for such means, that will allow hearing or speech impaired Persons to contact the Grantee. **OK 9/23**

~~B.~~ ~~The Grantee shall provide two way capability.~~  
**Delete OK 9/23**

### Section 7.2: Continuous Operation, Emergency Maintenance, and Staffing

A. Continuous Operation: Grantee shall operate and maintain said Cable System in a manner which will enable continuous twenty-four (24) hour operation of all services as required herein. The Grantee's Cable System shall be equipped with sources of auxiliary power at the Headend established by the Grantee for the purpose of continuation of service in the event of repairs, maintenance, power interruptions or power outages in accordance with Grantee's design. **OK 11/16**

B. Emergency Maintenance: The Grantee shall keep an emergency system and repair staff, capable of responding to and repairing System malfunctions or interruptions, on a twenty-four (24) hour basis.

C. Staffing: The Grantee must provide a sufficient staff, including its own employees, and at its sole discretion, contract labor, in order to respond

efficiently to customer inquiries, Complaints, and requests for service either over the phone, ~~and~~ or at the Subscriber's residence. **OK 9/30**

- D. The Grantee may interrupt service, when necessary, to cable Subscribers for the purposes of alteration, maintenance, repair or emergencies. Grantee shall create such interruptions at such time as will cause the least amount of inconvenience to its Subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give written notice to the Village of interruptions which affect Subscribers for a period in excess of six (6) hours. **OK 11/16**

### **Section 7.3: System Characteristics**

The Grantee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

- A. Industry-accepted Equipment. The System shall use equipment generally used in high-quality, reliable, modern systems of similar design. The Grantee shall provide backup power to the Headend. The Grantee shall comply with all applicable laws and regulations concerning Cable System compatibility with receivers and recording devices.
- B. The Grantee shall comply with all FCC regulations regarding scrambling or other encryption of signals.
- C. No Deterioration to Access Signals. The System shall be so constructed and operated so that there is no significant deterioration in the quality of PEG access signals received at the demarcation point from the Franchising Authority or its PEG access designee, either upstream or downstream, as compared with any other Channel on the System. Deterioration refers to any signal problem, including, but not limited to, hum, co-Channel interference, pixellation on digital Channels created as a result of signal ingress, egress, or other causes, and other forms of interference. **OK 9/23**
- D. Customer Equipment for Lease or Sale. Subject to applicable law or regulation, as part of the System, the Grantee shall offer every Subscriber the opportunity to use equipment that allows

Subscribers to view a program on one Channel while recording a program on another Channel.

#### Section 7.4: Extension of Service

A. Line Extensions to Residences: For the purposes of this Section, line extensions shall be defined as installations of trunk or Feeder Cable and shall not include the installation of a Subscriber Drop cable. The Grantee shall extend, at its sole expense, service to any part of the Franchise Area where there is a density of twenty (20) homes per cable mile as measured from the closest active equipment source from which a signal meeting FCC technical requirements could be provided to the affected homes, but no longer than from one hundred twenty-five (125) feet of its trunk or node, ~~within six (6) months~~ **Delete OK 11/16** of such density being achieved. The Grantee shall extend, ~~at its sole expense, service to those homes in existence on the Effective Date of this Agreement which meet the twenty (20) home per cable mile density requirement within three (3) months of the Effective Date of this Agreement.~~ **(Mediacom proposed delete - OK 11/16)** and where the area is not served by any other state or locally authorized video service provider delivering service through facilities located within the Right-of-Way subject to the following installation schedule:

1. For potential Subscriber requests for service from January 1 through March 31 of any year, Grantee shall extend its Cable System to the area meeting the density standard no later than September 30 of such calendar year. OK 11/16
2. For potential Subscriber requests for service from April 1 through October 31 of any year, Grantee shall extend its Cable System to an area meeting the density standard no later than June 30 of the subsequent calendar year. OK 11/16
3. For potential Subscriber requests for service from November 1 through December 31 of any year, Grantee shall extend its Cable System to an area meeting the density standard no later than September 30 of the subsequent year following such request. OK 11/16

Grantee shall extend its Cable System to Subscribers at no cost other than the usual connection fee for all Subscribers requesting a Standard Installation where the density standards of this section are satisfied **OK 11/16**. A Standard Installation shall mean a service drop of no more than one hundred twenty-five (125) feet, with no boring, that does not require disruption of pavement or similar surfaces, providing the standard signal strength for residences, using a standard residential drop cable, which currently consists of RG-6 cabling.

- B. **Line Extensions to Businesses:** Grantee shall extend the Cable System ~~, at its expense,~~ **Delete OK 11/16** upon request to local businesses within the Franchise Area where the area is not served by any other state or locally authorized video service provider delivering service through facilities located within the Right-of-Way. **OK 11/16** Grantee shall extend the Cable System to those businesses requiring a Standard Installation if the Installation meets the criteria set forth in subsection (A) hereinabove provided that the Grantee may assess additional costs to any customer where the commercial installation requires additional time or expense. **OK 11/16**
- C. **Line Extensions to Schools and Public Buildings:** The Grantee shall extend service to any School or public building, including buildings belonging to the Village, in the Franchise Area upon request of the School district, the Village, other governmental unit, or owner of the public building. The initial one hundred twenty-five (125) feet of the line extension from the Cable System feeder, trunk or node, shall be performed at the Grantee's sole expense. ~~Violations shall be corrected at the sole expense of the Grantee, and in a timeframe not to exceed thirty (30) calendar days, unless extenuating circumstances exist, in which case, a timeframe shall be agreed upon between the Village and the Grantee.~~ **(Delete OK 11/16)** The Grantee may charge the School district, other governmental unit, or building owner the cost of labor and materials for extensions of more than one hundred twenty-five (125) feet. Installations of line extensions to Schools or public buildings shall be performed within the same time period as set forth

~~in Subsection A hereinabove. three (3) months from the date of the request.~~ **(Mediacom proposed addition and deletion. OK 11/16)** Should additional time be needed, the Grantee shall request an extension in writing to the Village and the building owner showing the reasons requiring the need for additional time.

- D. Where density and proximity requirements provided in this Section have been met and applicable right of entry agreements have been received, a Grantee shall not exclude any multiple Dwelling Unit facilities located in the Village from having the ability to receive Cable Services, including but not limited to, apartment buildings, condominium complexes (including duplexes, townhouses and rowhouses), and senior citizen congregate housing. Nothing prevents a Grantee from recouping from a property management firm the reasonable expenses necessary to serve the facility.

#### **Section 7.5: Periodic Testing and Compliance With FCC Standards**

- A. ~~In accordance with Section 13.2 of the Cable Communications Ordinance, (delete OK 11/2)~~ Grantee shall comply with all Cable System testing regulations for video and audio signal quality and signal leakage as specified in Title 47, Section 76, Subpart K of the Code of Federal Regulations. Upon request, Grantee shall provide the Franchising Authority with copies of its FCC proof-of-performance tests in accordance with Section 13.2 of the Cable Communications Ordinance. In the event that the FCC should delete or repeal the requirements of 47 C.F.R. §76(K), the Village and the Grantee agree to incorporate similar standards into this Agreement. Upon request by the Franchising Authority, the Grantee shall provide a copy of any Cable System performance tests conducted pursuant to such similar standards within thirty (30) days after the end of the calendar year, or after the date of request, whichever comes first. OK 11/2
- B. The Village may require special testing of a location or locations within the Cable System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or

non-compliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The Village shall endeavor to arrange its request for such special testing so as to minimize hardship or inconvenience to the Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate, at its sole expense, and if necessary, correct problems or complaints that may necessitate testing. If such Complaints or problems have been addressed to the Village's satisfaction, then no further testing shall be ordered.

- C. If, after such notice, the Village wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantor's expense by a qualified engineer selected by the Village, and Grantee shall cooperate in such testing. If the tests reveal that the problem was caused by a violation of FCC technical standards, the cost of such testing shall be at Grantee's sole expense. In the event that no violation of FCC technical standards was found to have occurred, such testing shall be at the Village's sole expense. The Village will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to the Grantee or Subscribers.
- D. The Grantee shall test any new or substantially rebuilt portion of a Cable System after the portion of the Cable System is made available for service to Subscribers as a part of its next regularly scheduled Proof-of-Performance tests; †Technical performance tests shall be conducted by the Grantee to demonstrate full compliance with FCC technical standards. Such tests shall be performed by, or under the supervision of an engineer with proper training and experience. Upon request, a copy of the report shall be submitted to the Cable Administrator describing test results, instrumentation, calibration, and test procedure, and the qualifications of the engineer responsible for the tests. ~~In the event that the semi-annual FCC Proof-of-Performance testing of the Cable System occurs during the aforementioned ninety (90) day period,~~ †The Proof-of-Performance test results from the new or substantially rebuilt portion of the Cable System shall meet the requirements of this subsection. At the option of the Village, reasonable additional tests may be required, at the expense of the Grantee, if the Grantee is unable to meet FCC technical

standards based upon the results of technical performance tests or Proof-of-Performance tests. Any additional tests shall be conducted under the supervision of an engineer with proper training and experience.

#### **Section 7.6: New Services and Technologies**

This Agreement may not restrain or prohibit Grantee from adding new services and/or technologies to the Cable System as they become available. The Grantee shall notify the Village before it launches new categories of Subscriber services. This provision shall not be construed to require the Grantee to provide new categories of Subscriber services.

#### **Section 7.7: Performance Security and Security Fund**

- A. The Grantee shall comply with the performance security and security fund provisions of Chapter 7-5-10 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance (Ordinance No. 20080318C) for the establishment of a security fund, which may include, but not be limited to, construction bonds, labor, and material bonds. **(Mediacom wants specific language from the ROW Ordinance. OPEN Issue pending attorney discussion and Public Works Dept. Review.)**
- B. The time for the Grantee to correct any violation or liability, shall be extended by the Village if necessary action to correct such violation or liability is such a nature or character as to require more than thirty (30) days within which to perform, provided the Grantee provides written notice that it requires more than thirty (30) days to correct such problems or liability, commences the corrective action within the thirty (30) day period and thereafter ~~uses diligence as mutually agreed upon~~ to correct the violation or liability.  
**OK 10/8**
- C. In the event this Franchise is revoked by reason of default of the Grantee, the Village shall be entitled to collect from the performance bond that amount which is attributable to any damages sustained by the Village as a result of said

default or revocation.

- D. The Grantee shall be entitled to the return of the performance bond, or portion thereof, as remains after the expiration of the term of the Franchise or revocation for default thereof, provided the Village has not notified the Grantee of any actual or potential damages incurred as a result of Grantee's operations pursuant to the Franchise or as a result of said default.
- E. The Grantee agrees to pay all attorney's fees in association and specifically related to the compliance issue costs incurred by the Village if the Village pursues and prevails in an action against the bond company to recover an amount rightfully due to the Village under the terms of this Section. **OK 10/8**
- F. The Grantee shall provide the Village with thirty (30) days written notice prior to canceling the bond provided in this Section.
- G. The Grantee shall be entitled to the return of such Security Fund or portion thereof as remains on deposit at the expiration of the term of the Franchise.

### **Section 7.8: Reservation of Rights**

The rights reserved to the Village herein are in addition to all other rights of the Village, whether reserved herein or authorized by applicable law, and no action, proceeding, or exercise of a right with respect to ~~such the aforesaid~~ security ~~instrument~~ will affect any other right the Village may have. Neither the filing of a security ~~instrument~~ with the Village, nor the receipt of any damages recovered by the Village thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages, either to the full amount of the security ~~instrument~~ or otherwise.  
**(Village modifications)**

## **SECTION 8: CONSTRUCTION STANDARDS**

### **Section 8.1: Notice of Proposed Construction and Timetable**

Where the Grantee intends to construct, reconstruct, or upgrade more than one-third (1/3) of the total mileage of Cable System plant within the Franchise Area, the Grantee shall provide to the Franchising Authority, a schedule for construction, reconstruction, or upgrade, including Grantee's best estimate of a timetable for the completion of said construction.

### **Section 8.2: Adherence to Electrical and Safety Codes**

The Grantee shall comply with the requirements of Section 13.3 of the Cable Communications Ordinance as originally approved by the Village regarding adherence to electrical and safety codes. **OK 10/8**

### **Section 8.3: Permit and Inspection Requirements**

For work in the Right-of-Way conducted by the Grantee, the requirements of Section 7-5-1 through 7-5-23 of the Sugar Grove Municipal Code (Ordinance No. 20080318C) shall apply. In the event that the Grantee proposes to perform work in the Right-of-Way that includes excavation of property, the requirements of Section 7-2-1 through 7-2-10 of the Sugar Grove Municipal Code (Ordinance No. 380) shall apply. Provided, however, that the Village reserves the right to increase the amount of any required bond with corporate surety at any time during the term of this Agreement based upon the anticipated amount of indemnification of the Village for any loss, liability or damage that may result or accrue from activities involved in any excavation, or the failure to properly restore the Right-of-Way or other affected property upon completion of such excavation.

### **Section 8.4: Overhead and Underground Installation**

- A. Aerial cable locations shall comply with Chapter 7-5-16 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance (Ordinance No. 20080318C).
- B. In all sections of the Franchise Area where the cables, wires, or other like facilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground ~~to the maximum extent that existing technology permits the Grantee to do so.~~ **OK 10/8** The Grantee shall

comply with the provisions of Ordinance No. 20080318C, particularly Chapter 7-5-16 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance regarding underground installation of system plant and appurtenances. With respect to any cables, wires, and other like facilities constructed and installed by Grantee aboveground, Grantee shall, at its sole expense, reconstruct and reinstall cables, wires or other facilities underground pursuant to any project under which the cables, wires, or other facilities of all like utilities are placed underground within an area. At such time that a Grantee must relocate its System plant due to road or highway improvement, it shall relocate its plant in accordance with timetables established by the Village and shall relocate its lines in a manner as to avoid interference with road improvements and other utilities at no cost to the Village. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Public Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the Village shall not be considered to be public or private funds. OK 11/2 The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefitting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice by the permit holder to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permit relocation. (Mediacom proposed. Agreed on 10/8)

- C. Underground installations shall be in compliance with all applicable construction and safety codes. Construction, operation, maintenance, and repair of facilities shall be in accordance with ~~all~~ applicable state laws and regulations, and with

sound practices of the cable television industry. All safety practices required by the Illinois Occupational Safety and Health Act and the federal Occupational Safety and Health Act, along with other applicable laws shall be used during construction, repair and maintenance of facilities.  
**OK 10/8**

- D. The Grantee shall notify the public prior to commencing any construction, other than emergency repair work, that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally. Written notice of such construction work shall be delivered to the Village at least one week prior to commencement of that work. Notice shall be provided to those Persons most likely to be affected by the work in at least one of the following ways: by telephone (if the Subscriber is a customer of Grantee's phone service), in person, by Certified United States mail, return receipt requested or by overnight courier, or by distribution of flyers to local residences. (OK 11/16.) In the event that Grantee must enter a building or other structure and the owner, manager, or resident is not readily available, OK 10/8 it must schedule an appointment at the reasonable convenience of the owner or resident. Entry into a building or other structure shall only be allowed if there is a Person affiliated with the owner or resident who is eighteen (18) years of age or older. The notice and scheduling of appointment provisions of this section shall not apply if the Grantee is investigating possible cable signal theft. OK 10/8

#### **Section 8.4: Grounding**

The Grantee shall comply with the grounding standards stated in Section 13.6 of the Cable Communications Ordinance.

#### **Section 8.5: Outage Prevention**

Grantee shall warrant against downtime due to Cable System outages on critical Cable System functions. In the event that a significant number of outages are found to be present in the Cable System, and, after the Franchising Authority has provided the Grantee with adequate notice and opportunity to cure said outages, and a significant number of outages continue to occur, the Grantee shall develop a plan which

shall have the goal of minimizing the number of outages and shall present such plan to the Franchising Authority prior to implementation.

**Section 8.6: Emergency Removal of Plant**

If, at any time, in case of fire or other disaster within the Village, it shall become necessary to cut or move any of the wires, cables, amplifiers, power supplies, appliances, or appurtenances of the Grantee, the Village shall not be liable for cutting or moving, provided, a disinterested contractor, agreed to by the Village and the Grantee, determines that it was necessary for the Village to cut or move any wires, cables, amplifiers, power supplies, appliances, or appurtenances of the Grantee. Nothing herein shall be construed to preclude liability for willful or wanton acts.

**Section 8.7: Damage to Village Property**

Where any damage is caused to any Village property during construction, reconstruction, installation, or maintenance by Grantee, the Grantee shall be responsible for actual costs of such repairs including all service and materials after ~~ten~~ (10) twenty (20) days prior written notice to Grantee providing an opportunity to cure. The charges shall be paid within forty-five (45) days of the date of billing, or the Village, at its option, may withdraw the cost of such repairs from the Security Fund established in Section 7.7 of this Agreement. **OK 10/8**

**Section 8.8: Restoration of Property**

AB. Tree Preservation. The Grantee shall comply with the Village's lawful standards for trees, including, but not limited to, preservation, mutilation, trimming, pruning, abuse, and protection pursuant to Sections 7-4-1 through 7-4-14 and Section 7-5-17 of the Sugar Grove Municipal Code, as may be amended from time to time, provided, however the Grantee shall notify the Village of such trimming and then shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System. **OK 10/8**

AB. The Grantee shall comply with the requirements of Chapter 7-5-19 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance, Ordinance No. 20080318C regarding cleanup and restoration of property. Where areas of grass have been disturbed, Grantee shall replace said affected grassy areas with sod or seed, ~~at the discretion of the property owner,~~ as soon as is feasible. In the event that the grass dies before the end of the first season, Grantee shall repair the grass one time or replace the grass one time at its expense.  
**Delete OK 10/8**

~~B. Tree Preservation. The Grantee shall comply with the Village's standards for trees, including, but not limited to, preservation, mutilation, trimming, pruning, abuse, and protection pursuant to Sections 7 4 1 through 7 4 14 and Section 7 5 17 of the Sugar Grove Municipal Code, as may be amended from time to time.~~

C. In the event that a Subscriber requests Grantee to remove cable home wiring from Subscriber's residence, Grantee shall be responsible for removing wiring to the demarcation point at the ground block on the exterior of the Dwelling Unit. Grantee shall pay for any damage caused as a result of Grantee's unintentional negligent installation or removal of wiring. Grantee shall comply with the provisions of Title 47, Section 76.802 of the U.S. Code of Federal Regulations concerning the disposition of cable home wiring. **OK 10/8**

### **Section 8.9: Construction Delays**

At such time where Grantee fails to complete construction required pursuant to this Agreement, Grantee shall notify the Franchising Authority of the delay within ten (10) calendar days from the occurrence of the delay, and shall indicate the cause or causes for the delay. Upon receipt of notification by the Grantee of the delay, the Franchising Authority and the Grantee may agree to extend the construction completion date. In the event that the delay continues beyond the control of the Grantee, and extends beyond the agreed-upon date, the Franchising Authority and the Grantee may agree to

establish a new date for resumption of construction or service.

**Section 8.10: Installations at Dwelling Units**

- A. Construction and placement of an aerial Subscriber Drop or Service Line Drop connected to a Dwelling Unit shall be at the direction of the Subscriber or the Village. Grantee shall be responsible for securing the written authorization for the method employed and shall keep said authorization on file until the expiration of its Franchise Agreement.
  
- B. A Subscriber shall have the option to have the Grantee connect a standard Subscriber Drop to the Dwelling Unit by either:
  - 1. Connection of the aerial Drop to the Dwelling Unit at a minimum of twelve (12) feet above the ground level; or,
  - 2. Attachment of the Drop to the side of the utility pole and buried from the base of the utility pole to the Dwelling Unit at a depth of no less than six inches (6").

**SECTION 9: CUSTOMER SERVICE**

**Section 9.1: Customer Service Standards**

The Grantee shall comply with the Cable and Video Customer Protection Law (220 ILCS 5/ 22-501) authorizing the Village to enforce all of the customer service and privacy protection standards of this law. The Village shall enforce the customer service and privacy protections with respect to Complaints received from residents as provided by the Cable and Video Customer Protection Law pursuant to Ordinance No. 20080318A, enacted March 18, 2008. Infractions of this ordinance shall be subject to liquidated damages and procedures as specified in Section 14 hereinbelow. Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Ordinance shall be incorporated into this Agreement by reference. However, any amendment that makes its provisions optional for adoption by the Village shall not be incorporated into this Agreement by reference without formal action by the Village Board.

**Section 9.2: Customer Service Complaint and Outage Records**

Subject to Grantee's obligations pursuant to law to maintain

the privacy of certain information, the Grantee shall prepare and maintain records of all complaints received and the resolution of such complaints, including the date of such resolution.

Such records shall be on file at the office of the Grantee.

The Grantee shall provide the Village with a written summary of such complaints and their resolution upon request. Based upon their review, the Village Administrator and the Village Board may request further communication from the Grantee regarding information from the aforementioned logs and records.

## **SECTION 10: RATE REGULATION**

### **Section 10.1: Reservation of Rights**

A. The Village reserves its rights to regulate rates for the Basic Service Tier of Cable Service and equipment of the Grantee if allowed by the FCC. In the event that the Village is allowed to regulate rates, the Village and the Grantee shall abide by all applicable laws, rules, regulations, and orders with regards to rates and regulations promulgated by the FCC and the Village. The Village and the Grantee agree that any amendment or modification by the FCC or the Congress of the United States of rules regarding rates and regulation now or hereafter amended, shall apply to this Franchise Agreement.

B. The Franchise Fees collected from Subscribers pursuant to City of Dallas, Texas v. FCC., 118 F.3d. 393 (5<sup>th</sup> Cir. 1997) and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena" case, City of Pasadena, California, et al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001), and In re: Texas Coalition of Cities for Utility Issues v. FCC., 56 F. 3d. 151 324 F. 3d. 802 (5<sup>th</sup> Cir. 2003). **OK 9/23**

### **Section 10.2: ~~Senior Discount~~ Economy Service Tier (Village Proposed)**

~~The Grantee shall offer senior citizen Subscribers a discount on the rates for the Grantee's "Family Cable" level of~~

~~service ( a purchase of both the basic service tier and the first cable programming services tier as those terms are defined in the Cable Act on the Effective Date) of no less than ten percent (10%) per month in accordance with Section 623(e)(1) of the provisions of the Cable Television Consumer Protection and Competition Act of 1992 as referenced in Title 47, Section 543 of the United States Code of Federal Regulations. Senior citizen Subscribers shall be eligible for this discount if they provide documentation of age (65 or older), residency at the service address, and their enrollment in the Low Income Home Energy Assistance Program (LIHEAP) administered by the State of Illinois as established by the Subscriber's annual income. **Mediacom delete proposed.**~~

As of the Effective Date of this Agreement, the Grantee offers to Subscribers an economy service tier currently known as "Broadcast Basic" which consists of over-the-air Channels, PEG Channels, the Grantee's programming ("Mediacom Connections"), a home shopping Channel, and C-Span. To the extent consistent with federal and state law, the Grantee shall offer its lowest-cost Broadcast Basic tier as a stand-alone service to residential customers. The Grantee shall publicize the availability of this service tier to customers on its billing statements no less than three (3) times per year. **Villages proposed 11/18**

## **SECTION 11: FRANCHISE FEES, USAGE OF FEES AND OTHER SUPPORT**

### **Section 11.1: Amount, Payment and Required Information**

- A. As part of the consideration supporting the award of this Franchise Agreement, and the Village's permission to use the public Right-of-Ways of the Village, during the term of this Franchise, Grantee shall pay to Village an amount equal to five percent (5%) of Grantee's annual Gross Revenues or an amount equal to the maximum ~~amount~~ percentage permitted by law, of the Grantee's annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area, whichever is greater;

provided, however, that the Grantee shall not be compelled to pay any higher percentage of franchise fees than any other Cable Operator or video service provider, under state authorization or otherwise, providing service in the Franchise Area. In the case of a Cable Service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the Grantee's revenue attributable to the other services, capabilities, or applications shall be included in Gross Revenue unless the Grantee can

reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

- B. To the extent permitted by law, and in accordance therewith, increases in Franchise Fees levied by the Village shall be effective ninety (90) days after written notice is given to Grantee. Franchise Fees shall be paid quarterly and delivered to the Village Clerk either by hand, by certified United States Mail, or by a reputable overnight courier service, such as UPS or Federal Express. The quarterly anniversary shall be March 31, June 30, September 30, and December 31. Payment shall be made within forty-five (45) days from the aforementioned anniversary dates. Grantee shall file with each Franchise Fees payment, a complete and accurate written statement signed by an officer of Grantee identifying in detail sources and amounts the Gross Revenues received by Grantee during the preceding period for which payment is made. Grantee shall file a report signed by an authorized representative detailing the following separate categories of revenue for the period of the payment: installation, basic service, expanded basic service, digital service tiers, cable guides, premium services, pay-per-view, a la carte channels, video-on-demand service, bulk revenue, equipment rental, home shopping commissions, advertising revenues, late payment fees, miscellaneous and franchise fees. Grantee may, at its option, identify further specific categories of revenue. **OK 11/16**
- C. The Grantee shall file with each Franchise Fees payment, a complete and accurate written statement signed by an officer of Grantee identifying in detail sources and amounts the Gross Revenues received by Grantee during the preceding period for which payment is made. Upon the request by the Franchising Authority no later than April 30 of any year during the term of this Agreement, ¶ the Grantee shall also file, within one hundred twenty (120) days following the conclusion of the Grantee's fiscal year, an annual financial report, prepared and audited annually signed by a certified public accountant accounting firm acceptable to the Village, clearly showing the yearly accumulated total Gross Revenues and amount of Franchise Fees broken down by major revenue category, paid to the

~~Village during for the prior fiscal year. The report shall identify the same categories of revenue as included in Section (B) above. The Certified Public Accountant may be a Grantee employee in a financially-related responsibility of the company, and shall certify The statement of revenue shall be accompanied by a statement from an authorized financial officer of the Grantee certifying that the statement report is true, complete, and correct. OK 11/16~~

- D. For each whole or partial year that this Agreement or any extension thereof is in effect, the Franchise Fees due to the Village shall be paid on a quarterly basis as specified hereinabove. To avoid evasion of Franchise Fees, to the extent that discounts reduce revenues that are subject to inclusion for purposes of calculating Franchise Fees, a Grantee may not unfairly or unlawfully allocate discounts for bundled services.

#### **Section 11.2: Acceptance of Payment**

The acceptance of any payment required hereunder by the Village shall not be construed as an acknowledgment that the amount paid is the correct amount due nor shall such acceptance of payment be construed as a release of any claim which the Village may have for further or additional sums due and payable.

#### **Section 11.3: Request for Corporate Report**

Upon request by the Village, the Grantee shall provide a report which shall contain a listing of the Grantee's directors, officers, partners and/or shareholders who own directly or indirectly, at least five percent (5%) of the interest in the Grantee or its parent. The Grantee may refer the Village to a corporate report listing directors, officers, partners, and/or shareholders published on its Internet website. Where a ~~the~~ **OK 10/8** Grantee or its parent is a publicly-traded stock company, the filing by the Grantee with the Franchising Authority of a copy of the annual report to stockholders shall constitute compliance with the provisions of this Section. Where a ~~the~~ **OK 10/8** Grantee or its parent is a publicly-traded stock company subject to Securities and Exchange Commission (SEC) reporting requirements, the availability of its SEC filings on the Internet shall constitute compliance with this Section.

#### **Section 11.4: No Limitation of Liability**

Nothing in this Franchise shall be construed to limit the liability of Grantee for all applicable federal, state, and local taxes. Payment of the Franchise Fee by Grantee to Village shall not be considered in the nature of a tax or assessment, but shall be in addition to any and all taxes and assessments which are now or hereinafter required to be paid by any law to the Village.

### **Section 11.5: Late and Final Payments**

In the event that the Grantee has not made a payment due to the Village on or before the applicable due date fixed in any Section of this Agreement, ~~the Grantee shall comply with the requirements for late payments as stated in Section 11.6 of the Cable Communications Ordinance.~~ such Franchise Fee or other fee which remains unpaid in whole or in part after the date specified herein shall be delinquent. For any Franchise Fee or other fee payments owed by the Grantee which are not made on or before the due dates, the Grantee shall make such payments including interest, at a monthly rate of one and one-half (1 ½ ) percent. If an additional amount is due as a result of the recomputation, the Village shall send the Grantee a written notice and opportunity to cure in accordance with the provisions of this Agreement. (Original language from Ordinance Section 11.6 as requested by Mediacom. OK 10/8) In the event that the Grantee's Franchise is subject to termination, sale, transfer, or revocation, the Grantee shall be subject to the conditions established for expiration or revocation as stated in Section ~~11.7 of the Cable Communications Ordinance~~ 23 of this Agreement. OK 10/8

## **SECTION 12: FRANCHISE FEE AUDITS/AGREED-UPON PROCEDURES**

### **Section 12.1: Right of Franchising Authority to Inspect and Audit Franchise Fees**

- A. ~~Upon reasonable prior written notice, during Normal Business Hours, at Grantee's principal business office serving the Franchise Area,~~ The OK 10/8 Franchising Authority shall have the right of audit and agreed-upon procedures, and the right to require recomputation of any amounts determined to be payable under this Section and Section 11.3 of the Cable Communications Ordinance, as of the effective date of the Ordinance OK 10/8 whether the records are held by the Grantee, an affiliate, or

any other entity that collects or receives funds related to the Grantee's operations in the Village. The Grantee shall furnish to the Village upon request by the Village Administrator or his/her designee, such additional reports, documents, and information necessary to enable the Village to verify the payments made to it by the Grantee.

1. The Village shall have the right to inspect and copy records subject to a confidentiality agreement **OK 10/8** and the rights to audit and to recompute any amounts determined to be payable under this Agreement.
  2. The Grantee shall be responsible for making available to the Village for inspection and analysis all records necessary to confirm the accurate payment of Franchise Fees, without regard to by whom they are held. The Grantee shall maintain such records for ~~five (5)~~ four (4) years. **OK 10/8**
- B. The Franchising Authority shall provide Grantee with no less than twenty-one (21) calendar days notice of the Franchising Authority's intent to conduct an inspection of Grantee's financial records. Grantee shall comply with the request of the Franchising Authority and make available all such records as are reasonably required at a mutually-agreed upon location.
- C. The cost of said audit or agreed-upon procedures shall be borne by the Grantee if it is properly determined through the audit or agreed-upon procedures that the Grantee's annual payment due to the Village for the preceding year is increased by five (5) percent or more; otherwise, such costs shall be borne by the Franchising Authority as a cost incidental to the enforcement of the Franchise.

#### **Section 12.2: Payments of Amounts Due**

Any additional amount due as a result of such audit or agreed-upon procedures shall be paid within thirty (30) days following written notice to the Grantee by the Franchising Authority which notice shall include a copy of the audit report or the agreed-upon procedures report. If recomputation results in additional revenue to be paid to the Village, such amount shall be subject to interest at the monthly rate of one and one half percent (1 ½%). ~~as specified~~

~~in Section 11.6 of the Cable Communications Ordinance.~~ OK 10/8

### **SECTION 13: MAINTENANCE OF BOOKS AND RECORDS**

#### **Section 13.1: Requirement to Maintain Specific Books and Records**

Grantee shall maintain all revenue records pertaining to the operation of the Cable System necessary to the enforcement of this Franchise Agreement ~~and the Cable Communications Ordinance as of the effective date of the Ordinance~~ OK 10/8 **Delete requested by Mediacom 11/16 OK** in a manner such that material relevant to the Franchise Area can be obtained.

#### **Section 13.2: Records Required of Grantee**

- A. Upon notice to the Grantee, the Village shall have the right, during Normal Business Hours, dates, and frequency, to inspect ~~all or any~~ **Delete OK 10/8** of the Grantee's records, documents, and engineering records and documents ~~of any kind~~ **Delete OK 10/8** in connection with compliance with the Franchise OK 10/8 ~~the grant of Franchise, the Cable System, and the Grantee's undertakings with respect to this Ordinance~~ necessary for the enforcement of ~~the Ordinance~~ **Delete OK 10/8**, or this Franchise Agreement. The Grantee shall fully cooperate in allowing the Village to conduct such inspections. Grantee shall provide records required by this Franchise, State or Federal law.
- B. Grantee shall maintain all records pertaining to the operation of the Cable System necessary to the enforcement of the Franchise Agreement and ~~this the Ordinance as of the effective date~~ OK 11/16 in a manner such that material relevant to the Franchise Area can be obtained. Grantee shall not maintain its only records concerning the Cable System within the Franchise Area in aggregate form which commingles such records with those of Cable Systems in other communities to the extent that Grantee's records for the Franchise Area cannot be separately distinguished. This Section shall not apply to records generated by a third party not affiliated with the Grantee with respect to Cable System programming or operations.
- C. Where Grantee is unable to locate books and records specific to the Franchise Area at a location which is either within the Village of Sugar Grove, or

within the two hundred (200) mile restriction, Grantee may locate such books and records at a remote location which is set forth by Grantee with the provision that in the event that the Franchising Authority, or its designee requests to inspect such records, Franchising Authority shall provide no less than ten (10) calendar days notice to Grantee to inspect such records. If such records are not located in the metropolitan Chicago area and travel to review such documents is necessary, the Village shall have the right to seek and obtain reimbursement for all documented expenses (e.g., airfare, meals, lodging, car rental, public transportation, overnight courier charges, parking, and tolls) reasonably incurred by the Village or its designee for inspection of the Grantee's records.

### **Section 13.3: Records to be Provided to Village**

The Grantee shall provide, upon request with written notice, the Franchising Authority with the following:

- A. ~~In accordance with the *Ex Parte* rules of the FCC, the Grantee shall file with the Village Administrator's Office, a copy of all reports, petitions, applications, or communications filed or submitted by the Grantee with the FCC. The Grantee shall also file with the Village Administrator's Office, any other petitions, applications, reports, and communications filed with the Securities and Exchange Commission, or any other federal or state governmental entity having jurisdiction with respect to any matter specifically affecting the Cable System, its facilities, or the Grantee's undertakings with respect to this Section. Said documents shall be filed with the Village at the same time that they are filed with any other agency.~~

~~Upon written request of the Village Pursuant to FCC rules, the Grantee shall file with the Village all any reports, petitions, applications, or correspondence and materials submitted to or received from the FCC by the Grantee or its affiliates that relate specifically to the Cable System or a group of Cable Systems of which the~~

Grantee's Cable System is a part or are reasonably likely to affect the operations of the Grantee in the Franchise Area. Such reports and materials shall include, but are not limited to, proof of performance tests and results and any petitions or applications regarding the Cable System or a group of Cable Systems of which the Grantee's Cable System is a part. The Grantee shall also file with the Village any other petitions, applications, reports, and communications filed with the Securities and Exchange Commission, or any other federal or state governmental entity having jurisdiction with respect to any matter specifically affecting the Cable System. Said documents shall be filed with the Village at the same time that they are filed with any other agency. OK 11/2

- B. A quarterly summary of service calls tendered by Subscribers to the Grantee. Such summary record shall include the number of service calls received and an identification of the substance of the service calls.
- ~~C. Upon written request of the Village, the Grantee shall file with the Village all reports and materials submitted to or received from the FCC by the Grantee or its affiliates that relate specifically to the Cable System or are reasonably likely to affect the operations of the Grantee in the Franchise Area. Such reports and materials shall include, but are not limited to, proof of performance tests and results and any petitions or applications regarding the Cable System or a group of Cable Systems of which the Grantee's Cable System is a part.~~
- D. Upon request, A **OPEN Issue** quarterly summary of system outages where more than three (3) Subscribers lose service on one (1) or more Channels for more than six (6) hours, and, requests for repairs. Said reports shall indicate the date upon which the outage occurred, the duration and cause of the outage, and the date and time of resolution.
- E. Upon request, those reports required to demonstrate compliance with customer service obligations and standards established under state law as adopted under Ordinance No. 20080318A .

- F. Snow Drop and Temporary Drop Report. Upon request, ~~or as provided for in a Franchise Agreement,~~ **Delete OK 10/8** Grantee will provide a monthly report for all temporary Subscriber Drops installed, including "Snow Drops", including location, the date of Installation, and the date of burial.

#### **Section 13.4: Records Retention; Privacy**

The Grantee shall take all steps that may be required to ensure that it is able to provide the Village all information which must be provided or may be requested under the Cable Communications Ordinance or this Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Section shall be read to require a Grantee to violate 47 U.S.C. §551 or 220 ILCS 5/22-501(p). Grantee shall be responsible for redacting any data that federal or state law prevents it from providing to the Village. The Village retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least ~~five (5)~~ four (4) **OK 10/8** years unless otherwise agreed to in writing.

#### **SECTION 14: LIQUIDATED DAMAGES**

- A. Because the Grantee's failure to comply with certain provisions of this Agreement will result in injury to the Village, and because it will be difficult to estimate the economic extent of such injury, the Village and the Grantee agree to the following liquidated damages for the following violations of this Agreement, which represent both parties' best estimate of the damages resulting from the specific violation. Such damages shall be assessed from the date on which the Village gives written notice to the Grantee pursuant to Section 14(C) hereinbelow, but shall not be applied except according to the procedures specified in Section 14(C)(1-4). Liquidated damages can only be imposed by the Village after the period afforded to the Grantee to cure said violations and any extension thereof has passed and the violation remains uncured or undisputed subject to the provisions of Subsection (F) OK 10/28, the Village, in its sole discretion, may charge to and collect from the Grantee the following liquidated

damages for a period of up to ninety (90) days in the event of an uncured Franchise violation:

1. For failure to provide data, documents, reports, or information or to cooperate with the Village during a Cable System review or as otherwise provided herein, the liquidated damage amount shall be one hundred dollars (\$100.00) per day for each day, or part thereof, such failure occurs or continues. **OK 11/16**
2. For failure to comply with construction standards, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, such failure occurs or continues. **OK 11/16**
3. For violation of customer service standards as set forth in Chapter 3-9-1 of the Sugar Grove Municipal Code and Ordinance No. 20080318A as incorporated in Section 9.1 of this Agreement, the liquidated damage amount shall be defined by Illinois law. **OK 11/16**
4. For failure to provide the implementation and utilization of the access Channels, or the funding of capital equipment, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, such failure occurs or continues. **OK 11/16**
5. For failure to file, obtain, or maintain any required security instrument or insurance certificate in a timely fashion, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day or part thereof. **OK 11/16**
6. For failure to restore damaged Village property, weather permitting, the liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof, in addition to the cost of the restoration as required under the Village Right-of-Way Ordinance (Ordinance No. 20080318C) as incorporated hereinabove. **OK 10/28, 11/16**
7. For violation of any other provision of this Franchise or applicable Federal, or State, ~~or local~~ law or regulation, where enforcement is expressly delegated to the Village, the ~~penalty~~ liquidated damage amount shall be one hundred dollars (\$100.00) per day, for each day, or part thereof,

such violation continues. **OK 10/28, 11/16**

- B. Each violation of any provision of this Franchise shall be considered a separate violation for which a separate ~~penalty~~ liquidated damage amount can be imposed. **OK 10/28, 11/16**
- C. Whenever the Village finds that the Grantee has violated one or more terms, conditions, or provisions of this Franchise, a written notice shall be given to Grantee informing it of the alleged violation and stating with specificity the basis of the alleged violation. The Grantee shall have thirty (30) days from the receipt of such notice in which to cure such violation. The Grantee may notify the Village in writing within ~~ten (10)~~ fourteen (14) **OK 10/28** days from the date of notice during the cure period that there is a dispute as to whether a violation or failure has in fact occurred. The Grantee shall specify with particularity the matters disputed and the basis for dispute which shall toll the running of any time frames herein.
- D. In the event that the Grantee disputes one or more violations of this Agreement, the Village shall hear Grantee's dispute through the following process no more than ten (10) days from the date of the Village's receipt of Grantee's notice of dispute of the violation:
1. Meeting with the appropriate Village staff on an informal basis to discuss the disputed matter(s) and set a plan for resolution of the dispute.
  2. In the event that Village staff and the Grantee are unable to resolve the disputed matter(s), the Village shall establish an Ad-Hoc Committee of members of the Village Board to hear the dispute and decide upon a method or methods of resolving the dispute.
  3. Should the Grantee seek to appeal the decision of the Ad-Hoc Committee, it may appeal the committee's decision to the entire Village Board of Trustees at the next regular Village Board meeting not less than ten (10) days following the issuance of the Committee's decision. **OK 10/28**
- E. If the Grantee has failed to cure, and has provided good cause for its failure to resolve the problem during the curative period set by the Village, or upon receipt of a notice of dispute from the Grantee, the Grantor may

extend the time for cure. Where the Grantee has elected to have its dispute heard by a Village Board Ad-Hoc Committee or by the entire Village Board to review the Grantee's dispute of non-compliance, the Village must provide the Grantee with at least ten (10) days written advance notice of the Ad-Hoc Committee or Village Board meeting subject to compliance with the Illinois Open Meetings Act.

- F. In the event that the Village staff, the Ad-Hoc Committee, or the Village Board determines that a violation has taken place, and the Grantee has failed to cure the violation after notice and opportunity to cure the violation has been provided, the Village Board may impose liquidated damages as provided in this Franchise. Liquidated damages shall accrue retroactively to the date of the meeting where such damages were imposed. The Grantee shall pay any liquidated damage amount assessed in accordance with this Agreement within thirty (30) days of a final order by the Village Board. In the event that Village staff, the Ad-Hoc Committee, or the Village Board determines that no violation has taken place, or that corrective action has been taken and the violation has been cured, the Village shall rescind the notice of violation. The Grantee may appeal a final decision of the Village Board to a court of competent jurisdiction to be considered *de novo* under the Illinois Administrative Review Act. Any appeal by the Grantee shall be to the 16<sup>th</sup> Judicial Circuit, Kane County, Illinois.

## **SECTION 15: INDEMNIFICATION AND INSURANCE**

### **Section 15.1: Indemnification Provisions**

- A. ~~The Grantee shall comply with the requirements for indemnification as set forth in Section 7-5-9 of the Sugar Grove Municipal Code, specifically, the Village Right of Way Ordinance, Ordinance No.~~

20080318C.

By occupying or constructing facilities in the Right-of-Way, the Grantee shall be deemed to agree to defend, indemnify, and hold the Village and its elected and appointed officials and officers, employees, agents, and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses, and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act, or misconduct of the Grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the Rights-of-Way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Franchise Agreement; provided, however that the Grantee's indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses, or expenses arising out of or resulting from the negligence, misconduct or breach of this Agreement by the Village, its officials, officers, employees, agents or representatives. OK  
10/8

- B. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in defense of any litigation by their own counsel at their sole expense. Such participation shall not under any circumstances relieve Grantee from its duties of defense against liability or of paying any judgment entered against such indemnified party.
1. In order for the Franchising Authority to assert its rights to be indemnified, defended, and held harmless, Franchising Authority must with respect to each claim:
    - a. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right.
    - b. Afford Grantee the opportunity to participate in any compromise,

settlement, or other resolution or disposition of any claim or proceeding, and

- c. Fully cooperate with the request of Grantee, at Grantee's expense, in its participation in and compromise, settlement, or resolution or other disposition of such claim or proceedings subject to the provisions herein.

### **Section 15.2: Insurance Provisions**

- A. The Grantee shall comply with the requirements for insurance as set forth in Section ~~7-5-10~~ 7-5-8 of the Sugar Grove Municipal Code, specifically, the Village Right-of-Way Ordinance, Ordinance No. 20080318C as originally approved, except Grantee shall not be required to comply with Section 7-5-8(C) of the Ordinance No. 20080318C and shall not be required to provide any insurance policy to the Franchising Authority. OK 11/16.
- B. A copy of Certificates of Insurance identifying the policy or policies, coverages, and named insureds and naming the Village as an additional named insured shall be sent to Village as provided for herein.
- C. Grantee shall be responsible for the payment of all premiums on said policy or policies. In the event that Grantee intends not to renew said policy or policies, not to replace the same, or to materially alter or change the same, Grantee shall provide at least sixty (60) days written notice of its intentions to be delivered by certified United States Mail to the Village.

## **SECTION 16: CABLE PROGRAMMING**

### **Section 16.1: Categories of Service to be Provided**

To the extent not pre-empted by federal law, Grantee shall provide on the Cable System all Over-the-Air broadcast stations required to be carried by federal law or FCC regulations. Grantee shall provide a wide range and diversity

of programming for Subscribers residing within the Franchise Area. In accordance with Federal law, the programming decisions shall be within the discretion of the Grantee. Except as expressly permitted by law, the Grantee shall not exercise any editorial control over the content of programming on the PEG Access Channels, except for such programming as the Grantee may produce or cablecast on such Channels. **OK 10/8** Categories of programming comparable in quality, mix, and level to be provided by Grantee to Subscribers shall include, but not be limited to the following:

- A. Local, regional, national, and international news, sports, and weather programs
- B. Music video and concert programs
- C. Educational programming
- D. Public affairs and public service programming
- E. Classic and contemporary movies
- F. General entertainment programming
- G. Ethnic and foreign language programming
- H. Children's programming
- I. Financial and business-related programming

~~Except as expressly permitted by law, the Grantee shall not exercise any editorial control over the content of programming on the PEG Access Channels, except for such programming as the Grantee may produce or cablecast on such Channels.~~

#### **Section 16.2: Programming Tier for Congregate Housing**

The Grantee may provide a customized tier of service for congregate housing facilities located in the Franchise Area. For the purpose of this Section, congregate housing facilities may include nursing homes and long term care facilities, apartment complexes, and hotels or motels. The Grantee may apply bulk billing rates for the customized tier of service that are at a lower rate than the rate charged to individual customers for the same level of service.

### **SECTION 17: PUBLIC, EDUCATIONAL, & GOVERNMENTAL (PEG) PROGRAMMING**

#### **Section 17.1: Allocation of Channel Space**

- A. The Village or its designee is hereby designated to operate, administer, promote, and manage Public, Educational, and Governmental Access programming (hereinafter "PEG Access") on the Cable System.
- B. The Grantee shall dedicate one (1) Channel, which

shall be known as the Community Access Channel and one (1) Channel shall be the Waubensee Community College Channel. As of the Effective Date of this Agreement, the Waubensee Community College Channel exists and is operating on an ongoing basis. **OPEN Issue**

- C. Future Additional Channel: One (1) Channel shall be made available for Educational Access to be activated within sixty (60) days of a written request by the Village based on the need for one (1) additional Channel. The written request shall include evidence of substantial use of the Community Access Channel by both the Village and the local School District for a period of six (6) months or more. Such evidence shall include, at minimum, a programming level of sixty (60) hours per seven (7) day week of programming, which may include previously aired program playback and text messaging. Of the sixty(60) hour program schedule, at least ten (10) hours shall be first-run programming. Village Board meetings, School District meetings, and student-produced programming shall count toward this standard. The aforementioned standards shall be counted for a period of six (6) months extending retroactively from the date of the written request for the additional Channel. Playback of previously aired programming shall not count for more than thirty (30) hours of weekly programming. No limit shall be established for text messaging. All residential Subscribers who receive all or any part of the total services offered on the Cable System shall be eligible to receive such Channels at no additional charge. The Village may rename, reprogram, or otherwise change the use of these Channels in its sole discretion, provided such use is non-commercial, lawful, and retains the general purpose of the provision of community programming. **OPEN Issue**

- D. Digital Channel: The Grantee shall ~~place~~ deliver any PEG Channel ~~on~~ in conjunction with its most basic tier of service, as such service tier exists on the Effective Date of this Agreement. In the event that the FCC determines that PEG Channels may be located in the Grantee's digital bandwidth spectrum, the Grantee may, with thirty (30) days notice ~~the written consent of the Village~~, place the Channel or Channels on the digital service tier

received by the greatest number of customers in the Village. Grantee shall determine the delivery technology of PEG programming. OK 8/30, 10/8

- E. Reclamation of Channel by Grantee: Because the Village and Grantee agree that a blank or under utilized Access Channel is not in the public interest, the Village shall adopt rules and procedures under which Grantee may use a PEG Channel for the provision of video programming if a PEG Channel is not being used for its respective purposes pursuant to Section 611(d) of the Cable Act, 47 U.S.C. §531. The Grantee may program unused time on the Channel subject to reclamation from the Village upon no less than sixty (60) days notice. The Grantee shall use the PEG Channel solely in accordance with such rules and procedures, and, except when the Grantee is using the Channel, shall have no responsibility or control with respect to the programming of such Channel. The programming of the PEG Channel with text messaging or playback of previously aired programming shall not constitute unused time. Text messaging containing out-of-date or expired information for a period of thirty (30) days shall be considered unused time. Unused time shall also be considered to be a period of time, in excess of six (6) consecutive hours, where no programming of any kind can be viewed on the PEG Channel resulting in the display of a blank screen. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

- F. Channel Relocation; Signal Quality: In the event that the Grantee relocates the PEG Channel(s), the Grantee will cooperate with the Village to assist in the notification to the public and its customers of the relocation of the Channel positions. Grantee shall deliver PEG Access programming in a signal format and quality that meets or exceeds FCC technical requirements.

If Grantee modifies its Cable System in a manner that diminishes the signal quality of the PEG Access programming to a level below FCC technical standards, Grantee shall take corrective action at its own expense to ensure that the PEG Access

programming quality is restored to a level meeting or exceeding FCC technical standards. OK 11/16

~~Should Grantee make any change in the Cable System and related equipment, or facilities that would have a material adverse impact on the transmission or signal quality of Access programming, the Grantee shall, at its own expense, take all necessary steps to insure, at a minimum, such quality is maintained at no less than the previous level. Delete OK 10/8~~

### **Section 17.2: Non-Commercial Programming**

The Channels dedicated to the use and control of the Village, the public, the Schools, and other local government agencies designated by the Village shall be utilized for non-commercial programming and purposes, and without any charges by the Village to any Subscriber. The Village shall have the right to utilize its access Channels to provide residents with any non-commercial service considered in the public interest. For the purpose of this Agreement, the term "non-commercial" shall be construed to allow the Village to seek monetary or in-kind support from a public or private source or sources. Such support may include, but not be limited to, grants, budgetary allocations, stipends, fees or charges for transcripts, DVD reproductions, or other costs related to the production or reproduction of a program or programs, or other like kinds of support. Said support shall be directly related to the governmental purposes promoted by the access Channel. In the case of a grant, stipend, in-kind contribution or other form of support provided by a public or private source or sources, an acknowledgment of the contribution of the source may be shown on the Channel in accordance with the policies established by the Village provided that such policies do not allow for the commercial sale of advertising in order to promote said support. Programming cablecast on PEG Channels shall not be considered origination cablecasting for purposes of the Grantee's compliance with Section 76, Subpart G of the FCC rules and regulations unless otherwise determined by the FCC with respect to the Grantee. Use of such Channels is not "For-profit" or "Commercial" solely because an access programmer or an access program has more revenues than expenses, or because the activity in which it is engaged is provided on a for-profit basis by private entities in other communities or in the Village. Nothing shall prevent the Village from authorizing charges to users or viewers to pay for services such as fees for video class instruction or charges to recover the cost of special use equipment, or as they may be required to charge under applicable law.

### **Section 17.3: Access Rules**

- A. The Village shall implement rules for the use of any specially designated access Channels. The initial access rules and any amendments thereto shall be maintained on file with the Village and be made available for public inspection during Normal Business Hours.
- B. Prior to the cablecast of any program on any PEG Access Channel established herein, the Village shall require any Person who requests access (Public, Educational, and Governmental) to the Cable System to provide written certification in a form and substance acceptable to the Village and the Grantee that the Person has obtained all necessary copyright clearances to air the program material, including clearance on all components and which releases, indemnifies, and holds harmless the Village, the Grantee, and their respective employees, officers, agents, and assigns from any liability, cost, damages, and expenses, including all expenses for legal fees, arising or connected in any way with said program.
- C. Periodic Evaluation: Upon written request from either party, the Grantee and the Village shall meet to evaluate the PEG Access programming and support. Both parties agree to discuss any proposal for modification presented by the other party. Nothing herein shall presume or require consent to any such proposed modification. Modification may only occur by mutual written consent of both parties. The notice and meeting contemplated herein shall be required to occur no more than every three (3) years after adoption of this Franchise, however, nothing shall prevent mutually agreed upon negotiations between both parties at any time.

### **Section 17.4: Community Access Channel Designation**

The ~~Community Access~~ PEG Channel shall be made available for the residents, organizations, and institutions of Sugar

Grove. The Village shall establish policies for the use of the PEG Channel and the production of programming for the Channel. The Grantee shall not levy a charge for use of the ~~Community Access~~ PEG Channel. **OK 10/8**

**Section 17.5: Waubonsee Community College**

~~An Educational Access Channel shall continue to be available for non-commercial programming originating from Waubonsee Community College. At such time that Waubonsee Community College seeks to provide Interactive On Demand Programming for its televised courses to students residing in the Franchise Area, and the College submits a written request to the Grantee for enabling such programming, the Grantee shall meet and confer with Waubonsee Community College staff and the Franchising Authority to develop the methods by which such programming may be cablecast to Subscribers residing in Sugar Grove on terms and conditions mutually acceptable to Waubonsee Community College and the Grantee.~~ **Delete OK based on discussions with Waubonsee staff 11/16. Channel to be carried in Section 17.1**

**Section 17.6: Channel Availability Timetable**

The Grantee shall observe the following timetable for implementing the Community Access Channel:

- A. Within six (6) months of the Franchising Authority's notice to the Grantee that it is ready to utilize Channel space and facilities to develop and cablecast Community Access Channel programming, Grantee shall commence operation of the Community Access Channel, and install two-way capability to permit origination of programming from the Village Hall. In the event that two-way capability does not currently exist, the Grantee shall activate the return capability no later than June 30, if the request is submitted to Grantee on or before January 1, or the Grantee shall activate the return capability no later than January 1 if the request is received on or before June 30. **OPEN Issue-Mediacom to provide language**

1. The dedicated connection required by this Section shall be designed and built to include all equipment, but not limited to transmitters, receivers, modulators, processors, drops, and wiring in order to enable the sending of signals to the Headend on said Channel.
2. Grantee shall ensure that programming received via upstream feeds is retransmitted as sent by the PEG Access Channel programmer without changing the attributes of the signal in such a way as to effectively degrade the output by an incremental amount greater than the deterioration in commercial Channels as quantitatively measured in ~~The facilities and equipment provided would not be adequate if there would be more deterioration on Channels set aside for PEG use on the Subscriber network than on any other Channels on the Cable System. Deterioration refers to any signal problem reflected in~~ FCC technical standards, including, but not limited to, co-Channel interference and other forms of interference, hum, distortions, degradation of chroma and luminance, pixellation, and imperfections. **OK 10/8**

**Section 17.7: Capital Support for Community Access Channel**

- A. The Grantee shall provide to the Franchising Authority a capital grant of thirty-five thousand dollars (\$35,000.00) within ninety (90) days from the date of a written request to Grantee for capital support in advance of activation of the Community Access Channel. Said capital grant shall be used for Community Access Channel equipment, maintenance, training, and related technical support related directly to PEG access equipment usage. **OPEN Issue**
- B. It is recognized by the parties that the Grantee has the right under 47 C.F.R. §76.922(f)(1)(iii) to pass through the costs of the capital support in Section 17.7(A) hereinabove, and that the Grantee may, at its discretion, include a monthly amount per Subscriber on its monthly billing statements. Such capital support shall not exceed more than the monthly amount per Subscriber as determined from the amount of the grant stated hereinabove.

**SECTION 18: EMERGENCY OVERRIDE**

- A. ~~Grantee shall comply with the FCC rules and regulations regarding the Emergency Alert System (EAS) in accordance with 47 U.S.C. 11, as may be amended from time to time. In accordance with 47 U.S.C. 11, Grantee shall configure the Cable System to enable carriage of local, non EAS audio and video emergency override cablecasting over all Channels of the Cable System. Said emergency override capability shall be designed to allow the Village President of Sugar Grove, or his designee to activate the emergency override.~~  
Any Emergency Alert System ("EAS") provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the Franchising Authority will be only in accordance with the applicable state and local plans in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the Franchising Authority will hold the Grantee, its employees, officers, and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys fees and costs.  
**OK 11/16**

For the purpose of illustration for this Agreement, and as of the Effective Date of this Agreement, use of the EAS by the Village is activated upon contact from the Village Police Department or Fire Department serving the Village to the Kane County Office of Emergency Management (KCOEM), which in turn, notifies the Local Primary (LP) radio station serving the Village established as a part of the State of Illinois EAS State Plan. The KCOEM EAS Plan has been registered with the State of Illinois Emergency Management Agency. **New language clarifying local EAS procedure. OPEN**

- B. ~~Grantee shall provide its EAS procedures for emergency broadcast to the Village, Sugar Grove Township, the Sugar Grove Police Department and the Sugar Grove Fire Protection District. **Delete OK 11/16**~~
- CB. Willful or wanton F-failure of the EAS to perform

on the Cable System in the event of an public emergency declared by the President of the United States, the Governor of Illinois, the Chairperson of the Kane County Board, or the Village President or his or her designee, unless such failure is beyond the control of the Grantee, shall be a material breach of this Agreement and shall be subject to a damage amount of seven hundred fifty dollars (\$750.00) per occurrence. **OK 11/16**

## **SECTION 19: SERVICE TO PUBLIC FACILITIES**

### **Section 19.1: Service to Public Facilities**

- A. The Grantee shall provide, at no charge, one outlet **OK 10/28** of Basic Cable Service to Village and other local government buildings and Schools pursuant to the requirements of Chapter 3-9-1 of the Sugar Grove Municipal Code (Ordinance No. 20080318A) incorporating 220 ILCS 5/22-501(f)(1-2). The Grantee shall provide Cable Service to any School, library, or government buildings that are constructed during the term of this Agreement subject to the line extension provisions of this Agreement. A listing of such Schools, government buildings, and public institutions as of the Effective Date of this Agreement that are subject to Installation of Cable Service are identified in Appendix B. It is understood that there may be government buildings in existence today where Cable Service is not desired at this time, however, Cable Service shall be requested at a later date through a written request to the Grantee.
- B. Upon notice and consent by Grantee to insure signal integrity, signal leakage, and commercial use concerns, the **OK 10/28** institution being served may further distribute within the municipal building, School, library, or facility any Cable Service that it lawfully receives, consistent with the mission of the institution. Such further distribution shall be at the expense of the Village, if the building is owned or leased by the Village, or at the expense of the School, or other institution being served.

- C. The Grantee shall also provide, at no charge, a one OK 10/28 Converter, decoder, or similar equipment if necessary for Subscriber equipment (such as television sets) to receive Basic Cable Service at each such outlet, with all capabilities or options afforded at a given time by the Cable System. Grantee shall ~~insure~~ ensure that all signals are provided at such outlets with sufficient strength that they can be further amplified to distribute them throughout the site. **OK 10/28**

**SECTION 20: FRANCHISE EVALUATIONS AND PERIODIC FRANCHISE REVISITATIONS**

**Section 20.1: Franchise Evaluations**

- A. The Franchising Authority may, at any time during the term of this Agreement, evaluate performance of the Grantee for purposes of determining compliance with this Agreement and the Cable Communications Ordinance, and to provide for consideration of technological, legal, or regulatory changes in the state of the art of cable television. The Franchising Authority and the Grantee ~~shall~~ may **OK 10/28** hold performance evaluation sessions at any time during the term of the Franchise and as may be required by State and Federal law. Evaluation meetings shall be open to the public. Sessions that are open to the public shall be publicized in accordance with the Illinois Open Meetings Act. The Franchising Authority shall be responsible for notifying the Grantee in writing, at least sixty (60) days in advance of any performance evaluation sessions.
- B. The Village and the Grantee shall mutually cooperate and shall provide such information and documents as the Village and Grantee deem necessary to perform their review in order that a review of the Cable System can be performed.
- C. Topics which may be discussed during the evaluation process or at evaluation sessions shall include, but not be limited to the following: Service rate structures, free services, discounted services, Franchise Fees, penalties, applications of new

technologies, repair and maintenance services, billing procedures, service provided by Customer Service Representatives, system performance, programming offered, programming desired by Subscribers, Subscriber complaints, rights of privacy, above and below-ground extension of cables and equipment, rulings and decisions of the Federal Communications Commission, Federal and State Courts of Law affecting Cable Service, and Grantee or Village rules. The Franchising Authority shall provide Grantee with a listing of topics for discussion twenty-one (21) days prior to the date of a scheduled evaluation session.

- D. Franchise evaluation sessions and meeting shall be conducted in accordance with the Illinois Open Meetings Act and shall be in accordance with provisions established in Section 4.1 of the Cable Communications Ordinance in the form originally approved by the Village. **OK 10/28**
- E. In the event that the evaluation of the Grantee's performance under the Franchise reveals evidence indicating inadequate performance of the Cable System which seems to constitute a violation of FCC technical requirements, the Franchising Authority may require the Grantee to conduct tests and assessments within thirty (30) days following notice to the Grantee of the violation to locate the source of system deficiencies and to specify remedies to correct such deficiencies. The Grantee shall reasonably **OK 10/28** cooperate with the Franchising Authority in performing such testing and shall prepare results and a report if requested within thirty (30) days after completion of the tests. Such report shall include the following:
1. A statement of the problem, complaint, or suspected deficiency which prompted the need for testing and assessment;
  2. The system component or components that were tested;
  3. Date, place, and time where such testing took place;
  4. Equipment used in the testing and procedures employed to carry out such tests or assessments;

5. Methods used to remedy identified problems, deficiencies, or suspected violations of FCC technical standards, and the status of resolution of such problems, deficiencies, or suspected violations.

The Franchising Authority may utilize an independent consultant with experience and knowledge of cable television systems engineering who has no affiliation with the Grantee, to supervise Grantee in conducting tests and assessments of the Cable System. The consultant shall sign all records of tests and assessments conducted upon the Cable System, develop a report based on the findings of such tests and assessments, and provide the Village Board with a report interpreting the results of the tests and assessments to include recommendations of actions which would remedy problems or deficiencies uncovered during the course of such testing and assessments.

Where said testing determines that problems, deficiencies, or violations of the Franchise exist, Franchising Authority shall provide Grantee with notice of said problems, deficiencies, or Franchise violations, and provide an appropriate time period, which shall not be less than thirty (30) days, for the Grantee to cure said problem, deficiency, or violation. If the tests reveal that the problem was caused by a violation of FCC technical standards, the cost of such testing shall be at Grantee's sole expense. In the event that no violation of FCC technical standards was found to have occurred, such testing shall be at the Village's sole expense. The Village will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to the Grantee or Subscribers. The Franchising Authority's rights under this Section shall be limited to requiring tests, assessments, and reports concerning subjects and characteristics based on complaints, suspected deficiencies, or other evidence when and under such circumstances as the Franchising Authority has sufficient grounds to believe that such complaints, suspected deficiencies, or other evidence requires that tests be performed to protect Cable System Subscribers against substandard Cable Service.

- F. If, at the conclusion of the review, the Village makes specific, written findings of fact that show that the Grantee has not complied with the requirements of ~~the Cable Communications Ordinance~~ or this Franchise Agreement, and has failed to correct such violation

after a written notice and opportunity to cure has been provided, the Village may assess ~~penalties~~ remedies under the Cable Communications Ordinance for such violation or violations of the Cable Communications Ordinance so identified by the performance evaluation. Such ~~penalties~~ shall be assessed in accordance with the procedure for Cable Communications Ordinance violations established in Section 22 of the Cable Communications Ordinance. In the event that a violation or violations of this Franchise Agreement have been identified, any ~~remedies~~ shall be assessed in accordance with the procedures for Franchise violations as described in Section 14 and Section 23 of this Agreement. OK 10/28

#### **SECTION 21: MODIFICATIONS TO COMMUNICATIONS AND CABLE ACTS**

In the event that the Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, ~~or~~ the Telecommunications Act of 1996, the Illinois Cable and Video Competition Law of 2007 or the Illinois Cable and Video Customer Protection Law of 2007 are modified or amended in any manner that is mandatory, or the FCC or the State of Illinois modifies or alters any of its regulations pertaining to cable television which may affect any provision(s) of this Franchise Agreement, such provisions shall remain in effect until the effective date of such modifications, amendments, or alterations. The Franchising Authority and the Grantee, upon notice that said modifications, amendments, or alterations may affect any provision(s) of this Agreement and prior to the effective date of said modifications, amendments, or alterations, or as soon thereafter as practical, ~~shall~~ may meet in good faith to amend this Franchise Agreement accordingly. OK 10/28

#### **SECTION 22: TRANSFERS, DELEGATIONS, AND ASSIGNMENTS OF OWNERSHIP**

The Grantee and the Franchising Authority shall follow the procedures for transfers, delegations, and assignments of ownership of the Cable System as set forth in Sections 8.1 through 8.11 of the Cable Communications Ordinance, as of the Effective Date of this Agreement, except where otherwise provided in this Agreement. In the event of a transfer or change in actual working Control, the transferee shall become a signatory to this Agreement. OK 10/28

#### **SECTION 23: MATERIAL BREACH AND REVOCATION**

- A. In addition to all other rights and powers retained by the Village under the Cable Communications Ordinance and this Agreement or otherwise, the Village reserves the right to terminate the Franchise and all rights and privileges of a Grantee hereunder in the event of an uncured substantial breach of its terms and conditions which remain uncured after notice to the Grantee, and an opportunity to cure subject to the procedures outlined below ~~and in Section 22 of the Cable Communications Ordinance~~. Material provisions shall include all labeled as such and all others, which under the facts and circumstances indicated, constitute a significant portion of this Franchise Agreement. A material breach by a Grantee shall include, but shall not be limited to the following:
- ~~1.~~ Failure to complete initial construction or reconstruction, including upgrade, of a Cable System as specified in the Franchise Agreement.
  - ~~2~~1. Repeated failure, after notice and opportunity to cure, to comply with the material provisions of this Agreement ~~or the Cable Communications Ordinance~~.
  - ~~3~~2. Repeated failure to cure material violations of ~~the Cable Communications Ordinance or this Agreement~~ within a specified time after notice from the Village.
  - ~~4~~3. Failure to restore service after seventy-two (72) consecutive hours of interrupted service, provided the Grantee's failure to restore system-wide service is not caused by circumstances or events beyond the Grantee's control.
  - ~~5~~4. Material fraud or misrepresentation in the negotiation or renegotiation of the Franchise.
  - ~~6~~5. Repeated failure, after notice and opportunity to cure, to pay taxes, Franchise Fees, PEG support fees, costs or undisputed penalties when and as due the Village. **OPEN Issue - RE: "Undisputed"**
  - ~~7.~~ Failure to comply with Customer Service or Consumer Protection provisions as specified in the Customer Service and Consumer Protection Ordinance and this Agreement; provided, however, that the penalties

~~imposed by the Village shall not exceed those as specified under 220 ILCS 5/70-22-501(s) and Ordinance 20080318A, which include:~~

- ~~a. Failure to provide notice of customer service standards upon initiation of service.~~
- ~~b. Failure to install service within 7 days.~~
- ~~c. Failure to remedy service interruptions or poor video or audio service quality within 48 hours.~~
- ~~d. Failure to keep an appointment or to notify the customer prior to the close of business on the business day prior to the scheduled appointment.~~
- ~~e. Failure to comply with scrambling requirements.~~

~~86.~~ Failure to maintain required insurance coverage.

~~97.~~ Wanton or reckless ~~V~~ violation of federal, state, or local privacy requirements.

~~10.~~ ~~Insolvency or bankruptcy of the Grantee.~~

~~118.~~ Transfer of the Franchise without Village Board consent ~~pursuant to Section 8 of the Cable Communications Ordinance.~~

~~129.~~ Grantee Abandonment of the Franchise. A Grantee shall be deemed to have abandoned its Franchise if it willfully refuses or is unable to operate the Cable System as granted by this Franchise Agreement ~~pursuant to the Cable Communications Ordinance~~ where there is no event beyond the Grantee's control that prevents the operation of the Cable System, and where operation would not endanger the health or safety of the public or property. Grantee may not abandon the Cable System or any portion thereof without compensating the Village for damages resulting from the abandonment. The Village may recover from Grantee damages for all costs of the removal of the Cable System. **Additions and Deletes OK 11/2**

B. Notice of substantial breach: Written notice shall be given to a Grantee setting forth:

1. The nature of the substantial breach or default by the Grantee;
  2. A written demand that a Grantee correct the violation;
  3. Notice that any failure to correct the remedy within thirty (30) days or such other period and as may be stipulated in a Franchise Agreement or as the parties may agree, and to diligently pursue the completion of the breach or default, may be cause for revocation of the Franchise, or lesser sanctions.
- C. ~~A Grantee shall provide an answer to notice of breach in the manner specified in Section 22 of the Cable Communications Ordinance.~~ **OPEN Issue. Attorneys prefer Ordinance language.** The Grantee shall respond within thirty (30) days in writing to the Village after receipt of a notice of breach or violation and shall provide any and all information and documentation in support of its response. The Grantee's response may include a statement:
1. That it contests the Village's notice of breach or violation and requests an opportunity to be heard as provided herein.
  2. That corrective action has been implemented by the Grantee and the breach or violation has been cured.
  3. That corrective action has been implemented by the Grantee and is being actively and diligently pursued, accompanied with a written corrective action plan that includes the estimated time period in which the breach or violation will be cured. Language from Section 22 of Cable Ordinance per request of Village Attorney OK 11/16.
- D. Judicial Relief: No provision of this Section shall be deemed to delay, bar, or otherwise limit the right of the Village to seek or obtain judicial relief to enforce the provisions of ~~the Cable Communications Ordinance or~~ this Agreement. **Delete OK 11/2**
- E. In the event Grantee continues operation of all or any part of the Cable System beyond the revocation or expiration of this Agreement, Grantee shall pay to the Village the compensation set forth in Section 11.5 hereinabove and Section 11.7 of the Cable Communications Ordinance as of the Effective Date of this Agreement **OK 11/2** at the rate in effect at the time of such revocation or expiration, and in the manner set forth

herein, together with any taxes it would have been required to pay had its operation been duly authorized in addition to any damages or other relief to which the Village may be entitled in Section 14 hereinabove.

- F. Whenever the Village finds that the Grantee has violated one or more terms, conditions, or provisions of this Franchise, a written notice shall be given to Grantee informing it of the alleged violation and stating with specificity the basis of the alleged violation. The written notice shall include the nature of the breach or default by the Grantee; a written demand that a Grantee correct the violation; and, notice that any failure to correct the remedy within thirty (30) days or such other period as may be stipulated in the Franchise Agreement or as the parties may agree, may result in penalties, liquidated damages, revocation, or other sanctions, and that the Grantee shall diligently pursue the correction of the breach or default.
- G. The Grantee shall have thirty (30) days from the receipt of such notice in which to cure such violation. The Grantee may notify the Village in writing within ~~ten~~ fourteen (14) days from the date of notice during the cure period that there is a dispute as to whether a violation or failure has in fact occurred. The Grantee shall specify with particularity the matters disputed and the basis for dispute which shall toll the running of any time frames herein. The Grantee may provide any and all information and supporting documentation in support of its response. **OK 11/2**
- H. In the event that the Grantee disputes one or more violations of this Agreement, the Village shall hear Grantee's dispute through the following process no ~~more~~ less than ten (10) days from the date of the Village's receipt of Grantee's notice of dispute of the violation: **OK 11/2**
1. Meeting with the appropriate Village staff on an informal basis to discuss the disputed matter(s) and set a plan for resolution of the dispute.
  2. In the event that Village staff and the Grantee are unable to resolve the disputed matter(s), the Village shall establish an Ad-Hoc Committee of members of the Village Board to hear the dispute

and decide upon a method or methods of resolving the dispute.

3. Should the Grantee seek to appeal the decision of the Ad-Hoc Committee, it may appeal the committee's decision to the entire Village Board of Trustees at the next regular Village Board meeting not less than twenty (20) days **OK 11/2** following the issuance of the Committee's decision. The Grantee shall be entitled to the right to present evidence and the right to be represented by counsel. If a hearing officer has been designated, the hearing officer shall hear the relevant evidence, preserve a record and submit written findings and a recommendation to the Village Board for the Board make the appropriate determination. Based upon the evidence presented, the Village Board or the hearing officer shall render the findings and a decision and issue them in writing. The Village Board may continue the hearing in order to allow the Grantee to comply with any lesser penalty imposed by the Village Board in order to correct any breaches or violations. In the event that the Village Board determines that cause exists to revoke the Franchise, it shall send notice of revocation within ten (10) business days of the Village's determination. In the event that the Village Board is persuaded after a Grantee's opportunity to be heard in a public meeting that it has committed a violation for which a lesser sanction other than revocation is warranted, the Village Board may, after giving Grantee an opportunity to be heard, order Grantee to remedy the violation within a reasonable period of time specified by the Village Board; assess liquidated damages against the Grantee in accordance with Section 14 hereinabove and to exercise any other remedy provided in this Agreement or the Cable Communications Ordinance; or impose any lesser sanction permitted by this Agreement. he Village shall not exercise any right without a resolution approved by the Village Board.

- I. If the Grantee has failed to cure, and has provided good cause for its failure to resolve the problem during the curative period set by the Village, or upon receipt of a notice of dispute from the Grantee, the Grantor may extend the time for cure. The Village shall not unreasonably deny an extension of time to remedy the violation. Should the Village grant the extension, the

Grantee shall proceed to remedy the violation within the extended time period prescribed, provided that Grantee also informs the Village on a regular basis of the steps being taken to remedy the violation. Where the Grantee has elected to have its dispute heard by a Village Board Ad-Hoc Committee or by the entire Village Board to review the Grantee's dispute of non-compliance, the Village must provide the Grantee with at least ten (10) days written advance notice of the Ad-Hoc Committee or Village Board meeting subject to compliance with the Illinois Open Meetings Act.

- J. In the event that the Village staff, the Ad-Hoc Committee, or the Village Board determines that a violation has taken place, and the Grantee has failed to cure the violation after notice and opportunity to cure the violation has been provided, the Village Board may impose assessment of penalties, liquidated damages, or revocation. as provided in this Franchise. Liquidated damages shall accrue retroactively to the date of the meeting where such damages were imposed. In the event that Village staff, the Ad-Hoc Committee, or the Village Board determines that no violation has taken place, or that corrective action has been taken and the violation has been cured, the Village shall rescind the notice of violation. The Grantee may appeal a final decision of the Village Board to a court of competent jurisdiction to be considered *de novo* under the Illinois Administrative Review Act.
- K. The Village Board may, upon good cause shown, and upon its own motion, impose any lesser sanction permitted by this Agreement, ~~the Cable Communications Ordinance, OK 11/2~~ or as such lesser sanction is permitted at law or in equity, or waive any damage or penalty.
- ~~L. Pending litigation or any appeal to any regulatory body or court of competent jurisdiction over the Grantee shall not excuse the Grantee from the performance of its obligations under this Agreement unless a stay is obtained. Failure of the Grantee to perform such obligations because of pending litigation or petition, in the absence of a stay issued by a court of competent jurisdiction, may result in revocation of the Franchise pursuant to the provisions of this Agreement. Delete OK 11/16~~
- ML. Remedies Cumulative: All remedies under this Agreement and the Cable Communications Ordinance are cumulative unless otherwise expressly stated. The exercise of a remedy or the payment of liquidated damages or penalties

shall not relieve the Grantee of its obligations to comply with this Franchise Agreement or applicable law.

NM. Recovery by the Village of any amounts under insurance, a security fund, performance bond, or letter of credit, or otherwise does not limit Grantee's duty to indemnify the Village in any way; nor shall such recovery relieve Grantee of its obligations under this Agreement, limit the amounts owed to the Village, or in any respect prevent the Village from exercising any other right or remedy it may have. Provided, however, that a single recovery may only be derived from any and all sources of security. **OK 11/16**

ON. The Village President and the Village Board shall be the sole entity to make a final determination under this Agreement regarding the revocation of the Grantee's Franchise subject to Grantee's right to judicial review of any such decision.

PO. If the Grantee is providing telecommunications services as defined by the Cable Act in conjunction with Cable Services, and, in the event that the Grantee's Franchise to provide Cable Services is revoked under the conditions of ~~Section 9.1 of the Cable Communications Ordinance and of this Section~~ of this Agreement, Grantee shall be allowed to retain its Cable System plant. However, Grantee shall be required to cease the provision of all Cable Services ~~in accordance with the requirements of Section 9.4 of the Cable Communications Ordinance.~~ **Delete OK 11/2**

~~Q.~~ ~~Subject to the provisions of this Agreement, a Grantee shall not be relieved of its obligations to comply with any of the rules, regulations, requirements, or directives as stated within the Cable Communications Ordinance or this Agreement by reason of any failure of the Village or its officers, agents, or employees to enforce prompt compliance, nor shall such be considered a waiver thereof.~~ **Delete OK 11/2**

**SECTION 24: NO BAR OR WAIVER OF RIGHTS; INTERVENTION**

- A. Neither the granting of the Franchise nor any provision governing the Franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the Village.
- B. The Village may seek to intervene in any act or other

proceeding to which the Grantee is a party, in accordance with applicable law or regulation as it relates to this Franchise.

**SECTION 25: DELEGATED AUTHORITY**

The Village may delegate to an advisory body or other Person authority to administer the Franchise and monitor the performance of the Grantee pursuant to the Franchise; provided, however, that any and all ultimate enforcement authority shall be exercised only by the Village Board. The Grantee shall cooperate with any such delegee of the Village Board.

**SECTION 26: FORCE MAJEURE**

Whenever a period of time is provided for in the Cable Communications Ordinance or the Franchise Agreement, for either the Village or the Grantee to do or perform any act or obligation, including obtaining permits, licenses, or access to poles and conduits, neither party shall be liable for any delays due to war, riot, insurrection, rebellion, fire, flood, storm, earthquake, tornado, orders of a court of competent jurisdiction, any act of God, failure of a utility provider to provide pole attachments on reasonable terms or conditions therefore, or any cause beyond the control of said party. In such event, said time period shall be extended for the amount of time said party is so delayed.

An act or omission shall not be deemed to be "beyond the Grantee's control" if committed, omitted, or caused by the Grantee or its employees, officers, or agents, or a subsidiary, affiliate, or parent of the Grantee, or by any corporation or other business entity that holds a Controlling Interest in the Grantee, whether held directly or indirectly. Further, the failure of a Grantee to obtain financing, or to pay any money due from it to any Person, including the Village, for whatever reason, shall not be an act or omission which is beyond the control of the Grantee.

**SECTION 27: COMPLIANCE WITH STATE BIDDING STATUTES**

Through the acceptance of this Agreement, and in accordance with Illinois State Statutes regarding public contracts, the Grantee and the Village certify that neither party is in violation of Illinois State Statutes concerning bid rigging or bid rotation as stated in 720 ILCS 5/33(E)(3-4).

**SECTION 28: SERVICE OF NOTICE**

A. For purposes of this Franchise Agreement, Grantee

authorizes and appoints the Senior Manager of Government Affairs, MCC Illinois, LLC d/b/a/ Mediacom Communications Corporation, with offices located at 3900 26<sup>th</sup> Avenue, Moline, Illinois 61265 to act as its registered agent and represents to the Franchising Authority that such agent is authorized to accept notice and service on its behalf.

- B. Grantee shall notify the Franchising Authority in writing, thirty (30) days after any change in the registered agent or representative(s) referenced hereinabove.
- C. Any notice or service served upon Grantee's registered agent shall also be provided to the Legal representatives at the addresses specified below. All notices or other written communications required to be provided to Franchising Authority or Grantee under any provision of this Agreement, shall be deemed to be received by the recipient thereof only when said notices or other written communications are actually received in the office of the recipient at the following addresses:

Franchising Authority: Office of the Village  
Administrator  
Village of Sugar Grove  
10 South Municipal Drive  
Sugar Grove, Illinois 60554

Mickey, Wilson, Weiler, Renzi  
and Andersson, P.C.  
P.O. Box 787  
Aurora, Illinois 60506

Grantee: MCC Illinois, LLC  
d/b/a Mediacom Communications  
Corporation  
Senior Manager of Government Affairs  
3900 26<sup>th</sup> Avenue  
Moline, Illinois 61265

MCC Illinois, LLC  
d/b/a Mediacom Communications  
Corporation  
Legal Counsel  
~~3900 26<sup>th</sup> Avenue~~ 100 Crystal Run Road  
~~Moline, Illinois 61265~~ Middletown,  
New York 10941

**OK 10/28**

Except as otherwise provided in this Agreement, all written notices regarding any matter concerning this Agreement, the Cable Communications Ordinance, or any of the other ordinances of the Village shall be sent by the Village by either certified United States Mail, return receipt requested; by overnight mail services, such as Federal Express, with a delivery confirmation signature, or by facsimile transfer ( "Fax " ), or by electronic mail ( "e-mail " ) with a written copy of such e-Mail subsequently provided. Notice shall be deemed to have been given based upon the date of transmittal, however, this shall not preclude the Village from allowing a Grantee to act upon such notice, where action is applicable, within a specified time period starting from the date of receipt by the party to which the notice was sent.

**SECTION 29: ORAL MODIFICATION**

This Franchise Agreement shall not be changed, modified, or amended in whole or in part except in writing and signed by all of the parties unless such changes are a direct result of a change in applicable state law or federal regulation.

**SECTION 30: TIME IS OF THE ESSENCE**

Whenever any material provision of ~~the Cable Communications Ordinance or~~ this Franchise Agreement shall set forth any time for any act to be performed by the Grantee, such time shall be deemed to be of the essence. **OK 10/28**

**SECTION 31: SEVERABILITY**

The provisions of this Franchise Agreement are severable, and if any provision or application is held to be illegal, unconstitutional, or invalid, such holding shall not affect the remaining provisions which can be given effect without the invalid provision or application. In the event that any provision of this Agreement becomes invalid, the Village and the Grantee may amend this Agreement upon mutual consent.

**SECTION 32: ENTIRE CONTRACT**

This Franchise Agreement, including appendices, constitutes the entire contract between the parties and there are no other understandings, oral and written, relating to the subject hereof. This Agreement supersedes any prior understandings or the prior franchise agreement.

**SECTION 33: OBLIGATIONS TO CONTINUE THROUGHOUT TERM**

Unless otherwise specifically stated, all obligations under this Franchise Agreement shall continue throughout the entire term or extension of this Franchise Agreement.

**SECTION 34: HEADINGS**

Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Franchise Agreement.

**SECTION 35: WAIVER OF REQUIREMENTS**

- A. The Village may, on its own motion, or at the request of the Grantee, for good cause shown, waive any requirement or requirements of this Franchise Agreement.
- B. The Village shall have the right to waive any provision of this Agreement. However, any waiver shall be restricted to the particular subject matter of the waiver, and in no way shall be considered precedent for any other waiver, nor shall the Village be obligated to consider any request for a similar waiver. Further, the Village reserves the right to deny any waiver.
- C. The failure of the Village or Grantee on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right, compliance or performance has specifically been waived in writing. No delay or omission of the Village or Grantee to exercise any right or remedy shall be considered to be a waiver of or acquiescence in any default. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural Grantee or Village bestowed upon it under Federal or State law or statute unless such waiver is expressly stated herein.

**SECTION 36: NO WAIVER OF RIGHTS BESTOWED BY VIRTUE OF LAW**

~~Neither the Village nor the Grantee does not waives~~ or releases rights bestowed upon ~~it~~ them by virtue of law or statute. **OK 10/28**

**SECTION 37: GOVERNING LAW**

This Franchise Agreement shall be governed by the applicable laws



**APPENDIX A**  
**MAP OF FRANCHISE AREA**

**APPENDIX B**

**LIST OF PUBLIC INSTITUTIONS**

<b>Institution Name</b>	<b>Address</b>	<b>Cable Drop</b>
Village of Sugar Grove	10 South Municipal Drive.	Yes
Sugar Grove Public Library	15 South Municipal Drive	

Y  
e  
s

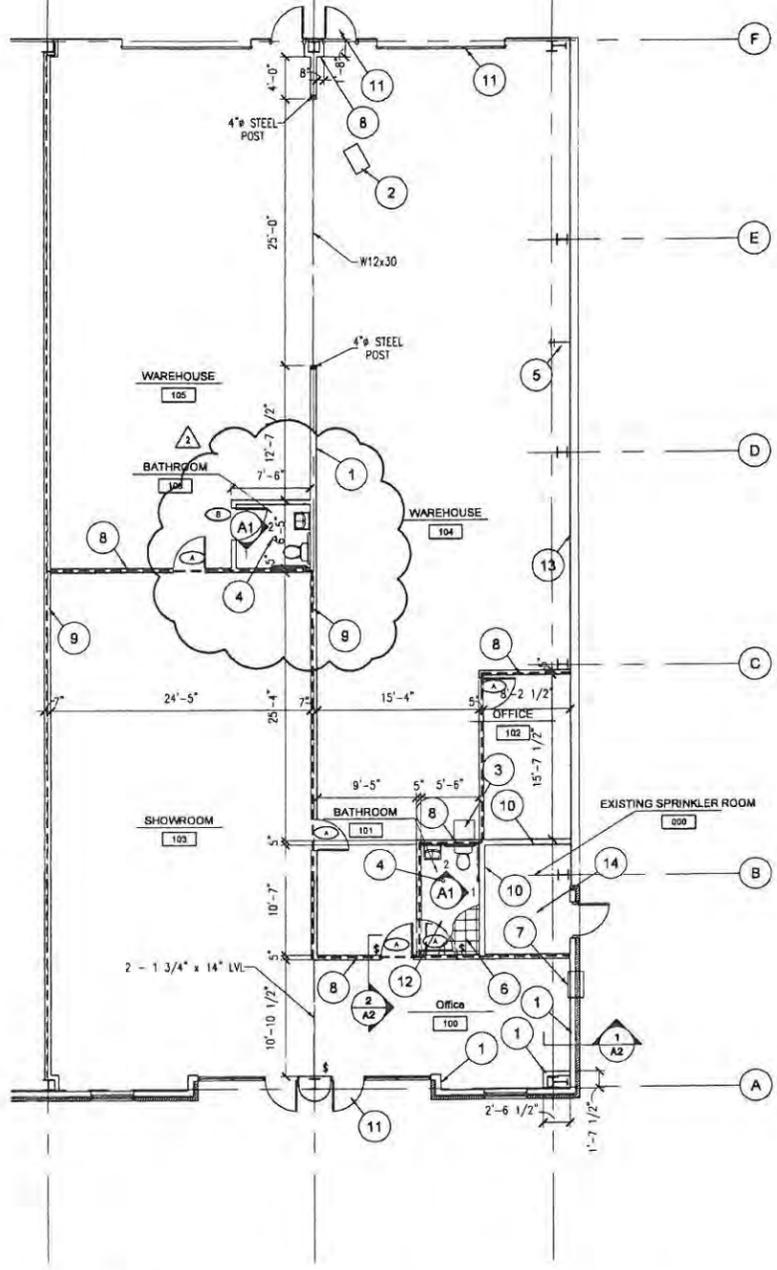
Village of Sugar Grove Public Works  
 Sugar Grove Fire & Protection District  
 Sugar Grove Park District  
 Kaneland Middle School  
 John Shields Elementary School  
 Sugar Grove Community House  
 Sugar Grove Township  
 Sugar Grove Township Highway  
 Department  
 Waubensee Community College

 **Global Flooring Store**

Laminate Ceramic  
Carpet  
Hardwood Area  
Rugs  
We Install!

03/11/2011 11:50

ROOM NO.	ROOM	FLOOR	BASE	WALLS				CEILING		REMARKS
				NORTH	SOUTH	EAST	WEST	TYPE	HEIGHT	
100	OFFICE	CT-1	B2	PAINT	PAINT	PAINT	PAINT	CEL-1	9'-0"	
101	BATHROOM	CT-1	B2	PAINT	PAINT	PAINT	PAINT	CEL-1	9'-0"	
102	OFFICE	CRP-1	B2	PAINT	PAINT	PAINT	PAINT	CEL-1	9'-0"	
103	SHOWROOM	CRP-1/CT-1	B2	PAINT	PAINT	PAINT	PAINT	CEL-1	9'-0"	
104	WAREHOUSE	CONCRETE	NA	PAINT	PAINT	PAINT	PAINT	OPEN		
105	WAREHOUSE	CONCRETE	N/A	PAINT	PAINT	PAINT	N/A	OPEN		
106	BATHROOM	CT-1	B1	PAINT	PAINT	PAINT	PAINT	CEL-1	9'-0"	

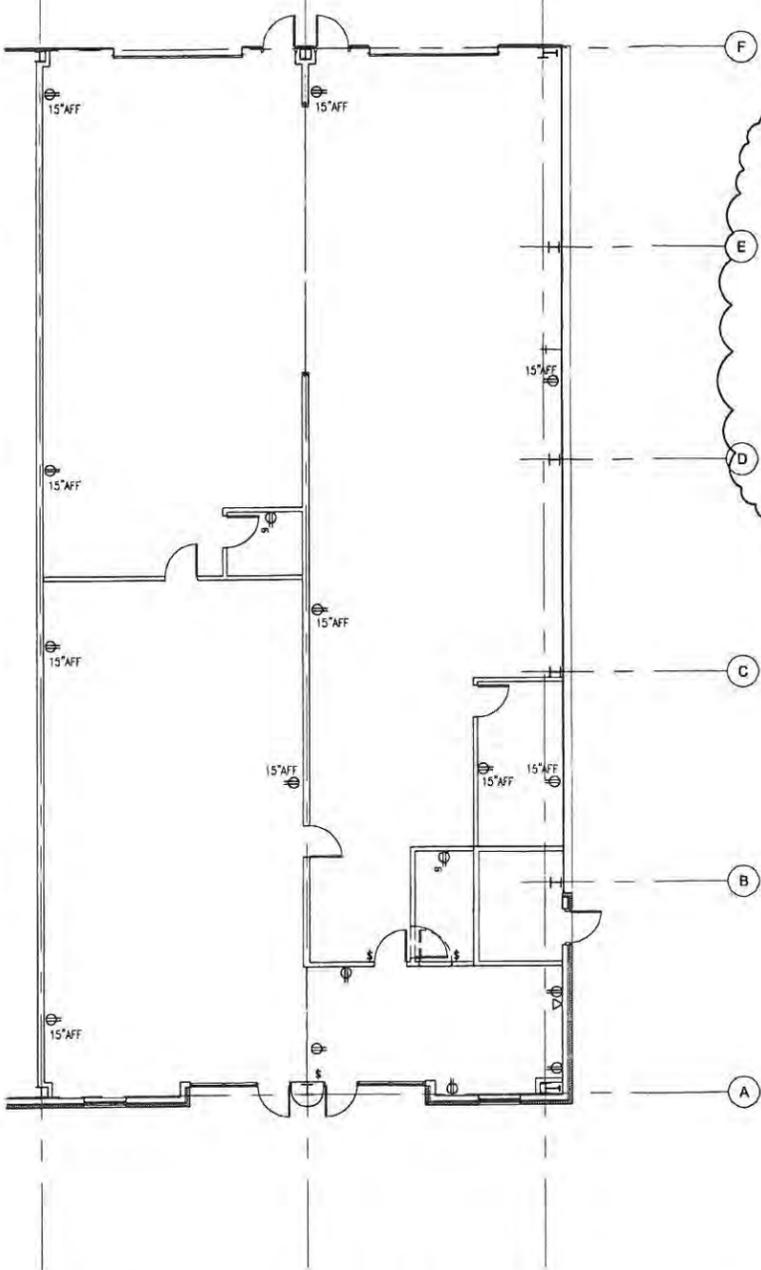


**FIRST FLOOR PLAN**

SCALE: 1/8" = 1'-0"

**FLOOR PLAN KEY NOTES**

- 1 2x4 WOOD STUDS @ 16" O.C. w/ 5/8" GYP. BD. EA. SIDE
- 2 SUSPENDED SHOP FURNACE
- 3 MOP SINK
- 4 ACCESSIBLE BATHROOM
- 5 HOSE BIB
- 6 12"x12" VCT TILE
- 7 AIR CONDITIONING UNIT
- 8 1 HR FIRE RATED FULL HEIGHT PARTITION UL Des No U305 - 2x8 WOOD STUDS @ 16" o.c. w/5/8" GYP. BD. EA. SIDE UP TO METAL PURLINS ABOVE. STUFF VOIDS BETWEEN METAL DECK & WALL PLATE w/ ROCK WOOL FIRE STOP INSULATION +/-23'-0"
- 9 1 HR RATED PARTITION UL Des No U305 - 2x6 WOOD STUDS @ 12" O.C. w/5/8" GYP. BD. EA. SIDE UP TO METAL PURLINS ABOVE. STUFF VOIDS BETWEEN METAL DECK & WALL PLATE w/ ROCK WOOL FIRE STOP INSULATION
- 10 EXISTING 1 HR RATED PARTITION WALL
- 11 EXISTING DOOR



**FIRST FLOOR ELEC PLAN**

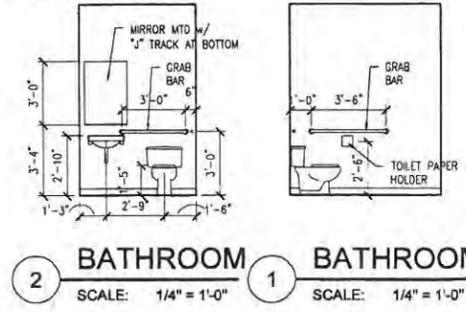
SCALE: 1/8" = 1'-0"

- 12 FLOOR DRAIN
- 13 EXISTING BUILDING
- 14 EXISTING SPRINKLER ROOM - ADD FIRE RATED DECK PER CODE.

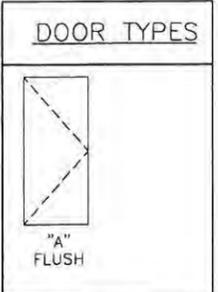
**FINISH MATERIALS LEGEND**

FLOOR		BASE		CEILING	
MARK	DESCRIPTION	MARK	DESCRIPTION	MARK	DESCRIPTION
CT-1	TYPE: CERAMIC TILE MFG: SELECTION BY INTERIOR DESIGNER SERIES: - COLOR: SELECTION BY OWNER FINISH: SELECTION BY OWNER SIZE: -	B1	TYPE: 4" RUBBER BASE MFG: ROPPE OR EQUAL SERIES: INFINITY PATTERN: - COLOR: AS SELECTED BY OWNER FINISH: - APPLIC: -	CEL-1	TYPE: ACOUSTICAL TILE 2' x 2' MFG: ARMSTRONG SERIES: 15/16" INVERTED T PATTERN: W/ SECOND LOOK TILE II COLOR: WHITE FINISH: - APPLIC: SUSPENDED METAL GRID
CRP-1	TYPE: CARPET MFG: SELECTION BY INTERIOR DESIGNER SERIES: - COLOR: SELECTION BY OWNER FINISH: SELECTION BY OWNER SIZE: -	B2	TYPE: 1X6 WOOD BASE MFG: SELECTION BY OWNER SERIES: - PATTERN: - COLOR: AS SELECTED BY OWNER FINISH: STAINED APPLIC: -	<b>PAINT</b>	
				P1	COLOR: AS SELECTED BY OWNER MFG: BENJAMIN MOORE OR EQUAL FINISH: EGG SHELL APPLIC: -

NOTE: ALL COLORS AND FINISHES TO BE SPECIFIED BY OWNER & G.C.



**BATHROOM BATHROOM**  
 SCALE: 1/4" = 1'-0"



**INTERIOR FINISH NOTES**

- USE GROUP B
- ALL CORRIDOR FINISHES CLASS II FLAME SPREAD 26 TO 75
- ALL ROOMS AND ENCLOSED SPACES CLASS III FLAME SPREAD RATING 76-200

**HARDWARE SPECIFICATIONS**

MK	FUNCTION	MANUFACTURER	CATALOG NUMBER	REMARKS
A	OFFICE	SCHLAGE	SATURN - S-SERIES - S51PD FIN: 626	
B	HINGES	STANLEY	SERIES - FBB-179 4 1/4 STAINLESS STEEL	
C	CLOSER	LCN CLOSERS	MODEL 1371 DU FIN: DURONODIC BRONZE	

**DOOR SCHEDULE**

DOOR #	DOOR SIZE			DOOR TYPE	DOOR MAT. FINISH	FRAME MAT. FINISH	RATING	DETAILS					HARDWARE	REMARKS
	WIDTH	HEIGHT	THICK					LOUVER	UNDERCUT	HEAD	HINGE	LOCK		
A	3'-0"	7'-0"	1 3/4"	A	HM/PT	HM/PT	45						A,B,C	
B	3'-0"	7'-0"	1 3/4"	A	HM/PT	HM/PT							A,B,C	

THESE DRAWINGS, INCLUDING ALL DESIGN, DETAILS, SPECIFICATIONS AND INFORMATION, ARE THE SOLE PROPERTY AND COPYRIGHT OF GLEASON ARCHITECTS, P.C. AND ARE FOR USE ON THIS SPECIFIC PROJECT AND SHALL NOT BE USED ON ANY OTHER WORK WITHOUT THE AGREEMENT AND WRITTEN PERMISSION OF GLEASON ARCHITECTS, P.C.

**ISSUED DATE**

FOR APPROVAL	08-12-05
FOR PERMIT	08-18-05
FOR BID	
FOR CONST.	

**REVISIONS DATE**

1 ADDED SPACE	09-12-06
2 ADDED BATHROOM	11-16-06
3 FINISH SCHEDULE	12-28-06



PROJECT: TENANT BUILDOUT - SPACE "E & F"  
 LOT 10, WAUBONSEE COPORATE CENTER  
 SUGAR GROVE, IL

Mike Saberski  
 769 Heartland Drive, Unit A  
 Sugar Grove, Illinois 60554

MAR - 8 2011

JOB NO. 05-182  
 DATE 08-11-05  
 FILE A1  
 PLOT SCALE 1:1

OWNER APPROVAL

SHEET TITLE  
 FLOOR PLANS  
 ELECTRICAL PLAN  
 DOOR & ROOM FINISH SCHEDULE  
 INTERIOR ELEVATIONS

SHEET NUMBER  
**A1**

**VILLAGE OF SUGAR GROVE  
KANE COUNTY, ILLINOIS**

**ORDINANCE NO. 20110405A**

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**An Ordinance  
Granting a Special Use  
for a health club  
at 769 N. Heartland Drive  
in the Village of Sugar Grove, Kane County, Illinois  
(Division One Fitness)**

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Adopted by the  
Board of Trustees and President  
of the Village of Sugar Grove  
this 5th day of April, 2011.

Published in Pamphlet Form  
by authority of the Board of Trustees  
of the Village of Sugar Grove, Kane County,  
Illinois, this 5th day of April, 2011.

**ORDINANCE NO. 20110405A**

**AN ORDINANCE GRANTING  
A SPECIAL USE  
FOR A HEALTH CLUB  
AT 769 N. HEARTLAND DRIVE  
IN THE VILLAGE OF SUGAR GROVE  
(Division One Fitness)**

**BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**WHEREAS**, the Village of Sugar Grove is not a home rule municipality within Article VII, Section 6A of the Illinois Constitution and, pursuant to the powers granted to it under 65 ILCS 5/1-1 *et seq.*; and,

**WHEREAS**, Division One Fitness has requested a Special Use for a health club at 769 N. Heartland Drive on property legally described in SECTION ONE; and,

**WHEREAS**, a public hearing has been conducted on the request by the Plan Commission of the Village of Sugar Grove on March 16, 2011, and the Commission recommended 6-0 (with one abstention) conditional approval of the Special Use; and

**WHEREAS**, the Village Board has reviewed the request and has deemed that approval of the Special Use would be in compliance with the Zoning Ordinance of the Village of Sugar Grove.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, as follows:

**SECTION ONE: SPECIAL USE**

The subject property described in **Exhibit A** is hereby granted a Special Use pursuant to Section 11-10-2-B of the Village of Sugar Grove Zoning Ordinance. Said Special Use is conditioned upon compliance with the conditions enumerated on **Exhibit B** which is attached and made a part of this ordinance.

**SECTION TWO: REPEALER**

That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict.

**SECTION THREE: SEVERABILITY**

Should any provision of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect the same as if the invalid provision had not been a part of this ordinance.

**SECTION FOUR: EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, this 5th day of April, 2011.

\_\_\_\_\_  
P. Sean Michels  
President of the Board of Trustees  
of the Village of Sugar Grove, Kane  
County, Illinois

	Aye	Nay	Absent
Bohler	___	___	___
Geary	___	___	___
Johnson	___	___	___
Renk	___	___	___
Montalto	___	___	___

ATTEST: \_\_\_\_\_  
Cynthia L. Galbreath  
Clerk, Village of Sugar Grove

**EXHIBIT A- LEGAL DESCRIPTION**

LOT 10 OF SUGAR GROVE RESEARCH PARK, VILLAGE OF SUGAR GROVE, KANE COUNTY, ILLINOIS, IN THE VILLAGE OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

## **EXHIBIT B- CONDITIONS OF APPROVAL**

1. The Special Use is limited to Units E and F of the building at 769 N. Heartland Drive and cannot be expanded unless the Special Use is amended.
2. The applicant shall secure all required building permits prior to any interior modifications or exterior sign installation.
3. The applicant shall secure a certificate of occupancy prior to occupancy.
4. The existing Global Flooring signs shall be removed prior to issuance of a certificate of occupancy.



N ↑

SUBJECT  
PROPERTY

Old Oaks

Warbler

Merrill

Harter

Cardinal  
Heartland

Key Deck

Illinois Route 47

Wheeler

Municipal

Carriage Hill

Westbourne

Caledonian

Vale

Sutton

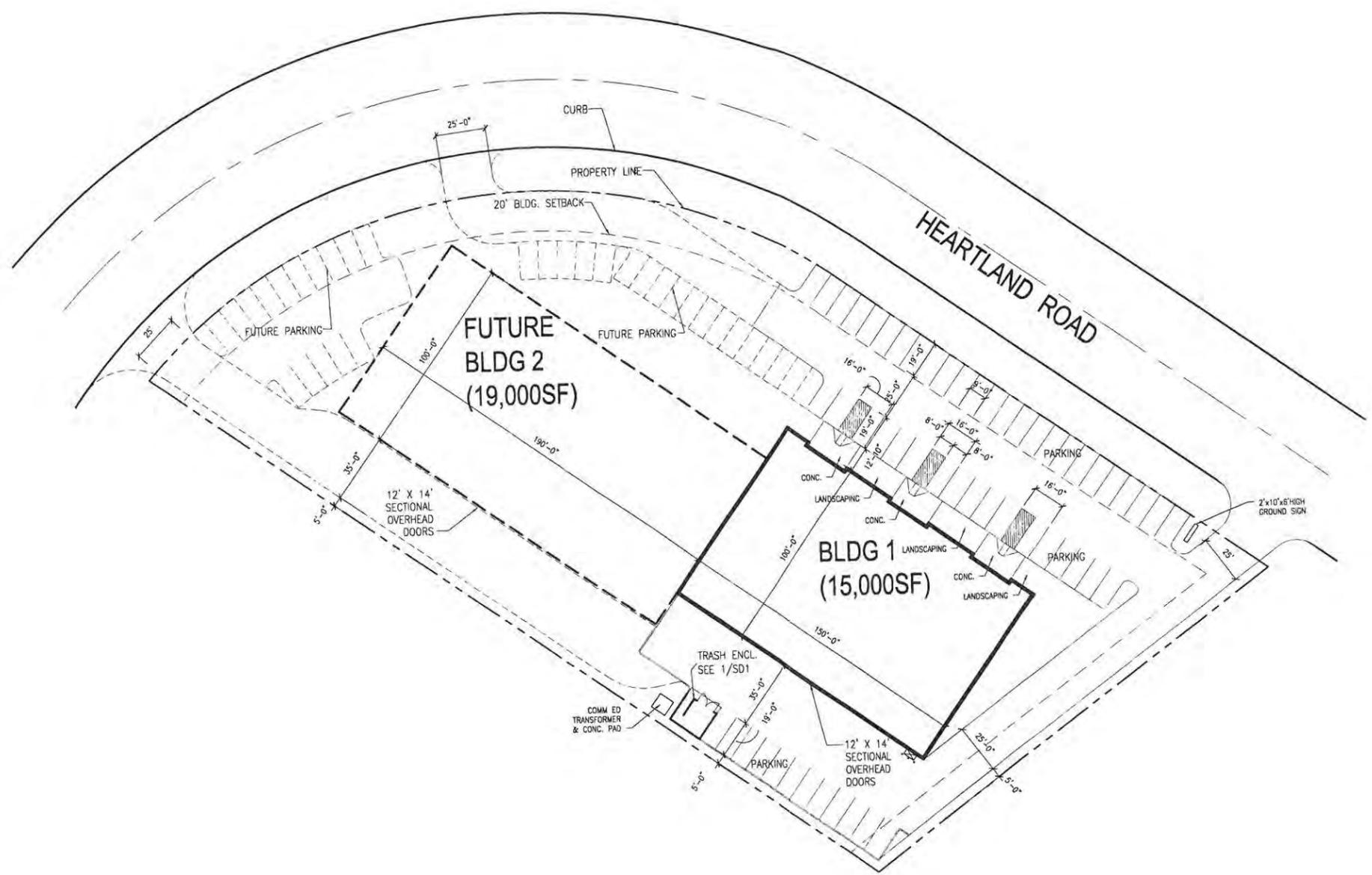


**GLEASON**  
ARCHITECTS, P.C.

333 North Randall RD, Suite 23  
St Charles, Illinois 60174  
Phone: 630-377-8512  
Fax: 630-377-8477  
E-mail: thuddaw@ycs.net

ISSUED	DATE
FOR APPROVAL	
FOR PERMIT	7/9/03
FOR BID	
FOR CONST.	

REVISIONS	DATE
▲	
▲	
▲	



**SITE PLAN**

SCALE: 1" = 30'



PROJECT:  
NEW COMMERCIAL BUILDING  
LOT 10, WAUBONSEE CORPORATE CENTER  
SUGAR GROVE, IL

JOB NO. 03-015  
DATE 4-16-03  
FILE 01-A1  
PLOT SCALE 11

OWNER APPROVAL

\_\_\_\_\_  
Date

SHEET TITLE  
SITE  
PLAN

SHEET NUMBER  
**A1**

MAR -8 2011

**STAFF REPORT TO THE SUGAR GROVE PLANNING COMMISSION  
FROM MIKE FERENCAK, PLANNER**

**GENERAL CASEFILE INFORMATION**

Commission Meeting Date: March 16, 2011

Petition Number: 11-004

Project Name: 769 N. Heartland Drive

Petitioner: Division One Fitness

Request: 1. Special Use for a health club, pursuant to Section 11-10-2-B of the Sugar Grove Zoning Ordinance.

Location: 769 N. Heartland Drive

Parcel Number(s): 14-08-253-003

Size: 98,010 square feet or 2.25 acres

Street Frontage: 641' along Heartland Drive

Current Zoning: M-1 Limited Manufacturing District

Contiguous Zoning: NORTH: (across Heartland Drive) B-3 Regional Business District  
SOUTH: M-1 Limited Manufacturing District  
EAST: M-1 Limited Manufacturing District  
WEST: (across Heartland Drive) B-3 Regional Business District and M-1 Limited Manufacturing District

Current Land Use: Multi-tenant office building

Contiguous Land Use: NORTH: (across Heartland Drive) proposed College Corner development  
SOUTH: Open / Vacant  
EAST: Financial office (American Heartland Bank)  
WEST: (across Heartland Drive) Open / Vacant, Multi-tenant warehouse / office building

Comp Plan Designation: Business Park

Exhibits: Special Use Application  
Responses to Special Use Standards / Statement  
Public Hearing Notice  
Publication Confirmation  
Posting Confirmation  
Mailing Confirmation (available in CD Dept.)  
Area Map  
Photo of tenant space  
Multi-tenant parking table  
Site Plan dated April 16, 2003  
Floor Plan dated August 11, 2005  
Plat of Survey (available in CD Dept.)

**CHARACTER OF THE AREA**

The subject property is located just west of the American Heartland Bank, near the intersection of Waubensee Drive and Heartland Drive. The character of the area is transition from commercial office / warehouse.

**DEVELOPMENT PROPOSAL**

The Planning Commission will consider a request for:

1. Special Use for a health club, pursuant to Section 11-10-2-B of the Sugar Grove Zoning Ordinance.

**HISTORY**

The applicant, Division One Fitness (represented by Corey Miceli) has submitted a request for a Special Use to allow a health club in two adjacent tenant spaces of the building at 769 N. Heartland Drive. Division One Fitness is currently located at 472 N. State Route 47 and is looking to relocate into this site, as it provides a larger space.

This site is Lot 10 of the Sugar Grove Research Park. At this time, the Sugar Grove Research Park annexation agreement has expired so our current Zoning Ordinance now applies in this subdivision. Lot 10 is already developed as a multi-tenant building. The building is used by various offices: Gleason Architects, CW Construction, and Modern Dentistry, and the UBC Regional Office (Locals 363, 916, and 2087). Gymnasiums and health clubs are listed as a Special Use in the M-1 Limited Manufacturing District. They were made a Special Use with the 2005 request from Maximum Gymnastics to locate in the M-1 District at 689 N. Heartland Drive.

The applicant was complete with their submittal on March 8, 2011. Staff first began working with the applicant at the beginning of February, 2011. There are no plans involved with this request at this time, as no exterior improvements are proposed. The attached plans are just provided for reference. Any interior improvements or sign requests will require a

building permit. A certificate of occupancy even if a building permit is not needed.

### **COMPREHENSIVE PLAN RECOMMENDATIONS**

The Comprehensive Plan designates the site as "Business Park". The Comprehensive Plan does not provide any policy regarding specific uses allowed in various districts of the Zoning Ordinance.

Contiguous properties are designated Business Park and Corridor Commercial. The proposed health club could be compatible with surrounding uses, though it is not necessarily a use which defines a business park area. Gymnasiums and health clubs are sometimes found in business parks due to their requirements for a larger space.

### **ZONING ORDINANCE STANDARDS**

Uses on this site are limited to the permitted and Special Uses allowed in the M-1 Limited Manufacturing District. Gymnasiums and health clubs are a Special Use in the M-1 Limited Manufacturing District.

Several standards must be met in order to grant a Special Use. These standards, and the status of each, are detailed below. The Planning Commission must determine that the Special Use:

- a. Will be harmonious with and in accordance with the general objectives of the Comprehensive Land Use Plan and/or this zoning ordinance.

*The proposed health club is consistent with the objectives of the Comprehensive Plan and the Zoning Ordinance. The proposed use could be considered compatible with planned uses for the area. With the Special Use, the proposed use will be in conformance with the Zoning Ordinance.*

- b. Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not alter the essential character of the same area.

*The applicant states that this use would be designed, constructed, operated, and maintained in harmony with its surroundings and not alter the essential character of the area because the building already exists and he will operate and maintain his use so that it meshes with the character of the area.*

- c. Will not be hazardous or disturbing to existing or future neighborhood uses.

*The use should not be hazardous or disturbing to existing or future neighboring uses, as this area is primarily industrial and commercial in nature.*

- d. Will be adequately served by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewers and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

*The site is an established business park with essential public facilities that can adequately serve the proposed use.*

- e. Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the Village.

*The use should not create excessive additional requirements at public cost. The use will be beneficial to the economic welfare of the Village as it should serve to grow the business at a new site within the Village limits.*

- f. Will not involve uses, activities, processes, materials, equipment and/or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

*The use will not produce significant traffic, nor noise, smoke, fumes, glare, or odors.*

- g. Will have vehicular approaches to the property which shall be so designed as to not create an undue interference with traffic on surrounding public streets or highways.

*The access points to Heartland Drive are already installed at this site. No exterior improvements are planned currently.*

- h. Will not increase the potential for flood damage to adjacent property, or require additional public expense for flood protection, rescue or relief.

*Stormwater management has been addressed as part of Sugar Grove Research Park development and at the time of development of this site. No exterior improvements are planned currently.*

- i. Will not result in the destruction, loss or damage of natural, scenic or historic features of major importance to the Village.

*There are no natural, scenic, or historical features on this site. No exterior improvements are planned currently.*

## **EVALUATION**

Generally, this use is required to conform to requirements of the Village of Sugar Grove Zoning Ordinance. The following evaluation is related to the Zoning Ordinance requirements.

1. Land Use / General – With a Special Use permit, a health club is allowed in the M-1 District.

2. Parking – There are 54 parking spaces existing on the site and 36 are required for the other uses in the building. This leaves 18 available parking spaces. Division One Fitness would occupy 5,000 square feet of the 15,000 square foot building. The parking requirement is 3 spaces per 1,000 square feet. Therefore, the parking requirement is 15 spaces. The site has enough parking to accommodate this use.

3. Signage / Interior Improvements – No signs or interior improvements are proposed at this time. If the applicant proposes a wall sign / tenant panel on the existing ground sign or interior improvements, a building permit is required. A certificate of occupancy will be required even if no improvements end up being proposed. The existing Global Flooring signs are required to be removed before the certificate of occupancy is issued, but no building permit is needed to remove them.

4. Trash – The site includes a trash enclosure in the rear parking lot.

### **PUBLIC RESPONSE**

Staff has received no public comment on this project.

### **STAFF RECOMMENDATION**

Staff recommends approval of the Special Use for a health club pursuant to Ordinance Section 11-10-2-B of the Sugar Grove Zoning Ordinance, subject to the following conditions:

1. The Special Use is limited to Units E and F of the building at 769 N. Heartland Drive and cannot be expanded unless the Special Use is amended.
2. The applicant shall secure all required building permits prior to any interior modifications or exterior sign installation.
3. The applicant shall secure a certificate of occupancy prior to occupancy.
4. The existing Global Flooring signs shall be removed prior to issuance of a certificate of occupancy.

**STAFF REPORT TO THE SUGAR GROVE PLANNING COMMISSION  
FROM MIKE FERENCAK, PLANNER**

**GENERAL CASEFILE INFORMATION**

Commission Meeting Date: March 16, 2011 **Updated March 15, 2011**

Petition Number: 11-002

Project Name: 1960 Bucktail Lane

Petitioner: Producers Chemical Co.

Request: 1. Special Use for chemical processing (chemical storage, repackaging, and distribution) including outdoor acid / solvent / fuel tanks, pipe support / railcar unloading platform, pursuant Section 11-10-2 and 11-13-12 of the Sugar Grove Zoning Ordinance.

2. Variance to waive the building wall material requirement thereby allowing a metal siding product on the proposed addition (a proposed enclosed canopy), pursuant to Section 11-10-7-E-1 of the Sugar Grove Zoning Ordinance.

Location: 1960 Bucktail Lane

Parcel Number(s): 14-19-151-005

Size: 370,396 square feet or 8.50 acres

Street Frontage: 163 feet along Bucktail Lane

Current Zoning: M-1 Limited Manufacturing District

Contiguous Zoning: NORTH: M-1 Limited Manufacturing District  
SOUTH: unincorporated Kane County F Farming District  
EAST: unincorporated Kane County F Farming District, A-1 Agricultural District  
WEST: M-1 Limited Manufacturing District

Current Land Use: Vacant building

Contiguous Land Use: NORTH: BNSF Railroad

SOUTH: Agricultural field  
EAST: Agricultural field  
WEST: Mini self-storage buildings

Comp Plan Designation: Business Park

Exhibits: **Special Use Application**  
**Variance Application**  
**Responses to Special Use Standards**  
**Special Use Statement**  
**Responses to Variance Standards**  
**Public Hearing Notice**  
**Publication Confirmation**  
**Posting Confirmation**  
**Mailing Confirmation (available in CD Dept.)**  
**Area Map**  
**Combined Comment Letter dated March 7, 2011**  
**Applicant Letter dated March 11, 2011**  
**Plan showing screening area for loading dock**  
**Various Plans last revised March 10, 2011**

### **CHARACTER OF THE AREA**

The subject property is located at the end of Bucktail Lane, which is accessed via Dugan Road. The existing character of the area is light industrial / warehouse / office.

### **DEVELOPMENT PROPOSAL**

The Planning Commission will consider requests for:

1. Special Use for chemical processing (chemical storage, repackaging, and distribution) including outdoor acid / solvent / fuel tanks, pipe support / railcar unloading platform, pursuant Section 11-10-2 and 11-13-12 of the Sugar Grove Zoning Ordinance.
2. Variance to waive the building wall material requirement thereby allowing a metal siding product on the proposed addition (a proposed enclosed canopy on the north side of the building), pursuant to Section 11-10-7-E-1 of the Sugar Grove Zoning Ordinance.

### **HISTORY**

The applicant, Producers Chemical Co., has submitted a request for a Special Use to allow a chemical processing facility in an existing vacant building along with outdoor tanks and pipes, etc. at 1960 Bucktail Lane. There is also a request for a Variance for building materials for the enclosure of the existing canopy. **The project was published with two**

**other Variances for drive aisle width and parking quantity, but through changes made to the design, suggested by staff, those Variances are no longer requested.**

This site is Lot 9 of Sugar Grove Industrial Park Unit 2. Lot 9 was originally developed as a drywall facility with railroad spur track in 2004. **It was then purchased and used by a different drywall company a few years ago.** Chemical processing is a Special Use in the M-1 Limited Manufacturing District.

**The applicant was generally complete with the submittal on February 18, 2011. Staff provided comments on the initial plans to the applicant on March 7, 2011 and March 9, 2011. Supplemental information and revised plans (attached) were submitted on March 11, 2011 and are reviewed in this report. Staff first began working with the applicant at the end of September, 2010.**

### **COMPREHENSIVE PLAN RECOMMENDATIONS**

The Comprehensive Plan designates the site as "Business Park". The Comprehensive Plan does not provide any policy regarding specific uses allowed in various districts of the Zoning Ordinance.

**Contiguous properties are designated Business Park to the west, Open Space to the east, Single Family Residential to the south, and Neighborhood Commercial across the railroad to the north.** The existing building on this site is compatible with surrounding uses.

### **ZONING ORDINANCE STANDARDS**

**The following amends the previous report:**

Uses on this site are limited to the permitted and Special Uses allowed in the M-1 Limited Manufacturing District. Chemical processing is a Special Use in the M-1 Limited Manufacturing District.

Several standards must be met in order to grant a Special Use. These standards, and the status of each, are detailed below. The Planning Commission must determine that the Special Use:

- a. Will be harmonious with and in accordance with the general objectives of the Comprehensive Land Use Plan and/or this zoning ordinance.

*The proposed chemical processor is consistent with the objectives of the Comprehensive Plan and the Zoning Ordinance. The proposed use could be considered compatible with planned uses for the area. With the Special Use, the proposed use will be in conformance with the Zoning Ordinance.*

- b. Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not alter the essential character of the same area.

*The applicant states that the existing building with the new use and outdoor uses would be operated and maintained in harmony with its surroundings and not alter the essential character of the area because the building already exists and they will operate and maintain the outdoor storage to be in full compliance with all environmental regulations.*

- c. Will not be hazardous or disturbing to existing or future neighborhood uses.

*The use should not be hazardous or disturbing to existing neighboring uses, as this area is primarily industrial, commercial, and agricultural in nature. The adjacent agricultural land may become residential in the future, but is generally screened by an existing tree line.*

- d. Will be adequately served by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewers and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

*The site is an established business park with essential public facilities that can adequately serve the proposed use.*

- e. Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the Village.

*The use should not create excessive additional requirements at public cost. The Fire District has reviewed the chemical sheets for this use and is comfortable with them. The use will be beneficial to the economic welfare of the Village as it generates both property and sales taxes.*

- f. Will not involve uses, activities, processes, materials, equipment and/or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

*The use will not produce significant traffic, noise, smoke, fumes, glare, or odors. The applicant states the use will have no impact to other properties.*

- g. Will have vehicular approaches to the property which shall be so designed as to not create an undue interference with traffic on surrounding public streets or highways.

*The access points to Bucktail Lane are already installed at this site. No changes to the drives accessing Bucktail Lane are proposed.*

- h. Will not increase the potential for flood damage to adjacent property, or require additional public expense for flood protection, rescue or relief.

*Stormwater management has been addressed as part of Sugar Grove Industrial Park development and at the time of development of this site. The Village engineer will check that stormwater is addressed for the new exterior improvements that are proposed.*

- i. Will not result in the destruction, loss or damage of natural, scenic or historic features of major importance to the Village.

*There are no scenic or historical features on this site. None of the proposed exterior improvements would impact the existing trees on the property.*

The proposed Variance is being requested pursuant to Section 11-10-7-E-1 of the Sugar Grove Zoning Ordinance.

Several standards must be met in order to grant a Variance. These standards, and the status of each, are detailed below. The Plan Commission must determine that with the Variance:

- a. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district:

*The variance is requested to allow for an enclosed canopy attached to the building with more screening than a standard fence would provide for outdoor storage, but with a wall that provides for more ventilation than a minimum 50% masonry wall that is required. The property in question could yield a reasonable return as another use, but with this use the proposed vented wall is stated to be necessary by the applicant.*

- b. Plight of the owner is due to unique circumstances:

*This may be a unique circumstance in that few types of site users other than chemical processors would have ventilation issues.*

- c. The Variation, if granted, will not alter the essential character of the locality:

*The variance for building materials would mostly affect the north wall of the*

*building. This wall is visible from as far away as US Highway 30 during the winter, but there is a tree line near the BNSF Railroad that blocks the view during the other seasons. There is very limited impact on the character of the area.*

The Plan Commission also needs to consider the following in making the above determination:

- a. The particular physical surroundings, shape or topographical condition of the specific property involved would bring particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out:

*The physical surroundings, shape or topographical condition of the property do not affect this Variance request in either a positive or negative way.*

- b. The conditions upon which the petition for variation is based would not be generally applicable to other property within the same zoning district:

*If it is determined that the only proper way to achieve ventilation for this use is through the proposed metal sided walls, then the metal sided walls would be a variation that is not generally applicable to other properties in this zoning district since they are necessary for this specific use.*

- c. The purpose of the variation is not based exclusively upon a desire to make more money out of the property:

*As compared to a standard fence with outdoor storage, this enclosure is preferable. As described, the variation for ventilation is integral to this use.*

- d. The alleged difficulty or particular hardship has not been created by any person presently having an interest in the property, or by the applicant:

*The hardship appears to be related to the type of use more than the applicant themselves.*

- e. The granting of the variation will not be detrimental to the public welfare, or injurious to other property or improvements in the neighborhood in which the property is located:

*The granting of such a variation would not be detrimental to the public welfare or injurious to other property. This is more an aesthetic issue, but with the tree line nearby should not be of much concern.*

- f. The variation will not:

1. Impair an adequate supply of light and air to adjacent properties:

*This Variance would in no way affect light and air.*

2. Substantially increase the hazard from fire or other dangers to said property or adjacent properties:

*The enclosure will help contain chemicals on the property.*

3. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of Sugar Grove:

*This Variance would generally not affect the public health, comfort, morals, or welfare of the inhabitants of Sugar Grove. It may help with public safety to some extent.*

4. Diminish or impair property values in the neighborhood:

*This Variance would generally not impair property values in the neighborhood because it will not be very visible from other properties with the existing tree line.*

5. Unduly increase traffic congestion in the public streets and highways:

*This Variance would in no way affect traffic.*

6. Create a nuisance:

*This Variance would in no way create a nuisance.*

7. Result in an increase in public expenditures:

*This Variance would not result in an increase in public expenditure.*

- g. The variation is the minimum variation necessary to make possible the reasonable use of the land, building or structure:

*The variance requested is the minimum necessary to achieve ventilation while still enclosing the canopy according to the applicant. This will help this user locate in this existing building.*

## **EVALUATION**

**The following amends the previous report:**

Generally, this use is required to conform to requirements of the Village of Sugar Grove Zoning Ordinance. The following evaluation is related to the Zoning Ordinance requirements.

1. Land Use / General – With a Special Use permit, chemical processing is allowed in the M-1 District.

2. Existing Conditions – There are existing trees on the site which will not be disturbed with the proposed site improvements.

3. Lots & Buildings Layout – The lot coverage is shown as 28.5%. The maximum allowed is 75%.

4. Building Setbacks – The existing building and the proposed enclosed canopy meet building setback requirements. All building setback lines should be added to the plan.

5. Parking / Drive Aisles – The site currently has 35 parking spaces, including 2 handicap accessible spaces. The building requires 36 parking spaces based on the proposed Floor Plan and the Zoning Ordinance requirements for warehouse / storage and office space. The plan shows the 18 parking spaces at the front of the building left as is, the 17 parking spaces in the south parking lot relocated to the east side of the building, and the addition of 1 parking space for a total of 36 parking spaces (including 2 handicap accessible parking spaces). Parking space dimension requirements have been met. The plans will need to be revised to show handicap accessible parking space sign details.

The minimum 24' drive aisle width requirement has been met throughout the site. The drive aisle widths should be dimensioned on the plan. The truck maneuvering area southwest of the proposed loading docks will be limited as proposed on the attached plans. Also, there is a septic field located southeast of the loading docks that may not be paved over. The septic field needs to be shown on the plans with its setback from pavement. The applicant is currently investigating ways to address this: either by relocating the septic field or the proposed loading docks. The plans show removal of all existing gravel areas on the site, which were installed by the original site owner without approval. The plans show installation of curb for all new paved areas. All site improvements would be located outside of the detention easement on the property.

6. Parking Setbacks – The existing parking lot and the proposed additional paved areas meet parking setback requirements. All parking setback lines should be added to the plan.

7. Sidewalk / Path Access – Lots in this subdivision have not been required to install public sidewalks in the past. There are no plans to install public sidewalks with this lot at this time.

8. Street Access / Traffic Study – Access to the site is provided from two existing driveways to Bucktail Lane. Bucktail Lane is accessed via Dugan Road.

9. Design – The primary design issue is the location of the septic field and its interaction with the paved area and loading area. This will need to be resolved before moving forward. The Plan Commission should also consider that a Zoning Ordinance update is currently underway regarding accessory uses and items such as which yards they should be allowed in are part of that discussion. Currently, standards do not exist for accessory uses such as outside storage tanks, etc.

10. Landscaping / Tree Mitigation – The Landscape Plan has not been submitted at this time. The applicant is preparing one at this time.

11. Architecture – The existing canopy is proposed to be enclosed. The exterior material is shown as new metal siding. The Zoning Ordinance requires a minimum 50% masonry product on all sides of the enclosed canopy. Metal siding is not allowed. The existing building is 100% masonry on the front and more than 50% masonry product on the rear and sides. A Variance for metal siding on the enclosed canopy is requested. The applicant has stated that the metal siding is necessary for ventilation purposes. The applicant has provided responses to the Variance standards (attached) and staff provided responses earlier in this report. In general, staff is recommending approval of this request since this side of the building abuts the existing tree line and is not very visible from other properties or the public right-of-way. The applicant should clarify how the ventilation works though. The plans show that the proposed metal siding would match the existing metal siding.

The proposed acid scrubber stack is required to be screened if it will be visible from Bucktail Lane or other public rights-of-way. Staff does not believe it will be very visible from Bucktail Lane. There is some other existing rooftop equipment that is not as tall as the proposed 9' acid scrubber stack, but that is located closer to the front of the building. This equipment is also not very visible from Bucktail Lane. The equipment was installed by the original site owner without Village approval. Screening this rooftop equipment would seem to draw more attention to it than leaving it exposed. Staff is recommending it not be screened.

The north elevation should be provided for the railcar unloading platform and pipe supports.

12. Lighting – The site will not be used at night so parking lot light poles are not required. The building does have 12 existing wall pack lights. Staff requested that the 12 wall packs be shielded so that light points down to the ground rather than out horizontally. The elevation plans contain notes showing the lights will be shielded. No new lights are proposed.

13. Signage – The existing wall sign will be removed. A new wall sign is not proposed. The proposed ground sign measures 27 square feet and meets the maximum size requirement. The ground sign would be setback approximately 20 feet from the front property line, which would meet the setback requirement.

14. Outdoor Storage / Loading / Trash – The applicant states that there will not be outdoor

storage other than the various tanks proposed on the lot. Therefore staff requested that only the tanks be screened with fences, rather than the entire rear and both sides of the lot. The existing diesel fuel tanks should also have a fence installed around them. Loading is requested to be screened by removing the extra existing pavement west of the loading docks and the south overhead door. This pavement (a triangular area as shown in the attached drawing) should be removed and landscaped to provide screening of the loading docks. The applicant has provided a letter (attached) which states that all trash will be kept inside the building so there is no need for an outdoor enclosure.

15. Engineering – EEI’s review letter is attached. Engineering Plans have not been completed. The applicant is preparing these at this time. The Plat of Survey scale error will need to be corrected also.

16. Water supply – Water service is already installed along Bucktail Lane and the northwest side of this lot.

17. Sanitary sewer – This area of the Village is not served by a sanitary sewer line. This property like many others in the area is served by septic systems.

18. Stormwater management – EEI will review stormwater service as the project moves forward. A detention pond that serves this subdivision is located within an easement on this lot.

19. Building / Fire – The Building Division and Fire District will review the plans as this project moves forward. The majority of the interior of the building will be open warehouse space. The Building Division has noted quite a bit of damage to the exterior of the building and the canopy that will need to be addressed.

### **PUBLIC RESPONSE**

Staff has received no public comment on this project.

### **STAFF RECOMMENDATION**

#### **The following amends the previous report:**

Staff recommends approval of the Variance to waive the building material requirement thereby allowing metal siding for the proposed enclosed canopy as shown on the Elevation Plans, titled “Elevations”, by Kestrel Management Services, LLC, sheet 5 and 6, dated February 2011, last revised March 10, 2011.

Staff recommends approval of the Special Use for chemical processing including outdoor tanks and loading pursuant to Section 11-10-2 and 11-10-7-E-1 of the Sugar Grove Zoning Ordinance, subject to the following conditions:

1. The Special Use shall substantially conform to:

A. the Site / Floor / Ground Sign Elevation Plan, titled “Facility Plan & Section - North” and “Facility Plan – South”, by Kestrel Management Services, LLC, sheet 3 and 4, dated February 2011, last revised March 10, 2011;

B. the Architectural Elevation / Loading Dock Elevation / Railcar Unloading Platform Elevation / Outdoor Storage & Fence Elevation Plans, titled “Elevations” by Kestrel Management Services, LLC, sheets 5 and 6, dated February 2011, last revised March 10, 2011;

C. the Landscape Plans, not yet submitted,

D. the Engineering Plans, not yet submitted,

except as such plans may be revised to conform to Village codes and ordinances and the conditions below.

2. All building setback lines shall be added to the plan, prior to Village Board review.
3. Handicap accessible parking space sign details shall be added to the plan, prior to Village Board review.
4. The drive aisle widths shall be dimensioned on the plan, prior to Village Board review.
5. The septic field shall be shown on the plans with its setback from pavement. Any design changes necessitated by the interaction between the pavement and septic field shall be reviewed by staff, prior to Village Board review.
6. All parking setback lines should be added to the plan, prior to Village Board review.
7. A Landscape Plan shall be submitted and reviewed by staff, prior to Village Board review.
8. The north elevation drawing shall be provided for the railcar unloading platform and pipe supports, prior to Village Board review.
9. The existing diesel fuel tanks shall be screened by a fence and shown on the plans screened, prior to Village Board review.
10. Drawings showing landscape screening of the loading dock area shall be provided (by removing a triangular area of existing pavement), prior to Village Board review.
11. The review comments from the Village engineering consultant in the letter dated March 9, 2011 shall be addressed. Engineering Plans shall be submitted and reviewed by the Village engineering consultant and staff, prior to Village Board review.

12. The Plat of Survey scale error shall be corrected, prior to Village Board review.
13. The outdoor storage tanks and railcar unloading platform are acknowledged and approved in the locations and sizes shown on the various plans as accessory uses.

N ↑

Airpark

United States Highway 30

Duffy

Granart

Dugan

Bucktail

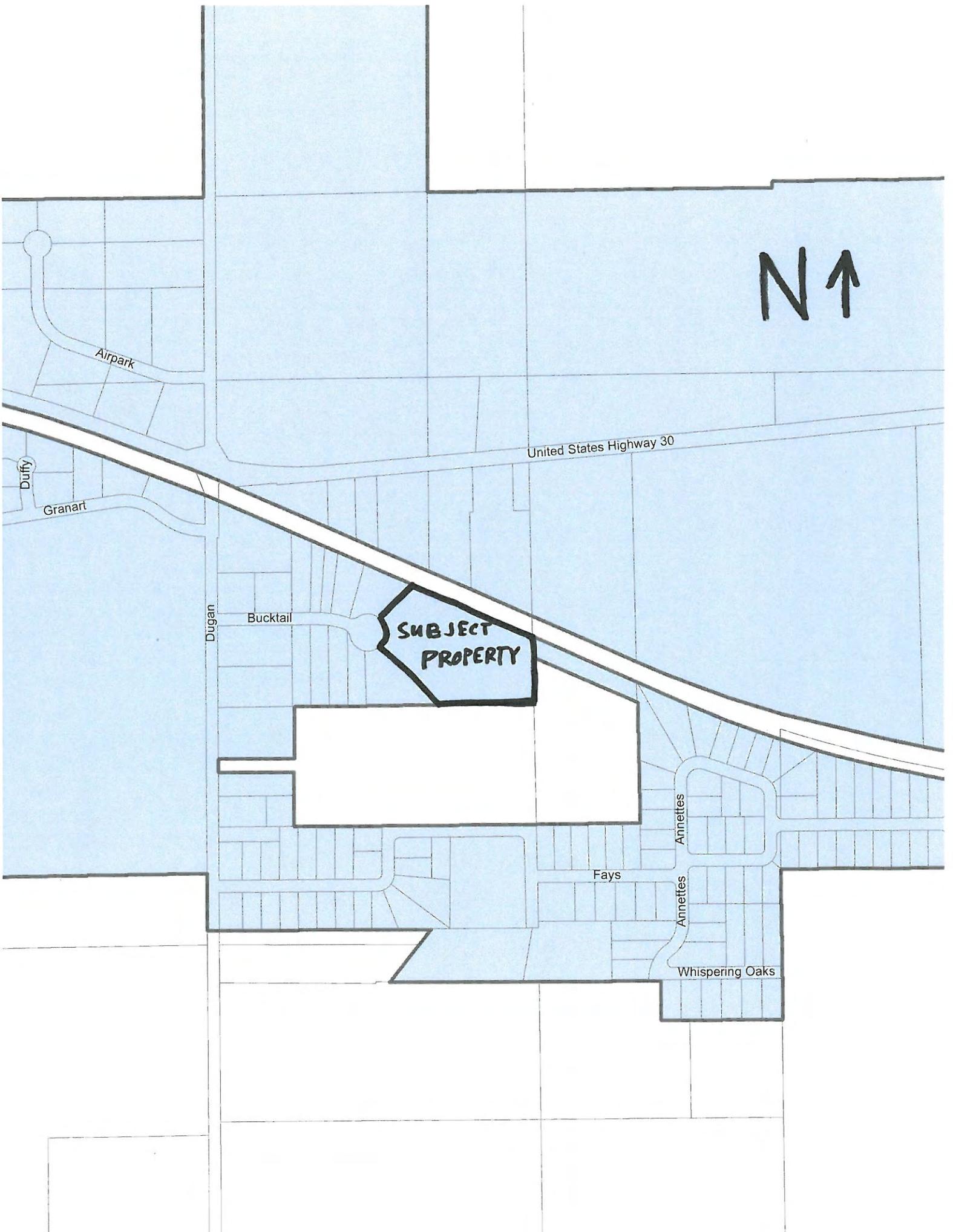
**SUBJECT  
PROPERTY**

Annettes

Fays

Annettes

Whispering Oaks





PROCLAMATION  
ADMINISTRATIVE PROFESSIONALS DAY  
"THE CELEBRATION OF OFFICE  
PROFESSIONALISM"

APRIL 27, 2011

*WHEREAS, in keeping with the tradition of their profession, administrative professionals are accepting vital responsibilities and are performing important roles in commerce, industry and government; and*

*WHEREAS, the efforts of these professionals and their contributions are significant; and*

*WHEREAS, administrative professionals work tirelessly for the betterment of all staff; and*

*WHEREAS, citizens depend on the municipal administrative professionals for the role they play in the provision of public services; and*

*WHEREAS, in recognition of scale backs in staffing that have necessitated the need for all in the workplace to pull together, not just administrative professionals this year's theme is, "The Celebration of Office Professionalism", encompassing everything about administrative professionals; from their values and excellence in work, to their appreciation of their coworkers.*

*THEREFORE, I, P. Sean Michels, President of the Board of Trustees of the Village of Sugar Grove, Kane County, Illinois do hereby proclaim April 27, 2011 as;*

*Administrative Professionals Day*

*and furthermore express the Village of Sugar Grove's sincere appreciation to our administrative professionals and urge all businesses and industries to join in giving special recognition of administrative professionals.*

*Passed this 5th, day of April, 2011*

*President, P. Sean Michels*

*Trustee, Robert E. Bohler*

*Trustee, Kevin M. Geary*

*Trustee, Mari Johnson*

*Trustee, Rick Montalto*

*Trustee Thomas Renk*



**Proclamation  
Library Week  
April 10-16, 2011**

*WHEREAS, the Sugar Grove Library contributes to the excellent quality of life enjoyed by the residents of Sugar Grove;*

*WHEREAS, libraries provide free access to all – from books and online resources for families to library business centers that help support entrepreneurship and retraining;*

*WHEREAS, the Sugar Grove Library enhances the community through its mission to “actively participate in the development of a strong, literate and well-informed community” by providing open access to a variety of materials that foster opportunities for lifelong learning;*

*WHEREAS, our nation’s school, academic, public and special libraries make a difference in the lives of millions of Americans today, more than ever;*

*WHEREAS, librarians are trained professionals, helping people of all ages and backgrounds find and interpret the information they need to live, learn and work in a challenging economy;*

*WHEREAS, libraries are helping level the playing field for job seekers, with 88% of public libraries providing access to job databases and other online resources;*

*WHEREAS, libraries are places of opportunity providing programs that teach all forms of literacy, promoting continuing education and encouraging lifelong learning.*

*NOW, THEREFORE, I, P. Sean Michels, President of the Board of Trustees of the Village of Sugar Grove, Kane County, Illinois, do hereby proclaim the week of April 10-16, 2011 Library Week, and encourage all residents to visit the library this week to take advantage of the wonderful resources available.*

*Passed this 5th day of April, 2011*

*President, P. Sean Michels*

*Trustee, Robert E. Bohler*

*Trustee, Kevin M. Geary*

*Trustee, Mari Johnson*

*Trustee, Rick Montalto*

*Trustee Thomas Renk*

*Village Clerk, Cynthia L. Galbreath*