AN ORDINANCE ANNEXING CERTAIN PROPERTY INTO THE CITY OF LEAWOOD PURSUANT TO CONSENT OF THE OWNER.

WHEREAS, COR DEVELOPMENT, LLC, a Kansas Limited Liability Company, (hereinafter "COR DEVELOPMENT") is the owner of the tract of ground that is described in the attached Exhibit ‘A,’ said Exhibit ‘A’ being incorporated herein by reference; and

WHEREAS, the property described in Exhibit A adjoins the City of Leawood but is presently located in an unincorporated portion of Johnson County; and

WHEREAS, COR Development and the City of Leawood have both approved and executed an Annexation Agreement; and

WHEREAS, COR Development has filed a “Petition Requesting Voluntary Annexation by the City of Leawood, Kansas Subject to Conditions”; and

WHEREAS, the Governing Body of the City of Leawood has, after giving the matter due consideration, determined that it is in the best interests of the City to accept the Petition; and

WHEREAS, it is the intent of the City, with the consent of the owner, to annex said property into the City of Leawood in the manner authorized by K.S.A. 12-520(a)(7) with said annexation to be effective as provided by law.

NOW THEREFORE, be it ordained by the Governing Body of the City of Leawood:

Section 1. Property Annexed. The City of Leawood does hereby annex pursuant to the provisions of K.S.A. § 12-520(a)(7) the property described in Exhibit ‘A,’ attached hereto and incorporated herein by reference.

Section 2. Notice of Annexation. The City Clerk is directed to furnish a certified copy of this ordinance to the Johnson County Clerk, the Register of Deeds of Johnson County, and the Johnson County Election Commissioner.

Section 3. Effective Date. This ordinance shall take effect and be in force from and after its publication in the official City newspaper, unless this date shall conflict with the provisions of K.S.A. 12-523 and then it shall take effect in accordance with the provisions of said statute.

Passed by the Governing Body this 16th day of July, 2001.

Approved by the Mayor this 16th day of July, 2001.
Peggy J. Dunn, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
DESCRIPTION:

Part of the Northwest Quarter of Section 33, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of said Section 33; thence N 87°51'30" E, along the North line of the Northwest Quarter of said Section 33, a distance of 1173.45 feet; thence S 1°50'17" E, a distance of 824.10 feet; thence N 87°51'30" E, a distance of 370.00 feet to a point on the West line of the East 68 acres of the Northwest Quarter of said Section 33; thence S 1°50'17" E, along the West line of the East 68 acres of the Northwest Quarter of said Section 33, a distance of 238.27 feet to a point on the North right-of-way line of 137th Street as platted in the Church of the Resurrection Second Plat; thence S 72°11'24" W, along the North line of said Church of the Resurrection Second Plat a distance of 28.62 feet to a point of curvature; thence Southwesterly on a curve to the left, along the North line of said Church of the Resurrection Second Plat, with a radius of 650.00 feet, a central angle of 34°26'53" an arc length of 390.80 feet to a point of reverse curvature; thence Westerly, on a curve to the right, along the North line of said Church of the Resurrection Second Plat, with a radius of 600.00 feet, a central angle of 81°18'37" an arc length of 851.48 feet to a point of reverse curvature; thence Northwesterly, on a curve to the left, along the North line of said Church of the Resurrection Second Plat, with a radius of 675.00 feet, a central angle of 31°08'13", an arc length of 366.82 feet; thence S 87°54'55" W, along the North line of said Church of the Resurrection Second Plat, a distance of 68.22 feet to the West line of the Northwest Quarter of said Section 33; thence N 2°05'05" W, along the West line of the Northwest Quarter of said Section 33, a distance of 1309.98 feet to the TRUE POINT OF BEGINNING and containing 40.6287 acres, more or less.
ORDINANCE NO. 1902

AN ORDINANCE ANNEXING CERTAIN PROPERTY INTO THE CITY OF LEAWOOD PURSUANT TO CONSENT OF THE OWNER.

WHEREAS, COR DEVELOPMENT, LLC, a Kansas Limited Liability Company, (hereinafter "COR DEVELOPMENT") is the owner of the tract of ground that is described in the attached Exhibit ‘A,’ said Exhibit ‘A’ being incorporated herein by reference; and

WHEREAS, the property described in Exhibit A adjoins the City of Leawood but is presently located in an unincorporated portion of Johnson County; and

WHEREAS, COR Development and the City of Leawood have both approved and executed an Annexation Agreement; and

WHEREAS, COR Development has filed a “Petition Requesting Voluntary Annexation by the City of Leawood, Kansas Subject to Conditions”; and

WHEREAS, the Governing Body of the City of Leawood has, after giving the matter due consideration, determined that it is in the best interests of the City to accept the Petition; and

WHEREAS, it is the intent of the City, with the consent of the owner, to annex said property into the City of Leawood in the manner authorized by K.S.A. 12-520(a)(7) with said annexation to be effective as provided by law.

NOW THEREFORE, be it ordained by the Governing Body of the City of Leawood:

Section 1. Property Annexed. The City of Leawood does hereby annex pursuant to the provisions of K.S.A. § 12-520(a)(7) the property described in Exhibit ‘A,’ attached hereto and incorporated herein by reference.

Section 2. Notice of Annexation. The City Clerk is directed to furnish a certified copy of this ordinance to the Johnson County Clerk, the Register of Deeds of Johnson County, and the Johnson County Election Commissioner.

Section 3. Effective Date. This ordinance shall take effect and be in force from and after its publication in the official City newspaper, unless this date shall conflict with the provisions of K.S.A. 12-523 and then it shall take effect in accordance with the provisions of said statute.
CERTIFICATE

State of Kansas
County of Johnson
City of Leawood

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the above and foregoing with attached Exhibit A is a true and correct copy of Ordinance No. 1900 as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of said city this 25th day of July, 2001.

Martha Heizer, City Clerk
DESCRIPTION:

Part of the Northwest Quarter of Section 33, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas, being more particularly described as follows:

Beginning at the Northwest corner of the Northwest Quarter of said Section 33; thence N 87°51'30" E, along the North line of the Northwest Quarter of said Section 33, a distance of 1173.45 feet; thence S 1°50'17" E, a distance of 824.10 feet; thence N 87°51'30" E, a distance of 370.00 feet to a point on the West line of the East 68 acres of the Northwest Quarter of said Section 33; thence S 1°50'17" E, along the West line of the East 68 acres of the Northwest Quarter of said Section 33, a distance of 238.27 feet to a point on the North right-of-way line of 137th Street as platted in the Church of the Resurrection Second Plat; thence S 72°11'24" W, along the North line of said Church of the Resurrection Second Plat a distance of 28.62 feet to a point of curvature; thence Southwesterly on a curve to the left, along the North line of said Church of the Resurrection Second Plat, with a radius of 650.00 feet, a central angle of 34°26'53" an arc length of 390.80 feet to a point of reverse curvature; thence Westerly, on a curve to the right, along the North line of said Church of the Resurrection Second Plat, with a radius of 600.00 feet, a central angle of 81°18'37", an arc length of 851.48 feet to a point of reverse curvature; thence Northwesterly, on a curve to the left, along the North line of said Church of the Resurrection Second Plat, with a radius of 675.00 feet, a central angle of 31°08'13", an arc length of 366.82 feet; thence S 87°54'55" W, along the North line of said Church of the Resurrection Second Plat, a distance of 68.22 feet to the West line of the Northwest Quarter of said Section 33; thence N 2°05'05" W, along the West line of the Northwest Quarter of said Section 33, a distance of 1309.98 feet to the TRUE POINT OF BEGINNING and containing 40.6287 acres, more or less.
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any):

for consecutive week(s), as follows:

ORDINANCE NO. 1900-7/17/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JULY 18, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


$48.04
ORDINANCE NO. 1900
First published in The Legal Record, Tuesday, July 17, 2001.

ORDINANCE NO. 1900

AN ORDINANCE ANNEXING CERTAIN PROPERTY INTO THE CITY OF LEAWOOD PURSUANT TO CONSENT OF THE OWNER.

WHEREAS, COR DEVELOPMENT, LLC, a Kansas Limited Liability Company, (hereinafter "COR DEVELOPMENT") is the owner of the tract of ground that is described in the attached Exhibit "A," said Exhibit "A" being incorporated herein by reference; and

WHEREAS, the property described in Exhibit A adjoins the City of Leawood but is presently located in an unincorporated portion of Johnson County; and

WHEREAS, COR Development and the City of Leawood have both approved and executed an Annexation Agreement; and

WHEREAS, COR Development has filed a "Petition Requesting Voluntary Annexation by the City of Leawood, Kansas Subject to Conditions"; and

WHEREAS, the Governing Body of the City of Leawood has, after giving the matter due consideration, determined that it is in the best interests of the City to accept the Petition; and

WHEREAS, it is the intent of the City, with the consent of the owner, to annex said property into the City of Leawood in the manner authorized by K.S.A. 12-520(a)(7) with said annexation to be effective as provided by law.

NOW THEREFORE, be it ordained by the Governing Body of the City of Leawood:

Section 1. Property Annexed. The City of Leawood does hereby annex pursuant to the provisions of K.S.A. § 12-520(a)(7) the property described in Exhibit "A," attached hereto and incorporated herein by reference.

Section 2. Notice of Annexation. The City Clerk is directed to furnish a certified copy of this ordinance to the Johnson County Clerk, the Register of Deeds of Johnson County, and the Johnson County Election Commissioner.

Section 3. Effective Date. This ordinance shall take effect and be in force from and after its publication in the official City newspaper, unless this date shall conflict with the provisions of K.S.A. 12-523 and then it shall take effect in accordance with the provisions of said statute.

Passed by the Governing Body this 16th day of July, 2001.

Approved by the Mayor this 16th day of July, 2001.

Peggy J. Dunne, Mayor

Martha Hoizer, City Clerk

Patricia A. Bennett, City Attorney

ATTEST:

EXHIBIT

APPROVED AS TO FORM:

BEFORE ME, a notary public in and for said City of Leawood, who is duly commissioned, this 16th day of July, 2001, acknowledged the annexation of the property described in Exhibit "A," attached hereto and incorporated herein by reference.
WHEREAS, noise has been proven to have demonstrable adverse physiological, biochemical and psychological impacts on humans; and

WHEREAS, the noxious stimulus of noise has long been used as a laboratory model for producing stress; and

WHEREAS, a substantial body of science and technology exists by which excessive sound may be substantially abated; and

WHEREAS, every citizen has the right to the peaceable enjoyment of their private property, and the usability of their commercial and industrial property; and

WHEREAS, the City of Leawood, Kansas, desires to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life.

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

SECTION ONE: Chapter 11, Article 2, Section 5, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

11-205 DISTURBING THE PEACE

(a) It shall be unlawful for any person to make, continue, maintain or cause to be made or continued any excessive, unreasonable or unusually loud noise or any noise which disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the City of Leawood, when such noise would disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person.

(b) It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. "Neighboring inhabitants" shall include persons living within or occupying residential
districts of single or multi-family dwellings and shall include areas where multiple-unit dwellings and high-density residential districts are located.

(c) No person shall congregate with other persons because of, participate in, or be in any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area, when such sound would disturb the peace, quiet or repose of a reasonable person. A police officer may order all persons present in any group or gathering from which such sound emanates, other than the owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this section. Owners or tenants of the dwelling unit shall immediately abate the disturbance and, failing to do so, shall be in violation of this section.

(d) Exemptions. Sounds emanating from the following shall be exempt from the provisions of (a) through (c) above:

1. Emergency vehicles;
2. Public safety vehicles;
3. Emergency activities of the fire or police department;
4. Emergency activities of any utility company;
5. Municipal maintenance vehicles and equipment;
6. Parades, fun run, race, festival, fiesta, concert, or other public gathering, within city limits, which are sponsored or permitted by the City;
7. Any noise or sound from church bells, or similar chimes, when used as part of a religious observance or service and which does not exceed five continuous minutes in duration;
8. Any noise or sound from lawful school activity;
9. Any noise or sound from lawful fireworks displays.

(e) Statement of Intent. No provision of this section shall be construed to limit or abridge the rights of any person to peacefully assemble and express opinions. It is the purpose of this section to protect individuals from unreasonable intrusions caused by excessive, unnecessary, unreasonable or unusually loud noises.

(Ord. 1691C; 8/18/97)

SECTION TWO: Repeal of Existing Sections. The existing Code § 11-205 is hereby repealed.
SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 16th day of July, 2001.

APPROVED by the Mayor this 16th day of July, 2001.

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any), for __ consecutive week(s), as follows:

ORDINANCE NO. 1899C--7/17/01

Subscribed and sworn to before me on this date:

JULY 18, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


Publication Fees: $52.66
AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2, SECTION 5 OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO DISTURBING THE PEACE.

WHEREAS, noise has been proven to have demonstrable adverse physiological, biochemical and psychological impacts on humans; and

WHEREAS, the noxious stimulus of noise has long been used as a laboratory model for producing stress; and

WHEREAS, a substantial body of science and technology exists by which excessive sound may be substantially abated; and

WHEREAS, every citizen has the right to the peaceable enjoyment of their private property, and the usability of their commercial and industrial property; and

WHEREAS, the City of Leawood, Kansas, desires to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life.

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

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(b) It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound, in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. "Neighboring inhabitants" shall include persons living within or occupying residential districts of single or multi-family dwellings and shall include areas where multiple-unit dwellings and high-density residential districts are located.

(c) No person shall congregate with other persons because of, participate in, or be in any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area, when such sound would disturb the peace, quiet or repose of a reasonable person. A police officer may order all persons present in any group or gathering from which such sound emanates, other than the owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this section. Owners or tenants of the dwelling unit shall immediately abate the disturbance and, failing to do so, shall be in violation of this section.

(d) Exemptions. Sounds emanating from the following shall be exempt from the provisions of (a) through (c) above:

(1) Emergency vehicles;
(2) Public safety vehicles;
(3) Emergency activities of the fire or police department;
(4) Emergency activities of any utility company;
(5) Municipal maintenance vehicles and equipment;
(6) Parades, fun run, race, festival, fiesta, concert or other public gathering, within city limits, which are sponsored or permitted by the City;
(7) Any noise or sound from church bells, or similar chimes, when used as part of a religious observance or service and which does not exceed five [5] continuous minutes in duration;
(8) Any noise or sound from lawful school activity;
(9) Any noise or sound from lawful fireworks displays.

(e) Statement of Intent. No provision of this section shall be construed to limit or abridge the rights of any person to peacefully assemble and express opinions. It is the purpose of this section to protect individuals from unreasonable intrusions caused by excessive, unnecessary, unreasonable or unusually loud noises.

(Order. 1691C, 8/18/97)

SECTION TWO: Repeal of Existing Sections. The existing Code

§ 11-205 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Inapplicability: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 16th day of July, 2001.

APPROVED by the Mayor this 16th day of July, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
ORDINANCE NO. 1898

AN ORDINANCE GRANTING TO EVEREST MIDWEST LICENSEE LLC, A
TELECOMMUNICATIONS FRANCHISE AND THE RIGHT TO CONSTRUCT,
OPERATE AND MAINTAIN TELECOMMUNICATIONS FACILITIES WITHIN THE
CORPORATE LIMITS OF THE CITY OF LEAWOOD, KANSAS.

WHEREAS, the City of Leawood, Kansas ['City'], a municipal corporation, duly
organized and existing under the laws of the State of Kansas, has the right under statute to grant
a franchise to construct, operate and maintain telecommunications facilities in said City; and

WHEREAS, Everest Midwest Licensee LLC, ['Everest'] desires to operate
telecommunication facilities for the purposes of providing telecommunication services in the
City and its surrounding communities, and therefore has applied to the City for a franchise in
order to operate its facilities; and

WHEREAS, any such permission requires a franchise to be granted by the City in
accordance to K.S.A. § 12-2001, et seq.

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

1. Definitions. For the purpose of this franchise ordinance, the following words and
   phrases and their derivations shall have the following meaning:

   'Cable' includes both the coaxial cable used to transmit signals of high frequency, and fiber optic
cable that consists of a bundle of thin insulated glass strands used to transmit data, voice,
video and other communications, and any other assembly of materials so classified
generically as cable.

   'Cable Service' means the one-way transmission to subscribers of video programming or other
programming service, and subscriber interaction, if any, which is required for selection
and use of video programming or other programming service, as defined by 47 USC
§522(6), any successor statute of similar import.

   'City' means the City of Leawood, Kansas, a municipal corporation, and if applicable, the
territorial boundaries of the City of Leawood as now constituted or as shall hereafter
exist.

   'Facilities' means lines, pipes, wires, cables, conduits, ducts, culverts, hoses, irrigation systems,
manholes, poles, towers, vaults, pedestals, boxes, appliances, antennas, repeaters, micro
cells, Pico cells, amplifiers, transmitters, gates, meters, appurtenances, or other
equipment used by the franchisee for the purposes of conducting franchise operations and
providing service to subscribers.

   'Franchise Ordinance' means this ordinance passed to grant the telecommunications franchise
to franchisee. This ordinance shall operate as an agreement or contract between the City
and franchisee and shall be subject to the laws of the State of Kansas.

   'Franchisee' means Everest Midwest Licensee LLC, or its successors, transferees, or assigns.
'Franchise Fee' means the fee imposed by the City on franchisee solely because of its status as such, in accordance to K.S.A. § 12-2001. It shall not include: [1] any tax, fee, or assessment of general applicability including any which are imposed on franchisee; [2] requirements or charges incidental to the awarding or enforcing the franchise ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, [3] any permit fee or other fee imposed under any valid right-of-way ordinance, or [4] any other fee imposed by federal, state, or local law.

'Gross Revenues' means those revenues less uncollectible, derived from the following: [1] recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features, and measured local calls; [2] recurring local exchange access line services for pay phone lines provided by franchisee to all pay phone service providers; [3] local directory assistance revenue; [4] line status verification/busy interrupt revenue; [5] local operator assistance revenue; [6] nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, unbundled network elements, nonregulated services, carrier and end user access, long distance, and all other services not wholly local in nature are excluded from 'gross revenues.' Further, 'gross revenues' shall be reduced by bad debt expenses and uncollectible and late charges shall not be included within 'gross revenues.' If during the term of this franchise ordinance franchisee offers additional services of a wholly local nature which if in existence at the effective date of the franchise ordinance would have been included with the definition of 'gross revenues,' such services shall be included from the date of the offering of such services in the City for the remaining term of the franchise ordinance.

'Open Video System' means the provision of video programming service as described in and subject to 47 USC § 573, or a successor statute of similar import.

'Person' means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

'Right-of-Way' means the area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways or boulevards dedicated as right-of-way.

'Service' means a commodity used by the public and provided through franchisee's facilities.

'Subscriber' means any person who receives services from franchisee services.

'Telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, as defined by 47 USC § 153(43), and successor statute of similar import.

'Telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities used, as defined by 47 USC § 153(46), a successor statute or similar import.

'Utility Easement' means, for the purpose of this ordinance, an easement dedicated to the City for the purpose of utilities.
2. **Grant.** Franchisee is hereby granted the right, privilege and franchise to construct, operate, and maintain facilities in, through and along the City’s right-of-way and utility easements for the purposes of supplying local telecommunications services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, franchisee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC, subject to franchisee’s right to challenge in good faith such requirements as established by the FCC, KCC or other City ordinance.

This franchise does not provide franchisee the right to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City. Upon franchisee’s request for a franchise to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City, the City agrees to timely negotiate such franchise in good faith with franchisee. Franchisee agrees that this franchise does not permit franchisee to operate an open video system without payment of fees permitted by 47 USC § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 USC § 573.

3. **Use of Public Right-of-Way and Utility Easements.** Franchisee’s facilities shall be located in the right-of-way and utility easements as now constructed and as further authorized by the City in accordance with all applicable laws, statutes and/or ordinances. Nothing in this agreement shall authorize Franchisee to locate its facilities on or within any City owned parkland property or any other City owned property unless authorized by separate agreement. Placement, changes, additions, replacements, maintenance and repairs to franchisee’s facilities shall be conducted in compliance with any applicable ordinance and/or permit requirement. Franchisee will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, franchisee shall be subject to all technical specifications, design criteria, policies now or hereafter adopted or promulgated by the City, or any other appropriate governmental entity. In its use of the right-of-way and utility easements within the City, franchisee shall be subject to all right-of-way management ordinances and all other applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers.

4. **Franchise Fee.** Franchisee shall pay the greater of $12,000 or an annual sum of $2.50 per lineal foot for all fiber in the right-of-way. This payment shall be due on the effective date of the ordinance and annually thereafter. In the event franchisee provides local service to customers within the City, franchisee shall notify the City Clerk. At such time, the franchise fee shall be the greater of the above prescribed amount, or five [5%] percent of its gross revenues as defined herein. Payment on the basis of gross revenues shall be made on a monthly basis without invoice or reminder from the City, and paid within forty-five [45] days after the last day of the applicable month.
All payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Franchisee shall pay interest at an annual rate of ten [10%] percent for each month or fraction thereof on any late payment of the charge provided for in this franchise ordinance.

5. **City's Right to Audit and Access to Records.** If franchisee is providing service within the City, franchisee shall annually file with the City of Leawood a gross receipts report regarding all applicable monthly revenues and all relevant codes. Franchisee and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of franchisee and agree that pursuant to K.S.A. § 45-221(18), as amended, such information does not constitute public records subject to K.S.A. § 45-218, as amended. In the event the City is required by to disclose such information, the City shall provide franchisee seven [7] days advance notice of its intent to disclose such information and shall take such action as may be reasonably required to cooperate with the franchisee to safeguard such information. The City shall also have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of the franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of gross revenues is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual rate of ten [10%] percent.

Regardless of whether franchisee is providing service within the City, the City’s acceptance of any payment determined as hereinbefore provided to be deficient shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by franchisee. In addition to access to the records of franchisee for audits, upon request, franchisee shall provide reasonable access to records necessary to verify compliance with the terms of this franchise ordinance.

6. **Term.** This franchisee ordinance shall be effective for a term of one [1] year from the effective date.

7. **Renegotiation of Franchise.** If the City has a good faith belief that franchisee is offering local telecommunications services within the City beyond those telecommunications services contemplated by this ordinance, the City may seek renegotiation of this franchise if the City reasonably believes that such services constitute local telecommunications services subject to a franchise fee under K.S.A. § 12-2001. In the event the City seeks renegotiation under such circumstances, franchisee agrees to negotiate with the City in good faith in a timely manner. Nothing herein shall preclude the City from seeking a separate franchise agreement with franchisee if the City has a good faith belief that franchisee is offering services other than telecommunications services that are subject to a franchise fee under K.S.A. § 12-2001. The purpose of this provision is to allow the City to ensure that franchisee is paying a franchise fee for all services for which a franchise fee is appropriate.
8. **Description of Service.** Franchisee shall on a semi-annual basis provide the City with a description of new local telecommunications services offered within the City during the prior six-month period. In the event franchisee offers new services [other than telecommunications services, extended area service, unbundled network elements, nonregulated services, carrier and end user access and long distance], franchisee shall notify the City of such services on a semi-annual basis.

9. **Franchisee Information.** Franchisee shall, at its own expense, annually submit to the City the following information:

   a. A report of the franchisee’s gross revenues as referenced by Section 5 herein [only if franchisee is providing service within the City]; and

   b. A summary of the previous year’s development of franchise facilities, including but not limited to, the location of facilities during the year, and franchisee’s plan of development of facilities for the next year – Note: in lieu of this requirement, franchisee’s right-of-way director may meet in person with the City’s Public Works Director to discuss these issues; and

   c. Information as to the number of subscribers in the City of Leawood [only if franchisee is providing service within the City]. Note: this requirement does not include giving the identification of the subscribers.

10. **Subscriber Rates.** Franchisee’s charges to subscribers will comply with all applicable federal and state regulations. Upon request, franchisee shall file with the City Clerk a schedule of current rates in effect when such rates are not on file and publicly available from the KCC. When provided so by state or federal law, the City may at any time fix a reasonable schedule of maximum rates to be charged to the City and its residents.

11. **Use of Facilities by Other Service Providers.** On a semi-annual basis, franchisee shall notify the City of the identity of local service providers that have been granted a certificate of convenience to offer local telecommunications services within the State of Kansas. Franchisee shall also provide the City on a semi-annual basis of the identity of entities with which franchisee has entered into an interconnection and/or resale agreement within the State of Kansas.

12. **Transfer of Franchise.** Pursuant to the written permission of the City, which shall not be unreasonably withheld, franchisee shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. City approval may be denied only upon a good faith finding by the City that the assignee lacks the legal, technical or financial qualifications to perform its obligations in accordance with this franchise ordinance or any other appropriate governmental requirement. If franchisee should seek approval to assign this franchise, franchisee shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This franchise shall be assignable only
13. **Other Service Providers.** Franchisee shall not interfere with any agreement between the City and another service provider. Additionally, if and when the City requires or negotiates to have another service provider cease to use its existing poles and to relocate its facilities underground, all other service providers using the same poles, including franchisee when applicable, shall also relocate their facilities underground at that time; provided, however, that such placement is economically reasonable. The City shall not unreasonably enter into such an agreement with another service provider, and notice of any intent to enter into such an agreement shall be timely provided to franchisee.

14. **Notification Procedure.** Any required or permitted notice under this franchise ordinance shall be in writing. Notice upon the City shall be delivered to the City Clerk by first class United States Mail or by personal delivery. Notice upon franchisee shall be delivered by first class United States Mail or by personal delivery to:

   Everest Midwest Licensee LLC  
   5555 Winghaven Boulevard  
   O’Fallon, MO 63366

15. **Indemnification.** Upon notice by the City, franchisee shall fully indemnify, defend and hold harmless the City, its officers, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees or otherwise, to the extent caused by franchisee’s actions and operations of its telecommunications service in accordance to this ordinance. The City agrees to immediately notify franchisee of any such claim, demand, suit, proceeding, and/or action, by providing written notice via certified mail to franchisee. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve franchisee from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

16. **Liability Insurance Requirement.** Franchisee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas in an amount not less than One Million Dollars [$1,000,000] per occurrence and Two Million Dollars [$2,000,000] in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by the service provider, or alleged to so have been caused or occurred. If franchisee is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.
Performance and Maintenance Bond Requirements. Franchisee shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of $50,000, for a term consistent with the term of this franchise ordinance plus one additional year, conditioned upon franchisee’s faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period shall satisfy this requirement.

Reservation of Rights. In addition to any rights specifically reserved to the City by this franchise ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Kansas, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals. Nothing in this franchise ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of the franchise, except those required by federal or state law, if the City determines: [a] that it is in the public interest to do so; and [b] that the enforcement of such provision will impose an undue hardship on franchisee or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this franchise ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

Forfeiture of Franchise. In case of the failure of franchisee to comply with any of the provisions of this franchise ordinance, or if franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this franchise ordinance, franchisee shall forfeit all rights and privileges granted by this franchise and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

a. For violations concerning the use of the right-of-way and/or utility easements as described in Section 3 of this franchise ordinance and deemed by the Public Works Director to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen [14] days subsequent to receipt of such notice to inform the City in writing of the action franchisee shall take to correct the violation. Such corrective action shall be completed within thirty [30] days subsequent to receipt of notice unless otherwise agreed to by the City. If, at the end of such period, the City deems that the conditions of such franchise have not been complied with by franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If franchisee fails to take corrective action within the 30-day period set forth above, nothing herein shall preclude the City from maintaining an action
against franchisee to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable costs of corrective action incurred by the City.

b. For all other violations of the franchise ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have ninety [90] days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such period the City deems that the conditions of such franchise have not been complied with by franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated.

c. If within thirty [30] days after the effective date of an ordinance to terminate the franchise, in accordance with 19(a) or 19(b) herein, the franchisee shall not have instituted an action in the District Court of Johnson County, Kansas, to determine whether or not the franchisee has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If within such thirty [30] day period the franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or at law or equity, either party shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this franchise ordinance and/or to abate nuisances maintained in violation thereof.

20. **Revocation of Franchise.** In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this franchise and all rights and privileges of the franchisee as a result of and in response to any of the following events or reasons:

a. Any provision of this franchise ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this franchise ordinance as to cause the same to become null and void; or

b. Franchisee commits an act of fraud or deceit against the City in obtaining the grant of this franchise herein conferred, or upon being granted franchisee commits such an act against the City.
To revoke this franchise in accordance with the provisions of this section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. Prior to the enactment of such ordinance, franchisee shall be provided with timely written notice by certified mail, and franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty [30] days after the effective date of such ordinance to terminate the franchise the franchisee shall not have instituted an action in the District Court of Johnson County, Kansas, to determine whether or not the franchise was appropriately terminated in accordance to the provisions of this section and is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If, within such thirty [30] day period, the franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the Court finds that the franchise is subject to cancellation by the reason addressed by this section, this franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

21. **Miscellaneous Provisions.**

a. **Nonexclusive Clause.** The privilege to construct, erect, operate and maintain franchisee’s facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other persons. However, no such additional franchise shall in any way affect the rights or obligations of franchisee.

b. **Exclusive Benefit of Franchise Right by Franchisee.** The rights granted to franchisee by this franchise ordinance shall be for the sole use of franchisee to provide telecommunications services as authorized herein. These rights are for the exclusive benefit of franchisee, except where otherwise provided herein, or when authorized by the City.

c. **Franchisee is Without Remedy Against the City.** Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this franchise ordinance, or for the failure of the City to have the authority to grant, all, or any part, of the franchise ordinance granted. Second, franchisee expressly acknowledges that it accepted the franchise ordinance granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the franchise conferred upon franchisee. Third, franchisee acknowledges by its acceptance of this franchise ordinance that it has not been induced to enter into this franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this franchise ordinance not expressed herein. Finally, franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions of this franchise.
ordinance and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. **Federal, State and City Jurisdiction.** This franchise ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this franchise ordinance to the contrary, the construction, operation and maintenance of franchise facilities by franchisee or its agent shall be in accordance with all laws and regulations of the United States, the State, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee’s rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, franchisee’s failure to comply with any law or regulation governing the operation of said franchise facilities may result in a forfeiture of the franchise in accordance with the provisions of this franchise ordinance.

e. **Attachment to Poles.** Nothing in this franchise ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or franchisee on the poles of the other. If such attachments are desired by either party, then a separate non-contingent agreement shall be prerequisite to such attachments.

f. **Failure to Enforce.** The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights nor a waiver of the other party’s obligations as provided herein.

g. **Force Majeure.** Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond franchisee’s or the City’s control.

h. **Severability.** Any section, subsection, sentence, clause, phrase, or portion of this franchise ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

22. **Repeal of Other Ordinances.** All other ordinances, agreements and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be canceled, annulled, repealed, and set aside; provided, that this franchise ordinance shall not take effect or become in force until the requirements for adopting a franchise ordinance under Kansas statute have occurred.
23. **Effectiveness.** This franchise ordinance is made under and in conformity with the laws of the State of Kansas. Before the final passage of this ordinance, it shall be read at three [3] regular meetings of the Governing Body. After final passage, this ordinance shall take effect and be in force after the expiration of sixty [60] days from the date of final passage by the Governing Body and after publication in the official City newspaper for two [2] consecutive weeks following final passage, unless a proper protest is filed, or franchisee fails to provide written acceptance within the sixty [60] day period.

**First Reading:** June 18, 2001

**Second Reading:** July 2, 2001

**Third Reading:** July 16, 2001

**Effective Date:** September 15, 2001

Passed by the Governing Body this 16th day of July, 2001.

Approved by the Mayor this 16th day of July, 2001.

ATTEST:

_Peggy Dunn_, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

_Lisa R. Wetzler_, Assistant City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 2 consecutive week(s), as follows:

ORDINANCE NO. 1898--7/24/01 & 7/31/01

\[Signature\]  
Legal Notices Administrator

Subscribed and sworn to before me on this date:  
AUGUST 1, 2001

\[Signature\]  
Notary Public

DEBRA VALENTI  
Notary Public - State of Kansas

$373.86
AN ORDINANCE GRANTING TO EVEREST MIDWEST LICENSEE LLC, A TELECOMMUNICATIONS FRANCHISE AND THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN TELECOMMUNICATIONS FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAWOOD, KANSAS.

WHEREAS, the City of Leawood, Kansas ["City"], a municipal corporation, duly organized and existing under the laws of the State of Kansas, has the right under statute to grant a franchise to construct, operate and maintain telecommunications facilities in said City; and

WHEREAS, Everest Midwest Licensee LLC, ["Everest"] desires to operate telecommunications facilities for the purposes of providing telecommunications services in the City and surrounding communities, and therefore has applied to the City for a franchise in order to operate its facilities; and

WHEREAS, any such permission requires a franchise to be granted by the City in accordance to K.S.A. § 12-2001, et seq.

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

1. Definitions. For the purpose of this franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

   - "Franchise" means the fee imposed by the City on franchisees solely because of its status as such, in accordance to K.S.A. § 12-2001. It shall not include: [1] any tax, fee, or assessment of general applicability including any which are imposed on franchisees; [2] requirements or charges incidental to the awarding or enforcing the franchise ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, [3] any permit fee or other fees imposed under any valid right-of-way ordinance, or [4] any other fee imposed by federal, state, or local law.

   - "Gross Revenues" means those revenues less uncollectible, derived from the following: [1] recurring local exchange service for business and residence which includes basic service, touch tone, optional calling features, and measured local calls; [2] recurring local exchange access service, customer lines provided by franchisees to all pay phone service providers; [3] local directory assistance revenue; [4] list status verification/buy interrupt revenue; [5] local operator assistance revenue; [6] nonrecurring local exchange service revenue which shall include customer services for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, unbundled network elements, unsupervised services, carrier and end user access, long distance, and all other services not wholly local in nature are excluded from "gross revenues." Further, gross revenues shall be reduced by bad debt expenses and uncollectible and late charges shall not be included within "gross revenues." If during the term of this franchise ordinance franchisees offer additional services of a wholly local nature which if in existence at the effective date of the franchise ordinance would have been included with the definition of "gross revenues," such services shall be included from the date of the offering of such services in the City for the remaining term of the franchise ordinance.

   - "Open-File System" means the provision of services as described in and subject to 47 USC § 573, or a successor statute of similar import.

   - "Person" means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

   - "Right-of-Way" means the area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways or boulevards dedicated as right-of-way.

   - "Service" means any service which is rendered by or for the benefit of any person which requires central station equipment or service.

   - "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, as defined by 47 USC § 153(43), and successor statute of similar import.

   - "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities used, as defined by 47 USC § 153(46), a successor statute or similar import.

   - "Utility Exemption" means, for the purposes of this ordinance, an easement dedicated to the City for the purpose of utilities.

2. Grant. Franchise is hereby granted the right, privilege and franchise to construct, operate, and maintain facilities in, through and along the City's right-of-way and utility easements for the purposes of supplying local telecommunications services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, franchisee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC, subject to franchisee's right to contest in good faith such requirements as established by the FCC, KCC or other City ordinance.

This franchise does not provide franchisee the right to provide cable service as a cable operator (as defined by 47 USC § 522(5)) within the City. Upon franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 USC § 522(5)) within the City, the City agrees to timely negotiate such franchise in good faith with franchisee. Franchisee agrees that this franchise does not permit franchisee to operate an open video system without payment of fees permitted by 47 USC § 570g(2)(B) and without complying with FCC regulations promulgated pursuant to 47 USC § 572.

3. Use of Public Right-Of-Way and Utility Easements. Franchisee's facilities shall be located in the right-of-way and utility easements as now constructed and as further amended by the City in accordance with all applicable laws and regulations. Nothing in this agreement shall authorize the City to locate its facilities on or within any City owned parkland property or any other City owned property unless authorized by separate agreement. Placement, changes, additions, replacements, maintenance and repairs to franchisee's facilities shall be conducted in compliance with any applicable ordinance and/or permit requirements. Franchisee will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, franchises shall be subject to all technical specifications, design criteria, policies now or hereafter adopted by the City, or any other appropriate governmental entity. In the event of any dispute or conflict between the City, franchisee and any other governmental entity, all parties shall be bound to all right-of-way management ordinances and all other applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers.

4. Franchise Fee. Franchisee shall pay the greater of $12,000 or an annual sum of $2.50 per linear foot for all fibers in the right-of-way. This payment shall be due on the effective date of the ordinance and annually thereafter. In the event franchisee provides local exchange service to customers within the City, franchisee shall notify the City Chief of Public Safety, a physical or electronic report of the number of customers served by franchisee and the City shall verify the correctness of said report and be subject to the laws of the State of Kansas.

5. Right of Audit and Access to Records. If franchisee is providing service within the City, franchisee shall annually file with the City of Leawood a gross receipts report for all applicable monthly and yearly payments. It is understood, recognized, and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of franchisee and agree that pursuant to K.S.A. § 45-221(18), as amended, such information does not constitute public records subject to K.S.A. § 45-221(18), as amended. In the event the City is required by law to disclose such information, the City shall provide franchisee seven (7) days advance notice of the intent to disclose such information and shall take such action as may be reasonably required to cooperate with the franchisee to safeguard such information. The City shall also have access to and the right to examine, at all reasonable times, all books, records, files, returns, and other documents of the franchisee which relates to the tax or franchise and to correct the same, if found to be erroneous. If such statement of gross revenues is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual rate of ten (10%) percent.

6. TERM. This franchise ordinance shall be effective for a term of one (1) year from the effective date.

7. Renegotiation of Franchise. If the City has a good faith belief that franchisee is offering local telecommunications services within the City beyond telecommunications services contemplated by this ordinance, the City may seek renegotiation of this franchise if the City reasonably believes that such services constitute local telecommunications services subject to a franchise fee under K.S.A. § 12-2001. In the event the City seeks renegotiation of this franchise, franchisee shall be bound to negotiate with the City in good faith in a timely manner. Nothing herein shall preclude the City from seeking a renegotiation agreement with franchisee if the City has a good faith belief that franchisee is offering services other than telecommunications services that are subject to a franchise fee under K.S.A. § 12-2001. The purpose of this provision is to allow the City to ensure that franchisee is paying a franchise fee for all services for which a franchise fee is appropriate.
To revoke this franchise in accordance with the provisions of this section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. Prior to the enactment of such ordinance, the franchisee shall be provided with timely written notice by certified mail, and franchisee shall be allowed to appear at the hearing in the District Court of Johnson County, Kansas, to determine whether or not the franchise was appropriately terminated in accordance with the provisions of this section. The franchisee shall be allowed to present evidence in support of the franchisee’s position. If within thirty (30) days of the filing date of such ordinance, the franchisee shall be terminated and the franchise shall be canceled and terminated at the end of such thirty-day period. If within such thirty (30) days of the filing date of such ordinance, the franchisee shall be allowed to present evidence in support of the franchisee’s position, the franchisee shall be allowed to present evidence in support of the franchisee’s position.

Miscellaneous Provisions.

a. Nonexclusive Clause. The privilege to construct, erect, operate and maintain franchisee’s facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other persons. However, no such additional franchisee shall in any way affect the rights or obligations of franchisee.

b. Exclusive Benefit of Franchise Rights by Franchisee. The rights granted to franchisee by this franchise ordinance shall be for the sole use of franchisee to provide telecommunications services as authorized herein. These rights are for the exclusive benefit of franchisee, except where otherwise provided herein, or when authorized by the City.

Franchise is Without Penalty Against the City. Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this franchise ordinance, or for any act or omission of the City to enforce the provisions of this franchise ordinance, or for any act or omission of the City to enforce the provisions of this franchise ordinance, or for any act or omission of the City to enforce the provisions of this franchise ordinance, or for any act or omission of the City to enforce the provisions of this franchise ordinance, or for any act or omission of the City to enforce the provisions of this franchise ordinance, or for any act or omission of the City to enforce the provisions of this franchise ordinance.

Federal, State, and City Jurisdiction. This franchise ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this franchise ordinance to the contrary, the construction, operation and maintenance of franchisee’s facilities by franchisee or its agents shall be in accordance with all laws and regulations of the United States, the State, the City, and any administrative agency thereof, having jurisdiction. In addition, franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including but not limited to the City, State, and any administrative agency thereof, having jurisdiction.

b. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights or waiver of the rights of the other party’s obligations as provided herein.

c. Severability. Any section, subsection, sentence, clause, phrase, or portion of this franchise ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

d. Repeal of Other Ordinances. All other ordinances, agreements and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be canceled, annulled, repealed, and set aside; provided, that this franchise ordinance shall not take effect or become in force until the requirements for adopting a franchise ordinance under Kansas statutes have occurred.
AN ORDINANCE AMENDING THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, REPEALING EXISTING CHAPTER XV, ARTICLE I, PERTAINING TO THE LEAWOOD SANITARY SEWER SYSTEM.

WHEREAS, the City of Leawood, Kansas, desires to repeal current Chapter XV, Article I, related to the Leawood Sanitary Sewer System.

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


SECTION TWO: Effective Date. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the Governing Body this 2nd day of July, 2001.

APPROVED by the Mayor this 2nd day of July, 2001.

Peggy Dunn, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for _ consecutive week(s), as follows:

ORDINANCE NO. 1897C--7/3/01

Subscribed and sworn to before me on this date:

JULY 5, 2001

Notary Public:

DEBRA VALENTI
Notary Public - State of Kansas

ORDINANCE NO. 1897C

AN ORDINANCE AMENDING THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, REPEALING EXISTING CHAPTER XV, ARTICLE I, PERTAINING TO THE LEAWOOD SANITARY SEWER SYSTEM.

WHEREAS, the City of Leawood, Kansas, desires to repeal current Chapter XV, Article I, related to the Leawood Sanitary Sewer System.

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


SECTION TWO: Effective Date. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the Governing Body this 2nd day of July, 2001.

APPROVED by the Mayor this 2nd day of July, 2001.

Peggy Dunn, Mayor

[SEAL]

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

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

SECTION ONE: Chapter 14, Article 1, of the Code of the City of Leawood, Kansas, 2000, is hereby added to read as follows:

14-108 SAME; AMENDMENT. Section 30 [Article 6] of the Standard Traffic Ordinance incorporated in Section 14-101 of this Article shall be amended to read as follows:

Section 30. DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES.

[a] No person shall operate or attempt to operate any vehicle within this city while:

[1] The alcohol concentration in the person’s blood or breath as shown by any competent evidence, including other competent evidence, is .08 or more;

[2] The alcohol concentration in the person’s blood or breath, as measured within two [2] hours of the time of operating or attempting to operate a vehicle, is .08 or more;

[3] Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

[4] Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

[5] Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

[b] No person shall operate or attempt to operate any vehicle within this city if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.
If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than $500 nor more than $1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. § 8-1008, and amendments thereto, or both the education and treatment programs.

On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,000 nor more than $1,500. The person convicted must serve at least five [5] consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. § 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. § 8-1008, and amendments thereto.

Any person convicted of violating this section who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to $5.00 for each full hour spent by the person in the specified community service. The community service ordered by the court
shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

[i] The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

[j] For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:

[1] ‘Conviction’ includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

[2] ‘Conviction’ includes being convicted of a violation of a law of any state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

[3] Any convictions occurring during a person’s lifetime shall be taken into account when determining the sentence to be imposed for a first or second offender.

[4] It is irrelevant whether an offense occurred before or after conviction for a previous offense; and

[5] A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, only once during the person’s lifetime.

[k] Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person’s driving privileges as provided by K.S.A. § 8-1014, and amendments thereto.

[l] Upon conviction of a person of a violation of this section, the court may order the convicted person to pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

[m] No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. § 12-4413 et seq., and amendments thereto, shall not constitute plea bargaining.
The alternatives set out in subsections [a][1], [a][2] and [a][3] may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

[Code 2000]

SECTION TWO: That this ordinance shall be construed as follows:

**INTERPRETATION**

A. **Liberal Construction:** The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. **Invalidity:** If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION THREE: That Section 30 of the 2000 Standard Traffic Ordinance [STO] is hereby repealed.

SECTION FOUR: That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: This ordinance shall become effective July 1, 2001.

PASSED by the Governing Body this 18th day of June, 2001.

APPROVED by the Mayor this 18th day of June, 2001.

Peggy Dunn, Mayor

Martha Heizer, City Clerk

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any):

for _ consecutive week(s), as follows:

ORDINANCE NO. 1896C--6/19/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JUNE 20, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEWOOD, KANSAS,

SECTION ONE: Chapter 14, Article 1, of the Code of the City of Leewood, Kansas, 2000, is hereby added to read as follows:

14-108 SAME: AMENDMENT. Section 30 [Article 6] of the Standard Traffic Ordinance incorporated in Section 14-101 of this Article shall be amended to read as follows:

Section 30. DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES.

(a) No person shall operate or attempt to operate any vehicle within this city while:

1. The alcohol concentration in the person’s blood or breath as shown by any competent evidence, including other competent evidence, is .08 or more;

2. The alcohol concentration in the person’s blood or breath, measured within two [2] hours of the time of operating or attempting to operate a vehicle, is .08 or more;

3. Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

4. Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle;

5. Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this city when the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulant drug.

If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

If a first conviction of a violation of this section, a person shall be sentenced to not less than 48 consecutive hours nor more than six months’ imprisonment, or in the court’s discretion 100 hours of public service, and fined not less than $500 nor more than $1,000. The person convicted must serve at least 48 consecutive hours’ imprisonment or 100 hours of public service before the person is granted probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety education program or treatment program as provided in K.S.A. § 8-1008, and amendments thereto, or both the education and treatment programs.

On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year’s imprisonment and fined not less than $1,000 nor more than $3,000. In addition, the court may place the person convicted under a house arrest program pursuant to K.S.A. § 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours’ imprisonment, and provided such work release program requires such person to serve to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. § 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours’ imprisonment. As a condition of any grant of probation, suspension of sentence or parole or any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. § 8-1008, and amendments thereto.

Any person convicted of violating this section who has a child under the age of 14 years in the vehicle at the time of the offense shall have such person’s punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to $5.00 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:

1. ‘Conviction’ includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings or a complaint alleging a violation of this section;

2. ‘Conviction’ includes being convicted of a violation of a law of any state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

3. Any convictions occurring during a person’s lifetime shall be taken into account when determining the sentence to be imposed for a first or second offender.

4. It is irrelevant whether an offense occurred before or after conviction for a previous offense;

5. A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, only once during the person’s lifetime.

Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person’s driving privileges as provided by K.S.A. § 8-1014, and amendments thereto.

Upon conviction of a person of a violation of this section, the court may order the convicted person to pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of persuading a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. § 12-444 et seq., and amendments thereto, shall not constitute plea bargaining.

The alternatives set out in subsections (a), (b) and (c) of this section may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

SECTION TWO: That this ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION THREE: That Section 30 of the 2000 Standard Traffic Ordinance [STO] is hereby repealed.

SECTION FOUR: That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: This ordinance shall become effective July 1, 2001.

APPROVED by the Mayor this 18th day of June, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

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

SECTION ONE: Chapter 15, Article 4, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

ARTICLE 4. SOLID WASTE

15-401. CITY'S SOLID WASTE MANAGEMENT PLAN. This Article shall be construed in such a manner to be consistent with the Johnson County Solid Waste Management Plan.

15-402. DEFINITIONS. For the purposes of this article, the following terms, phrases, words and their derivation shall have the meanings given in this section:

(1) Agricultural Waste. Solid waste resulting from the production of farm or agricultural products.

(2) Approved Container. All containers designed for the disposal of solid waste, which may include cans and recycling containers. All such containers shall be of rigid construction with tight fitting covers and be watertight. Yard waste may be placed in other suitable containers. Containers shall have a maximum capacity of 55 gallons and be so constructed as to adequately contain all contents placed therein without spillage, leakage or emission of odors while awaiting collection. The weight of any individual container and its contents shall not exceed 75 pounds.

(3) Bulky Waste. Items either too large or too heavy to be loaded in solid waste collection vehicles with safety and convenience by solid waste collectors, with the equipment available therefore, including but not limited to appliances, furniture, tires, large auto parts, trees, branches, and stumps.

(4) City. The City of Leawood, Kansas.

(5) Collection. Removal and transportation of solid waste and recyclables, material from its place of storage to its place of processing or disposal.

(6) Collector. Any person, public or private, engaged in collecting solid waste and recyclable materials.
(7) **Combined Refuse Collection.** The collection of mixed refuse (putrescible and nonputrescible).

(8) **Combined Solid Waste.** Solid waste containing both garbage and rubbish.

(9) **Commercial Waste.** Solid waste emanating from establishments engaged in business. This category includes, but is not limited to solid waste originating in stores, markets, office buildings, restaurants, shopping centers, theaters and schools.

(10) **Composting.** A controlled process of microbial degradation of organic material into a stable, nuisance free humus-like product.

(11) **Construction Waste.** Waste building materials and rubble resulting from construction, remodeling or repair operations on houses, commercial buildings, or other structures and pavements.

(12) **Contractor.** The person or corporation holding a valid Solid Waste Management contract, whether public or private operation.

(13) **Demolition Waste.** Waste material from the destruction of residential, industrial or commercial structures.

(14) **Disposable Solid Waste Container.** Approved containers, which are designed to be disposed of with the solid waste contained therein.

(15) **Disposal.** Depositing solid waste in or at a facility approved by the City, Johnson County Solid Waste Management, and the Kansas State Board of Health for such purpose.

(16) **Dump.** A collection or consolidation of solid waste from one or more sources at a central disposal site, which does not meet standards for proper disposal.

(17) **Dwelling Unit.** Any room or group of rooms located within a structure, and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating.

(18) **Garbage.** The animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods, including unclean containers.

(19) **Hazardous Waste.** Solid and liquid waste which requires special handling and disposal to protect and conserve the environment and human health including, but not limited to, pesticides, acids, caustics, pathological waste, radioactive materials, flammable or explosive materials, oils and solvents, and similar organic and inorganic chemicals and materials, containers and materials that have been contaminated with hazardous waste.

(20) **Incineration.** The controlled process of burning solid, liquid and/or industrial processes and liquid waste resulting from manufacturing or industrial processes which are not suitable for discharge to a sanitary sewer or treatment in a community sewage treatment plant.
(21) **Nuisance.** Anything which (1) is injurious to health or is offensive to the senses or any obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the handling or disposal of solid waste.

(22) **Occupant.** Any person who, alone or jointly or severally with others, shall be in actual possession of any dwelling unit or any other improved real property, either as owner, guest, or as a tenant, either with or without the consent of the owner thereof.

(23) **Owner.** Any person who, alone or jointly or severally with others, has legal title to, or sufficient proprietary interest in, or have charge, care or control of any dwelling unit or any other improved real property, as title holder, as employee or agent of the title holder, or as landlord or manager or as trustee or guardian of the estate or person of the title holder.

(24) **Person.** Individual, partnership, corporation, institution, political subdivision, homes association or state agency.

(25) **Processing of Waste.** Any technology applied for the purpose of reducing the bulk or hazards of solid waste materials or any technology designed to convert part or all of the solid waste materials for refuse.

(26) **Putrescible Waste.** The progressive chemical decomposition of the organic matter in refuse, with the production of foul smelling compounds and/or material that attracts insect or animal life.

(27) **Recyclable Container.** Receptacle used by any person to store recyclables during the interval between recyclable collections.

(28) **Recyclable Material.** Glass, aluminum, tin, newspaper and plastic beverage containers.

(29) **Refuse.** (See Solid Waste).

(30) **Rubbish.** Nonputrescible solid wastes consisting of combustible and/or noncombustible waste materials from: dwelling units, commercial, industrial, institutional, or agricultural establishments, including yard wastes and items commonly referred to as "trash."
   (a) **Bulky rubbish** - (See Bulky Waste).
   (b) **Commercial rubbish** - rubbish resulting from commercial, industrial, institutional, or agricultural activities.
   (c) **Residential rubbish** - rubbish resulting from the maintenance and operation of dwelling units.

(31) **Scavenger.** A person who scavenges. Scavenge means to collect and remove refuse from.
(32) **Service.** The useful result; the product of labor and machines in property and effective management to dispose of solid waste.

(33) **Solid Waste.** Unwanted or discarded waste materials in a solid or semi-liquid state, including but not limited to refuse, garbage, ashes, street refuse, rubbish, dead animals, animal and agricultural wastes, yard wastes, discarded appliances, abandoned vehicle parts, special wastes, industrial wastes, demolition and construction wastes and digested sludges resulting from the treatment of domestic sewage or a combination thereof.
   (a) **Commercial solid waste** - solid waste resulting from the operation of any commercial, industrial, institutional or agricultural establishment.
   (b) **Residential solid waste** - solid waste resulting from the maintenance and operation of dwelling units.

(34) **Solid Waste Container.** Any receptacle used by any person to store solid waste during the interval between solid waste collections.

(35) **Solid Waste Disposal Area.** Also referred to herein as "disposal area" or "disposal site", means any area used for the disposal of refuse from more than one residential premise, or one or more commercial, industrial, manufacturing, or municipal operations.

(36) **Solid Waste Processing Facility.** Also referred to herein as "processing facility" means incinerator, compost plant, transfer station or any other location where solid wastes are consolidated, temporarily stored, salvaged, or processed prior to being transported to a final disposal site.

(37) **Storage.** Keeping, maintaining or storing solid waste from the time of its production until the time of its collection.

(38) **Temporary Storage.** Proper accumulation and storage of solid waste between regularly scheduled refuse collection intervals.

(39) **Transfer Station.** A facility used as an adjunct to solid waste collection system. Such a facility may be fixed or mobile and may include recompaction of solid waste.

(40) **Water Pollution.** Contamination, or other alteration of the physical, chemical or biological properties of any waters of the City or state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health safety or welfare, or to the plant, animal or aquatic life of the City or state or to other legitimate beneficial uses.

(41) **Waters of the City or State.** All streams, creeks, and springs, and all bodies of surface or ground water, whether natural or artificial, within the boundaries of the state.

(42) **Yard Wastes.** All forms of botanical waste, including but not limited to grass clippings, leaves, tree trimmings, branches and stumps.
15-403. **STORAGE OF SOLID WASTE.**

A. The owner or occupant of every dwelling unit and of every institutional, commercial, industrial or agricultural establishment producing solid waste within the corporate limits of the City, shall provide sufficient and adequate approved containers for the storage of such solid waste in sufficient number to serve each such dwelling unit and/or establishment; and shall maintain such solid waste containers and their environs at all times reasonably clean and in good repair; and shall repair or replace same from time to time, without notice, when any such containers shall no longer meet the specifications therefore as established by regulations.

B. The occupant of every dwelling unit and of every institutional, commercial, industrial, or agricultural or business establishment, from which solid waste collection is made under this article, shall place all solid waste in proper solid waste containers, except as otherwise provided herein, and shall maintain such solid waste containers and the area surrounding them in a clean, neat, and sanitary condition at all times. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation must be kept covered or in approved containers, closed bins or containers not subject to deterioration. All containers shall be screened in such a manner that they are not visible from any street or roadway except when placed in position for pickup.

C. Residential solid waste shall be stored in approved containers of not more than 55 gallons. Such containers shall be of watertight construction and provided with a lid or cover which shall fit closely to retain all odors and keep out flies and other insects and shall be kept covered at all times except when depositing waste or removing same. All containers shall have handles or lifting devices or features. Containers shall be lightweight to be easily emptied and of sturdy construction. The weight of any individual container and its contents shall not exceed 75 pounds.

D. Commercial solid waste shall be stored in solid waste containers. The containers shall be water-proof, leak-proof, and shall be covered at all times except when depositing waste therein or removing contents thereof; and shall meet all requirements as set forth in this article.

E. Tree limbs less than four inches in diameter and brush shall be securely tied in bundles not larger than 48 inches long and 18 inches in diameter when not placed in storage containers.

F. Yard wastes shall be stored in approved containers so constructed and maintained as to prevent the dispersal of wastes placed therein upon the premises served, upon adjacent premises, or upon adjacent public rights-of-way. The weight of any individual container and its contents shall not exceed 75 pounds.

15-404. **TEMPORARY STORAGE.** Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation shall be covered or in closed bins or containers not subject to deterioration and properly maintained. Materials not subject to decay or putrefaction shall be stored temporarily in containers suitable for the handling thereof.
COLLECTION AND DISPOSAL OF SOLID WASTE. The City shall provide or allow for the collection of all residential solid waste as follows:

A. The City shall provide for or establish the parameters by which all solid waste and recyclables are collected and disposed of in the City. The City provides for the collection of solid waste by authorizing others, including, but not limited to, homes associations, commercial and retail establishments and other non-residential establishments to be responsible for providing for the collection of solid waste and recyclables, and complying with all applicable restrictions, regulations and property maintenance codes, provided further that the following guidelines are followed:

1. Residential Collection: Residential collection, other than bulky waste, in residential areas shall be not less than one [1] collection each calendar week when applicable.
2. Commercial-Industrial Collection: Commercial-industrial collection shall be not less than one [1] collection each calendar week or at more frequent intervals upon a determination that more frequent intervals if necessary to protect the health, welfare and safety of the City and to maintain the premises in a sanitary and unlittered condition.
3. Hours of Collection: Collection within two hundred [200] feet of residential areas shall not commence earlier than 7:00 A.M. nor continue later than sunset.

B. Each collector shall contractually provide for the service of collecting and transporting residential solid waste and recyclables to each person requesting such service located within the City of Leawood, Kansas. Upon request, each collector shall promptly furnish a copy of any and all contracts to the City.

C. Following the effective date of this ordinance, all persons contracting to provide the service of collecting and transporting residential solid waste and recyclables in the City of Leawood shall meet all the licensing requirements and regulations of the City. Every hauler shall periodically provide documentation to their clients substantiating the method by which the recyclables were disposed of, weight and/or volume of recyclables collected and compensation received for the recycled materials.
COLLECTION AND DISPOSAL OF RECYCLABLES. The City shall provide or allow for the collection of all residential recyclables as follows:

A. All recyclables shall be disposed of at a recycling processing or disposal facility approved by and complying with all requirements of the Johnson County Waste Administrator and which will meet all local, State and Federal regulations.

B. Residential recyclables shall be stored in an open rectangular bin, a minimum of fourteen (14) gallons in capacity, green in color and constructed of twenty five percent (25%) recycled plastic to be furnished by the contractor. The City Administrator, may, upon application, approve different colors for the container. The City Administrator may require placement of an approved logo or identifying mark on each recyclable container.

C. Should the owner or occupant of any premises desire to recycle, then such person shall separate recyclable materials from all other solid waste and place such recyclable materials at curbside, in one container, for collection and shall maintain such recyclable containers and the area surrounding it in a neat, clean and sanitary condition at all times. It shall be the responsibility of the recyclable collector to provide such container.

D. All recyclable collection containers shall be maintained in a safe, clean and sanitary condition and shall be so constructed, maintained and operated as to prevent spillage therefrom.

COLLECTION VEHICLES.

A. All collection vehicles shall be maintained in a safe, clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of solid waste therefrom. All vehicles to be used for collection of solid waste shall be constructed with water-tight bodies and with covers which shall be an integral part of the vehicle or shall be a separate cover of suitable material with fasteners designed to secure all sides of the cover to the vehicle and shall be secured whenever the vehicle is transporting waste, or, as an alternate, the entire bodies thereof shall be enclosed, with only loading hoppers exposed. No materials shall be transported in the loading hoppers.

B. All motor vehicles operating under any permit required by this article shall display a City permit (sticker) in the lower right corner of the windshield of each vehicle. The permit must be clearly visible.

PERMITS.

A. Any person engaging in the business of collecting, transporting or processing of solid waste or recyclables, within the corporate limits of the City shall first obtain a permit from the City Clerk. Each applicant for any such permit shall state in his or her application the following:

(1) The nature of the permit desired (storage, collection and/or transportation of solid waste or any combination thereof);

(2) The characteristics of solid waste to be collected and transported;

(3) The number of solid waste vehicles and equipment to be operated thereunder;
(4) The precise location or locations of solid waste processing or disposal for service to be used;
(5) The information sufficient to establish that the permittee in contracting to collect and transport solid waste within the City has agreed that said collection and transportation will be in accordance with the provisions of this ordinance;
(6) An agreement to indemnify and hold the City harmless for any claims which may be made against the City as a result of the failure of the permittee to transport, dispose, or process solid waste collected within the City in compliance with this ordinance, state or federal law;
(7) Such other information as required by the City Clerk as may be reasonably necessary to determine that the operations of the permittee will be conducted in compliance with the provisions of this ordinance.

B. Permits will be issued on a client-by-client basis. A permit will not be issued for collection of solid waste for those clients who have not agreed to expand their service to include all aspects of the integrated solid waste management program.

C. If the application shows that the applicant will collect and transport solid waste and recyclables without hazard to the public health or damage to the environment and in conformity with the Johnson County Solid Waste Management System, the laws of the State of Kansas, and of this article, the City shall issue the permit authorized by this article.

D. The permit shall be issued for the period of one year, and each applicant shall pay a fee of $25.00 for each collection vehicle to be used in the City. The application must clearly show that the collection and transportation of solid waste and recyclables will create no public health hazard or be without harmful effects on the environment. If such a showing is not made by the applicant, the City Clerk shall deny the application and not issue the permit.

E. Permits shall not be required for the removal, hauling or disposal of demolition or construction wastes; however, all such wastes shall be conveyed in tight vehicles, trucks or receptacles, so constructed and maintained to prevent the material being transported from spilling upon the public highways.

15-409. PERMIT SUSPENSION OR REVOCATION.
In all cases, when corrective measures have not been taken, within the time specified, when so required by the City to comply with this Article, the Public Works Director shall suspend or revoke the permit involved in the violation; however, in those cases where an extension of time will permit correction, and there is no public health hazard created by the delay, one extension of time may be given.

15-410. APPEALS.
A. Any person who feels aggrieved by any act of the Public Works Director, may within ten [10] days of the act for which redress is sought, appeal directly to the Governing Body, in writing, setting forth in a concise statement the act being appealed and the grounds for its reversal.
B. Any person licensed under this Article and found, after public hearing before the Governing Body, to be in violation of the provisions of this Article, may have any license or permit issued by the City revoked.

C. Nothing in this section shall prejudice the right of the applicant to reapply at a later date for a permit.

15-411. INSURANCE REQUIREMENTS.
The applicant must furnish the City a certificate of insurance showing a minimum public liability insurance coverage in an amount not less than $500,000 for each occurrence. In the event the insurance is canceled during the term of the permit, the insurance carrier shall notify the City in writing no less than 10 days prior to the effective date of such cancellation. The certificate of insurance shall provide that the insurance company agrees to so notify the City, and further, the insurance policy shall contain written provisions which shall place the responsibility for the 10-day written notification upon the company issuing the policy in order that the coverage be considered proper.

15-412. OFFICE AND TELEPHONE REQUIRED.
All licensed contractors shall maintain an office with adequate telephone service to provide for service inquiries and complaints. The City Clerk shall be promptly furnished with any change in telephone or address, if such changes occur after receiving the license or permit.

15-413. INSPECTIONS.
In order to ensure compliance with the laws of this State, the Johnson County Solid Waste Management Plan, County Solid Waste Regulations, this Article and the rules authorized herein, the City Administrator, or his/her designee, is authorized to inspect all phases of solid waste management within the City and within the property of the permit holder. No inspection shall be made in any residential unit unless authorized by the occupant or by due process of law. In all instances where such inspections reveal a violation of this Article, the City Administrator, or his/her designee, shall issue notice for each such violation stating therein the violation or violations found, the time and date and the corrective measure to be taken, together with the time in which such corrections shall be made.

15-414. RULES AND REGULATIONS.
A. The Public Works Director, by and with the consent of the Governing Body, shall define and promulgate reasonable and necessary rules governing the solid waste management system, which rules and regulations shall be filed in the Office of the City Clerk. The rules and regulations shall include, but not be limited to:
   Handling of special wastes such as toxic and hazardous wastes, sludges, ashes, agricultural wastes, construction wastes, automobiles, oils, greases, bulky wastes.
B. The Public Works Director may classify certain wastes as hazardous wastes which will require special handling and which should be disposed of only in a manner acceptable to the public safety and banned in a manner which meets all city, county, state and federal regulations.

15-415. ANTI-SCAVENGER. It shall be unlawful for any person not licensed by the City and not under contract with the owner or occupant, to remove from private property or public right-of-way any item which has been discarded by the occupant for collection by a person holding a permit to collect solid waste, including any discarded trash or recyclable material.

15-416. DUMPING ON STREETS.
A. It shall be unlawful for any person, any owner, occupant or person in charge of any house, building or premise to deposit or cause to be deposited upon any street of the City or upon any other property, public or private, within the City limits, any rejected material or items. Such described material or items must be deposited in such a manner and placed as prescribed in this Article.
B. Any person performing public work directed toward making improvements may place necessary materials at such places as are prescribed by the specifications of his contract or as approved by the Public Works Director.

15-417. PROHIBITED PRACTICES.
A. No person shall engage in the business of collection, transportation or processing of solid waste within the City in a manner which is contrary to any provisions of this ordinance.
B. No person shall engage in the business of collection, transportation or processing of solid waste within the corporate limits of the City without first obtaining a permit as defined and required in Section 15-409.
C. No person shall deposit any type of solid waste within public dumpsters.
D. It shall be unlawful for any person to:
1. Deposit solid waste or recyclables in any solid waste container other than his/her own container without the written consent of the owner of such container and/or with the intent of avoiding payment of those fees charged for solid waste or recyclables collection or disposal, or;
2. Interfere in any manner with solid waste or recyclables collection equipment, or with solid waste or recyclables collectors in the lawful performance of their duties as such, whether such equipment or collectors shall be those of the City or those of a solid waste collection agency operating under agreement with the City of Leawood.
3. Burn solid waste or recyclables, unless an approved incinerator is provided.
15-418. OWNERSHIP OF COLLECTED MATERIAL.
All solid waste and recyclables collected, shall, upon being loaded into collection equipment, become the property of the collection agency.

15-419. EDUCATION, PROMOTION AND MARKETING. Each solid waste and recyclable contractor shall implement public education and awareness programs to educate their clients of the importance of recycling, yard waste composting, and disposal of household hazardous waste. This program shall be implemented regardless of the type of recycling service, if any, that is performed.

15-420. ENFORCEMENT PROVISIONS. The Public Works Director or his/her designee is hereby authorized to exercise such powers as may be necessary to carry out and effectuate the purposes and provisions of this article. Included in the powers is the right to inspect all phases of solid waste management within the City to assure compliance with this ordinance.

15-421. GENERAL PROVISIONS.
A. Solid waste collectors employed by the City or solid waste collection agencies operating under contract with the City, are hereby authorized to enter in and upon private property for the purpose of collecting solid waste or recyclables therefrom as authorized by agreement.

B. All contracts providing for the storage, collection and transportation of solid waste to which the City is a party shall contain provisions for a performance bond in an amount not less than the total value of the services provided by the contractor. The bond shall be with a good and sufficient surety and shall be approved by the City Clerk before the execution of the contract. The bonds shall provide that the principal shall pay any and all damages which may be caused to any property, public or private, within the City when such injury or damage shall be inflicted by the principal or his/her agent, employee, workman, contractor or subcontractor, and such bond shall be conditioned also that the principal will serve, indemnify, hold harmless and protect the City from any and all liability, that he/she will in all respects, comply with all articles of the City and comply with the terms of his/her permit and conditional upon his/her faithful performance of the contract. The form of such bond must be approved by the City Attorney.

15-422. PENALTY. Any person convicted of a violation of any of the provisions of or failing to comply with any of the mandatory requirements of this article shall be guilty of a public offense and punished by a fine of not more than $500 or by imprisonment not to exceed six months or by both such fine and imprisonment. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by any such person.
SECTION TWO: Repeal of Existing Sections. The existing Article 4 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 18th day of June, 2001.

APPROVED by the Mayor this 18th day of June, 2001.

Peggy J. Dunn, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication
STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for consecutive week(s), as follows:
ORDINANCE NO. 1895C--6/19/01

Legal Notices Administrator

Subscribed and sworn to before me on this date:
JUNE 20, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

AN ORDINANCE AMENDING CHAPTER 15, ARTICLE 4, OF THE "CODE OF THE
CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO SOLID WASTE
MANAGEMENT, AND REPEALING EXISTING ARTICLE 4.

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

SECTION ONE: Chapter 15, Article 4, of the Code of the City of Leawood, Kansas,
2000, is hereby amended to read as follows:

ARTICLE 4. SOLID WASTE

15-401. CITY’S SOLID WASTE MANAGEMENT PLAN. This Article shall be
construed in such a manner as to be consistent with the Johnson County Solid Waste
Management Plan.

15-402. DEFINITIONS. For the purposes of this article, the following terms, phrases,
words and their derivation shall have the meanings given in this section:

1. Agricultural Waste. Solid waste resulting from the production of farm or
agricultural products.

2. Approved Container. All containers designed for the disposal of solid waste,
which may include cans and recycling containers. All such containers shall be of rigid
construction with tight fitting covers and be watertight. Yard waste may be placed in other suitable containers.

3. Bulky Waste. Items either too large or too heavy to be loaded in solid waste
collection vehicles with safety and convenience by solid waste collectors, with the equipment available therefor, including not limited to appliances, furniture, tires, large auto parts, trees, branches, and stumps.


5. Collection. Removal and transportation of solid waste and recyclables, material from its place of storage to its place of processing or disposal.

6. Collector. Any person, public or private, engaged in collecting solid waste and recyclable materials.

7. Combined Refuse Collection. The collection of mixed refuse (putrescible
and nonputrescible).

8. Combined Solid Waste. Solid waste containing both garbage and rubbish.

9. Commercial Waste. Solid waste emanating from businesses engaged in
business. This category includes, but is not limited to solid waste originating in shops, stores, office buildings, restaurants, shopping centers, theaters and schools.

10. Composting. A controlled process of microbial degradation of organic
material into a stable, nuisance free human-like product.

11. Construction Waste. Waste building materials and rubble resulting from
construction, remodeling or repair operations on houses, commercial
buildings, or other structures and pavements.

12. Contractor. The person or corporation holding a valid Solid Waste
Management contract, whether public or private operation.

13. Demolition Waste. Waste material from the destruction of residential,
industrial or commercial structures.

14. Disposible Solid Waste Container. Approved containers, which are
designed to be disposed of with the solid waste contained therein.

15. Disposal. Depositing solid waste in or at a facility approved by the City,
Johnson County Solid Waste Management, and the Kansas State Board of
Health for such purpose.

16. Dump. A collection or consolidation of solid waste from one or more
sources at a central disposal site, which does not meet standards for proper
disposal.

17. Dwelling Unit. Any room or group of rooms located within a structure,
and forming a single habitable unit with facilities which are used, or are
intended to be used, for living, sleeping, cooking and eating.

18. Garbage. The animal and vegetable waste resulting from the handling,
processing, storage, packaging, preparation, sale, cooking and serving of
meat, produce and other foods, including unclean containers.

19. Hazardous Waste. Solid and liquid waste which requires special handling
disposal and protection to conserve the environment and human health
including, but not limited to, pesticides, acids, caustics, pathological
waste, radioactive materials, flammable or explosive materials, oils and
solvents, and similar organic and inorganic chemicals and materials, containers and materials that have been contaminated with hazardous
waste.

20. Incineration. The controlled process of burning solid, liquid and/or
industrial processes and liquid waste resulting from manufacturing or
industrial processes which are not suitable for discharge to a sanitary
sewer or treatment in a community sewage treatment plant.

21. Nuisance. Anything which (1) is injurious to health or is offensive to the
senses or any obstruction to the free use of property so as to interfere with
the comfortable enjoyment of life or property, and (2) affects at the same
time an entire community or neighborhood or any considerable number of
persons, although the extent of the annoyance or damage inflicted upon
individuals may be unequal, and (3) occurs during or as a result of the
handling or disposal of solid waste.

22. Occupant. Any person who, alone or jointly or severally with others,
shall be in actual possession, as owner of any dwelling unit or any other improved
real property, either as owner, guest, or as a tenant, either with or without
the consent of the owner thereof.

23. Owner. Any person who, alone or jointly or severally with others, has
legal title to, or sufficient proprietary interest in or, have charge, control of any dwelling unit or any other improved real property, as title
holder, as employee or agent of the title holder, or as landlord or manager
or as trustee or guardian of the estate or person of the title holder.

24. Person. Individual, partnership, corporation, institution, political
subdivision, business association or waste agency.

25. Processing of Waste. Any technology applied for the purpose of reducing
the bulk or hazards of solid waste materials or any technology designed to
convert part or all of the solid waste materials to refuse.

26. Putrescible Waste. The progressive chemical, decomposition of the
organic matter in refuse, with the production of foul smelling compounds
and/or material that attracts insect or animal life.

27. Recyclable Container. Receptacle used by any person to store recyclables
during the interval between recyclable collections.

28. Recyclable Material. Glass, aluminum, tin, newspaper and plastic
beverage containers.

29. Refuse. (See Solid Waste).

30. Rubbish. Nonputrescible solid wastes consisting of combustible and/or
noncombustible solid waste materials from: dwelling units, commercial,
industrial, institutional or agricultural establishments, including yard
wastes and items commonly referred to as "trash."

(a) Bulky rubbish (See Bulky Waste).

(b) Commercial rubbish - rubbish resulting from commercial,
industrial, institutional or agricultural activities.

(c) Residential rubbish - rubbish resulting from the maintenance and
operation of dwelling units.

31. Scavenger. A person who scavenges. Scavenger means to collect and
remove refuse from.

32. Service. The useful result; the product of labor and machines in property
and effective management to dispose of solid waste.

33. Solid Waste. Unwanted or discarded waste materials in a solid or semi
liquid state, including but not limited to refuse, garbage, ashes, street
refuse, rubbish, dense materials, animal and agricultural wastes, yard wastes,
discarded appliances, abandoned vehicle parts, special wastes, industrial
wastes, demolition and construction wastes and dredged sludges resulting
from the treatment of domestic sewage or a combination thereof.

(a) Commercial solid waste - solid waste resulting from the operation
of any commercial, industrial, institutional or agricultural
establishment.

(b) Residential solid waste - solid waste resulting from the maintenance and operation of dwelling units.

34. Solid Waste Container. Any receptacle used by any person to store solid
waste during the interval between solid waste collections.

35. Solid Waste Disposal Area. Also referred to herein as "disposal area" or
"disposal site", means any area used for the disposal of refuse from more
than one residential premises, or one or more commercial, industrial,
manufacturing, or municipal operations.

36. Solid Waste Processing Facility. Also referred to herein as "processing facility" means incinerator, compost plant, transfer station or any other
location where solid wastes are consolidated, temporarily stored, salvaged, or processed prior to being transported to a final disposal site.

37. Storage. Keeping, maintaining or storing solid waste from the time of its
production until the time of its collection.

38. Temporary Storage. Proper accumulation and storage of solid waste
between regularly scheduled refuse collection intervals.

39. Transfer Station. A facility used as an adjunct to solid waste collection
system. Such a facility may be fixed or mobile and may include compaction of solid waste.

40. Water Pollution. Contamination, or other alteration of the physical,
chemical or biological properties of any waters of the City or State as
will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the City or State, or other legitimate beneficial uses.

41. Waters of the City or State. All streams, creeks, and springs, and all
bodies of surface or ground water, whether natural or artificial, within the
boundaries of the state.

42. Yard Wastes. All forms of botanical waste, including but not limited to
gross clippings, leaves, tree trimmings, branches and stumps.
STORAGE OF SOLID WASTE.

A. The owner or occupant of every dwelling unit and of every institutional, commercial, industrial, or agricultural establishment producing solid waste within the corporate limits of the City, shall provide sufficient and adequate approved containers for the storage of such solid waste in sufficient number to serve each such dwelling unit and/or establishment; and shall maintain such solid waste containers and their environs at all times reasonably clean and in good condition. Such containers shall be replaced in specified locations in accordance with the regulations.

B. The occupant of every dwelling unit and of every institutional, commercial, industrial, or agricultural establishment, from which solid waste collection is made under this article, shall place all solid waste in proper solid waste containers, except as otherwise provided herein, and shall maintain such solid waste containers and the area surrounding them in a clean, neat, and sanitary condition at all times. Whenever a persistent accumulation of solid waste results from decay or putrefaction, such an accumulation must be kept covered or in approved containers, closed bins or containers not subject to deterioration. All containers shall be screened in such a manner that they are not visible from any street or roadway except when placed in position for pickup.

C. Residential solid waste shall be stored in approved containers of not more than 35 gallons. Such containers shall be of watertight construction and provided with a lid or cover which shall fit closely to retain all odor and keep out flies and other insects and shall be kept covered at all times except when depositing waste or removing same. All containers shall have handles or lifting devices or features. Containers shall be lightweight to be easily emptied and of sturdy construction.

D. Commercial solid waste shall be stored in solid waste containers. The containers shall be water-proof, leak-proof, and shall be covered at all times except when depositing waste therein or removing contents thereof; and shall meet all requirements as set forth in this article.

E. Tree limbs less than four inches in diameter and brush shall be securely tied in bundles not larger than 48 inches long and 18 inches in diameter when not placed in storage containers.

F. Yard wastes shall be stored in approved containers so constructed and maintained as to prevent the dispersal of wastes placed therein upon the premises served, unless adjacent premises, or public property rights-of-way; and the weight of any individual container and its contents shall not exceed 75 pounds.

TEMPORARY STORAGE. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation shall be covered or in closed bins or containers not subject to deterioration and properly maintained. Materials not subject to decay or putrefaction shall be stored temporarily in containers suitable for the handling thereof.

COLLECTION AND DISPOSAL OF SOLID WASTE. The City shall provide or allow for the collection of all residential solid waste as follows:

A. The City shall provide for or establish the parameters by which all solid waste and recyclables are collected and disposed of in the City. The City provides for the collection of solid waste by authorizing others, including, but not limited to, homes associations, commercial and professional public right-of-ways, and other non-residential establishments to be responsible for providing for the collection of solid waste and recyclables, and complying with all applicable restrictions, regulations and property maintenance codes, provided further that the following guidelines are followed:

1. Residential Collection: Residential collection, other than bulky waste, in residential areas shall be not less than one [1] collection each calendar week when applicable.

2. Commercial-Industrial Collection: Commercial-industrial collection shall not be less than one [1] collection each calendar week or at more frequent intervals upon a determination that more frequent intervals if necessary to protect the health, welfare and safety of the City and to maintain the premises in a sanitary and unattended condition.

3. Hours of Collection: Collection within two hundred [200] feet of residential areas shall not commence earlier than 7:00 A.M. nor continue later than sunset.

B. Each collector shall contractually provide for the service of collecting and transporting residential solid waste and recyclables to each person requesting such service located within the City of Lawood, Kansas. Upon request, each collector shall promptly furnish a copy of any and all contracts to the City.

C. Following the effective date of this ordinance, all persons contracting to provide the service of collecting and transporting residential solid waste and recyclables in the City of Lawood shall meet all the licensing requirements and regulations of the City. Every hauler shall periodically provide documentation to their clients substantiating the method by which the recyclables were disposed of, weight and/or volume of recyclables collected and compensation received for the recycled materials.

COLLECTION AND DISPOSAL OF RECYCLABLES. The City shall provide or allow for the collection of all residential recyclables as follows:

A. All recyclables shall be disposed of at a recycling processing or disposal facility approved by and complying with all requirements of the Johnson County Waste Administrator and which will meet all local, state and Federal regulations.

B. Residential recyclables shall be stored in an open rectangular bin, a minimum of fourteen (14) gallons in capacity, green in color and constructed of twenty-five [25] pounds of plastic material. The City or its designee, the Johnson County Waste Administrator, may, upon application, approve different colors for the container.

C. The City Administrator may require placement of an approved logo or identifying mark on each recyclable container.

D. Any person or occupant of any premises desire to recycle, then such person shall separate recyclable materials from all other solid waste and place such recyclable materials at curbside, in one container, for collection and shall maintain such recyclable containers and the area surrounding it in a neat, clean and sanitary condition at all times. It shall be the responsibility of the recyclable collector to provide such containers.

E. All recyclable collection containers shall be maintained in a safe, clean and sanitary condition and shall be so constructed, maintained and operated as to prevent spillage therefrom.

COLLECTION VEHICLES.

A. All collection vehicles shall be maintained in a safe, clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of solid waste therefrom. All vehicles to be used for collection of solid waste shall be constructed with watertight bodies and with covers which shall be an integral part of the vehicle or shall be a separate cover of suitable material with fasteners designed to secure all sides of the cover to the vehicle and shall be securely whenever the vehicle is transporting waste, or, as an alternate, the entire body thereof shall be enclosed, with only loading hoppers exposed. No materials shall be transferred in the loading hoppers.

B. All motor vehicles operated under any permit required by this article shall display a City permit (sticker) in the lower right corner of the windshield of each vehicle. The permit must be clearly visible.

PERMITS.

Any person engaging in the business of collecting, transporting or processing of solid waste or recyclables, within the corporate limits of the City shall first obtain a permit from the City. Each applicant for any such permit shall state in his or her application the following:

1. The nature of the permit desired (storage, collection, and/or transportation of solid waste or any combination thereof);

2. The characteristics of solid waste to be collected and transported;

3. The solid waste vehicles and equipment to be operated thereunder;

4. The precise location or areas of solid waste processing or disposal for service to be used;

5. The information sufficient to establish that the permittee in constructing to collect and transport solid waste within the City has agreed that said collection and transportation will be in accordance with the provisions of this ordinance;

6. An agreement to indemnify and hold the City harmless for any claims which may be made against the City as a result of the failure of the permittee in properly disposing all solid waste collected within the City in compliance with this ordinance, state or federal law;

7. Such other information as required by the City Clerk as may be reasonably necessary to determine that the operations of the permittee will be conducted in compliance with the provisions of this ordinance.

Permits will be issued on a client-by-client basis. A permit will not be issued for the collection of solid waste for those clients who have not agreed to expand their service to include all aspects of the integrated solid waste management program.

If the application shows that the applicant will collect and transport solid waste and recyclables without hazard to the public health or damage to the environment and in accordance with the Johnson County Solid Waste Management System, the laws of the State of Kansas, and of this article, the City shall issue the permit authorized by this article.

The permit shall be issued for the period of one year, and each applicant shall pay a fee of $25.00 for each collection vehicle to be used in the City. The application must clearly show that the collection and transportation of solid waste and recyclables will create no public health hazard or be without harmful effects on the environment. If such a showing is not made by the applicant, the City Clerk shall deny the application and note the reason for the refusal.

Permits shall be required for the removal, hauling or disposal of demolition or construction wastes; however, all such wastes shall be conveyed in right vehicles, trucks or receptacles, so constructed and maintained to prevent the material being transported from spilling upon the public highways.

PERMIT SUSPENSION OR REVOCATION.

In all cases, when corrective measures have not been taken, within the time specified, when so required by the City to comply with this Article, the Public Works Director shall suspend or revoke the permit involved in the violation; however, in those cases where an extension of time will permit correction, and there is no public health hazard created by the delay, one extension of time may be given.

APPEALS.

Any person who feels aggrieved by any act of the Public Works Director, may within ten [10] days of the act for which redress is sought, appeal directly to the Governing Body, in writing, setting forth in a concise statement the act being appealed and the grounds for its reversal.

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

SECTION ONE. Chapter 15, Article 4, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

ARTICLE 4. SOLID WASTE

15-401. CITY'S SOLID WASTE MANAGEMENT PLAN. This Article shall be construed in such a manner to be consistent with the Johnson County Solid Waste Management Plan.

15-402. DEFINITIONS. For the purposes of this article, the following terms, phrases, words and their derivation shall have the meanings given in this section:

1. (a) Agricultural Waste. Solid waste resulting from the production of food or agricultural products.

2. (b) Disposed Container. All containers designed for the disposal of solid waste, which may include cans and recycling containers. All such containers shall be of rigid construction with tight fitting covers and be watertight. Yard waste may be placed in other suitable containers. Containers shall have a maximum capacity of 55 gallons and be so constructed as to adequately contain all contents placed therein without spillage, leakage or emission of odors while awaiting collection. The weight of any individual container and its contents shall not exceed 75 pounds.

3. Bulky Waste. Items either too large or too heavy to be loaded in solid waste collection vehicles with safety and convenience by solid waste collectors, with the equipment available therefor, including but not limited to appliances, furniture, tires, large auto parts, trees, branches, and stumps.


5. Collection. Removal and transportation of solid waste and recyclables, material from its place of storage to its place of processing or disposal.

6. Collector. Any person, public or private, engaged in collecting solid waste and recyclable materials.


8. Combined Solid Waste. Solid waste containing both garbage and rubbish.

9. Commercial Waste. Solid waste emanating from establishments engaged in business. This category includes, but is not limited to solid waste originating in stores, markets, office buildings, restaurants, shopping centers, theaters and schools.


11. Construction Waste. Waste building materials and rubbish resulting from construction, remodeling or repair operations on houses, commercial buildings, or other structures and pavements.

12. Contractor. The person or corporation holding a valid Solid Waste Management contract, whether public or private operation.

13. Demolition Waste. Waste material from the destruction of residential, industrial or commercial structures.

14. Disposable Solid Waste Container. Approved containers, which are designed to be disposed of with the solid waste contained therein.

15. Disposal. Depositing solid waste in or at a facility approved by the City, Johnson County Solid Waste Management, and the Kansas State Board of Health for such purposes.

16. Dump. A collection or consolidation of solid waste from one or more sources at a central disposal site, which does not meet standards for proper disposal.

17. Dwelling Unit. Any room or group of rooms located within a structure, and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating.

18. Garbage. The animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods, including unclean containers.

19. Hazardous Waste. Solid and liquid waste which requires special handling and disposal to protect and conserve the environment and human health including, but not limited to, pesticides, acids, caustics, pathological waste, radioactive materials, flammable or explosive materials, oils and solvents, and similar organic and inorganic chemicals and materials, containers and materials that have been contaminated with hazardous waste.

20. Incineration. The controlled process of burning solid, liquid and/or industrial processes and liquid waste resulting from manufacturing or industrial processes which are not suitable for discharge to, a sanitary sewer or treatment in a community sewage treatment plant.

21. Nuisance. Anything which (1) is injurious to health or is offensive to the senses or any obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the normal handling or disposal of solid waste.

22. Occupant. Any person who, alone or jointly or severally with others, shall be in actual possession of any dwelling unit or any other improved real property, either as owner, guest, or as a tenant, either with or without the consent of the owner thereof.

23. Owner. Any person who, alone or jointly or severally with others, has legal title to, or sufficient proprietary interest in, or have charge, care or control of any dwelling unit or any other improved real property, as title holder, as employees or agent of the title holder, or as landlord or manager or as trustee or guardian of the estate or person of the title holder.

24. Person. Individual, partnership, corporation, institution, political subdivision, commission, association or state agency.

25. Processing of Waste. Any technology applied for the purpose of reducing the bulk or hazards of solid waste materials or any technology designed to convert part or all of the solid waste materials for refuse.

26. Putrescible Waste. The progressive chemical decomposition of the organic matter in refuse, with the production of foul smelling compounds and/or material that attracts insects or animal life.

27. Recyclable Container. Receptacle used by any person to store recyclables during the interval between recyclable collections.


29. Refuse. (See Solid Waste).

30. Rubbish. Nonputrescible solid wastes consisting of combustible and/or noncombustible waste materials from: dwelling units, commercial, industrial, institutional or agricultural establishments, including yard wastes and items commonly referred to as "trash."

(a) Bulky rubbish - (See Bulky Waste).

(b) Commercial rubbish - rubbish resulting from commercial industrial, institutional, or agricultural activities.

(c) Residential rubbish - rubbish resulting from the maintenance and operation of dwelling units.


32. Service. The useful result; the product of labor and machines in property and effective management to dispose of solid waste.

33. Solid Waste. Unwanted or discarded waste materials in a solid or semi-liquid state, including but not limited to refuse, garbage, ashes, street refuse, rubbish, dead animals, personal and agricultural wastes, yard wastes, discarded appliances, abandoned vehicle parts, special wastes, industrial wastes, demolition and construction wastes and digested sludges resulting from the treatment of domestic sewage or a combination thereof.

(a) Commercial solid waste - solid waste resulting from the operation of any commercial, industrial, institutional or agricultural establishment.

(b) Residential solid waste - solid waste resulting from the maintenance and operation of dwelling units.

34. Solid Waste Container. Any receptacle used by any person to store solid waste during the interval between solid waste collections.

35. Solid Waste Disposal Area. Also referred to herein as "disposal area" or "disposal site", means any area used for the disposal of refuse from more than one residential premises, or one or more commercial, industrial, institutional or agricultural establishments.

36. Solid Waste Processing Facility. Also referred to herein as "processing facility" means incinerator, compost plant, transfer station or any other location where solid wastes are consolidated, temporarily stored, salvaged, or processed prior to being transported to a final disposal site.

37. Storage. Keeping, maintaining or storing solid waste from the time of its production until the time of its collection.

38. Temporary Storage. Proper accumulation and storage of solid waste between scheduled collection intervals.

39. Transfer Station. A facility used as an adjunct to solid waste collection on system. Such a facility may be fixed or mobile and may include compaction of solid waste.

40. Water Pollution. Contamination, or other alteration of the physical, chemical or biological properties of any waters of the City or state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the health of man or beast, or to the plant, animal or aquatic life of the City or state or to other legitimate beneficial uses.

41. Waters of the City or State. All streams, creeks, and springs, and all bodies of surface or ground water, whether natural or artificial, within the boundaries of the state.

42. Yard Waste. All forms of botanical waste, including but not limited to grass clippings, leaves, tree trimming, branches and stumps.

CONTINUED ON NEXT PAGE
15-418. OWNERSHIP OF COLLECTED MATERIAL.
All solid waste and recyclables collected, shall, upon being loaded into collection
equipment, become the property of the collection agency.

15-419. EDUCATION, PROMOTION AND MARKETING. Each solid waste and
recyclable contractor shall implement public education and awareness programs
to educate their clients of the importance of recycling, yard waste composting,
and disposal of household hazardous waste. This program shall be implemented
regardless of the type of recycling service, if any, that is performed.

15-420. ENFORCEMENT PROVISIONS. The Public Works Director, or his/her
designee is hereby authorized to exercise such powers as may be necessary to
carry out and effectuate the purposes and provisions of this Article. Included in
the powers is the right to inspect all phases of solid waste management within
the City to assure compliance with this ordinance.

15-421. GENERAL PROVISIONS.
A. Solid waste collectors employed by the City or solid waste collection agencies
operating under contract with the City, are hereby authorized to enter in and upon
private property for the purpose of collecting solid waste or recyclables therewith
as authorized by agreement.

B. All contracts providing for the storage, collection and transportation of solid
waste to which the City is a party shall contain provisions for a performance bond
in an amount not less than the total value of the services provided by the
contractor. The bond shall be in the form of surety and held as collateral for payment of charges owed by the contractor.

15-422. PENALTY. Any person convicted of a violation of any of the provisions of this
Article or failing to comply with any of the requirements of this Article shall
be guilty of a public offense and punished by a fine of not more than $500 or
by imprisonment not to exceed six months or by both such fine and imprisonment.

The penalty shall be a separate offense for each and every day during
which any portion of which any violation of any provision of this Article is committed,
continued or permitted by any such person.

SECTION TWO: Repeal of Existing Sections. The existing Article 4 is hereby
repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally
construed to effectively carry out its purposes which are hereby found and declared to be in
furturement of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence,
portion or part of the proposed ordinance set forth, or the application thereof to any person or
circumstance is declared to be unconstitutional or invalid, such decision shall not affect the valid-
ity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective
upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 18th day of June, 2001.

APPROVED by the Mayor this 18th day of June, 2001.

[SEAL]

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

Peggy J. Flanigan, Mayor
ORDINANCE NO. 1894

ORDINANCE REZONING FROM AG, AGRICULTURE, TO RP-1, PLANNED SINGLE FAMILY RESIDENTIAL, FOR A RESIDENTIAL SUBDIVISION, LOCATED NORTH OF 143RD STREET, EAST OF NALL AVENUE, CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS. [ST. MICHAEL THE ARCHANGEL CATHOLIC CHURCH]

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit “A,” attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agriculture, to RP-1, Planned Single Family Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the ‘Leawood Development Ordinance.’

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 21st day of May, 2001.

APPROVED by the Mayor this 21st day of May, 2001.

Peggy Dunn, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
March 2, 2001

LEGAL DESCRIPTION FOR
PROPOSED RP-1 ZONING
PART OF SW¼, SECTION 33-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the SW¼ of the SW¼ of Section 33, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Southwest corner of the SW¼ of said Section 33; thence N 1° 55' 56" W, along the West line of the SW¼ of said Section 33, a distance of 869.01 feet, to the true point of beginning of subject tract; thence continuing N 1° 55' 56" W, along the West line of the SW¼ of said Section 33, a distance of 458.07 feet, to the Northwest corner of the SW¼ of the SW¼ of said Section 33; thence N 87° 50' 04" E, along the North line of the SW¼ of the SW¼ of said Section 33, a distance of 994.40 feet, to the Northeast corner of the W¼ of the E½ of the SW¼ of said Section 33; thence S 1° 56' 37" E, along the East line of the W½ of the E¾ of the SW¼ of the SW¼ of said Section 33, a distance of 462.12 feet; thence S 88° 04' 04" W, along a line perpendicular to the West line of the SW¼ of said Section 33, a distance of 994.48 feet, to the true point of beginning of subject tract.

The above described tract of land contains 10.50 acres, more or less.

By: ________________________________
Douglas A. Farrar, RLS No. 720
March 2, 2001

A MULTI-DISCIPLINE APPROACH TO PROJECTS
Civil Engineers • Electrical Engineers • Mechanical Engineers • Landscape Architects • Land Surveyors • Planners • GIS Consultants • Monitoring/Testing
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)
for 1 consecutive week(s), as follows:

ORDINANCE NO. 1894--5/22/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 23, 2001

Debra Valenti
Notary Public

My appointment expires: August 21, 2003
ORDINANCE REZONING FROM AG, AGRICULTURE, TO RP-I, PLANNED SINGLE FAMILY RESIDENTIAL, FOR A RESIDENTIAL SUBDIVISION, LOCATED NORTH OF 145TH STREET, EAST OF NALL AVENUE, CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS. [ST. MICHAEL THE ARCHANGELO CATHOLIC CHURCH]

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "A," attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agriculture, to RP-I, Planned Single Family Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing rezoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 21st day of May, 2001.
APPROVED by the Mayor this 21st day of May, 2001.

(SEAL)

Peggy B. Elin, Mayor

ATTEST:

Martha Heiser, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

March 2, 2001

LEGAL DESCRIPTION FOR
PROPOSED REZONING - RP-1 ZONING
PART OF SW1/4, SECTION 33-13-23
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the SW1/4 of the SW1/4 of Section 33, Township 13, Range 23, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Southwest corner of the SW1/4 of said Section 33, thence N 1° 53' 50" W, along the West line of the SW1/4 of said Section 33, a distance of 869.01 feet, to the true point of beginning of subject tract; thence continuing N 1° 55' 56" W, along the West line of the SW1/4 of said Section 33, a distance of 458.07 feet, to the Northwest corner of the SW1/4 of the SW1/4 of said Section 33; thence N 87° 50' 04" E, along the North line of the SW1/4 of the SW1/4 of said Section 33, a distance of 994.40 feet, to the Northeast corner of the W1/4 of the SW1/4 of the SW1/4 of said Section 33; thence S 1° 56' 37" E, along the East line of the W1/4 of the SW1/4 of the SW1/4 of said Section 33, a distance of 462.12 feet; thence S 88° 04' 04" W, along a line perpendicular to the West line of the SW1/4 of said Section 33, a distance of 994.48 feet, to the true point of beginning of subject tract.

The above described tract of land contains 10.50 acres, more or less.

By:

DONALD A. FLETT, C.P.E.
KANSAS LAND SURVEYOR

March 2, 2001
ORDINANCE NO. 1893

AN ORDINANCE GRANTING TO AND AUTHORIZING TO METROMEDIA FIBER NETWORK SERVICES, INC. A FRANCHISE AGREEMENT AUTHORIZING THE RIGHT TO CONSTRUCT, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM USING THE RIGHTS-OF-WAY IN THE CITY.

WHEREAS, Metromedia Fiber Network Services, Inc. ("Franchisee") has requested a Communications Franchise from the City to authorize the use of the City Rights-of-Way for the Franchisee to construct, install, maintain, and operate its communications fiber optic cable and related facilities for communications or related capabilities; and

WHEREAS, Kansas statutes and the Home Rule Amendment to the Kansas Constitution authorize the City to grant a franchise agreement and other such agreements for the use and occupancy of Rights-of-Way for placement of a System as hereinafter defined, and to adopt rules and regulations regarding such use and occupancy; and

WHEREAS, the City is authorized to and has established standards by ordinance, and in Exhibit B and otherwise in this franchise agreement for permitting occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Kansas Corporation Commission’s duties and jurisdiction.

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

SECTION 1. GENERAL

1.1 Preservation of Police Power Authority. Any rights granted to Franchisee pursuant to this Franchise are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 Defined Terms. For purposes of this Franchise, the terms, phrases, words, and their derivatives shall have the meanings as set forth in Exhibit B applicable to this Franchise Agreement and attached hereto.

1.3 Franchise Subject to Provisions of Exhibit B. This Franchise fully incorporates the provisions of the attached Exhibit B as fully set forth herein, and Franchisee agrees as a part of this Franchise to abide by the provisions of such Exhibit B, and to be subject to the enforcement by the City as provided therein and in this Franchise as a material term herein. This Franchise may establish supplementary obligations on Franchisee, but nothing in this Franchise shall be deemed to waive any obligation or requirement applicable to Franchisee authorized or established by Exhibit B.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 Franchises Non-Exclusive. This Franchise shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law.
2.2 Nature of Rights Granted by this Franchise. This Franchise shall not convey title, equitable or legal, in the Rights-of-Way, and gives only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Franchise and subject to the requirements herein. This Franchise shall not grant the right to use physical Facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall a Franchise excuse Franchisee from obtaining separate appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third party.

2.2 Grant. Franchisee is hereby granted the right and privilege to construct, operate, and maintain facilities in, through and along the City's right-of-way solely for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise and the Exhibit B, and all such special conditions as may be set forth in Exhibit A. As a condition of this grant, Franchisee is required to obtain and is responsible for any necessary permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City the FCC or the Kansas Corporation Commission, subject to Franchisee's right to challenge in good faith such requirements.

This Franchise does not provide Franchisee the right to provide cable service, operate an Open Video System, or use the Rights-of-Way for any other purpose other than as authorized herein.

2.3 Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate. The Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Franchise or hereinafter adopted to the extent not in contravention of state or federal law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by this Franchise shall in all matters be subordinate to the City's use and rights therein and Franchisee shall be limited to such uses as have been expressly granted to Franchisee by the City.

2.4 No interference. Franchisee shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Franchisee shall reasonably notify all residents affected by the proposed work prior to commencement of such work. All construction and maintenance by Franchisee or its subcontractors shall be performed in accordance with industry standards.

2.5 Notification, Joint Installation and Collocation Requirements. Franchisee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be required by the Exhibit B and as may otherwise be implemented in reasonable regulations or policies adopted by the City for use of the Rights-of-Way. Franchisee shall further make its installed facilities available to other Franchisees on a nondiscriminatory competitively neutral basis consistent with the requirements of federal law codified at § 47 U.S.C. 224.
2.6 Additional Facilities Requirements; Planned Infrastructure. When Franchisee installs any new conduit, the Franchisee shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") in the Rights-of-Way as may be determined by the City Engineer in accordance with the Exhibit B. When sections of Franchisee’s conduit is installed simultaneously with another Franchisee, the cost of such sections of Excess Conduit shall also be cost shared among each Franchisee as may be established by the City. In no event shall any Franchisee that chooses to allow collocation in its Facilities do so in a manner that is competitively discriminatory or creates an obstacle to entry under the terms made available.

2.7 Franchisee Responsible for Costs. The Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the Exhibit B. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

SECTION 3. TERM

This Franchise shall be effective for a term of two (2) years from the effective date herein of this Franchise, subject to termination or forfeiture as provided herein.

SECTION 4. COMPENSATION

4.1 Compensation. Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, but in no event shall the monthly Communications Franchise Fee be less than the sum of:

4.1.1 $1000 per month for the first mile of linear Facilities, or part thereof, plus $.21 per Linear Foot thereafter up to a monthly charge under this subsection of $10,000, and

4.1.2 Antenna shall be permitted, and compensation shall be paid as provided by the Exhibit B, as amended from time to time subject to the specific approval requirements set for the therein.

Franchisee agrees to pay the Communications Franchise Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the Exhibit B. As to the City of Leawood only, Franchisee acknowledges such compensation is fair and reasonable compensation which shall be lawfully paid to the City for use of the Rights-of-Way.
4.2 **Taxes; Communications Franchise Fee Not a Tax.** The Communications Franchise Fees or other compensation required herein and by the Exhibit B shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Exhibit B. Franchisee acknowledges that the Communications Franchise Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind.

**SECTION 5. TRANSFER OF FRANCHISE OR FACILITIES**

5.1 **Transfer of Franchise.** Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise or any of the rights or privileges granted by this Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee’s assets, including but not limited to the Franchise, or an interest in Franchisee’s Affiliate companies, in a transaction commonly known as an “initial public offering” without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

5.2 **Sale or Lease of Facilities.** Except as otherwise may be provided by law, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

**SECTION 6. FORFEITURE OF FRANCHISE AND PRIVILEGE.**

In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Franchise, including but not limited to payment of the Franchise Fees and such other material provisions of the Exhibit B, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, including the provisions of the Exhibit B, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Franchise. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; setting out the grounds upon which said Franchise is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the Exhibit B or as may otherwise exist at law.
SECTION 7. GENERAL CONDITIONS

7.1 Compliance With Laws. In performing activities and exercising its rights and obligations under this Franchise, the Franchisee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

7.2 Enforcement; Attorneys' Fees. The City shall be entitled to enforce this Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys’ fees in the event that Franchisee is determined judicially to have violated the terms of this Franchise.

7.3 Relationship of the Parties. Under no circumstances shall this Franchise be construed as one of agency, partnership, joint venture, or employment between the parties.

7.4 Relocation or Removal of Facilities. Franchisee shall at its own cost relocate or remove its Facilities as required by the City under such conditions as may be set forth in the Exhibit B.

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

SECTION 8. INDEMNIFICATION

Franchisee at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel for the City acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney’s fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City entered into this Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under this Franchise, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. As to the City of Leawood only, in executing this Franchise, Franchisee agrees that the Franchise has been lawfully authorized, and that Franchisee waives any claim to challenge the lawfulness of this Franchise. This indemnification shall survive the expiration or termination of this Franchise for a period of two (2) years after the effective date of expiration or termination.
SECTION 9. MISCELLANEOUS

9.1 This Franchise, together with all Exhibits, shall constitute the entire Franchise and no negotiations or discussions prior to execution shall be of any effect.

9.2 The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

9.3 The right and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision thereof shall not constitute a waiver of any other breach. The laws of the State of Kansas shall govern this Franchise.

9.4 This Franchise shall create no third-party beneficiary rights.

9.5 Notices shall be in writing, mailed certified with return receipt requested, effective upon receipt and sent to:

Franchisee: Metromedia Fiber Network Services, Inc.
360 Hamilton Avenue
White Plains, NY 10601
Attn: Vice President, Legal and Regulatory Affairs

The City: City of Leawood, Kansas
4800 Town Center Drive
Attn: Vice President, Legal and Regulatory Affairs

or to replacement addresses that may be later designed in writing.

SECTION 10. EFFECTIVE AND ACCEPTANCE.

10.1 Pursuant to the City’s Home Rule authority, this Franchise Agreement shall be effective upon adoption and publication of this ordinance once in the official City newspaper upon Franchisee having filed within three (3) days thereafter with the City Clerk of the City and Franchisee’s unconditional acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City and Franchisee. Franchisee shall pay all publication costs. Franchisee’s acceptance shall be deemed to acknowledge that this Franchise is a lawful contract between the City and Franchisee and that Franchisee agrees to the terms hereof voluntarily and with full authority to execute this Franchise.

10.2 To the extent that Franchisee seeks any rights that hereinafter may require a franchise adopted pursuant to the procedure set forth in K.S.A. 12-2001 or otherwise, this franchise ordinance shall additionally be read in full at three regular meetings of the Governing Body. Immediately after the final passage, the franchise ordinance shall be published in the official City newspaper, once each week for two consecutive weeks. To the extent not otherwise effective pursuant to Section 10.1 of this Ordinance, such provisions shall take effect and be in force sixty-one days after the date of its final passage unless pending its final
passage or within sixty days of its final passage a petition signed by a number of the voters of the City equal to 20% of the number of voters who voted from the council member receiving the highest number of votes at the last preceding City election shall be presented to the Governing Body of the City asking that the such provisions be submitted for adoption to popular vote, in which case the such provisions shall become effective only if and when approved by a majority of the electors voting thereon. Franchisees written acceptance pursuant to Section 10.1 shall be deemed such acceptance of any such provisions additionally approved pursuant to this Section 10.2 and shall similarly be deemed unconditional acceptance in writing of the provisions, terms and conditions of this ordinance and shall constitute a contract between the City and Franchisee.

Passed by the Council the _______21st____ day of _______May___, 2001.

Approved by the Mayor the _______21st____ day of _______May___, 2001.

Publication Dates: Tuesday, May 29, 2001: Tuesday, June 5, 2001

Effective Date: _______July 21, 2001____

Peggy J. Dunn, Mayor

Martha Heizer, City Clerk

Lisa R. Wetzler, Assistant City Attorney
EXHIBIT A
SPECIAL CONDITIONS

The following special conditions shall be a condition of this Franchise and shall supercede any provision in this Franchise to the contrary:

Irrespective of any new Facilities as may be hereinafter permitted, this Franchise authorizes use of four existing 1.5 inch HDPE conduits located within the Right-of-Way for which a single linear foot charge would apply.
EXHIBIT B

The parties acknowledge that this Franchise Agreement is being approved prior to final adoption of a pending Communications and Cable Services Code. In order to facilitate the expeditious approval of this Franchise, the parties agree that the following provisions and requirements are adopted solely for the purposes of this Franchise Agreement and shall be deemed incorporated herein accordingly as contract or franchise terms. To the extent that the provisions in this Exhibit B impose requirements in conflict with this Franchise, the Franchise language shall prevail:

CHAPTER 1. GENERAL PROVISIONS

1.1 Declaration of Findings. The City hereby declares as a legislative finding that the Rights-of-Way within Leawood, Kansas:

A. Are a unique and physically limited resource;

B. Are critical to the travel and transport of persons and property in the City; and

C. Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the Facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the City and its citizens; and require adoption of the specific additional regulations established by this Exhibit B to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of cable, communications, and other services in the public interest.

1.2 Title. This Exhibit and the requirements herein may be referred to and cited as the "Exhibit B" to the attached Franchise Agreement.

1.3 Applicability. The requirements of this Exhibit B shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Exhibit B shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Exhibit B shall be deemed incorporated in each Franchise granted Nothing in this Exhibit B or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, whether entered into before or after enactment of this Exhibit B, and shall impose obligations on any such Person additional to those included in such franchise or contract only to the extent permitted by law;

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provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City’s right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid franchise or Agreement.

1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 **Public Inspection of Records.** Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

1.6 **Indemnification.** As a condition of use of the Rights-of-Way, Providers at their sole cost and expense, shall indemnify, protect, defend (with legal counsel representing the City that is acceptable to the City, such approval not to be unreasonably withheld) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney’s fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City approved a Franchise with Provider, the rights granted to Provider, or the activities performed, or failed to be performed, by Provider under the Franchise or use of the Rights-of-Way, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. This indemnification shall survive the expiration or termination of any Franchise or use of the Rights-of-Way for a period of two (2) years after the effective date of expiration or termination.

1.7 **No Cause of Action Against the City.** The Provider shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement
thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 Compliance With Laws. In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 Enforcement; Attorneys' Fees. The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 Relationship of the Parties. Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

1.11 Defined Terms. For purposes of this Exhibit B, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "Access Facilities" means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. "Affiliate" means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding
an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "Antenna" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "Basic Cable Service" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).


F. "Cable Franchise" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "Cable Franchise Fee" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance,
indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "Cable Internet Services" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "Cable Services" means:

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;

J. "Cable System" means 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 the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(e)) to the extent 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;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "Capital Costs" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "City" or "Grantor" means the City of Leawood, Kansas.

N. "Exhibit B" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "Collocation" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "Communications" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "Communications Franchise" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.
R. "**Communications Franchise Fee**" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "**Communications Service**" means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. "**Complaint**" means any oral, written or electronic, allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "**Converter**" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "**Direct Incremental Costs**" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "**Drop**" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "**Facilities**" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. "**Franchise**" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.
Z. "Franchise Area," unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. "Franchisee" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.

BB. "Grantee" means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. "Gross Receipts" means all revenues received directly or indirectly by a Franchisee or its Affiliates for Communications Services originating, terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers
that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "Gross Revenues" means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from
the Cable System; payments or other consideration received by the Grantee from programmers, except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or (iv) Cable Franchise Fees collected from Cable Subscribers; or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

EE. "Institutional Network" or "I-Net" means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. "Institutional Network Services" means the provision of an I-Net by a Cable System operator to governmental, educational and other, Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated
voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. "Institutional Users" means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. "Internet Access Service" means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. "Linear Foot" means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. "Normal Operating Conditions" means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those
conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. "Open Video Services" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. "Person" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. "Provider" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.

OO. "Public Building" means any building owned or for the greater part occupied by the City or other governmental unit.

PP. "Renewal" means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. "Reports" means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. "Reseller Service Provider" means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. "Rights-of-Way" means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.
TT. "ROW Ordinance" means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.

UU. "Service Interruption" means the loss of picture or sound on one or more Channels on the Cable System.

VV. "Standard Installation" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. "Subscriber" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. "System" means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.


AAA. "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. "Trained Representative" means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 Unlawful to Operate Without a Franchise. It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City
without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within "Communications Services" as defined herein.

2.2 **Franchises Nonexclusive.** The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 **Nature of Rights Granted by any Franchise.** Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 **Application and Application Fee Required.** Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public
interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 Standards and Procedures for Approval or Renewal of Franchises. Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 Cable Service and Open Video Systems (OVS); Separate Franchise Required. A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements
pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate. The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 Term. A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 Communications Franchise Fees. Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $1000 per month for the first mile of linear Facilities, or part thereof, plus $.21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $10,000, and
B. $15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

2.10 Bundled Services. To the extent Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of the Franchisee in such manner that an amount equal to the Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts," provided, however, if a Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee.

2.11 Timing of Payment of Communications Franchise Fees. Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 Interest on Late Payments and Under Payments. If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.

2.13 Fee Statement. Each Communications Franchise Fee payment shall be accompanied by a statement showing the manner in which the Communications Franchise Fee was calculated. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit
a statement, certified as true, setting forth its Gross Receipts, Linear Foot, and number of Antennae for each month of the preceding calendar year, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Communications Franchise Fee.

2.14 No Accord and Satisfaction. For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 Maintain Records. Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 Right of Inspection. The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee’s Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business’ days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

2.17 Description of Service. Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior year. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.
2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Communications Franchise Fee is compensation for use of the Rights-of-Way. Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction.
commonly known as an “initial public offering” without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 Forfeiture of Franchise and Privilege. In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

CHAPTER 3. CABLE SERVICES

3.1 Cable Franchise Requirements.

A. Unlawful to Operate Without a Franchise. It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such
violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. **Nature of Rights Granted by any Cable Franchise.** Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. **Franchise Not Exclusive.**

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.
3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. Franchise Territory.

Every Cable Franchise shall apply to the entire territorial area of the City, as it exists now or may later be configured.

E. Federal, State, and City Jurisdiction.

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a
legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. Initial Franchise Applications. Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. Consideration of Initial Applications.

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. Franchise Renewal. Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. Grant of Additional Franchise and Competing Service. Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a
Franchise, the City may issue a Franchise in an area where another
Grantee is operating only following a public hearing to consider the
potential impact which the grant of an additional Franchise may have on
the community. In considering whether to grant one or more additional
Franchises, the City shall specifically consider, and address in a written
report, the following issues:

1. The positive and/or negative impact of an additional Franchise on
the community.

2. The ability and willingness of the specific applicant in question to
provide Cable Services to the entire Franchise Area which is
served by the existing Cable Provider. The purpose of this
subsection is to ensure that any competition which may occur
among Grantees will be on terms, which when taken as a whole, do
not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete
construction of the proposed Cable System and activate Cable
Service in the entire Franchise Area; and, whether the applicant
can complete construction and activation of its Cable System in a
timely manner.

4. The financial capabilities of the applicant and its guaranteed
commitment to make the necessary investment to erect, maintain,
and operate the proposed Cable System for the duration of the
Franchise term. In order to ensure that any prospective Grantee
does have the requisite current financial capabilities, the City may
request equity and debt financing commitment letters, current
financial statements, bonds, letters of credit, or other
documentation to demonstrate to the City's satisfaction that the
requisite funds to construct and operate the proposed Cable System
are available.

5. The quality and technical reliability of the proposed Cable System,
based upon the applicant's plan of construction and the method of
distribution of signals, and the applicant's technical qualifications
to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and
operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more
additional Cable Systems and the potential disruption of those
Rights-of-Way and private property that may occur if one or more
additional Franchises are granted.

8.
9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. Permits for Non-Franchised Entities.

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 Design, Services and Capabilities.

A. Cable System Design. Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. The Cable System. Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. Drops To Public Buildings.

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one
hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor
fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power.** Within twelve (12) months of activation of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

3.3 **Institutional Network, And Public Educational And Governmental Access Or "PEG Access"**

A. **Institutional Network, Access Channels.**
1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

B. Proof of Performance Testing. To ensure high quality service on the Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 Technical Standards and Customer Service Practices.


1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.
B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less than ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.
5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee’s employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

(i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

(ii) A problem established as having been non-Cable System or Cable Service in origin.

A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee’s Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of
time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.
8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. Communications Between Grantee and Subscribers.

1. Notifications to Subscribers:

(i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

(a) Product and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

(c) Installation and service maintenance policies;

(d) Instructions on how to use Services;
(e) Channel positions of programming offered on a System; and

(f) Billing and Complaint procedures, including the name, address and telephone number of the City.

(ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. Billing.

(i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

(ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

(iv) Credits for Service shall be issued no later than the Subscriber's next billing cycle after determination that the credit is warranted.

3. Late Charges. A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

(i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

(a) The date after which the fee will be imposed if the balance is not paid; and
(b) The amount of the fee that will be imposed; and

(ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

(i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, the-and available for inspection by the City upon request.

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.
2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

4. **Special Agreements.** Nothing herein shall be construed to prevent a Grantee from serving areas not covered under this section upon agreement with developers, property owners or residents.

K. **Customer Service Reporting Requirements.** The City may require upon reasonable request that a Grantee periodically prepare and furnish to City semi-annual reports and any other reasonable information relevant to the Grantee's compliance with the customer Service requirements of this Chapter measured on a quarterly basis.

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate
compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. **Communications with Regulatory Agencies.** Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. **Annual Reports.**

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

   (i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

   (ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

   (iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

   (iv) A statement of the Grantee's current billing practices and charges;

   (v) A copy, if any, of the Grantee's current Subscriber Service contract; and

   (vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

   (vii) An index of all technical and operational reports that Franchisee is required to develop and maintain with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.
Other than subsection (vii), all of the above information shall not be required annually unless there is a change after the first filing.

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

D. Service Contract and Subscriber Information.

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 Financial Provisions, Remedies, Procedures and Due Process.

A. Annual Cable Franchise Fee.

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the
2. Further, every Cable Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if a Cable Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not a Cable Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any other applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Cable Service Cable Franchise Fee.

3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Grantee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Grantee's System.

4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Grantee or by audit as permitted by this Chapter, the Grantee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.

5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Grantee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.

6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the
City may have for further sums payable under the provisions of this Chapter, Exhibit B or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed. City's right to audit, and the Grantee's obligations to retain records related to the Cable Franchise Fee audit, shall expire five (5) years from the date on which each Cable Franchise Fee payment by the Grantee is due.

B. **Security Fund.** Each Grantee may be required to maintain a security fund with the City to ensure compliance with this Chapter, Exhibit B and applicable Franchise, in an amount and in a manner as set forth in the Grantee's Franchise.

C. **Bonds, Indemnification, and Insurance.** Each Grantee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Grantee's Franchise. Each Grantee also shall be required to indemnify the City in a manner as set forth in Chapter 1 and in the Grantee's Franchise.

D. **Remedies and Enforcement Procedure.**

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Exhibit B or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Grantee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Grantee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Grantee fails to correct the violation within the time prescribed, or if the Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Exhibit B or Franchise violations, including those in which grounds for revocation are considered.

2. At the public hearing, the City Council shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.

3. In the event the City finds that the Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully...
remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

4. In the event the City finds that a violation exists and that the Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the Security Fund, as follows:

(i) For System construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, $500 per day of non-compliance;

(ii) For all other violations, $250 per day per violation.

The City shall provide the Grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee Cable remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.

6. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Grantee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Grantee.

7. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Exhibit B, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.

8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type.

E. Grounds for Revocation. In addition to any rights in this Exhibit B or applicable Franchise, the City reserves the right to utilize the above described enforcement procedure to revoke a Franchise, and all rights and privileges pertaining thereto, in the event that any of the following occur,
and the City and a Grantee are not able to mutually agree upon a cure or alternate remedy:

1. The Grantee substantially violates any material provision of this Exhibit B or its Franchise;
2. The Grantee practices an act of fraud or deceit upon the City; or
3. The Grantee becomes insolvent or is adjudged bankrupt.

F. Right of Appeal.

1. Upon the imposition of a penalty or revocation decision, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the City Council within which to file an appeal with a court of competent jurisdiction.

2. During any such appeal period, the Franchise shall remain in full force and effect.

3.7 Foreclosure, Receivership and Abandonment.

A. Foreclosure. Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Exhibit B governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

B. Receivership. The City shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Franchise and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Exhibit B and applicable Franchise.
3.8 **Purchase Of System.**

A. If a renewal or extension of a Franchise is denied without further right of appeal, or a Franchise is lawfully terminated, with all rights of appeal exhausted, the City may acquire ownership of the Cable System or effect a transfer of ownership of the Cable System to another Person, any such acquisition or transfer shall in accordance with and to the extent permitted by 47 U.S.C. § 547 as follows:

1. Upon revocation of a Franchise, such valuation shall not include any sum attributable to the value of the Franchise itself and plant and property shall be valued according to its book value at the time of revocation, or the Cable System's initial cost less depreciation and salvage whichever of the two is lower.

2. At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

3.9 **Sale Or Transfer Of Franchise.**

A. A Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.

B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System to an unaffiliated entity so as to create a new controlling interest in
the Grantee. The term "controlling interest" as used herein means majority equity ownership of a Grantee.

C. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Grantee's assets, including, but not limited to, the Franchise, such as in a transaction commonly known as an "initial public offering" shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Franchise or Cable System and thus shall not require compliance with this section.

D. In the case of any sale or transfer of ownership of an interest in or control of a Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Exhibit B. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

E. The City reserves any legal right it has under applicable law to require a Grantee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a Cable Franchise Fee.

3.10 Rights Of Individuals Protected.

A. Discriminatory Practices Prohibited. A Grantee shall not deny Cable Service, deny access, or otherwise discriminate against Subscribers, programmers, or general citizens on the basis of income level, race, color, religion, national origin, sex, or age. Every Grantee shall strictly adhere to the equal employment opportunity requirements of state and federal law. Every Grantee shall comply at all times with all other applicable federal, State, and local laws, and all executive and administrative orders relating to non-discrimination.

B. Subscriber Privacy. Every Grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

3.11 Miscellaneous Provisions.

A. Rate Regulation. The City reserves the right to regulate rates for Basic Cable Service and any other services offered over a Cable System, to the extent permitted by federal or state law. A Grantee shall be subject to the
CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS

4.1 Rights-of-Way Ordinance. A Provider shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Exhibit B shall be deemed a condition of any Franchise. The provisions of this Chapter 4 shall apply as provided herein to Providers, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

4.2 Permit Requirements. At least thirty (30) days before the beginning of any installation, removal or relocation of its Facilities, the Provider shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within thirty (30) days of receipt of such plans, either approve the plans or inform the Provider of the reasons for disapproval. The Provider shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance.

A. Prior to any excavation within the Rights-of-Way, the Provider shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Ordinance, and any subsequent ordinances or regulations that may be adopted by the City regarding excavation work.

B. The Provider shall post a bond with the City in accordance with the City's ordinances in an amount determined by the City Engineer, to guarantee the timeliness and quality of any construction, repair and restoration work, including damage to public or private property, and to guarantee the removal of its facilities from the City's Rights-of-Way should such removal be required upon the expiration of a Franchise.
C. Prior to the commencement of any construction or alteration of its facilities located in the Rights-of-Way, the Provider shall furnish to the City Engineer a subsurface utility engineering study on the proposed route of construction, expansion or alteration, which shall consist of the following tasks:

1. All available plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route;

2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, post and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of task A and B above, on to the Provider's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files; and

4. Provide all such data collected into a CADD file (or other format as may be identified by the City Engineer) compatible with that used by the City Engineer and deliver a copy to the City Engineer.

4.3 Mapping of Facilities. Each Provider shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new Facilities in the Rights-of-Way, and such other related information as required by the City Engineer. Such maps shall be updated and kept current with the City.

4.4 No interference. Provider shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Provider shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by Provider or its subcontractors shall be performed in accordance with industry standards.

4.5 Advertising, Signs or Extraneous Markings. Provider shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Provider or any other person or entity on the public right-of-way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

4.6 Tree Protection. Unless otherwise approved in writing by the City, in the attachment, installation, removal, reattachment, reinstallation, relocation or
replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

4.7 **Exclusion of Certain Locations/Facilities.** Prior to its installation of any Facilities in the Rights-of-Way and after it provides the City with its proposed plans for the Facilities, the City may in its discretion designate certain locations or facilities in the Rights-of-Way to be excluded from use by Provider for its Facilities, including, but not limited to, ornamental or similar specially-designed street lights, or other facilities or locations which, in the reasonable judgment of the City Engineer do not have electrical service adequate or appropriate for the Provider's Facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the City Engineer is incompatible with the proposed Facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other facilities that have been designated or planned for other use or are not otherwise available for use by Provider due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with the reasonable requirements of the Provider, the City will cooperate in good faith with Provider to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for Provider. All such determinations shall be in writing and appealable to the City Administrator as provided in the ROW Ordinance.

4.8 **Location, Type and Design of Facilities Subject to Approval.** The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennae, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good
cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 Notification, Joint Installation and Collocation Requirements. Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 Use of Facilities by others; required terms. If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 Additional Facilities Requirements; Planned Infrastructure. When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of
Excess Conduit Installed at the City’s direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 Removal of Facilities. Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 Relocation of Facilities. Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallion of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallion of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person
requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 Provider Responsible for Costs. The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 Insurance and Bonds. During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

5.1 Administration of Franchise. The City shall be responsible for the continued administration of this Exhibit B and any Franchises granted hereunder. The City may delegate this authority from time to time in any manner consistent with applicable law, provided, however, that the City shall not delegate enforcement authority.

5.2 Appeals. Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 Non-Enforcement by the City. A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 Penalties. Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all
other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

5.5 **Publication of Notices.** All public notices or ordinances required to be published by law shall be published in the official newspaper of the City. A Grantee shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments thereto.

5.6 **Severability.** If any material Section of this Exhibit B or of any Franchise granted pursuant to it is held by a governmental authority of competent jurisdiction, to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of the Exhibit B, Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions therein.
CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication
STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)
for 2 consecutive week(s), as follows:
ORDINANCE NO. 1893--5/29/01 & 6/5/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JUNE 6, 2001

DEBRA VALENTI
Notary Public - State of Kansas

ORDINANCE NO. 1893

AN ORDINANCE GRANTING TO AND AUTHORIZING TO METHODOLOGY FIRE BRIGADE, INC., FOR THE PURPOSE OF FURTHERING THE CONTRACT, OPERATE, AND MAINTAIN A COMMUNITY FIRE PREVENTION AND CONTROL SERVICE IN THE CITY OF LEAWOOD, KANSAS....

WHEREAS, the City of Leawood, an incorporated municipal corporation, in the State of Kansas, by and through its Board of Commissioners, has determined that it is necessary and desirable to have a fire prevention and control service established in the City of Leawood, Kansas.

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

SECTION 1. General Provisions

1.1 Preservation of Police Power Authority. Any rights granted to Fireman pursuant to this ordinance shall be subject to the authority of the State of Kansas to enact laws and to the authority of the City of Leawood to enact ordinances; and the said rights granted to Fireman shall be deemed to be in addition to and not in derogation of any rights which are already conferred on the City of Leawood.

1.2 Powers of the City Council. The City Council of the City of Leawood, Kansas, is hereby empowered to make and pass all such ordinances as may be necessary to carry out the provisions of this ordinance.

SECTION 2. Scope of Ordinance

2.1 Scope of Ordinance. This ordinance shall apply to the City of Leawood, Kansas, as herein defined.

2.2 Nature of Authority. The authority granted to the City of Leawood by this ordinance is to be exercised in accordance with the provisions of this ordinance.

2.3 Authority of the City Council. The City Council of the City of Leawood, Kansas, is hereby authorized to adopt, amend, and repeal this ordinance.

SECTION 3. Definitions

3.1 Definitions of Terms. The terms used in this ordinance shall be defined as follows:

3.2 Application of Ordinance. This ordinance shall be applicable to the City of Leawood, Kansas, as herein defined.

SECTION 4. Transfer of Franchises or Privileges

4.1 Transfer of Franchise. The City of Leawood is hereby granted the right to transfer this franchise to any entity or entity or association which shall be in good standing and shall comply with the provisions of this ordinance.

4.2 Transfer of Franchise. The City of Leawood is hereby granted the right to transfer this franchise to any entity or entity or association which shall be in good standing and shall comply with the provisions of this ordinance.

SECTION 5. Transfer of Franchises or Privileges

5.1 Transfer of Franchise. The City of Leawood is hereby granted the right to transfer this franchise to any entity or entity or association which shall be in good standing and shall comply with the provisions of this ordinance.

5.2 Transfer of Franchise. The City of Leawood is hereby granted the right to transfer this franchise to any entity or entity or association which shall be in good standing and shall comply with the provisions of this ordinance.

SECTION 6. FORFEITURE OF FRANCHISES AND PRIVILEGES

6.1 Forfeiture of Franchise. Any franchise granted to a person or entity under this ordinance shall be forfeited upon the happening of any one of the following events:

6.2 Forfeiture of Franchise. Any franchise granted to a person or entity under this ordinance shall be forfeited upon the happening of any one of the following events:

6.3 Forfeiture of Franchise. Any franchise granted to a person or entity under this ordinance shall be forfeited upon the happening of any one of the following events:

SECTION 7. GENERAL PROVISIONS

7.1 Conditions of Franchise. The conditions of this franchise shall be such as to be reasonable and reasonable, and shall be subject to the approval of the City Council.

7.2 Conditions of Franchise. The conditions of this franchise shall be such as to be reasonable and reasonable, and shall be subject to the approval of the City Council.

7.3 Conditions of Franchise. The conditions of this franchise shall be such as to be reasonable and reasonable, and shall be subject to the approval of the City Council.

SECTION 8. MISCELLANEOUS

8.1 Miscellaneous. The provisions of this ordinance shall be deemed to be in addition to and not in derogation of any rights which are already conferred on the City of Leawood.

8.2 Miscellaneous. The provisions of this ordinance shall be deemed to be in addition to and not in derogation of any rights which are already conferred on the City of Leawood.

8.3 Miscellaneous. The provisions of this ordinance shall be deemed to be in addition to and not in derogation of any rights which are already conferred on the City of Leawood.
AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF LANDS OR INTERESTS IN LANDS IN THE 4000 BLOCKS OF 39TH STREET AND MARSHALL DRIVE TO ROSEHILL ROAD.

WHEREAS, the Governing Body of the City of Lenexa, Kansas, by Act 2020-37, declared the necessary for the purchase of all necessary lands or interests in lands for the improvements described in the ordinance for the following: Improvements to include redesign of the intersections at 39th Street and Marshall Drive and 39th Street and Rosehill Road, installation of a modified cut-de-sac at 40th Street and Rosehill Road and closure and elimination of a small portion of Rosehill Road between the East End of 39th Street and the current West leg of 39th Street, and any and all appurtenances thereat,

WHEREAS, said survey and description was presented and is maintained by the Lenexa City Attorney, Kansas 66215.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Lenexa, Kansas: SECTION ONE: It is hereby declared necessary to acquire private property for the use of the City of Lenexa, Kansas, for the following described improvements: Improvements to include redesign of the intersections at 39th Street and Marshall Drive and 39th Street and Rosehill Road, installation of a modified cut-de-sac at 39th Street and Rosehill Road and closure and elimination of a small portion of Rosehill Road between the East End of 39th Street and the current West leg of 39th Street, and any and all appurtenances thereat.

CONCERNED:

B.A. Kasch and Co. and all other persons holding any interest in the property herein described.

MAILING ADDRESS:

12000 West 39th Street
Lenexa, Kansas 66215

VENDOR:

State Farm Life Insurance Company

1201 Main Street
Lenexa, Kansas 66215

LEASE HOLDER:


EASEMENT HOLDERS:

Ferguson Electronics, Inc.

2501 SW 39th Street
Lenexa, Kansas 66215

INTEREST IN PROPERTY:

Ferguson Electronics, Inc.

2501 SW 39th Street
Lenexa, Kansas 66215

TEMPORARY CONSTRUCTION EASEMENT:

All that part of the Northeast Quarter 2 of the Southwest Quarter of Section 34, Township 12 South, Range 24 East, in the City of Lenexa, Johnson County, Kansas, described as follows: starting at the Southwest corner of said Section 34 a distance of 125 feet along the West line of said Section 34, thence North 12 degrees 12 minutes 32 seconds west along said Section 34 a distance of 123 feet 10 inches to a point on the South line of the Southwest Quarter of Section 34, thence West 65 degrees 52 minutes 58 seconds along the South line of said Section 34 a distance of 123 feet 10 inches to the point of beginning. Said easement to be 12 feet in width along the South line of said Section 34, 6 feet in width along the West line of Section 34, and 6 feet in width along the North line of said Section 34.

PERMANENT RIGHT OF WAY:

All that part of the Northeast Quarter 2 of the Southwest Quarter of Section 34, Township 12 South, Range 24 East, in the City of Lenexa, Johnson County, Kansas, described as follows: starting at the Southwest corner of said Section 34 a distance of 125 feet along the West line of said Section 34, thence North 12 degrees 12 minutes 32 seconds west along said Section 34 a distance of 123 feet 10 inches to a point on the South line of the Southwest Quarter of Section 34, thence West 65 degrees 52 minutes 58 seconds along the South line of said Section 34 a distance of 123 feet 10 inches to the point of beginning. Said easement to be 12 feet in width along the South line of said Section 34, 6 feet in width along the West line of Section 34, and 6 feet in width along the North line of said Section 34.
A " Basic Cable Service" means any Cable Service to which a law limiting the availability of local television broadcast signals and any Public, Educational, and Governmental Access programming is required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall include only Cable Services for which there is no additional charge, with the exception of those Cable Services that are provided to the cable system by a Cable Service Provider as a part of a Cable System Access Arrangement.

B. " Cable System " means the facilities and services provided to the public by a Cable Service Provider under a franchise.

C. " Cables and Wires " means the cables and wires used to distribute Cable Services to the public.

D. " Cable System Access Arrangement " means a formal agreement between a cable system and a Cable Service Provider requiring the cable system to carry certain Cable Services.

E. " Cable Television Service " means the transmission of visual and/or audio signals through the use of cables and wires, including any public, educational, and governmental Access programming.

F. " Cable Television Service Provider " means any person who provides Cable Television Services, including any person who provides Cable Television Services to the public.

G. " Cable Television System " means the facilities and services provided to the public by a Cable Television Service Provider.

H. " Cable Television System Access Arrangement " means a formal agreement between a cable television system and a Cable Television Service Provider requiring the cable television system to carry certain Cable Television Services.

I. " Cable Television System Access Arrangement " means a formal agreement between a cable television system and a Cable Television Service Provider requiring the cable television system to carry certain Cable Television Services.

J. " Cable Television System Access Arrangement " means a formal agreement between a cable television system and a Cable Television Service Provider requiring the cable television system to carry certain Cable Television Services.

K. " Cable Television System Access Arrangement " means a formal agreement between a cable television system and a Cable Television Service Provider requiring the cable television system to carry certain Cable Television Services.

L. " Cable Television System Access Arrangement " means a formal agreement between a cable television system and a Cable Television Service Provider requiring the cable television system to carry certain Cable Television Services.

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Z. " Cable Television System Access Arrangement " means a formal agreement between a cable television system and a Cable Television Service Provider requiring the cable television system to carry certain Cable Television Services.
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2.4 Applications and Application Fee Required. Any person seeking to register as a franchisee shall file an application with the franchisor and shall pay the franchise fee, which application may be required to include such additional information as the franchisor may reasonably require. The franchisor shall determine the adequacy of the application and shall either approve or deny the application within thirty days after receipt of the application. If the franchisee is denied, the franchisor shall provide the franchisee with a written explanation of the denial within a reasonable time after the denial.

CHAPTER 3. CABLE SERVICES

3.1 Cable Services Requirements.

A. Upon Compliance with these Rules. A franchisee shall not be deemed in compliance with these Rules subject to any of the Rules contained in this Part, unless the franchisor shall have consented to the franchisee's compliance therewith, and shall have consented to such agreement or written notice of consent, respectively, in writing.

B. Time Limit. Unless the Rules specifically provide otherwise, within thirty days after the date of the filing by the franchisor of such documents, notice, or written consent, the franchisor shall either grant or deny consent, and shall notify the franchisee in writing of the decision and of the reasons therefor.

C. Notice of Consent. The franchisor shall give notice of its consent in writing to the franchisee within ninety days after the date of the filing by the franchisor of such documents, notice, or written consent, respectively.

D. Notice of Denial. The franchisor shall give notice of its denial in writing to the franchisee within ninety days after the date of the filing by the franchisor of such documents, notice, or written consent, respectively.

E. Notice of Filing. The franchisor shall give notice of the filing of such documents, notice, or written consent, respectively, in writing to the franchisee within ninety days after the date of the filing by the franchisor of such documents, notice, or written consent, respectively.

F. Notice of Violation. The franchisor shall give notice of the filing of such documents, notice, or written consent, respectively, in writing to the franchisee within ninety days after the date of the filing by the franchisor of such documents, notice, or written consent, respectively.

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1. A facility that serves Subscribers without using any public Rights-of-Way;
2. A facility that carries traffic on a public Rights-of-Way;
3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 and 202 shall be considered as a Communications System (other than for purposes of 47 U.S.C. § 243(b) to the extent such facility is used in the performance of such Services) if any use of the facility exceeds the extent of such use is solely to provide interactive on-demand video service.
4. An Open Video System that complies with Section 653 of the Cable Act;
5. Any facility of any electric utility used solely for operating its transportation system.

"Capital Costs" means costs associated with the purchase of assets, products, or other resources that will provide service for more than one year and require meaning in conjunction with generally accepted accounting principles.

"Charter" means a portion of the electromagnetic spectrum designated by the FCC.

"City" or "Greater City" means the City of Llewellyn, Kansas.

"Exhibit B" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

"Collaboration" means the shared use of facilities, including, but not limited to, mutual investments in facilities, joint ownership or control of the same or similar facilities. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their ordinary and customary meaning.

"A. Access Franchises"
1. Defined capacity designed for non-commercial Public, Educational or Governmental Access use, and
2. The facilities and equipment for the use of such capacity.

"B. Affiliates" means each person, directly or indirectly, controlling, controlled by, or under common control with, any person designated as an Affiliate, and includes any management or other person who, by contract or otherwise, exercises control of, or has the right to exercise control of, such person.

"C. Attorney" means any device that transmits and/or receives radio waves having up to 30 MHz CPM bandwidth for purposes other than television, AM/FM radio, microwave, cellular telephones and other common carrier services in a single transponder or channel, or other access physically connected and coordinated to receive and transmit all such devices.

"D. Basic Cable Service" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Program and/or Service(s) that the Provider or its Affiliate may receive, distribute, or resell, which is designed for public, educational, or governmental Access Use.


The text appears to be a legal document, specifically a franchise agreement, discussing terms and provisions related to the use of cable systems and services. It includes definitions for various terms such as "access franchises," "collaboration," and "basic cable service," among others, and outlines the rights and obligations of both the franchisee (the Provider) and the franchisor (the City of Llewellyn, Kansas). The document appears to be part of a larger legal framework, likely involving telecommunications or cable television services. The text is technical and legal in nature, using specific terminology and references to statutes and regulations. The overall aim is to establish a franchise agreement with detailed provisions ensuring the operation and compliance of a cable system within the city.
Subscriptions and Disconnections

1. If any Subscriber fails to pay a monthly Subscription fee, or any other proper due fee or charge, the Subscriber may be disconnected, without notice, or, if the account is delinquent, disconnected without notice. A ten-day notice of delinquency shall be given, and at the expiration of such period, without notice, the Subscriber may be disconnected without notice. The Subscriber may be disconnected without notice if the same is payable to the subscriber immediately prior to such subscriber's disconnection activity within a reasonable period of time after connection to the subscriber. Except for a Subscriber's personal outdoor service equipment, noSubscriber shall be disconnected, unless, at the request of the Subscriber, a ten-day notice of the disconnection is given to the Subscriber. A Subscriber may also disconnect the service for any good reason, at the Subscriber's expense, and the Subscriber may be disconnected without notice. The Subscriber may be disconnected without notice for non-payment of any amount due to the Subscriber. Subscribers shall be disconnected without notice if the amount due to the Subscriber is not paid within thirty days of the date of receipt of the notice of disconnection. A Subscriber may also disconnect the service for any good reason, at the Subscriber's expense, and the Subscriber may be disconnected without notice. The Subscriber may be disconnected without notice for non-payment of any amount due to the Subscriber. Subscribers shall be disconnected without notice if the amount due to the Subscriber is not paid within thirty days of the date of receipt of the notice of disconnection.
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terms and conditions, a sum totaling five percent (5%) of the Grantor’s Gross Revenues.

2.

Furthermore, every Cable Grantor shall market any "humbled" services or facilities so fairly, honestly, and on an appropriate and equitable basis among the various services offered Revenues from the sale of such humbled services shall be allocated to the Cable Grantor in such manner that an amount equal to the Cable Broadband Service and corresponding to the Grantor’s Gross Revenues shall be included in "Gross Revenues", provided, however, if a Cable Grantor fails to so license, market, or sell the applicable Service or services in such manner that an amount equal to the percentage of the difference between the sums for the sale of such humbled services and the corresponding to the Grantor’s Gross Revenues shall be included in "Gross Revenues", but it is hereby agreed and understood that any such license, marketing, or sale shall be subject to the Communications Franchise Fee and any other applicable taxes or fees levied, including but not limited to, any taxes or fees levied upon the amounts upon which it will pay the Cable Service Cable Franchise Tax payable under the provisions of this Chapter.

3.

Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each such payment shall bear interest at the rate of ten percent (10%) per annum and shall be payable no later than forty five (45) days after the dates listed in the preceding sentence. Each such payment shall be in addition to any payments due under a separate cable franchise agreement, if any, between the Cable Grantor and the City Council within which is paid as an appeal of a court of competent jurisdiction.

4.

During the appeal period, the Franchisor shall remain in full force and effect.

3.7 Foreclosure, Recuperation and Abatement.

A.

Foreclosure. Upon the failure of or other judicial sale of all or a part of a Cable Grantor’s Grantor’s Gross Revenues, or upon the declaration of any court of law in all or any part of the Cable System, a Grantor shall notify the City of such fact and such Grantor’s Gross Revenues shall be applied pursuant to the terms of this Chapter and the City shall have the right to foreclose on all or any part of the Cable System or any equipment, goods, and chattels of the Grantor or any such mortgages, deeds of trust or security instruments or other conveyance or lease under which the Grantor holds title or interest, and to foreclose on all or any part of the Grantor’s Gross Revenues.

B.

Recuperation. The City shall have the right to recover a Cable Service not covered by the Grantor’s Gross Revenues on all or any part of the Cable System.

C.

Abatement. The City may take such action as it deems necessary to foreclose on any or all of the Grantor’s Gross Revenues, as provided, in the event that the Grantor shall fail to perform any or all of the covenants or conditions of the franchise.

3.8 Purchase of System

A.

If a renewal or extension of a Franchise is denied without such right of appeal, or a Franchise is terminated, with all rights of appeal exhausted, the City Council may purchase the Cable System or any equipment, goods, and chattels of the Grantor or any such finances, deeds of trust or security instruments or other conveyance or lease under which the Grantor holds title or interest and the City shall have the right to foreclose on all or any part of the Grantor’s Gross Revenues.

B.

If a renewal or extension of a Franchise is denied without such right of appeal, or a Franchise is terminated, with all rights of appeal exhausted, the City Council may purchase the Cable System or any equipment, goods, and chattels of the Grantor or any such finances, deeds of trust or security instruments or other conveyance or lease under which the Grantor holds title or interest and the City shall have the right to foreclose on all or any part of the Grantor’s Gross Revenues.

3.9 Safe Order of Franchise

A.

A Grantor shall not, without the written consent of the City, sell, assign, or convey, transfer, lease, or otherwise dispose of any of its Cable Systems or any or all of its Grantor’s Gross Revenues, or any part thereof, by any agreement, assignment, lease or otherwise, without the written consent of the City. Any such assignments or transfers, without the written consent of the City, shall be null and void.

B.

The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or a Cable System on an annual basis.

C.

A Grantor shall not, without the written consent of the City, sell, assign, or convey, transfer, lease, or otherwise dispose of any of its Cable Systems or any or all of its Grantor’s Gross Revenues, or any part thereof, by any agreement, assignment, lease or otherwise, without the written consent of the City. Any such assignments or transfers, without the written consent of the City, shall be null and void.

D.

In the case of any sale or transfer of an interest in or control of 50 percent or less of a Franchise or a Cable System, the City shall have the right to purchase the Cable System or any equipment, goods, and chattels of the Grantor or any such finances, deeds of trust or security instruments or other conveyance or lease under which the Grantor holds title or interest and the City shall have the right to foreclose on all or any part of the Grantor’s Gross Revenues.

E.

The City receives any legal right to a cable system shall be based on its determination that the Cable System at issue is not in accordance with the applicable laws and regulations, procedures, and standards. The City may require the Cable System at issue to cease operations or the City to issue a cease-and-desist order.

F.

The City may take such action as it deems necessary to foreclose on all or any part of the Grantor’s Gross Revenues, as provided, in the event that the Grantor shall fail to perform any or all of the covenants or conditions of the franchise.

G.

The City may take such action as it deems necessary to foreclose on all or any part of the Grantor’s Gross Revenues, as provided, in the event that the Grantor shall fail to perform any or all of the covenants or conditions of the franchise.

10. Rights of Individuals Protected.

A.

Discrimination.

B.

Discretionary Franchises Provided.


A.

Rate Fixation.

B.

The City shall have the right to fix the rates for Basic Cable Service and any other services offered over the Cable System, to be determined by the City Council.
ORDINANCE NO. 1893
CONTINUED FROM PAGE 11

cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae-towers having a height of forty (40) feet or greater located on the Rights-of-Way or antenna on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-Way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

9 Notification, Joint Installation and Collocation Requirements. Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbances to the Rights-of-Way and maximize its usable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

10 Use of Facilities by others; required terms. If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interlaced or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

11 Additional Facilities Requirements; Planned Infrastructure. When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of Excess Conduit installed at the City's direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right to charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

12 Removal of Facilities. Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

13 Relocation of Facilities. Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person

CONTINUED ON PAGE 5
4.14 Provider Responsible for Costs. The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City’s books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 Insurance and Bonds. During the term of any Franchise, the Provider shall obtain and maintain at the Provider’s sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider’s liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

5.1 Administration of Franchise. The City shall be responsible for the continued administration of this Exhibit B and any Franchises granted hereunder. The City may delegate this authority from time to time in any manner consistent with applicable law, provided, however, that the City shall not delegate enforcement authority.

5.2 Appeals. Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 Non-Enforcement by the City. A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 Penalties. Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

5.5 Publication of Notices. All public notices or ordinances required to be published by law shall be published in the official newspaper of the City. A Grantee shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments thereto.

5.6 Severability. If any material Section of this Exhibit B or of any Franchise granted pursuant to it is held by a governmental authority of competent jurisdiction, to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court of competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of the Exhibit B, Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions therein.
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;

Penny Knight, of lawful age, being first duly sworn, deposes
and says that she is Legal Notices Administrator of The Legal
Record which is a newspaper printed in the State of Kansas,
published in and of general paid circulation on a weekly,
monthly or yearly basis in Johnson County, Kansas, is not a
trade, religious or fraternal publication, is published at least
weekly fifty (50) times a year, has been so published
continuously and uninterrupted in said County and State for a
period of more than one year prior to the first publication of the
notice attached, and has been entered at the post office as
Periodicals Class mail matter. That a notice was published
in all editions of the regular and entire issue for the following
subject matter (also identified by the following case number,
if any)

for 2 consecutive week(s), as follows:

ORDINANCE NO. 1893--5/29/01 & 6/5/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JUNE 6, 2001

DEBRA VALENTI
Notary Public


$2,010.16
ORDINANCE NO. 1893

ORDINANCE NO. 1893
AN ORDINANCE CHANGING THE NAME OF THE MULTIMEDIA FILTER NETWORK SERVICES, INC., FRANCHISE AGREEMENT AUTHORIZING THE RIGHT TO CONSUME AND ADVERTISE AND INSTALL AND OPERATE THE MULTIMEDIA FILTER NETWORK SYSTEM USING THE RIGHTS-WAY OF THE CITY.

WHEREAS, Multimedia Filter Network Services, Inc. ("Franchisor") has executed a Communications Franchise Term Lease with the City of Little Rock, Arkansas, as procured, for the use of the Rights-Way of the City of Little Rock, Arkansas, and for the installation and operation of a Multimedia Filter Network System using the Rights-Way of the City of Little Rock, Arkansas; and

WHEREAS, Kansas statutes and the Interstate Commerce Commission authorize the City to enter into a franchise agreement with the Franchisor, and such agreement is necessary and proper to protect the public interest and welfare;

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF LITTLE ROCK, ARKANSAS:

SECTION 1. GENERAL.

1.1 Preservation of Public Power Authority. Any rights granted to Franchisee pursuant to the terms of this ordinance shall be made available to the public for the purpose of educating the general public about the use of Rights-Way of the City, and which shall be so used and adapted as the public service, and to which shall be maintained by the public service department in accordance with the Kansas Corporation Commission's rules and regulations.

1.2 Defined Terms. For purposes of this ordinance, the terms, phrases, words, and their definitions, as defined herein, shall be in lieu of any other definitions which may be included in any other agreement or other agreements.

1.3 Subject to franchise agreements. Franchisee shall be subject to franchise agreements entered into by the City with other franchisors for the installation and operation of a Multimedia Filter Network System using the Rights-Way of the City of Little Rock, Arkansas, and which shall be maintained by the public service department in accordance with the Kansas Corporation Commission's rules and regulations.

SECTION 2. TRANSFER OF FRANCHISES OR FACILITIES.

2.1 Transfer of Franchisee. Franchisee shall, upon the request of the City, transfer, lease, assign, sublease, or sublicense to the City, of all rights, privileges, and powers granted or reserved to the City by this ordinance, and the City may be relieved of the obligations of this ordinance.

2.2 Transfer of Franchisee. Franchisee shall not, without the prior written consent of the City, assign, transfer, lease, or sublease any of the rights, privileges, and powers granted or reserved to the City by this ordinance, and the City may be relieved of the obligations of this ordinance.

SECTION 3. FORFEITURE OF FRANCHISES OR FACILITIES.

3.1 Forfeiture of Franchisees. If the Franchisee shall fail to comply with any of the terms and conditions of this ordinance, it shall be deemed a violation thereof, and the City may, without notice or hearing, immediately terminate this ordinance and all rights granted by this ordinance, and the City may be relieved of the obligations of this ordinance.

3.2 Forfeiture of Franchisees. If the Franchisee shall fail to comply with any of the terms and conditions of this ordinance, it shall be deemed a violation thereof, and the City may, without notice or hearing, immediately terminate this ordinance and all rights granted by this ordinance, and the City may be relieved of the obligations of this ordinance.

SECTION 4. GENERAL CONDITIONS.

4.1 Compensation. Franchisee shall pay to the City a monthly franchise fee for the use of the Rights-Way of the City of Little Rock, Arkansas, according to the terms and conditions of this ordinance, which compenation shall be due and payable in the amount of $500.00 per month, and the City shall have the right to increase the compensation as necessary or proper to protect the public interest and welfare.

4.2 Compensations. Franchisee shall pay to the City a monthly franchise fee for the use of the Rights-Way of the City of Little Rock, Arkansas, according to the terms and conditions of this ordinance, which compenation shall be due and payable in the amount of $500.00 per month, and the City shall have the right to increase the compensation as necessary or proper to protect the public interest and welfare.

SECTION 5. TERMINATION.

5.1 Termination of Franchisee. If the Franchisee shall fail to comply with any of the terms and conditions of this ordinance, it shall be deemed a violation thereof, and the City may, without notice or hearing, immediately terminate this ordinance and all rights granted by this ordinance, and the City may be relieved of the obligations of this ordinance.

5.2 Termination of Franchisee. If the Franchisee shall fail to comply with any of the terms and conditions of this ordinance, it shall be deemed a violation thereof, and the City may, without notice or hearing, immediately terminate this ordinance and all rights granted by this ordinance, and the City may be relieved of the obligations of this ordinance.

SECTION 6. MISCELLANEOUS.

6.1 The Franchisee's obligations shall be secured by the City's acceptance of a Security Agreement acceptable to the City, and the City may be relieved of the obligations of this ordinance.

6.2 The Franchisee's obligations shall be secured by the City's acceptance of a Security Agreement acceptable to the City, and the City may be relieved of the obligations of this ordinance.

SECTION 7. COMPENSATION AND ACCEPTANCE.

7.1 Payment and Acceptance. Franchisee shall pay to the City the compensation fees specified in Section 4 of this ordinance, and the City shall accept such payments as payment in full for the rights, privileges, and powers granted to the City by this ordinance.

7.2 Payment and Acceptance. Franchisee shall pay to the City the compensation fees specified in Section 4 of this ordinance, and the City shall accept such payments as payment in full for the rights, privileges, and powers granted to the City by this ordinance.

SECTION 8. APPROVAL OF ORDINANCE.

8.1 Approval of Ordinance. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

8.2 Approval of Ordinance. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

EXHIBIT A
SPECIAL CONDITIONS

The following special conditions shall be a condition of the franchise and shall apply to any provision in this ordinance that the franchisor will not comply with.

1. General Provision.

1.1 Declaration of Findings. The City hereby declares as a legislative finding that the Rights-Way of the City of Little Rock is:

A. A unique and nationally distributed service. . . .

B. A critical and transportation services for the City, and shall be entitled to compensation for any franchise fee paid to it under this ordinance.

SECTION 2. APPLICATION.

2.1 Application Required. Any application for a franchise under this ordinance shall be filed with the City at least 30 days prior to the date on which the application for a franchise is to be filed.

2.2 Application Required. Any application for a franchise under this ordinance shall be filed with the City at least 30 days prior to the date on which the application for a franchise is to be filed.

SECTION 3. TERRITORY.

3.1 The territory for which a franchise is authorized shall be the territory of the City of Little Rock, Arkansas, as defined by this ordinance.

3.2 The territory for which a franchise is authorized shall be the territory of the City of Little Rock, Arkansas, as defined by this ordinance.

SECTION 4. APPROPRIATION.

4.1 Appropriation of Ordinance. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

4.2 Appropriation of Ordinance. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 5. IMPORTANCE.

5.1 Importance of Ordinance. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

5.2 Importance of Ordinance. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 6. COMPLIANCE.

6.1 Compliance Required. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

6.2 Compliance Required. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 7. ENFORCEMENT.

7.1 Enforcement by the City. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

7.2 Enforcement by the City. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 8. PENALTIES.

8.1 Penalties. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

8.2 Penalties. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 9. EFFECT.

9.1 Effect. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

9.2 Effect. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 10. SEVERABILITY.

10.1 Severability. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

10.2 Severability. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 11. PROMULGATION.

11.1 Promulgation. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

11.2 Promulgation. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 12. SURVIVAL.

12.1 Survival of Ordinance. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

12.2 Survival of Ordinance. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 13. FINANCIAL LICENSEES.

13.1 Financial Licensees. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

13.2 Financial Licensees. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 14. CONFLICT OF INTEREST.

14.1 Conflict of Interest. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

14.2 Conflict of Interest. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 15. INTENTIONAL USE.

15.1 Intentional Use. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

15.2 Intentional Use. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

SECTION 16. CONCLUSION.

16.1 Conclusion. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

16.2 Conclusion. This ordinance shall be approved by the City Council on the date hereof, and shall become effective immediately upon its approval.

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3.5 Standards and Procedures for Approval or Renewal of Franchises. Franchises shall be renewed or revoked on the basis whether or not a franchisee has met the franchise conditions that relate directly to the franchise or obligations thereunder. The following is a list of all franchise requirements applicable to any franchisee.

3.6 Right of Inspection. The City or any designated representative shall have the right to inspect, examine, or audit, during normal business hours and upon reasonable prior notice not less than two business days' notice, any records or other information pertaining to the franchise or the franchise's business activities, financial condition, or the franchise's compliance with this Act. Such records or other information may include, but are not limited to, any financial records or other information required by the franchisee to maintain or to make a determination of the franchisee's compliance with this Act. If any such record or other information is not made available to the inspector during normal business hours, the franchisee shall be liable for costs incurred in connection with such inspection.

3.7 Payment of Taxes. The Communications Franchise Fee required herein shall be in addition to any other applicable tax. Franchisees shall not be entitled to any exemptions or tax abatements otherwise applicable that may be imposed by the City. The Communications Franchise Fee paid pursuant to this Act shall be in addition to any other taxes payable.

3.8 Assignment of Franchise. The franchisee shall not, without the written consent of the City, transfer, alienate, assign, mortgage, pledge, hypothecate, or otherwise dispose of, in whole or in part, or otherwise transfer possession or control of, any franchise or franchise agreement, or any right thereto. Any such transfer, assignment, mortgage, pledge, hypothecation, or other disposition of any franchise or franchise agreement or any right thereto shall be void and of no effect.

3.9 Termination of Franchise. A franchise may be terminated by order of the City for any reason in the event that the franchisee has failed to comply with the terms of this Act or has failed to meet the conditions set forth in the franchise agreement.

3.10 Communications Franchise Fees. Unless otherwise specified by the governing body of the City, all franchisees shall pay a franchise fee equal to the greater of the franchise fee specified in the franchise agreement or the maximum allowable Communications Franchise Fee applicable to the franchise. The maximum allowable Communications Franchise Fee shall be limited to the lesser of $200,000 or the franchise fee that would be paid by a franchisee under the terms of the franchise agreement.

3.11 Payment of Franchise Fees. Provided, however, no such maximum Allowable Fee shall be imposed during the term of the franchise. The Communications Franchise Fee shall be paid to the City on or before the 15th day of each calendar month.

3.12 Prepayment of Franchise Fees. In the event that the franchisee exceeds the maximum allowable Communications Franchise Fee applicable to the franchise, the franchisee shall be required to pay the excess amount, as well as any applicable late fees, within thirty (30) days after the date the excess amount is due.

3.13 Termination of Franchise. A franchise may be terminated by order of the City for any reason in the event that the franchisee has failed to comply with the terms of this Act or has failed to meet the conditions set forth in the franchise agreement.

CHAPTER 3. COMMUNICATIONS SERVICES

3.14 Application and Application Fee Required. Any person seeking to offer or provide any telecommunications services shall submit a complete application on such form as the Department of Telecommunications Services shall prescribe. The application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Service Company or in the amount of $2,500 for an application for any small business provider of telecommunications services. The application fee shall be submitted with the application or as otherwise provided by the Governing Body. The application fee is non-refundable and shall be retained by the Department of Telecommunications Services for any reason, whether the application be approved or denied. The application fee shall be retained by the Department of Telecommunications Services to cover the review, regulation, and administration of any application filed under this Subtitle B.

3.15 Amendments to Application. An application may be amended at any time by the applicant, but any such amendment shall be made in accordance with the terms and conditions of the application. The applicant shall be required to pay an additional fee of $2,500 for each amendment to the application.

3.16 Time of Payment of Application Fee. Any Communications Service Company desiring to provide telecommunications services shall pay the application fee on or before the date the application is filed with the Department of Telecommunications Services. The application fee is non-refundable and shall be retained by the Department of Telecommunications Services for any reason, whether the application be approved or denied. The application fee shall be retained by the Department of Telecommunications Services to cover the review, regulation, and administration of any application filed under this Subtitle B.

3.17 Notice to Applicant. Upon receipt of the application fee, the Department of Telecommunications Services shall issue a certificate of application for a Communications Service Company or a small business provider of telecommunications services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services.

3.18 Notice to Applicant. Upon receipt of the application fee, the Department of Telecommunications Services shall issue a certificate of application for a Communications Service Company or a small business provider of telecommunications services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services.

3.19 Notice to Applicant. Upon receipt of the application fee, the Department of Telecommunications Services shall issue a certificate of application for a Communications Service Company or a small business provider of telecommunications services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services.

3.20 Notice to Applicant. Upon receipt of the application fee, the Department of Telecommunications Services shall issue a certificate of application for a Communications Service Company or a small business provider of telecommunications services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services.

3.21 Notice to Applicant. Upon receipt of the application fee, the Department of Telecommunications Services shall issue a certificate of application for a Communications Service Company or a small business provider of telecommunications services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services. The certificate of application shall be issued on or before the date the application is filed with the Department of Telecommunications Services.
interest. The information provided by Franchisee shall be considered as new and current and Franchisee shall be responsible to notify the City any material changes that may occur. The information provided in such completed Applications during the term of any Franchise shall be considered as continuing to be valid for so long as such Applications are in effect.

2.5 Standards and Procedures for Approval or Renewal of Franchise. Franchisee shall be granted permission in all applicable procedures and requirements as listed below. Franchisee shall submit all required information to the City in accordance with the procedures set forth in this Exhibit B. The City shall process all such applications and reports made by Franchisee in accordance with the procedures set forth in this Exhibit B with due diligence and within the time periods specified in these rules. This Section 2.5 may be amended by the City at any time during the term of this Franchise to reflect any changes in law or changes in the Franchise Agreement. Notice of any such amendments shall be given to Franchisee in accordance with the procedures set forth in this Exhibit B.

2.6 Cable Service and Video Services System (OVS); Separate Franchise Requirements. In accordance with the terms of this Exhibit B, Franchisee shall be required to provide cable service as a separate service (as defined by 47 U.S.C. § 222) within the City. Franchisee shall operate the cable service in accordance with all applicable laws and regulations. Franchisee shall be subject to all applicable rules and regulations of the Telecommunications Act, Telecommunications Act of 1996, and the City shall have the right to audit the franchise in accordance with the terms of this Exhibit B. The City may suspend, terminate, cancel, or modify any of the terms, conditions, or covenants of this Exhibit B in accordance with the procedures set forth in this Exhibit B.

3. ROYALTY OBLIGATIONS. Franchisee shall be required to pay the City a royalty fee in an amount as determined from time to time by the City. The royalty fee shall be paid to the City in accordance with the procedures set forth in this Exhibit B. The royalty fee shall be adjusted for inflation on an annual basis. Franchisee shall be required to maintain separate records of all royalty payments made to the City in accordance with the procedures set forth in this Exhibit B.

4. Payment of Taxes. The Communications Franchise fee required herein shall be in addition to any other taxes that the City may be required to pay. Any franchise fees required herein shall be in addition to any other taxes that the City may be required to pay. Any franchise fees required herein shall be in addition to any other taxes that the City may be required to pay. Any franchise fees required herein shall be in addition to any other taxes that the City may be required to pay.

5. Other Legal Requirements. In addition to the obligations set forth in this Exhibit B, Franchisee shall be required to comply with all applicable laws and regulations of the City, the State, and the Federal Government. Franchisee shall be required to comply with all applicable laws and regulations of the City, the State, and the Federal Government. Franchisee shall be required to comply with all applicable laws and regulations of the City, the State, and the Federal Government. Franchisee shall be required to comply with all applicable laws and regulations of the City, the State, and the Federal Government.

6. Assignment of Franchise. The Franchise shall not be assignable, transferrable, or subject to any other form of disposition, in whole or in part, unless by written assignment by the Franchisee unless the Franchisee shall have been granted a license or permit by the City to do so, and such assignment shall be subject to the approval of the City. The Franchise shall not be assignable, transferrable, or subject to any other form of disposition, in whole or in part, unless by written assignment by the Franchisee unless the Franchisee shall have been granted a license or permit by the City to do so, and such assignment shall be subject to the approval of the City. The Franchise shall not be assignable, transferrable, or subject to any other form of disposition, in whole or in part, unless by written assignment by the Franchisee unless the Franchisee shall have been granted a license or permit by the City to do so, and such assignment shall be subject to the approval of the City. The Franchise shall not be assignable, transferrable, or subject to any other form of disposition, in whole or in part, unless by written assignment by the Franchisee unless the Franchisee shall have been granted a license or permit by the City to do so, and such assignment shall be subject to the approval of the City. The Franchise shall not be assignable, transferrable, or subject to any other form of disposition, in whole or in part, unless by written assignment by the Franchisee unless the Franchisee shall have been granted a license or permit by the City to do so, and such assignment shall be subject to the approval of the City.

7. Transfer to New Franchisee. In the event of the Franchisee's bankruptcy or dissolution, the City shall have the right to transfer the Franchise to a new franchisee as determined by the City. The City shall have the right to transfer the Franchise to a new franchisee as determined by the City. The City shall have the right to transfer the Franchise to a new franchisee as determined by the City. The City shall have the right to transfer the Franchise to a new franchisee as determined by the City. The City shall have the right to transfer the Franchise to a new franchisee as determined by the City.

8. Transfer to New Franchisee. In the event of the Franchisee's bankruptcy or dissolution, the City shall have the right to transfer the Franchise to a new franchisee as determined by the City. The City shall have the right to transfer the Franchise to a new franchisee as determined by the City. The City shall have the right to transfer the Franchise to a new franchisee as determined by the City. The City shall have the right to transfer the Franchise to a new franchisee as determined by the City. The City shall have the right to transfer the Franchise to a new franchisee as determined by the City.

9. Termination of Franchise. In the event of default by the Franchisee under any of the provisions of this Exhibit B, the City may terminate this Franchise by giving written notice to the Franchisee and the Franchisee shall be required to return all equipment and other property to the City in good working order.

10. Transfer of Franchise. In the event of the transfer of the Franchise, the new Franchisee shall be required to assume all of the obligations and responsibilities of the Franchisee under this Exhibit B. The new Franchisee shall be required to assume all of the obligations and responsibilities of the Franchisee under this Exhibit B. The new Franchisee shall be required to assume all of the obligations and responsibilities of the Franchisee under this Exhibit B. The new Franchisee shall be required to assume all of the obligations and responsibilities of the Franchisee under this Exhibit B. The new Franchisee shall be required to assume all of the obligations and responsibilities of the Franchisee under this Exhibit B.
1. The way-to-way subscription to (1) video programming, for any combination of services (G) and (H); or
2. The facility (C) that serves only to retransmit the television signals of one or more television broadcast stations; or
3. A facility consisting of a set of closed transmission paths and associated signal generation, reception, transmission, and control services, which includes video programming and is provided to multiple Subscribers within the boundaries of the Facility's service area.

1.1 A facility that serves only to retransmit the television signals of one or more television broadcast stations; or
2. A facility consisting of a set of closed transmission paths and associated signal generation, reception, transmission, and control services, which includes video programming and is provided to multiple Subscribers within the boundaries of the Facility's service area.
villagers shall be subject to all other applicable provisions of this Exhibit B to the extent such provisions relate to the payment of a Cable Service Fee. This section shall not apply to a Governmental entity except as permitted by the Title VI regulations in Title 47 USC § 546.

B. Nature of Rights Granted by Any Cable Franchise. Cable franchises shall be granted, exercised, and enforced in legal form, and shall give the right to occupy Right-of-Way, for the purposes of providing Cable Service. No franchise shall be granted to any entity that controls or owns the cable facilities of such entity, or any entity that is controlled by, or owned by, the City. A franchise shall grant the right to use facilities owned or controlled by the City only, and shall not give the City, any franchisee, or any franchisee's assignee or successor, any rights to occupy Right-of-Way, or to use any facilities of the City.

C. Franchise Non Exclusive. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The franchisee specifically reserves the right to grant, to any third party, any such franchise rights for a Cable System in any component thereof, to any other Person including other cable systems, subject to this Exhibit B and applicable federal and state law.

D. Franchise Territory. Every Cable Franchise shall apply to the entire territorial area of the City.

E. Federal, State, and City Applications.

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government, or a state or federal agency, shall require the City to amend, terminate, or cancel any provision of this Ordinance or of this Exhibit B, the effective date of such amendment, termination, or cancellation shall be the date that the order is filed with the City and the provisions of this Ordinance or of this Exhibit B shall be amended, terminated, or canceled in accordance with the terms of this Ordinance.

3. Any Applicability of the Federal, State and City Applications. Any Applicability of the Federal, State and City Applications may be affected by law and the reasonable exercise of the City's police powers.

4. The provisions of this Chapter and Exhibit B shall apply to all Cable System Operators licensed, qualified, and registered with the Federal Communications Commission, under the effective date of this Ordinance. This Chapter and Exhibit B shall apply to all Cable System Operators licensed, qualified, and registered with the Federal Communications Commission, under the effective date of this Ordinance, and in accordance with the terms of this Ordinance.

5. Initial Applications. Any Person desiring in an Initial Application for a Cable Franchise for a Cable System for application with the City, a franchise application for a Cable System for a Cable Franchise. The City shall accompany the application, which shall not be considered or accepted by the City until the application is complete and all required filings are made.

C. Conditions of Initial Application.

1. Upon receipt of any application for an Initial Application for an Initial Application for a Cable Franchise for a Cable System for application with the City, a franchise application for a Cable System for a Cable Franchise. The City shall accompany the application, which shall not be considered or accepted by the City until the application is complete and all required filings are made.

D. Franchise Business. A franchise shall be renewed automatically for a term of five years unless a notice of termination is filed with the City not less than six months prior to the expiration of the franchise.

E. Effect of Franchise Termination. In the event of the termination of a franchise, the City shall be entitled to the following:

1. The right to assign any of the Grantor's rights under the franchise to a new franchisee.

2. The right to collect any unpaid fees or charges under the franchise.

3. The right to receive any unpaid compensation or other payments due under the franchise.

4. The right to seek damages for any breach of the franchise.

5. The right to enforce any other rights or remedies provided by law.

F. Discontinuance of Business. In the event of the discontinuance of business by any franchisee, the City shall be entitled to the following:

1. The right to assign any of the Grantor's rights under the franchise to a new franchisee.

2. The right to collect any unpaid fees or charges under the franchise.

3. The right to receive any unpaid compensation or other payments due under the franchise.

4. The right to seek damages for any breach of the franchise.

5. The right to enforce any other rights or remedies provided by law.

6. The right to require the franchisor to provide a bond to guarantee the performance of the franchise obligations.

G. Forfeiture of Franchise. In the event of the discontinuance of business by any franchisee, the City shall be entitled to the following:

1. The right to assign any of the Grantor's rights under the franchise to a new franchisee.

2. The right to collect any unpaid fees or charges under the franchise.

3. The right to receive any unpaid compensation or other payments due under the franchise.

4. The right to seek damages for any breach of the franchise.

5. The right to enforce any other rights or remedies provided by law.

6. The right to require the franchisor to provide a bond to guarantee the performance of the franchise obligations.

H. Franchise Renewal. Franchise Renewals shall be in accordance with the terms of this Ordinance, and shall be subject to the approval of the City. The City shall have the right to extend any franchise for a term of five years, subject to the City's approval.

I. Grant of Additional Franchise and Compensating Service. Since the franchisee's right to use the Right-of-Way is for the purpose of providing Cable Service, the City shall have the right and obligation to provide additional services to the franchisee. The City shall have the right to require the franchisee to provide additional services to the City, subject to the terms of the franchise agreement.
1. Standard installations will be performed within seven (7) business days of the date an order has been placed. A typical installation requires three hours for the Subscribers, and the Subscriber must be present at all times during the installation.

2. The appointment window alternative for installations, Service Connections, and other subscriber activities will be either a specific time or within a maximum four-hour period. This window may be subject to certain availability conditions. The Subscriber must be present during the installation for any additional costs incurred.

3. A Subscriber may be disconnected due to the failure to maintain a minimum balance of fifty dollars ($50.00) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

4. A Subscriber may be disconnected due to the failure to maintain a minimum balance of twenty-five dollars ($25.00) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

5. A Subscriber may be disconnected due to the failure to maintain a minimum balance of ten dollars ($10.00) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

6. A Subscriber may be disconnected due to the failure to maintain a minimum balance of five dollars ($5.00) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

7. A Subscriber may be disconnected due to the failure to maintain a minimum balance of one dollar ($1.00) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

8. A Subscriber may be disconnected due to the failure to maintain a minimum balance of twenty-five cents ($0.25) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

9. A Subscriber may be disconnected due to the failure to maintain a minimum balance of ten cents ($0.10) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

10. A Subscriber may be disconnected due to the failure to maintain a minimum balance of five cents ($0.05) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

11. A Subscriber may be disconnected due to the failure to maintain a minimum balance of one cent ($0.01) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

12. A Subscriber may be disconnected due to the failure to maintain a minimum balance of twenty-five cents ($0.25) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

13. A Subscriber may be disconnected due to the failure to maintain a minimum balance of ten cents ($0.10) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

14. A Subscriber may be disconnected due to the failure to maintain a minimum balance of five cents ($0.05) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

15. A Subscriber may be disconnected due to the failure to maintain a minimum balance of one cent ($0.01) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

16. A Subscriber may be disconnected due to the failure to maintain a minimum balance of twenty-five cents ($0.25) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

17. A Subscriber may be disconnected due to the failure to maintain a minimum balance of ten cents ($0.10) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

18. A Subscriber may be disconnected due to the failure to maintain a minimum balance of five cents ($0.05) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

19. A Subscriber may be disconnected due to the failure to maintain a minimum balance of one cent ($0.01) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

20. A Subscriber may be disconnected due to the failure to maintain a minimum balance of twenty-five cents ($0.25) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

21. A Subscriber may be disconnected due to the failure to maintain a minimum balance of ten cents ($0.10) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

22. A Subscriber may be disconnected due to the failure to maintain a minimum balance of five cents ($0.05) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

23. A Subscriber may be disconnected due to the failure to maintain a minimum balance of one cent ($0.01) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.

24. A Subscriber may be disconnected due to the failure to maintain a minimum balance of twenty-five cents ($0.25) at the time of connection. If the balance is insufficient to cover the costs of installation, the Subscriber must pay the balance prior to connection. Failure to pay the balance will result in disconnection.
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CONTINUED FROM PAGE 11

cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antenna/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennas on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement of Franchise with the City. Antennas shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennas in the Rights-of-Way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennas. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 Notification, Joint Installation and Collocation Requirements. Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 Use of Facilities by others; required terms. If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 Additional Facilities Requirements; Planned Infrastructure. When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities (“Excess Conduit”) as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of Excess Conduit installed at the City’s direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider’s conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 Removal of Facilities. Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 Relocation of Facilities. Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person

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requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person’s request.

4.14 Provider Responsible for Costs. The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit Fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City’s books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 Insurance and Bonds. During the term of any Franchise, the Provider shall obtain and maintain at the Provider’s sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider’s liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

5.1 Administration of Franchise. The City shall be responsible for the continued administration of this Exhibit B and any Franchises granted hereunder. The City may delegate this authority from time to time in any manner consistent with applicable law, provided, however, that the City shall not delegate enforcement authority.

5.2 Appeals. Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 Non-Enforcement by the City. A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 Penalties. Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

5.5 Publication of Notices. All public notices or ordinances required to be published by law shall be published in the official newspaper of the City. A Grantee shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments thereto.

5.6 Severability. If any material Section of this Exhibit B or of any Franchise granted pursuant to it is held by a governmental authority of competent jurisdiction, to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of the Exhibit B, Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions therein.
ORDINANCE NO.  1892

AN ORDINANCE GRANTING TO AND AUTHORIZING TO METROMEDIA FIBER NETWORK SERVICES, INC. A FRANCHISE AGREEMENT AUTHORIZING THE RIGHT TO CONSTRUCT, OPERATE, AND MAINTAIN A COMMUNICATIONS SYSTEM USING THE RIGHTS-OF-WAY IN THE CITY.

WHEREAS, Metromedia Fiber Network Services, Inc. ("Franchisee") has requested a Communications Franchise from the City to authorize the use of the City Rights-of-Way for the Franchisee to construct, install, maintain, and operate its communications fiber optic cable and related facilities for communications or related capabilities; and

WHEREAS, Kansas statutes and the Home Rule Amendment to the Kansas Constitution authorize the City to grant a franchise agreement and other such agreements for the use and occupancy of Rights-of-Way for placement of a System as hereinafter defined, and to adopt rules and regulations regarding such use and occupancy; and

WHEREAS, the City is authorized to and has established standards by ordinance, and in Exhibit B and otherwise in this franchise agreement for permitting occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Kansas Corporation Commission’s duties and jurisdiction.

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

SECTION 1. GENERAL

1.1 Preservation of Police Power Authority. Any rights granted to Franchisee pursuant to this Franchise are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

1.2 Defined Terms. For purposes of this Franchise, the terms, phrases, words, and their derivatives shall have the meanings as set forth in Exhibit B applicable to this Franchise Agreement and attached hereto.

1.3 Franchise Subject to Provisions of Exhibit B. This Franchise fully incorporates the provisions of the attached Exhibit B as fully set forth herein, and Franchisee agrees as a part of this Franchise to abide by the provisions of such Exhibit B, and to be subject to the enforcement by the City as provided therein and in this Franchise as a material term herein. This Franchise may establish supplementary obligations on Franchisee, but nothing in this Franchise shall be deemed to waive any obligation or requirement applicable to Franchisee authorized or established by Exhibit B.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 Franchises Non-Exclusive. This Franchise shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law.
2.2 **Nature of Rights Granted by this Franchise.** This Franchise shall not convey title, equitable or legal, in the Rights-of-Way, and gives only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Franchise and subject to the requirements herein. This Franchise shall not grant the right to use physical Facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall a Franchise excuse Franchisee from obtaining separate appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third party.

2.2 **Grant.** Franchisee is hereby granted the right and privilege to construct, operate, and maintain facilities in, through and along the City's right-of-way solely for the purposes of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this Franchise and the Exhibit B, and all such special conditions as may be set forth in Exhibit A. As a condition of this grant, Franchisee is required to obtain and is responsible for any necessary permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City the FCC or the Kansas Corporation Commission, subject to Franchisee's right to challenge in good faith such requirements.

This Franchise does not provide Franchisee the right to provide cable service, operate an Open Video System, or use the Rights-of-Way for any other purpose other than as authorized herein.

2.3 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Franchise or hereinafter adopted to the extent not in contravention of state or federal law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by this Franchise shall in all matters be subordinate to the City’s use and rights therein and Franchisee shall be limited to such uses as have been expressly granted to Franchisee by the City.

2.4 **No interference.** Franchisee shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Franchisee shall reasonably notify all residents affected by the proposed work prior to commencement of such work. All construction and maintenance by Franchisee or its subcontractors shall be performed in accordance with industry standards.

2.5 **Notification, Joint Installation and Collocation Requirements.** Franchisee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be required by the Exhibit B and as may otherwise be implemented in reasonable regulations or policies adopted by the City for use of the Rights-of-Way. Franchisee shall further make its installed facilities available to other Franchisees on a nondiscriminatory competitively neutral basis consistent with the requirements of federal law codified at § 47 U.S.C. 224.
2.6 Additional Facilities Requirements; Planned Infrastructure. When Franchisee installs any new conduit, the Franchisee shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") in the Rights-of-Way as may be determined by the City Engineer in accordance with the Exhibit B. When sections of Franchisee’s conduit is installed simultaneously with another Franchisee, the cost of such sections of Excess Conduit shall also be cost shared among each Franchisee as may be established by the City. In no event shall any Franchisee that chooses to allow collocation in its Facilities do so in a manner that is competitively discriminatory or creates an obstacle to entry under the terms made available.

2.7 Franchisee Responsible for Costs. The Franchisee shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the Exhibit B. All such costs shall be itemized and the City’s books and records related to these costs shall be made available upon request to the Franchisee. Franchisee shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

SECTION 3. TERM

This Franchise shall be effective for a term of two (2) years from the effective date herein of this Franchise, subject to termination or forfeiture as provided herein.

SECTION 4. COMPENSATION

4.1 Compensation. Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, but in no event shall the monthly Communications Franchise Fee be less than the sum of:

4.1.1 $ 1000 per month for the first mile of linear Facilities, or part thereof, plus $.21 per Linear Foot per month thereafter up to a monthly charge under this subsection of $10,000, and

4.1.2 Antenna shall be permitted, and compensation shall be paid as provided by the Exhibit B, as amended from time to time subject to the specific approval requirements set for the therein.

Franchisee agrees to pay the Communications Franchise Fees and such other compensation in the amount and under such additional regulations and provisions as are set forth in the Exhibit B. As to the City of Leawood only, Franchisee acknowledges such compensation is fair and reasonable compensation which shall be lawfully paid to the City for use of the Rights-of-Way.
4.2 **Taxes; Communications Franchise Fee Not a Tax.** The Communications Franchise Fees or other compensation required herein and by the Exhibit B shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City, except as may be provided for in the Exhibit B. Franchisee acknowledges that the Communications Franchise Fee is compensation for use of the Rights-of-Way and shall in no way be deemed a tax of any kind.

**SECTION 5. TRANSFER OF FRANCHISE OR FACILITIES**

5.1 **Transfer of Franchise.** Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise or any of the rights or privileges granted by this Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee’s assets, including but not limited to the Franchise, or an interest in Franchisee’s Affiliate companies, in a transaction commonly known as an “initial public offering” without the prior approval of the City The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

5.2 **Sale or Lease of Facilities.** Except as otherwise may be provided by law, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

**SECTION 6. FORFEITURE OF FRANCHISE AND PRIVILEGE.**

In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Franchise, including but not limited to payment of the Franchise Fees and such other material provisions of the Exhibit B, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise, including the provisions of the Exhibit B, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Franchise. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; setting out the grounds upon which said Franchise is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the Exhibit B or as may otherwise exist at law.
SECTION 7. GENERAL CONDITIONS

7.1 Compliance With Laws. In performing activities and exercising its rights and obligations under this Franchise, the Franchisee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

7.2 Enforcement; Attorneys' Fees. The City shall be entitled to enforce this Franchise through all remedies lawfully available, and Franchisee shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Franchisee is determined judicially to have violated the terms of this Franchise.

7.3 Relationship of the Parties. Under no circumstances shall this Franchise be construed as one of agency, partnership, joint venture, or employment between the parties.

7.4 Relocation or Removal of Facilities. Franchisee shall at its own cost relocate or remove its Facilities as required by the City under such conditions as may be set forth in the Exhibit B.

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

SECTION 8. INDEMNIFICATION

Franchisee at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel for the City acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City entered into this Franchise with Franchisee, the rights granted to Franchisee, or the activities performed, or failed to be performed, by Franchisee under this Franchise, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. As to the City of Leawood only, in executing this Franchise, Franchisee agrees that the Franchise has been lawfully authorized, and that Franchisee waives any claim to challenge the lawfulness of this Franchise. This indemnification shall survive the expiration or termination of this Franchise for a period of two (2) years after the effective date of expiration or termination.
SECTION 9. MISCELLANEOUS

9.1 This Franchise, together with all Exhibits, shall constitute the entire Franchise and no negotiations or discussions prior to execution shall be of any effect.

9.2 The invalidity in whole or in part of any provision shall not affect the validity of any other provision.

9.3 The right and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision thereof shall not constitute a waiver of any other breach. The laws of the State of Kansas shall govern this Franchise.

9.4 This Franchise shall create no third-party beneficiary rights.

9.5 Notices shall be in writing, mailed certified with return receipt requested, effective upon receipt and sent to:

Franchisee: The City:
Metromedia Fiber Network Services, Inc. City of Leawood, Kansas
360 Hamilton Avenue City Clerk
White Plains, NY 10601 4800 Town Center Drive
Attn: Vice President, Legal and Leawood, KS 66211
regulatory Affairs

or to replacement addresses that may be later designed in writing.

SECTION 10. EFFECTIVE AND ACCEPTANCE.

10.1 Pursuant to the City’s Home Rule authority, this Franchise Agreement shall be effective upon adoption and publication of this ordinance once in the official City newspaper upon Franchisee having filed within three (3) days thereafter with the City Clerk of the City and Franchisee’s unconditional acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City and Franchisee. Franchisee shall pay all publication costs. Franchisee’s acceptance shall be deemed to acknowledge that this Franchise is a lawful contract between the City and Franchisee and that Franchisee agrees to the terms hereof voluntarily and with full authority to execute this Franchise.

10.2 To the extent that Franchisee seeks any rights that hereinafter may require a franchise adopted pursuant to the procedure set forth in K.S.A. 12-2001 or otherwise, this franchise ordinance shall additionally be read in full at three regular meetings of the Governing Body. Immediately after the final passage, the franchise ordinance shall be published in the official City newspaper, once each week for two consecutive weeks. To the extent not otherwise effective pursuant to Section 10.1 of this Ordinance, such provisions shall take effect and be in force sixty-one days after the date of its final passage unless pending its final
passage or within sixty days of its final passage a petition signed by a number of the voters of the City equal to 20% of the number of voters who voted from the council member receiving the highest number of votes at the last preceding City election shall be presented to the Governing Body of the City asking that the such provisions be submitted for adoption to popular vote, in which case the such provisions shall become effective only if and when approved by a majority of the electors voting thereon. Franchisees written acceptance pursuant to Section 10.1 shall be deemed such acceptance of any such provisions additionally approved pursuant to this Section 10.2 and shall similarly be deemed unconditional acceptance in writing of the provisions, terms and conditions of this ordinance and shall constitute a contract between the City and Franchisee.

Passed by the Council the 16th day of April, 2001.

Approved by the Mayor the 16th day of April, 2001.

Peggy J. Dunn, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney
EXHIBIT A
SPECIAL CONDITIONS

The following special conditions shall be a condition of this Franchise and shall supersede any provision in this Franchise to the contrary:

Irrespective of any new Facilities as may be hereinafter permitted, this Franchise authorizes use of four existing 1.5 inch HDPE conduits located within the Right-of-Way for which a single linear foot charge would apply.
EXHIBIT B

The parties acknowledge that this Franchise Agreement is being approved prior to final adoption of a pending Communications and Cable Services Code. In order to facilitate the expeditious approval of this Franchise, the parties agree that the following provisions and requirements are adopted solely for the purposes of this Franchise Agreement and shall be deemed incorporated herein accordingly as contract or franchise terms. To the extent that the provisions in this Exhibit B impose requirements in conflict with this Franchise, the Franchise language shall prevail:

CHAPTER 1. GENERAL PROVISIONS

1.1 Declaration of Findings. The City hereby declares as a legislative finding that the Rights-of-Way within Leawood, Kansas:

A. Are a unique and physically limited resource;

B. Are critical to the travel and transport of persons and property in the City; and

C. Are intended for public uses and must be managed and controlled consistent with that intent; and can be partially occupied by the Facilities of utilities and public service entities, to the enhancement of the health, welfare, and general economic well being of the City and its citizens; and require adoption of the specific additional regulations established by this Exhibit B to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum number of providers of cable, communications, and other services in the public interest.

1.2 Title. This Exhibit and the requirements herein may be referred to and cited as the "Exhibit B" to the attached Franchise Agreement.

1.3 Applicability. The requirements of this Exhibit B shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or state law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Exhibit B shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Exhibit B shall be deemed incorporated in each Franchise granted Nothing in this Exhibit B or amendments thereto shall be interpreted to unilaterally deprive any Person of any rights or obligations imposed by any binding and existing valid franchise or contract during the term thereof, whether entered into before or after enactment of this Exhibit B, and shall impose obligations on any such Person additional to those included in such franchise or contract only to the extent permitted by law;
provided that the failure of the City to enforce any provision herein or the failure of any Person to comply with any provision herein shall not be a waiver of the City’s right to enforce such provisions nor shall it in any way constitute evidence or agreement by the City that such Person has a valid existing franchise. The provisions of this Exhibit B shall apply irrespective of whether a Franchisee is determined to be operating pursuant to a valid franchise or Agreement.

1.4 Preservation of Police Power Authority. Any rights granted pursuant to this Exhibit B and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Providers shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Exhibit B shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.

1.5 Public Inspection of Records. Certain information required to be filed with the City pursuant to this Exhibit B is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of Provider as deemed in the public interest and as may be established by City policy establishing requirements for notification and/or joint installation of facilities.

1.6 Indemnification. As a condition of use of the Rights-of-Way, Providers at their sole cost and expense, shall indemnify, protect, defend (with legal counsel representing the City that is acceptable to the City, such approval not to be unreasonably withheld) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney’s fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City approved a Franchise with Provider, the rights granted to Provider, or the activities performed, or failed to be performed, by Provider under the Franchise or use of the Rights-of-Way, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. This indemnification shall survive the expiration or termination of any Franchise or use of the Rights-of-Way for a period of two (2) years after the effective date of expiration or termination.

1.7 No Cause of Action Against the City. The Provider shall have no cause of action whatsoever against the City for damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement
thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with Provider; provided further that the Provider acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the Provider acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, the Provider shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Exhibit B and any Franchise through all remedies lawfully available, and Provider shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that Provider is determined judicially to have violated the terms of this Exhibit B or any Franchise.

1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Exhibit B be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

1.11 **Defined Terms.** For purposes of this Exhibit B, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. **"Access Facilities"** means:

1. Channel capacity designated for non-commercial Public, Educational or Governmental Access use; and

2. The facilities and equipment for the use of such channel capacity.

B. **"Affiliate"** means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding...
an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Franchisee.

C. "Antenna" means any device that transmits and/or receives radio waves for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. A combination of panels, boxes, or other antenna physically connected and designed in conjunction to receive signals at one location in the System shall be considered one (1) antenna.

D. "Basic Cable Service" means any Cable Service tier that includes the lawful retransmission of local television broadcast signals and any Public, Educational, and Governmental Access programming required by this Ordinance to be carried on the basic tier. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7) (1997).


F. "Cable Franchise" means an initial Cable Franchise authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to Section 626), issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.

G. "Cable Franchise Fee" means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a Cable Service Provider or its Cable Subscribers, or both, solely because of their status as such, pursuant to Section Three of this Exhibit B. The term "Cable Franchise Fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their Cable Services but not including a tax, fee, or assessment that is unduly discriminatory against Cable Grantees Franchisees or Cable Subscribers); (ii) Capital Costs that are required by a Cable Franchise to be incurred by a Grantee for public, educational or governmental ("PEG") Access facilities; (iii) requirements or charges incidental to the award or enforcement of a Cable Franchise, including payments for bonds, security funds, letters of credit, insurance,
indemnification, penalties, or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.

H. "Cable Internet Services" means the offering of direct access by a cable license to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Cable Internet Service shall mean the direct access to the Internet provided to customers over the Cable System and shall include the provision of incidental services and such other revenues that are required by applicable law to be treated under the same regulation as such direct access service, but not including revenue from independent services such as Internet web design or Internet web hosting or the sale of modems for Cable Internet Services. Except as may be otherwise required by applicable law or a binding provision of a Franchise issued by the City prior to the effective date of this Franchise Agreement and Exhibit B, a Provider receiving revenue from Cable Internet Service shall include such revenue in the calculation of Gross Receipts from Communications Services and shall be required to have a Communications Franchise with the City governing the use of the Rights-of-Way for such purposes. Except as may lawfully be required by the City or otherwise dictated by applicable law, all Franchises granted hereinafter shall authorize use of the Rights-of-Way for Cable Internet Service only pursuant to a Communications Franchise. All prior payments to the City attributable to such Cable Internet Service under a Cable Franchise shall be irrefutably deemed to be lawful compensation for the past use prospectively paid under any new Communications Franchise, irrespective of any additional rates or terms required for any future use under any new Communications Franchise.

I. "Cable Services" means:

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;

J. "Cable System" means 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 the Franchise Area, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves Subscribers without using any public Rights-of-Way; or

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent 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;

4. An Open Video System that complies with Section 653 of the Cable Act; or

5. Any facility of any electric utility used solely for operating its electric utility system.

K. "Capital Costs" means costs associated with the purchase of assets, products or other resources that will provide service for more than one year, but shall not have any meaning inconsistent with generally accepted accounting principles.

L. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of carrying a television channel as defined by the FCC.

M. "City" or "Grantor" means the City of Leawood, Kansas.

N. "Exhibit B" means this Exhibit B incorporated into the attached franchise agreement and all provisions herein.

O. "Collocation" means the shared use of Facilities, including, but not limited to, the placement of conduit owned by more than one Rights-of-Way user in the same trench or boring and the placement of equipment owned by more than one user in the same or connected conduit or location. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

P. "Communications" means the transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

Q. "Communications Franchise" means a franchise for use of the Rights-of-Way for Communications Services as authorized herein and executed by the City and Franchisee.
R. "Communications Franchise Fee" means the fee imposed by the City on Franchisee for use of the Rights-of-Way pursuant to a Communications Franchise pursuant to Chapter Two of this Exhibit B.

S. "Communications Service" means the transmission via Facilities, in whole or in part, of any writings, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Access Service" and "Cable Internet Service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, conduit, apparatus ("Communications Facilities"), and services (among other things, the receipt, forwarding, and delivery of telecommunications) incidental to or designed to directly or indirectly facilitate or accept such transmission. This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application.

T. "Complaint" means any oral, written or electronic, allegation, or assertion made by a Person regarding Cable Service or Cable System operations that the Cable Franchisee is required to perform or comply with under this Exhibit B or its Cable Franchise.

U. "Converter" means an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and, through the use of an appropriate Channel selector, permits a Cable Subscriber to view all authorized Cable Subscriber signals delivered at designated converter dial locations.

V. "Direct Incremental Costs" means the costs actually incurred by a Cable Provider in meeting an obligation under its Franchise which the Provider would not otherwise have incurred in order to either operate and conduct the business of its Cable System or meet another obligation of the Franchise.

W. "Drop" means the cable or cables that connect the ground block on the Cable Subscriber's property to the nearest feasible point on the Cable System in order to receive Cable Service.

X. "Facilities" means any portion of a System located in, along, over, upon, under, or through the Rights-of-Way.

Y. "Franchise" means a Cable Franchise or a Communications Franchise as defined herein or any other agreement or license granted by the City authorizing use of the Rights-of-Way for any Cable Service or Communication Service.
Z. "Franchise Area," unless otherwise specified in the applicable Franchise, as provided for in 3.4.J., means the entire geographic area within the City as it is now constituted or may in the future be constituted.

AA. "Franchisee" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.

BB. "Grantee" means a Person who is granted a Cable Franchise and that Person's agents, employees, lawful successors, transferees, or assignees, or any other Person who constructs, operates or maintains Cable Facilities or provides Cable Services by use of the Rights-of-Way.

CC. "Gross Receipts" means all revenues received directly or indirectly by a Franchisee or its Affiliates for Communications Services originating, terminating or otherwise rendered within the City and all revenue derived from the use of the Communications Services Facilities. Except to the extent as may be prohibited by law, such "Gross Receipts" shall specifically include, but shall not be limited to, all revenue of the Franchisee derived from the following:

1. Recurring local exchange service revenues for business and residence which include basic telephone exchange service, Touch Tone, Custom Calling Services and measured local calls;

2. Recurring local exchange service revenues for public, semi-public and private coin;

3. Local directory assistance (411);

4. Line status verification/busy interrupt;

5. Local operator assistance;

6. Information delivery service;

7. Cellular and other wireless communication services revenue; provided that such revenues derive from a system having antennae or other parts of the mobile system are physically located within the Right-of-Way; Rights-of-Way and the City is legally authorized to collect such fee;

8. Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate telephone bills;

9. Revenue received by the Franchisee from Reseller Service Providers (except for revenues from Reseller Service Providers
that have a separate enforceable Franchise with the City providing for payment of Gross Receipts of that Reseller Service Provider);

10. Revenue from Internet Access Service (and including Cable Internet Service, unless such service revenues are validly required to be included and are collected as Gross Revenues in a Cable Franchise between Franchisee and the City);

11. Revenue from rent, physical use, collocation, or sale of the Facilities, network elements, or a portion thereof for any purpose provided, however, that this shall not apply to the sale or transfer of the entire System or Franchise;

12. ;

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectible debt, late charges, any federal, state or local taxes separately stated on a customer's bill and franchise fees. "Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City shall be presumed to be Gross Receipts of Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

DD. "Gross Revenues" means any revenue actually received by a Grantee, or by any other entity that is a Cable Operator on a Grantee's Cable System including the Grantee's Affiliates, from the operation of the Grantee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Exhibit B); commissions from home shopping channels to the extent conducted through a Cable Service; all Cable Service lease payments from
the Cable System; payments or other consideration received by the Grantee from programmers, except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the Grantee's Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a Grantee's ability to pass through franchise related costs to the extent allowed by applicable law; or (iii) any taxes on Cable Services furnished by Grantee which are imposed directly upon any Subscriber or user by the State, City or other governmental unit and which are collected by Grantee on behalf of said governmental unit, or (iv) Cable Franchise Fees collected from Cable Subscribers; or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

EE. "Institutional Network" or "I-Net" means a communication network which is constructed or operated by Grantee and which is generally available only to Cable Subscribers who are not residential Subscribers. As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

FF. "Institutional Network Services" means the provision of an I-Net by a Cable System operator to governmental, educational and other, Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated
voice, video, data and telephony channels connecting and interconnecting user facilities.

GG. "Institutional Users" means governmental, educational, and other non-profit or publicly funded users delineated in the individual Cable Franchise, Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

HH. "Internet Access Service" means the offering of direct access to the international computer network of both federal and non-federal interoperable packet switched data networks to customers for a fee. For purposes of this Exhibit B, Internet Access Service shall include the direct access to the Internet or Internet connections, including but not limited to all high-speed and Dedicated Subscriber Line ("DSL") communications connections to the Internet or otherwise and shall include the provision of incidental services and related services, but not including revenue from independent services such as Internet web design or Internet web hosting and the sale of Internet Service modems. Except where otherwise stated, the term "Internet Access Service" shall include Cable Internet Service.

II. "Linear Foot" means the length in feet of cable, wire, fiber, conduit or other linear Communications Facilities. Facilities that are physically connected, wrapped, or lashed as a single cable, conduit or bundle of cables or conduit shall be considered a single facility for purposes of calculating each Linear Foot, provided that each conduit or bundle of conduit up to and including 4" in exterior diameter or its equivalent shall constitute a separate Facility for calculating Linear Feet. Conduit having fiber optic or other cable or wire installed within it shall not be considered separate facilities but shall be considered part of the single "conduit" or bundle for purposes of calculating Linear Feet. Each Provider shall be subject to a separate Linear Foot charge for Communications Facilities used by Provider and subject to this Exhibit B. Facilities used by Franchisee solely for Cable Services or other purposes that do not include Communications Services shall not be included in the calculation of linear feet.

JJ. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours, at least one night per week, and some weekend hours.

KK. "Normal Operating Conditions" means those Cable Services offered or conducted by the Cable Franchisee or those conditions that are within the control of a Grantee. Those conditions, which are ordinarily within the control of Grantee, include, but are not limited to, special promotions; pay-per-view events; rate increases; regular peak or seasonal demand periods; and maintenance or upgrade of the Cable System. Those
conditions that are not within the control of Grantee include, but are not limited to, natural disasters; civil disturbances; power outages; telephone network outages; vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

LL. "Open Video Services" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.

MM. "Person" means any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

NN. "Provider" means Metromedia Fiber Network Services, Inc. and its agents, officers, and assigns.

OO. "Public Building" means any building owned or for the greater part occupied by the City or other governmental unit.

PP. "Renewal" means a new Communications Franchise or Cable Franchise granted to an existing Provider.

QQ. "Reports" means any and all non-trade secret documents and information required to be completed and/or kept or filed by a Grantee or Franchisee on order of the Federal Communications Commission, State or City. In accordance with applicable law, the City shall maintain such information as confidential to the extent that the Provider identifies specific information as such.

RR. "Reseller Service Provider" means a Communications or Cable Service Provider providing service within the City that does not have ownership, possessory interest, or control of Facilities in the Rights-of-Way, but instead uses the Rights-of-Way by interconnecting with or using the network elements of another Provider utilizing the Rights-of-Way, and/or by leasing excess capacity from a facility-based Communications Service Provider or Cable Services Provider.

SS. "Rights-of-Way" means the surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon, including, but not limited to, overhead lighting facilities. This term shall not include any county, state, or federal rights-of-way except where controlled or maintained by the City, or as other provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency. "Rights-of-Way" shall not include public property owned or leased by the City and not intended for right-of-way use, including, but not limited to, municipal building property, parks, or public works facilities.
TT. "ROW Ordinance" means the "An Ordinance for the Use and Excavations of the Public Right-of-Way for the City of Leawood, Kansas," adopted as Ordinance No. 1834C that regulates the excavation, construction and use of the Rights-of-Way by all persons, or as amended or supplemented hereinafter.

UU. "Service Interruption" means the loss of picture or sound on one or more Channels on the Cable System.

VV. "Standard Installation" means any Service installation that can be completed using a Drop of one hundred twenty-five (125) feet or less.

WW. "Subscriber" means any Person, who or which lawfully elects to subscribe for any purpose to Cable Service provided by a Grantee by means of, or in connection with, the Cable System, and whose premises or facilities are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System, including Persons who receive Cable Service without charge according to the terms of the Exhibit B or Franchise.

XX. "System" means the cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment, or other facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing communications to or from locations within the City.

YY. "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.


AAA. "Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

BBB. "Trained Representative" means employees of a Grantee who have the authority and capability while speaking with a Cable Subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

CHAPTER 2. COMMUNICATIONS SERVICES

2.1 Unlawful to Operate Without a Franchise. It shall be unlawful for any Person to construct, operate or maintain Communications Facilities or to provide Communications Services by use of Facilities in the Rights-of-Way in the City.
without a valid, unexpired Communications Franchise from the City, unless otherwise specifically authorized under applicable federal or state law, or otherwise provided by Ordinance. Unless otherwise provided hereinafter by City ordinance, a Reseller Service Provider shall not be required to obtain a Franchise. Unless otherwise specified in the applicable Communications Franchise, a Franchisee is authorized to provide the full range of Communications Services (not including Cable Service) contemplated under this Exhibit B, provided, however, that nothing herein prevents a Franchisee from entering into a Franchise to solely provide Telecommunications Services as defined under federal law or such other more limited service as may be included within “Communications Services” as defined herein.

2.2 Franchises Nonexclusive. The authority granted by the City in any Franchise shall be for nonexclusive use of the Rights-of-Way. The Grantor specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to all applicable law.

2.3 Nature of Rights Granted by any Franchise. Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes and for the period stated in this Exhibit B and as may be further limited by the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee.

2.4 Application and Application Fee Required. Any person seeking to use the Rights-of-Way for any Communications Service, or seeking renewal of an existing Franchise, shall submit a completed application on such form as approved by the City. Such application shall be accompanied by a non-refundable application fee in the amount of $5,000 for a Communications Services franchise application and $8,000 for a Cable Services franchise application or as may be otherwise established by the Governing Body, to compensate the City and defray in whole or part the City's reasonable costs in review, negotiation and administration of any application filed under this Exhibit B. On request of the City, the applicant shall provide such additional information that is deemed necessary or appropriate to the City in reviewing the application and proposed use of the Rights-of-Way. Franchisee shall be responsible for payment of any reasonable costs incurred by City in processing these applications or in adapting or executing the Franchise for use by Franchisee to the extent such costs exceed the application fees paid. The City may provide for the waiver of these application fees and/or of Communications Franchise Fees for use of the Rights-of-Way by other governmental entities for governmental noncommercial purposes where such waiver is deemed by the City to be lawful and in the public interest.
interest. The information provided by Franchisee shall be certified as true and correct and Franchisee shall be responsible to certify to the City any material changes that relate directly to the Franchise or obligations thereunder to the information provided in such completed Application during the term of any Franchise.

2.5 Standards and Procedures for Approval or Renewal of Franchises. Franchises shall be granted pursuant to all applicable procedures and requirements as set forth in K.S.A. 12-2001, et. seq. The City shall authorize Franchises or renewals to any eligible Franchisee for the right and privilege to construct, operate, and maintain Facilities in, through and along the City's Rights-of-Way for the purpose of supplying Communications Services on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Exhibit B, which shall be deemed incorporated therein, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission. In reviewing an Application, the City may consider prior conduct of the Franchisee in performance of its obligations or compliance with the City’s ordinances in the past, or the existence of any outstanding violations or deficiencies. To the extent not inconsistent with applicable law, the City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City or as otherwise provided by law. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Applications for Franchises may be approved, denied, or approved with conditions consistent with applicable requirements of the Telecommunications Act or other applicable requirements as may be necessary to fulfill the requirements and objectives of this Exhibit B. Franchises shall be granted by the City on a non-discriminatory and competitively neutral basis to the extent required by the Telecommunications Act, and the City shall not unreasonably discriminate between similarly situated Communications Franchisees.

2.6 Cable Service and Open Video Systems (OVS); Separate Franchise Required. A Communications Franchise shall not provide Franchisee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon Franchisee's request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522(5)) within the City, the City shall timely negotiate such Cable Television Services Franchise in good faith with Franchisee. A Communications Franchise shall also not permit Franchisee to operate an Open Video System, except where otherwise expressly provided in the Franchise or by separate Franchise, and Franchisee remits the maximum fees permitted by 47 U.S.C. § 573(c)(2)(B) and where Franchisee otherwise complies with the Cable Franchise requirements established in Section Three of this Exhibit B as limited or supplemented by FCC regulations and requirements.
pursuant to 47 U.S.C. § 573. Absent such applicable Franchise from the City, Franchisee shall be prohibited from offering OVS or services not authorized by the Franchise and any such services shall be considered a material breach of the Franchise. Unless otherwise specified, any such new Franchise or amendment to a Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

2.7 Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate. The Franchisee shall construct and maintain Franchisee's Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Exhibit B or hereinafter adopted to the extent not in contravention of state or federal law, or vested rights in any existing franchise. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.

2.8 Term. A Franchise shall be effective for a term of five (5) years from its effective date, unless the City reasonably determines that a different term is warranted under the circumstances consistent with applicable law.

2.9 Communications Franchise Fees. Unless otherwise approved by the Governing Body, Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to five percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:

A. $1000 per month for the first mile of linear Facilities, or part thereof, plus $.21 per month per Linear Foot thereafter up to a monthly charge under this subsection of $10,000, and
B. $15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than $1000 per month; provided that nothing herein shall preclude the Governing Body from eliminating the Gross Receipts requirements for the use of the Rights-of-Way for one or more antennae where such methodology would otherwise result in unfair or unreasonable compensation.

Provided, however, no such minimum Linear Foot charge shall be imposed during the first two months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

2.10 Bundled Services. To the extent Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered. Revenues from the sale of such bundled services shall be apportioned for purposes of the Franchisee in such manner that an amount equal to the Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts;" provided, however, if a Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee.

2.11 Timing of Payment of Communications Franchise Fees. Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").

2.12 Interest on Late Payments and Under Payments. If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the rate of one and one-half percent per month, unless such other maximum rate is established by Law.

2.13 Fee Statement. Each Communications Franchise Fee payment shall be accompanied by a statement showing the manner in which the Communications Franchise Fee was calculated. If any Fee Statement is determined to understate the Fee owed, then such additional amount owed shall be made with a corrected statement, including interest on said amount as provided herein. Within 90 calendar days following the end of the calendar year, each Franchisee shall submit
a statement, certified as true, setting forth its Gross Receipts, Linear Foot, and number of Antennae for each month of the preceding calendar year, and describing what revenues or receipts (including each type of services) were included and excluded in the fee calculations for the calendar year, and describing any adjustments made in determining the Communications Franchise Fee.

2.14 **No Accord and Satisfaction.** For a period of five (5) years after receipt of a payment, no acceptance by the City of any Communications Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Communications Franchise Fee payment be construed as a release of any claim of the City.

2.15 **Maintain Records.** Franchisee shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Franchisee with respect to the System in a manner that allows the City to determine whether the Franchisee has properly calculated its Communications Franchise Fee in compliance with this Ordinance. Should the City reasonably determine that the records are not being maintained in such manner, the Franchisee and City shall mutually agree on a method to correct the manner in which the books and/or records are maintained so that the Franchisee comes into compliance with this section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Kansas, and generally accepted accounting principles shall be deemed to be acceptable under this section. Such books and records shall be maintained for a period of at least three years. The maintenance of such records and the provision of such information as required herein shall be a material term of this Franchise.

2.16 **Right of Inspection.** The City or its designated representatives shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, (ordinarily not less than two business days), all documents, records or other information that pertains to the System and/or Franchisee’s Communications Franchise Fee obligations under the Franchise. In addition to access to the records of Franchisee for audits, upon at least two (2) business’ days notice, Franchisee shall provide reasonable access to records necessary to verify compliance with the terms of the Franchise. If any audit or review by the City results in a determination by the City that Franchisee has underpaid any amount due by more than five (5%) percent of the total due, Franchisee shall, in addition to other amounts due, shall also pay any audit costs incurred by the City in determining or identifying such underpayment.

2.17 **Description of Service.** Franchisee shall on an annual basis provide the City with a description of new local communications services offered within the City during the prior year. The first annual report shall also provide a listing of each separate type of service or bundled service offered during the initial annual period. Any individual or bundled service or item for which the provider has a separate charge shall be considered a separate service under this paragraph.
2.18 **Payment of Taxes.** The Communications Franchise Fees required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Communications Franchise Fee is compensation for use of the Rights-of-Way. Franchisee shall be fully responsible for the payment of all applicable taxes.

2.19 **Duty to Notify City of Resellers.** Within 30 days of the Franchisee carrying any Communications of any Reseller Service Provider through Franchisee's Facilities, Franchisee shall notify the City of the name and address of such Reseller Service Provider, the reseller rates or tariffs to be paid to Franchisee relating to such Reseller, and provide to the City a statement as to whether the Reseller Service Provider will be obtaining a separate Franchise with the City to directly pay Franchise Fees for the revenues attributable to such Reseller Service Provider.

2.20 **Duty of Reseller to Provide Notice of Operation Within City; Facilities to be Subject to Franchise.** Prior to providing service within the City or transmitting communications through Facilities in the City, a Reseller Service Provider shall provide written notice to the City of the intent to do so, and shall include (1) the certification of the applicable regulatory approval necessary to undertake such service or communications (2) the name of the Provider(s) owning the Facilities within the City through which the Communications shall be transmitted. It shall be unlawful for any Provider or Reseller Service Provider not having its own Franchise authorizing such communications to transmit communications for commercial purposes through any Facility owned by a Provider that does not have a valid franchise with the City authorizing the use of such Facilities.

2.21 **Sale or Lease of Facilities.** Except as otherwise may be provided by Law or Franchise, Franchisee shall not lease, sell, or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Franchise, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. This subsection shall not be construed to apply to Franchisee offering or providing its capacity or spectrum on the System to a Reseller Service Provider however nominated, provided that no possessory or tangible property interest of any kind in the Facilities is transferred. Franchisee shall provide the City reasonable prior notice of such intended sale, lease or transfer of possession or control.

2.22 **Assignment of Franchise.** The Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, a Franchise or any of the rights or privileges granted by a Franchise, without the prior written consent of the City; provided that such transfer may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon thirty days prior notice to the City. Such consent shall not be unreasonably withheld. Franchisee may also pledge or grant a security interest to any lender(s) (not affiliated with Franchisee) of Franchisee's assets, including but not limited to the Franchise, or an interest in Franchisee's Affiliate companies, in a transaction
commonly known as an "initial public offering" without the prior approval of the City. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Franchisee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

2.23 **Forfeiture of Franchise and Privilege.** In case of failure on the part of the Franchisee, its successors and assigns, to comply with any of the material provisions of this Exhibit B or a Franchise, including but not limited to payment of Franchise Fees, or if the Franchisee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of this Exhibit B or the terms of a Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Exhibit B and any Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise, it shall first serve a written notice upon the Company, setting forth in detail the neglect or failure complained of, and the Company shall have thirty (30) days thereafter, or such other longer reasonable period established by the City Council, in which to cure the default by complying with the conditions of a Franchise and fully remedying any default or violation. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with the City shall conduct a public hearing affording Franchisee due process. If after a hearing the City determines that the Franchisee is in violation of the Franchise, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Franchise; and setting out the grounds upon which said Franchise is to be forfeited or revoked in a written notice to Franchisee together with written findings of fact. Nothing herein shall prevent the City from invoking any other remedy as may be set forth in the Exhibit B or as may otherwise exist at law or, when reasonable to do so, from declaring immediate forfeiture upon notification where the material default is incapable of being cured by Franchisee, including where such material defaults or violations have repeatedly occurred after notification of such violations, nor shall this Section preclude Franchisee from seeking any right it may have to judicial review of a final decision under this Section.

**CHAPTER 3. CABLE SERVICES**

3.1 **Cable Franchise Requirements.**

A. **Unlawful to Operate Without a Franchise.** It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing multichannel video services, including OVS, in the City without a Franchise authorizing the same, unless otherwise specifically authorized under applicable federal or State law. Consistent with Chapter 5 any such Person shall be subject to a fine of $500 per day. The payment of such fine notwithstanding, all such
violators shall be subject to all other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Cable Franchise Fee. This section shall not apply to a Grantee who has properly asserted its intent and is diligently pursuing renewal of the Franchise pursuant to 47 USC § 546.

B. Nature of Rights Granted by any Cable Franchise. Cable Franchises shall not convey title, equitable or legal, in the Rights-of-Way, and shall give only the right to occupy Rights-of-Way, for the purposes of providing Cable Services and as may be further limited by the Cable Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. All Franchises shall be deemed to incorporate and be limited by the provisions of this Exhibit B and shall create rights for the sole and exclusive use of Franchisee. Any Franchise or other authorization for Cable Services, in whatever form granted, shall not grant or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of Communications Services; (ii) any permit, agreement, or authorization required in connection with operations in the Rights-of-Way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

C. Franchise Not Exclusive.

1. Any Cable Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable Television System or any component thereof, to any other Person including itself, as it deems appropriate, subject to this Exhibit B and applicable federal and state law.

2. The terms and conditions of any Cable Franchises granted or renewed pursuant to this Ordinance shall be, when taken as a whole, no less burdensome or more beneficial than any other Cable Franchises granted or renewed pursuant to this Ordinance, when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted. Provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.
3. Further provided, nothing in this subsection shall create any remedy other than that which is provided in subsection C.4 below, nor shall it be deemed to create any cause of action or claim of breach for any party.

4. Before granting an additional Cable Franchise, the City shall give written notice to every existing Cable Franchisee of any other proposal to service all or part of such existing Cable Franchisee's Franchise area, identifying the applicant for such additional franchise and specifying the date, time, and place at which the City shall consider and/or determine whether such additional Cable Franchise should be granted. In the event that an existing Cable Franchisee believes that the City has entered into an additional Cable Franchise with terms or provisions that are, taken as a whole, more favorable or less burdensome than the terms set forth in this Franchise, taking into consideration, where reasonably warranted, the situation that existed at the time in which the different provisions were adopted, the City shall, upon request by such existing Cable Franchisee, enter into good faith negotiations with the existing Cable Franchisee to modify the Cable Franchisee's Franchise.

D. Franchise Territory.

Every Cable Franchise shall apply to the entire territorial area of the City, as it exists now or may later be configured.

E. Federal, State, and City Jurisdiction.

1. This Chapter and Exhibit B shall be construed in a manner consistent with all applicable federal and state laws.

2. In the event that the federal or state government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, City may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law and the reasonable exercise of the City's police powers.

3. The provisions of this Chapter and Exhibit B shall apply to all Cable Franchises granted or renewed after or simultaneously with the effective date of this Ordinance. This Chapter and Exhibit B shall also apply to all existing Cable Franchises, to the extent not inconsistent with the terms of any such Franchise. A Cable Franchise (including all of Grantee's particular rights, powers, protections, privileges, immunities and obligations associated therewith as the same exist on the date hereof) shall constitute a
legally binding contract between the City and Grantee, and as such, cannot be amended, modified or changed by the Grantor without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions. In the event of any conflict between the terms and conditions of a Cable Franchise and the provisions of this Chapter or Exhibit B, and other generally applicable regulatory ordinances of the City, the specific terms of the Franchise shall control; provided, however, that nothing herein contained shall preclude the City from the proper exercise of its police powers.

4. In the event of a change in state or federal law which by its terms would require the City to amend this Chapter or Exhibit B, the parties shall modify the existing Cable Franchise in a mutually agreed upon manner.

F. Initial Franchise Applications. Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A nonrefundable Application Fee as may be hereinafter established by the City shall accompany the application, which shall not be considered or credited against the collection of applicable Cable Franchise Fees.

G. Consideration of Initial Applications.

1. Upon receipt of any application for an initial Franchise, the City Administrator shall prepare a report and make his or her recommendations respecting such application to the City Council.

2. A public hearing shall be held prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted, subject to what conditions.

H. Franchise Renewal. Franchise Renewals shall be in accordance with applicable law including, but not necessarily limited to, the Cable Communications Policy Act of 1984, as amended. The City and a Grantee, by mutual consent, may enter into Renewal negotiations at any time during the term of the Franchise.

I. Grant of Additional Franchise and Competing Service. Since competing or overlapping Cable Franchises may have an adverse impact on the public Rights-of-Way, on the quality and availability of services to the public and may adversely affect an existing Provider's ability to continue to provide the Services it is presently providing under a
Franchise, the City may issue a Franchise in an area where another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional Franchise may have on the community. In considering whether to grant one or more additional Franchises, the City shall specifically consider, and address in a written report, the following issues:

1. The positive and/or negative impact of an additional Franchise on the community.

2. The ability and willingness of the specific applicant in question to provide Cable Services to the entire Franchise Area which is served by the existing Cable Provider. The purpose of this subsection is to ensure that any competition which may occur among Grantees will be on terms, which when taken as a whole, do not give a competitive advantage to one Grantee over another.

3. The amount of time it will take the applicant to complete construction of the proposed Cable System and activate Cable Service in the entire Franchise Area; and, whether the applicant can complete construction and activation of its Cable System in a timely manner.

4. The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain, and operate the proposed Cable System for the duration of the Franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the City may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit, or other documentation to demonstrate to the City's satisfaction that the requisite funds to construct and operate the proposed Cable System are available.

5. The quality and technical reliability of the proposed Cable System, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such Cable System.

6. The experience of the applicant in the erection, maintenance, and operation of a Cable System.

7. The capacity of the Rights-of-Way to accommodate one or more additional Cable Systems and the potential disruption of those Rights-of-Way and private property that may occur if one or more additional Franchises are granted.

8. 
9. Such other information as the City may deem appropriate to be considered prior to granting any competing or overlapping Franchise.

J. Permits for Non-Franchised Entities.

1. The City may issue a license or Franchise to a Person other than the Grantee to permit that Person to traverse any portion of a Grantee's Franchise Area within the City in order to provide Cable Service outside, but not within the City. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize nor permit said Person to provide Cable Service of any type to any home or place of business within the City.

3.2 Design, Services and Capabilities.

A. Cable System Design. Every Grantee shall offer Cable Service that meets the current and future cable-related needs of the City. Such Cable Service shall, at a minimum, be comparable to Cable Services offered by that Grantee or its Affiliates operating any headend serving the City and surrounding municipalities in Johnson County. The Cable Franchise shall incorporate a description of the Grantee's Cable System including the general design and capabilities of the Cable System to identify for the City how the Cable System will meet the current and future Cable needs of the City.

B. The Cable System. Every Cable System shall pass by every single-family dwelling unit and multiple-family dwelling unit within the Franchise Area in accordance with line extension policies set forth in this Ordinance. Service shall be provided to Subscribers in accordance with the schedules and line extension policies specified in this Ordinance unless otherwise specified in the Franchise.

C. Drops To Public Buildings.

1. Every Grantee shall provide installation of at least one (1) Cable Drop, and one (1) outlet, provide monthly Basic Cable Service, without charge, to Public Buildings specified by the City in the applicable Franchise, where the drop does not exceed two hundred (200) feet. All accredited K-12 schools, and public libraries shall also receive one (1) Cable Drop and one (1) outlet and Basic Cable Service at no charge, subject to the above 200-foot limit. The location of such Cable Drops and outlets shall be determined in cooperation with the management of the Public Building to which the connection is to be made. Following the City's designation of additional Public Building(s) to receive Cable Service, a Grantee shall complete construction of the Drop and outlet within one
hundred and eighty (180) days if the City requests construction, weather permitting and subject to payment of the Direct Incremental Costs of installation in excess of two hundred (200) feet. Drops and outlets that are in addition to the one free Drop and outlet required by this Section shall be provided by a Grantee at the cost of Grantee's Direct Incremental Cost. Alternatively, at an institution's request, the institution may add outlets at its own expense, as long as such installation meets the Grantee's standards, which shall be made readily available to any public entity upon request. Additional outlets and Services to Public Buildings are subject to the applicable commercial rate.

2. All such Cable Service outlets shall not be utilized for commercial purposes. The City shall take reasonable precautions to prevent any use of a Grantee's Cable System in any inappropriate manner or that may result in loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, other than for those claims arising out of improper installation or faulty equipment.

3. In instances where the Drop line from the feeder cable to the Public Building, school or library exceeds 200 feet, the Grantee may charge for its Direct Incremental Costs that are incurred in exceeding this length. A Cable Franchisee may require advance payment of this cost.

D. **School and Library Cable Modems.** Unless otherwise specified in the applicable Franchise, upon activation and commercial offering of two-way cable modem service within the Franchise Area, every Grantee shall provide upon written request a courtesy cable modem and Cable Internet Service without charge to every State accredited K-12 school and library in the Franchise Area, which may constitute an element of an individual Franchise I-Net requirement.

E. **Use Of Grantee's Facilities.** Unless otherwise specified in the applicable Cable Franchise, and subject to any applicable state or federal regulations, the City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of a Grantee, any wires and fixtures desired by the City for public purposes. Provided, however, that (a) such use by Grantor does not unreasonably interfere with the current or future use by Grantee; (b) such use by Grantor is restricted to non-commercial public purposes; and (c) Grantor takes reasonable precautions to prevent any use of Grantee's facilities in any manner that results in an inappropriate use thereof, or any loss or damage to the Cable System. For the purposes of this subsection, "public purposes" includes, but is not limited to, the use of the structures and installations for Grantor
fire, police, traffic, utility, lighting, and/or signal systems, but not for Cable System purposes in competition with the Grantee. The Grantee shall not deduct the value of such use of its Facilities from its Cable Franchise Fee and/or other fees payable to Grantor.

F. **Upgrade of System.** Every Grantee shall upgrade its Cable System (herein referred to as the "System Upgrade"), if required, as set forth in its respective Franchise.

G. **Emergency Alert Capability.** Every Grantee shall at all times provide the System capabilities to comply with the FCC's Emergency Alert System rules and regulations. Provided, that at a minimum these capabilities will remain in place even if the FCC at some future date eliminates the current regulations.

H. **Periodic Review.** The Franchise shall include provisions to provide for a "periodic review" between the City and a Grantee to evaluate changes in law, technology, or service, and reasonable procedures for mutually agreed upon modifications to the Franchise to incorporate changes identified as desirable or necessary as a result of any such periodic review.

I. **Closed Captioning and Descriptive Audio Service.** Every Grantee will make audio descriptive service and closed captioning capabilities available to the extent required by state and federal law.

J. **Standby Power.** Within twelve (12) months of activation of the System, the Grantee shall provide standby power backup service capacity capable of providing at least twelve (12) hours of emergency supply at the Cable System Headend. For nodes, two hours with emergency power supply. Every Grantee shall maintain standby power System supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

K. **Status Monitoring.** Every Grantee shall provide an automatic status monitoring System, or a functional equivalent, when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible.

L. **HDTV/ATV Conversion.** Conversion to High Definition Television/Advanced Television (HDTV/ATV) formats shall occur in accordance with applicable law.

### 3.3 Institutional Network, And Public Educational And Governmental Access Or "PEG Access"

A. **Institutional Network, Access Channels.**
1. Every Grantee shall, to the extent required in its Franchise and subject to applicable law, provide or fund on a similar basis with other Cable Providers whose Franchises are granted or renewed after the adoption of this Exhibit B an Institutional Network, or PEG Access Facilities or other public interest services, or some combination of the same, for use by governmental, educational and other publicly-funded or non-profit local community service organizations identified by the City. Such public interest requirements shall at a minimum satisfy the community need for such facilities and/or services as determined by the Governing Body for the period of the applicable Franchise.

2. Every Grantee shall also provide a channel or channels, bandwidth capacity, service, and funding, for separate Public, Educational and Government Access Channels, as specified in their Franchise. All such PEG Access Channels shall be available to all Subscribers as part of their Basic Cable Service. Given the on-going changes in the state of technology as of the Effective Date of this Exhibit B, absent the express written consent of the City, Grantee shall transmit PEG Access Channels in the format or technology utilized to transmit all of the Channels on the Basic Cable Service tier. Oversight and administration of the PEG Access Channels shall be set forth in the Franchise.

B. **Proof of Performance Testing.** To ensure high quality service on the Access Channels, proof of performance testing throughout the System and on all Channels will be made available to the City to the extent required in a Franchise. Every Grantee will monitor Access Channels throughout the Cable System to determine the level of technical quality of Access Channels is in conformance with FCC Rules and to ensure that the level of technical quality on such Access Channels is the same as on other Channels within the Cable System.

3.4 **Technical Standards and Customer Service Practices.**

A. **General Technical Standards and Customer Service Practices.**

1. This Chapter incorporates Cable Service technical standards and establishes customer service practices that every Grantee must satisfy.

2. Every Grantee shall maintain such equipment and keep such records as required to comply with all customer service and technical standards required by these regulations and other applicable laws. The Grantee shall at all times assist and cooperate with Grantor in explaining, interpreting and understanding such records or reports.
B. **Test and Compliance Procedure.** Tests for a Cable System shall be performed periodically in a manner so as to conform with FCC specifications. The tests may be witnessed by representatives of the City and written test reports shall be made available to the City upon request. If any test locations fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken and shall have the site retested.

C. **Cable System Office Hours and Telephone Availability.**

1. Every Grantee shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return converter boxes and comparable items and receive information on the Grantee and its services. Such service center shall be open at least during Normal Business Hours. Grantee shall also maintain a publicly listed toll-free or local telephone line that is available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

2. Every Grantee shall have Trained Company Representatives available to respond to Subscriber telephone inquiries during Normal Business Hours.

3. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a Trained Representative on the next business day.

4. Under Normal Operating Conditions, telephone answer time by a Trained Customer Service representative or automated response unit, including wait time, shall not exceed thirty (30) seconds when the connection is made. If a call must be transferred to a Trained Customer Service representative, transfer time shall not exceed thirty (30) seconds. Under Normal Operating Conditions, these standards shall be met no less then ninety percent (90%) of the time, measured on a quarterly basis.

5. Under Normal Operating Conditions, a Grantee shall establish an inbound telephone system upon which Subscribers shall not receive a busy signal more than three percent (3%) of the time.

6. A Cable Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
D. **Service Calls and Installations.** Under Normal Operating Conditions, each of the following standards must be met no less than ninety-five percent (95%) of the time as measured on a quarterly basis:

1. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard Installations" are those that are located up to 125 feet from the existing distribution system.

2. The appointment window alternatives for installations, Service calls, and other installation activities, will be either a specific time or, within a maximum four (4) hour time block during Normal Business Hours. The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the express convenience of a Subscriber, if so requested.

3. A Grantee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

4. If a Grantee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber must be contacted. The appointment must be rescheduled, as necessary, at a time which is convenient for the Subscriber.

E. **Repairs and Interruptions.**

1. Under Normal Operating Conditions and excluding conditions beyond the control of a Grantee, every Grantee will begin working on Service Interruptions and outages within a reasonable time frame but in no event later than twenty-four (24) hours after the Service Interruption or outage becomes known. The Grantee must begin actions to correct other service problems on the business day following notification of such service problems.

2. The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

3. Work on requests for service, excluding conditions beyond the control of a Grantee, must begin by the next business day after notification of the problem.

4. Outside repairs to cable plant, which cannot be made by the initial service technician dispatched, shall under Normal Operating Conditions be re-scheduled within twenty-four (24) hours of the originally scheduled service call. The Subscriber does not need to be home for outside plant and line repairs.
5. A Grantee may interrupt service only for good cause and for the shortest time reasonably possible, including interruption for System Upgrade, maintenance and repair. Subject to the reasonable safety precautions for the benefit of the Grantee's employees and agents, routine maintenance shall occur at times that affect the fewest number of Subscribers, generally between 12:00 A.M. and 6:00 A.M. To the extent that specific neighborhoods will be affected by a planned outage, such as during an upgrade, the Grantee shall provide advance notice through telephone calls, door hangers and/or other reasonable means.

6. Upon Subscriber request Grantee shall provide a credit equivalent to a pro rata of the monthly cable rate for each Service Interruption exceeding four (4) hours in any twenty-four (24) hour period, unless it is demonstrated that the Subscriber caused the outage, or the outage was planned as part of an upgrade or other work that occurred between the hours of 12:00 A.M. and 6:00 A.M., of which the City and the Subscriber received appropriate prior notification. A Subscriber is entitled to a full refund for any Cable System or disruption to a pay per view event. These credits and refunds shall be made available upon request by Subscriber describing the time, date and nature of the disruption experienced.

7. Technicians capable of performing service related emergency repairs and maintenance must be available twenty-four (24) hours a day, including weekends and holidays.

8. No charge shall be made to a Subscriber for any service call relating to Grantee owned and Grantee maintained equipment after the initial installation of Cable Service unless the problem giving rise to the service request can be demonstrated by Grantee to have been:

(i) Caused by the negligence or malicious destruction of cable equipment by the Subscriber; or

(ii) A problem established as having been non-Cable System or Cable Service in origin.

A Grantee may also assess a service charge for repeat service calls to the same address in instances where the problem was not caused by the Grantee.

9. Cable Drop lines, cable trunk lines, or any other type of outside wiring that comprise part of a Grantee's Cable System that are located underground, shall be placed in such locations pursuant to City Exhibit B, and the surrounding ground shall be restored as close as is practical to its condition immediately prior to such underground construction activity within a reasonable period of
time after connection to the Cable System. Except for a Grantee's maintenance facilities, no Cable Drop line, cable trunk line, or any other type of outside wiring shall be permitted to lay upon the ground for an unreasonable period of time, within the City, except for the express purpose of being immediately connected to the Cable System of Grantee. The requirements of this subsection shall apply to all installation, reinstallation, service or repair commenced by a Grantee within the City during Normal Operating Conditions.

F. **Disconnections and Downgrades.**

1. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, the Grantee may disconnect the Subscriber's outlet; provided, however, that such disconnection shall not be effected until after the later of: (i) thirty (30) days after the due date of said delinquent fee or charge; or (ii) fifteen (15) days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), the Grantee shall not disconnect. Provided, however, that this section does not apply to Subscribers disconnected as a result of insufficient funds.

2. Absent extenuating circumstances, no Subscriber may be disconnected without prior written notice, the above notification of intent to disconnect in 3.3.F.1 shall satisfy this notice requirement. Provided, however, that no such prior notification requirement shall apply to disconnections for theft of service, or other violations of law.

3. No Subscriber may be disconnected for non-payment if payment of outstanding balances is made before the scheduled date for disconnection, up to and including the last business day before the scheduled disconnection.

4. No Subscriber may be disconnected due to a Grantee's failure to timely or correctly post payments.

5. No Subscriber may be disconnected outside of Normal Business Hours or on Sundays or holidays.

6. Absent extenuating circumstances, a Grantee is not required to reconnect a Subscriber with an undisputed outstanding balance.

7. A Grantee is permitted to refuse orders for premium or "pay per view" services from Subscribers with a record of non-payment.
8. A Grantee may disconnect Subscriber premises that are responsible for signal leakage in excess of applicable federal limits. A Grantee may effectuate such disconnection without advance notice, provided that a Grantee shall immediately notify the Subscriber with door tags and/or telephone calls or other reasonable means. If the source of the signal leakage is remedied, and the Subscriber was not the cause of such leakage the Grantee shall reconnect the Subscriber at no charge. If the Subscriber was the cause of the signal leakage the Grantee may charge a reasonable reconnection fee. For purposes of this Section, use of FCC-approved navigation devices does not in and of itself constitute Subscriber caused signal leakage.

9. Subscribers may request disconnection or a downgrade of cable service at any time. A Grantee may not impose any charge for service delivered after the requested date of disconnection. As provided under federal law, subscribers may request a downgrade at no charge if made within thirty (30) days of a rate increase.

10. Nothing in this Chapter or Exhibit B shall limit the right of a Grantee to deny Cable Service to any household or individual which has a negative credit or Cable Service history with the Grantee, which may include non-payment of bills, theft or damage to the Grantee's equipment, outstanding balances, or threats or assaults on employees of the Grantee in the course of their employment. In the event Cable Service is denied, the Grantee will give notice to the Subscriber of the right to contact the appropriate authority, as designated by the City.

G. Communications Between Grantee and Subscribers.

1. Notifications to Subscribers:

(i) Every Grantee shall provide written information to Subscribers on each of the following topics at the time of installation, at least annually to all Subscribers, and at any time upon request of a Subscriber:

(a) Product and Services offered;

(b) Prices and options for programming Services and conditions of subscription to programming and other Services and facilities.

(c) Installation and service maintenance policies;

(d) Instructions on how to use Services;
(e) Channel positions of programming offered on a System; and
(f) Billing and Complaint procedures, including the name, address and telephone number of the City.

(ii) Subscribers will be given thirty (30) days advance notice of any changes in rates, programming Services, or Channel positions, if the change is within the control of the Grantee. All such notice shall be provided in writing by any reasonable means. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by this section. Notwithstanding the foregoing or any provision of this Franchise to the contrary, a Grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Cable Franchise Fee, or any other fee, tax assessment, or change of any kind imposed by any government entity on the transaction between the Grantee and the Subscriber.

2. **Billing.**

(i) Bills must be clear, concise, and understandable. Bills must be fully itemized, including, but not limited to, Basic and premium Service charges and equipment charges.

(ii) Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(iii) In case of a billing dispute, a Grantee must respond to a written Complaint from a Subscriber within fourteen (14) calendar days of receipt by Grantee.

(iv) Credits for Service shall be issued no later than the Subscriber’s next billing cycle after determination that the credit is warranted.

3. **Late Charges.** A Grantee may impose a monthly fee for any delinquent balance owed by a Subscriber, subject to the following:

(i) At least ten (10) days before the date the fee is imposed, the Subscriber shall be given written notice, on the face of the bill or by separate notice of:

   (a) The date after which the fee will be imposed if the balance is not paid; and
(b) The amount of the fee that will be imposed; and

(ii) The Fee for the delinquent payment shall not exceed five percent (5%) of the amount of the delinquent balance per month or five dollars ($5) per month, whichever is greater.

4. **Refunds.** Refund checks will be issued promptly, but no later than either:

(i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) The return of equipment supplied by the Grantee if Cable Services are terminated.

H. **Complaint Log.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., every Grantee shall prepare and maintain written records of Complaints made to them and the resolution of such Complaints, including the date of such resolution. For purposes of this requirement all Complaints that result in the dispatch of a service technician shall be individually logged and for all other Complaints the Cable Franchisee may satisfy this requirement by the creation of a written summary of the type of Complaint and their resolution. Such Complaint logs and summaries shall be on file at the office of Grantee, and available for inspection by the City upon request.

I. **Parental Control.** Every Grantee shall make available to any Subscriber upon request a "lockout" device for blocking both video and audio portions of any channel(s) of programming entering the Subscriber's premises. Such device shall be provided at a reasonable charge, except to the extent that federal law specifically provides otherwise. A Grantee may, however, require a reasonable security deposit for the use of such a device.

J. **Service Area.**

1. A Grantee may not discriminate in the build-out of its Cable System to a particular area of the City or provision of cable Service to individual or groups of residents on the basis of race, creed, religion or economic condition. A Grantee shall serve all areas of the City with populations of at least twenty-five (25) dwelling units per cable mile, including areas annexed subsequent to the grant of the Franchise, unless otherwise provided by Franchise ordinance. Such line extension requirements may be modified in a Franchise such as where an franchise is granted to a prior existing Cable operator located in area annexed subsequent to the adoption of this Exhibit B, or such other circumstances that are sufficiently unique as determined by the Governing Body as not to create an unfair competitive advantage.
2. **Mandatory Extension Rule.** Every Grantee shall extend the System and make Service available at regular installation and regular monthly charges upon request to any contiguous area not designated for initial Service in the plan when potential Subscribers can be served by extension of the System past occupied dwelling units equivalent to twenty-five (25) units or more per cable mile. Such extension shall be at the Grantee's cost. Where aerial extension is allowed by regulation but underground installation is requested by benefited Subscribers, the cost of undergrounding that exceeds estimated aerial extension cost may be charged to benefited Subscribers.

3. **Newly Annexed Areas.** In such cases where mandatory extension of the Cable System is required for areas newly annexed after the effective date of the Franchise, but the technical capabilities of the then-existing Cable System are such that the minimum technical performance standards required by this Franchise or the FCC cannot be met, then the Grantee shall be required to make such extension only if the Grantee can earn a fair return (as measured by the Grantee's weighted average cost of capital) on the incremental investment required combined with the overall investment base of the Cable System within the boundaries of the Franchise Area.

4. **Special Agreements.** Nothing herein shall be construed to prevent a Grantee from serving areas not covered under this section upon agreement with developers, property owners or residents.

K. **Customer Service Reporting Requirements.** The City may require upon reasonable request that a Grantee periodically prepare and furnish to City semi-annual reports and any other reasonable information relevant to the Grantee's compliance with the customer Service requirements of this Chapter measured on a quarterly basis.

3.5 **Operation and Maintenance.**

A. **Open Books and Records.** Every Grantee shall cooperate with the City with respect to City's administration of this Chapter and Exhibit B and any applicable Franchise granted pursuant to it. Subject to the privacy provisions of the Cable Act, City shall have the right to inspect, upon three (3) business days notice, during Normal Business Hours, all books, records, maps, plans, financial statements, service complaint logs, performance test results, and other existing like materials of a Grantee that relate to the operation of the Grantee's Cable System and that are reasonably necessary to Grantor's enforcement or administration of this Exhibit B or the Grantee's Franchise. A Grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years, except that financial records necessary to demonstrate
compliance with the required Cable Franchise Fee payments shall be kept for six (6) years. Upon request, the City will treat designated information disclosed by a Grantee as confidential to the extent permissible under state and federal law. All such review of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor.

B. Communications with Regulatory Agencies. Copies of all petitions, applications, communications, and reports submitted by a Grantee to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency which directly relate to the operation of the Cable System in the City shall be made available contemporaneously to the City upon request. Copies of responses from the above regulatory agencies to a Grantee likewise shall be made available promptly to the City upon request. If the City is specifically named in any such pleading or response, the City shall automatically be furnished a copy.

C. Annual Reports.

1. Upon request, a Grantee shall make available to City, within ninety (90) days of the end of each of the applicable Grantee's fiscal years during the term of this Franchise, the following:

(i) A revenue statement certified by a representative of the Grantee showing the Gross Revenues of the Grantee for the preceding fiscal year;

(ii) A current list of names and addresses of each officer and director and other management personnel of the Grantee;

(iii) A copy of all documents that relate directly to the Grantee's Cable System that were filed with any federal, State, or local agencies during the preceding fiscal year and that were not previously filed with the City;

(iv) A statement of the Grantee's current billing practices and charges;

(v) A copy, if any, of the Grantee's current Subscriber Service contract; and

(vi) A copy of Annual Reports to stockholders, if any, for operating company and parent company.

(vii) An index of all technical and operational reports that Franchisee is required to develop and maintain with respect to its Cable System pursuant to this Exhibit B, individual Cable Franchise and the FCC.
Other than subsection (vii), all of the above information shall not be required annually unless there is a change after the first filing.

2. City and its agents and representatives shall have authority to arrange for and conduct an audit during Normal Business Hours of the books and records of Grantee that are reasonably necessary for the enforcement of a Franchise. A Grantee shall first be given thirty (30) days notice of the audit, the description of and purpose for the audit, and a description, to the best of City's ability, of the books, records, and documents that City wants to review. The costs and expense of such audit shall be borne by the Grantee if the audit reveals a discrepancy of five percent (5%) or more from the information related to the City.

3. Any review or audit of a Grantee's books and records shall be performed by an independent party if the City itself enters into the business as a competitor to provide Cable Services.

D. Service Contract and Subscriber Information.

1. A Grantee shall have authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Chapter and its Franchise and to assure uninterrupted Cable Service to all of its Subscribers; provided such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Exhibit B, federal, state and/or local law, or any applicable rules and regulations.

2. Upon request, a Grantee shall submit to City any Subscriber contract form that it utilizes. If no written contract exists, a Grantee shall file with the City a document completely and concisely stating the terms of the residential Subscriber contract offered, specifically including the length of the Subscriber contract. The length and terms of any Subscriber contract shall be available for public inspection during Normal Business Hours.

3.6 Financial Provisions, Remedies, Procedures and Due Process.

A. Annual Cable Franchise Fee.

1. As compensation for grant of a Franchise and in consideration of permission to use the Rights-of-Way of the City for the construction, operation, maintenance and reconstruction of a Cable System, and to defray the costs of Franchise obligations, every Grantee shall pay to the City on an annual basis throughout the
term of its Franchise, a sum totaling five percent (5%) of the Grantee's Gross Revenues.

2. Further, every Cable Grantee shall market any "bundled" services to fairly reflect an appropriate and reasonable division of services among the various services offered Revenues from the sale of such bundled services shall be apportioned for purposes of the Cable Franchise in such manner that an amount equal to the Cable Franchisee's usual and customary charge for Cable Service alone shall be included in "Gross Revenues;" provided, however, if a Cable Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Revenues" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not a Cable Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any other applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Cable Service Cable Franchise Fee.

3. Payments due City under this section shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty five (45) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report by the Grantee showing the basis for the computation and a "Cable Franchise Fee Worksheet," listing all of the sources of revenues attributable to the operation of the Grantee's System.

4. Should any additional monies be due to the City as a result of information contained in the annual financial report of a Grantee or by audit as permitted by this Chapter, the Grantee shall pay such additional monies to the City within sixty (60) days after receipt of notice of same from the City.

5. In the event that any of the quarterly Cable Franchise Fee payments are not timely made, a Grantee shall also pay the City interest thereon at the then-current prime rate. Said interest to be applied commencing with the forty-fifth (45th) day after the end of the quarter and continuing until all such overdue sums (including interest) are paid.

6. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the
City may have for further sums payable under the provisions of this Chapter, Exhibit B or applicable Franchise. All amounts paid shall be subject to audit and re-computation by the City or its designee, at any time upon reasonable notice and specification of the documents requested to be reviewed. City's right to audit, and the Grantee's obligations to retain records related to the Cable Franchise Fee audit, shall expire five (5) years from the date on which each Cable Franchise Fee payment by the Grantee is due.

B. **Security Fund.** Each Grantee may be required to maintain a security fund with the City to ensure compliance with this Chapter, Exhibit B and applicable Franchise, in an amount and in a manner as set forth in the Grantee's Franchise.

C. **Bonds, Indemnification, and Insurance.** Each Grantee shall maintain bonds and insurance with the City in amounts and in a manner as set forth in the Grantee's Franchise. Each Grantee also shall be required to indemnify the City in a manner as set forth in Chapter 1 and in the Grantee's Franchise.

D. **Remedies and Enforcement Procedure.**

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Exhibit B or its Franchise, including the customer service and telephone availability requirements, the City shall first notify the Grantee in writing of the violation and demand correction within a reasonable time, which shall not be less than thirty (30) days. If the Grantee fails to demonstrate to the reasonable satisfaction of the City that no violation exists, or if the Grantee fails to correct the violation within the time prescribed, or if the Grantee is unable to correct the violation and fails to commence corrective action within the time prescribed and to diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall indicate with reasonable specificity the violation alleged to have occurred. This procedure shall apply to all alleged Exhibit B or Franchise violations, including those in which grounds for revocation are considered.

2. At the public hearing, the City Council shall hear and consider all relevant evidence and thereafter render findings and a decision based upon the evidence.

3. In the event the City finds that the Grantee has corrected the violation or promptly commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully
remedy the violation, or that no violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

4. In the event the City finds that a violation exists and that the Grantee has not corrected the same in a satisfactory manner or did not promptly commence and diligently proceed to correct the violation, the City may impose penalties and/or liquidated damages from the Security Fund, as follows:

(i) For System construction schedule violations, including, but not limited to provisions relating to initial construction schedules and system upgrade construction schedule, $500 per day of non-compliance;

(ii) For all other violations, $250 per day per violation.

The City shall provide the Grantee with written notice of its decision together with a written finding of fact explaining the basis for such a decision.

5. If the City elects to assess penalties or liquidated damages, then such election shall constitute the City's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee Cable remains in non-compliance, the City may pursue any other available remedy, including Franchise revocation.

6. In the event that a Cable Franchise is cancelled or terminated by reason of the default of the Grantee, the security fund deposited pursuant to the Cable Franchise shall remain in effect and available to the City until all pending claims or penalties are resolved or settled, after which point any remaining amounts in the security fund shall revert to the possession of the Grantee.

7. The rights reserved to the City with respect to the security fund are in addition to all other rights of City, whether reserved by this Exhibit B, applicable Cable Franchise, or authorized by law, and no action, proceeding, or exercise of a right with respect to such security fund shall affect any other right City may have.

8. The foregoing provisions shall not be deemed to preclude the City from obtaining any other available remedies for repeated violations, of the same general type.

E. **Grounds for Revocation.** In addition to any rights in this Exhibit B or applicable Franchise, the City reserves the right to utilize the above described enforcement procedure to revoke a Franchise, and all rights and privileges pertaining thereto, in the event that any of the following occur,
and the City and a Grantee are not able to mutually agree upon a cure or alternate remedy:

1. The Grantee substantially violates any material provision of this Exhibit B or its Franchise;
2. The Grantee practices an act of fraud or deceit upon the City; or
3. The Grantee becomes insolvent or is adjudged bankrupt.

F. **Right of Appeal.**

1. Upon the imposition of a penalty or revocation decision, a Grantee shall have a period of one hundred and twenty (120) days subsequent to the date of the formal adoption of the decision by the City Council within which to file an appeal with a court of competent jurisdiction.
2. During any such appeal period, the Franchise shall remain in full force and effect.

3.7 **Foreclosure, Receivership and Abandonment.**

A. **Foreclosure.** Upon the foreclosure or other judicial sale of all or a part of the Cable System, or upon the termination of any lease covering all or part of the Cable System, a Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Exhibit B governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

B. **Receivership.** The City shall have the right to cancel a Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after its election or appointment, the receiver or trustee has fully complied with all the provisions of the Franchise and remedied all defaults thereunder, and
2. Such receiver or trustee, within said one hundred twenty (120) days, has executed an agreement, duly approved by a court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Exhibit B and applicable Franchise.
3.8 Purchase Of System.

A. If a renewal or extension of a Franchise is denied without further right of appeal, or a Franchise is lawfully terminated, with all rights of appeal exhausted, the City may acquire ownership of the Cable System or effect a transfer of ownership of the Cable System to another Person, any such acquisition or transfer shall in accordance with and to the extent permitted by 47 U.S.C. § 547 as follows:

1. Upon revocation of a Franchise, such valuation shall not include any sum attributable to the value of the Franchise itself and plant and property shall be valued according to its book value at the time of revocation, or the Cable System's initial cost less depreciation and salvage whichever of the two is lower.

2. At the expiration of a Franchise, such valuation shall be at fair market value, exclusive of the value attributed to the Franchise itself.

3.9 Sale Or Transfer Of Franchise.

A. A Grantee shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, an interest in or control of a Franchise or Cable System without the prior consent of the City, which consent shall not be unreasonably denied or delayed and may be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical, or financial qualifications to consummate the transaction and operate the Cable System so as to perform its obligations under the Franchise. This section shall not apply to sales of property or equipment in the normal course of business. Consent from the City shall not be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by, or under common control with a Grantee.

B. The following events shall be deemed to be a sale, assignment, or other transfer of an interest in or control of a Franchise or Cable System requiring compliance with this section: (i) the sale, assignment, or other transfer of all or a majority of a Grantee's assets in the City; (ii) the sale, assignment, or other transfer of capital stock or partnership, membership, or other equity interests in a Grantee by one or more of its existing shareholders, partners, members, or other equity owners so as to create a new controlling interest in Grantee; (iii) the issuance of additional capital stock or partnership membership or other equity interest by a Grantee so as to create a new controlling interest in a Grantee; and (iv) a Grantee's agreement to transfer management or operation of the Grantee or the System to an unaffiliated entity so as to create a new controlling interest in the...
the Grantee. The term "controlling interest" as used herein means majority equity ownership of a Grantee.

C. A transfer solely for security purposes such as the grant of a mortgage or security interest, including the pledge or grant of a mortgage or security interest to lenders of a Grantee's assets, including, but not limited to, the Franchise, such as in a transaction commonly known as an "initial public offering" shall not be deemed to be a sale, assignment or other transfer of an interest in or control of a Franchise or Cable System and thus shall not require compliance with this section.

D. In the case of any sale or transfer of ownership of an interest in or control of a Franchise or Cable System, the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with FCC Regulations and the requirements of this Exhibit B. If the City fails to render a final decision on the request within one hundred twenty (120) days after receipt by the City of all required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of the one hundred twenty (120) day period.

E. The City reserves any legal right it has under applicable law to require a Grantee to pay all costs and expenses incurred by the City in connection with the sale, assignment, or transfer of a Franchise, including, but not limited to, the City's costs of reviewing the qualifications of any proposed transferees. Such reimbursement shall not be considered a Cable Franchise Fee.

3.10 Rights Of Individuals Protected.

A. Discriminatory Practices Prohibited. A Grantee shall not deny Cable Service, deny access, or otherwise discriminate against Subscribers, programmers, or general citizens on the basis of income level, race, color, religion, national origin, sex, or age. Every Grantee shall strictly adhere to the equal employment opportunity requirements of state and federal law. Every Grantee shall comply at all times with all other applicable federal, State, and local laws, and all executive and administrative orders relating to non-discrimination.

B. Subscriber Privacy. Every Grantee shall at all times comply with the federal subscriber privacy requirements codified at 47 U.S.C. § 551.

3.11 Miscellaneous Provisions.

A. Rate Regulation. The City reserves the right to regulate rates for Basic Cable Service and any other services offered over a Cable System, to the extent permitted by federal or state law. A Grantee shall be subject to the
rate regulation provisions provided for herein, and those of the Federal Communications Commission (FCC) at 47 C.F.R., Part 76.900, Subpart N. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.

B. **Rights Reserved to Grantor.** Upon either final non-appealable determination of non-renewal or revocation of a Franchise, Grantor shall have discretion to permit a Grantee by mutual consent to continue to operate the Cable System for an extended period of time agreed upon by the parties. Any such operation of the System by a Grantee shall be in accordance with the terms and conditions of this Exhibit B and the Cable Franchise, and shall provide the regular Subscriber service and any and all of the services that may be provided at that time.

**CHAPTER 4. RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS**

4.1 **Rights-of-Way Ordinance.** A Provider shall be subject to and comply with the additional or supplementary terms and conditions of the "ROW Ordinance," as may be amended from time to time, which is incorporated herein by reference and such provisions and the provisions of this Exhibit B shall be deemed a condition of any Franchise. The provisions of this Chapter 4 shall apply as provided herein to Providers, and to the full extent permitted by law, additionally to all construction activities in public utility easements.

4.2 **Permit Requirements.** At least thirty (30) days before the beginning of any installation, removal or relocation of its Facilities, the Provider shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within thirty (30) days of receipt of such plans, either approve the plans or inform the Provider of the reasons for disapproval. The Provider shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance.

A. Prior to any excavation within the Rights-of-Way, the Provider shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Ordinance, and any subsequent ordinances or regulations that may be adopted by the City regarding excavation work.

B. The Provider shall post a bond with the City in accordance with the City's ordinances in an amount determined by the City Engineer, to guarantee the timeliness and quality of any construction, repair and restoration work, including damage to public or private property, and to guarantee the removal of its facilities from the City's Rights-of-Way should such removal be required upon the expiration of a Franchise.
C. Prior to the commencement of any construction or alteration of its facilities located in the Rights-of-Way, the Provider shall furnish to the City Engineer a subsurface utility engineering study on the proposed route of construction, expansion or alteration, which shall consist of the following tasks:

1. All available plans, plats and other location data indicating the existence and approximate location of all facilities along the proposed construction route;

2. Completion of a visual survey and written record of the location and dimensions of any above-ground features of any underground facilities along the proposed construction route, including, but not limited to, manholes, valve boxes, utility boxes, post and visible street cut repairs;

3. Plot and incorporate the data obtained from completion of task A and B above, on to the Provider's proposed system route maps, plan sheets and computer aided drafting and design (CADD) files; and

4. Provide all such data collected into a CADD file (or other format as may be identified by the City Engineer) compatible with that used by the City Engineer and deliver a copy to the City Engineer.

4.3 Mapping of Facilities. Each Provider shall maintain and file with the City updated maps, in such form as may be required by the City Engineer, providing the location and sufficient detail of all existing and new Facilities in the Rights-of-Way, and such other related information as required by the City Engineer. Such maps shall be updated and kept current with the City.

4.4 No interference. Provider shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Provider shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by Provider or its subcontractors shall be performed in accordance with industry standards.

4.5 Advertising, Signs or Extraneous Markings. Provider shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Provider or any other person or entity on the public right-of-way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

4.6 Tree Protection. Unless otherwise approved in writing by the City, in the attachment, installation, removal, reattachment, reinstallation, relocation or
replacement or otherwise of the Facilities, Provider shall neither remove, cut, nor damage any trees, or their roots, in and along the streets, alleys and public places of the City. With the exception of emergency procedures, tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

4.7 Exclusion of Certain Locations/Facilities. Prior to its installation of any Facilities in the Rights-of-Way and after it provides the City with its proposed plans for the Facilities, the City may in its discretion designate certain locations or facilities in the Rights-of-Way to be excluded from use by Provider for its Facilities, including, but not limited to, ornamental or similar specially-designed street lights, or other facilities or locations which, in the reasonable judgment of the City Engineer do not have electrical service adequate or appropriate for the Provider's Facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the City Engineer is incompatible with the proposed Facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other facilities that have been designated or planned for other use or are not otherwise available for use by Provider due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with the reasonable requirements of the Provider, the City will cooperate in good faith with Provider to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for Provider. All such determinations shall be in writing and appealable to the City Administrator as provided in the ROW Ordinance.

4.8 Location, Type and Design of Facilities Subject to Approval. The design, location, and nature of all Facilities shall be subject to the review and approval of the City Engineer. Such review shall be based on nondiscriminatory bases in application of City policy and approvals shall not be unreasonably withheld. Except as provided herein, all Facilities constructed after the date of a Franchise shall be placed underground, and in conduit, where capable. The location of pedestals, vaults, nodes or ground mounted Facilities, including backup power supplies, to the extent permitted pursuant herein and subject to the City's ROW Ordinance, and other applicable permitting/zoning requirements, shall be provided to the City Engineer for review at least fifteen days in advance of actual construction. Where reasonable and appropriate and where adequate public Rights-of-Way exists, the Franchisee shall at its cost place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and technically and economically feasible. Facilities, including Antennae, may be located aboveground only if approved by the City Engineer for good cause and including as may be specifically authorized in an Exhibit attached to the Franchise. Unless extraordinary circumstances exist, good
cause shall not include authorization for aboveground facilities requiring new poles or major modification to existing aboveground structures. Unless specifically authorized herein or otherwise by the City, antennae/towers having a height of forty (40) feet or greater located on the Rights-of-Way or antennae on other City owned or controlled property shall not be authorized by a Franchise, but shall require a separate Agreement or Franchise with the City. Antennae shall be permitted pursuant to a Franchise only on existing structures requiring no substantial modification and subject to approval of the City Engineer, including as to location and design. The location, design and other requirements for antennae in the Rights-of-way shall additionally be subject to all specific ordinances, regulations or policies of the City generally applicable to the siting of antennae. City height limitations, applicable zoning restrictions, and general city policy with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The City Public Works Director may establish such regulations or policies as may be deemed necessary or appropriate to effect this provision.

4.9 Notification, Joint Installation and Collocation Requirements. Provider shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way as may be provided for by separate City policy. Such notification and adopted policies shall be designed to maximize collocation of providers to minimize the disturbance to the Rights-of-Way and maximize its useable capacity. Provider shall not install new conduit or other Facilities in the Rights-of-Way where existing conduit is available to Provider that would reasonably avoid the need for new excavation or overhead installations. Provider shall identify by mapping, as required by the City Engineer, the location and specifications of all conduit available or dedicated for collocation.

4.10 Use of Facilities by others; required terms. If any Provider chooses to make its Facilities physically available for use by any other Provider it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. Provider shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.

4.11 Additional Facilities Requirements; Planned Infrastructure. When Provider installs any new conduit, the Provider shall simultaneously install sufficient additional conduit or other related facilities ("Excess Conduit") as may be determined by the City Engineer and in order to reasonably meet the needs of existing and future users of the Rights-of-Way. The criteria for when such conduit will be required, the amount of conduit to be required, management and ownership of the excess conduit and financing of the excess conduit and related matters shall be established by a separate city policy. Unless otherwise provided by the Council or in such adopted Policy, the City shall grant Provider a credit on the amount of any Franchise Fees due in the amount of 75 cents per linear foot of
Excess Conduit Installed at the City’s direction. Such credit shall not exceed any amount due and shall be credited under such procedures as may be established by the City. Provider may retain ownership of such Excess Conduit but must make it available to other Providers at the prorata cost of installation and on a competitively neutral and nondiscriminatory basis and pursuant to reasonable terms as may be required by the City. Provider, and affiliates of Provider, may use the Excess Conduit for their own use or for use of an affiliate only upon a determination by the Public Works Director that the Excess Conduit to be used is not reasonably needed to be reserved for future capacity and an approved list of providers has been notified of the proposed use and has not sought to use such locations. The City shall have the right at no charge to the City to use a portion of the Excess Conduit as may be needed for existing or future needs, provided that the Provider having receiving credit for installation of the Excess Conduit may add the cost of installation of the portion of the conduit so used by the City to the prorata cost charged to Providers acquiring the remaining Excess Conduit. Such additional detailed policies relating to the Excess Conduit shall be publicly available and unless otherwise provided each Franchise shall be deemed subject to such applicable policies adopted or as may be amended. The Excess Conduit shall be designed and installed in accordance with City specifications. When sections of Provider's conduit is installed simultaneously with another Provider, the cost of such sections of Excess Conduit shall also be cost shared among each Provider as may be established by policy. The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis to maximize the available space in the Rights-of-Way and designed to minimize the total number of excavations and cost of total communications infrastructure installation. No Linear Foot charge shall apply to any Excess Conduit installed by Provider that is dedicated to the City or subject to a Provider credit as provided herein.

4.12 Removal of Facilities. Upon expiration of a Franchise, whether by lapse of time, by agreement between the Provider and the City, or by forfeiture thereof, the Provider shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of a Franchise within a reasonable time after such expiration, not to exceed 90 days, and, it shall be the duty of Provider immediately upon such removal to restore the right-of-way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Provider, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal only under terms as may be approved by the City.

4.13 Relocation of Facilities. Whenever the City shall in its exercise of the public interest request of the Provider the relocation or reinstallation of any of its Facilities, Provider shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Provider. Provider shall upon request of any other person
requesting relocation of Facilities and holding a validly issued building or moving permit of the City, and within forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, Provider shall thereupon temporarily raise, lower, or relocate its wires or other Facilities as may be required for the person to exercise the rights under the permit, and Provider may require such permit holder to make payment in advance for any expenses incurred by said Provider pursuant to said person's request.

4.14 Provider Responsible for Costs. The Provider shall be responsible for all reasonable costs borne by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Provider. Provider shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

4.15 Insurance and Bonds. During the term of any Franchise, the Provider shall obtain and maintain at the Provider's sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Exhibit B shall limit the Provider's liability to the City to the limits of insurance certified or carried.

CHAPTER 5. MISCELLANEOUS

5.1 Administration of Franchise. The City shall be responsible for the continued administration of this Exhibit B and any Franchises granted hereunder. The City may delegate this authority from time to time in any manner consistent with applicable law, provided, however, that the City shall not delegate enforcement authority.

5.2 Appeals. Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a Provider may appeal any decision of the City pursuant to this Exhibit B to the governing body of City within ten (10) days of such decision where, upon written request of the Provider specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.

5.3 Non-Enforcement by the City. A Provider shall not be relieved of its obligation to comply with any of the provisions of this Exhibit B or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

5.4 Penalties. Except as provided in Section 3.6(d) any Person violating any provision of this Exhibit B shall be subject to a fine of $500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all
other applicable provisions of this Exhibit B to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.

5.5 **Publication of Notices.** All public notices or ordinances required to be published by law shall be published in the official newspaper of the City. A Grantee shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments thereto.

5.6 **Severability.** If any material Section of this Exhibit B or of any Franchise granted pursuant to it is held by a governmental authority of competent jurisdiction, to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of the Exhibit B, Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions therein.
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for __ consecutive week(s), as follows:

ORDINANCE NO. 1892--5/8/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:

MAY 9, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

ORDINANCE NO. 1892
ORDINANCE NO. 1892
AN ORDINANCE GRANTING TO AND AUTHORIZING TO NTERMEDIA FIBER NETWORK SERVICES, INC. A FRANCHISE AGREEMENT AUTHORIZING THE RIGHTS TO PROVIDE COMMUNICATIONS SERVICES TO THE CITY OF LEAWOOD, KANSAS, IN EXCHANGE FOR THE RIGHTS OF WAY IN THE CITY.
NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the City of Leawood, Kansas:

SECTION 1. GENERAL

1.1 Purposes. The purpose of this Ordinance is to ensure the necessary and timely installation, operation, maintenance, repair, conversion and relocation of facilities by the franchisee and to order them in a manner that will not cause unreasonable inconvenience to the public, in return for the City granting to the franchisee the rights of way to place and maintain its facilities.

1.2 Definitions. For purposes of this Ordinance, the terms "facilities," "franchisee," "utility," "rights of way," and "City" shall have the meanings set forth in the Agreement.

SECTION 2. TRANSFER OF FRANCHISE OR FACILITIES

2.1 Transfer of Franchise. The franchise shall not be transferable, lease, assign, sublet or delegate in any way, nor shall any portion thereof be subdivided, converted, or otherwise, for the franchisee or of any right granted by the franchisee, except as herein authorized. The franchise shall not be transferred in any manner or in whole or in part, except as herein authorized. Any such transfer shall void any written consent of the City to a transfer party by, is subject to the provisions of this Ordinance and any agreements entered into between the City and the franchisee. The City shall have the right to terminate the franchise if the transfer is not in accordance with the provisions of this Ordinance.

SECTION 3. ADDITIONAL FACILITIES REQUIREMENTS

3.1 Additional Facilities Requirements. In addition to the requirements set forth in the Agreement, the franchisee shall be required to provide such additional facilities as the City may reasonably require to ensure adequate service to the public.

SECTION 4. TERMINATION

4.1 Termination. If, at any time, the franchisee shall fail to comply with the terms of this Ordinance or the Agreement, the City may terminate the franchise for cause.

SECTION 5. EXHIBITS AND ADDENDA

5.1 Exhibit A. The exhibit A is attached and constitutes an integral part of this Ordinance.

SECTION 6. EFFECTIVE AND ADEQUATE

6.1 The provisions of this Ordinance are effective and adequate as of the date of its adoption and shall be binding upon all parties.

SECTION 7. REPEAL

7.1 This Ordinance repeals all prior ordinances on the same subject, and the provisions of this Ordinance shall be in lieu of all prior ordinances.

SECTION 8. SEVERABILITY

8.1 If any provision of this Ordinance is held to be invalid, the remaining provisions shall remain in full force and effect.

SECTION 9. INDEMNIFICATION

9.1 The franchisee shall indemnify and hold harmless the City from any and all claims, damages, losses, costs, and expenses arising out of the performance of the franchise.

SECTION 10. MISCELLANEOUS

10.1 This Ordinance contains the entire agreement between the parties and supersedes all prior negotiations.

SECTION 11. ENFORCEMENT

11.1 The provisions of this Ordinance shall be enforced by the City and the franchisee.

SECTION 12. TITLE

12.1 This Ordinance shall be known as the "Franchise Agreement Ordinance of Leawood, Kansas."

3. Disposition of Franchise Rights. When the City ceases to offer a Cable Service, it shall be deemed to have terminated all existing franchises.

4. Before granting an additional Cable Service, the City shall approve written notice to all existing Cable Franchises of any other proposed Cable Service and the terms and conditions of such Cable Service area, identifying the applicant for such additional franchise, the type of Cable Service proposed, and making such other representations as the City may require, in order to determine whether the proposed Cable Service is consistent with the public interest, convenience, and necessity. The City shall not enter into any agreements with any Cable Service in this way unless it has first determined that such agreements are in the best interest of the public. The City shall not enter into any agreements with any Cable Service in this way unless it has first determined that such agreements are in the best interest of the public.

5. The provisions of this Chapter and Exhibit B shall apply to all Cable Services, whether owned or operated by the City or otherwise, in the effective date of this Ordinance. This Chapter and Exhibit B shall not apply to any existing Cable Franchises, to the extent not inconsistent with the terms of any such existing Franchise.

6. A Cable Service shall be subject to all applicable laws and regulations, including but not limited to the extent of Cable Services, the Constitution of the United States, the Constitution of the State of Georgia, and any other state and federal laws and regulations, in the exercise of its Franchise rights.

7. The City shall not enter into any agreements with any Cable Service in this way unless it has first determined that such agreements are in the best interest of the public.
Continued from preceding page...

3. Any review or audit of a Grantor's books and records shall be conducted after giving at least 30 days' notice to the Grantor, and no such review or audit shall be conducted during the last 60 days of the Grantor's fiscal year.

4. If the Grantor at any time sends notice of compliance and the Grantee does not receive notice of compliance, the Grantee shall have 30 days from the date of notice to present evidence of compliance to the City, or the City shall initiate legal action to collect the amount due to it. If the Grantee fails to provide evidence of compliance within 30 days, the City may file a lawsuit to collect the amount due.

5. If the City is unable to collect the amount due, the City may foreclose on the property or take other legal action as deemed necessary to recover the amount due, in accordance with the procedures established by the City Council.

B. The City shall have the right to enforce any provision of this Exhibit B that is not subject to the Grantor's right of prepayment, with the same effect as the right to enforce any provision of this Exhibit B that is subject to the Grantor's right of prepayment.

6. Any dispute arising out of or in connection with this Exhibit B shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding on the parties.

7. This Exhibit B shall be governed by the laws of the State of California, without giving effect to any choice or conflicts of law provision or rule that would cause the application of the laws of any other jurisdiction.

8. This Exhibit B may be amended or modified only by written agreement of the parties, and any such amendment or modification shall be effective only upon execution of a written agreement by the parties.

9. This Exhibit B represents the entire agreement between the parties and supersedes all prior negotiations, discussions, and agreements.

C. The City represents that it has no knowledge of any facts or circumstances that would cause the City to disqualify the Grantee under any law of the State of California or the United States of America.

D. This exhibit is intended to take effect upon the execution and delivery of a copy to each of the parties hereto. In the event of any conflict between the terms of this exhibit and the terms of the Grant Agreement, the terms of the Grant Agreement shall prevail.

E. This exhibit is not intended to be construed as an offer or commitment by the City to provide any benefits or services to the Grantee.

F. This exhibit is not intended to create a contract or obligation between the City and the Grantee, but rather to provide a framework for the City to consider the feasibility of providing the benefits and services to the Grantee.

G. The City reserves the right to amend or modify this exhibit at any time, with or without notice to the Grantee.

H. This exhibit is not intended to be binding on the City until it is signed by an authorized representative of the City and delivered to the Grantee.

I. This exhibit is not intended to be binding on the Grantee until it is signed by an authorized representative of the Grantee and delivered to the City.

J. This exhibit is not intended to be binding on the City or the Grantee until both parties have executed a copy of the exhibit and delivered a copy to each other.

K. This exhibit is not intended to be binding on the City or the Grantee until the exhibit is approved by the City Council and the Grantor.

L. This exhibit is not intended to be binding on the City or the Grantee until the exhibit is approved by the City Council and the Grantor, and the exhibit is delivered to the City and the Grantee.

M. This exhibit is not intended to be binding on the City or the Grantee until the exhibit is approved by the City Council and the Grantor, and the exhibit is delivered to the City and the Grantee.

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Z. This exhibit is not intended to be binding on the City or the Grantee until the exhibit is approved by the City Council and the Grantor, and the exhibit is delivered to the City and the Grantee.
The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any):

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1892--5/8/01

D. Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 9, 2001

D. Ballman
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


$1,003.14
ORDINANCE NO. 1892

ORDINANCE NO. 1892
An ORDINANCE GRANTING TO AND AUTHORIZING TO MENTHURIS REALTY SERVICES, INC., A FRANCHISE AUTHORIZATION TO CONDUCT A COMMERCIAL RELOCATION SYSTEM USING THE RIGHTS-OF-WAY IN THE CITY OF LEWISVILLE, TEXAS.

WHEREAS, the City has determined that the proposed relocation system will be of benefit to the City and the general public;

WHEREAS, the City has a right to authorize and establish such relocation systems in accordance with applicable laws and regulations;

NOW, THEREFORE, BE IT ORDAINED by the GOVERNING BODY OF THE CITY OF LEWISVILLE, TEXAS:

SECTION 1. GENERAL.
1.1 The City, in its sole discretion, shall have the authority to authorize and establish such relocation systems as it sees fit.

2.2 The City shall have the authority to enter into agreements with third parties for the purpose of implementing such systems.

3.3 The City shall have the authority to adopt such regulations as it deems necessary to ensure the safe and efficient operation of such systems.

SECTION 2. RIGHTS-OF-WAY.
2.1 The City shall have the authority to establish and maintain rights-of-way for the purpose of ensuring the safe and efficient operation of such systems.

3.3 The City shall have the authority to enter into agreements with third parties for the purpose of implementing such rights-of-way.

SECTION 3. COMPENSATION.
3.1 The City shall have the authority to establish compensation for the use of such rights-of-way.

4.2 The City shall have the authority to establish compensation for the use of such rights-of-way.

SECTION 4. TRANSFER OF FRANCHISES.
4.1 The City shall have the authority to transfer franchises to third parties.

5.2 The City shall have the authority to dispose of such franchises in a manner consistent with the best interests of the City.

SECTION 5. SPECIAL CONDITIONS.
5.1 The City shall have the authority to impose special conditions on any franchises granted.

6.2 The City shall have the authority to impose special conditions on any franchises granted.

EXHIBIT A.
The following special conditions shall be imposed on any franchise granted:

1. Non-compliance with any terms and conditions of this ordinance shall result in the revocation of the franchise.

2. The City shall have the authority to revoke any franchise at any time it deems necessary.

EXHIBIT B.
The parties agree that this Franchise Agreement is binding upon both parties and shall be governed by the laws of the State of Texas.

APPENDIX.
The following appendix shall be attached to this ordinance:

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APPENDIX A.
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APPENDIX V.
The following appendix shall be attached to this ordinance:

1.1 The City, in its sole discretion, shall have the authority to authorize and establish such relocation systems as it sees fit.

APPENDIX W.
The following appendix shall be attached to this ordinance:

1.1 The City, in its sole discretion, shall have the authority to authorize and establish such relocation systems as it sees fit.

APPENDIX X.
The following appendix shall be attached to this ordinance:

1.1 The City, in its sole discretion, shall have the authority to authorize and establish such relocation systems as it sees fit.
**HANNAH ESTATE**
First published in The Legal Record, Tuesday, May 1, 2001.

NOTICE TO CREDITORS
Estate of Hannah

To all creditors indicated in the estate of Thomas M. Hannah, deceased, acting as Trustee under a trust, the form of which provides that the Trustee shall be paid by the Trustee upon receipt of proof of claim.
The address of the Trustee is:
2601 State Street
P.O. Box 333
Kansas City, KS 66201

**PROBATE DIVISION**
In the matter of the Estate of Thomas M. Hannah, Deceased
Case No. 00-046294, Division M1

NOTICE OF HEARING AND APPLICATION
To All Persons Concerned

You are hereby notified that on May 4, 2001, a Petition was filed in this Court by Cheryl Wells, attorney, for the appointment of a personal representative and guardian ad litem for the State of Kansas to All Persons Concerned.

You are required to file your written demand thereon or before June 11, 2001, at 3:00 p.m. of such day, in this Court, in the City of Olathe, in Johnson County, Kansas, at which time and place the cause will be heard. Should you fail, judgment and decree will be entered in due course upon the petition.

The petitioners are creditors to exhibit their demands against the estate within four months from the date of this Notice, as provided by law, and if such demands are not thus exhibited, they shall be forever barred.

Brandy Nance Carroll, Attorney for:
BRANDY NANCE CARRAHL
5/1/01

**WOLBERG ESTATE**
First published in The Legal Record, Tuesday, May 1, 2001.

NOTICE TO CREDITORS
To All Persons Interested in the Estate of HEIM WOLBERG

The undersigned, ARTHUR L. WOLBERG and RONALD K. LINDHOLM, Attorneys for the Estate of HEIM WOLBERG, all persons interested in the estate of HEIM WOLBERG, under a Trust Agreement dated September 4, 1999, subject to the terms of which the provisions of a document by which the above named estate are notified to exhibit their demands against the estate within three months from the date of first publication of this notice, as provided by law, and if such demands are not thus exhibited, they shall be forever barred.

ATTORNEYS FOR: ARTHUR L. WOLBERG, Trustee
5/1/01

**SOUTH OF JAY**

To all persons interested in the Estate of The Trust

The undersigned, ARTHUR L. WOLBERG and RONALD L. LINDHOLM, Attorneys for the Trustee, hereby notified that on April 20, 2001, a Petition for Probate of Will and Sale of Letters Testamentary of The Trust was filed in this Court by Cheryl Wells, attorney, for the appointment of a personal representative and guardian ad litem for The Trust.

You are hereby notified that on May 4, 2001, a Petition was filed by the above named personal representative and guardian ad litem for the State of Kansas to All Persons Concerned.

You are required to file your written demand thereon or before June 11, 2001, at 3:00 p.m. of such day, in this Court, in the City of Olathe, in Johnson County, Kansas, at which time and place the cause will be heard. Should you fail, judgment and decree will be entered in due course upon the petition.

The petitioners are creditors to exhibit their demands against the estate within four months from the date of this Notice, as provided by law, and if such demands are not thus exhibited, they shall be forever barred.

Brandy Nance Carroll, Attorney for:
BRANDY NANCE CARRAHL
5/1/01

**MACHLITT ADOPTION**
First published in The Legal Record, Tuesday, May 1, 2001.

In the matter of the adoption of Baby Boy MacHlitv, in the District Court of Johnson County, Kansas, Division Two in the State of Kansas, on the 21st day of May, 2001, Petitioners, by Attorney for Petitioners, have been hereby notified that on the 21st day of May, 2001, Petitioners have been notified that the adoption of Baby Boy MacHlitv, a minor infant, child of Mr. and Mrs. Michael MacHlitv, from the State of Kansas, has been heard and declared proper and that a preliminary order allowing the adoption of Baby Boy MacHlitv has been entered.

The Court has determined that it is necessary to appoint a guardian for the minor in order to protect the interests of the minor and that a preliminary order allowing the adoption of Baby Boy MacHlitv has been entered. The Court has determined that it is necessary to appoint a guardian for the minor in order to protect the interests of the minor and that a preliminary order allowing the adoption of Baby Boy MacHlitv has been entered.

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CHAPTER 3. COMMUNICATIONS SERVICES

1. Understanding Operations Without a Franchise. It shall not be unlawful for any Person to use or maintain any Facilities necessary for the provision of Communications Services by use of Facilities in the Right-of-Way in the City.

2. Any entity specifically referred to under applicable federal law is not an Affiliate under the Act.

3. A franchise shall be effective for a term of five (5) years from its effective date. The City may refuse to issue a franchise if it determines that it is necessary to protect the public interest, convenience, or safety.

4. The Director of Communications Services shall be responsible for the preparation of all applications for the issuance of a franchise or amendment to an existing franchise.

5. Applications for a franchise shall be made to the City, and such applications shall be filed at the City Hall, Room 205, 212 East Main Street, Batesville, IN 47006.

6. The Director of Communications Services shall be responsible for the preparation of all applications for the issuance of a franchise or amendment to an existing franchise.

7. The Director of Communications Services shall be responsible for the preparation of all applications for the issuance of a franchise or amendment to an existing franchise.

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15. The Director of Communications Services shall be responsible for the preparation of all applications for the issuance of a franchise or amendment to an existing franchise.
immediatization, precision, or liquidated damages; or (v) any as may be imposed under Title 17 of the United States Code.

H. "Cable Internet Service" means the offering of direct access to a cable service to the public through a cable service provider's network of communications using fixed-line and/or wireless means or combinations thereof, and its provision to customers on a pay-as-you-go or subscription basis that is designed for personal, family, governmental, educational, medical, or other non-commercial purposes.

I. "Cable Internet Service Provider" means a person who provides cable Internet service.

J. "Cable Television" means a cable service for which a consumer pays.

K. "Cable Television Service" means any service provided to consumers by a cable service provider, other than cable Internet service or cable voice service.

L. "Cable Television Service Provider" means a person who provides cable television service.

M. "Cable Television Service Provider Agreement" means an agreement between the City and a cable television service provider that sets forth the terms and conditions under which the provider is allowed to offer cable television service.

N. "Cable Television System" means a cable television system that is subject to the authority of the City under the cable television service provider agreement.

O. "Cable Television Authority" means the City's authority under the cable television service provider agreement.

P. "Cable Television Service Provider Agreement" means an agreement between the City and a cable television service provider that sets forth the terms and conditions under which the provider is allowed to offer cable television service.

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C. Cable System Offer Hours and Telephone Availability

1. Every Georgia shall maintain a conveniently located customer service center, which shall include a place where Subscribers may pay their bills, pick up and return coupons and comparable items for customers in services. Such service center shall be open at least during normal telephone hours and shall be run by a local telephone company or local business telephone company. The local telephone company or local business telephone company may extend the service center to pay for its own telephone services. In any event, the customer service center shall be open to all customers who ask to pay for their services. The customer service center shall be located in a public place. Such location shall be accessible to all customers who ask for it.

2. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.

3. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.

D. Service Cables and Installations

1. Under Normal Operating Conditions, each subscriber, including non-commercial subscribers, shall receive at least as much as ninety-five percent (95%) of the standard telephone service offered to customers in the service area.

2. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.

3. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.

4. Under Normal Operating Conditions, telephone service may be restored within one (1) business day, subject to the requirements of Subscribers.

5. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.

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6. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.

F. Commercial Services

1. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.

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3. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.

4. Under Normal Operating Conditions, telephone service may be restored within one (1) business day, subject to the requirements of Subscribers.

5. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.

6. A Cable Service Representative shall be available to respond to Subscriber inquiries during normal Business Hours.
Finally, the credit of the city and the Government is not impaired by virtue of the Act of June 28, 1870, and the city may be held to the performance of all its contracts and obligations under the Act of June 28, 1870.
CONTINUED FROM PRECEDING PAGE

Other than subsection (c), all of the above information shall not be required except if there is a change in the filing date. A. A Grantee shall have authority to promulgate such rules, regulations, and orders as may be necessary for the exercise of the powers and duties vested in the Council, in the conduct of its business as shall be reasonably necessary to enable the Council to carry out such powers and duties. In the event that a Grantee is not able to exercise such authority, the Board of Directors of the Council in Freeport may assume the authority to promulgate such rules, regulations, and orders as may be necessary to carry out such powers and duties.

2. Any audit or review of a Grantee's books and records shall be made in accordance with generally accepted auditing standards. Any costs or expenses of such audit or review shall be borne by the Grantee and are not to include any assessments or other charges attributable to the operation of the Council's System.

3. Any reviews or audits of a Grantee's books and records shall be made in accordance with generally accepted auditing standards. Any costs or expenses of such reviews or audits shall be borne by the Grantee and are not to include any assessments or other charges attributable to the operation of the Council's System.

D. Service Contract and Subcontract Information.

1. A Grantee shall have authority to promulgate such rules, regulations, and orders as may be necessary for the exercise of the powers and duties vested in the Council, in the conduct of its business as shall be reasonably necessary to enable the Council to carry out such powers and duties. In the event that a Grantee is not able to exercise such authority, the Board of Directors of the Council in Freeport may assume the authority to promulgate such rules, regulations, and orders as may be necessary to carry out such powers and duties.

2. On request, a Grantee shall submit to City any Subcontractor's books and records. Any costs or expenses of such audit or review shall be borne by the Grantee and are not to include any assessments or other charges attributable to the operation of the Council's System.

3. Any reviews or audits of a Grantee's books and records shall be made in accordance with generally accepted auditing standards. Any costs or expenses of such reviews or audits shall be borne by the Grantee and are not to include any assessments or other charges attributable to the operation of the Council's System.

3.6 Financial Provisions, Reports, Procedures and Due Process

A. Annual Cable Franchise Fee

1. As compensation for great of a Franchise, and in consideration of permission to use the Right-of-Way of the City of Freeport for the Franchisee's use in the operation of a Cable System, and to pay the costs of Franchisee's franchise, every Grantee shall pay to the City on an annual basis the amount of Franchisee's Gross Revenues in the context of Franchisee's a sum totaling five percent (5%) of the Grantee's Gross Revenues.

2. Further, every Cable Franchisee shall market any "bundled" services to customers which have been identified as appropriate and reasonable services of similar terms among the various services offered from the sale of such services as the "bundled" services to the extent it is reasonably feasible for Franchisee to market such "bundled" services to the extent that is reasonably feasible for Franchisee to market such "bundled" services.

3. Franchisee shall be entitled to operate, maintain, and control the premises of Franchisee, and, in the event that any of the services attributable to the operation of the Council's System.

4. Should any additional minutes be due to the City as a result of an increase in the length of any such lease or license, such additional minutes shall be paid to the City, and the Grantee shall be entitled to the extent of the increase in the length of such lease or license.

5. No acceptance of any payment shall be construed as an agreement that the payment is due or that the Grantee has agreed to pay such amount. Any acceptance of payment shall be construed as a release of any claim the City may have for further sums payable under the provisions of this Chapter.

6. In the event that any of the cable franchisee's premises are leased or subleased, the City shall be entitled to the full amount of any such lease or sublease.

B. Purchasing of System.

1. If a franchisee fails to comply with the terms of this Chapter relating to the operation of the Council's System, and the Council determines that such failure will result in a violation, the Council may order the franchisee to cease and desist from such violation, and, if such violation continues, the Council may take such action as is necessary to enforce the terms of this Chapter.

2. No acceptance of any payment shall be construed as an agreement that the payment is due or that the Grantee has agreed to pay such amount. Any acceptance of payment shall be construed as a release of any claim the City may have for further sums payable under the provisions of this Chapter.

D. Remuneration and Enforcement Procedures.

1. Whenever the City has reason to believe that a Grantee has violated any provision of this Chapter or otherwise failed to comply with the terms of the franchise agreements or franchise agreements, the City shall cause the Grantee to cease and desist from such violation, and, if such violation continues, the City may take such action as is necessary to enforce the terms of this Chapter.

2. At the hearing, the City Council shall hear and consider all relevant evidence and thereby renders findings and a decision on the violation.

3. In the event the City finds that the Grantee has corrected the violation or promptly commenced correction of such violation as noted above, the City is directed to file a report

CONTINUED ON NEXT PAGE
NOTICE OF PUBLIC HEARING

NOTICE OF PUBLIC HEARING
Notice is hereby given that the Lenoxx Planning Commission will hold a Public Hearing on Monday, June 4, 2001 at 7:00 p.m., or as soon thereafter as can be heard, at the Lenox City Hall, 12350 West 87th Street Parkway.

At said hearing, all interested parties will be heard concerning the advisability of adopting an erosion and sedimentation control ordinance, which establishes substantive and procedural requirements for erosion and sediment control, and for the quality of ground water and surface water, which is not in compliance with the Kansas Department of Health and Environment policies.

LENEXA PLANNING COMMISSION
Don Oppel, Chairman

Planning Commission Meeting Date: June 4, 2001

NOTICE OF PUBLIC HEARING

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Notice is hereby given that the Lenox Planning Commission will hold a Public Hearing on June 4, 2001 at 7:00 p.m., or as soon thereafter as can be heard, at the Lenox City Hall, 12350 West 87th Street Parkway.

At said hearing, all interested parties will be heard concerning the advisability of adopting an erosion and sedimentation control ordinance, which establishes substantive and procedural requirements for erosion and sediment control, and for the quality of ground water and surface water, which is not in compliance with the Kansas Department of Health and Environment policies.

LENEXA PLANNING COMMISSION
Don Oppel, Chairman

Planning Commission Meeting Date: June 4, 2001
replacement or acquisition of the Facilities. Provisions shall not remove, cut, or damage any trees, shrubs, their roots, or in any way, utilize power and public places or health. Provisions may be required prior to the prior approval thereof by the City. The type and extent of trimming of pruning shall be in accordance with the requirements of the City.

4.7 Location, Types and Design of Facilities Subject to Approval. The design, location, and nature of all Facilities shall be subject to the review and approval of the City. The provisions providing for the location or establishment of any Facilities shall be placed underground, and as nearly as is feasible, in accordance with the requirements of the City.

5.0 Location, Types and Design of Facilities Subject to Approval. The City shall be responsible for the construction of all Facilities, including the construction of all electric, gas, and other facilities required for the safe and efficient operation of the City. Such facilities may be required to be installed in locations specified by the City. Such facilities may be required to be installed in locations specified by the City.

6.0 Location, Types and Design of Facilities Subject to Approval. The City shall be responsible for the construction of all Facilities, including the construction of all electric, gas, and other facilities required for the safe and efficient operation of the City. Such facilities may be required to be installed in locations specified by the City. Such facilities may be required to be installed in locations specified by the City.

7.0 Location, Types and Design of Facilities Subject to Approval. The City shall be responsible for the construction of all Facilities, including the construction of all electric, gas, and other facilities required for the safe and efficient operation of the City. Such facilities may be required to be installed in locations specified by the City. Such facilities may be required to be installed in locations specified by the City.

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ORDINANCE NO. 1891

ORDINANCE ACCEPTING REZONING FROM AG, AGRICULTURAL, TO R-1, SINGLE FAMILY RESIDENTIAL FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit “D,” attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agricultural, to R-1, Single Family Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the ‘Leawood Development Ordinance.’

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

Peggy Dunn/Mayor

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
May 26, 2000

LEGAL DESCRIPTION FOR
PROPOSED R-1 ZONING
PART OF W\%4, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W\%4 of Section 34, Township 13, Range 25, now in the City of
Leawood, Johnson County, Kansas, more particularly described as follows: Beginning
at the Southwest corner of the NW\%4 of said Section 34; thence N 2° 01' 05" W, along
the West line of the NW\%4 of said Section 34, a distance of 423.39 feet; thence
N 87° 58' 56" E, a distance of 50 feet; thence S 89° 12' 10" E, a distance of 293.98
feet; thence S 60° 39' 53" E, a distance of 212.69 feet; thence N 65° 38' 45" E, a
distance of 205.90 feet; thence N 78° 20' 48" E, a distance of 151.59 feet; thence
N 45° 36' 39" E, a distance of 120.03 feet; thence S 53° 30' 33" E, a distance of
149.99 feet; thence Northeasterly and Easterly, along a curve to the right having a
radius of 325 feet, a central angle of 51° 30' 33" and whose initial tangent bearing is
N 36° 29' 27" E, a distance of 292.18 feet, to a point on the East line of the W\%4 of the
NW\%4 of said Section 34; thence S 2° E, along the East line of the W\%4 of the NW\%4 of
said Section 34, a distance of 505.98 feet, to the Southeast corner thereof; thence
S 2° 00' 08" E, along the East line of the W\%4 of the SW\%4 of said Section 34, a
distance of 664.53 feet, to the Southeast corner of the N\% of the SW\%4 of said
Section 34; thence S 87° 43' 53" W, along the South line of the N\% of the SW\%4 of
the SW\%4 of said Section 34, a distance of 1,325.20 feet, to the Southwest corner
thereof; thence N 2° 01' 39" W, along the West line of the NW\%4 of the SW\%4 of said
Section 34, a distance of 664.25 feet, to the point of beginning, all subject to that part
thereof dedicated for street purposes.

The above described tract of land contains 32.547 gross acres, more or less.

By: Scott D. Conner, LS-1249
May 26, 2000
The Legal Record

213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for consecutive week(s), as follows:

ORDINANCE NO. 1891--9/25/01

Legal Notices Administrator

Subscribed and sworn to before me on this date:

SEPTEMBER 26, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


$52.66
ORDINANCE NO. 1891
First published in The Legal Record, Tuesday, September 25, 2001:

ORDINANCE NO. 1891

ORDINANCE ACCEPTING REZONING FROM AG, AGRICULTURAL, TO R-1, SINGLE FAMILY RESIDENTIAL FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "B" attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agricultural, to R-1, Single Family Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

Peggy Durbin, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Sandra A. Bennett, City Attorney

May 24, 2000

LEGAL DESCRIPTION FOR
PROPOSED R-1 ZONING
PART OF W4, SEC. 34-13-26
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W1/4 of Section 34, Township 13, Range 26, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Southwestern corner of the NW4 of said Section 34; thence N 3° 01' 08" W, along the West line of the NW4 of said Section 34, a distance of 433.39 feet; thence N 87° 59' 54" N, a distance of 360 feet; thence S 80° 15' 10" W, a distance of 209.94 feet; thence S 60° 39' 53" E, a distance of 212.69 feet; thence N 65° 34' 45" E, a distance of 208.90 feet; thence N 78° 20' 46" E, a distance of 151.30 feet; thence N 42° 26' 38" E, a distance of 120.63 feet; thence S 59° 30' 53" W, a distance of 146.90 feet; thence Northwesterly and Easterly, along a curve to the right having a radius of 315 feet, a central angle of 51° 30' 39" and whose initial tangential bearing is N 36° 29' 27" W, a distance of 292.18 feet, to a point on the East line of the W4 of the NW4 of said Section 34; thence S 2° 00' 08" E, along the East line of the W4 of the NW4 of said Section 34, a distance of 505.98 feet, to the Southeast corner thereof; thence S 2° 00' 08" W, along the East line of the W4 of the NW4 of said Section 34, a distance of 664.53 feet, to the Southeast corner of the NW4 of the SW4 of said Section 34; thence S 87° 49' 52" W, along the South line of the NW4 of the SW4 of said Section 34, a distance of 1,325.20 feet, to the Southwest corner thereof; thence N 2° 01' 59" W, along the West line of the NW4 of the SW4 of said Section 34, a distance of 664.53 feet, to the point of beginning, all subject to that part thereof dedicated for street purposes.

The above described tract of land contains 32.447 acres, more or less.

By:

Scott C. Co.
May 24, 2000

[SEAL]
ORDINANCE NO. 1890

ORDINANCE ACCEPTING REZONING FROM RP-2, PLANNED TWO-FAMILY RESIDENTIAL TO AG, AGRICULTURAL, FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit “C,” attached hereto and incorporated herein by reference, is hereby rezoned from RP-2, Planned Two-Family Residential, to AG, Agricultural.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the ‘Leawood Development Ordinance.’

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
May 26, 2000

EXHIBIT C

LEGAL DESCRIPTION FOR
PROPOSED REZONING
RP-2 TO AG
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the SW¼ of the NW¼ of Section 34, Township 13, Range 25, now in
the City of Leawood, Johnson County, Kansas, more particularly described as follows:
Commencing at the Northwest corner of the NW¼ of said Section 34; thence
S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of
1,350.88 feet, to a point 25.12 feet South of the North line of the SW¼ of the NW¼ of
said Section 34; thence N 87° 41' 58" E, along a line 25.12 feet South of and parallel
with the North line of the SW¼ of the NW¼ of said Section 34, a distance of 549.30
feet, thence S 22° 21' 24" E, a distance of 308.60 feet; thence S 67° 54' 26" E, a
distance of 151.25 feet, to the true point of beginning of subject tract; thence
continuing S 67° 54' 26" E, a distance of 168.75 feet; thence N 24° 08' 17" E, a
distance of 77.53 feet; thence S 87° 46' 51" W, a distance of 188.20 feet, to the true
point of beginning of subject tract.

The above described tract of land contains 0.150 acres, more or less.

By: 
Scott D. Confer, RLS-12666
May 26, 2000

KANSAS LAND SURVEYOR
The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication
STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)
for __ consecutive week(s), as follows:
ORDINANCE NO. 1890--9/25/01

[Signature]
Legal Notices Administrator

Subscribed and sworn to before me on this date:
SEPTEMBER 26, 2001

[Signature]
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


ORD1890
Publication Fees: $52.66

$52.66
ORDINANCE NO. 1690
First published in The Legal Record, Tuesday, September 25, 2001.

ORDINANCE NO. 1690

ORDINANCE ACCEPTING REZONING FROM RP-2, PLANNED TWO-FAMILY RESIDENTIAL TO AG, AGRICULTURAL, FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit “C,” attached hereto and incorporated herein by reference, is hereby rezoned from RP-2, Planned Two-Family Residential, to AG, Agricultural.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the ‘Leawood Development Ordinance.’

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

(SEAL)

Peggy Quinn
Peggy Quinn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney

CONTINUED ON NEXT PAGE
LEGAL DESCRIPTION FOR PROPOSED TRACTING
E 42 TO AG
PART OF NW¼, SEC. 34-15-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the NW¼ of the NW¼ of Section 34, Township 12, Range 25, now in
the City of Leawood, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of the NW¼ of said Section 34; thence
S 21° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of
1,250.62 feet, to a point 25.12 feet South of the North line of the NW¼ of the NW¼ of
said Section 34; thence N 87° 41' 58" W, along a line 25.12 feet South of and parallel
with the North line of the NW¼ of the NW¼ of said Section 34, a distance of 540.30
feet; thence E 22° 31' 24" E, a distance of 308.60 feet; thence E 07° 54' 36" E, a
distance of 151.26 feet, to the true point of beginning of subject tract; thence
continuing E 07° 54' 36" E, a distance of 168.75 feet; thence N 24° 08' 17" W, a
distance of 77.55 feet; thence N 87° 40' 51" W, a distance of 188.30 feet, to the true
point of beginning of subject tract.

The above described tract of land contains 0.150 acres, more or less.

By: [Signature]
Scott D. Conner, PLS
May 26, 2000

LAND SURVEYOR
ORDINANCE NO. 1889

ORDINANCE ACCEPTING REZONING FROM AG, AGRICULTURAL, TO RP-3, PLANNED APARTMENT HOUSE RESIDENTIAL FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit “B,” attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agricultural, to RP-3, Planned Apartment House Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the ‘Leawood Development Ordinance.’

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

... PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

Peggy Dunn, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
May 26, 2000

LEGAL DESCRIPTION FOR PROPOSED REZONING
AG TO RP-3
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W½ of the NW¼ of Section 34, Township 13, Range 25, now in the
City of Leawood, Johnson County, Kansas, more particularly described as follows:
Commencing at the Northwest corner of the NW¼ of said Section 34; thence
S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of
1,350.88 feet, to a point 25.12 feet South of the North line of the SW¼ of the NW¼ of
said Section 34; thence N 87° 41' 58" E, along a line 25.12 feet South of and parallel
with the North line of the SW¼ of the NW¼ of said Section 34, a distance of 295 feet,
to the true point of beginning of subject tract; thence continuing N 87° 41' 58" E, along
a line 25.12 feet South of and parallel to the North line of the SW¼ of the NW¼ of
said Section 34, a distance of 254.30 feet; thence S 22° 21' 24" E, a distance of 308.60
feet; thence S 67° 54' 26" E, a distance of 151.25 feet, to a point hereinafter referred to
as Point "A"; thence S 87° 46' 51" W, a distance of 252.57 feet; thence
N 37° 10' 28" W, a distance of 429.04 feet; to the true point of beginning of subject
tract... and also... Commencing at aforementioned Point "A"; thence N 87° 46' 51" E, a
distance of 188.20 feet, to the true point of beginning of subject tract; thence
continuing N 87° 46' 51" E, a distance of 260.58 feet; thence N 33° 14' 01" E, a
distance of 142.82 feet, to a point on the East line of the SW¼ of the NW¼ of said
Section 34; thence N 79° 56' 47" W, a distance of 264 feet; thence S 24° 08' 17" W, a
distance of 192.47 feet, to the true point of beginning of subject tract.
The above described tracts of land contain 2.579 acres, more or less.

By:

[Signature]
May 26, 2000
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for _ _ consecutive week(s), as follows:

ORDINANCE NO. 1889--9/25/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date: SEPTEMBER 26, 2001

Debra Valenti
Notary Public

ORDINANCE NO. 1889
First published in The Legal Record, Tuesday, September 25, 2001.

ORDINANCE NO. 1889

ORDINANCE ACCEPTING REZONING FROM AG, AGRICULTURAL, TO RP-1, PLANNED APARTMENT HOUSE RESIDENTIAL FOR PROPERTY LOCATED WITHIN FINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, LEAWOOD, JOHNSON COUNTY, KANSAS.

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "B," attached hereto and incorporated herein by reference, is hereby rezoned from AG, Agricultural, to RP-1, Planned Apartment House Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the "Leawood Development Ordinance."

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

Peggy Halm, Mayor

ATTEST:

[Signature]

Martie Helzer, City Clerk

APPROVED AS TO FORM

[Signature]

Patricia A. Bennett, City Attorney

May 24, 2000

LEGAL DESCRIPTION FOR PROPOSED REZONING AG TO RP-1
PART OF NW1/4, SEC. 34, T34S, R23W
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W1/4 of the NW1/4 of Section 34, Township 34, Range 23, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of the NW1/4 of said Section 34; thence 82° 01' 04" E, along the West line of the NW1/4 of said Section 34, a distance of 1,225.89 feet, to a point 35.73 feet South of the North line of the SW1/4 of the NW1/4 of said Section 34; thence N 87° 41' 58" E, along a line 33.12 feet South of and parallel with the North line of the SW1/4 of the NW1/4 of said Section 34, a distance of 291 feet, to the true point of beginning of subject tract; thence continuing N 87° 41' 58" E, along a line 33.12 feet South of and parallel to the North line of the SW1/4 of the NW1/4 of said Section 34, a distance of 294.30 feet; thence 22° 21' 34" N, a distance of 306.60 feet; thence 87° 54' 26" E, a distance of 161.23 feet, to a point hereinafter referred to as Point "A"; thence 87° 46' 51" W, a distance of 392.27 feet; thence N 77° 10' 28" W, a distance of 429.09 feet, to the true point of beginning of subject tract; and also... Commencing at aforementioned Point "A"; thence 87° 46' 51" W, a distance of 188.20 feet, to the true point of beginning of subject tract; thence continuing N 87° 46' 51" W, a distance of 260.58 feet; thence N 53° 14' 01" E, a distance of 143.82 feet, to a point on the East line of the SW1/4 of the NW1/4 of said Section 34; thence 79° 50' 47" W, a distance of 364 feet; thence 54° 08' 17" W, a distance of 192.67 feet, to the true point of beginning of subject tract.

The above described tract of land contains 5,579 acres, more or less.
ORDINANCE NO. 1888

ORDINANCE REZONING FROM RP-2, PLANNED TWO-FAMILY RESIDENTIAL TO RP-3, PLANNED APARTMENT HOUSE RESIDENTIAL, FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 137TH & MISSION ROAD, CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "A," attached hereto and incorporated herein by reference, is hereby rezoned from RP-2, Planned Two-Family Residential, to RP-3, Planned Apartment House Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the 'Leawood Development Ordinance.'

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

Peggy Dunn, Mayor

[Seal]

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
May 26, 2000

EXHIBIT A

LEGAL DESCRIPTION FOR PROPOSED REZONING
RP-2 TO RP-3
PART OF NW¼, SEC. 34-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the W¼ of the NW¼ of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of the NW¼ of said Section 34; thence
S 2° 01' 04" E, along the West line of the NW¼ of said Section 34, a distance of 662.88 feet, to the Northwest corner of the S¼ of the NW¼ of the NW¼ of said Section 34; thence N 87° 41' 22" E, along the North line of the S¼ of the NW¼ of the NW¼ of said Section 34, a distance of 357.50 feet, to the true point of beginning of subject tract; thence continuing N 87° 41' 22" E, along the North line of the S¼ of the NW¼ of the NW¼ of said Section 34, a distance of 92.50 feet; thence S 2° 01' 05" E, a distance of 70 feet; thence S 4° 05' 15" W, a distance of 235 feet; thence
S 20° 43' 59" E, a distance of 129.26; thence N 72° 41' 58" E, a distance of 130 feet;
thence S 14° 18' 02" E, a distance of 119.39 feet; thence S 22° 21' 24" E, a distance of 400 feet; thence S 67° 54' 26" E, a distance of 145 feet; thence N 22° 05' 34" E, a distance of 205 feet; thence S 67° 54' 26" E, a distance of 65 feet; thence
S 25° 23' 50" E, a distance of 90.53 feet; thence S 24° 08' 17" W, a distance of 192.47 feet; thence S 87° 46' 51" W, a distance of 188.20 feet; thence N 67° 54' 26" W, a distance of 151.25 feet; thence N 22° 21' 24" W, a distance of 308.60 feet, to a point 25.12 feet South of the South line of the NW¼ of the NW¼ of said Section 34; thence
S 87° 41' 58" W, along a line 25.12 feet South of and parallel with the South line of the NW¼ of the NW¼ of said Section 34, a distance of 254.30 feet; thence
N 28° 30' 50" E, a distance of 116.26 feet; thence N 2° 01' 05" W, a distance of 114.87 feet; thence N 45° 06' 43" W, a distance of 226.19 feet; thence N 59° 46' 24" E, a distance of 132.93 feet; thence N 2° 01' 05" W, a distance of 85.91 feet; thence
LEGAL DESCRIPTION FOR
PROPOSED REZONING
RP-2 TO RP-3
PART OF NW1/4, SEC. 34-13-25
CITY OF LEAWOOD
MAY 26, 2000
PAGE 2

N 25° 46' 24" E, a distance of 88.24 feet; thence N 2° 15' 40" W, a distance of 81.41
feet, to the true point of beginning of subject tract.

The above described tract of land contains 5.228 acres, more or less.

By:

Scott D. Confer
May 26, 2000
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for __________ consecutive week(s), as follows:

ORDINANCE NO. 1888--9/25/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:

SEPTEMBER 26, 2001

DEBRA VALENTI
Notary Public - State of Kansas

ORDINANCE NO. 1888
First published in The Legal Record, Tuesday, September 25, 2001.

ORDINANCE NO. 1888

ORDINANCE REZONING FROM RP-2, PLANNED TWO-FAMILY RESIDENTIAL TO RP-3, PLANNED APARTMENT HOUSE RESIDENTIAL, FOR PROPERTY LOCATED WITHIN PINE LAKES SUBDIVISION AT THE SOUTHEAST CORNER OF 13TH & MISSION ROAD, CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

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

SECTION ONE: Rezoning. That the following described real estate, hereinafter described in Exhibit "A," attached hereto and incorporated herein by reference, is hereby rezoned from RP-2, Planned Two-Family Residential, to RP-3, Planned Apartment House Residential.

SECTION TWO: Official Zoning Map Amended. That the Planning and Development Director is hereby directed to amend the Official Zoning Map of the City of Leawood, Kansas, in accordance with the above and foregoing zoning changes.

SECTION THREE: Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City of Leawood, Kansas, as provided for and adopted pursuant to the provisions contained within the "Leawood Development Ordinance."

SECTION FOUR: Effective Date. That this ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 2nd day of April, 2001.

APPROVED by the Mayor this 2nd day of April, 2001.

[SEAL]

ATTEST:

Peggy Hind, Mayor

[Seal]

Martha Hanner, City Clerk

APPROVED AS TO FORM:

Tia Eldrid, City Attorney

May 24, 2000

LEGAL DESCRIPTION FOR
PROPOSED REZONING
RP-2 TO RP-3
PART OF NW1/4, SEC. 14-13-35
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the NW1/4 of the NW1/4 of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northwest corner of the NW1/4 of said Section 34; thence S 2° 01' 04" W, along the West line of the NW1/4 of said Section 34, a distance of 605.56 feet, to the Northwest corner of the NW1/4 of the NW1/4 of said Section 34; thence N 87° 41' 23" E, along the North line of the NW1/4 of the NW1/4 of said Section 34, a distance of 237.50 feet, to the true point of beginning of subject tract; thence continuing N 87° 41' 23" E, along the North line of the NW1/4 of the NW1/4 of said Section 34, a distance of 82.50 feet; thence N 2° 01' 05" E, a distance of 76 feet; thence S 4° 08' 15" W, a distance of 235.56 feet; thence S 80° 40' 59" E, a distance of 102.56 feet; thence N 72° 17' 00" E, a distance of 110 feet; thence N 14° 11' 03" E, a distance of 115.50 feet; thence S 82° 01' 24" E, a distance of 400 feet; thence S 67° 24' 26" E, a distance of 145 feet; thence N 22° 05' 14" W, a distance of 205 feet; thence S 07° 34' 26" E, a distance of 65 feet; thence S 23° 33' 30" W, a distance of 50.53 feet; thence N 39' 03" W, a distance of 112.50 feet; thence S 67° 46' 05" W, a distance of 189.20 feet; thence N 07° 54' 55" W, a distance of 181.25 feet; thence N 28' 31' 34" W, a distance of 308.60 feet, to a point 292.12 feet South of the South line of the NW1/4 of said Section 34; thence S 87° 41' 58" W, along a line 23.12 feet South of and parallel with the South line of the NW1/4 of said Section 34, a distance of 294.50 feet; thence N 28° 30' 05" W, a distance of 114.26 feet; thence N 3° 01' 05" W, a distance of 114.87 feet; thence N 42° 08' 45" W, a distance of 234.19 feet; thence N 50° 46' 34" W, a distance of 132.90 feet; thence N 2° 01' 05" W, a distance of 88.81 feet; thence
LEGAL DESCRIPTION FOR PROPOSED REZONING
26-3 TO AG
PART OF NW1/4, SEC. 24-13-25
CITY OF LEAWOOD
JOHNSON COUNTY, KANSAS

All that part of the NW1/4 of the NW1/4 of Section 34, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows:
Commencing at the Northwest corner of the NW1/4 of said Section 34; thence
S 2° 01' 04" E, along the West line of the NW1/4 of said Section 34, a distance of
1,550.88 feet, to a point 25.12 feet South of the North line of the NW1/4 of the NW1/4 of
said Section 34; thence N 87° 41' 58" E, along a line 25.12 feet South of and parallel
with the North line of the NW1/4 of the NW1/4 of said Section 34, a distance of 540.30
feet, thence S 22° 21' 24" W, a distance of 308.50 feet; thence S 67° 54' 26" W, a
distance of 151.26 feet, to the true point of beginning of subject tract; thence
continuing S 67° 54' 26" W, a distance of 168.75 feet; thence N 24° 06' 17" E, a
distance of 77.33 feet; thence E 87° 46' 31" W, a distance of 166.30 feet, to the true
point of beginning of subject tract.

The above described tract of land consists 0.150 acres, more or less.

By: ____________________________
Scott D.Concurrency Dates: 12/06/1999
May 24, 2000

NOTICE TO BIDDERS

Sealed bids for Asphalt Jogging Trail - Parkhurst Park from Regnier Road to Shawnee Mission Park, will be accepted by the City of Leawood, Kansas at the office of City Clerk, Leawood City Hall, 12330 W 87th Street Parkway, Leawood, Kansas 66215, until 3:30 P.M., on October 4, 2001, at which time bids will be publicly opened and read aloud at the Leawood City Hall. Any bid received after the designated closing time will not be considered and will be returned unopened.

All bids shall be submitted in sealed envelopes addressed to the CITY OF LEAWOOD, KANSAS, ATTENTION: CITY CLERK, and marked "Bid for: Asphalt Jogging Trail - Parkhurst Park from Regnier Road to Shawnee Mission Park." Copies of plans, specifications, bidding documents and other Contract Documents are on file at the office of:

CITY CLERK
City of Leawood - City Hall
12330 W 87th Street Parkway
Leawood, KS 66215

Bidders desiring Contract Documents for use in preparing bids may obtain a set of such documents at the address above upon payment of Fifty and No/100 Dollars ($50.00), which amount is non-refundable.

CONTRACTORS SHOULD READ AND BE FULLY FAMILIAR WITH ALL CONTRACT DOCUMENTS INCLUDING ADDENDA BEFORE SUBMITTING A BID. IN SUBMITTING A BID, THE BIDDER WARRANTS THAT IT HAS READ THE CONTRACT DOCUMENTS AND IS FULLY FAMILIAR THERewith AND THAT IT HAS VISITED THE SITE OF THE WORK TO FULLY INFORM ITSELF AS TO ALL EXISTING CONDITIONS AND LIMITATIONS AND SHALL INCLINE IN ITS BID A SUM TO COVER THE COST OF ALL ITEMS OF WORK AS SPECIFIED IN THE CONTRACT DOCUMENTS.

No oral, telegraphic, telephonic proposals or alterations will be considered. Facsimile transmittals will not be accepted.

The following items must be included in the sealed envelope with the Bid:

a. Bid Form;

b. 5% Bid Security - Bid Bond, Cashier's Check or Certified Check (See below)

Each bidder shall file with its bid a bond, a cashier’s check or a certified check drawn on an acceptable bank, made payable to City of Leawood, Kansas, in an amount equal to five percent (5%) of the total bid, which shall be retained by City of Leawood, Kansas until a Contract for the project has been executed. Bond Funds will be returned to the bidders, with the exception of the first and second lowest and second lowest responsible bidders, within twenty-one (21) days after their bids are rejected. The bond deposit of the lowest and the second lowest responsible bidders will be returned when the Performance Bond, Maintenance Bond and Statutory Bond, each in an amount equal to 100% of the contract amount; required insurance certificates and other required documents shall have been furnished and the Contract Documents have been executed by the successful bidder.

In the event the low bidder is unable to execute the Contract, for whatever reason, within the time provided in the Notice of Award, City may null the Notice of Award and the bid deposit may be forfeited. City shall reserve its legal prerogatives; including, but not limited to, enforcement of its rights as to the bid security or specific performance.

City reserves the right to accept or reject any and all bids and to waive any technicalities or irregularities therein. Bids may be modified or withdrawn by written request of the bidder received in the office of City Clerk, prior to the time and date for bid opening.

ALL BIDDERS AGREE THAT REJECTION SHALL CREATE NO LIABILITY ON THE PART OF CITY BECAUSE OF SUCH REJECTION, AND THE FILING OF ANY BID IN RESPONSE TO THIS NOTICE SHALL CONSTITUTE AN AGREEMENT OF THE BIDDER TO THESE CONDITIONS.

If this section is completed, a Pre-Bid Conference will be held at:

Leawood Public Works Conference Room - Lower Level of Leawood City Hall

on October 4, 2001 at 8:30 A.M.

Sincerely yours,

CITY CLERK, CITY OF LEAWOOD, KANSAS
ORDINANCE NO. 1887

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $4,300,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement of State Line Road between 103rd Street and Carondelet within the City pursuant to K.S.A. 12-685, et seq. and Ordinance No. 1372;

(b) Acquisition of certain real property in Leawood South Park and construction and installation of a new fire station thereon pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;

(c) Acquisition, construction and installation of a new public works facility within the City pursuant to 12-1736 et seq. and Resolution No. 1532;

(d) Improvement and reiimprovement of 119th Street and Mission Road in the area of the intersection thereof pursuant to K.S.A. 12-685 et seq. and Resolution No. 1505;

(e) Improvement of Lee Boulevard between 103rd Street and 105th Street within the City pursuant to K.S.A. 12-685 et seq. and Ordinance No. 1886;

(f) Construction of 133rd Street from the intersection of said street and State Line Road to the intersection of said street with Mission Road within the City and related appurtenances pursuant to K.S.A. 12-6a01 et seq. and Resolution No. 1525; and

(g) Construction of 133rd Street from the intersection of said street with Mission Road to the intersection of said street with Roe Avenue within the City and related appurtenances pursuant to K.S.A. 12-6a01 et seq. and Resolution No. 1524;

(collectively, the "City Improvement Projects"); and
WHEREAS, the City has heretofore issued certain Temporary Notes dated July 15, 2000, in the principal amount of $1,200,000 (the “Prior Notes”) to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,100,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Four Million Three Hundred Thousand Dollars ($4,300,000) (the “Notes”). The amount of the Notes together with other temporary notes heretofore issued to finance each of the respective City Improvement Projects which remain outstanding does not exceed the total estimated cost of each of such City Improvement Projects.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing
Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,100,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.
Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the “Code”), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be “arbitrage bonds” within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a “private activity bond” within the meaning of Section 141(a) of the Code.

Section 7. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 8. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or
advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 9. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 10. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Governing Body this 19th day of March, 2001.

APPROVED by the Mayor this 19th day of March, 2001.

Peggy J. Dunn, Mayor

Martha Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly base in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for ___ consecutive week(s), as follows:

ORDINANCE NO. 1887--3/20/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 21, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


$95.56
AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $4,300,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement of State Line Road between 103rd Street and Corandertot within the City pursuant to K.S.A. 12-685, et seq. and Ordinance No. 1372;
(b) Acquisition of certain real property in Leawood South Park and construction and installation of a new fire station thereon pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;
(c) Acquisition, construction and installation of a new public works facility within the City pursuant to 12-1736 et seq. and Resolution No. 1532.
(d) Improvement and reimpooment of 119th Street and Mission Road in the area of the intersection thereof pursuant to K.S.A. 12-683 et seq. and Resolution No. 1505;
(e) Improvement of Lee Boulevard between 103rd Street and 105th Street within the City pursuant to K.S.A. 12-682 et seq. and Ordinance No. 1866;
(f) Construction of 133rd Street from the intersection of said street and State Line Road to the intersection of said street with Mission Road within the City and related appurtenances pursuant to K.S.A. 12-6401 et seq. and Resolution No. 1525; and
(g) Construction of 133rd Street from the intersection of said street with Lee Avenue within the City and related appurtenances pursuant to K.S.A. 12-6401 et seq. and Resolution No. 1524
(collectively, the "City Improvement Projects"); and

WHEREAS, the City has heretofore issued certain Temporary Notes dated July 15, 2000, in the principal amount of $1,100,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects hereinafter described and to permit the City to pay the costs of the City Improvement Projects as may be determined by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series as may be determined by the Governing Body of the City providing for the issuance of such series of Notes. Each such series of Notes shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, mature and payable by their stated terms at such times, as shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

WHEREAS, the Prior Notes become due and payable in the immediate future, but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,200,000; and

WHEREAS, the City is authorized by law, and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Four Million Three Hundred Thousand Dollars ($4,300,000) (the "Notes"). The amount of the Notes together with other temporary notes hereof issued to finance each of the respective City Improvement Projects which remain outstanding does not exceed the total estimated cost of each of such City Improvement Projects.

Section 3. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series as may be determined by the Governing Body of the City providing for the issuance of each such series of Notes. Each such series of Notes shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated and mature and payable on the dates specified therein; and said Notes shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance heretofore described and as provided by law and to procure the proper registration of each of the City Improvement Projects in the City and in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price herefore as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,100,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenant. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"); including Sections 103 and 143 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 141 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or way to purchase or permit any other action, that would cause the Notes to be "worseage bonds" within the meaning of Section 141(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City to take or permit any action to be taken, or fail to take any action, if such action or failure or both would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 7. Remedies. The provisions of this Ordinance, including the covenants and agreements hereinafter made, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 8. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 9. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 10. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Governing Body this 12th day of March, 2001.

APPROVED by the Mayor this 12th day of March, 2001.

(P.S.A.L.)

Peggy J. Dunn, Mayor

ATTEST:

Martha Haizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney
AN ORDINANCE AUTHORIZING THE IMPROVEMENT OF A CERTAIN SECTION OF LEE BOULEVARD, A MAIN TRAFFICWAY, BETWEEN 103RD STREET AND 105TH STREET WITHIN THE CITY OF LEAWOOD; PROVIDING FOR ISSUANCE OF GENERAL OBLIGATION IMPROVEMENT BONDS OF THE CITY TO PAY THE COSTS THEREOF PURSUANT TO K.S.A. 12-689; AND FOR THE ISSUANCE OF TEMPORARY NOTES OF THE CITY PENDING THE ISSUANCE OF SAID BONDS; AND EXPRESSING THE INTENT TO REIMBURSE COSTS OF THE PROJECT SO INCURRED FROM PROCEEDS OF GENERAL OBLIGATION BONDS; AND AUTHORIZING AND IMPROVING CERTAIN RELATED MATTERS AND ACTIONS.

WHEREAS, the City of Leawood, Kansas has previously by Section 14-206 of the “Code of the City of Leawood, Kansas”, designated that portion of Lee Boulevard which is located within this City as a main trafficway pursuant to the provisions of K.S.A. 12-685; and

WHEREAS, K.S.A.12-687 provides that the Governing Body of any city shall have power to improve or reimprove or cause to be improved or reimproved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. 12-685 et seq., and such improvement or reimprovement may include grading, regrading, curbing, recurbing, guttering, reguttering, paving, repaving, macadamizing, remacadamizing, constructing, reconstructing, opening, widening, extending, rounding corners, straightening, relocating, construction or reconstruction of any necessary bridges and approaches thereto, viaducts, overpasses, underpasses, culverts, storm drainage, trafficway illumination, traffic control devices, pedestrian ways, bicycle ways, or other improvements or any two or more of such improvements or reimprovements and the acquisition of right-of-way by purchase or condemnation when necessary for any of such purposes; and

WHEREAS, K.S.A. 12-689 provides that all costs of improvements or reimprovements authorized under the provisions of K.S.A. 12-687, including acquisition of right-of-way, engineering costs, and all other costs properly attributable to such projects, shall be paid by the City at large and may be funded by, among other alternatives, the issuance of general obligation improvement bonds; and

WHEREAS, Section 1.103-18 of the Income Tax Regulations issued by the Internal Revenue Service (the “Regulations”) requires that the City make a prior declaration of its intent to reimburse itself for project expenditures made by the City prior to the date of issuance of notes or bonds, and the City desires to comply with the requirements of the Regulations with respect to this Project; and

WHEREAS, said Governing Body finds and determines that it is necessary to improve and reimprove that section of Lee Boulevard between 103rd Street and 105th Street within the City of Leawood, as provided by and under the authority of K.S.A. 12-687, and to provide for the payment of the costs thereof as provided by and under the authority of K.S.A. 12-689.
THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

Section 1. It is hereby deemed and declared to be necessary to improve and re-improve that section of Lee Boulevard between 103rd Street and 105th Street within the City of Leawood, and it is hereby authorized, ordered, and directed that said main trafficway improvements be undertaken under the authority of K.S.A. 12-687.

Section 2. The total estimated cost of the above described main trafficway improvements or reimprovements, including construction, engineering fees, acquisition of right-of-way and easements, and contingencies, is $1,295,097 and shall be chargeable to the City at large to be paid by the issuance of general obligation improvement bonds of the City of Leawood under the authority of K.S.A. 12-689.

Section 3. That the costs incurred in connection with the Project shall be paid for from the proceeds of temporary notes to be issued from time to time as said costs are so incurred, and the Project shall be permanently financed with the proceeds of the sale of general obligation improvement bonds of the City in an amount not to exceed $1,295,097.

Section 4. That to the extent the City shall pay all or any portion of the costs of the Project from available funds on hand prior to the issuance of temporary notes or bonds, the City hereby declares that it reasonably expects to reimburse such expenditures out of the proceeds of such temporary notes and such general obligation bonds. All such expenditures so reimbursed shall be capital expenditure with the meaning of Section 1.150-1(h) of the Income Tax Regulations (the "Regulations").

This declaration is a declaration of official intent adopted pursuant to Section 1.103-18 of the Regulations.

Section 5. That as of the date hereof, there are not City funds reserved, allocated on a long term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project, other than pursuant to the issuance of temporary notes or the bonds. This Ordinance, therefore is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof, all within the meaning and content of the Regulations.

Section 6. That this Ordinance shall be filed within 30 days of its adoption in the publicly available official books and records of the City. This Ordinance shall be available for inspection at the office of the City Clerk at City Hall during normal business hours of the City on every business day until the date of issuance of the bonds.

Section 7. That the City's Director of Finance shall be responsible for making any "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the notes or the bonds to reimburse the source of temporary financing used by the City to make payment of the prior costs of the Project. Each allocation
shall be evidenced by an entry on the official books and records of the City maintained for the notes or the bonds, shall specifically identify the actual reimbursement of a fund or account in accordance with Section 1.103-18, the fund or account form which the expenditure was paid, and shall be effective to relieve the proceeds of the notes or the bonds from any restriction under the ordinance or other documents authorizing the issuance of such notes or the bonds, and under any applicable state statute, which would apply to the unspent proceeds of the notes or the bonds.

Section 8. This Ordinance shall take effect and be in force from and after its passage and approval and publication one time in the official City newspaper.

ADOPTED by the Governing Body this 19th day of March, 2001.

APPROVED by the Mayor this 19th day of March, 2001.

Peggy J. Dunn, Mayor

Marcia Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS.
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for ___ consecutive week(s), as follows:

ORDINANCE NO. 1886--3/20/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 21, 2001

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

ORDINANCE NO. 1886
ORDINANCE NO. 1884
AN ORDINANCE AUTHORIZING THE IMPROVEMENT OF A CERTAIN SECTION OF LEES BOULEVARD BETWEEN 103RD STREET AND 105TH STREET WITHIN THE CITY OF LEAWOOD, KANSAS, BY THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY TO PAY THE COSTS THEREOF, PURSUANT TO K.S.A. 12-687; DECLARING THE ISSUANCE OF SAID BONDS; AND EXPRESSING THE INTENT TO LEVY AND COLLECT SUCH OTHER TAXES OR FEES AS MAY BE NEEDED TO PROCEED WITH THE IMPROVEMENT PURSUANT TO K.S.A. 12-687, OR ANY OTHER LEGAL AUTHORITY AVAILABLE TO THE CITY OR ANY AUTHORITY IMMEDIATELY OR INDIRECTLY POWERED TO ACT ON BEHALF OF THE CITY OR TO CURRICULUM FROM PROCEEDS OF GENERAL OBLIGATION BONDS; AND AUTHORIZING AND APPROVING CERTAIN RELATED MATTERS AND ACTIONS.
WHEREAS, the City of Leawood, Kansas has previously by Section 14-206 of the "Code of the City of Leawood, Kansas", designated that portion of Lees Boulevard which is located within this City as a main trafficway pursuant to the provisions of K.S.A. 12-685; and
WHEREAS, K.S.A. 12-687 provides that the Governing Body of any city shall have power to improve or re improve or cause to be improved or re improved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. 12-685 et seq; and such improvement or re improvement may include grading, regrading, curbing, curbing, guttering, gutting, regulating, paving, repaving, macadamizing, resurface macadamizing, constructing, reconstructing, widening, extending, rounding corners, straightening the City at construction or reconstruction of any necessary bridges and approaches thereto, viducts, overpasses, underpasses, culverts, storm drainage, trafficway illumination, bicycle ways, of bicycle ways, or other improvements or any two or more of such improvements, or re improvements, or the acquisition of right-of-way by purchase or condemnation when necessary for any of such purposes; and
WHEREAS, K.S.A. 12-687 provides that all costs of improvements or re improvements authorized under the provisions of K.S.A. 12-687, including acquisition of right-of-way, engineering costs, and all other costs associated therewith, shall be paid by the City at large and may be funded by, among other alternatives, the issuance of general obligation bonding used by the City. City desires to comply with the requirements of the Regulations with respect to this
WHEREAS, said Governing Body finds and determines that it is necessary to improve and re improve that section of Lees Boulevard between 103rd street and 105th street within the City of Leawood, Kansas be funded by the City, and the desire of the City desires to comply with the requirements of the Regulations with respect to this
WHEREAS, Section 1.103-18 of the Income Tax Regulations issued by the Internal Revenue Service (the "Regulations") requires that the City make a prior declaration of its intent to re improve the project expenditures made by the City, pursuant to a plan, or the bonds, and the City desires to comply with the requirements of the Regulations with respect to this
THEREFORE, be it ORDNANCED by the GOVERNING BODY OF THE CITY OF
Section 1. It is hereby deemed and declared to be necessary and proper to improve and re improve that section of Lees Boulevard between 103rd street and 105th street within the City of Leawood, Kansas, it is hereby determined and declared that said main trafficway improvements be undertaken under the authority of K.S.A. 12-687.
Section 2. The total estimated cost of the above described main trafficway improvements or re improvements, including engineering fees, acquisition of right-of-way and easements, and condemnation, is $1,295,097 and is incidental to the issuance of general obligation improvement bonds of the City of Leawood under the authority of K.S.A. 12-687.
Section 3. That the costs incurred in connection with the Project shall be paid for from time to time as said costs are incurred, and the Project shall be permanently financed with the proceeds of the sale of general obligation improvement bonds of the City in an amount not to exceed $1,295,097.
Section 4. That to the extent the City shall pay all or any portion of the costs of the Project from available funds hereon, the City hereby declares that it reasonably expects to reimburse such expenditures out of the proceeds of such general obligation improvement bonds as shall be issued in connection with the issuance of general obligation improvement bonds of the City. Such reimbursement shall be capital expenditure with the meaning of Section 1.150-1(b) of the Income Tax Regulations (the "Regulations"). This declaration is a declaration of official intent adopted pursuant to Section 1.150-18 of the Regulations.
Section 5. That as of the date hereof, there are not City funds reserved, allocated on a long term basis or otherwise set aside (other than the city's general fund, allocated on a long term basis or otherwise set aside) to provide for permanent financing for the expenditures described in the Project, namely, the improvements to the main trafficway on or near the project site, therefore is determined to be consistent with the City's budgetary requirements and all other financial needs of the City, and therefore is determined to be reasonably foreseeable on the date hereof, all within the meaning and content of the Regulations.
Section 6. That this Ordinance shall be filed within 30 days of its adoption in the publicly available official records and records of the City. This Ordinance shall be available for inspection at the office of the City Clerk at City Hall during normal business hours of the City on every business day until the date of issuance of the bonds.
Section 7. That the Public Director of Finance shall be responsible for making any "reimbursement allocation described herein, and shall inform the Public Director of Finance generally the transfer of the appropriate amount of proceeds of the notes or the bonds to reimburse the source of temporary financing, and shall effect such reimbursement in accordance with Section 1.103-18, the fund or account form which the expenditure was paid, and shall be effective to relieve the proceeds of the notes or the bonds from any restriction under the provisions of the bonds, or the issuance of such notes or the bonds, or any applicable state statute, which would apply to the unspent proceeds of the notes or the bonds.
Section 8. This Ordinance shall take effect and be in force from and after its passage and publication one time in the official City newspaper.
ADOPTED by the Governing Body this 10th day of March, 2001.
(SEAL)
Attest:
Maria A. Bennett, City Clerk
APPROVED AS TO FORM:
ORDINANCE NO. 1885 C


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

SECTION ONE: Chapter 13, Article 1, Section 2, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

13-102. INCORPORATING SPECIFICATIONS AND STANDARDS. There is hereby incorporated by reference that certain publication known as "Public Improvement Construction Standards," prepared and published by the City of Leawood, January 2001. No fewer than three copies of said publication shall be marked or stamped "Official Copy as Adopted by Ordinance No. 1885 C" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 1847C, 2-7-00)

SECTION TWO: Repeal of Existing Sections. The existing Code § 13-102 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.
SECTION FOUR: Publication: That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 5th day of March, 2001.

APPROVED by the Mayor this 5th day of March, 2001.

Peggy J. Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS,
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for consecutive week(s), as follows:

ORDINANCE NO. 1885C--3/6/01

Subscribed and sworn to before me on this date:
MARCH 7, 2001

Notary Public

ORDINANCE NO. 1885C
First published in The Legal Record, Tuesday, March 6, 2001.

ORDINANCE NO. 1885C


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

SECTION ONE: Chapter 13, Article 1, Section 2, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

13-102. INCORPORATING SPECIFICATIONS AND STANDARDS. There is hereby incorporated by reference that certain publication known as "Public Improvement Construction Standards," prepared and published by the City of Leawood, January 2001. No fewer than three copies of said publication shall be marked or stamped "Official Copy as Adopted by Ordinance No. 1885 C" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 1847C, 2-7-00)

SECTION TWO: Repeal of Existing Sections. The existing Code § 13-102 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Publication: That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 5th day of March, 2001.

APPROVED by the Mayor this 5th day of March, 2001.

[SEAL]

Peggy L. Doran, Mayor

ATTEST:

Martha Hetzer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
ORDINANCE NO. 1884

ORDINANCE APPROVING PLAN COMMISSION’S RECOMMENDATION TO ADOPT LEAWOOD COMPREHENSIVE PLAN, IN ACCORDANCE WITH K.S.A. § 12-747, FOR THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, in accordance with K.S.A. § 12-747(d), at least once a year, the City shall review or reconsider the Comprehensive Plan or any part thereof and may propose amendments or additions thereto; and

WHEREAS, the City’s Plan Commission held a public hearing on November 28, 2000, to give residents an opportunity to voice their concerns and comments regarding amendments to the proposed Comprehensive Plan; and

WHEREAS, the Plan Commission, in accordance with K.S.A. § 12-747, adopted the 2000 Comprehensive Plan by Resolution on November 28, 2000, and recommended passage by the Governing Body; and

WHEREAS, the Plan Commission’s recommendation was presented to the Leawood Governing Body at its January 2, 2001 and January 16, 2001 regular scheduled meetings and after hearing comments from citizens speaking in favor and in opposition to the submitted Plan, continued said recommendation to the February 20, 2001 regularly scheduled Governing Body meeting.

WHEREAS, the Plan was further discussed and reviewed by the Governing Body at the February 20, 2001, Governing Body meeting, and the Plan Commission’s recommendation was adopted.

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

SECTION ONE: That the Governing Body of the City of Leawood hereby accepts the Plan Commission’s recommendation to adopt the 2000 Comprehensive Plan.

SECTION TWO: That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the Governing Body this 20th day of February, 2001.

ADOPTED by the Governing Body this 20th day of February, 2001.

Peggy Dunn, Mayor
ORD1884
Publication Fees: $24.33

ORDINANCE NO. 1884
First published in The Legal Record, Tuesday, February 27, 2001.

ORDINANCE NO. 1884

ORDINANCE APPROVING PLAN COMMISSION'S RECOMMENDATION TO ADOPT LEAWOOD COMPREHENSIVE PLAN, IN ACCORDANCE WITH K.S.A. § 12-747, FOR THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, in accordance with K.S.A. § 12-747(f), at least once a year, the City shall review or reconsider the Comprehensive Plan or any part thereof and may propose amendments or additions thereto; and

WHEREAS, the City's Plan Commission held a public hearing on November 28, 2000, to give residents an opportunity to voice their concerns and comments regarding amendments to the proposed Comprehensive Plan; and

WHEREAS, the Plan Commission, in accordance with K.S.A. § 12-747, adopted the 2000 Comprehensive Plan by Resolution on November 28, 2000, and recommended passage by the Governing Body; and

WHEREAS, the Plan Commission's recommendation was presented to the Leawood Governing Body at its January 2, 2001 and January 16, 2001 regular scheduled meetings and after hearing comments from citizens speaking in favor and in opposition to the submitted Plan, continued said recommendation to the February 20, 2001 regularly scheduled Governing Body meeting.

WHEREAS, the Plan was further discussed and reviewed by the Governing Body at the February 20, 2001, Governing Body meeting, and the Plan Commission's recommendation was adopted.

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

SECTION ONE: That the Governing Body of the City of Leawood hereby accepts the Plan Commission's recommendation to adopt the 2000 Comprehensive Plan.

SECTION TWO: That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

ADOPTED by the Governing Body this 20th day of February, 2001.

[SEAL]

Peggy Doak, Mayor

ATTEST:

Martha Helmer, City Clerk

APPROVED AS TO FORM:

[SEAL]

Patricia A. Bruggmayer, City Attorney


$24.33
AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 2, SECTION 8 OF THE “CODE OF THE CITY OF LEAWOOD, KANSAS, 2000,” PERTAINING TO COMPENSATION, AND REPEALING EXISTING CODE SECTION 1-208.

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

SECTION ONE: Chapter 1, Article 2, Section 8, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-208. COMPENSATION.

A. For the office of mayor, there is hereby established:
   (1) a salary of $9,600 per year, payable at the rate of $800 per month; and
   (2) a car allowance of $2,400 per year, payable at the rate of $200 per month, said sums shall be paid each month until the mayor’s term of office shall cease, or he or she is removed from office, or for any reason shall leave office and his or her successor shall be qualified and take over the duties of the office of mayor. Said sums shall be paid from and after January 1, 2000.

B. For the office of councilmember, there is hereby established
   (1) a salary of $5,000 per year, payable at the rate of $416.67 per month; and
   (2) an expense allowance of $200.00 per month for the office of councilmember, said sum shall be paid each month until the councilmember’s term of office shall cease, or he or she is removed from office or for any reason shall leave office. Such expense reimbursement shall be for mileage and all communication related technology and no further reimbursement for such expenses, specified in § 1-212 of this Code or otherwise, shall be allowed. Said salary amount shall be paid from and after January 1, 2000. Said expense allowance shall be paid from and after January 1, 2002.

(Ord. 1837C; 12-20-99)

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-208 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.
B. **Invalidity:** If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

**SECTION FOUR:** **Publication:** That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

**SECTION FIVE:** **Effective Date:** This ordinance shall become effective January 1, 2002.

PASSED by the Governing Body this 5th day of February, 2001.

APPROVED by the Mayor this 5th day of February, 2001.

Peggy Dunn, Mayor

Martha Heizer, City Clerk

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes
and says that she is Legal Notices Administrator of The Legal
Record which is a newspaper printed in the State of Kansas,
published in and of general paid circulation on a weekly,
monthly or yearly basis in Johnson County, Kansas, is not a
trade, religious or fraternal publication, is published at least
weekly fifty (50) times a year, has been so published
continuously and uninterrupted in said County and State for a
period of more than one year prior to the first publication of the
notice attached, and has been entered at the post office as
Periodicals Class mail matter. That a notice was published
in all editions of the regular and entire issue for the following
subject matter (also identified by the following case number,
if any)

for consecutive week(s), as follows:
ORDINANCE NO. 1883C--2/13/01

Penny Knight

Legal Notices Administrator

Subscribed and sworn to before me on this date:
FEBRUARY 13, 2001

Notary Public

ORDINANCE NO. 1883C

First published in The Legal Record, Tuesday, February 13, 2001.

ORDINANCE NO. 1883C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 1, SECTION 8 OF THE "CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO COMPENSATION, AND REPEALING EXISTING CODE SECTION 1-208.

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

SECTION ONE: Chapter 1, Article 2, Section 8, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-208. COMPENSATION.
A. For the office of mayor, there is hereby established:
(1) a salary of $9,600 per year, payable at the rate of $800 per month; and
(2) a car allowance of $2,400 per year, payable at the rate of $200 per month, said sums shall be paid each month until the mayor's term of office shall cease, or he or she is removed from office, or for any reason shall leave office and his or her successor shall be qualified and take over the duties of the office of mayor. Said sums shall be paid from and after January 1, 2000.

B. For the office of councilmember, there is hereby established
(1) a salary of $5,000 per year, payable at the rate of $416.67 per month; and
(2) an expense allowance of $200.00 per month for the office of councilmember, said sum shall be paid each month until the councilmember's term of office shall cease, or he or she is removed from office or for any reason shall leave office. Such expense reimbursement shall be for mileage and all communication related technology and no further reimbursement for such expenses, specified in § 1-212 of this Code or otherwise, shall be allowed. Said salary amount shall be paid from and after January 1, 2000. Said expense allowance shall be paid from and after January 1, 2002.

(Cod. 1837C, 12-20-99)

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-208 is hereby repealed.

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION
A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of the Code or other ordinances.

SECTION FOUR: Publication.—That the City Clerk is hereby directed to publish said ordinance once in the official city newspaper.

SECTION FIVE: Effective Date: This ordinance shall become effective January 1, 2002.

PASSED by the Governing Body this 5th day of February, 2001.

APPROVED by the Mayor this 5th day of February, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
AN ORDINANCE ADDING A NEW ARTICLE 5 TO CHAPTER VIII OF THE CITY OF LEAWOOD CODE 2000, RELATING TO THE ESTABLISHMENT AND IMPLEMENTATION OF AN INSURANCE PROCEEDS FUND PURSUANT TO K.S.A. 40-3901 et seq., AND REPEALING EXISTING ORDINANCES OF THE CITY OF LEAWOOD, KANSAS IN CONFLICT HEREWITH.

WHEREAS, property damage caused by accidental fires, explosions or windstorms, if left abandoned and/or unrepaired, may constitute a hazardous and unsightly nuisance to the citizens of the City of Leawood, Kansas; and

WHEREAS, state law authorizes cities to pass an ordinance which establishes a fund in order to collect a portion of the insurance proceeds received whenever any building or structure in the City is damaged as a result of fire, explosion or windstorm where the amount recoverable is in excess of 75% of the face value of the policy covering the building or structure; and

WHEREAS, pursuant to said law, if the damaged structure is repaired or removed to the satisfaction of the City, the money is returned to the insured party. If not, the money in the fund is used to make the necessary repairs; and

WHEREAS, the Governing Body finds that the establishment of said fund will protect the health, safety, and welfare of the citizens of the City of Leawood.

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

Section 1: A new Section 8-501 is hereby added to read as follows:

8-501 SCOPE AND APPLICATION
The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, arising out of any fire, explosion, or windstorm, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this ordinance.

Section 2: A new Section 8-502 is hereby added to read as follows:

8-502 LIEN CREATED
The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, caused by or arising out of any fire, explosion, or windstorm, where the amount recoverable for all the loss or damage to the building or other
structure under all policies is in excess of 75 percent of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.

Section 3: A new Section 8-503 is hereby added to read as follows:

8-503 ENCUMBRANCES
Prior to final settlement on any claim covered by Section 2, the insurer or insurers shall contact the county treasurer, Johnson County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Johnson County, Kansas.

Section 4: A new Section 8-504 is hereby added to read as follows:

8-504 PRO RATA BASIS
Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

Section 5: A new Section 8-505 is hereby added to read as follows:

8-505 PROCEDURE
(A) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the city in an amount equal to the sum of 15 percent of the covered claim payment unless the neighborhood service director of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(B) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(C) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the neighborhood service director
shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this ordinance.

Section 6: A new Section 8-506 is hereby added to read as follows:

8-506 FUND CREATED; DEPOSIT OF MONEYS
The city finance director is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city finance department as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

Section 7: A new Section 8-507 is hereby added to read as follows:

8-507 NEIGHBORHOOD SERVICE DIRECTOR; INVESTIGATION, REMOVAL OF STRUCTURE
(A) Upon receipt of moneys as provided for by this ordinance, the city finance director shall immediately notify the neighborhood service director of said receipt, and transmit all documentation received from the insurance company or companies to the neighborhood service director.

(B) Within 20 days of the receipt of said moneys, the neighborhood service director shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(C) Prior to the expiration of the 20 days established by subsection (b) of this section, the neighborhood service director shall notify the city finance director whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(D) If the neighborhood service director has determined that proceedings under K.S.A. 12-1750 et seq., as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the moneys by the city finance department.

(E) Upon notification to the city finance department by the neighborhood service director that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the city finance director shall return all such moneys received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 30 days of the receipt of the moneys from the insurance company or companies.

Section 8: A new Section 8-508 is hereby added to read as follows:

8-508 REMOVAL OF STRUCTURE; EXCESS MONEYS
If the neighborhood service director has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.
Section 9: A new Section 8-509 is hereby added to read as follows:

8-509 SAME; DISPOSITION OF FUNDS
If the neighborhood service director, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city finance department under the authority of Section 5(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the neighborhood service director shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city under Section 5(a), the neighborhood service director shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

Section 10 A new Section 8-510 is hereby added to read as follows:

8-510 EFFECT UPON INSURANCE POLICIES
This ordinance shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

Section 11: A new Section 8-511 is hereby added to read as follows:

8-511 INSURERS; LIABILITY
Insurers complying with this ordinance or attempting in good faith to comply with this ordinance shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this ordinance, or releasing or disclosing any information pursuant to this ordinance.

Section 12: That this ordinance shall be construed as follows:

INTERPRETATION
A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

Section 13: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

Section 14: That the City Clerk is hereby directed to certify a copy of this ordinance to: Commissioner of Insurance, 420 S.W. 9th Street, Topeka, KS 66612, for filing.

P:\CB Updates\8-501.doc
Rev. 10/00
PASSED by the Governing Body this 16th day of January, 2001.

APPROVED by the Mayor this 16th day of January, 2001.

ATTEST:

[Signature]
Martha Heizer, City Clerk

APPROVED AS TO FORM:

[Signature]
Patricia A. Bennett, City Attorney

[Seal]
January 19, 2001

Kathleen Sebelius
Commissioner of Insurance
420 SW 9th St.
Topeka, Kansas 66612-1678

Dear Ms. Sebelius:

Enclosed for your records is a certified copy of Leawood's Ordinance No. 1882C which adds new sections to the Code relating to the establishment and implementation of an insurance proceeds fund pursuant to K.S.A. 40-3901 et seq.

Sincerely,

[Signature]

Martha Heizer
City Clerk
September 20, 2000

Dear City Clerk:

In recent years, the League has codified your ordinances as part of a service we offer to cities. While performing a cross-check with the Kansas Insurance Department (KID), we found that KID has not been notified of your Insurance Proceeds Fund Ordinance, which was very likely included in your City Code. We recommend that you notify KID of your ordinance because this ensures that the ordinance works the way it was intended. The procedure to notify KID is very simple as explained below...

What is an Insurance Proceeds Fund? The fund was created and codified in your new City Code. Typically, it can be found in the Chapter entitled “Health and Welfare,” although some older codes may have it in the Chapter entitled “Fire.” K.S.A. 40-3901 et seq authorizes a city to establish this fund in order to collect up to 15% of the insurance proceeds received whenever any building or other structure is damaged as a result of fire, explosion, or windstorm where the amount recoverable is in excess of 75% of the face value of the policy covering the building or structure.

Why Do This? In the event that the structure is not properly repaired, the money in the fund may be used to make the necessary repairs. If the damaged structure is repaired to the satisfaction of the city, the money is returned to the insured party.

To make sure that all insurance companies are aware of a city’s fund, state law requires cities to notify the commissioner of insurance after adoption of the ordinance.

How To Notify The Insurance Commissioner. The process is simple. Simply mail (1) a copy of the ordinance adopting the Code and (2) a copy of the Insurance Proceeds Fund article (probably found at Article 7 of Chapter VIII of the City Code) to:

Insurance Commissioner
420 S.W. 9th Street
Topeka, KS 66612

If you have any questions, please contact the LKM Legal Department at (785) 354-9565.

Sincerely,

Sandy Jacquot
Director of Law

www.lkmonline.org
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1882C--1/23/01

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JANUARY 24, 2001

Notary Public

AN ORDINANCE ADDING A NEW ARTICLE 5 TO CHAPTER VII OF THE CITY OF LEAWOOD CODE 2000, RELATING TO THE ESTABLISHMENT AND IMPLEMENTATION OF AN INSURANCE PROCEEDS FUND PURSUANT TO K.S.A. 45-3901 et seq., AND REPEALING EXISTING ORDINANCES OF THE CITY OF LEAWOOD, KANSAS IN CONFLICT HEREWITH.

WHEREAS, property damage caused by accidental fires, explosions or windstorms, if left unattended and/or uninsured, may constitute a hazardous and unhealthful menace to the citizens of the City of Leawood, Kansas, and

WHEREAS, state law authorizes cities to pass an ordinance which establishes a fund in order to collect a portion of the insurance proceeds recovered when damage to any building or structure in the City is damaged as a result of fire, explosion or windstorm where the amount recoverable is in excess of 75% of the face value of the policy covering the building or structure; and

WHEREAS, pursuant to said law, if the damaged structure is repaired or removed to the satisfaction of the City, the money is returned to the insured party. If not, the money in the fund is used to make the necessary repairs; and

WHEREAS, the Governing Body finds that the establishment of said fund will protect the health, safety, and welfare of the citizens of the City of Leawood.

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

Section 1: A new Section 5-501 is hereby added to read as follows:

5-501 SCOPE AND APPLICATION
The city is hereby authorized to utilize the procedures established by K.S.A. 45-3901 et seq., when insurance companies shall pay a claim of a named insured for fire damage to any building or other structure located within the city, arising out of any fire, explosion, or windstorm, where the amount recoverable for the loss or damage to the building or other structure is in excess of 75% of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this ordinance.

Section 2: A new Section 5-502 is hereby added to read as follows:

5-502 LIEN CREATED
The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, caused by or arising out of any fire, explosion, or windstorm, where the amount recoverable for all loss or damage to the building or other structure under all policies is in excess of 75% of the face value of the policy covering such building or other insured structure.

Section 3: A new Section 5-503 is hereby added to read as follows:

5-503 ENCUMBRANCES
Prior to final settlement on any claim covered by Section 2, the insurer or insurers shall contact the county treasurer, Johnson County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Johnson County, Kansas.

Section 4: A new Section 5-504 is hereby added to read as follows:

5-504 PRO RATA BASIS
Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

Section 5: A new Section 5-505 is hereby added to read as follows:

5-505 PROCEDURE
(A) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75% of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsement thereto, have been paid, the insurance company or companies shall execute a draft payable to the city in an amount equal to the sum of 15% of the covered claim payment unless the neighborhood service director of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(B) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(C) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the neighborhood service director shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this ordinance.

Section 6: A new Section 5-506 is hereby added to read as follows:

5-506 FUND CREATED; DEPOSIT OF FUNDS
The city finance director is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city finance department as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

Section 7: A new Section 5-507 is hereby added to read as follows:

5-507 NEIGHBORHOOD SERVICE DIRECTOR; INVESTIGATION, REMOVAL OF STRUCTURE
(A) Upon receipt of moneys as provided for by this ordinance, the city finance director shall immediately notify the neighborhood service director of said receipt, and transmit all documentation received from the insurance company or companies to the neighborhood service director.

(B) Within 20 days of the receipt of said moneys, the neighborhood service director shall determine, after proper investigation, whether the city shall institute proceedings under the provisions of K.S.A. 12-1750 et seq., as amended.

(C) Prior to the expiration of the 20 days established by subsection (b) of this section, the neighborhood service director shall notify the city finance director whether he or she intends to initiate proceedings under K.S.A. 12-1750 et seq., as amended.

(D) If the neighborhood service director has determined that proceedings under K.S.A. 12-1750 et seq., as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the moneys by the city finance department.

(E) Upon notification to the city finance department by the neighborhood service director that no proceedings shall be initiated under K.S.A. 12-1750 et seq., as amended, the city finance director shall return all such moneys received, plus accrued interest, to the insured or insureds as identified in the documentation from the insurance company or companies. Such return shall be accomplished within 30 days of the receipt of the moneys from the insurance company or companies.

Section 8: A new Section 5-508 is hereby added to read as follows:

5-508 REMOVAL OF STRUCTURE; EXCESS FUNDS
If the neighborhood service director has proceeded under the provisions of K.S.A. 12-1750 et seq., as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

Section 9: A new Section 5-509 is hereby added to read as follows:

5-509 SAME; DISPOSITION OF FUNDS
If the neighborhood service director, with regard to a building or other structure damaged by fire, explosion, or windstorm, determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city finance department under the authority of Section 5(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the neighborhood service director shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city under Section 5(a), the neighborhood service director shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

Section 10: A new Section 5-510 is hereby added to read as follows:

5-610 EFFECT UPON INSURANCE POLICIES
This ordinance shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

Section 11: A new Section 5-611 is hereby added to read as follows:

5-611 INSURERS; LIABILITY
Insurers complying with this ordinance or attempting in good faith to comply with this ordinance shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this ordinance, or releasing or disclosing any information pursuant to this ordinance.

Section 12: That this ordinance shall be construed as follows:

INTERPRETATION
A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

Section 13: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

Section 14: That the City Clerk is hereby directed to certify a copy of this ordinance to: Commissioner of Insurance, 420 S.W. 9th Street, Topeka, KS 66612, for filing.
NOTICE TO BIDDERS

NOTICE TO BIDDERS
CITY OF PRAIRIE VILLAGE, KANSAS
2001 CRACK SEAL/SLURRY SEAL PROGRAM

Sealed proposals will be received by the City, Governing Body of Prairie Village, Kansas at the office of the City Clerk, 7700 Mission Road, Prairie Village, Kansas, until 3:00 p.m. (CST) on Friday, February 9, 2001. Proposals shall be submitted in the sealed envelope stamped "Bid", sealed and addressed to the City Clerk marked 2001 CRACK SEAL/SLURRY SEAL PROGRAM. At the above stated time and place, all proposals shall be publicly opened and read aloud. Bids received after the designated closing time will be returned unopened.

 Said project to include, but not limited to, 2001 CRACK SEAL/SLURRY SEAL PROGRAM removal and replacement of pavement, concrete curbs, sidewalks, and driveways throughout the City, including reticitem. Approximate quantities of the major items are given below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crack Sealant</td>
<td>LBS</td>
<td>$7,000</td>
</tr>
<tr>
<td>Slurry Sealant</td>
<td>S.Y.</td>
<td>$12,000</td>
</tr>
</tbody>
</table>

All equipment, material and workmanship must be in accordance with the Plans, Specifications and other Contract Documents in the Project Manual on file with the City Clerk, Joyce Hagen-Mundy, Prairie Village, Kansas.

Copies of the contract documents (Notice to Bidders, Instructions to Bidders, Proposal Form, Contract Form, Bid Form) desired for bidding purposes may be obtained from the Consulting Engineer, The Lagero Group, Inc., 9321 Ward Parkway, Suite 900, Kansas City, Missouri 64114.

Payment for Plans and Project Manual
A payment of $1,500, non-refundable, will be required for each complete set of Plans and Project Manual. Single sheets may be obtained for a fee of $4.00 per sheet, non-refundable.

Each proposal having a total value of $10,000 or more shall be accompanied by a certified or a cashier's check or Bid Bond drawn on an acceptable Bank, made payable, without conditions, to the City of Prairie Village, Kansas, in an amount of not less than five (5%) percent of the total proposal cost.

Contractors must be KDOT pre-qualified to be eligible to submit bids. Each Contractor must indicate on the outside of his bid envelope his KDOT Vendor Number to certify that they are qualified in Work Class D. Information pertaining to prequalification can be obtained through the Kansas Department of Transportation's office of Construction and Maintenance, telephone (913) 296-1578.

Non-resident contractors that are not already registered with the Kansas Secretary of State and all non-resident individuals and partnerships are required by law to register with the Director of Revenue, State Office Building, Topeka, Kansas, and to pay a fee of Ten Dollars ($10.00) for each and every contract as a precaution against fraudulent work on the contract. For contracts in excess of Ten Thousand Dollars ($10,000), the foreign contractor shall file with the Director of Revenue an acceptable bond in the amount of ten percent (10%) of the contract.

The Contractor shall not award subcontracts which total more than forty-five percent (45%) of the contract and which are not within its own organization, work accounting to not less than fifty-five percent (55%) of the total contract price.

All subcontractors shall be submitted and approved by the City prior to bid award.

No proposal may be withdrawn within a period of thirty (30) days from and after the date fixed for opening proposals.

The City reserves the right to reject any or all proposals; and to waive any irregularities or irregularities therein.

PRE-BID MEETING: A pre-bid meeting will be held at Prairie Village Public Works, 3515 Converse Drive, Prairie Village, Kansas at 1:00 p.m. (CST) on Friday, January 26, 2001. Attendance at this meeting is mandatory; however, any aspect of the project will be discussed and representatives of the City and Engineer will be available to discuss the project.

CITY OF PRAIRIE VILLAGE
JOYCE HAGEN-MUNDY
CITY CLERK

Date: 1-22-01

CITY CLERK, CITY OF LEVADA, KANSAS
PASSED by the Governing Body this 16th day of January, 2001.

APPROVED by the Mayor this 16th day of January, 2001.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
ORDINANCE NO. 1881

AN ORDINANCE REZONING PROPERTY LOCATED AT APPROXIMATELY 151ST STREET AND MISSION ROAD (SUMMERTREE VILLAS, PHASE II), FROM AG (AGRICULTURAL) TO RP-4 (PLANNED CLUSTER RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

A tract of land in the Northeast quarter of Section 9, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northeast corner of said Northeast quarter; thence South 02° 04'56" East, along the East line of said Northeast quarter, a distance of 944.43 feet; thence South 87° 55'04" West, a distance of 1058.00 feet, to the Point of Beginning; thence South 56° 13'58" West, a distance of 49.76 feet; thence South 45° 27'16" West, a distance of 135.84 feet; thence South 61° 37'54" West, a distance of 79.96 feet; thence South 59° 09'02" West, a distance of 82.43 feet; thence South 59° 10'31" West, a distance of 265.46 feet; thence North 02° 03'53" West, a distance of 259.68 feet; thence Northeasterly, along a curve to the left, having a radius of 375.00 feet, a central angle of 15° 01'14", and whose initial tangent bearing is North 66° 56'22" East, a distance of 98.31 feet, to a point of compound curvature; thence Northeasterly, along a curve to the left having a radius of 175.00 feet, a central angle of 46° 04'54", a distance of 140.75 feet, to a point of tangency; thence North 05° 50'14" East, a distance of 103.80 feet, to a point of curvature; thence Northeasterly, along a curve to the right, having a radius of 225.00 feet, a central angle of 63° 36'12", a distance of 249.77 feet; thence South 28° 56'01" East, a distance of 435.49 feet, to the Point of Beginning, containing 175,065.19 square feet or 4.0189 acres, more or less now zoned AG, is hereby rezoned to RP-4.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby
reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance."

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 18th day of December, 2000.

Approved by the Mayor the 18th day of December, 2000.

Peggy Dunn
Mayor

Martha Heizer
City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for __ consecutive week(s), as follows:

ORDINANCE NO. 1881--12/25/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:

DECEMBER 20, 2000

Chas Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

$32.40
ORDINANCE NO. 1881
First published in The Legal Record, Tuesday, December 19, 2000.

ORDINANCE NO. 1881
AN ORDINANCE REZONING PROPERTY LOCATED AT APPROXIMATELY 151ST STREET AND MISSION ROAD (SOMERSET VILLAGES, PHASE II), FROM AG (AGRICULTURAL) TO RP-4 (PLANNED CLUSTER RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

A tract of land in the Northeast quarter of Section 9, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northeast corner of said Northeast quarter; thence South 02°04'56" East, along the East line of said Northeast quarter, a distance of 346.43 feet; thence South 85°55'04" West, a distance of 1058.00 feet, to the Point of Beginning; thence South 56°13'55" West, a distance of 49.16 feet; thence South 45°27'16" West, a distance of 135.84 feet; thence South 62°37'54" West, a distance of 79.36 feet; thence South 59°09'02" West, a distance of 82.43 feet; thence South 59°10'31" West, a distance of 265.66 feet; thence North 02°03'53" West, a distance of 259.68 feet; thence Northwesterly, along a curve to the left, having a radius of 375.00 feet, a central angle of 160°02'14", and where initial tangent bearing is North 66°56'22" East, a distance of 96.31 feet, to a point of compound curvature; thence Northwesterly, along a curve to the left having a radius of 175.00 feet, a central angle of 46°04'54", a distance of 140.75 feet, to a point of tangency; thence North 05°50'14" East, a distance of 103.80 feet to a point of curvature; thence Northwesterly, along a curve to the right, having a radius of 225.00 feet, a central angle of 63°36'12", a distance of 249.77 feet; thence South 28°56'01" South, a distance of 435.49 feet, to the Point of Beginning; containing 175,065.13 square feet or 4.0184 acres, more or less now zoned AG, is hereby rezoned to RP-4.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 4-2 of the "Leawood Development Ordinance."

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 10th day of December, 2000.
Approved by the Mayor the 13th day of December, 2000.

Peggy J. Dunn Mayor

Attest:

Martha Helzer City Clerk

[Signature]

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 3, SECTION 1-303, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, PERTAINING TO QUALIFICATIONS OF THE CITY ADMINISTRATOR.

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

SECTION ONE: Chapter 1, Article 3, Section 3, of the code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-303 QUALIFICATIONS.
A. The person appointed to the office of City Administrator shall be a resident of Johnson County at the time of the effective date of such appointment, and shall be a graduate of an accredited university or college, qualifications and experience in financial and/or administrative fields.
B. In the event the office of City Administrator is vacant and an Interim Administrator is appointed to carry out the duties and responsibilities of the City Administrator, all qualifications set forth in Section 1-303, subsection A, shall be waived and shall not be applicable.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-303 is hereby repealed. [Prior Law: Ord. 642]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION
A. Liberal Construction: The provisions of this ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.
B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 4th day of December, 2000.
APPROVED by the Mayor this 4th day of December, 2000.

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for _0_ consecutive week(s), as follows:

ORDINANCE NO. 1880C--12/5/00

Subscribed, and sworn to before me on this date:

DECEMBER 6, 2000

Notary Public

Expires: 04/30/003

DEBRA VALENTI
Notary Public - State of Kansas
ORDINANCE NO. 1880 C
First published in The Legal Record, Tuesday, December 5, 2000.

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 3, SECTION 1-303, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, PERTAINING TO QUALIFICATIONS OF THE CITY ADMINISTRATOR.

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

SECTION ONE: Chapter 1, Article 3, Section 3, of the code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-303 QUALIFICATIONS.
A. The person appointed to the office of City Administrator shall be a resident of Johnson County at the time of the effective date of such appointment, and shall be a graduate of an accredited university or college, qualifications and experience in financial and/or administrative fields.
B. In the event the office of City Administrator is vacant and an Interim Administrator is appointed to carry out the duties and responsibilities of the City Administrator, all qualifications set forth in Section 1-303, subsection A, shall be waived and shall not be applicable.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-303 is hereby repealed. [Prior Law: Ord. 642]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION
A. Liberal Construction: The provisions of this ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.
B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date: That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 4th day of December, 2000.

APPROVED by the Mayor this 4th day of December, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heiser, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
ORDINANCE 1879 C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 4, SECTION 1-406, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, PERTAINING TO THE DUTIES OF THE CITY TREASURER.

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

SECTION ONE: Chapter 1, Article 4, Section 6, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-406. CITY TREASURER. The City Treasurer shall:

(a) Keep a full and accurate financial record of and for the city;
(b) Publish a quarterly financial statement;
(c) Be responsible for the receipt of all moneys belonging to the city;
(d) Deposit all public moneys and sign all checks of the city;
(e) Pay out the funds of the city upon warrant and checks properly signed by the mayor and city clerk;
(f) Have the purchasing authority up to and including $5,000 or less. Purchases exceeding $5,000 shall be approved by the Governing Body, except for emergency repair or maintenance to city-owned facilities or equipment. Purchases made by the City Treasurer, or his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body; and
(g) Perform such other duties as may be delegated by the governing body or the Kansas statutes.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-406 is hereby repealed. [K.S.A. § 10-803; K.S.A. § 12-1608]; [Prior Law Ord. 696; Code 2000]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.
SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 4th day of December, 2000.

APPROVED by the Mayor this 4th day of December, 2000.

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for ___ consecutive week(s), as follows:

ORDINANCE NO. 1879C--12/5/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
DECEMBER 6, 2000

DEBRA VALENTI
Notary Public

Expiration: 9/30/2003

$33.57
ORDINANCE 1879 C
First published in The Legal Record, Tuesday, December 5, 2000.

ORDINANCE 1879 C

AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 4, SECTION 1-406, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, PERTAINING TO THE DUTIES OF THE CITY TREASURER.

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

SECTION ONE: Chapter 1, Article 4, Section 6, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-406. CITY TREASURER. The City Treasurer shall:

(a) Keep a full and accurate financial record of and for the city;
(b) Publish a quarterly financial statement;
(c) Be responsible for the receipt of all money belonging to the city;
(d) Deposit all public moneys and sign all checks of the city;
(e) Pay out the funds of the city upon warrant and checks properly signed by the mayor and city clerk;
(f) Have the purchasing authority up to and including $5,000 or less. Purchases exceeding $5,000 shall be approved by the Governing Body, except for emergency repair or maintenance to city-owned facilities or equipment. Purchases made by the City Treasurer, his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body; and
(g) Perform such other duties as may be delegated by the governing body or the Kansas statutes.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-406 is hereby repealed. [K.S.A. § 10-803; K.S.A. § 12-1508; Prior Law Ord. 606; Code 2000]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 4th day of December, 2000.

APPROVED by the Mayor this 4th day of December, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Hesser, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
ORDINANCE NO. 1878

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $2,100,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the “City”) is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Acquisition, construction and installation of improvements to existing City parks pursuant to K.S.A. 12-1737, Ordinance No. 1742 and Resolution No. 1444.

(b) Acquisition of certain real property in Leawood South Park leased by the City and acquisition, construction and installation of a new fire station thereon, including parking facilities and access roads, and furnishing and equipping the same pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;

(c) Acquisition, construction and equipping of a new public works building pursuant to K.S.A. 12-1736 et seq. and Resolution No. 1532;

(d) Improvement and reimprovement of Mission Road and 119th Street in the vicinity of the intersection thereof pursuant to K.S.A. 12-685, et seq. and Resolution No. 1505; and

(e) Improvement and reimprovement of 151st Street between Nall Avenue and Mission Road pursuant to K.S.A. 12-685 et seq. and Resolution No. 1506;

(collectively, the “City Improvement Projects”).

WHEREAS, the City has heretofore issued its Temporary Notes dated April 15, 2000, in the principal amount of $5,500,000 (the “Prior Notes”) to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and
WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of certain of the City Improvement Projects within the next six months in the amount of $800,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Two Million One Hundred Thousand Dollars ($2,100,000) (the “Notes”). The amount of the Notes together with other temporary notes heretofore issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the “Note Resolutions”).

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ORDINANCE
Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City’s portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,300,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the “Code”),
including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be “arbitrage bonds” within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a “private activity bond” within the meaning of Section 141(a) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948;

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.
3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be "qualified tax-exempt obligations" within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.
PASSED by the Council the 20th day of November, 2000.

APPROVED by the Mayor the 20th day of November, 2000.

Peggy J. Dunn, Mayor

Martha Heizer, City Clerk
Debra A. Harper

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for consecutive week(s), as follows:

ORDINANCE NO. 1878--11/21/00

Subscribed and sworn to before me on this date:

NOVEMBER 22, 2000

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAVWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $2,100,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAVWOOD.

WHEREAS, the City of Leavwood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Acquisition, construction and installation of improvements to existing City parks pursuant to K.S.A. 12-1737, Ordinance No. 1742 and Resolution No. 1444;

(b) Acquisition of certain real property in Leavwood South Park leased by the City and acquisition and installation of a new fire station thereto, including parking facilities and access roads, and furnishing and equipping the same pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;

(c) Acquisition, construction and equipping of a new public works building pursuant to K.S.A. 12-1736 et seq. and Resolution No. 1532;

(d) Improvement and reimpovement of Mission Road and 119th Street in the vicinity of the intersection thereof pursuant to K.S.A. 12-685, et seq. and Resolution No. 1505; and

(e) Improvement and reimpovement of 131st Street between Nall Avenue and Mission Road pursuant to K.S.A. 12-685 et seq. and Resolution No. 1566; collectively, the "City Improvement Projects").

WHEREAS, the City has heretofore issued its Temporary Notes dated April 15, 2000, in the principal amount of $5,500,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of certain of the City Improvement Projects within the next six months in the amount of $800,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Two Million One Hundred Thousand Dollars ($2,100,000) ("the Notes"). The amount of the Notes together with other temporary notes heretofore issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leavwood, Kansas Temporary Notes with such further appropriate designation incorporated in each title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms and at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the "Note Resolutions").

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leavwood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessment... on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,300,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1976, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(a) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948.

2. Since January 1, 2000, neither the City, nor any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.
The Grantee, on the request of any applicant, shall remove, raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting the same, and the Grantee may require such payment in advance. The Grantee shall be given no fewer than thirty (30) days written notice from the applicant detailing the time and location of the moving operations and no fewer than twenty-four (24) hours' advance notice from the applicant advising of the actual operation. The City shall not be liable for any such expense or notice requirement for the moving of houses or structures by the City or its contractors.

Permission is hereby granted to the Grantee to trim trees upon and overhanging streets, alleys, sidewalks, and public places of said City so as to prevent the branches of such trees from coming in contact with the facilities of the Grantee, all the said trimming to be done under the supervision and direction of any City official to whom said duties have been or may be delegated.

The City encourages the conservation of right of way by the sharing of space by all utilities. To the extent required by federal or state law, the Grantee shall permit any public agency by a written agreement negotiated by the parties to use any and all facilities constructed or erected by the Grantee. All such agreements and installments shall be subject to all existing and future ordinances and regulations of the City.

SECTION FOUR: INSPECTION OF RECORDS
The City's right to inspect the books, files, records, and documents of the Grantee necessary to verify the correctness of the statement of gross revenues and to correct the same, if found to be erroneous. If the statement of gross revenues is determined by both parties to be incorrect, then such payment shall be made upon a corrected statement.

SECTION FIVE: RIGHTS AND DUTIES
Upon expiration of this franchise, whether by lapse of time, by agreement between the Grantee and the City, or by forfeiture thereof, the Grantee shall dispose of its facilities on public property used in its said business within a reasonable time after such expiration and in compliance with all applicable City ordinances. It shall be the duty of the Grantee immediately upon the demand of the City to remove all facilities which were disposed of as good condition as the same were before said disposal was effected.

SECTION SIX: FORFEITURE AND GRANTS
In case of a material failure on the part of the Grantee, its successors and assigns, to comply with any of the provisions of this franchise, or if the Grantee, its successors and assigns, shall do or cause to be done any act or thing prohibited by or in violation of

derived from local exchange telecommunications services rendered wholly within the corporate limits of the City. For the purpose of this Section "gross revenues from local exchange telecommunications service" shall mean those revenues less uncollectible charges, derived from the following, whether wholesale or retail: (1) recurring local exchange service for commercial and residential customers, which includes basic exchange service, the touch tone, optional calling functions, and metered local calls; (2) recurring local exchange access line services for pay phone lines provided by the Grantee to all pay phone service providers; (3) local directory assistance revenue; (4) line status verification/busy interrupt revenue; (5) local operator assistance revenue; (6) nonrecurrent local exchange access service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. Grantee and the City agree that all other revenues, including but not limited to revenues from exchange access service, unbundled loops, nonregulated services, carrier and end-user access, long distance, and all other services not wholly in nature are excluded from "gross revenues from local exchange telecommunications services." Grantee and the City agree that "gross revenues for local exchange telecommunications services" shall be reduced by bad debt losses and uncollectible charges; and further agree that late charges shall not be included within "gross revenues from local exchange telecommunications services." If during the term of this franchise, Grantee offers additional services of a wholly local nature which in its existence at the effective date of this franchise would have been included within the definition of "gross revenues for local exchange telecommunications services," such services shall be included from the date of the offering of such service in the City for the remaining term of this franchise.

SECTION TEN: SALE OR TRANSFER OF GRANT OF FRANCHISE
Pursuant to the written permission of the City, which shall not be unreasonably withheld, the Grantee shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, fire or corporation, and any such assignments by accepting such assignment, shall be bound by the terms and provisions of this ordinance and applicable state or federal law.

SECTION ELEVEN: CONDITIONS OF FRANCHISE
A. This contract, franchise, grant, and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the one year, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

B. This franchise shall not be exclusive.

SECTION TWELVE: ACCEPTANCE OF TERMS
The Grantee shall have sixty (60) days after the final passage and approval of this ordinance to file with the City Clerk of the City of Lenexa its acceptance in writing of the provisions, terms, and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, the ordinance and acceptance shall constitute a contract between the City of Lenexa and Grantee, subject to the provisions of the laws of the State of Kansas.

SECTION THIRTEEN: INVALIDITY OF ORDINANCE
If any clause, sentence, or section of this ordinance shall be held to be invalid, it shall not affect the remaining provisions of this ordinance.

SECTION FOURTEEN: APPROVAL
This franchise ordinance shall be read in full at three (3) regular meetings of the Governing Body. Immediately after the final reading and passage by the Governing Body, the franchise ordinance shall be published in the official City newspaper, once each week for two consecutive weeks. It shall take effect and be in force sixty-one (61) days after the date of its final passage. If, pending the passage of this ordinance, or during the time between its final passage and the expiration of 60 days before the ordinance takes effect, a petition signed by a number of voters of the City of Lenexa equal to 20% of the qualified voters voting for mayor, or in case no mayor is elected, the commissioner or council member receiving the highest number of votes, at the last preceding city election, shall be presented to the Governing Body of the City of Lenexa asking that the franchise ordinance be submitted for adoption to popular vote, then the franchise shall become effective only if and when approved by a majority of the electors voting thereon.

PASSED by the Governing Body this 7th day of November 2000.

Amended by the Mayor of this 7th day of November 2000.
3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be “qualified tax-exempt obligations” within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 20th day of November, 2000.

APPROVED by the Mayor the 20th day of November, 2000.

(SEAL)

Peggy J. Duma, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney
The Legal Record
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication
STATE OF KANSAS, JOHNSON COUNTY, SS:
Penny Knight, of lawful age, being first duly sworn, deposes
and says that she is Legal Notices Administrator of The Legal
Record which is a newspaper printed in the State of Kansas,
published in and of general paid circulation on a weekly,
monthly or yearly basis in Johnson County, Kansas, is not a
trade, religious or fraternal publication, is published at least
weekly fifty (50) times a year, has been so published
continuously and uninterrupted in said County and State for a
period of more than one year prior to the first publication of the
notice attached, and has been entered at the post office as
Periodicals Class mail matter. That a notice was published
in all editions of the regular and entire issue for the following
subject matter (also identified by the following case number,
if any)

for _ consecutive week(s), as follows:

ORDINANCE NO. 1878--11/21/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
NOVEMBER 22, 2000

DEBRA VALENTI
Notary Public - State of Kansas


$96.10
WHEREAS, the City of Evanston is committed to enhancing its infrastructure and ensuring the safety and functionality of its public spaces; and

WHEREAS, the City of Evanston recognizes the importance of maintaining a transparent procurement process for the acquisition of infrastructure projects; and

WHEREAS, the City of Evanston seeks to improve the efficiency and effectiveness of its municipal processes; and

WHEREAS, the City of Evanston is dedicated to providing safe and accessible public spaces for all residents and visitors; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, ILLINOIS, AS ITS CITY COUNCIL, THIS BE IT

ORDINANCE NO. 1768

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF THE CITY OF EVANSTON, ILLINOIS, MUNICIPAL BONDS IN THE AMOUNT OF $2,000,000 TO FACILITATE THE ACQUISITION AND DELIVERY OF INFRASTRUCTURE AND MUNICIPAL PROJECTS IN THE CITY OF EVANSTON, ILLINOIS.
AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 3, SECTION 6, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO THE DUTIES OF THE CITY ADMINISTRATOR.

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

SECTION ONE: Chapter 1, Article 3, Section 6, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-306. DUTIES. The city administrator shall:

(a) Be the chief administrative assistant to the mayor and as such shall be the administrative officer of the city government. Except as otherwise specified by ordinance or by law of the State of Kansas, the city administrator shall coordinate and generally supervise the operation of all departments of the city;

(b) Be the purchasing agent for the city, and all purchases amounting to $5,000 or less shall be made under his or her general direction and supervision. Purchases exceeding $5,000 shall be approved by the Governing Body, except for emergency repair or maintenance to city-owned facilities or equipment; or any and all necessary expenditures to carry out the daily operations of the management of IRONHORSE Golf Club. Those emergency repairs or maintenance purchases shall be approved by the city administrator. All purchases made by the city administrator, or his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body;

(c) Be the budget officer of the city and with the assistance of all department heads shall assemble estimates of the financial needs and resources of the city for each ensuing year and shall prepare a program of activities within the financial power of the city, embodying in it a budget document with proper supporting schedules and an analysis to be proposed to the Governing Body for their final approval;

(d) Make monthly reports to the Governing Body relative to the financial condition of the city. Such reports shall show the financial condition of the city in relation to the budget;

(e) Prepare and present to the Governing Body an annual report of the city's affairs, including in such a report a summary of reports of department heads and such other reports as the Governing Body may require;

(f) Act as the personnel officer of the city and shall administer the Personnel Rules and Regulations Administrative Policy including making appropriate changes to the Policy to facilitate the efficient and effective daily operations of the City. The City Administrator shall report any amendment of or changes to the Personnel Rules and Regulations Administrative Policy to the Governing Body as soon as is practical. The City Administrator shall recommend an appropriate pay plan to the Governing Body and, after consultation with department heads, shall approve advancement and appropriate pay increases within the approved pay plan and the position classification system. The City
Administrator shall have the power to appoint and remove all subordinate employees of the City subject to the personnel system regulations and shall make recommendations to the Governing Body concerning the appointment and removal of department heads;

(g) Recommend to the Governing Body adoption of such measures as he or she may deem necessary or expedient for the health, safety, or welfare of the city or for the improvement of administrative services for the city;

(h) Submit to the Governing Body a proposed agenda for each council meeting at least 72 hours before the time of the regular council meeting;

(i) Work with all city commissions and committees to help coordinate the work of each;

(j) Attend all meetings of the Governing Body unless excused by the mayor;

(k) Supervise the preparation of all bid specifications for services and equipment, and receive sealed bids for presentation to the Governing Body;

(l) Coordinate federal and state programs which may have application to the city;

(m) Attend state and regional conferences and programs applicable to the office, and the business of the city, whenever such attendance is directed and approved by the Governing Body;

(n) Keep full and accurate records of all actions taken by him or her in the course of his or her duties, and he or she shall safely and properly keep all records and papers belonging to the city and entrusted to his or her care in accordance with federal and Kansas state statutes. All such records shall be and remain the property of the city and be open to inspection by the Governing Body at all times;

(o) Perform any and all other duties or functions prescribed by the Governing Body.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-306 is hereby repealed. [Prior law 1230 07/15/91; 1092]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 6th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.
Peggy Dunn, Mayor

Martha Heizer, City Clerk

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for __ consecutive week(s), as follows:

ORDINANCE NO. 1877C--11/7/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:

NOVEMBER 6, 2000

Debra Valenti
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


$44.59
AN ORDINANCE AMENDING CHAPTER 1, ARTICLE 3, SECTION 6, OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000," PERTAINING TO THE DUTIES OF THE CITY ADMINISTRATOR.

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

SECTION ONE: Chapter 1, Article 3, Section 6, of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

1-306. DUTIES. The city administrator shall:

(a) Be the chief administrative assistant to the mayor and as such shall be the administrative officer of the city government. Except as otherwise specified by ordinance or by law of the State of Kansas, the city administrator shall coordinate and generally supervise the operation of all departments of the city;

(b) Be the purchasing agent for the city, and all purchases amounting to $5,000 or less shall be made under his or her general direction and supervision. Purchases exceeding $5,000 shall be approved by the Governing Body, except for emergency repair or maintenance to city-owned facilities or equipment; or any and all necessary expenditures to carry out the daily operations of the management of Ironhorse Golf Club. Those emergency repairs or maintenance purchases shall be approved by the city administrator. All purchases made by the city administrator, or his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body;

(c) Be the budget officer of the city and with the assistance of all department heads shall assemble estimates of the financial needs and resources of the city for each ensuing year and shall prepare a program of activities within the financial power of the city, embodying in it a budget document with proper supporting schedules and an analysis to be proposed to the Governing Body for its final approval;

(d) Make monthly reports to the Governing Body relative to the financial condition of the city. Such reports shall show the financial condition of the city in relation to the budget;

(e) Prepare and present to the Governing Body an annual report of the city's affairs, including in such a report a summary of reports of department heads and such other reports as the Governing Body may require;

(f) Act as the personnel officer of the city and shall administer the Personnel Rules and Regulations Administrative Policy including making appropriate changes to the Policy to facilitate the efficient and effective daily operations of the City. The City Administrator shall report any amendment of or changes to the Personnel Rules and Regulations Administrative Policy to the Governing Body as soon as is practicable. The City Administrator shall recommend an appropriate pay plan to the Governing Body and, after consultation with department heads, shall approve advancement and appropriate pay increases within the approved pay plan and the position classification system. The City Administrator shall have the power to appoint and remove all subordinate employees of the City subject to the personnel system regulations and shall make recommendations to the Governing Body concerning the appointment and removal of department heads;

(g) Recommend to the Governing Body adoption of such measures as he or she may deem necessary or expedient for the health, safety, or welfare of the city or for the improvement of administrative services for the city;

(h) Submit to the Governing Body a proposed agenda for each council meeting at least 72 hours before the time of the regular council meeting;

(i) Work with all city committees and agencies to help coordinate the work of each;

(j) Attend all meetings of the Governing Body unless excused by the mayor;

(k) Supervise the preparation of all bids specifications for services and equipment, and receive sealed bids for the Governing Body;

(l) Coordinate federal and state programs which may have application to the city;

(m) Attend state and regional conferences and programs applicable to the office, and the business of the city, whenever such attendance is directed and approved by the Governing Body;

(n) Keep full and accurate records of all actions taken by him or her in the course of his or her duties, and he or she shall keep and properly keep all records and papers belonging to the city and entrusted to him or her care in accordance with federal and Kansas state statutes. All such records shall be and remain the property of the city and be open to inspection by the Governing Body at all times;

(o) Perform any and all other duties or functions prescribed by the Governing Body.

SECTION TWO: Repeal of Existing Sections. The existing Code § 1-306 is hereby repealed. [Prior law 1230 07/15/91; 1992]

SECTION THREE: This ordinance shall be construed as follows:

INTERPRETATION

A. Liberal Construction: The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

B. Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of the proposed ordinance set out, or the application thereof to any person or circumstance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Code or other ordinances.

SECTION FOUR: Effective Date. That said ordinance shall become effective upon adoption and publication once in the official city newspaper.

PASSED by the Governing Body this 6th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.
ORDINANCE NO. 1876

AN ORDINANCE AUTHORIZING THE ISSUANCE AND DELIVERY OF $8,310,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2000-A, OF THE CITY OF LEAWOOD, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON THE BONDS AS THEY BECOME DUE; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

WHEREAS, the City of Leawood, Kansas (the “City”), is a city of the first class, created, organized and existing under the laws of the State of Kansas (the “State”); and

WHEREAS, pursuant to K.S.A. 12-685 et seq., K.S.A. 12-6a01 et seq., and K.S.A. 12-1301 et seq., each as amended, and other provisions of the laws of the State applicable thereto, by proceedings duly had, the Governing Body of the City has caused the following improvements to be made in the City:

(a) Construction of improvements to College Boulevard between Tomahawk Creek Parkway and El Monte Street including necessary appurtenances, pursuant to K.S.A. 12-6a01 et seq., as authorized by Resolution No. 1484, as amended by Resolution No. 1530, and as further amended and restated by Resolution No. 1548 (the “College Boulevard Improvement”);

(b) Construction of improvements to Mission Road from 103rd Street to I-435 including necessary appurtenances, pursuant to K.S.A. 12-685 et seq., as authorized by Ordinance No. 1204 (the “Mission Road Improvement”);

(c) Construction of improvements to existing City parks pursuant to K.S.A. 12-1301 et seq., as authorized by Ordinance No. 1742 and an election held in the City on November 3, 1998 (the “City Parks Improvement”);

(d) Construction of improvements to roads within the Normandy Place subdivision including necessary appurtenances, and certain storm water improvements therein, pursuant to K.S.A. 12-6a01 et seq., as authorized by Resolution No. 1531 (the “Normandy Place Improvement”); and

(e) Construction of improvements and reimprovement of Lee Boulevard between 103rd Street and Mission Road within the City, pursuant to K.S.A. 12-685 et seq., as authorized by Ordinance No. 1807 (the “Lee Boulevard Improvement”); and

WHEREAS, all legal requirements pertaining to the College Boulevard Improvement, the Mission Road Improvement, the City Parks Improvement, the Normandy Place Improvement and the Lee Boulevard Improvement (collectively, the “Series 2000 City Improvement Projects”)
have been complied with, and the Governing Body of the City has found and determined and hereby finds and determines that the total cost of said City Improvement Projects including construction financing and related expenses is not less than $8,320,862.06 with $476,000 of the cost to be paid by the owners of the property within the City benefited by the College Boulevard Improvement and $315,000 of the cost to be paid by the owners of property within the City benefited by the Normandy Place Improvement and $7,529,862.06 of the cost to be paid by the City at-large; and

WHEREAS, owners of property benefitted by the Normandy Plaza Improvement have heretofore paid assessments in the amount of $10,862.06 and the Governing Body of the City is authorized by law to issue general obligation bonds of the City to finance the balance of the costs of the Series 2000 City Improvements Projects; and

WHEREAS, the Governing Body of the City has advertised the sale of its general obligation bonds in accordance with the law and has awarded the sale of such bonds to George K. Baum & Company in association with Prudential Securities Incorporated, PaineWebber Incorporated, Edward D. Jones & Co., L.P., First Union National Bank, Fahnestock & Co Inc. and Cooper Malone McClain, Inc. (the “Original Purchaser”); and

WHEREAS, the Governing Body of the City finds and determines that it is necessary for the City to authorize the issuance and delivery of its general obligation bonds in the principal amount of $8,310,000 to finance the costs of the Series 2000 City Improvement Projects.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Definitions of Words and Terms.

In addition to the words and terms defined in the recitals to this Ordinance, the following words and terms as used in this Ordinance shall have the following meanings, unless some other meaning is plainly intended:

“Bond and Interest Fund” means the Bond and Interest Fund of the City for its general obligation bonds.

“Bond Resolution” means the resolution adopted by the Governing Body of the City contemporaneously herewith providing the terms and details of the Bonds authorized by this Ordinance.

“Bonds” means the City’s General Obligation Improvement Bonds, Series 2000-A, authorized by this Ordinance in the aggregate principal amount of $8,310,000 and dated November 15, 2000.

“City” means the City of Leawood, Kansas.

“City Clerk” means the appointed and acting City Clerk or, in the City Clerk’s absence, the appointed acting City Clerk of the City.
"City Treasurer" means the appointed and acting City Treasurer or, in the City Treasurer's absence, the appointed acting City Treasurer of the City.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations proposed or promulgated thereunder of the United States Department of the Treasury.

"Mayor" means the elected and acting Mayor of the City or, in the Mayor's absence, the appointed acting Mayor of the City.

"Ordinance" means this Ordinance of the City authorizing the issuance of the Bonds.

"State" means the state of Kansas.

Section 2. Authorization of and Security for the Bonds. The Bonds are authorized and directed to be issued in the principal amount of $8,310,000, for the purpose of providing funds to finance the costs of the Series 2000 City Improvement Projects.

The Bonds shall be general obligations of the City payable as to both principal and interest in part from special assessments levied upon the property benefited by the College Boulevard Improvement and the Normandy Place Improvement and, if such special assessments shall not be so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City, and the balance of the principal and interest on the Bonds not payable first from such special assessments shall be payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City.

The full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 3. Terms, Details and Conditions of the Bonds. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, shall be subject to redemption and payment prior to the maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Bond Resolution adopted by the Governing Body of the City.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Bonds herein authorized and to procure the proper registration in the office of the City Clerk and in the office of the State Treasurer of the State of Kansas, and when so executed and registered, said Bonds shall be delivered to the Original Purchaser upon payment of the purchase price therefor as provided in the Bond Resolution.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Bonds shall be deposited with the City Treasurer and used and applied as provided in the Bond Resolution.
Section 6. Levy and Collection of Annual Tax. The Governing Body of the City shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by levying and collecting special assessments on property benefited by the College Boulevard Improvement and the Normandy Place Improvement, and to the extent of the City’s portion of the cost of the Series 2000 City Improvement Projects and to the extent such special assessments shall not be so collected, by levying and collecting an annual tax upon all of the taxable tangible property, real and personal, within territorial limits of the City in the manner provided by law in amounts sufficient to pay the installments of principal and interest on the Bonds as the same accrue and become due and payable.

The taxes and assessments above referred to shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the general ad valorem taxes of the City are levied and collected, and the proceeds derived from such taxes and assessments shall be deposited in the Bond and Interest Fund.

If at any time taxes and assessments are not collected in time to pay the principal of or interest on the Bonds when due, the City Treasurer is authorized and directed to pay the principal and interest out of the general funds of the City and to reimburse the general funds for money so expended when the taxes and assessments are collected.

Section 7. Tax Covenants. The City covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds; (2) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds; (3) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for with the Bonds are issued; (4) it will not invest or directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of Bonds or any other funds of the City nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a “private activity bond” within the meaning of Section 141(a) of the Code.

Section 8. Remedies. The provisions of this Ordinance and the Bond Resolution, including the covenants and agreements herein and therein contained, shall constitute a contract
between the City and the Owners of the Bonds and may be enforced in accordance with the provisions hereof and of the Bond Resolution.

Section 9. Further Authority. The Mayor, City Clerk and other City officials are further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, to make alterations, changes or additions in the agreements, statements, instruments and other documents approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. The Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 11. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication in the official City newspaper.

PASSED by the Governing Body of the City this 6th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.

Peggy J. Dunn, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for ___ consecutive week(s), as follows:

ORDINANCE NO. 1876--11/7/00

Subscribed and sworn to before me on this date:

NOVEMBER 9, 2000

Notary Public

ORDINANCE NO. 1876
First published in The Legal Record, Tuesday, November 7, 2000.

ORDINANCE NO. 1876
AN ORDINANCE AUTHORIZING THE ISSUANCE AND DELIVERY OF $8,310,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2000-A, OF THE CITY OF LEAWOOD, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL AND INTEREST ON THE BONDS AS THEY BECOME DUE; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.

WHEREAS, the City of Leawood, Kansas (the "City"), is a city of the first class, created, organized and existing under the laws of the State of Kansas (the "State"); and

WHEREAS, pursuant to K.S.A. 12-685 et seq., K.S.A. 12-640 et seq., and K.S.A. 12-1301 et seq. each as amended, and other provisions of the laws of the State applicable thereto, proceedings duly had, the Governing Body of the City has caused the following improvements to be made in the City:

(a) Construction of improvements to College Boulevard between Tomahawk Creek Parkway and 11 Mile Street including necessary appurtenances, pursuant to K.S.A. 12-685 et seq., K.S.A. 12-640 et seq., and K.S.A. 12-1301 et seq., each as amended, and other provisions of the laws of the State applicable thereto, pursuant to Resolution No. 1433, as amended by Resolution No. 1570, and further amended and restated by Resolution No. 1549 (see "College Boulevard Improvement");

(b) Construction of improvements to Mission Road from 103rd Street to I-435 including necessary appurtenances, pursuant to K.S.A. 12-685 et seq., as authorized by Ordinance No. 1204 (the "Mission Road Improvement");

(c) Construction of improvements to existing City parks pursuant to K.S.A. 12-1301 et seq., as authorized by Ordinance No. 1742 and an election held in the City on November 3, 1998 (the "City Parks Improvement");

(d) Construction of improvements to roads within the Normandy Place subdivision including necessary appurtenances, and certain storm water improvements therein, pursuant to K.S.A. 12-685 et seq., as authorized by Resolution No. 1531 (the "Normandy Place Improvement"); and

(e) Construction of improvements and improvement of Lee Boulevard between 103rd Street and Mission Road within the City, pursuant to K.S.A. 12-685 et seq., as authorized by Ordinance No. 1807 (the "Lee Boulevard Improvement");

WHEREAS, all legal requirements pertaining to the College Boulevard Improvement, the Mission Road Improvement, the City Parks Improvement, the Normandy Place Improvement and the Lee Boulevard Improvement (collectively, the "Series 2000 City Improvement Projects") have been complied with, and the Governing Body of the City has found and determined and hereby finds and determines that the total cost of said City Improvement Projects, including construction financing and related expenses is not less than $8,320,862.06 with $476,000 of the cost to be paid by the owners of the property within the City benefited by the College Boulevard Improvement and $315,000 of the cost to be paid by the owners of property within the City benefited by the Normandy Place Improvement and $7,529,862.06 of the cost to be paid by the City at-large; and

WHEREAS, owners of property benefited by the Normandy Place Improvement have, heretofore paid assessments in the amount of $10,862.06 and the Governing Body of the City is authorized by law to issue general obligation bonds of the City to finance the balance of the cost of the Series 2000 City Improvement Projects; and

WHEREAS, the Governing Body of the City has advertised the sale of its general obligation bonds in accordance with the law and has awarded the sale of such bonds to George K. Baun & Company in association with Prudential Securities Incorporated, PainWebber Incorporated, Edward D. Jones & Co., L.P, First Union National Bank, Fitchnet & Co Inc. and Commerical Maine McClaclain, Inc. (the "Original Purchaser"); and

WHEREAS, the Governing Body of the City finds and determines that it is necessary for the City to authorize the issuance and delivery of its general obligation bonds in the principal amount of $8,310,000 to finance the costs of the Series 2000 City Improvement Projects.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Definitions of Words and Terms.
In addition to the words and terms defined in the recitals to this Ordinance, the following words and terms as used in this Ordinance shall have the following meanings, unless some other meaning is plainly intended:

"Bond" means the bond and interest Fund of the City for its general obligation bonds.

"Bond Resolution" means the resolution adopted by the Governing Body of the City contemporaneously herewith providing the terms and details of the Bonds authorized by this Ordinance.

"Bonds" means the City's General Obligation Improvement Bonds, Series 2000-A, authorized by this Ordinance in the aggregate principal amount of $8,310,000 and dated November 15, 2000.

"City" means the City of Leawood, Kansas.

"City Clerk" means the appointed and acting City Clerk or, in the City Clerk's absence, the appointed acting City Clerk of the City.

"City Treasurer" means the appointed and acting City Treasurer or, in the City Treasurer's absence, the appointed acting City Treasurer of the City.


"Mayor" means the elected and acting Mayor of the City or, in the Mayor's absence, the appointed acting Mayor of the City.

"Ordinance" means this Ordinance of the City authorizing the issuance of the Bonds.

"State" means the state of Kansas.

Section 2. Authorization of and Security for the Bonds. The Bonds are authorized and directed to be issued in the principal amount of $8,310,000, for the purpose of providing funds to finance the costs of the Series 2000 City Improvement Projects.

The Bonds shall be general obligations of the City payable as to both principal and interest in part from special assessments levied upon the property benefited by the College Boulevard Improvement and the Normandy Place Improvement and, if such special assessments shall not be so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City, and the balance of the principal and interest on the Bonds not payable first from such special assessments shall be payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City.

The full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 3. Terms, Details and Conditions of the Bonds. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, shall be subject to redemption and payment prior to the maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions and the conditions contained in and agreements set forth in the Bond Resolution adopted by the Governing Body of the City.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Bonds herein authorized and to procure the proper registration in the office of the City Clerk and in the office of the State Treasurer of the State of Kansas, and when so executed and registered, said Bonds shall be delivered to the Original Purchaser upon payment of the purchase price therefore as provided in the Bond Resolution.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Bonds shall be deposited with the City Treasurer and used and applied as provided in the Bond Resolution.

Section 6. Levy and Collection of Annual Tax. The Governing Body of the City shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds and shall become due by levying and collecting special assessments on property benefited by the College Boulevard Improvement and the Normandy Place Improvement, and to the extent of the City's portion of the cost of the Series 2000 City Improvement Projects and in the extent such special assessments shall not be so collected, by levying and collecting an annual tax upon all of the taxable tangible property, real and personal, within territorial limits of the City in the manner provided by law in amounts sufficient to pay the installments of principal and interest on the Bonds as the same become due and payable.

The taxes and assessments above referred to shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the general ad valorem taxes of the City are levied and collected, and the proceeds derived from such taxes and assessments shall be deposited in the Bond and Interest Fund.

If at any time taxes and assessments are not collected in time to pay the principal of or interest on the Bonds when due, the City Treasurer is authorized and directed to pay the principal and interest out of the general funds of the City and to reimburse the general funds for money so expended when the taxes and assessments are collected.

Section 7. Tax Covenants. The City covenants and agrees that (1) it will comply with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of interest on the Bond, (2) it will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds, (3) it will use the proceeds of the Bonds as soon as practicable and with all reasonable dispatch for the purposes for which the Bonds are issued; (4) it will not use the proceeds of the Bonds to finance any other activities of the City or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(f) of the Code; and (5) it will not use or permit the use of any proceeds of the Bonds or any other funds of the City in any manner, or take or omit to take any action that would cause the Bonds to be "tax-exempt securities" within the meaning of Section 141 of the Code.

The City covenants and agrees that it will not use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in any manner that would cause any Bond to be "private activity bond" within the meaning of Section 141(b) of the Code.

Section 8. Remedies. The provisions of this Ordinance and the Bond Resolution, including the covenants and agreements herein and therein contained, shall constitute a contract.
between the City and the Owners of the Bonds and may be enforced in accordance with the provisions hereof and of the Bond Resolution.

Section 9. Further Authority. The Mayor, City Clerk and other City officials are further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, to make alterations, changes or additions in the agreements, statements, instruments and other documents approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. The Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 11. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Governing Body of the City and publication in the official City newspaper.

PASSED by the Governing Body of the City this 6th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.

(SEAL)

Peggy J. Dunn

Peggy J. Dunn, Mayor

ATTEST:

Marsha Heizer

Marsha Heizer, City Clerk

APPROVED AS TO FORM:

[Signature]
ORDINANCE NO. 1875

AN ORDINANCE AMENDING SECTIONS 3-1, 3-2, 3-3, 3-4, 3-13, AND 3-16 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE ALLOWED ROOFING; AND REPEALING EXISTING SECTION.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 3-1, 3-2, 3-3, 3-4, 3-13, and 3-16 of the Leawood Development Ordinance, is hereby amended to read as follows:

3-1 RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL DISTRICT)
A) General Purpose and Description: Property zoned and developed as RP-A Planned Large Lot Single Family Residential shall be to provide for single family detached dwellings on large lots and at the same time ensure proper placement on the property so as not to hinder future redevelopment including the extension of streets and utilities that would be required for rezoning to a greater density. Property zoned RP-A should be those tracts that correspond to the Rural Density Residential land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District RP-A no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single family residential dwellings (detached).
2) Group Homes as defined herein.
3) Railroads and public or quasi-public utilities including substations.
4) Noncommercial nurseries and gardens.
5) Oil and gas wells.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-A District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.
2) Sales office
3) Model homes

F) Bulk Regulations:
1) Front Setback: 50 feet
2) Side Setback: 25 feet
3) Rear Setback: 50 feet
4) Lot Area: 1 acre per dwelling (net)
5) Lot Frontage: 150 feet
6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials, and color; nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Article 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required for development in this district.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.
1) Roofs shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2 inch thickness measured at butt
   c) Slate
d) Clay Tile

e) Concrete Tile

f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

   A) Chestnut
   B) Driftwood
   C) Mahogany
   D) Terra Cotta
   E) Granite
   F) Charcoal
   G) Cedar

3) Other tile or roofing materials as specifically authorized by Resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.
Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than two and one-half (2 1/2) times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.
4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-2 R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as R-1 Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned R-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District R-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings

2) Group Homes as defined herein.

3) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body.
   a) Athletic Fields
   b) Cemeteries
   c) Community center buildings
   d) Convents, when a part of a school or church complex
   e) Fire station
   f) Libraries
   g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon
   h) Parks, playgrounds and other recreational areas of municipal ownership
   i) Police stations
   j) Swimming pools, (municipal)
   k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)
E) Temporary Uses: The following use shall be permitted as a temporary use in the R-1 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 35 feet except that the side yard on street side of corner lot shall be 30 feet.

2) Side Setback: 15 feet

3) Rear Setback: 30 feet except that when structure is placed at approximately a 45 degree angle toward street then irregular lot setbacks shall apply.

4) Irregular Lot Setbacks: On lots bounded by two intersecting streets, irregular rear property line or of other than generally rectangular shape the rear yard setback shall average distance of 30 feet. This setback shall be determined by extending the sidewalls of the structure to the rear property line and calculating the square footage within the area between the rear walls, the side extensions and the rear property line(s). This figure will then be divided by the distance between the extended sidewall lines. This will give the average depth of the area enclosed and this must be equal to or greater than 30 feet. In no case shall the structure be located less than 15 feet from any property line.

5) Lot Area: 15,000 square feet per dwelling

6) Lot Frontage: 100 feet

7) Height Limit: 2 1/2 stories

8) Exception to Side Yard Setback: The Board of Zoning Appeals shall have the power to grant an exception to the required 15-foot Side Setback for additions to existing structures, upon a determination that such exception shall not cause adverse impact to the surrounding properties, and upon a finding of the following conditions:

a) The existing structure was legally constructed with a Side Setback of less than 15 feet; and

b) In no case shall the existing structure and any proposed addition be any closer than 10 feet to the property line; and

c) The proposed addition will be continuous and consistent with the existing side build line of the existing structure; and
d) The proposed addition shall not cause further encroachment than that of the existing structure.

Such exception shall require a public hearing. Notice of the hearing shall be published in the official city newspaper at the applicant's expense at least 20 days prior to the date of the hearing. Additionally, at least 10 days prior to the date of the hearing, the applicant shall mail notices regarding the application to all adjacent property owners and to the applicable homes association. Such mailed notice shall be by certified mail, return receipt requested, and shall be in the form of a letter explaining the proposed change. Failure to receive such notice shall not invalidate any subsequent action taken.

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2 inch thickness measured at butt
   c) Slate
   d) Clay Tile
   e) Concrete Tile
f) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:
   
   A) Chestnut
   B) Driftwood
   C) Mahogany
   D) Terra Cotta
   E) Granite
   F) Charcoal
   G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed but end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than two and one-half (2 1/2) times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.
RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL DIST.)

A) General Purpose and Description: Property zoned and developed as RP-1 Planned Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned RP-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 6-3.1 of this ordinance.

B) Principal Permitted Uses: In District RP-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings
2) Group Homes as defined herein.
3) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:
   a) Athletic Fields
   b) Cemeteries
   c) Community center buildings
   d) Convents, when a part of a school or church complex
   e) Fire station
   f) Libraries
   g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon
   h) Parks, playgrounds and other recreational areas of municipal ownership
   i) Police stations
   j) Swimming pools, (municipal)
   k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-1 District in accordance with Section 2-4.4 of this ordinance.
1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 35 feet except that the side yard on street side of corner lot may be 30 feet.

2) Side Setback: 12 feet

3) Rear Setback: 30 feet except that when structure is placed at approximately a 45 degree angle toward street then irregular lot setbacks shall apply.

4) Irregular Lot Setbacks: On lots bounded by two intersecting streets, irregular rear property line or of other than generally rectangular shape the rear yard setback shall average a distance of 30 feet. This setback shall be determined by extending the sidewalls of the structure to the rear property line and calculating the square footage within the area between the rear walls, the side extensions and the rear property line(s). This figure will then be divided by the distance between the extended sidewalk lines. This will give the average depth of the area enclosed and this must be equal to or greater than 30 feet. In no case shall the structure be located less than 12 feet from any property line.

5) Lot Area: 12,000 square feet per dwelling

6) Lot Frontage: 100 feet

7) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded
except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2 inch thickness measured at butt
   c) Slate
   d) Clay Tile
   e) Concrete Tile
   f) Other Tile
      1) Synthetic slate within similar color range of slate, clay or concrete tile.
      2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:
         A) Chestnut
         B) Driftwood
         C) Mahogany
         D) Terra Cotta
         E) Granite
         F) Charcoal
         G) Cedar
      3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

   g) Laminated Composition Shingles:
1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
2) Required to be installed with sheet metal valleys and flashings.
3) Required to be installed with preformed ridge shingles.
4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
5) Must use a minimum of five (5) color blend granules.
6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.
7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
8) Required to be U.L. Class A fire rated material.
9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
2) Required to be installed with sheet metal valleys and flashings.
3) Required to be installed with preformed ridge shingles.
4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
5) Must use a minimum of five (5) color blend granules.
6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.
7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
8) Required to be U.L. Class A fire rated material.

2. Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.
L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-4 RP-2 (PLANNED TWO FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-2 Planned Two Family Residential shall be to provide for duplexes (two family attached dwelling units) and other selected uses which are compatible with medium density residential character of this district. Property zoned RP-2 should be those tracts that correspond to the Medium Density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 6-3.1 of this ordinance. Two family dwellings which otherwise comply with the codes and ordinances of the City of Leawood may be divided at the party wall as to ownership and owned as separate dwelling units by separate owners and such ownerships shall not constitute violation of the lot and yard requirements of this ordinance.

B) Principal Permitted Uses: In District RP-2 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Two Family Dwellings

2) Group Homes as defined herein

3) Single Family dwellings when incorporated with a planned two family project
4) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:

a) Athletic Fields
b) Cemeteries
c) Community center buildings
d) Convents, when a part of a school or church complex
e) Fire station
f) Libraries
g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fertilizer renovation may be conducted thereon
h) Parks, playgrounds and other recreational areas of municipal ownership
i) Police stations
j) Swimming pools (municipal)
k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-2 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

2) Sales office

3) Model homes

F) Bulk Regulations:

1) Front Setback: 30 feet
2) Side Setback: 10 feet
3) Rear Setback: 30 feet
4) Lot Area: 6,000 square feet/dwelling unit
5) Lot Frontage: 100 feet
6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence or two family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles per unit in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color, nor shall any existing single family residence or two family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family and two family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2 inch thickness measured at butt
   c) Slate
   d) Clay Tile
   e) Concrete Tile
   f) Other Tile

      1) Synthetic slate within similar color range of slate, clay or concrete tile.
      2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:

          A) Chestnut
B) Driftwood
C) Mahogany
D) Terra Cotta
E) Granite
F) Charcoal
G) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

  g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
2) Required to be installed with sheet metal valleys and flashings.
3) Required to be installed with preformed ridge shingles.
4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
5) Must use a minimum of five (5) color blend granules.
6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.
7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
8) Required to be U.L. Class A fire rated material.
9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
2) Required to be installed with sheet metal valleys and flashings.
3) Required to be installed with preformed ridge shingles.
4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
5) Must use a minimum of five (5) color blend granules.
6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-13 AG (AGRICULTURAL DISTRICT)

A) General Purpose and Description: The AG District is intended to conserve farm land for agricultural purposes and to serve as a "holding" zone to prevent the premature development of large land acreages and of recently annexed land for which the most appropriate future use has not yet been determined. In order to promote these purposes, the regulations for this district allow a very limited range of uses so that the present
development character of the land may be maintained and future development options preserved pending comprehensive study and analysis of the area.

B) Principal Permitted Uses: In District AG no building, structure, land or premises shall be used or hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Agricultural use, including the raising of field crops and fruit orchards, grazing and stabling of livestock, horticulture, dairy farming, forestry, animal husbandry, and similar farming activities.
2) Railroads and public or quasi-public utilities including substations.
3) Noncommercial nursery.
4) Single family dwelling located on a lot of 40 acres or more.
5) Group Homes as defined herein.
6) Oil and gas wells.
7) Public or private park, golf course (except miniature golf and driving ranges), or similar natural recreation areas.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses:

F) Bulk Regulations:

1) Front Setback: 50 feet
2) Side Setback: 50 feet
3) Rear Setback: 50 feet
4) Lot Area: 40 acres per dwelling
5) Lot Frontage: 330 feet
6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for two standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)
I) Landscaping and Screening Requirements: The agricultural district is exempt from landscaping and screening requirements.

J) Sewage Disposal: No permit for a dwelling or other building or land use which will produce impure wastewater shall be issued until a septic tank permit has been approved by the Governing Body after recommendation from the County Health Department or connection to sanitary sewer system.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2 inch thickness measured at butt
   c) Slate
   d) Clay Tile
   e) Concrete Tile
   f) Other Tile
      1) Synthetic slate within similar color range of slate, clay or concrete tile.
      2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:
         A) Chestnut
         B) Driftwood
         C) Mahogany
         D) Terra Cotta
         E) Granite
         F) Charcoal
         G) Cedar
      3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.
g) Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
2) Required to be installed with sheet metal valleys and flashings.
3) Required to be installed with preformed ridge shingles.
4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
5) Must use a minimum of 5 color blend granules.
6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1 1/4's.
7) Minimum thickness 3/16 inch measured at either exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
8) Required to be U.L. Class A fire rated material.
9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
2) Required to be installed with sheet metal valleys and flashings.
3) Required to be installed with preformed ridge shingles.
4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
5) Must use a minimum of five (5) color blend granules.
6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.
7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
8) Required to be U.L. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.
3) Farm homes shall be exempt from roofing requirements for maintenance purposes only. New construction, including additions, shall comply with these provisions.

L) Type of Construction -- Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 2/1 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-16 RP-A5 (PLANNED rural density single FAMILY RESIDENTIAL DISTRICT)
A) General Purpose and Description: Property zoned and developed as RP-A5 Planned Rural Density Single Family Residential shall be to provide for single family detached dwellings and other selected uses which are compatible with low density residential character of this district. Property zoned RP-A5 should be those tracts that correspond to the rural density residential land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District RP-A5 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Residential Dwellings (detached).

2) Group Homes as defined herein.

3) Railroads and public or quasi-public utilities including substations.

4) Noncommercial nurseries and gardens.
5) Oil and gas wells.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-A5 District in accordance with Section 2-4.4 of this ordinance.

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

F) Bulk Regulations:

1) Front Setback: 150 feet
2) Side Setback: 35 feet
3) Rear Setback: 100 feet
4) Lot Area: 5 acres per dwelling (gross)
5) Lot Frontage: 150 feet
6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such away as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant or an acceptable septic tank system approved by Johnson county is required for development in the district.
K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal and glass.

1) Roofs shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2 inch thickness measured at butt
   c) Slate
   d) Clay Tile
   e) Concrete Tile
   f) Other Tile
      1) Synthetic slate within similar color range of slate, clay or concrete tile.
      2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:
         A) Chestnut
         B) Driftwood
         C) Mahogany
         D) Terra Cotta
         E) Granite
         F) Charcoal
         G) Cedar
      3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.
   g) Laminated Composition Shingles:
      1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
      2) Required to be installed with sheet metal valleys and flashings.
      3) Required to be installed with preformed ridge shingles.
4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt-end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

9) Required to be a minimum of 330 lb./square.

h) Rubberized Asphalt Shingle

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.

2) Required to be installed with sheet metal valleys and flashings.

3) Required to be installed with preformed ridge shingles.

4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

5) Must use a minimum of five (5) color blend granules.

6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4's.

7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.L. Class A fire rated material.

2. Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membrane.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.
1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building codes.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, axles, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unpierced except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

Section 2. Existing Sections Repealed. The existing Sections 3-1, 3-2, 3-3, 3-4, 3-13, AND 3-16 of the Leawood Development Ordinance are hereby repealed. (Prior law: Ord. Nos. 1822 & 1747)

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 6th day of November, 2000.

Approved by the Mayor the 6th day of November, 2000.

Peggy J. Dunn
Mayor

Attest:

Martha Heizer
City Clerk

Approved as to form:

Patricia A. Bennett
City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for 1 consecutive week(s), as follows:

ORDINANCE NO. 1875--11/7/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
NOVEMBER 8, 2000

Debra Valenti
Notary Public

ORDINANCE NO. 1875
First published in The Legal Record, Tuesday, November 7, 2000.

AN ORDINANCE AMENDING SECTIONS 3-1, 3-2, 3-3, 3-4, 3-13, AND 3-16 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE ALLOWED ROOFING, AND REPEALING EXISTING SECTION.

Be it Ordained by the Governing Body of the City of Leawood:
Section 1. Leawood Development Ordinance Amended. That Section 3-1, 3-2, 3-3, 3-4, 3-13, and 3-16 of the Leawood Development Ordinance, is hereby amended to read as follows:

3-1 RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL DISTRICT)
A) General Purpose and Description: Property zoned and developed as RP-A Planned Large Lot Single Family Residential shall be to provide for single family detached dwellings on large lots and at the same time ensure proper placement on the property so as not to hinder future redevelopment including the expansion of streets and utilities that would be required for a block to greater density. Property zoned RP-A should be those tracts that correspond to the Rural Density Residential land use category identified in the Master Development Plan.
B) Permitted Uses: In District RP-A no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:
1) Single family residential dwellings (detached).
2) Group Homes as defined herein.
3) Railroads and public or quasi-public utilities including substations.
4) Noncommercial nurseries and gardens.
5) Oil and gas wells.
C) Accessory Uses. (See Section 4-1 of the ordinance.)
D) Special Uses. (See Section 4-3 of this ordinance.)
E) Temporary Uses. The following use shall be permitted as a temporary use in the RP-A District in accordance with Section 2-4-4 of the ordinance.
1) Building or trailer for storage of materials and/or equipment necessary for construction. Authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.
2) Sales office

3) Mobile homes

F) Bulk Regulations:
1) Front Setback: 50 feet
2) Side Setback: 25 feet
3) Rear Setback: 50 feet
4) Lot Area: 1 acre per dwelling unit
5) Lot Frontage: 150 feet
6) Height Limit: 2 stories

G) Parking Requirements. Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide spaces for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials, and color; nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Article 4-5 of this ordinance.)
I) Landscaping and Screening Requirements. Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and unencumbered surface that contains living materials. All areas which are to remain unpaved and not covered by buildings shall be brought to finish grade and sodded except those areas receiving other landscaping materials. (For additional requirements see Section 4-5 of this ordinance.)
J) Sewage Disposal. Connection to a sanitary sewer system with treatment plant is required for development in this district.
K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, stone shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, stucco or any combination thereof. Windows, doors and towners shall be of wood or metal and glass.
1) Roofs shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2 inch thickness measured at butt
   c) Slate

L) Laminated Composition Shingles:
   a) Architectural shingles with shadow lines and or ridges flanking a wood shingle or wood shake.
   b) Required to be installed with sheet metal valleys and flashings.
   c) Required to be installed with preformed ridge shingles.
   d) Have the appearance and color range of natural weathered cedar shingles or weathered wood shakes.
   e) Must use a minimum of five (5) color blend granules.
   f) Required to be placed on solid decking. Existing roofing materials shall be removed down to the sheathing and/or 1/4 inch.
   g) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
   h) Required to be U.L. Class A fire rated material.
   i) Required to be a minimum of 500 to acquire.

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2) Flat roofs or roofs with a pitch of less than 3 inches per foot. In addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply synthetic membrane.

Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All manufactured design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall not be more than two and one-half (2 1/2) times the shortest exterior dimension.

2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-marine siding materials shall extend above the top of the foundation or sheathing and the joint shall be flashed in accordance with the city building code.

3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building code. The running gear, tongue, aseis, and whee shall be removed from the unit at the time of installation. A continuous, permanent flashing or concrete foundation, unplastered except for required ventilation and access, shall be installed under the perimeter of the home.

4) The home shall have an attached two car garage.

5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-2 R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as R-1 Single Family Residential shall be to provide for single family detached dwellings and other accessory use which are compatible with low density residential character of the district. Property zoned R-1 should be those lots that correspond to the low density land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District R-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings

2) Group Homes as defined herein.

3) The following public and community uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:
   a) Athletic Fields
   b) Cemeteries
   c) Community center buildings
   d) Convents, when a part of a school or church complex
   e) Fire station
   f) Libraries
   g) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obnoxious fumes or transient may be created through
   h) Parks, playgrounds and other recreational areas of municipal ownership
   i) Police stations
   j) Swimming pools (municipal)
   k) Other municipal facilities

Accessory Uses: (See Section 4-1 of this ordinance.)

Special Uses: (See Section 4-3 of this ordinance.)
3-2 R-1 (SINGLE FAMILY RESIDENTIAL DISTRICT)

A. General Purpose and Description. Property zoned and developed as R-1 Single Family Residential shall be

provided for single family detached dwellings and other attached units which are compatible with low density

residential character of this district. Property zoned R-1 should be those tracts that correspond to the low
density land use category identified in the Master Development Plan.

B. Principal Permitted Uses: In District R-1 no building, structure, land or premises shall be used, and no

building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one

or more of the following uses:

1. Single Family Dwellings
2. Group Homes as defined herein
3. The following public and semipublic uses may be permitted after hearing and review of preliminary

plans and recommendations by the City Plan Commission and approval of the Governing Body

a. Athletic fields
b. Country clubs
c. Community center buildings
d. Convents, when part of a school or church complex
e. Fire station
f. Libraries
g. Nurseries and truck gardens limited to the propagation and cultivation of plants provided

no retail or wholesale business shall be conducted on the premises and no obnoxious

fertilizer renovation may be conducted thereon
h. Parks, playgrounds and other recreational areas of municipal ownership
i. Police stations
j. Swimming pools (municipal)
k. Other municipal facilities

C. Accessory Uses: (See Section 4-1 of this ordinance)

D. Special Uses: (See Section 4-3 of this ordinance)

E. Temporary Uses: The following uses shall be permitted as temporary use in the R-1 District in accordance

with Section 2-4-4 of this ordinance.

1. Building or trailer for storage of materials and/or equipment necessary for construction authorized

by a valid building permit, provided the location of the building or trailer has been approved by the

Director of Planning and Development.
2. Sales office
3. Model homes

F. Bulk Regulations:

1. Lot Setback: 35 feet except that the side yard on street side of corner lot shall be 30 feet.
2. Side Setback: 15 feet
3. Rear Setback: 30 feet except that when structure is placed at approximately a 45 degrees angle

forward than regular lot setbacks shall apply.
4. Irregular Lot Setbacks; On lots bounded by two intersecting streets, irregular rear property line or

of other than generally rectangular shape the rear yard setback shall average distance of 30 feet.
This setback shall be determined by extending the sidewalks of the structure to the rear property

line and calculating the square footage within the area between the rear walls, the side extensions

and the rear property line(s). This figure will then be divided by the distance between the extended

sidewalk lines. This will give the average depth of the area enclosed and this must be equal to or

greater than 30 feet. In no case shall the structure be located less than 15 feet from any property

line.
5. Lot Area: 15,000 square feet per dwelling
6. Lot Frontage: 100 feet
7. Height Limit: 2 1/2 stories
8. Exception to Side Yard Setback: The Board of Zoning Appeals shall have the power to grant an

exception to the required 15 foot Side Setback for additions to existing structures, upon a

determination that such exception shall not cause adverse impact to the surrounding properties,

and upon a finding of the following conditions:

a. The existing structure was legally constructed with a Side Setback of less than 15 feet; and
b. In no case shall the existing structure and any proposed addition be any closer than 10

feet to the property line; and
c. The proposed addition will be continuous and consistent with the existing side buld line

of the existing structure; and
d. The proposed addition shall not cause further encroachment than that of the existing

structure.

Such exception shall require a public hearing. Notice of the hearing shall be published in the official city

newspaper at the applicant's expense at least 10 days prior to the date of the hearing. Additionally, at least

10 days prior to the date of the hearing, the applicant shall notify registrants according to the application to

all adjacent property owners and to the applicable homeowners association. Such mailed notice shall be by certified

mail, return receipt requested, and shall be in the form of a letter explaining the proposed change.
Failure to receive such notice shall not invalidate any subsequent action taken.

G. Parking Requirements: Refer to institutional parking groups in Section 4-4 of this ordinance. No single family

residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2

standard passenger vehicles in an area designated as a garage, attached or integral to the residence and

compatible with said residence in construction, materials and color; nor shall any existing single family

residence be altered in such a way as to incorporate existing garage space into living area unless said

alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage

attached to or integral with said residence and compatible in construction, materials and color.

H. Signs: (See Section 4-5 of this ordinance.)

i. Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot

area (exclusive of sidewalk) as a permeable and uncovered surface that contains living material. All land

areas which are to remain ungraded and not covered by buildings shall be brought to gentle grade and graded

except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of

this ordinance.)

J. Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K. Type of Construction: Material walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles,

wood shakes, wood siding, wood paneling, wood floor paneling, tile or any combination thereof.

Windows, doors and backdoor shall be of wood or metal and glass.

L. Roofs shall be covered with:

a. Wood Shingles: Number 1 or 2 grade
b. Wood Shakes:
1) Number 1 or 2 grade
2) Minimum 1/2 inch thickness measured at butt
c. Slate
d. Clay Tile
e. Concrete Tile

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between the City and the Owners of the Bonds and may be enforced in accordance with the provisions hereof and of the Bond Resolution.

Section 9. Further Authority. The Mayor, City Clerk and other City officials are further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, to make alterations, changes or additions to the agreements, statements, instruments and other documents approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. The Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 11. Effective Date. This Ordinance shall take effect and be in full force from and after the passage by the Governing Body of the City and publication in the official City newspaper.

PASSED by the Governing Body of the City this 5th day of November, 2000.

APPROVED by the Mayor this 6th day of November, 2000.

(Seal)

Peggy J. Dunn, Mayor

ATTTEST:

[Signature]

Martha Heizer, City Clerk

APPROVED AS TO FORM:

[Signature]

Patricia A. Bennett, City Attorney

ORDINANCE NO. 1875
First published in The Legal Record, Tuesday, November 7, 2000.

ORDINANCE NO.

AN ORDINANCE AMENDING SECTIONS 3-1, 3-2, 3-3, 3-4, 3-13, AND 3-16 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE ALLOWED ROOFING, AND REPEALING EXISTING SECTION.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 3-1, 3-2, 3-3, 3-4, 3-13, and 3-16 of the Leawood Development Ordinance, is hereby amended to read as follows:

3-1 RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL DISTRICT)

(a) General Purpose and Description. Property zoned and developed as RP-A Planned Large Lot Single Family Residential shall be for single family detached dwellings on large lots and at the same time ensure proper placement on the property so as not to hinder future redevelopment including the extension of streets and utilities that would be required for rezoning to a greater density. Property zoned RP-A should be those tracts that correspond to the Rural Density Residential land use category identified in the Master Development Plan.

(b) Principal Permitted Uses. In District RP-A no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single family residential dwellings (detached).
2) Group homes as defined herein.
3) Railroads and public or quasi-public utilities including substations.
4) Noncommercial nurseries and gardens.
5) Oil and gas wells.

(c) Accessory Uses. [See Section 4-1 of this ordinance.]

(d) Special Uses. [See Section 4-3 of this ordinance.]

(e) Temporary Uses. The following use shall be permitted as a temporary use in the RP-A District in accordance with Section 2-4-4 of this ordinance:

1) Building or trailer for storage of materials and/or equipment necessary for construction, authorized by a valid building permit provided the location of the building or trailer has been approved by the Director of Planning and Development.
2) Sales office

(f) Bath Requirements:

1) Front setback: 50 feet
2) Side setback: 25 feet
3) Rear setback: 50 feet
4) Lot area: 1 acre per dwelling unit
5) Lot Frontage: 150 feet
6) Height Limit: 2 1/2 stories

(g) Parking Requirements. Refer to individual parking group in Section 4-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials, and color, nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

(h) Signs. [See Article 4-5 of this ordinance.]

(i) Landscaping and Screening Requirements. Single family residences shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncultivated surface that contains living material. All and areas which are to remain unpened and not covered by buildings shall be brought to rich grade and seeded except those areas receiving other landscaping materials. [For additional requirements see Section 4-6 of this ordinance.]

(j) Sanitary Disposal. Connection to a sanitary sewer system with treatment plant is required for development in this district.

(k) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, stucco, wood shingles, wood shakes, wood siding, wood paneling, tile or any combination thereof. Windows, doors and shutters shall be of wood or metal and glass.

1) Roofs shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Slaters:
      1) Number 1 or 2 grade
      2) Minimum 1 1/2 inch thickness measured at butt
   c) Slate

(l) Roofing Materials. [See Section 1875.]

(m) Clay Tile

(n) Concrete Tile

(o) Other Tile

1) Synthetic slate within similar color range of slate, clay or concrete tile.

2) A bonded stone-coated steel, steel roofing tile shall be limited to the following colors:

   A) Chestnut
   B) Driftwood
   C) Mahogany
   D) Terra Cotta
   E) Granite
   F) Coral
   G) Cedar

3) Other tile or roofing materials as specifically authorized by Resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

Laminated Composition Shingles:

1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shakes.
2) Required to be installed with shingle metal valleys and flashings.
3) Required to be installed with preferred ridge shingles.
4) Have the appearance and range of natural weathered cedar shingles or weathered cedar shakes.
5) Must use a minimum of five (5) color blend granules.
6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the sheathing under 1/4".
7) Minimum thickness 3/16" inch measured at exposed end of overlap.
8) required to be installed with R-19 and 1/2" x 2" x 8" insulating asphalt saturated felt.
9) Required to be a U.L. Class A fire rated materials.
10) Required to be a minimum of 350 to acquire.

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3-3 RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL DIST.)

A) General Purpose and Description: Property zoned as RP-1 Planned Single Family Residential shall be used for single family detached dwellings and other accessory uses which are compatible with low density residential character of this district. Property zoned RP-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 8.3.1 of this ordinance.

B) Principal Permitted Uses: In Districts RP-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings
2) Group Homes as defined herein
3) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Planning Commission and approval of the Governing Body:
   a) Athletic Fields
   b) Cemeteries
   c) Community center buildings
   d) Convent, when part of a school or church complex
   e) Fire station
   f) Libraries
   g) Nurseries and tree planting projects limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no conspicuous tree planting or removal may be conducted thereon
   h) Parks, playgrounds and other recreational areas of municipal ownership
   i) Police stations
   j) Swimming pools, (municipal)
   k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-1 Districts in accordance with Section 4.4 of this ordinance:

1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development

2) Sales office
3) Model homes

F) Bulk Regulations:

1) Front Setback: 35 feet except that the side yard on street side of corner lot may be 30 feet.
2) Side Setback: 12 feet
3) Rear Setback: 30 feet except that when structure is placed at approximately 45 degree angle toward street then irregular lot setbacks shall apply

4) Irregular Lot Setbacks: On lots bounded by two intersecting streets, irregular rear property line or of other than generally rectangular shape the rear yard setback shall average a distance of 30 feet. This setback shall be determined by extending the sidewalks of the structure to the rear property line and calculating the square footage within the area bounded by the rear set back, the side set back, and the rear property line(s). The figure thus divided by the distance between the sidewalks. This figure shall be used in lieu of determining the square footage of the area bounded by the irregular lot setback. The building shall be set back a distance of 30 feet from the front set back.

5) Lot Area: 12,000 square feet per dwelling

6) Lot Frontage: 100 feet

7) Fenced Lot: 1 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4.4 of this ordinance. No single family residential use shall be constructed that does not provide space for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color; nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into being area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-4 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-ways) as a permeable and unrestrained surface that contains living material. All land areas which are to remain unfenced and not covered by buildings shall be brought to finish grade and sodded.
paragraph 1:  
1) Roof shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2 inch thickness measured at butt
   c) Slat
   d) Clay Tile
   e) Concrete Tile
   f) Other Tile
   1) Synthetic slate within similar color range of slate, clay or concrete tile.
   2) A bonded stone-coated finish, metal roofing tile shall be limited to the following colors:
      A) Charcoal
      B) Driftwood
      C) Mahogany
      D) Terra Cotta
      E) Granit
      F) Charcoal
      G) Cedar
   3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinances of the City Council provided that all building code requirements are met.
   a) Laminated Composition Shingles:
      1) Architectural shingles with shadow lines and or relief imitating a wood shingle or wood shake.
      2) Required to be installed with sheet metal valleys and flashings.
      3) Required to be installed with preformed ridge shingles.
      4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
      5) Must use a minimum of five (5) color band granules.
      6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4".
      7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
      8) Required to be U.L. Class A fire rated material.
      9) Required to be a minimum of 200 lbs. square.
   h) Rubberized Asphalt Shingle
      1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
      2) Required to be installed with sheet metal valleys and flashings.
      3) Required to be installed with preformed ridge shingles.
      4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
      5) Must use a minimum of five (5) color band granules.
      6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4".
      7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
      8) Required to be U.L. Class A fire rated material.

Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up epoxi, or single ply synthetic membrane.

3-4  Planned Two Family Residential District

A) General Purpose and Description: Property zoned and developed as RP-2 Planned Two Family Residential shall be to provide for duplex (two family attached dwelling units) and other similar uses which are compatible with medium density residential character of this district. Properly zoned RP-2 should be those tracts that correspond to the Medium Density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 6-3-1 of this ordinance.

B) Principal Permitted Uses: In District RP-2 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:
   1) Two Family Dwellings
   2) Group Homes as defined herein
   3) Single Family dwellings when incorporated with a planned two family project
   4) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Plan Commission and approval of the Governing Body:
      a) Athletic Fields
      b) Campgrounds
      c) Community center buildings
      d) Convent, when a part of a school or church complex
      e) Fire station
      f) Libraries
      g) Nurseries and rock gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no occasion fertilizer renewal may be conducted thereon
      h) Parks, playgrounds and other recreational areas of municipal ownership
      i) Police stations
      j) Swimming pools (municipal)
      k) Other municipal facilities

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-2 District in accordance with Section 2.4-4 of this ordinance.
   1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.
   2) Sales office
   3) Model Homes

F) Bully Regulations:
   1) Front Setback: 30 feet
   2) Side Setback: 10 feet
   3) Rear Setback: 30 feet
   4) Lot Area: 6,000 square feet dwelling unit
   5) Lot Frontage: 100 feet

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except those areas receiving small landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

4. Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K. Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and overhangs shall be of wood or metal and glass.

1. Roofs shall be covered with:
   a. Wood Shingles: Number 1 or 2 grade
   b. Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2 inch thickness measured at butt
   c. Slate
   d. Clay Tile
   e. Concrete Tile
   f. Other Tile

   1) Synthetic slate with similar color range of slate, clay or concrete tile.

   2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:
      A) Ashcroft
      B) Driftwood
      C) Mahogany
      D) Terra Cotta
      E) Granita
      F) Charcoal
      G) Cedar

   3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinance of the City Council provided that all building code requirements are met.

   g. Laminated Composition Shingles:
      1) Architectural tile with shadow lines and or relief imitating a wood shingle or wood shake.
      2) Required to be installed with sheet metal valleys and flashings.
      3) Required to be installed with pressed ridge shingles.
      4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

      5) Must use a minimum of five (5) color blend granules.
      6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4".
      7) Minimum thickness 5/16 inch measured at exposed butt and of overlap creating the shadow line or individual thickness of the ply of roof material.
      8) Required to be U.L. Class A fire rated material.
      9) Required to be a minimum of 330 lbs/square.

   h. Rubberized Asphalt Shingle:
      1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
      2) Required to be installed with sheet metal valleys and flashings.
      3) Required to be installed with preformed ridge shingles.
      4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.

      5) Must use a minimum of five (5) color blend granules.
      6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the stringers and/or 1/4".
      7) Minimum thickness 5/16 inch measured at exposed butt and of overlap creating the shadow line or individual thickness of the ply of roof material.

      8) Required to be U.L. Class A fire rated material.

2. Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphault, or single ply elastomeric membrane.

3-4 RP-2 (PLANNED TWO FAMILY RESIDENTIAL DISTRICT)

A. General Purpose and Description: Property zoned and developed as RP-2 Planned Two Family Residential shall be to provide for the development of the highest and best use with the least public nuisance and for the densest residential character of the rules of density to encourage the growth of the residential neighborhood.

B. Principal Permitted Uses: In District RP-2 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

   1) Two Family Dwellings
   2) Group Homes as defined herein
   3) Single Family dwellings when incorporated with a planned two family project

C. Accessory Uses: (See Section 4-1 of this ordinance.)

D. Special Uses: (See Section 4-3 of this ordinance.)

E. Temporary Uses: The following uses shall be permitted as temporary use in the RP-2 District in accordance with Section 2-4-4 of this ordinance.

   1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the building or trailer has been approved by the Director of Planning and Development.

   2) Sales office
   3) Model homes

F. Bulk Regulations:

   1) Front Setback: 30 feet
   2) Side Setback: 10 feet
   3) Rear Setback: 30 feet

   4) Lot Area: 5,000 square feet
   5) Lot Frontage: 100 feet

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3.3 RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL DIST.)

A) General Purpose and Description: Property zoned and developed as RP-1 Planned Single Family Residential shall be provided for single family detached dwellings and other attached uses which are compatible with low density residential character of this district. Property zoned RP-1 should be those tracts that correspond to the low density land use category identified in the Master Development Plan and that meet the intent and objectives of Planned District Requirements in Section 3.3.1 of this ordinance.

B) Principal Permitted Uses: In District RP-1 no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

1) Single Family Dwellings
2) Group Homes as defined herein.

C) The following public and semipublic uses may be permitted after hearing and review of preliminary plans and recommendation by the City Planning Commission and approval of the Governing Body:

1) Athletic Fields
2) Cemeteries
3) Community center buildings
4) Convenience, when a part of a school or church complex
5) Fire station
6) Libraries
7) Nurseries and truck gardens limited to the propagation and cultivation of plants provided no retail or wholesale business shall be conducted on the premises and no obvious fertilizer renovation may be conducted therein
8) Parks, playgrounds and other recreational areas of municipal ownership
9) Police stations
10) Swimming pools, (municipal)
11) Other municipal facilities

D) Accessory Uses: See Section 3.3.1 of this ordinance.

E) Special Uses: See Section 3.3.2 of this ordinance.

F) Parking Requirements: In District RP-1 the following parking requirements shall be met:

1) Front Setback: 35 feet except that the side yard on street side of corner lot may be 30 feet.
2) Side Setback: 12 feet
3) Rear Setback: 30 feet except that when structure is placed at approximately a 45 degree angle toward street then irregular lot setbacks shall apply.

4) Irregular Lot Setbacks: On lots bounded by two intersecting streets, irregular lot property line or of other than generally rectangular shape the rear yard setback shall average a distance of 30 feet. This setback shall be determined by extending the sidewalks of the structure to the rear property line and calculating the area footage within the area between the rear walls, the side extensions of the building, and the rear property line(s). The figure will then be divided by the distance between the extended sidewalks. This will give the average depth of the area encroached and this area must be equal to or greater than 30 feet. In no case shall the structure be located less than 12 feet from any property line.

5) Lot Area: 12,000 square feet per dwelling

6) Lot Frontage: 100 feet

7) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4.4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for two standard passenger vehicles in a area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color, nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: See Section 4.5 of this ordinance.

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and uncovered surface that contains living material. All land areas which are to remain unsorted and not covered by buildings shall be brought to finish grade and scattered
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G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family
residence or two family residence shall be constructed that does not provide space for fully covered and fully
enclosed parking for 2 standard passenger vehicles per unit in an area designated as a garage, attached or
integral to the residence and compatible with said residence in construction, materials and color; nor shall
any existing single family residence or two family residence be altered in such a way as to incorporate
existing garage space into living area unless said alteration shall provide an equivalent area of fully
covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in
construction, materials and color.

H) Landscaping and Screening Requirements: Single family and two family dwellings shall maintain a minimum of
25% of lot area (exclusive of right-of-ways) as a permanently covered, unobstructed area that contains living
material. All land areas which are to remain unobscured and covered by buildings shall be brought to final
grade and seeded except those areas receiving other landscaping materials. (For additional requirements
see Section 4-4 of this ordinance.)

J) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

K) Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles,
wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof.
Windows, doors and towers shall be of wood or metal and glass.

1) Roofs shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 1/2" thickness measured at butt
   c) Slate
   d) Clay Tile
   e) Concrete Tile
   f) Other Tile
      1) Synthetic slate or similar color range of slate, clay or concrete tile.
      2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:
         A) Chestnut
         B) Driftwood
         C) Mahogany
         D) Terra Cotta
         E) Granite
         F) Charcoal
         G) Cedar
      3) Other tiles or roofing materials as specifically authorized by resolution of the Plan
         Commission and ordinance of the City Council provided that all building code
         requirements are met.

L) Laminated Composition Shingles:
   1) Architectural shingle with shadow lines and relief imitating a wood shingle or
      wood shake.
   2) Required to be installed with sheet metal valleys and flashings.
   3) Required to be installed with perforated ridge shingles.
   4) Have the appearance and color range of natural weathered cedar shingles or
      weathered cedar shakes.
   5) Must use a minimum of five (9) color blend granules.
   6) Required to be placed on solid deckings. All existing roofing materials shall be
      removed down to the sheathing and/or 1/4".
   7) Minimum thickness 3/16" measured at exposed butt end of overlap
      creating the shadow line or individual thickness of the ply of roof material.
   8) Required to be U.S. Class A fire rated material.
   9) Required to be a minimum of 530 lb./square.

M) Rubberized Asphalt Shingle
   1) Architectural shingle with shadow lines and relief imitating a wood shingle or
      wood shake.
   2) Required to be installed with sheet metal valleys and flashings.
   3) Required to be installed with perforated ridge shingles.
   4) Have the appearance and color range of natural weathered cedar shingles or
      weathered cedar shakes.
   5) Must use a minimum of five (9) color blend granules.

7) Minimum thickness 3/16" measured at exposed butt end of overlap
   creating the shadow line or individual thickness of the ply of roof material.

8) Required to be U.S. Class A fire rated material.

2) Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted
   herein, for other roofs, may also be covered with metal, built-up or felt, or single ply elastomeric
   membranes:

   a) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor
      area, excluding any attached garage or porch, and the longest exterior dimension of the body shall
      be not more than 2 1/2 times the shortest exterior dimension.
   b) The exterior siding must be of brick, stone, stucco, wood shingles, wood shakes, wood
      siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry
      material shall extend below the top of the exterior foundation or exterior wall and the joint
      shall be finished in accordance with the city building codes.
   c) All residential design manufactured homes shall be installed in accordance with the recommended
      installation procedures of the manufacturer and city building codes. The running gear, tongue,
      sills, and wheels shall be removed from the unit at the time of installation. A continuous,
      permanent masonry or concrete foundation, approved except for required ventilation and access,
      shall be installed under the perimeter of the home.
   d) The home shall have an attached two car garage.
   e) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-13 AG (AGRICULTURAL DISTRICT)
A) General Purpose and Description: The AG District is intended to conserve farm land for agricultural
purposes and to serve as a "holding" zone to prevent the premature development of large farm holdings and
of recently annexed land for which the most appropriate future use has not yet been determined. In order to
promote these purposes, the regulations for this district allow a very limited range of uses so that the present
development character of the land may be maintained and future development options preserved pending
comprehensive study and analysis of the areas.

B) Principal Uses: Uses in District AG no building, structure, land or premises shall be used or transferred
to another use without the compensation as required as herein. The compensation offered, moved, or altered except for one or more of the following uses:

1) AGRICULTURAL USES, including the raising of field crops and fruit orchards, grazing and dairying of
   livestock, horticulture, dairy farming, forestry, animal husbandry, and similar farming activities.
2) Railroads and public or quasi-public utilities including substations.
3) Noncommercial nursery.
4) Single family dwelling located on a lot of 40 acres or more.
5) Group Homes as defined herein.
6) Oil and gas wells.
7) Public or private park, golf course (except miniature golf and driving ranges), or similar natural
   recreation areas.

C) Accessory Uses: (See Section 4-11 of this ordinance.)

D) Special Uses: (See Section 4-13 of this ordinance.)

E) Temporary Uses:

F) Bulk Regulations:

1) Front Setback: 50 feet
2) Side Setback: 50 feet
3) Rear Setback: 50 feet
4) Lot Area: 40 acres per dwelling
5) Lot Frontage: 330 feet
6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 4-4 of this ordinance. No single family
residence shall be constructed that does not provide space for fully covered and fully enclosed parking for
2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence
and compatible with said residence in construction, materials and color; nor shall any existing single family
residence be altered in such a way as to incorporate existing garage space into living area unless said
alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage
attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-4 of this ordinance.)

CONTINUOUS ON NEXT PAGE
Landscaping and Screening Requirements: The agricultural district is exempt from landscaping and screening requirements.

Sewage Disposal: No permit for a dwelling or other building or land use which will produce impure wastewater shall be issued until a septic tank permit has been approved by the Governing Body after recommendation from the County Health Department or connection to sanitary sewer system.

Type of Construction: Exterior walls of all dwellings shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and doors shall be of wood or metal and glass.

1) Roof shall be covered with:
   a) Wood Shingles: Number 1 or 2 grade
   b) Wood Shakes:
      1) Number 1 or 2 grade
      2) Minimum 3/16 inch thickness measured at butt
   c) Slate
   d) Clay Tile
   e) Corrugated Tile
   f) Other Tile

2) A bonded stone-coated finish, steel roofing tile shall be limited to the following colors:
   a) Chestnut
   b) Driftwood
   c) Mahogany
   d) Terra Cotta
   e) Granite
   f) Charcoal
   g) Cedar

3) Other tile or roofing materials as specifically authorized by resolution of the Plan Commission and ordinances of the City Council provided that all building code requirements are met.

Laminated Composition Shingles:
1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
2) Required to be installed with sheet metal valleys and flashings.
3) Required to be installed with preformed ridge shingles.
4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
5) Must use a minimum of 5 color blend granules.
6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the strainers and/or 1/4's.
7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
8) Required to be U.L. Class A fire rated material.
9) Required to be a minimum of 300 lbs./square.

Rubberized Asphalt Shingles
1) Architectural shingle with shadow lines and or relief imitating a wood shingle or wood shake.
2) Required to be installed with sheet metal valleys and flashings.
3) Required to be installed with preformed ridge shingles.
4) Have the appearance and color range of natural weathered cedar shingles or weathered cedar shakes.
5) Must use a minimum of 5 color blend granules.
6) Required to be placed on solid decking. All existing roofing materials shall be removed down to the strainers and/or 1/4's.
7) Minimum thickness 3/16 inch measured at exposed butt end of overlap creating the shadow line or individual thickness of the ply of roof material.
8) Required to be U.L. Class A fire rated material.

Flat roofs or roofs with a pitch of less than 3 inches per foot, in addition to the materials permitted herein, for other roofs, may also be covered with metal, built-up asphalt, or single ply elastomeric membranes.

Type of Construction: Residential Design Manufacured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and doors shall be of wood or metal and glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, including any attached garage or porch, and the longest exterior dimension of the home shall not be more than 2/3 times the shortest exterior dimension.
2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-asphalt siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the building codes.
3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building codes. The running gear, tongue, seat, and wheels shall be removed from the unit at the time of installation. A continuous, permanent masonry or concrete foundation, unattached except for required ventilation and access, shall be installed under the perimeter of the home.
4) The home shall have air attached car garage.
5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-16 RP-AS (PLANNED rural density single FAMILY RESIDENTIAL DISTRICT)

A) General Purpose and Description: Property zoned and developed as RP-AS Planned Rural Density Single Family Residential shall be in provided for single family detached dwellings and other structures which are compatible with low density residential character of this district. Property zoned RP-AS should be more trades that correspond to the rural density residential land use category identified in the Master Development Plan.

B) Principal Permitted Uses: In District RP-AS no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:
1) Single Family Residential Dwellings (detached)
2) Group Homes as defined herein.
3) Residential or public or quasi-public utilities including subdivisions.
4) Noncommercial nurseries and gardens.
5) Oil and gas wells.

C) Accessory Uses: (See Section 4-1 of this ordinance.)

D) Special Uses: (See Section 4-3 of this ordinance.)

E) Temporary Uses: The following use shall be permitted as a temporary use in the RP-AS District in accordance with Section 4-4 of this ordinance.
1) Building or trailer for storage of materials and/or equipment necessary for construction authorized by a valid building permit, provided the location of the trailer or building has been approved by the Director of Planning and Development.

F) Bulk Regulations:
1) Front Setback: 150 feet
2) Side Setback: 35 feet
3) Rear Setback: 100 feet
4) Lot Area: 6 acres per dwelling (max)
5) Lot Frontage: 150 feet
6) Height Limit: 3 1/2 stories

G) Parking Requirements: Refer to individual zoning group in Section 4-4 of this ordinance. No single family residential that does not provide spaces for fully covered and fully enclosed parking for 2 standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color, nor shall any existing single family residence be altered in such way as to incorporate existing garage space into living areas unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 4-5 of this ordinance.)

I) Landscaping and Screening Requirements: Single family dwellings shall maintain a minimum of 25% of lot area (exclusive of right-of-way) as a permeable and permeable surface that contains living material. All landscape areas which are to be retained unpaved and not covered by buildings shall be brought to finish grade and seeded except those areas receiving other landscaping materials. (For additional requirements see Section 4-6 of this ordinance.)

J) Sewage Disposal: Connection to sanitary sewer system with treatment plant or an acceptable septic tank system approved by Johnson County is required for development in the district.
<table>
<thead>
<tr>
<th>Proposed Plan Code</th>
<th>Type of Use</th>
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# Building Density
- The maximum density for single-family residential units is 1 unit per 2 acres.

## Minimum Lot Size
- The minimum lot size required for single-family homes is 0.25 acres.

### Zoning Regulations
- The zoning regulations for single-family homes require a minimum front yard width of 20 feet.

**Note:** Additional details and requirements may be found in the Planning and Zoning Code. The specific regulations for each area and municipality should be consulted for accurate and complete information.
CONTINUED FROM PRECEDING PAGE

6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 6-4 of this ordinance. No single family residence or two family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for two standard passenger vehicles per unit in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color. Nor shall any existing single family residence or two family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials, and color.

i) Signs: (See Section 6-5 of this ordinance.)

J) Landscaping and Screening Requirements: Single family and two family dwellings shall maintain a minimum of 25% of lot area (exclusive of sight-ways) as permeable and uncovered surfaces that contains living material. All land areas which are to remain uncovered and not covered by buildings shall be brought to 25% grade and sodded except these areas receiving other landscaping materials. (For additional requirements see Section 6-4 of this ordinance.)

K) Sewage Disposal: Connection to a sanitary sewer system with treatment plant is required.

L) Type of Construction - Residential Design Manufactured Homes: Exterior walls of all residential design manufactured homes shall be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Windows, doors and louvers shall be of wood or metal or glass.

1) All residential design manufactured homes shall have a minimum of 1200 square feet of main floor area, excluding any attached garage or porch, and the longest exterior dimension of the body shall be not more than 2 1/2 times the shortest exterior dimension.
2) The exterior siding must be of brick, stone, wood, stucco, wood shingles, wood shakes, wood siding, wood paneling, wood fiber product paneling, tile or any combination thereof. Non-masonry siding material shall extend below the top of the exterior foundation or curtain wall and the joint shall be flashed in accordance with the city building code.
3) All residential design manufactured homes shall be installed in accordance with the recommended installation procedures of the manufacturer and city building code. The running gear, tongue, eaves, and walls shall be removed from the unit at the time of installation. A continuous, permanent foundation or concrete foundation, understand except for required ventilation and access, shall be installed under the perimeter of the home.
4) The home shall have an attached two car garage.
5) Roofing shall be the same as for single family dwellings as stated in subsection K.

3-13 AG (AGRICULTURAL DISTRICT)

A) General Purpose and Description: The AG District is intended to conserve farm land for agricultural purposes and to serve as a "holding" zone to prevent the premature development of large land acreages and of recently annexed land for which the most appropriate future use has not yet been determined. In order to promote these purposes, the regulations for this district allow a very limited range of uses so that the present development character of the land may be maintained and future development options preserved pending comprehensive study and analysis of the area.

B) Prerequisite Permits: Use in this District AG no building, structure, land or premises shall be used or hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses.
1) Agricultural use, including the raising of field crops and fruit orchards, grazing and stocking of livestock, dairying, horticulture, dairy farming, forestry, animal husbandry, and similar farming activities.
2) Roadways and public or quasi-public utilities including substations.
3) Noncommercial nursery.
4) Single family dwelings located on a lot of 40 acres or more.
5) Group Homes as defined herein.
6) Oil and gas wells.
7) Public or private park, golf course (except miniature golf and driving ranges), or similar natural recreation areas.

C) Accessory Uses: (See Section 6-1 of this ordinance.)

D) Special Uses: (See Section 6-3 of this ordinance.)

E) Temporary Uses.

F) Bulk Regulations:

1) Front Setback: 50 feet
2) Side Setback: 50 feet
3) Rear Setback: 50 feet
4) Lot Area: 40 acres per dwelling
5) Lot Frontage: 330 feet
6) Height Limit: 2 1/2 stories

G) Parking Requirements: Refer to individual parking group in Section 6-4 of this ordinance. No single family residence shall be constructed that does not provide space for fully covered and fully enclosed parking for two standard passenger vehicles in an area designated as a garage, attached or integral to the residence and compatible with said residence in construction, materials and color. Nor shall any existing single family residence be altered in such a way as to incorporate existing garage space into living area unless said alteration shall provide an equivalent area of fully covered, fully enclosed parking in the form of a garage attached to or integral with said residence and compatible in construction, materials and color.

H) Signs: (See Section 6-5 of this ordinance.)
Section 2. Existing Section Repealed. The existing Sections 3-1, 3-2, 3-3, 3-4, 3-13, and 3-16 of the Leawood Development Ordinance are hereby repealed. (Prior law: Ord. Nos. 1932 & 1947)

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the _______ day of ________, 2000.
Approved by the Mayor the _______ day of ________, 2000.

(S.E.A. L.)

Peggy J. Dunh
Mayor

Attest:

Martha Heiser
City Clerk

(Approved as to form:

Patricia A. Bennett
City Attorney)
ORDINANCE NO. 1874

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF LANDS OR INTERESTS THEREIN BY CONDEMNATION FOR THE STORMWATER IMPROVEMENT PROJECT LOCATED AT 84TH STREET AND STATE LINE ROAD IN LEAWOOD, JOHNSON COUNTY, KANSAS. [SMAC PROJECT # DB-04-015]

WHEREAS, the Governing Body of the City of Leawood, Kansas did by Resolution No. 1554 declare the necessity for, and authorize a survey and description of lands or interests therein to be condemned by the City for the following:

Improvement along a Dykes Branch Tributary from State Line Road between 83rd Terrace and 84th Street to the confluence with the main channel of Dykes Branch between Sagamore and Overbrook Road, including drainage, storm sewers, surfacing and other necessary appurtenances.

WHEREAS, said survey and description was prepared, filed with the City Clerk and is maintained at the Leawood City Hall.

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

SECTION ONE: It is hereby authorized and provided that the lands or interests therein hereafter described be acquired for the following improvement:

Improvement along a Dykes Branch Tributary from State Line Road between 83rd Terrace and 84th Street to the confluence with the main channel of Dykes Branch between Sagamore and Overbrook Road, including drainage, storm sewers, surfacing and other necessary appurtenances.

Tract No.: 1
Owner: Lynn A. Sheek and Kimberly L. Sheek
Address: 2007 W. 84th Street
Leawood, KS 66206

Situs: 2007 W. 84th Street
Leawood, KS 66206
Property Description: That part of Lots 4 and 9 lying Westerly of the following line: Beginning at a point on the Northerly line of Lot 9 which is 24 feet, as measured on said Northerly line, Southeast of the Northwest corner running thence Southwesterly in a straight line to a point on the Southerly line of said Lot 4 which is 10 feet West, as measured on said Southerly line, of the Southeast corner of said Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision in the City of Leawood, Kansas, Johnson County, Kansas, according to the recorded plat therof.

Mortgage Holder: In Volume 4306, Page 150, to Commerce Mortgage Corporation, 1000 Walnut, Suite # 200, Kansas City, MO 64106

Easement Holders: A 30-foot front building restriction on Lot 4, and a 35-foot front building line restriction on that part of the premises in Lot 9, as shown on the recorded plat of BRIGHTWATER ADDITION, in Plat Book 24, Page 13.


Homes Association Declaration recorded in Misc. Book 69, Page 568.


Easement to Kansas City Power & Light Company recorded in Misc. Book 123, Page 146.

Easement to Kansas City Power & Light Company recorded in Misc. Book 82, Page 80.


Sewer rights-of-way provided in the Sanitary Sewer Connection Agreement recorded in Misc. Book 123, Page 38.

Restrictions and easements recorded in Misc. Book 123, Page 32.
Easement to Kansas City Power & Light Co. recorded in Volume 1116, Page 389.

TEMPORARY CONSTRUCTION EASEMENT
All those parts of Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, described as follows:

Commencing at the most Northerly corner of said Lot 4; thence South 27°44'50'' East, along the Northeast line of said Lot 4, a distance of 29.33 feet to the True Point of Beginning; thence continuing South 27°44'50'' East, along the Northeast line of said Lot 4, a distance of 12.06 feet; thence South 52°21'32'' West a distance of 68.32 feet; thence South 04°09'15'' West a distance of 12.80 feet; thence South 46°25'50'' West a distance of 11.34 feet; thence North 06°54'44'' East a distance of 15.23 feet; thence North 24°25'33'' East a distance of 19.55 feet; thence North 49°59'26'' East a distance of 62.30 feet to the True Point of Beginning, containing 827 square feet, more or less.

And

Commencing at the Southwest corner of said Lot 4; thence South 81°49'50'' East, along the South line of said Lot 4, a distance of 20.57 feet to the True Point of Beginning; thence continuing South 81°49'50'' East, along the South line of said Lot 4, a distance of 14.51 feet; thence North 19°00'43'' East a distance of 38.29 feet; thence North 04°09'15'' East a distance of 39.16 feet; thence North 43°26'02'' West a distance of 8.48 feet to a point on the West line of said Lot 4; thence South 30°02'50'' West, along the West line of said Lot 4, a distance of 6.01 feet to a point that is North 30°02'50'' East a distance of 82.28 feet from the Southwest corner of said Lot 4; thence South 06°54'44'' West a distance of 41.24 feet; thence South 25°32'44'' West a distance of 36.81 feet to the True Point of Beginning, containing 868 square feet, more or less.

PERMANENT RIGHT-OF-WAY GRANT
All that part of Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, described as follows:

Commencing at the most Northerly corner of said Lot 4; thence South 46°21'35'' West, along the Northwest line of said Lot 4, a distance of 110.62 feet to the West line of said Lot 4; thence South 14°57'43'' East, along the West line of said Lot 4, a distance of 22.37 feet to the True Point of Beginning; thence continuing South 14°57'43'' East, along the West line of said Lot 4, a distance of 16.00 feet to an angle point in the West line of said Lot 4; thence South 83°43'38'' East, along the West line of said Lot 4, a distance of 24.24 feet; thence North 06°54'44'' East a distance of 19.44
feet; thence South 87°46'02" West a distance of 30.59 feet to the True Point of Beginning, containing 474 square feet, more or less.

PERMANENT DRAINAGE EASEMENT

All that part of Lot 4, Block 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, described as follows:

Beginning at the most Northerly corner of said Lot 4; thence South 46°21'35" West, along the Northwest line of said Lot 4, a distance of 110.62 feet to the West line of said Lot 4; thence South 14°57'43" East, along the West line of said Lot 4, a distance of 38.37 feet; thence South 83°43'38" East, along the West line of said Lot 4, a distance of 24.24 feet; thence North 06°54'44" East a distance of 32.49 feet; thence North 24°25'33" East a distance of 19.55 feet; thence North 49°59'26" East a distance of 62.30 feet to a point on the Northeast line of said Lot 4; thence North 27°44'50" West, along the Northeast line of said Lot 4, a distance of 29.33 feet to the Point of Beginning, containing 3,662 square feet, more or less.

and

Beginning at the Southwest corner of said Lot 4; thence North 30°02'50" East, along the West line of said Lot 4, a distance of 82.28 feet; thence South 06°54'44" West a distance of 41.24 feet; thence South 25°32'44" West a distance of 36.81 feet to a point on the South line of said Lot 4; thence North 81°49'50" West, along the South line of said Lot 4, a distance of 20.57 feet to the Point of Beginning, containing 1,028 square feet, more or less.

SECTION TWO: It is further authorized and provided that, as soon as practicable after the passage of this ordinance, action be initiated to exercise the power of eminent domain in accordance with K.S.A. 26-501 et seq., the Eminent Domain Procedure Act, to condemn all lands and interests therein before described.

SECTION THREE: This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

APPROVED by the Governing Body this 16th day of October, 2000.

SIGNED by the Mayor this 16th day of October, 2000.

Peggy Dunn, Mayor
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any)

for ___ consecutive week(s), as follows:

ORDINANCE NO. 1874--10/17/00

ORDINANCE NO. 1874

First published in The Legal Record, Tuesday, October 17, 2000.

ORDINANCE NO. 1874

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF LANDS OR INTERESTS THEREIN BY CONDEMNATION FOR THE STORMWATER IMPROVEMENT PROJECT LOCATED AT 84TH STREET AND STATE LINE ROAD IN LEAWOOD, JOHNSON COUNTY, KANSAS, [MAC PROJECT # D-04-015].

WHEREAS, the Governing Body of the City of Leawood, Kansas did by Resolution No. 1554 declare the necessity for, and authorize a survey and description of lands or interests therein to be condemned by the City for the following:

Improvement along a Dykes Branch Tributary from State Line Road between 83rd Terrace and 84th Street to the confluence with the main channel of Dykes Branch between Sagamore and Overbrook Road, including drainage, storm sewers, surfacing and other necessary appurtenances.

WHEREAS, said survey and description was prepared, filed with the City Clerk and is maintained at the Leawood City Hall.

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

SECTION ONE: It is hereby authorized and provided that the lands or interests therein hereafter described be acquired for the following improvement:

Improvement along a Dykes Branch Tributary from State Line Road between 83rd Terrace and 84th Street to the confluence with the main channel of Dykes Branch between Sagamore and Overbrook Road, including drainage, storm sewers, surfacing and other necessary appurtenances.

Tract No.: 1
Owner: Lynn A. Sheek and Kimberly L. Sheek
Address: 2007 W. 84th Street
Leawood, KS 66206
Situs: 2007 W. 84th Street
Leawood, KS 66206

Property Description: That part of Lots 4 and 9 lying Westerly of the following line: Beginning at a point on the Northwesterly line of Lot 9 which is 24 feet, as measured on said Northwesterly line, Southeast of the Northeast corner running thence Southwesterly in a straight line to a point on the Southwesterly line of said Lot 4 which is 10 feet West, as measured on said Southwesterly line, of the Southeast corner of said Lot 4, Book 7, BRIGHTWATER ADDITION, a subdivision in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof.

Mortgage Holders: In Volume 4306, Page 150, to Commerce Mortgage Corporation, 1000 Walnut, Suite # 200, Kansas City, MO 64106

Easement Holders: A 30-foot front building restriction on Lot 4, and a 35-foot front building line restriction on that part of the premises in Lot 9, as shown on the recorded plat of BRIGHTWATER ADDITION, in Plat Book 24, Page 13.


Homes Association Declaration recorded in Misc. Book 69, Page 568.


Easement to Kansas City Power & Light Company recorded in Misc. Book 123, Page 146.

Easement to Kansas City Power & Light Company recorded in Misc. Book 82, Page 80.

Public Utility easement recorded in Misc. Book 123, Page 32.

Sewer rights-of-way provided in the Sanitary Sewer Connection Agreement recorded in Misc. Book 123, Page 38.

Restrictions and easements recorded in Misc. Book 123, Page 32.

Easement to Kansas City Power & Light Co. recorded in Volume 1116, Page 389.

TEMPORARY CONSTRUCTION EASEMENT

All those parts of Lot 4, Book 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, as follows:

Beginning at the most Northeasterly corner of said Lot 4, thence South 29°14'50" East, along the Northeast line of said Lot 4, a distance of 29.33 feet to the True Point of Beginning; thence continuing South 29°14'50" East, along the Northeast line of said Lot 4, a distance of 12.06 feet; thence North 32°21'33" East a distance of 48.32 feet; thence North 04°09'15" West a distance of 12.80 feet; thence South 46°25'50" West a distance of 11.34 feet; thence North 06°54'44" East a distance of 15.23 feet; thence North 24°21'53" East a distance of 19.55 feet; thence North 49°59'26" East a distance of 62.30 feet to the True Point of Beginning, containing 827 square feet, more or less.

And

Beginning at the Southwest corner of said Lot 4; thence South 81°49'20" East, along the South line of said Lot 4, a distance of 20.57 feet to the True Point of Beginning; thence continuing South 81°49'20" East, along the South line of said Lot 4, a distance of 14.51 feet; thence North 19°00'45" East a distance of 38.29 feet; thence North 04°09'15" East a distance of 39.14 feet; thence North 49°59'26" East a distance of 8.48 feet to a point on the West line of said Lot 4; thence South 30°02'50" West, along the West line of said Lot 4, a distance of 6.01 feet to a point that is North 30°02'50" East a distance of 82.28 feet from the Southwest corner of said Lot 4; thence South 06°54'44" West a distance of 41.24 feet; thence South 25°02'44" West a distance of 36.81 feet to the True Point of Beginning, containing 646 square feet, more or less.

PERMANENT RIGHT-OF-WAY GRANT

All that part of Lot 4, Book 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, as follows:

Beginning at the most Northeasterly corner of said Lot 4; thence South 45°21'33" West, along the Northwest line of said Lot 4, a distance of 110.62 feet to the West line of said Lot 4; thence South 14°57'43" East, along the West line of said Lot 4, a distance of 22.37 feet to the True Point of Beginning; thence continuing South 14°57'43" East, along the West line of said Lot 4, a distance of 36.37 feet; thence South 83°43'38" East, along the West line of said Lot 4, a distance of 24.24 feet; thence North 06°54'44" East a distance of 32.49 feet; thence North 24°21'53" East a distance of 19.55 feet; thence North 45°59'26" East a distance of 63.30 feet to a point on the Northeast line of said Lot 4; thence North 29°44'50" West, along the Northeast line of said Lot 4, a distance of 29.33 feet to the True Point of Beginning, containing 3.662 square feet, more or less.

PERMANENT DRAINAGE EASEMENT

All that part of Lot 4, Book 7, BRIGHTWATER ADDITION, a subdivision of land in the City of Leawood, Johnson County, Kansas, according to the recorded plat thereof, as follows:

Beginning at the most Northeasterly corner of said Lot 4; thence South 40°51'35" West, along the West line of said Lot 4, a distance of 110.62 feet to the West line of said Lot 4; thence South 14°57'43" East, along the West line of said Lot 4, a distance of 22.37 feet to the True Point of Beginning; thence continuing South 14°57'43" East, along the West line of said Lot 4, a distance of 36.37 feet; thence South 83°43'38" East, along the West line of said Lot 4, a distance of 24.24 feet; thence North 06°54'44" East a distance of 32.49 feet; thence North 24°21'53" East a distance of 19.55 feet; thence North 45°59'26" East a distance of 63.30 feet to a point on the Northeast line of said Lot 4; thence North 29°44'50" West, along the Northeast line of said Lot 4, a distance of 29.33 feet to the True Point of Beginning, containing 3.662 square feet, more or less.

SECTION TWO: It is further authorized and provided that, as soon as practicable after the passage of this ordinance, action be initiated to exercise the power of eminent domain in accordance with K.S.A. 26-501 et seq, the Eminent Domain Procedure Act, to condemn all lands and interests therein hereinafter described.

SECTION THREE: This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

APPROVED by the Governing Body this 16th day of October, 2000.

SIGNED by the Mayor this 16th day of October, 2000.

Peggy Dunn, Mayor

[SEAL]

ATTEST:

[SEAL]

APPROVED AS TO FORM:

/s/ Patricia A. Bennett
Patricia A. Bennett, City Attorney
ORDINANCE NO. 1873

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING ROADS WITHIN THE NORMANDY PLACE SUBDIVISION (IMPROVEMENT DISTRICT NORMANDY PLACE, PROJECT 164).

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

Improvement, Reimprovement, Excavation and repair of the damaged sections of all roads within the Normandy Place Subdivision and certain storm water drainage improvements with said subdivision; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $315,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $315,000.00 and such property, within the improvement district shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

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

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.
Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKE EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

Peggy Dunn Mayor

Martha Heizer City Clerk

APPROVED FOR FORM: Patricia A. Bennett, City Attorney
ASSESSMENT ROLL
Normandy Place Road Improvement
Project 164

Assessment Factor:
Actual Cost of Improvement.
Equal shares per lot.

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ORDINANCE NO. 1873

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING ROADS WITHIN THE NORMANDY PLACE SUBDIVISION (IMPROVEMENT DISTRICT NORMANDY PLACE, PROJECT 164).

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

Improvement, Reimprovement, Excavation and repair of the damaged sections of all roads within the Normandy Place Subdivision and certain storm water drainage improvements with said subdivision; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $315,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $315,000.00 and such property, within the improvement district shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

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

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.
Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKE EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

(SEAL)

Peggy Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM: Patricia A. Bennett
ASSESSMENT ROLL

Normandy Place Road Improvement
Project 164

Assessment Factor:
Actual Cost of Improvement.
Equal shares per lot.

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CERTIFICATE

State of Kansas
County of Johnson
City of Leawood

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the attached is a true and correct copy of Ordinance No. 1873 with associated 4-page road improvement assessment roll as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of said city this 22nd day of August, 2000.

Martha Heizer
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:

John G. Lewis, of lawful age, being first duly sworn, deposes and says that he is Publisher of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).

That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by

the following case number, if any) for consecutive week(s), as follows:

ORDINANCE NO. 1873--8/22/00

Publisher

Subscribed and sworn to before me on this date:
AUGUST 23, 2000

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

AN ORDINANCE LEVying ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING ROADS WITHIN THE NORMANDY PLACE SUBDIVISION IMPROVEMENT DISTRICT NORMANDY PLACE, PROJECT 164.

WHEREAS, pursuant to proceedings regularly held according to law, contracts have been let for the following improvement in the City of Leawood:

Improvement, Reinforcement, Excavation and repair of the damaged sections of all roads within the Normandy Place Subdivision and certain storm water drainage improvements with said subdivision; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $315,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $315,000.00 and each property within the improvement district shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

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

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk’s Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued on or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKE EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 31st day of August, 2000.

Approved by the Mayor this 31st day of August, 2000.

(S E A L)

Peggy Dunn
Mayor

[Signature]

Martha Heizer
City Clerk

APPROVED FOR FILING

City Attorney

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PUBLIC HEARING
First published in The Legal Record, Tuesday, August 22, 2000.

NOTICE OF PUBLIC HEARING BEFORE
THE CITY OF MISSION
PLANNING COMMISSION

YOU ARE HEREBY NOTIFIED THAT Application 06-17 has been filed in the office of the City Clerk by McCullough Van Sickle & Perry, agent for KFC Restaurant, Mission, Kansas, for a Special Use Permit in accordance with zoning regulations provided under the Zoning Ordinance of the City of Mission, Kansas.

LEGAL DESCRIPTION
A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 13, RANGE 25, AND ALL OF LOTS 6 AND 7, BLOCK 2, WEST MISSION, A SUBDIVISION OF LAND IN MISSION, JOHNSON COUNTY, KANSAS, ACCORDING TO THE RECORD OF PLAT THEREOF BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 7, THENCE S 90° 00' 00" W, ALONG THE WEST LINE OF SAID LOT 7 A DISTANCE OF 1,660 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF JOHNSON DRIVE SAID POINT, POINT ALSO BEING THE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED, THENCE E 0° 00' 00" N ALONG SAID RIGHT-OF-WAY LINE TO A POINT ON THE EAST LINE OF SAID LOT 8, A DISTANCE OF 100 FEET, THENCE S 90° 00' 00" E ALONG THE EAST LINE OF SAID LOT 8 AND THE PROLONATION THEREOF A DISTANCE OF 196.60 FEET, THENCE N 90° 00' 00" W, A DISTANCE OF 196.60 FEET TO THE POINT OF BEGINNING.

There will be a Planning Commission meeting to consider the application on Monday, September 11, 2000, at 7:30 PM at the Mission City Hall, 6090 Woodson, Mission, Kansas, at which time all interested persons will be heard.

The application is on file in the City Clerk and Public Works Offices.

Barbara J. Sharp
Planning Commission Secretary
City of Mission, Kansas

PUBLIC HEARING
First published in The Legal Record, Tuesday, August 22, 2000.

K.S.A. 12-2007
Notice of Public Hearing

LENEXA TO HOLD CABLE TELEVISION FRANCHISE PUBLIC HEARING ON SEPTEMBER 5, 2000

The Lenexa City Council will hold a public hearing on Tuesday, September 5th at 7:30 p.m. in the Council Chambers of Lenexa City Hall, 12350 W. 87th Street Parkway, to receive public comments regarding a proposed cable television franchise with Digital Access Corporation of Kansas.

For further information, please call
Eric Arner at 913-477-7623.
ORDINANCE NO. 1872

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING COLLEGE BOULEVARD FROM THOMAHAWK CREEK PARKWAY TO EL MONTE STREET (IMPROVEMENT DISTRICT COLLEGE BOULEVARD, PROJECT 108).

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

Improving College Boulevard from Thomahawk Creek Parkway to El Monte Street in the City of Leawood including concrete curb and gutter, asphalt pavement, storm drainage, sidewalks, street lighting, and such other appurtenances as are required pursuant to the final plans approved by the City of Leawood; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $491,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $476,000.00 and such property, within the improvement district abutting the proposed improvement shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment;

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

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.
Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, by the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKE EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

Peggy Dunn
Mayor

Martha Heizer
City Clerk

APPROVED FOR FORM: Patricia A. Bennett, City Attorney
ORDINANCE NO. 1872

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING COLLEGE BOULEVARD FROM THOMAHAWK CREEK PARKWAY TO EL MONTE STREET (IMPROVEMENT DISTRICT COLLEGE BOULEVARD, PROJECT 108).

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(S E A L)

Peggy Dunn
Mayor

Attest:

Martha Heizer
City Clerk

APPROVED FOR FORM: Patricia A. Bennett, City Attorney
ASSESSMENT ROLL

Improvement District
College Boulevard
Project 108

Assessment Factor:
Actual Cost of Improvement.
Equal Shares per lot.

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CERTIFICATE

State of Kansas
County of Johnson
City of Leawood

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the attached is a true and correct copy of Ordinance No. 1872 with associated 6-page improvement district assessment roll as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the seal of said city this 22nd day of August, 2000.

Martha Heizer
**ASSESSMENT ROLL**

Improvement District  
College Boulevard  
Project 108

Assessment Factor:  
Actual Cost of Improvement.  
Equal Shares per lot.

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Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:
John G. Lewis, of lawful age, being first duly sworn, deposes and says that he is Publisher of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class). That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for ______ consecutive week(s), as follows:
ORDINANCE NO. 1872--8/22/00

Publisher

Subscribed and sworn to before me on this date:
AUGUST 23, 2000

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


$137.05
ORDINANCE NO. 1972
First published in The Legal Record, Tuesday, August 22, 2000.

ORDINANCE NO. 1972

AN ORDINANCE LEVYING ASSESSMENTS ON LOTS, PIECES, AND PARCELS OF GROUND IN THE CITY OF LEAWOOD, KANSAS, FOR THE PURPOSE OF PAYING FOR THE COST OF IMPROVING COLLEGE BOULEVARD FROM THOMAHAWK CREEK PARKWAY TO EL MONTE STREET (IMPROVEMENT DISTRICT COLLEGE BOULEVARD, PROJECT 308).

WHEREAS, pursuant to proceedings regularly had according to law, contracts have been let for the following improvement in the City of Leawood:

- Improving College Boulevard from Thomahawk Creek Parkway to El Monte Street in the City of Leawood including concrete curb and gutter, asphalt pavement, storm drainage, sidewalks, street lighting, and such other appurtenances as are required pursuant to the final plans approved by the City of Leawood; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to the City is $491,000.00; and

WHEREAS, said Governing Body has determined that the total cost of such improvement to be assessed against the improvement district is $476,000.00 and such property, within the improvement district abutting the proposed improvement shall be assessed for actual cost based on an equal share per lot within the benefit district; and

WHEREAS, said Governing Body has, after due notice, met and determined the amount of such special assessment.

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

Section 1. Special assessments to pay the cost of said improvement, with accrued interest, be and the same are hereby levied against the several lots, pieces and parcels of land liable for special assessments for said improvement as set out on assessment roll on file in the City Clerk's Office.

Section 2. Such assessments with accrued interest are levied concurrently with general property taxes and shall be payable in annual installments. The first installment shall be payable at the time of the first payment of general property taxes following the adopting and publication of this ordinance unless this ordinance is adopted and certified too late to permit collection at such time.

Section 3. All assessments shall bear interest at a rate not to exceed the maximum rate set by Kansas law.

Section 4. The owner of any property so assessed may at any time prior to 4:00 p.m., Monday, September 25, 2000, pay the whole of the assessment against any lot or parcel of ground, without interest, to the City Treasurer.

Section 5. Assessments not paid prior to 4:00 p.m., Monday, September 25, 2000, shall be certified, together with the interest accrued or to accrue, to the City Clerk to the County Clerk, and collected in the same manner as other taxes.

TAKING EFFECT.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Governing Body this 21st day of August, 2000.

Approved by the Mayor this 21st day of August, 2000.

(SEAL)

Peggy Snapp
Mayor

Attorn:

Martina Heiser
City Clerk

APPROVED FOR FORM:

Patricia A. Bennett
City Attorney

CONTINUED ON NEXT PAGE
Economics Put Air Service For Smaller Kansas Cities In Doubt, Says FAA

CONTINUED FROM PAGE 1

of Great Lakes Aviation, a regional airline that offers a flight between Salina and Denver.

"We expected a cost increase," Voss said, "but the size of it surprised everyone."

Many smaller carriers that serve smaller cities get a federal subsidy. With costs going from 13.8 cents per seat-mile to 24 cents, Voss said, the subsidy is vital - but every year it gets trimmed by Congress.

A story in last Wednesday's edition of USA Today said Mesa Air Group, which owns Wichita-based Air Midwest, is cutting its use of 19-seat turboprops because of the high cost of federally mandated improvements to the planes.

According to the story, Mesa Air Group will get rid of up to half of its 19-seat turboprops during the next two years and will eliminate rural routes in the Southwest.

Many of those planes will be replaced by 36-seat turboprops. And, Air Midwest president Greg Stephens said at Friday's session, those planes will fly only routes where the chance of a full plane is high - and the Salina-to-Kansas City route isn't one of enced aviators and contributed to the pilot shortage, Voss said.

"What we're seeing is just the tip of the iceberg of what is going to happen," Voss said.

Also, Voss said, it's nearly impossible to keep pilots from moving up to larger airlines.

Garvey said the transition to higher standards was a challenge for all airlines. Airlines and regulators must work together to find flexible rules, she said.

The mandatory retirement rate has always been contentious," she said. The FAA is in the middle of a rulemaking process to reduce the mandatory retirement age of pilots.

Small charters are also feeling a crunch, a McPherson businessman said Friday.

"Two months ago, John Britting, owner of MAC Air Corp., a fixed-base operator in McPherson, sold his charter license and six planes. He said he knows of three others who have gotten out of the business."

Britting is still in the airplane maintenance and flight instruction business.

He said he had come to expect a pilot shortage and had been preparing for it, but the recent high cost of pilot training and the high cost of getting a new pilots license have made it impossible to stay in business.

The FAA has been working to reduce the cost of pilot training, but the high cost of getting a new pilots license continues to be a problem.

The FAA has also been working to reduce the mandatory retirement age of pilots, but the lack of a clearly defined retirement age has made it difficult to get a clear picture of the situation.

The FAA has been working to reduce the cost of pilot training, but the high cost of getting a new pilots license continues to be a problem.

ORDINANCE NO. 1871

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF LEAWOOD, KANSAS, AUTHORIZED BY CONTRACT PROVIDING FOR THE REPEAL OF CERTAIN OTHER ORDINANCES NOT INCLUDED THEREIN, EXCEPTING CERTAIN ORDINANCES FROM REPEAL AND SAVING CERTAIN ACCRUED RIGHTS AND LIABILITIES.

Be it Ordained by the Governing Body of the City of Leawood, Kansas:

SECTION ONE: The codification of ordinances of the City of Leawood, Kansas, authorized by contract and K.S.A. 12-3014 and 12-3015, as set out in the following chapters, Chapters I to XVI and Appendices A and B, all inclusive, and entitled the "Code of the City of Leawood, Kansas, 2000," is hereby adopted and ordained as the "Code of the City of Leawood, Kansas, 2000," and said codification shall become effective upon publication of no fewer than 10 copies of said code in book form.

SECTION TWO: All ordinances and parts of ordinances of a general nature passed prior to August 21, 2000, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Leawood, Kansas, 2000," and this ordinance, are hereby repealed as of the date of publication of said code except as hereinafter provided.

SECTION THREE: In construing this ordinance, the following ordinances shall not be considered or held to be ordinances of a general nature:

(a) Ordinances pertaining to the acquisition of property or interests in property by gift, purchase, devise, bequest, appropriation or condemnation;
(b) Ordinances opening, dedicating, widening, vacating or narrowing streets, avenues, alleys and boulevards;
(c) Ordinances establishing and changing grades of streets, avenues, alleys and boulevards;
(d) Ordinances naming or changing the names of streets, avenues and boulevards;
(e) Ordinances authorizing or directing public improvements to be made;
(f) Ordinances creating districts for public improvements of whatsoever kind or nature;
(g) Ordinances levying general taxes;
(h) Ordinances levying special assessments or taxes;
(i) Ordinances granting any rights, privileges, easements or franchises therein mentioned to any person, firm or corporation;
(j) Ordinances authorizing the issuance of bonds and other instruments of indebtedness by the city;
(k) Ordinances authorizing contracts;
(l) Ordinances establishing the limits of the city or pertaining to annexation or exclusion of territory;
(m) Ordinances relating to compensation of officials, officers and employees of the city;
(n) Ordinances of a temporary nature;
Ordinances contained in the Leawood Development Ordinance and any amendments thereto;

Ordinances contained in the Amendment of Leawood Development Ordinance and any amendments thereto.

Provided, That the above enumeration of exceptions shall not be held or deemed to be exclusive, it being the purpose and intention to exempt from repeal any and all ordinances not of a general nature and general ordinances specifically excepted by this section.

SECTION FOUR: The arrangement and classification of the several chapters, articles, and sections of the code adopted by Section 1 of this ordinance and the headnotes and footnotes at the ends of the sections, are made for the purpose of convenience and orderly arrangement, and do not constitute a part of the ordinances, and therefore, no implication or presumption of legislative intent or construction is to be drawn therefrom.

SECTION FIVE: The repeal of ordinances as provided in Section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

SECTION SIX: If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Leawood, Kansas, 2000," or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this code.

SECTION SEVEN: This ordinance shall take effect and be in force from and after the publication of the "Code of the City of Leawood, Kansas, 2000," as provided in K.S.A. 12-3015.

PASSED by the Governing Body this 21st day of August, 2000.

SIGNED by the Mayor this 21st day of August, 2000.

Peggy Dunn, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
CERTIFICATE OF THE CITY CLERK

Office of the City
City of Leawood, Kansas

STATE OF KANSAS )
) ss.
JOHNSON COUNTY )

I, Martha Heizer, City Clerk of the City of Leawood, Johnson County, Kansas do hereby certify that said city is a city of the first class of the mayor-council form of government under the statutes of Kansas; that this codification of the general ordinances of said city and the publication thereof in book form were ordered and authorized by the governing body by contract and in accordance therewith is entitled the "Code of the City of Leawood, Kansas, 2000," that said codification was adopted as the "Code of the City of Leawood, Kansas, 2000," by the governing body by Ordinance No. 1871 passed on the 21st day of August, 2000, as authorized by Section 12-3015 of the Kansas Statutes Annotated; that said Ordinance No. 1871 and said codification of general ordinances as contained in this volume will take effect upon publication of 10 or more copies; that the publication of 10 copies of this code and adoptive Ordinance No. 1871 constitute due passage of this code and all general ordinances contained therein; that the codification and adoptive Ordinance No. 1871 as contained herein are true and correct copies; and that said publication imports absolute verity and is to be received in evidence in all courts and places without further proof as provided by 12-3015 of the Kansas Statutes Annotated.

I further certify that the "Code of the City of Leawood, Kansas, 2000," and the matter therein contained will take effect upon publication and be in force from and after August 22, 2000.

Witness my hand and the seal of the City of Leawood, Kansas, at my office in Leawood, Kansas, this 21st day of August, 2000.

Martha Heizer, City Clerk
City of Leawood, Kansas
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:
John G. Lewis, of lawful age, being first duly sworn, deposes and says that he is Publisher of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for __ consecutive week(s), as follows:

ORDINANCE NO. 1871--8/22/00

Publisher

Subscribed and sworn to before me on this date:
AUGUST 23, 2000

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

ORDINANCE NO. 1871

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF LEAWOOD, KANSAS, AUTHORIZED BY CONTRACT PROVIDING FOR THE REPEAL OF CERTAIN OTHER ORDINANCES NOT INCLUDED THEREIN, EXCEPTING CERTAIN ORDNANCES FROM REPEAL AND SAVING CERTAIN ACCRUED RIGHTS AND LIABILITIES.

Be it Ordained by the Governing Body of the City of Leawood, Kansas:

SECTION ONE: The codification of ordinances of the City of Leawood, Kansas, authorized by contract and K.S.A. 12-3014 and 12-3015, as set out in the following chapters, Chapters I to XVI and Appendices A and B, all inclusive, and entitled the "Code of the City of Leawood, Kansas, 2000," is hereby adopted and ordained as the "Code of the City of Leawood, Kansas, 2000," and said codification shall become effective upon publication of no fewer than 10 copies of said code in book form.

SECTION TWO: All ordinances and parts of ordinances of a general nature passed prior to August 21, 2000, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Leawood, Kansas, 2000," and this ordinance, are hereby repealed as of the date of publication of said code except as hereinbefore provided.

SECTION THREE: In construing this ordinance, the following shall not be considered or held to be ordinances of a general nature:

(a) Ordinances pertaining to the acquisition of property or interests in property by gift, purchase, devise, bequest, appropriation or condemnation;
(b) Ordinances opening, dedicating, widening, vacating or narrowing streets, avenues, alleys and boulevards;
(c) Ordinances establishing and changing grades of streets, avenues, alleys and boulevards;
(d) Ordinances naming or changing the names of streets, avenues and boulevards;
(e) Ordinances authorizing or directing public improvements to be made;
(f) Ordinances creating departments or public improvements of whatsoever kind or nature;
(g) Ordinances relating to general taxes;
(h) Ordinances levying special assessments or taxes;
(i) Ordinances granting any rights, privileges, easements or franchises therein mentioned to any person, firm or corporation;
(j) Ordinances requiring the issuance of bonds and other instruments of indebtedness by the city;
(k) Ordinances authorizing contracts;
(l) Ordinances establishing the limits of the city or pertaining to annexation or exclusion of territory;
(m) Ordinances relating to compensation of officials, officers and employees of the city;
(n) Ordinances of a temporary nature;
(o) Ordinances contained in the Leawood Development Ordinance and any amendments thereof;
(p) Ordinances contained in the Amendment of Leawood Development Ordinance and any amendments thereof.

Provided, That the above enumeration of exceptions shall not be held or deemed to be exclusive, but that the purpose and intention to exempt from repeal any and all ordinances not of a general nature and general ordinances specifically excepted by this section.

SECTION FOUR: The arrangement and classification of the several chapters, articles, and sections of the code adopted by Section 1 of this ordinance and the headnotes and footnotes at the end of the sections, are made for the purpose of convenience and orderly arrangement, and do not constitute a part of the ordinances, and therefore, no implication or presumption of legislative intent or construction is to be drawn therefrom.

SECTION FIVE: The repeal of ordinances as provided in Section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or sections involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and sections thereof.

SECTION SIX: If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Leawood, Kansas, 2000," or the application thereof to any person or circumstance is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this code.

SECTION SEVEN: This ordinance shall take effect and be in force from and after the publication of the "Code of the City of Leawood, Kansas, 2000," as provided in K.S.A. 12-3015.

PASSED by the Governing Body this 21st day of August, 2000.

SIGNED by the Mayor this 21st day of August, 2000.

[Seal]

Peggy Blum, Mayor

ATTEST:

Martha Haner, City Clerk

APPROVED AS TO FORM:

Patricia A. Bennett, City Attorney
ORDINANCE NO. 1870

AN ORDINANCE REZONING PROPERTY (MISSION FARMS CLUBHOUSE) LOCATED AT APPROXIMATELY 105TH STREET AND HOWE FROM SD-CR (SPECIAL DEVELOPMENT-COMMERCIAL RETAIL) TO RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the NW1/4 of Section 10, Township 13, Range 25, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW1/4 of said Section 10; thence S 0° 25' 05" W, along the West line of the NW1/4 of said Section 10, a distance of 2303.64 feet, to a point on the centerline of 105th Street, as now established; thence S 89° 34' 55" E, along the centerline of said 105th Street, a distance of 262.82 feet, to a point of curvature; thence Easterly and Northeasterly, along the centerline of said 105th Street, said line being a curve to the left having a radius of 489 feet, and a central angle of 22° 10' 13", a distance of 189.22 feet, to a point of reverse curvature; thence Northeasterly, along the centerline of said 105th Street, said line being a curve to the right having a radius of 688 feet, a central angle of 6° 24' 08" and whose initial tangent bearing is N 68° 14' 52" E, a distance of 76.88 feet, to the true point of beginning of subject tract; thence continuing Northeasterly and Easterly, along the centerline of said 105th Street, said line being a curve to the right having a radius of 688 feet, a central angle of 11° 20' 12" and whose initial tangent bearing is N 74° 38' 59" E, a distance of 148.74 feet, to a point of tangency; thence N 86° 59' 12" E, along the centerline of said 105th Street, a distance of 14.30 feet; thence S 0° 32' 03" W, a distance of 233.55 feet; thence N 89° 27' 57" W, a distance of 80 feet; thence N 0° 32' 03" E, a distance of 34 feet; thence N 89° 27' 57" W, a distance of 80 feet; thence N 0° 32' 03" E, a distance of 173.72 feet, to the true point of beginning of subject tract, all subject to that part thereof dedicated for street purposes, containing 0.760 gross acres, more or less

now zoned SD-CR, is hereby rezoned RP-A.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood,
Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of July, 2000

Approved by the Mayor the 17th day of July, 2000.

Peggy J. Dunn
Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM

Patricia A. Bennett City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes
and says that she is Legal Notices Administrator of The Legal
Record which is a newspaper printed in the State of Kansas,
published in and of general paid circulation on a weekly,
monthly or yearly basis in Johnson County, Kansas, is not a
trade, religious or fraternal publication, is published at least
weekly fifty (50) times a year, has been so published
continuously and uninterrupted in said County and State for a
period of more than five (5) years prior to the first publication
of the notice attached, and has been admitted at the post office
as second class matter (now called periodicals class).

That a notice was published in all editions of the regular and
entire issue for the following subject matter (also identified by
the following case number, if any) for _ consecutive
week(s), as follows:

ORDINANCE NO. 1870--7/18/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JULY 19, 2000

DEBRA VALENTI
Notary Public


$35.49
ORDINANCE NO. 1870
First published in The Legal Record, Tuesday, July 18, 2000.

ORDINANCE NO. 1870

AN ORDINANCE REZONING PROPERTY (MISSION FARM) LOCATED AT APPROXIMATELY 105TH STREET AND ROUE FROM SD-CR (SPECIAL DEVELOPMENT-COMMERCIAL RETAIL) TO RP-A (PLANNED LARGE LOT SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it Ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the NW 1/4 of Section 10, Township 13, Range 26, now in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the NW 1/4 of said Section 10, thence S 0° 28' 09" W, along the West line of the NW 1/4 of said Section 10, a distance of 230.44 feet, to a point on the centerline of 105th Street, as now established, thence S 89° 34' 55" E, along the centerline of said 105th Street, a distance of 360.82 feet, to a point of curvature, thence Easterly and Northeasternly, along the centerline of said 105th Street, said line being a curve to the left having a radius of 486 feet, and a central angle of 22° 20' 13", a distance of 189.22 feet, to a point of reverse curvature; thence Northeasternly, along the centerline of said 105th Street, said line being a curve to the right having a radius of 486 feet, a central angle of 6° 24' 06" and whose initial tangent bearing is N 66° 14' 25" E, a distance of 76.88 feet, to the true point of beginning of subject tract; thence continuing Northeasternly and Easterly, along the centerline of said 105th Street, said line being a curve to the right having a radius of 486 feet, a central angle of 11° 23' 12" and whose initial tangent bearing is N 74° 18' 59" E, a distance of 148.74 feet, to a point of tangency; thence N 86° 59' 12" E, along the centerline of said 105th Street, a distance of 144.30 feet, thence S 0° 28' 57" W, a distance of 213.35 feet; thence N 59° 27' 57" W, a distance of 80 feet; thence N 59° 27' 57" W, a distance of 80 feet; thence S 59° 27' 57" W, a distance of 171.72 feet, to the true point of beginning of subject tract, all subject to that part thereof dedicated for street purposes, containing 0.760 gross acres, more or less.

now zoned SD-CR, is hereby rezoned RP-A.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the ______ day of ______, 2000.
Approved by the Mayor the ______ day of July, ______, 2000.

(S E A L)

[Signature]
Mayor

[Signature]
City Attorney

[Signature]
City Attorney

APPROVED FOR FORM:

[Signature]
City Attorney

[Signature]
City Attorney
ORDINANCE NO. 1869

AN ORDINANCE REZONING PROPERTY (SUMMERTREE VILLAS) LOCATED AT THE SOUTHWEST CORNER OF 151ST STREET AND MISSION ROAD FROM AG (AGRICULTURAL) TO RP-4 (PLANNED CLUSTER RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the Northeast Quarter of Section 9, Township 14, Range 25 in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Northeast corner of said Northeast Quarter; thence South 02° 04'56" East, along the East line of said Northeast Quarter, a distance of 577.00 feet; thence South 73°23'35" West, a distance of 136.55 feet; thence North 76°31'27" West, a distance of 34.43 feet; thence South 75°11'20" West, a distance of 95.14 feet; thence South 79°30'52" West, a distance of 118.80 feet; thence South 73°00'10" West, a distance of 137.22 feet; thence South 31°45'16" West, a distance of 48.08 feet; thence South 73°23'35" West, a distance of 152.25 feet; thence South 67°42'12" West, a distance of 160.81 feet; thence South 60°54'54" West, a distance of 20.14 feet; thence South 57°23'41" West, a distance of 76.96 feet; thence South 56°13'39" West, a distance of 165.11 feet; thence North 28°56'01" West, a distance of 449.67 feet; thence North 20°34'13" East, a distance of 115.05 feet; thence North 59°15'05" East, a distance of 11.48 feet; thence North 83°52'30" East, a distance of 55.06 feet; thence North 10°03'47" West, a distance of 19.48 feet, to a point of curvature; thence Northerly and North-easterly, along a curve to the right, having a radius of 225.00 feet; and a central angle of 45°05'47", a distance of 177.09 feet; thence North 12°02'19" West, along an existing fence line, a distance of 236.50 feet, to a point on the North line of said Northeast Quarter; thence North 87°30'15" East, along the North line of said Northeast Quarter, a distance of 1152.08 feet, to the Point of Beginning, except any part thereof in streets or roads. Tract of land contains a gross area of 19.4966 acres, more or less. The net area contains 17.2645 acres, more or less (excludes 151st Street and Mission Road right-of-way).

now zoned AG, is hereby rezoned RP-4.
ORDINANCE NO. 1869

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of July, 2000.

Approved by the Mayor the 17th day of July, 2000.

Peggy J. Dunn
Mayor

Attest:

Martha Heizer
City Clerk

APPROVED FOR FORM:

Patricia A. Bennett
City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:
Penny Knight, of lawful age, being first duly sworn, deposes
and says that she is Legal Notices Administrator of The Legal
Record which is a newspaper printed in the State of Kansas,
published in and of general paid circulation on a weekly,
monthly or yearly basis in Johnson County, Kansas, is not a
trade, religious or fraternal publication, is published at least
weekly fifty (50) times a year, has been so published
continuously and uninterruptedly in said County and State for a
period of more than five (5) years prior to the first publication
of the notice attached, and has been admitted at the post office
as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and
entire issue for the following subject matter (also identified by
the following case number, if any) for ___ consecutive
week(s), as follows:

ORDINANCE NO. 1869 -- 7/18/00

[Signature]
Legal Notices Administrator

Subscribed and sworn to before me on this date:
JULY 19, 2000

[Signature]
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

ORDINANCE NO. 1869

First published in The Legal Record, Tuesday, July 18, 2000.

ORDINANCE NO. 1869

AN ORDNANCE REZONING PROPERTY (SUBURBAN VILLAGES) LOCATED AT THE SOUTHWEST CORNER OF 151ST STREET AND MISSION ROAD FROM AG (AGRICULTURAL) TO RP-4 (PLANNED CIDTER RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the Northeast Quarter of Section 9, Township 14, Range 26 in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Northeast corner of said Northeast Quarter; thence South 04° 06' East, along the East line of said Northeast Quarter, a distance of 597.00 feet; thence South 73° 22' 15" West, a distance of 326.85 feet; thence North 76° 11' 27" West, a distance of 34.43 feet; thence South 78° 21' 10" West, a distance of 95.14 feet; thence South 78° 30' 52" West, a distance of 118.85 feet; thence South 73° 00' 10" West, a distance of 37.32 feet; thence South 37° 45' 1.5" West, a distance of 45.08 feet; thence South 73° 23' 15" West, a distance of 152.25 feet; thence South 67° 42' 15" West, a distance of 160.61 feet; thence South 46° 54' 14" West, a distance of 20.14 feet; thence South 57° 23' 41" West, a distance of 75.96 feet; thence South 66° 13' 19" West, a distance of 449.67 feet; thence North 20° 34' 11" East, a distance of 115.05 feet; thence North 59° 18' 05" East, a distance of 14.48 feet; thence North 8° 54' 01" East, a distance of 55.06 feet; thence North 10° 03' 47" West, a distance of 19.48 feet, to a point of curvature; thence Northerly and Northwesterly, along a curve to the right, having a radius of 235.00 feet; and a central angle of 46° 05' 47", a distance of 177.09 feet; thence North 12° 02' 19" West, along an existing fence line, a distance of 216.20 feet, to a point on the North line of said Northeast Quarter, thence North 87° 30' 15" East, along the North line of said Northeast Quarter, a distance of 112.08 feet, to the Point of Beginning, hereby constituting any part thereof in streets or roads. Tract of land contains a gross area of 19.4966 acres, more or less. The net area contains 17.2644 acres, more or less (excludes 151st Street and Mission Road right-of-way).

now zoned AG, is hereby rezoned RP-4.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 3-3 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of July, 2000.
Approved by the Mayor the 17th day of July, 2000.

(P & L)

[Signature]
Mayor

[Signature]
City Clerk

[Signature]
City Attorney
ORDINANCE NO. 1868

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,100,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement of State Line Road between 103rd Street and Carondelet within the City pursuant to K.S.A. 12-685 et seq. and Ordinance No. 1372;

(b) Improvement of certain sections of Mission Road from 103rd Street to I-435 within the City pursuant to K.S.A. 12-685 et seq. and Ordinance No. 1204;

(c) Acquisition, construction and installation of improvements to existing City parks pursuant to K.S.A. 12-1302 and Ordinance No. 1742.

(d) Acquisition, construction and installation of a new public works facility pursuant to K.S.A. 12-1737 and Resolution No. 1532;

(e) Improvement and reimprovement of 119th Street and Mission Road in the area of the intersection thereof within the City pursuant to K.S.A. 12-685 et seq. and Resolution No. 1505;

(f) Improvement, reimprovement, excavation and repair of damaged sections of roads within the Normandy Place subdivision and certain storm water drainage improvements within said subdivision pursuant to K.S.A. 12-6a01 et seq. and Resolution No. 1489.

(g) Improvement and reimprovement of that section of Mission Road between 83rd Street and 95th Street within the City pursuant to K.S.A. 12-685 et seq. and Ordinance Nos. 1716 and 1717;
(h) Improvement and re-improvement of that section of Roe Avenue between 137th Street and 138th Terrace within the City pursuant to K.S.A. 12-685 et seq. and Resolution No. 1504;

(i) Reconstruction, remodeling and replacement of the bathhouse at the Municipal Pool Complex located at the City park at 10601 Lee Boulevard within the City pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1735;

(j) Construction of 133rd Street from the intersection of said street with State Line Road to the intersection of said street with Mission Road within the City and related appurtenances pursuant to K.S.A. 12-6a01 et seq. and Resolution No. 1525; and

(k) Construction of 133rd Street from the intersection of said street with Mission Road to the intersection of said street with Roe Avenue within the City and related appurtenances pursuant to K.S.A. 12-6a01 et seq. and Resolution No. 1524;

(collectively, the “City Improvement Projects”); and

WHEREAS, the City has heretofore issued its Temporary Notes dated November 1, 1999, in the principal amount of $2,600,000 (the “Prior Notes”) to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,000,000 and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become
due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Five Million One Hundred Thousand Dollars ($5,100,000) (the “Notes”). The amount of the Notes together with other temporary notes heretofore issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the “Note Resolutions”).

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City’s portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in
an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor, or in the absence of the Mayor, the President of the Council, and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $2,100,000 of such proceeds, together with certain other available funds of the City, shall be used to redeem and retire the Prior Notes, and the balance of such proceeds of the Notes shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the “Code”), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be “arbitrage bonds” within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax
purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a “private activity bond” within the meaning of Section 141(a) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948;

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.

3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be “qualified tax-exempt obligations” within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of
the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.
PASSED by the Council the 3rd day of July, 2000.

APPROVED by the Mayor the 3rd day of July, 2000.

ATTEST:

Martha Heizer

Martha Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney
AFFIDAVIT OF PUBLICATION

STATE OF KANSAS, JOHNSON COUNTY, ss, Georgiann Thacker being first duly sworn, deposes and says: that she is legal publication manager of THE JOHNSON COUNTY SUN, a semi-weekly newspaper printed in the State of Kansas, and published in and of general paid circulation in JOHNSON COUNTY, Kansas, and that said newspaper is not a trade, religious or fraternal publication.

Said newspaper is a semi-weekly published at least 50 times a year; has been so published continuously and uninterruptedly in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at the post office of SHAWNEE MISSION, KANSAS in said County as a second class matter.

That the attached notice is a true copy thereof and was published in the regular and entire issue of said newspaper for __ consecutive ___ day (weeks/days), the first publication thereof being made as aforesaid on the ___ day of ___ July ___ 2000 , with subsequent publication being made on the following dates:

_________________________________________ 2000_________________________________________ 2000

_________________________________________ 2000_________________________________________ 2000

Subscribers and sworn to before me this ___ day of __ July __ 2000

My Commission Expires __________________________

Printer’s Fee ___________________________ 93.14

Additional Copies $ __________________________
In 1965, the County Board of Supervisors authorized the implementation of a new public transit system in the city of Santa Barbara, California. The purpose of this system was to improve public transportation in the city, which had been fragmented and inefficient under previous arrangements. The new system was designed to provide better service,连接不同的地区, and reduce traffic congestion in the city.

Under the new system, a fleet of buses was purchased and operated by a private company, Santa Barbara Municipal Transportation Authority (SBMTA). The buses ran on fixed routes, and were equipped with amenities such as air conditioning and seating arrangements designed for comfort.

The system was well-received by the public, and quickly became a popular mode of transportation. The city council was pleased with the results, and decided to continue the project. The new system was an integral part of the city's development, and helped to make the city more accessible to all residents and visitors.
AN ORDINANCE TO PROVIDE FOR THE LICENSING OF MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS IN THE CITY OF LEAWOOD BY AMENDING SECTIONS 4.9.2 AND 4.9.6 OF THE LEAWOOD DEVELOPMENT ORDINANCE, AND ADDING A NEW ARTICLE 5 TO CHAPTER V OF THE LEAWOOD CITY CODE REGARDING MASSAGE.

WHEREAS, "Massage Establishments" and "Massage Therapy" are currently regulated in the City of Leawood under the provisions and terms of the Adult Use and Entertainment Ordinance codified in Section 4-9 of the Leawood Development Ordinance; and

WHEREAS, the Governing Body has determined that "Massage Establishments" and "Massage Therapy" should not be regulated as Adult Uses, but should be separately administered and regulated by the City; and

WHEREAS, the Governing Body has determined that a licensing requirement should be enacted to help administer and regulate the same; and

WHEREAS, the Governing Body has established the requirements provided for hereafter for the administration and regulation of "Massage Establishments" and "Massage Therapy" within the City of Leawood;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. That Sections 4-9.2, and 4-9.6 of Article 4 of the Leawood Development Ordinance are hereby repealed.

SECTION 2. That Section 4-9.2 of Article 4 of the Leawood Development Ordinance is hereby amended to read as follows:

4-9.2 Definitions.
In addition to the definitions contained in Article 8 of the Development Ordinance, the following words and phrases shall, for the purposes of this Section, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Development Ordinance, these definitions shall prevail:

A. Administrator: The Neighborhood Services Administrator.

B. Adult Arcade: Any business establishment or concern to which the public is permitted or invited and where coin or slug operated or electronically, electrically or mechanically controlled amusement devices, still or motion picture machines, projectors, videos or other image-producing devices are maintained to show images on a regular or substantial basis, where the images so displayed are considered 'adult material' as defined by this Section.

C. Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade adult material, or an establishment with a segment or section devoted to the sale or display of such material.

1. An establishment shall be deemed to have a substantial or significant portion of its stock in trade if not less than twenty percent (20%) of the stock of the business or twenty percent (20%) of the floor area which houses the adult business is adult material provided, however, that if the adult business is housed in a building or structure which includes more than one business, then the 'floor area' shall mean and refer to only that portion of the building which is leased or
otherwise demised to the adult business.

2. An establishment shall also be deemed to have a substantial or significant portion of its stock in trade if not less than twenty percent (20%) of the gross receipts of the business or use derived from the sale of 'adult material' (as defined below).

D. **Adult Business or Adult Use:**

1. Any business establishment or concern which is a regular and substantial course of conduct operates as an adult bookstore, adult theater, adult arcade, adult cabaret or adult nightclub, figure modeling studio, adult dance studio, adult entertainment studio, erotic dance studio, or adult hotel; or

2. Any business establishment or concern which as a regular and substantial course of conduct offers, sells, or distributes adult oriented merchandise or sexually oriented merchandise, or which offers to its patrons adult materials or other products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical parts.

E. **Adult Cabaret or Adult Nightclub:** A business establishment or concern which features live performances by dancers or similar entertainers in the nude.

F. **Adult Dance Studio:** Any business establishment or concern which provides for members of the public a partner for dance where the partner appears nude, or where the dance is distinguished or characterized by the emphasis on matter depicting, or describing or relating to specified sexual activities or specified anatomical areas.

G. **Adult Entertainment Studio:** Any premises to which the public, patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises, wherein an entertainer provides entertainment to a member of the public, a patron or a member, when such entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An adult entertainment studio includes, without being limited to, any premises that is physically arranged and used as such, whether advertised or represented as an entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import. Adult entertainment studio shall not include theaters, concert halls, or similar establishments where entertainment is performed for groups of four or more.

H. **Adult Hotel:** A hotel which is used for presenting on a regular and substantial basis material which is distinguished or characterized by the emphasis on matter depicting or describing or relating to specified sexual activities or specified anatomical areas through closed circuit or cable television or through video tape recorder where video tapes are provided by the hotel/motel. For purposes of this subsection, a "Hotel" means any building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a motel, cabin camp, tourist cabin, or other type of lodging unit. Evidence that a sleeping room in a hotel has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult hotel as that term is defined in this Section.

I. **Adult Oriented Merchandise:** Sexually oriented implements, paraphernalia, or novelty items, such as, but not limited to: dildos, auto sucks, sexually-oriented vibrators, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually-oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sadomasochistic activity or distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
J. **Adult Material**: Materials which are distinguished or characterized by their emphasis on matter which is distinguished or characterized by its emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.

K. **Adult Theater**: A theater or other commercial establishment with or without a stage or proscenium which is used for presenting, on a regular or substantial basis, material which is distinguished or characterized by an emphasis on matter depicting, or describing, or relating to specified sexual activities or specified anatomical areas.

L. **Arcade Booth**: Any enclosed or partially enclosed portion of an establishment in which an adult arcade is located, or where a live performance is presented, on a regular or substantial basis, where the material presented is distinguished or characterized by an emphasis on matter depicting, or describing, or relating to specified sexual activities or specified anatomical areas.

M. **Commercial Zoning District**: Any property within the City which is zoned SD-CR (Special Development), CP-1 (Planned Neighborhood Retail) or CP-2 (Planned General Retail) on the City’s official zoning map adopted pursuant to 2-2 of the Leawood Development Ordinance, as may be amended from time to time.

N. **Dancer**: A Performer who dances or otherwise performs for an erotic dance studio and who seeks to arouse or excite the patron’s sexual desires.

O. **Employee**: Any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult entertainment studio.

P. **Entertainer**: Any person who provides entertainment within an adult entertainment studio as defined in this Section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

Q. **Entertainment**: Any exhibition, performance, display or dance of any type, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered for amusement.

R. **Erotic Dance Studio**: A fixed place of business which emphasizes and seeks, through one or more dancers or performers, to arouse or excite the patron’s sexual desires.

S. **Figure Modeling Studio**: Any establishment or business which provides for members of the public, the services of a live human model for the purpose of reproducing the human body, wholly or partially in the nude, by means of photograph, painting, sketching, drawing, or other pictorial form.

T. **Footcandle**: A unit of illumination lighting a surface, on which there is uniformly distributed a light flux of one lumen over an area of one square foot. A lumen is a unit of measure of the quantity of light energy emitted by a light source without regard to the effectiveness of its distribution. A candela is the unit of intensity of a light source in a specific direction. One candela directed perpendicular to a surface one foot away generates one footcandle of light. A light source of one candela emits a total of 12.57 lumens. For the purposes of this Ordinance, the lumen output values shall be the initial lumen output ratings of a lamp.

U. **Industrial Zoning District**: Any property within the City which is zoned BP (Planned Business Park) or PI (Planned Industrial) on the City’s official zoning map adopted pursuant to 2-2 of the Leawood Development Ordinance, as may be amended from time to time.

V. **Massage**: Any method of pressure on, friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

W. **Massage Establishment**: An establishment having a fixed place of business where massages are administered in accordance with the provisions of the City Code regarding Massage.
X. **Massage Therapy:** The application of Massage by a Massage Therapist as provided for by the provisions of the City Code regarding Massage.

Y. **Master Plan:** The document entitled *Leawood Master Development Plan* adopted by Ordinance No. 1667 (March 31, 1997), which document is hereby incorporated by this reference as if set forth in its entirety herein.

Z. **Material:** Relative to adult businesses, material shall mean and include, but not be limited to, accessories, books, magazines, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos, slides, tapes, or electronically generated images or devices including computer software, or any combination thereof.

AA. **Nude:** Any state of undress in which the whole or part of any human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

BB. **Obscene:** Any material or performance is obscene if the average person applying contemporary community standards would find that such material or performance, taken as a whole, appeals to the prurient interest; that the material or performance has patently offensive representations or descriptions of ultimate sexual acts, normal or perverted; and that the material or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.

CC. **Operator:** Any person, partnership, or corporation operating, conducting or maintaining an adult use or adult business.

DD. **Park:** Any public or private land designated as Open Space - Public or Open Space - Private in the *Master Plan*.

EE. **Patron:** Any person who is a guest, member or customer on or in an adult business.

FF. **Performer:** Any person who is an employee or independent contractor of the adult business, or any person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of an adult business and who seeks to arouse or excite the patron’s sexual desires.

GG. **Person:** Any natural person, or any association, partnership, or corporation.

HH. **Religious Institution:** A facility used primarily for religious assembly or worship and related religious activities.

II. **Residential Zone:** Any property within the City which is designated as a Residential District pursuant to 2-1 of the Leawood Development Ordinance, as may be amended from time to time, including any property within the City which is zoned RP-A (Planned Large Lot Single Family Residential), R-1 (Single Family Residential), RP-3 (Planned Apartment House Residential) or RP-4 (Planned Cluster Residential) on the City’s official zoning map adopted pursuant to 2-2 of the Leawood Development Code, or RP-A5 (Planned Rural Density Single Family). The term Residential Zone shall also mean and refer to any property designated as Rural Density Residential, Low Density Residential, Medium Density Residential - Single Family Detached, Medium Density Residential - Single Family Attached, and Medium Density Residential Apartments in the *Master Plan*.

JJ. **School:** Any institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the Kansas Board of Regents or which is maintained pursuant to standards set by the Kansas Board of Regents. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, but not including dancing schools, riding academies, or trade or vocational school.
KK. Specified Anatomical Areas shall mean:
1. Less than completely and opaquely covered;
   a. human genitals, pubic region;
   b. buttock, or
   c. female breast below a point immediately above the top of the areola; or
2. Any device or covering, when exposed to view, which simulates the female breast below a point immediately above the top of the areola, human genitals, pubic region or buttock; or
3. Human or simulated male genitals in a discernible turgid state, even if completely and opaquely covered.

LL. Specified Sexual Activities shall mean:
1. Human genitals in a state of sexual stimulation or arousal; and/or
2. Acts of human masturbation, sexual intercourse or arousal; and/or
3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or
4. Masochism, erotic or sexually-oriented torture, beating, or the infliction of pain; and/or
5. Human excretion, urination, menstruation, vaginal or anal irrigation; and/or
6. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

MM. Tavern: Any premises on which alcoholic or cereal malt beverages are sold or served for consumption on the premises pursuant to a license or permit issued by the State of Kansas, the County of Johnson, or any other political subdivision or agency of the State of Kansas.

SECTION 3. That Section 4-9.6 of Article 4 of the Leawood Development Ordinance is hereby amended to read as follows:

4-9.6 Massage Establishments and Massage Therapy
No person shall operate a Massage Establishment or perform and provide Massage Therapy except as provided for by the provisions of the City Code regarding Massage. When licensed and authorized as provided by the City Code, Massage Establishments and Massage Therapy shall not be considered an adult use.

SECTION 4. That the code of the City of Leawood is hereby amended by adding a new article 5 to Chapter V. which read as follows:

CHAPTER V.
ARTICLE 5. MASSAGE
5-601 Definitions
(a) "Applicant." A person who has applied to the City for a Massage Establishment License or a Massage Therapy License or Permit as authorized by this ordinance.
(b) "License." An authorization as provided for in this ordinance for a person to:
(1) Operate and conduct a Massage Establishment; or

(2) Perform and provide Massage Therapy.

c) "Licensee." A person who has been granted a License as provided for by this ordinance.

d) "Massage." Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. Massage as defined herein does not include the touching in any fashion of the human genitalia.

e) "Massage Establishment." A fixed place of business within the City where Massage Therapy is administered for compensation, including, massage salons, sauna baths, steam baths, and health clubs. Such place of business shall be only upon authorized commercial premises as specifically provided for hereafter. For the provisions and requirements of this ordinance, this definition shall not be construed to include hospitals, nursing homes, medical clinics or the commercial offices of: (1) a licensed physician, surgeon, chiropractor, osteopath or physical therapist when such duly licensed person is directly supervising or administering Massage to his or her patient; (2) a licensed operator of electrolysis equipment (only with regards to the provision of electrolysis treatment); or (3) barbershops or beauty salon which perform Massage only to the scalp, the face, the neck or shoulders.

f) "Massage Therapy." The application of Massage for consideration of any kind, including discounts and other goodwill offers. For the provisions and requirements of this ordinance, this definition shall not be construed to include: (1) any continuing instruction in martial arts, performing arts or organized athletic activities; (2) any Massage directly supervised or administered by a licensed physician, surgeon, chiropractor, osteopath or physical therapist in his or her commercial offices; (3) any provision of electrolysis by a licensed operator of electrolysis equipment; or (4) any Massage to the scalp, face, neck or shoulders by a licensed barber or beautician.

g) "Massage Therapist." A person licensed in accordance with this ordinance who engages in the practice of Massage and performs and provides Massage Therapy.

h) "Out Call." Massage Therapy that is conducted upon the commercial or residential premises of a Patron as specifically provided for hereafter.

i) "Patron." A person who utilizes or receives the services of Massage Therapy. Such person shall be over 18 years of age; provided a person under the age of 18 may utilize or receive Massage Therapy from a Licensed Massage Therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.

j) "Permit." An authorization for a student to perform Massage Therapy only as specifically provided for hereafter.

k) "Person." Any natural or corporate person, business association or business entity including, but not limited to, a firm, a partnership, an association, a sole proprietorship a successor or assign of any of the foregoing, or any other legal entity.

l) "Specified Anatomical Areas." The human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola.
5-602 Massage Licenses in General: License Required. No person shall perform and provide Massage Therapy within the City or operate and conduct a Massage Establishment within the City without a valid and separate License. Such Licenses shall be issued by the City pursuant to the provisions of this ordinance, and must be current, unrevoked and not suspended. Licenses granted pursuant to this ordinance shall be valid for a period of twelve months from the date of issuance.

5-603 Massage Licenses in General: Multiple Licenses.

(a) Applicants seeking to operate and conduct a Massage Establishment and to perform and provide Massage Therapy must obtain both a Massage Establishment License and a Massage Therapist License.

(b) Applicants seeking to operate and conduct multiple Massage Establishments must obtain a separate Massage Establishment License for each location.

5-604 Massage Licenses in General: License and Permit Fees.

(a) The annual filing fee for a Massage Establishment License, a Massage Therapy License and a Massage Therapy Student Permit shall be set by the City’s annual fee schedule, and shall be nonrefundable and nontransferable.

(b) An individual applicant concurrently applying for both a Massage Establishment License and a Massage Therapy License shall only be charged the fee for a Massage Establishment License.

(c) Any applications made, fees paid, and Licenses or Permits obtained under the provisions of this ordinance shall be in addition to, and not in lieu of any other fees, taxes, permits, or licenses required to be paid or obtained under any other ordinances of this City.

5-605 Massage Licenses in General: Transfer of Licenses and Permits. No Massage Establishment License, Massage Therapy License or Massage Therapy Student Permit may be transferred to a person other than the Licensee or Permittee named therein.

5-606 Massage Licenses in General: Advertising. No Licensee shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective Patrons that any service is available other than those services as provided for by this ordinance, or that employees or Massage Therapists are dressed in any manner other than provided for herein, nor shall any text of such advertising indicate that any service is available other than those services authorized by this ordinance.

5-607 Massage Licenses in General: Other Provisions.

(a) Applicability to Existing Businesses. The operators of any existing massage therapy establishment and any providers or performers of Massage Therapy within the City are required to comply with all provisions of this ordinance within ninety (90) days from the enactment of this ordinance.

(b) Exceptions. The provisions of this ordinance shall not apply to a physician, surgeon, chiropractor, osteopath, physical therapist, registered professional nurse, operator of electrolysis equipment, barber or cosmetologist who is lawfully carrying out his or her particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state.
Further Regulations. The License Clerk, the Chief of Police or the City Administrator may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out the intent of this ordinance.

Penalty. Any person convicted of violating any of the provisions of this ordinance shall be deemed guilty of a public offense and subject to the general penalty provisions of the Leawood City Code.

Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof.

5-608-609 Reserved.

5-610 Massage Therapy: License.

(a) Generally. No person shall perform and provide Massage Therapy within the City without first obtaining a valid Massage Therapist License issued by the City pursuant to the provisions of this ordinance. To receive a License and to perform and provide Massage Therapy, the applicant must operate or be currently employed by a licensed Massage Establishment, and meet the requirements of a Massage Therapist as provided for hereafter. Persons qualified as a Massage Therapist may receive a Massage Therapy License to perform and provide Massage Therapy within the City subject to the eligibility requirements cited hereafter.

(b) Application. Applicants for a License to perform and provide Massage Therapy within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, including the current FBI and KBI fingerprint fees. The application for a Massage Therapist License shall contain the following:

(1) The name, address and telephone number of the applicant;

(2) Written evidence that the applicant is at least 18 years old;

(3) The applicant’s weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);

(4) Two portrait photographs of the applicant (at least two inches by two inches);

(5) The position or function the applicant is being hired to perform within such establishment, and the exact nature of the services to be provided under the requested License;

(6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and court in which convicted, the offense, and the sentence imposed as a result of such conviction;
The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously had such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

The proposed place of business and facilities therefor, including proof that such place of business currently holds a proper Massage Establishment License;

Proof of the education and experience requirements as provided by this ordinance;

Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants’ former application.

**Process of Application.** Applications for a Massage Therapy License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police. With the aid and input of the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted.

**Issuance of License.** The License Clerk shall approve the issuance of a Massage Therapist License, unless it is found that:

1. The applicant has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a lewd or unlawful act; (vi) prostitution; (vii) pandering or other sexually related offense; or

2. The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the city in conjunction therewith; or

3. The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or

4. The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment; or

5. The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation; or

6. That the applicant has not successfully completed the education standards required under the provisions of this ordinance; or

7. The application is for work to be performed at a Massage Establishment that is unlicensed, or whose License has been suspended or revoked; or
Any other application requirement has not been met.

Upon approval of the application, the License Clerk shall issue the Massage Therapy License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may appeal to the Governing Body within ten (10) days after notice of the disapproval, provided that such appeal shall be reviewed by the Governing Body within thirty (30) days from the date the appeal is submitted. Any applicant still aggrieved after review by the Governing Body may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the review by the Governing Body.

5-611 Massage Therapy: Out Calls. Outcalls on commercial premises within the City are prohibited. Outcalls on residential premises of a Patron within the City are prohibited, unless prescribed by a licensed healing arts practitioner.

(1) Residential Premises. Out Calls may only be conducted at a private residence at the direction of a licensed healing arts practitioner. In such event, the Massage Therapist shall provide to the License Clerk the name and address of the Patron, a copy of the licensed healing arts practitioner's authorization, the date and time of the service, a description of the service, and the fees charged. Prior to any service being done at a private residence, the Massage Therapist must clearly state that he or she is a Licensed Massage Therapist, and the Patron must sign a form requesting the service. All such written requests shall be kept by the Massage Therapist for a period of one year, and shall be produced for inspection when requested by any city officer.

5-612 Massage Therapy: Classification. The following categories and educational requirements shall be applicable to all Massage Therapists as specifically provided hereafter. Proof of completion of education and training requirements required by this ordinance must be by certified transcripts. The educational and training may be received from more than one school.

(a) Education. To be eligible for a Massage Therapist License, the applicant must provide proof of the following:

(1) That the applicant has successfully completed a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage (An hour of instruction is defined as fifty minutes of actual instructional time). The curriculum shall include at a minimum:

a. Two hundred and fifty (250) hours of theory and practice of Massage Therapy technique, to include deep tissue techniques, remedial gymnastics, body mechanics of the practitioner, and medical treatment. A maximum of fifty (50) of these hours may include time spent in a student clinic.

b. One hundred thirty (130) hours of anatomy, physiology and kinesiology, including palpation, range of motion, and physics of joint function. There must be a minimum of forty (40) hours of kinesiology.
c. Fifty-five (55) hours of clinical/business practices, to include hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, Patron interaction, state and local laws and three hours of communicable diseases.
d. Fifty (50) hours of pathology including indications and contraindications to Massage Therapy and palpation.
e. Fifteen (15) hours of hydrotherapy.

(ii) As an alternative to the above educational requirements, the applicant may provide proof that:

a. The applicant is currently licensed or has been licensed within six months of the date of application for a minimum of one year with a (U.S.) state’s licensing authority that requires a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage. The required curriculum must include anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique; or

b. The applicant has successfully passed the 1992 or later, National Certification Examination for Therapeutic Massage and Bodywork and has successfully completed a course of instruction, consisting of not less than three hundred (500) hours, in the theory, method or practice of Massage. The required curriculum must include the subjects of anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique.

(iii) In addition to meeting the requirements of either subsection (i) or subsection (ii), the applicant must also have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent, and provide current certification.

(2) Eligibility. A Licensed Massage Therapist may perform and provide Massage Therapy at a Massaged Establishment. A Licensed Massage Therapist may also perform and provide Out Calls only when prescribed by a licensed healing arts practitioner.

(3) Student Massage Therapy. Student Massage Therapy is prohibited within the City unless an individual meets the qualifications of provision 5-615 of this ordinance.

5-613 Massage Therapy: Identification Cards. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall at all time have in their possession a valid Identification Card when working in a Massage Establishment or performing and providing Out Calls. Such Identification Card shall be conspicuously worn on the Massage Therapist’s clothing, or be posted on the wall of the massage room in a conspicuous location. Such Identification Card shall bear the Massage Therapist’s name, license number, classification, physical description, and a photograph, and shall be laminated to prevent alteration. Additionally, all Massage Therapists shall keep their Licenses and Permits available for inspection at all times upon request of any person who by law may inspect the same.
5-614 **Massage Therapy: Patron Registers.** All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons’ names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year. Such register may be kept and supervised by the Massage Establishment as provided for hereafter.

5-615 **Massage Therapy: Applicability to Existing Massage Providers.** An individual providing or performing Massage Therapy within the City at the time this ordinance is enacted who does not meet the education requirements described above may be exempted by the City from such education requirements for thirty-six (36) months past the date of enactment as long as such individual meets the following conditions:

(a) As of the date of enactment, such individual is currently practicing and has practiced Massage Therapy within the City during the previous twenty-four (24) months and can verify this through:

(1) Proof of receiving a Leawood business license to provide Massage Therapy within the City during the past twenty-four (24) months, or

(2) Proof that the individual declared income on the individual’s tax return for performing and providing Massage Therapy within the City during the past twenty-four (24) months (Such individual shall sign an affidavit stating that the individual has submitted a true and accurate copy of the tax return filed with the I.R.S. and the State of Kansas and that the Massage Therapy was performed within the City); and

(b) Such individual will provide all future Massage Therapy in conjunction with a Licensed Massage Establishment, and has applied for and meets all other licensing requirements for a Massage Therapist; and

(c) Such individual is actively enrolled in and currently attending classes in a course of instruction in the theory, method or practice of Massage, in order to meet the City’s educational requirements, or is signed up to take the National Certification Examination for Therapeutic Massage and Bodywork, as authorized above.

5-616 **Massage Therapy: Revocation or Suspension of License or Permit.** A Massage Therapist License or Permit issued by the City may be revoked or suspended by the License Clerk after a public hearing before the License Clerk, or his designated representative, and a determination that:

(a) The provisions for the issuance of a Massage Therapist License or Permit are violated; or

(b) The Massage Therapist has been convicted of any offense discussed in this ordinance or any violent felony; or

(c) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.
Before revoking or suspending the Massage Therapist License or Permit, the License Clerk shall give the Massage Therapist at least ten (10) days written notice of the charges and the opportunity to be publically heard by the License Clerk, or his designated representative, at which time the Licensee may present evidence in response to the charges, and the relevant facts regarding the occurrence of the conviction or offense shall be determined. All revocations or suspensions by the License Clerk are appealable to the Governing Body, provided said appeal must be in writing and delivered to the License Clerk within ten (10) days of the revocation or suspension, and further provided that such appeal shall be reviewed by the Governing Body within thirty (30) days from the date the appeal is submitted. If the Governing Body upholds the revocation or suspension, an appeal may then be made to the Johnson County District Court as provided by law within thirty (30) days after the review of the Governing Body.

5-617-619  Reserved.

5-620 Massage Establishment: License.

(a) Generally. No person shall operate and conduct a Massage Establishment within the City without first obtaining a valid Massage Establishment License issued by the City pursuant to the provisions of this ordinance. To receive a License for operating and conducting a Massage Establishment, the applicant must meet the requirements as provided for hereafter. A Massage Establishment License specifically does not authorize the Licensee to perform and provide Massage Therapy without first obtaining a separate Massage Therapy License. A Massage Establishment License shall also be required to operate and conduct a business to perform and provide Out Calls.

(b) Application. Applicants for a License to operate or conduct a Massage Establishment within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, including the current FBI and KBI fingerprint fees. The application to operate a Massage Establishment shall contain the following:

Note: the following informational requirements for applicants shall also be provided as applicable for each stockholder holding more than 10% of the stock, and each director or officer (if the applicant is a corporation), each partner or limited partner (if the applicant is a partnership), and any manager or other person principally in charge of the business operations of the proposed establishment.

1. The name, address and telephone number of the applicant;
2. Written evidence that the applicant is at least 18 years old;
3. The applicant’s weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);
4. Two portrait photographs of the applicant (at least two inches by two inches);
5. The position or function the applicant is being hired to (or will) perform within such establishment, and the exact nature of the services to be provided under the requested License (As applicable);
6. The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;
Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and court in which convicted, the offense, and the sentence imposed as a result of such conviction;

The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously had such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

The proposed place of business and facilities therefor;

A list of all Massage Therapists working in the Massage Establishment and proof that such Massage Therapists are properly licensed (to be updated as necessary);

Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants’ former application.

Process of Application. Applications for a Massage Establishment License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police, the Neighborhood Services Administrator and the Building Official for their review and investigation. With the aid and input of the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted. The Neighborhood Services Administrator and the Building Official shall determine whether the structure of the proposed Massage Establishment complies with the requirements and standards of all applicable health, zoning, building code, fire and property maintenance ordinances, and all other applicable codes, standards and zoning requirements, provided the premises need not be designed or set up for the requirements of a Massage Establishment on the date of application, provided further that such requirements for a Massage Establishment are met prior to the first day of business. The Neighborhood Services Administrator and the Building Official shall report their findings to the License Clerk within ten (10) working days from the date the application is submitted. Upon the determination of the qualifications of the applicant and the receipt of the reports of the Neighborhood Services Administrator and the Building Official, the License Clerk shall schedule the application for review by the Governing Body at the earliest date possible with consideration for notice requirements established by law, provided that the application shall be approved or disapproved within forty-five (45) days from the date the application is submitted. The applicant shall be notified in writing of the date of the review by the Governing Body, and will be afforded an opportunity to be heard at such time. If inspection items related to structural design of the premises cannot be verified prior to the review by the Governing Body, the application may be approved contingent upon a final inspection prior to the issuance of the License.
(b) **Issuance of License.** The Governing Body shall review the application and shall approve the issuance of a License for a Massage Establishment, unless it is found that:

1. The applicant, any stockholders holding more than 10% of the stock or any director or officer (if the applicant is a corporation), any partner or limited partner (if the applicant is a partnership), or any manager or other person principally in charge of the operation of the business, has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a lewd or unlawful act; (vi) prostitution; (vii) pandering or other sexually related offense; or

2. The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the City in conjunction therewith; or

3. The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or

4. The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment; or

5. The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation; or

6. The operation as proposed by the applicant would not comply with all applicable laws including, but not limited to, the City's code or building, zoning, and health ordinances and regulations; or

7. The manager or other person principally in charge of the operation of the business would be ineligible to receive a License under the provisions of this ordinance; or

8. Any other application requirement has not been met.

Upon approval of the application by the Governing Body, the License Clerk shall issue the Massage Establishment License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the date of the disapproval.

**5-621 Massage Establishment: Display of Licenses.** A Massage Establishment shall at all times display in an open and conspicuous place its Massage Establishment License. It shall also display in an open and conspicuous place either a copy of the Identification Card of all Massage Therapists working at the Massage Establishment, or an identified color picture (at least 4 inches by 4 inches) of each Massage Therapist that provides the same information.
5-622 Massage Establishment: Inspection.

(a) Inspection of Proposed Massage Establishment. No business shall be operated or conducted at any proposed Massage Establishment, nor shall any Massage Establishment License be issued until an inspection by the Neighborhood Services Administrator, or the Building Official, or his/her authorized representative has been completed. The Neighborhood Services Administrator, or the Building Official, or his/her authorized representative shall certify that the proposed Massage Establishment complies with all of the requirements of this ordinance and shall give such certification to the License Clerk; provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of the premises, nor to preclude authorized inspection thereof.

(b) Supplemental Inspections. The License Clerk, the Police Department, the Neighborhood Services Administrator, the Building Official or his/her authorized representative may from time to time make an inspection of each Licensed Massage Establishment in this City for the purposes of determining that the provisions of this ordinance are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any Licensee to fail to allow such inspector immediate access to the premises or to hinder such inspector in any manner. Any failure on the part of a Licensee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee License.

5-623 Massage Establishment: Facilities. No business shall be operated or conducted at any Massage Establishment without first complying with the following with the minimum requirements:

(a) Massage Rooms. Rooms in which Massage Therapy is to be practiced or administered shall have at least fifty (50) square feet of clear floor area and shall maintain a light level of not less than forty (40) foot-candles as measured three (3) feet above the floor. Such rooms shall contain a door incapable of being locked from the exterior or interior. Such rooms, or rooms immediately adjacent thereto, shall be equipped with cabinets for the storage of clean linen and chemicals and approved receptacles for the storage of soiled linen.

(b) Dressing Rooms. Provisions for a separate dressing room for each sex must be available within all Massage Establishments, with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

(c) Toilet Facilities. Toilet facilities shall be provided in convenient locations. When five or more employees and Patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Urinals may be substituted for water closets after one water closet has been provided. The separate toilet facilities shall be designated as to the sex accommodated therein.

(d) Lavatories or Wash Basins. Lavatories or wash basins shall be provided in either the toilet room or a vestibule with both hot and cold running water. Soap in a dispenser and sanitary towels shall also be provided.

(e) Cleanliness of Establishment. Every portion of a Massage Establishment, including appliances, shall be kept clean and operated in a sanitary condition.

(1) The walls shall be clean, and the walls shall be painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition.
Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

**Towels and Linen.** When applicable, all Massage Establishments shall provide clean, laundered sheets and towels in sufficient quantity, and such items shall be laundered after each use thereof and stored in a sanitary manner. Towels, linen, and items for the personal use of employees and Patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for or by more than one Patron.

**5-624 Massage Establishment: Operation Regulations.** The operation of a Massage Establishment and the provision and performance of Massage Therapy shall be subject to the following regulations:

(a) **Hours.** Such business shall be closed and operations shall cease between the hours of 10:00 p.m. and 6:00 a.m. each day. Out Calls prescribed by a licensed healing arts practitioner shall cease between the hours of 9:00 p.m. and 8:00 a.m. each day.

(b) **Supervision.** The premises shall be supervised at all times when open for business. The Licensee or a person employed as a Massage Therapist shall personally supervise the business, and shall not violate or permit others to violate any applicable provision of this ordinance. The violation of any such provision by any agent or employee of the Licensee shall constitute a violation by the Licensee.

(c) **Separation of Sexes.** It shall be unlawful for Patrons of the opposite gender to receive treatment in the same room or the same quarters at the same time. Additionally, it shall also be unlawful for any person to be able to view or to be in the same room as persons of the opposite gender whose Specified Anatomical Areas are not fully covered.

(d) **Patron Attire.** No owner, manager, Massage Therapist or employee, while performing any task or service associated with the Massage Therapy, shall be present in any room with a Patron, or allow any other person to be present in a room with a Patron (excluding bathrooms, dressing rooms, or any room utilized for dressing purposes), unless the Patron’s Specified Anatomical Areas are fully covered by towels, cloths or undergarments. Any contact with a Patron’s genital area is strictly prohibited.

(e) **Employee Attire.** While performing or available to perform Massage Therapy or related services, all employees and Massage Therapists shall be fully clothed and covered, modestly attired, clean, and wearing clean outer garments. For purposes of this subsection, fully clothed and covered means a state of dress in which the covering shall be of an opaque material. Diaphanous or transparent clothing is prohibited. Additionally, the clothing must cover the employees and the Massage Therapists’ chests at all times, and extend from a point not to exceed four (4) inches above the center of the knee cap to the base of the neck. Finally, the clothing shall be maintained in a clean and sanitary condition.

(f) **Identification Card.** All Massage Therapists shall be required to conspicuously display their valid Identification Card as required above.

(g) **Danger to Safety or Health.** No service shall be given which is clearly dangerous or harmful in the opinion of the Chief of Police, the Neighborhood Services Administrator or the Building Official, to the safety or health of any person, and after such notice in writing has been delivered to the Licensee from such director or officer.
(h) **Alcoholic Beverages.** No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted, or suffered to be done in or upon any Licensed Massage Establishment, or during any Out Call; provided this restriction shall not apply to businesses where the Licensed Massage Therapy is accessory to the predominant business purpose of the establishment; provided further that no alcohol is permitted on that portion of the premises where the Massage Therapy occurs.

(i) **Conduct of Business.** All Licensees licensed under the provisions of this ordinance shall at all times be responsible for the conduct of business at their Massage Establishment and for any act or conduct of their employees which constitutes a violation of the provisions of this ordinance. Any violation of the city, state, or federal laws committed on the premises by any such Licensee or employee affecting the eligibility or suitability of such person to hold a License may be grounds for suspension or revocation of same.

**5-625 Massage Establishment: Employee and Patron Registers.**

(a) **Employees.** A Massage Establishment shall keep and maintain on the premises a current register of all employees showing such employee’s name, address, position and license number (if applicable). Such register shall be open to inspection at all reasonable times by any city inspector or police officer.

(b) **Patrons.** A Massage Establishment shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons’ names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year.

**5-626 Massage Establishment: Restrictions on Place of Business.**

a. **Operation of Massage Establishment.** Any commercial premises meeting the requirements herein may be licensed as a Massage Establishment to perform and provide Massage Therapy. Operation of such an establishment in a private residence or noncommercial business establishment is prohibited.

b. **Hotels and Motels.** No hotel or motel may receive a Massage Establishment License.

**5-627 Massage Establishment: Revocation or Suspension of License.** A Massage Establishment License may be revoked or suspended by the Governing Body after a public hearing before the Governing Body, and a determination that:

(a) A provision for the issuance of a Massage Establishment License has been violated; or

(b) The Licensee or its employee, including a Massage Therapist, has been convicted of any offense discussed in this ordinance or any violent felony, and the Licensee has actual or constructive knowledge of the violation or conviction; or

(c) The Licensee refused to permit a duly authorized police officer or city employee to inspect the premises or the operations of the Licensee; or

(d) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.
Before revoking or suspending a Massage Establishment License, the Governing Body shall give
the Licensee at least ten (10) days written notice of the charges and the opportunity to be heard by
the Governing Body, at which time the Licensee may present evidence in response to the charges.
A Licensee aggrieved by the decision of the Governing Body may appeal the decision to the
Johnson County District Court as provided by law within thirty (30) days after the date of the
revocation or suspension.

SECTION 5. This ordinance shall take effect and be in force as of the date of its passage, approval
and publication as provided by law.

PASSED by the Governing Body, the 19 day of June, 2000.

ADOPTED by the Governing Body the 19 day of June, 2000.

Peggy Durr, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class). That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for consecutive week(s), as follows:

ORDINANCE NO. 1867C--7/18/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:

JULY 19, 2000

DEBRA VALENTI
Notary Public


$323.26
ORDINANCE NO. 1867 C
First published in The Legal Record, Tuesday, July 18, 2000.
ORDINANCE NO. 1867 C

ORDINANCE TO PROVIDE FOR THE LICENSING OF MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS IN THE CITY OF LEAWOOD BY AMENDING SECTIONS 4.9.2-4.9.9 OF THE LEAWOOD DEVELOPMENT ORDINANCE, AND SEEKING A NEW PLACE TO CHAPTER 5 OF THE LEAWOOD CITY CODE REGARDING MASSAGE.

WHEREAS, "Massage Establishments" and "Massage Therapy" are currently regulated in the City of Leawood under the provisions and terms of the Adult Use and Entertainments Ordinance codified in Section 4-9-0 of the Leawood Development Ordinance; and

WHEREAS, the Governing Body has determined that "Massage Establishments" and "Massage Therapy" should not be regulated as Adult Use, but should be unconditionally administratively and regulated by the City; and

WHEREAS, the Governing Body has determined that a licensing requirement should be enacted to help administer and regulate the same; and

WHEREAS, the Governing Body has established the requirements provided for hereafter for the administration and regulation of "Massage Establishments" and "Massage Therapy" within the City of Leawood;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. That Sections 4-9.2-4.9.6 of Article 4 of the Leawood Development Ordinance are hereby repealed.

SECTION 2. That Section 4-9.2 of Article 4 of the Leawood Development Ordinance is hereby continued to read as follows:

4-9.2. Definitions. In addition to the definitions contained in Article 4 of the Development Ordinance, the following words and phrases shall, for purposes of this Section, be deemed to have the following meanings in the context that another meaning is intended. Should any of the definitions be in conflict with the current provisions of the Development Ordinance, these definitions shall prevail:

A. Administrator: The Neighborhood Services Administrator.

B. Adult Arcades: Any business establishment or concern to which the public is permitted or invited and which is equipped or operated, electronically, mechanically, or mechanically controlled, amusement devices, such as, but not limited to, slot machines, pinball machines, video games, or other video-producing devices are maintained to show images on a regular or substantial basis, where the images so displayed are considered "obscene" as defined by this Section.

C. Adult Bookstores: An establishment having as a substantial or significant portion of its stock in trade adult material, or as an establishment with a segment or sector devoted to the sale or display of such material.

D. Adult Business or Adult Use:

1. Any business establishment or concern which is a regular and substantial course of conduct, land use, or business where the patron expects nude, where the display is distinguished or characterized by the emphasis on matter depicting, or describing or relating to specified sexual activities or specified anatomical areas.

2. Any business establishment or concern which is a regular and substantial course of conduct offered, sells, or distributes adult oriented merchandise or sexually oriented merchandise, or which offers to its patrons adult materials or other products, merchandise, services or entertainment as substantially characterized by the emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

E. Adult Cabaret or Adult Nightclub: A business establishment or concern which features live performances by dancers or similar entertainers in the nude.

F. Adult Dance Studio: Any business establishment or concern which provides for members of the public a place to dance where the patron expects nude, or where the display is distinguished or characterized by the emphasis on matter depicting, or describing or relating to specified sexual activities or specified anatomical areas.

G. Adult Entertainment Studio: Any premises to which the public, patrons or members are invited or admitted, and which are physically arranged so as to provide dancing, cabaret, shows, concerts, orgies, or similar events from the common area of the premises, whereas an entertainment provides entertainment to a member of the public, a patron or a member, when such entertainment is held, conducted, operated or performed by any person, persons, group or groups of persons. An entertainment studio includes, without being limited to, any premises that is physically arranged and used as such, whether or not it is an entertainment studio, spa, wellness, dance studio, encounter studio, sensuality studio, modeling studio, or similar establishment where members expect to be entertained by others who are not included therein, contactless bars, similar establishments where entertainment is performed for groups of four or more.

H. Adult Hotel: A hotel which is used for presenting on a regular and substantial basis material which is distinguished or characterized by the emphasis on matter depicting or describing or relating to specified sexual activities or specified anatomical areas through closed circuit or cable television or through video tape recorder where video tapes are provided by the host/hotel. For purposes of this subsection, a "hotel" means any building or other structure which is kept, used, maintained, or held to be the place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more meals are used for the accommodation of such guests, regardless of whether such building or structure is designed as a motel, cabin camp, motor court, bus terminal, or other type of lodging establishment. Evidence that a sleeping room in a hotel has been rented and vacated two or more times in an period of time that is less than ten (10) hours creates reasonable presumptions that the establishment is an adult hotel as that term is defined in this Section.

I. Adult Oriented Merchandise: Sexually oriented implement, paraphernalia, or novelty items, such as, but not limited to, adult toys, sex aids, sex swings, sexually oriented ornaments, houses,下半, reservable ornaments, anatomical balloons with orifices, simulated and operated oxygen vacuums, and sexual and/or anatomical devices which are designed or manufactured primarily for the stimulation of human genital organs or male or female sexual activity or distinguished or characterized by the emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

J. Adult Material: Materials which are distinguished or characterized by their emphasis on matter which is distinguished or characterized by the emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

K. Adult Theater: A theater or other commercial establishment with or without a stage or presentation which is used for presenting, on a regular or substantial basis, material which is distinguished or characterized by the emphasis on matter depicting, or describing, or relating to specified sexual activities or specified anatomical areas.

L. Arcade Booth: Any enclosed or partially enclosed portion of an establishment in which an adult arcade is located, or where a live performance is presented, on a regular or substantial basis, where the content presented is distinguished or characterized by the emphasis on matter depicting, or describing, or relating to specified sexual activities or specified anatomical areas.

M. Commercial Zoning District: Any property within the City which is zoned SD-CR (Special Development, CR) (Planned Development, CR) or PD-CR (Planned Development General, CR) on the City’s official zoning map adopted pursuant to 2-2 of the Leawood Development Ordinance, as may be amended from time to time.

N. Dancer: A Performer who dances or otherwise performs for an adult dance studio and who seeks or accepts the patron’s sexual desires.

O. Employee: Any and all persons, including independent contractors, who work in or as a dancer or performer for or as a patron or dancer or performer for an adult entertainment establishment.

P. Entertainment: Any person who provides entertainment within an adult entertainment studio as defined in this Section.

Q. Entertainers: Any person who provides entertainment within an adult entertainment studio as defined in this Section.

R. Educational: Any performance or exhibition of any type, in the course of which entertainment or whether or not entertainment is provided as an employee or an independent contractor.

S. Exhibition: Any exhibition, performance, display or display of any type, in the course of which entertainment or whether or not entertainment is provided as an employee or an independent contractor.

T. Erotic Dance Studio: A fixed place of business which emphasizes and seeks, through one or more dancers or performers, to arouse or excite the patron’s sexual desires.

U. Erotica Modeling Studio: Any establishment or business which provides for members of the public, the services of a live body model for the purpose of reproducing the human body, wholly or partially in the nude, and includes any design, photograph, painting, sketching, drawing, or other pictorial form.

V. Footstool: A unit of illumination having a base from which there is uniformly distributed a light flux of one lumen over an area of one square foot. A lumen is a unit of measurement of the quantity of light energy emitted by a light source without regard to the effectiveness of its distribution. A candle is the unit of measurement of the quantity of light sources in a more specific direction. One candle directs its periphery to a surface one foot away generates one lumen of light output. A lumen of one candle directed on a unit area.

W. For the purposes of this Ordinance, the human output values shall be the total radiant output luminous.

X. Erotic Entertainment: Any business establishment or concern which is a regular and substantial course of conduct, land use, or business where the display is distinguished or characterized by the emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

Y. Master Plan: The current official Master Plan adopted by Ordinance No. 1667 (March 31, 1997), which document a hereinafter is referenced as if set forth in its entirety herein.

Z. Material: Any adult business, adult material, subject matter, images, or any combination thereof.

AA. Nude: Any state of nudity in which the whole or part of any human genitals, pubic region, buttok or female breast, at a level below the top of the areola, is less than completely and opaque covered.

BB. Obscenity: Any material or performance is obscene if the average person, applying contemporary community standards, would consider it to be obscene. The material must be considered as a whole, and it must also be considered whether that material, taken as a whole, appeals to the prurient interest, that the material in question is patently offensive. Offensive or patently offensive representations or descriptions of ultimate sexual acts, orgies, or sex games, and that the material or performance, taken as a whole, lacks serious literary, artistic, educational, religious, political or scientific value.

CC. Operator: Any person, partnership, or corporation operating, conducting or maintaining an adult or adult business.

DD. Park: Any public or private land designated as Open Space - Public or Private Open Space - Private in the Master Plan.

EE. Patrons: Any person, group of persons or an adult business.

FF. Performer: Any person who is an employee or independent contractor of the adult business, or any patron or dancer or performer for or without any compensation or other form of consideration, performs live entertainment for patrons of an adult business and who seeks to arouse or excite the patron’s sexual desires.

GG. Person: Any natural person, or any association, partnership, or corporation.

HH. Religious Institution: A facility used primarily for religious assembly or worship and related religious activities.

II. Residential Zone: Any property within the City which is designated as a Residential District pursuant to 2-1 of the Leawood Development Ordinance, as may be amended from time to time, and including any property within the City which is zoned RA-P (Planned Large Lots Single Family Residential), R-1 (Single Family Residential, RA-P (Planned Apartment House Residential), RA-P (Planned Apartment House Residential) or RA-P-4 (Planned Apartment House Residential) on the City’s official zoning map adopted pursuant to 2-2 of the Leawood Development Code, or RA-5 (Planned Rural Density Single Family). The term Residential Zone shall also mean any and all areas designated as Rural Density Residential, Low Density Residential, Medium Density Residential - Single Family Detached, Medium Density Residential - Single Family Attached, and Medium Density Residential Apartment in the Master Plan.

JJ. Seated: Any business establishment or concern which provides for members of the public, any exhibition or presentation which is in the course of which entertainment or whether or not entertainment is provided as an employee or an independent contractor.
ORDINANCE NO. 1869
First published in The Legal Record, Tuesday, July 18, 2000.

ORDINANCE NO. 1869

An ordinance rezoning property (Summitridge Villas) located at Chippewa Boulevard and Main Street Plus Annex (Agriculural) to R-4 (Planned Cluster Residential); Directing Amendment of the Official Zoning Map of the City of Leawood, Kansas; and Reincorporating Said Zoning Map.

Be it Ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

All that part of the Northeast Quarter of Section 5, Township 14, Range 25 in the City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the northeastern corner of said Northeast Quarter; thence South 04° 04' 56" East, along the East line of said Northeast Quarter, a distance of 877.06 feet; thence South 73° 23' 35" West, a distance of 136.98 feet; thence North 76° 11' 27" West, a distance of 34.40 feet; thence South 58° 10' 20" West, a distance of 95.14 feet; thence South 10° 30' 52" West, a distance of 118.82 feet; thence South 177° 01' 10" West, a distance of 117.22 feet; thence North 31° 45' 16" West, a distance of 46.08 feet; thence South 72° 23' 35" West, a distance of 152.25 feet; thence South 67° 42' 12" West, a distance of 160.81 feet; thence South 66° 54' 56" West, a distance of 20.14 feet; thence South 57° 23' 41" West, a distance of 75.95 feet; thence South 56° 13' 39" West, a distance of 186.11 feet; thence North 28° 46' 01" West, a distance of 449.67 feet; thence North 2° 34' 13" East, a distance of 115.05 feet; thence North 59° 15' 05" East, a distance of 114.48 feet; thence North 32° 30" East, a distance of 55.06 feet; thence North 1° 03' 47" West, a distance of 19.48 feet; thence South 76° 09' 20" West, along an arc of a circle, having a radius of 225.00 feet; and a central angle of 45° 05' 47", a distance of 179.03 feet; thence North 12° 02' 29" West, along an arc of a circle, having a radius of 225.00 feet, to a point on the North line of said Northeast Quarter; thence North 88° 38' 15" East, along the North line of said Northeast Quarter, a distance of 112.03 feet, to the Point of Beginning, except any part thereof in streets or roads. Tract of land contains 17,264.3 acres, more or less (excluded 161st Street and Mission Road right-of-way).

Now zoned AG, is hereby zoned R-4.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 19th day of July, 2000.

Approved by the Mayor the 19th day of July, 2000.

(S E A L)

Peggy J. Dunn Mayor

Martha Heiser City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney

TREASURER'S REPORT
First published in The Legal Record, Tuesday, July 18, 2000.
CITY OF LEAWOOD
TREASURER'S REPORT
QUARTER ENDING 06/30/2000

<table>
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<tr>
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<th>Expenditures</th>
<th>Ending</th>
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<td>$1,084,538,188</td>
<td>$1,339,228,50</td>
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Cash Accounts:
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- Savings Account: $1,010,337,197

Liabilities:
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- Total Liabilities: $1,010,337,197

Debt Service:
- Total Debt Service: $1,010,337,197

Bank Deposits:
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- Savings: $1,010,337,197

Total Liabilities: $1,010,337,197

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TREASURER'S REPORT
First published in The Legal Record, Tuesday, July 18, 2000.
5-602 Massage Licenses in General: License Required. No person shall perform and provide Massage Therapy within the City or operate and conduct a Massage Establishment within the City without a valid and separate License. Such Licenses shall be issued by the City pursuant to the provisions of this ordinance, and must be current, unrevoked and not suspended. Licenses granted pursuant to this ordinance shall be valid for a period of twelve months from the date of issuance.

5-603 Massage Licenses in General: Multiple Licenses.

(a) Applicants seeking to operate and conduct a Massage Establishment and to perform and provide Massage Therapy must obtain both a Massage Establishment License and a Massage Therapist License.

(b) Applicants seeking to operate and conduct multiple Massage Establishments must obtain a separate Massage Establishment License for each location.

5-604 Massage Licenses in General: License and Permit Fees.

(a) The annual fee for a Massage Establishment License, a Massage Therapy License and a Massage Therapy Student Permit shall be set by the City’s annual fee schedule, and shall be nonrefundable and nontransferable.

(b) An individual applicant concurrently applying for both a Massage Establishment License and a Massage Therapy License shall only be charged the fee for a Massage Establishment License.

(c) Any applications made, fees paid, and Licenses or Permits obtained under the provisions of this ordinance shall be in addition to, and not in lieu of any other fees, taxes, permits, or licenses required to be paid or obtained under any other ordinances of the City.

5-605 Massage Licenses in General: Transfer of Licenses and Permits. No Massage Establishment License, Massage Therapy License or Massage Therapy Student Permit may be transferred to a person other than the Licencsee or Permittee named therein.

5-606 Massage Licenses in General: Advertising. No Licensee shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than that service as provided for by this ordinance, or that employees or Massage Therapists are trained in any manner other than provided for herein, nor shall any text or description indicate that any service is available other than those services authorized by this ordinance.

5-607 Massage Licenses in General: Other Provisions.

(a) Applicability to Existing Businesses. The operator of any existing massage therapy establishment and any providers or performers of Massage Therapy within the City are required to comply with all provisions of this ordinance within ninety (90) days from the enactment of this ordinance.

(b) Exceptions. The provisions of this ordinance shall not apply to a physician, surgeon, dermatologist, osteopath, physical therapist, registered nurse or any other person engaged in the operation of electrotherapy equipment, barber or cosmetologist who lawfully carries on his or her particular profession or business and holds a valid, unrevoked license or certificate of registration issued by the State.

(c) Further Regulations. The License Clerk, the Chief of Police or the City Administrator may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out the intent of this ordinance.

(d) Penalty. Any person convicted of violating any of the provisions of this ordinance shall be deemed guilty of a public offense and subject to the general penalty provisions of the Law enforcement Code.

(e) Repeal. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof.

5-608-609 Reserved.

5-610 Massage Therapy License.

(a) Generally. No person shall perform and provide Massage Therapy within the City without first obtaining a valid Massage Therapist License issued by the City pursuant to the provisions of this ordinance. To receive a License to perform and provide Massage Therapy, the applicant must be currently employed by a licensed Massage Establishment, and meet the requirements of a Massage Therapist as provided for hereafter. Persons qualified as a Massage Therapist may receive a Massage Therapy License to perform and provide Massage Therapy within the City subject to the eligibility requirements cited hereafter.

(b) Application. Applicants for a License to perform and provide Massage Therapy within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, including the current FBI and CBI fingerprint fees. The application for a Massage Therapist License shall contain the following:

(1) The name, address and telephone number of the applicant;

(2) Written evidence that the applicant is at least 18 years old;

(3) The applicant’s weight, height, color of hair and eyes, and fingerprints (applicant will not be required to submit fingerprints on subsequent renewal applications);

(4) Two portrait photographs of the applicant (at least two inches by two inches);

(5) The position or function the applicant is being hired to perform within such establishment, and the exact nature of the services to be provided under the requested License;

(6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of the application.

(7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the date and place and nature of the conviction, the offense, and the sentence imposed as a result of such conviction;
5.61 The Massage Therapy and Massage Establishment License of the applicant, and whether the applicant has in the City or any other city or state previously held such license or similar authorization revoked or suspended. In each such event, the applicant will provide the reason therefor, and the business activity or occupation, subsequent to such action of suspension or revocation;

(9) The proposed place of business and facilities thereof, including proof that such place of business currently holds a proper Massage Establishment License;

(10) Proof of the education and experience requirements as provided by this ordinance;

(11) Authorization for the City, its agents and employees to seek information and conduct an investigation, into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

(12) Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the information for the Licensee in its file.

(a) Process of Application. Applications for a Massage Therapy License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police. With the receipt and input of the Chief of Police, the License Clerk shall determine whether the information contained in the applicant's application is accurate and whether the applicant is qualified to be issued (or renewed) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted.

(b) Issuance of License. The License Clerk shall approve the issuance of a Massage Therapist License unless it is found that:

1. The applicant has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a person under unlawful age; (vi) prostitution; (vii) pandering or another sexually related offense, or

2. The applicant has knowingly made any false, misleading, or fraudulent statement in the application or in any document required by the City in connection therewith;

3. The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permits or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed at any such establishment;

4. The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation;

5. That the applicant has not successfully completed the education standards required under the provisions of this ordinance; or

(7) The application is for work to be performed at a Massage Establishment that is unlawful, or whose License has been suspended or revoked;

(8) Any other application requirement has not been met.

Upon approval of the application, the License Clerk shall issue the Massage Therapy License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant will be immediately notified by certified mail, return receipt requested, for the disapproval. Any applicant approved by the disapproval may appeal to the appeal will be reviewed by the Governing Board within thirty (30) days from the date the applicant is submitted. Any applicant may appeal to the Governing Board within thirty (30) days from the date of the Governing Board may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the review by the Governing Board.

5.611 Massage Therapy: Out-Call. Out-calls on commercial premises within the City are prohibited. Outcalls on residential premises of a Patron within the City are prohibited, unless prescribed by a licensed healing arts practitioner.

(1) Residential Premises. Out-Calls may only be conducted as a private residence at the discretion of a licensed healing arts practitioner. In such event, the massage therapist shall provide the residential premises the name and address of the patron, a copy of the licensed healing arts practitioner's education, license, and the fee charged. Prior to any service being done at a private residence, the massage therapist must clearly state that he or she is a Licensed Massage Therapist, and the patron may sign a form requesting the service. All such written requests shall be kept by the Massage Therapist for a period of one year, and shall be produced for inspection when requested by any city official.

5.612 Massage Therapy: Classification. The following categories and educational requirements shall be applicable to all Massage Therapists as specified below. Proof of completion of education and training requirements required by this ordinance shall be by certified transcripts. The educational and training may be received from more than one school.

(a) Education. T Massage Therapists

(1) a. 

That the applicant has successfully completed a course of instruction, consisting of not less than five hundred (500) hours, in massage therapy, including but not limited to, practical massage (An hour of instruction is defined as fifty minutes of actual instructional time). The curriculum shall include at a minimum:

(a) Two hundred and fifty (250) hours of theory and practice of massage technique, to include body treatment techniques, remedial gymnastics, body mechanics of the practitioner, and medical treatment. A maximum of fifty (50) of these hours may include time spent in a student clinic;

(b) One hundred thirty (130) hours of anatomy, physiology, and kinesiology, including palpation, range of motion, and physical joint function. There must be a minimum of forty (40) hours of kinesiology.

(b) Fifty-five (55) hours of clinical/business practices, to include hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, patient interaction, state and local laws and three hours of communicable diseases.

(c) Fifty (50) hours of pathology including infections and communicable diseases in the Massage Therapy and pathology.

(d) Fifteen (15) hours of hydrotherapy.

3. As an alternative to the above educational requirements, the applicant may provide proof that:

(a) The applicant is currently licensed or has been licensed within six months of the date of application for a minimum of one year with a U.S. state's licensing authority that requires a course of instruction, consisting of at least one hundred fifty (150) hours of instruction, in the theory, method or practice of Massage. Such required curriculum must include anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique;

(b) The applicant has successfully passed the 1992 or later, National Certification Examination for Therapeutic Massage and Bodywork and has successfully completed a course of instruction, consisting of not less than three hundred (300) hours in the theory, method or practice of Massage. The required curriculum must include the subjects of anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique.

(iii) In addition to meeting the requirements of either subsection (i) or (ii), the applicant must also have successfully completed certification in American Red Cross first aid and Adult: Infant Heart Association CPR or the equivalent, and provide current certification.

2. Eligibility. A Licensed Massage Therapist may perform and provide Massage Therapy at a Massage Establishment. A Licensed Massage Therapist may also perform and provide Out-Calls only when presented by a licensed healing arts practitioner.

3. Student Massage Therapy. Student Massage Therapy is prohibited within the City unless an individual meets the qualifications of provisions 5.615 of this ordinance.

5.613 Massage Therapy Identification Cards. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall keep a list of all names in their possession, a valid Identification Card when working in a Massage Establishment or performing and providing service. Such Identification Card shall be conspicuously worn on the Massage Therapist's clothing, or be posted on the wall, of the massage room in a conspicuous location. Such Identification Card shall bear the Massage Therapist's name, license number, classification, physical description, and a keep their Licenses and Permits available for inspection at all times upon request of any person who by law may inspect the same.

5.614 Massage Therapy: Patron Registers. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall keep a daily register of all persons patronizing the massage therapist. Such register shall list the Patron's names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned for the massage therapist shall at all times during business hours be subject to inspection by City inspectors and police officers. The register shall be kept on file for three years. Such register may be kept and supervised by the Massage Establishment as provided for herein.

5.615 Massage Therapy: Applicability to Existing Massage Providers. All individuals providing or performing Massage Therapy within the City at the time this ordinance is enacted who does not require for thirty-six (36) months past the date of enactment as long as such individual meets the following conditions:

(a) As of the date of enactment, such individual is currently providing and has practiced Massage Therapy within the City during the previous twenty-four (24) months and can verify this through:

1. Proof of receiving a Lawedocan business license to provide Massage Therapy within the City during the past twenty-four (24) months, or

2. Proof of the individual declared income on the individual's tax return for performing and providing Massage Therapy within the City during the past twenty-four (24) months (Such individual shall sign an affidavit stating that the individual had submitted a true and accurate copy of the tax return filed with the I.R.S. and the State of Kansas and that the Massage Therapy was performed within the City);

Such individual will provide all future Massage Therapy in conjunction with a Licensed Massage Establishment, and has applied for and meets all other licensing requirements for a Massage Therapist and:

(c) Such individual is actively enrolled in and currently attending classes in a course of educational requirements, in the theory, method or practice of Massage, in order to meet the City's educational requirements, or is signed up to take the National Certification Examination for Therapeutic Massage and Bodywork, as authorized above.

5.616 Massage Therapy: Revocation or Suspension of License or Permit. A Massage Therapist License or Permit issued by the City may be revoked or suspended by the License Clerk after a public hearing before the License Clerk, or his designated representative, and a determination that:

(a) The provisions for the issuance of a Massage Therapist License or Permit are violated; or

(b) The Massage Therapist has been convicted of any offense previously in 5.616.

(c) Any of the provisions of this ordinance are violated, including, but not limited to the applicable standards.
The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously held such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

The proposed place of business and facilities therefore, including proof that such place of business currently holds a proper Massage Establishment License;

Proof of the education and experience requirements as provided by this ordinance;

Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License;

Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicant's former application.

Process of Application. Applications for a Massage Therapy License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police. With the file and the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted.

Issuance of License. The License Clerk shall issue the license upon compliance with all the requirements of this ordinance.

(a) The applicant has been convicted of, or divvied on, (i) a felony, (ii) an offense involving sexual misconduct with children; (iii) obesity; (iv) prescribing a controlled substance as defined by Kansas statute; (v) solicitation of a fraud or unlawful act; (vi) prostitution; (vii) pandering or other sexually oriented offense; or

(b) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the City in connection therewith;

(c) The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or

(d) The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Lawrence Development Ordinance) or escort service, or has been employed by any such establishment; or

(e) The current license for has not been surrendered to the City, and, in the case of a check, been cashed, honored upon presentation; or

(f) The applicant has not successfully completed the education standards required under the provisions of this ordinance, or

(g) The application is for work to be performed at a Massage Establishment that is unlicensed, or whose License has been suspended or revoked; or

(h) Any other application requirement has not been met.

Upon approval of the application, the License Clerk shall issue the Massage Therapy License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the denial (if any). Any applicant aggrieved by the disapproval, may appeal to the Governing Body within ten (10) days after notice of the disapproval, provided that such appeal shall be received by the Governing Body within thirty (30) days from the date the appeal is filed. Any appeal shall be considered by the Governing Body after the Governing Body may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the review by the Governing Body.

5-611 Massage Therapy - Out Calls. Outcalls on commercial premises within the City are prohibited. Outcalls on residential premises of a Patron within the City are prohibited, unless prescribed by a licensed healing arts practitioner.

(1) Residential Premises - Out Calls may only be conducted at a private residence at the discretion of a licensed healing arts practitioner. In such event, the Massage Therapist shall provide to the License Clerk the name and address of the Patron, a copy of the licensed healing arts practitioner's authorization, the date and time of the service, a description of the services to be rendered, the fees charged. Prior to or after any service being done at a private residence, the Massage Therapist must clearly state to the Patron that he or she is a Licensed Massage Therapist, and the Patron must sign a form requesting the service. All such written requests shall be kept by the Massage Therapist for a period of one year, and shall be produced for inspection when requested by any City officer.

5-612 Massage Therapy - Classification. The following categories and educational requirements shall be applicable to all Massage Therapists as specifically provided hereinafter. Proof of completion of education and training requirements required by this ordinance must be by certified transcript. The educational and training may be received from more than one school.

Education - Massage Therapist

(a) Be eligible for a Massage Therapist License, the applicant must provide proof of the following:

(b) That the applicant has successfully completed a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage (An hour of instruction is defined as fifty minutes of instructional time). The curriculum shall include:

a. Two hundred and fifty (250) hours of theory and practice of Massage Therapy techniques, including: deep tissue massage, remedial gymnastics, body mechanics of the practitioner, and medical treatment. A maximum of fifty (50) of these hours may include time spent in a student intern. There must be a minimum of forty (40) hours of anatomy.

b. One hundred thirty (130) hours of anatomy, physiology and kinesiology, including palpation, range of motion, and physics of joint function.

5-613 Massage Therapy - Identification Cards. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall at all times have in their possession a voidable identification card when working in a Massage Establishment or performing and providing Out Calls. Such Identification Card shall be conspicuously worn on the Massage Therapist's clothing, or be posted on the wall of the message room in a conspicuous location. Such Identification Card shall bear the massage Therapist's name, license number, classification, physical description, and a photograph, and shall be in possession to prevent alteration. Additionally, all Massage Therapists shall keep their Licenses and Permits available for inspection at all times upon request of any person who by law may inspect the same.

5-614 Massage Therapy - Patron Registers. All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patron's name, address, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall be all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year. Such register may be kept and supervised by the Massage Establishment as provided for herein.

5-615 Massage Therapy - Applicability to Existing Massage Providers. An individual providing or performing Massage Therapy within the City at any time prior to this ordinance is an entity who does not meet the education requirements described herein. Such an entity may be exempted from the City's current education requirements for thirty-six (36) months past the date of enactment as long as such individual meets the following conditions:

(a) At the date of enactment, such individual is currently practicing and has practiced Massage Therapy within the City during the previous twenty-four (24) months and can verify this through:

1. Proof of receiving a Lawrence business license to provide Massage Therapy within the City during the past twenty-four (24) months;

2. Proof that the individual declared income on the individual's tax return for performing and providing Massage Therapy within the City during the past twenty-four (24) months (Local and state) and the individual's tax return during the last twenty-four (24) months has submitted a true and accurate copy of the tax return filed with the I.R.S. and the State of Kansas and that the Massage Therapy was performed within the City;

(b) Such individual will provide all future Massage Therapy in conjunction with a Licensed Massage Establishment, and has applied for and meets all other licensing requirements for a Massage Therapist; and

(c) Such individual is actively enrolled in and currently attending classes in a course of instruction in the theory, method or practice of Massage, in order to meet the City's educational requirements, or is signed up to take the National Certification Examination for Therapeutic Massage and Bodywork, as described above.

5-616 Massage Therapy - Revocation or Suspension of Licenses or Permits. A Massage Therapist License or Permit issued by the City may be revoked or suspended by the License Clerk upon a public hearing before the License Clerk, or his designee representative, and a determination that:

(a) The provisions for the issuance of a Massage Therapist License or Permit are violated; or

(b) The Massage Therapist has been convicted of any offense described in this ordinance or any other felony; or

(c) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.
CONTINUED FROM PRECEDING PAGE

K. Specified Assaultive Areas shall mean:
1. Less than completely and openly covered:
   a. public region; or
   b. female breast below a point immediately above the areola; or
   c. female breast above a point immediately above the areola; or
2. Any device or clothing, when exposed to view, which simulates the female breast below a point immediately above the areola, public region or breast; or
3. Human or simulated male genitals in a discernible virginal state, even if completely and openly covered.

L. Specified Sexual Activities shall mean:
1. Human genitals in a state of sexual excitement or arousal; and/or
2. Area of human masturbation, sexual intercourse or arousal; and/or
3. Use of human or animal excretions, odor, oral copulation, erotic or masturbation, and/or
4. Masochism, erotic or sexually-oriented torture, beating, or the infliction of pain; and/or
5. Human excretion, urination, conception, vaginal or anal irrigation; and/or
6. Fondling or other sexual touching of human genitals, public region, breast, or female breast.

M. Tavern: Any premises on which alcoholic or other malt beverages are sold for consumption on the premises pursuant to a license or permit issued by the Kansas Board of Taxation, the City of Kansas, or any other political subdivision or agency of the State of Kansas.

SECTION III. That Section 4-96 of Article 4 of the Leawood Development Ordinance is hereby amended to read as follows:

5-606 Massage Establishments and Massage Therapy

No person shall operate a Massage Establishment or perform and provide Massage Therapy except as provided for by the provisions of the City Code regarding Massage. When licensed and authorized as provided by the City Code, Massage Establishments and Massage Therapy shall not be considered an adult use.

SECTION V. That the code of the City of Leawood is hereby amended by adding a new article 5 to Chapter V, which reads as follows:

CHAPTER V. ARTICLE 5. MASSAGE

5-606 Definitions

(a) "Applicant." A person who has applied to the City for a Massage Establishent License or a Massage Therapy License or Permit as authorized by this ordinance.

(b) "License." An authorization as provided for in this ordinance for a person to:
   (1) Operate and conduct a Massage Establishment; or
   (2) Perform and provide Massage Therapy.

(c) "Licensee." A person who has been granted a License as provided for by this ordinance.

(d) "Massage." Any form of pressure on or to the body, including, but not limited to, rubbing, brushing, kneading, rubbing, tapping, stroking, boiling, vibrating, stimulating the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiperspirants, oil, powder, creme, talcum powder or other similar preparations commonly used in this practice. Massage as defined herein does not include the tattooing in any fashion of the human body.

(e) "Massage Establishment." A fixed place of business within the City where Massage Therapy is administered for compensation, including, massage tables, massage chairs, steam tables, and towel service. Such place of business shall be only open during normal commercial premises as specifically provided for hereinafter. For the provisions and requirements of this ordinance, this definition shall not be construed to include hospitals, nursing homes, medical clinics or the commercial offices of: (1) a licensed physician, surgeon, chiropractor, osteopath or physical therapist when such duly licensed person is directly supervising or administering Massage to his or her patient; (2) a licensed operator of an electrolysis establishment (only with regard to the provision of electrolysis treatment); or (3) barbershops or beauty salons which perform Massage only to the scalp, the face, the neck or shoulders.

(f) "Massage Therapy." The application of Massage for consideration of any kind, including discounts and other goodwill offers. For the provisions and requirements of this ordinance, this definition shall not be construed to include: (1) any continuing instruction in aural arts, performing arts or organized athletic activities; (2) any Massage directly supervised or administered by a licensed physician, surgeon, chiropractor, osteopath or physical therapist in his or her commercial offices; (3) any provision of electrolysis by a licensed operator of electrolysis establishment; or (4) any Massage to the scalp, face, neck or shoulders by a licensed barber or beautician.

(g) "Massage Therapist." A person licensed in accordance with this ordinance who engages in the practice of Massage and performs and provides Massage Therapy.

(h) "Our Call." Massage Therapy that is conducted upon the commercial or personal premises of a patron as specifically provided for hereinafter.

(i) "Patron." A person who utilizes or receives the services of Massage Therapy. Such person shall be over 18 years of age and provided a person under the age of 18 may utilize or receive Massage Therapy from a Licensed Massage Therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy as writing.

(j) "Permit." An authorization for a student to perform Massage Therapy only as specifically provided for hereinafter.

(k) "Person." Any natural or corporate person, business association or business entity, including, but not limited to, a firm, a partnership, an association, a sole proprietorship, a successor or assign of any of the foregoing, or any other legal entity.

(l) "Specified Assaultive Areas." The human genitals, pubic region, breasts, or female breasts below a point immediately above the areola.

5-607 Massage License in General: License Required.

No person shall perform and provide Massage Therapy within the City or operate and conduct a Massage Establishment within the City without a valid and separate License. Such License shall be issued by the City pursuant to the provisions of this ordinance, and must be current, unrevoked and not suspended. Licenses granted pursuant to this ordinance shall be valid for a period of twelve months from the date of issue.

5-603 Massage Licenses in General: Multiple Licenses.

(a) Applicants seeking to operate and conduct a Massage Establishment and to perform and provide Massage Therapy must obtain both a Massage Establishment License and a Massage Therapy License.

(b) Applicants seeking to operate and conduct multiple Massage Establishments must obtain a separate Massage Establishment License for each location.

5-604 Massage Licenses in General: License and Permit Fees.

(a) The annual filing fee for a Massage Establishment License, a Massage Therapy License and a Massage Therapy Student Permit shall be set by the City's annual fee schedule, and shall be nonrefundable and nontransferable.

(b) An individual applicant concurrently applying for both a Massage Establishment License and a Massage Therapy License shall only be charged the fee for a Massage Establishment License.

(c) Any applications made, fees paid, and Licenses or Permits obtained under the provisions of this ordinance shall be in addition to, and not in lieu of any other fees, taxes, permits, or licenses required to be paid or obtained under any other ordinances or laws of this City.

5-605 Massage Licenses in General: Transfer of Licenses and Permits.

No Massage Establishment License, Massage Therapy License or Massage Therapy Student Permit may be transferred to a person other than the Licensee or Permittee named therein.

5-606 Massage Licenses in General: Advertising.

No Licensee shall place, publish or distribute a sign or cause to be placed, published or distributed any advertising matter that indicates a Massage Establishment, is reasonably suggestive of sexual services or is advertised to any person reasonably suggests that any services are available other than those services as provided for by this ordinance, or that employees or Massage Practitioners are dressed in any manner other than provided for herein, nor shall any act of such advertising indicate that any service is available other than those services authorized by this ordinance.

5-607 Massage Licenses in General: Other Regulations.

(a) Applicability to Existing Establishments. The operation of any existing massage therapy establishment and any provider or performance of Massage Therapy within the City are required to comply with all provisions of this ordinance within ninety (90) days from the enactment of this ordinance.

(b) Exemptions. The provisions of this ordinance shall not apply to a physician, surgeon, chiropractor, osteopath, physical therapist, registered professional nurse, or any other person licensed by a board or any office of the State of Kansas to practice under the laws of Kansas.

(c) Further Regulations. The License Clerk, the Chief of Police, the City Administrator, may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out the intent of this ordinance.

(d) Penalty. Any person convicted of violating any of the provisions of this ordinance shall be deemed guilty of a public offense and subject to the general penalty provisions of the Leawood City Code.

(e) Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is, for any reason held to be unconstitutional or invalid, the remainder of this ordinance shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof.

5-640 Reserved.

5-610 Massage Therapy: License.

Generally, no person shall perform and provide Massage Therapy within the City without first obtaining a valid Massage Therapist License issued by the City pursuant to the provisions of this ordinance. To receive a License and to perform and provide Massage Therapy, the applicant must operate or be currently employed by a licensed Massage Establishment and meet the requirements of a Massage Therapist as provided for hereinafter. Persons qualified as a Massage Therapist may receive a Massage Therapy License to perform and provide Massage Therapy within the City subject to the eligibility requirements cited hereinafter.

(a) Applicants. Applicants for a License to perform and provide Massage Therapy within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, including the current FBI and IRS fingerprint fees. The application for a Massage Therapist License shall contain the following:

(1) The name, address and telephone number of the applicant;

(2) Written evidence that the applicant is at least 18 years old;

(3) The applicant's weight, height, color of hair and eyes, and fingerprints (applicant will not be required to remit fingerprints on subsequent renewal applications);

(4) Two portrait photographs of the applicant (at least two inches by two inches);

(5) The position or function the applicant is being hired to perform within such establishment, and the exact nature of the services to be provided under the requested License;

(6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and year in which convicted, the offense, and the sentence imposed as a result of such conviction.

(8) ...
(a) Hours. Each business shall be open and conducted in such a manner that it shall close at 12:00 a.m. or earlier. No one shall remain in the business after closing time.

(b) Supervision. The premises shall be supervised at all times by an agent or employee of the Licensee.

(c) Separation of Sexes. Male patrons shall use the same room or a separate room designated for men. Female patrons shall use the same room or a separate room designated for women. No person of the opposite sex shall be admitted to the same room.

(d) Patron Attire. No patron shall enter the business unless they are properly attired. All patrons shall be required to sign in before entering the premises. No patron shall be allowed on the premises after closing time.

(e) Identification. All patrons shall present identification at the time of entry. The identification shall be checked by the premises manager.

(f) Alcoholic Beverages. No alcoholic beverages shall be served or consumed on the premises.

(g) Sanitation. The premises shall be kept clean and sanitary at all times. All waste shall be disposed of properly and promptly.

5-624 Massage Establishments: Operation Regulations. The operation of a Massage Establishment shall be conducted in accordance with the following regulations:

(a) Hours. The business shall be open and conducted in such a manner that it shall close at 12:00 a.m. or earlier. No one shall remain in the business after closing time.

(b) Supervision. The premises shall be supervised at all times by an agent or employee of the Licensee.

(c) Separation of Sexes. Male patrons shall use the same room or a separate room designated for men. Female patrons shall use the same room or a separate room designated for women. No person of the opposite sex shall be admitted to the same room.

(d) Patron Attire. No patron shall enter the business unless they are properly attired. All patrons shall be required to sign in before entering the premises. No patron shall be allowed on the premises after closing time.

(e) Identification. All patrons shall present identification at the time of entry. The identification shall be checked by the premises manager.

(f) Alcoholic Beverages. No alcoholic beverages shall be served or consumed on the premises.

(g) Sanitation. The premises shall be kept clean and sanitary at all times. All waste shall be disposed of properly and promptly.

5-625 Massage Establishments: Operation Regulations. Any commercial premises meeting the requirements herein may be licensed as a Massage Establishment to perform and provide Massage Therapy. Operation of such an establishment is a private residence or noncommercial business establishment is prohibited.

5-627 Massage Establishments: Operation Regulations. Any commercial premises meeting the requirements herein may be licensed as a Massage Establishment to perform and provide Massage Therapy. Operation of such an establishment is a private residence or noncommercial business establishment is prohibited.

SECTION 3. This ordinance shall take effect and be in force as of the date of its passage, approval and publication as provided by law.

ADOPTED by the Governing Body the 13th day of June, 2009.
Wet and dry best rooms, shower compartments and toilet rooms shall be thoroughly cleaned after each use.

Towels and Linens. When applicable, all Massage Establishments shall provide clean laundered sheets and towels in sufficient quantity, and such items shall be laundered after each use and stored in a sanitary manner. Towels, linens, and items for the personal use of employees and patrons shall be clean and freshly laundered. Towels, sheets, towels, sheets, and clothes shall not be used for or by more than one patron.

5-624 Massage Establishment: Operation Regulations. The operation of a Massage Establishment and the provision and performance of Massage Therapy shall be subject to the following regulations:

(a) Hours. Such business shall be closed and operations shall cease between the hours of 2:00 p.m. and 5:00 a.m. daily. No Calls shall be made to a licensed massage therapist during this time.

(b) Supervision. The premises shall be supervised at all times when open for business. The premises shall be personally supervised by a licensed massage therapist. The premises shall not be conducted by employees or agents of the licensees. The premises shall not be conducted by individuals or groups of individuals who do not have a valid license under this ordinance.

(c) Separation of Sexes. It shall be unlawful for patrons of the opposite sex to receive treatment in the same room or the same quarters at the same time. Additionally, it shall be unlawful for any person to be visible or to be in the same room as persons of the opposite sex in any Massage Establishment, even though the area is not designated as a.k.a. massage area.

(d) Patron Attire. No owner, manager, Massage Therapist or employee, while performing any service associated with the Massage Therapy shall be present in any room with a Patron, or allow any person other than a Massage Therapist to be present in a room with a Patron (excluding the room where treatment is provided). All individuals shall be dressed appropriately for the treatment being provided.

(e) Employee Attire. While performing or available to perform Massage Therapy, all employees of Massage Establishments shall be fully clothed and covered, modestly, neatly, and wearing clean outer garments. For purposes of this subsection, "fully clothed" means that the covering shall not expose any portion of the body, except for the head, shoulders, back, and arms, or the lower half of the body, or the lower extremities, or the head, shoulders, back, and arms, or the lower extremities, respectively. "Covered" means that the covering shall not expose any portion of the body, except for the head, shoulders, back, and arms, or the lower half of the body, or the head, shoulders, back, and arms, or the lower extremities, respectively.

(f) Identification Card. All Massage Therapists shall be required to conspicuously display their valid Identification Card as required above.

(g) Danger to Safety or Health. No service shall be given which is clearly dangerous or harmful. In the opinion of the Chief of Police, the Neighborhood Services Administrator, or the Building Official, to the safety or health of any person, and after such notice in writing has been delivered to the Licensee from such director or officer.

(h) Alcoholic Beverages. No alcoholic beverages or any malt beverages, for the consumption of non-consumers, shall be allowed, permitted, or suffered to be done in or upon any premises except that all alcoholic beverages shall be in a container of not more than one-half gallon in capacity, and shall be stored in a manner and in a place where they are not exposed to public view.

5-625 Massage Establishment: Employees and Patron Registry.

(a) Employees. A Massage Establishment shall keep and maintain on the premises a current register of all employees showing each employee's name, address, position, and license number (if applicable). Such register shall be open to inspection at all reasonable times by any city inspector or police officer.

(b) Patrons. A Massage Establishment shall keep a daily register of all patrons in a form approved by the Licensee. Such register shall list the patrons' names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall be kept at all times during business hours to be subject to inspection by City inspectors and police officers, and shall be kept on file for three years.

5-626 Massage Establishment: Restrictions on Place of Business.

(a) Operation of Massage Establishment. Any commercial premises meeting the requirements herein may be licensed as a Massage Establishment to perform and provide Massage Therapy. Operation of such an establishment in a private residence or non-commercial business establishment is prohibited.

(b) Hotels and Motels. No hotel or motel may use the premises of any Massage Establishment to perform any Massage Therapy or to provide any services related to the performance of Massage Therapy.

5-627 Massage Establishment: Revocation or Suspension of License. A Massage Establishment License may be revoked or suspended by the Governing Body after a public hearing before the Governing Body, and a determination that:

(a) A provision for the issuance of a Massage Establishment License has been violated; or

(b) The Licensee or its employee, including any Massage Therapist, has been convicted of any offense discussed in this ordinance or any violation of any law of the state, and the Licensee has actual or constructive knowledge of the violation or conviction; or

(c) The Licensee refuses to permit a duly authorized police officer or city employee to inspect the premises or the operation of the Licensee; or

(d) Any of the provisions of this ordinance are violated, including, but not limited to, the application standards.
ORDINANCE NO. 1866

AN ORDINANCE AMENDING SECTION 3-8 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE PLANNED NEIGHBORHOOD RETAIL; AND REPEALING EXISTING SECTION.

Be it ordained by the governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 3-8 of the Leawood Development Ordinance, is hereby amended to read as follows:

3-8 CP-1 (PLANNED NEIGHBORHOOD RETAIL)

A) General Purpose and Description: Property zoned and developed as CP-1 Planned Neighborhood Retail shall be to provide for selected neighborhood retail business uses within the City. This district is limited to retail activities that are conducted wholly within the facility with noted exceptions. The intended purpose is to provide for neighborhood shopping centers properly landscaped to ensure open space and promote compatibility to surrounding neighborhoods.

B) Permitted Uses: In District CP-1 no building, structure, land or premises shall be used or hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Art galleries, museums, and libraries
2) Artist studio
3) Bakery (retail only)
4) Banks, savings and loans, credit unions
5) Barber/beauty shops
6) Bicycle shop (sales/rental)
7) Books/stationery store
8) Camera/photo supply store
9) Clothing/accessory store
10) Computer sales/service
11) Convenience store
12) Drug store/health care supplies
13) Electronic sales and service
14) Flower/garden store
15) General offices
16) Gift/souvenir shop
17) Grocery store
18) Hardware store
19) Home accessory shops and boutiques
20) Jewelry store
21) Laundromat
22) Laundry/dry cleaners
23) Medical offices/clinic
24) Medical/dental lab
25) Movie rentals and sales
26) Music store (sales/service/rental)
27) Office supply
28) Personal services
29) Photographic studio
30) Restaurant (sit down/carry out)
31) Schools of private instruction
32) Sewing/fabric store
33) Shoe repair
34) Shoe store
35) Sporting goods (sales/rental)
36) Tailoring/alterations.

37) Toy/hobby shop

C) Accessory Uses: (See Section 4-1 of this ordinance).

D) Special Uses: (See Section 4-3 of this ordinance).

E) Temporary Uses: The following uses shall be permitted as temporary uses within the CP-1 District in accordance with Section 2-4.4 of this ordinance:

1) Reserved for future use.

2) Promotional fairs, etc.

F) Bulk Regulations:

1) Front Yard Setback: 40 feet for buildings and structures 25 feet for surface parking (loading and service areas prohibited)

2) Side Yard Setback: 40 feet for buildings and structures 25 feet for surface parking, loading, and service areas

3) Rear Yard Setback: (Same as side yard)

4) Height Limit: 3 stories

G) Performance Standards:

1) No wholesale sales shall be conducted.

2) No merchandise or equipment shall be stored or displayed outside a building.

3) All products shall be sold and all services rendered inside a building except that banks and savings and loan establishments may have drive-up or walk-up service.

4) No smoke, radiation, vibration or concussion, heat or glare shall be produced that is perceptible outside a building, and no dust, fly ash or gas that is toxic, caustic or obviously injurious to humans or property shall be discharged.

5) Alcoholic beverages and cereal malt beverages shall not be sold for consumption on the premises except that places serving food for consumption inside the building may serve cereal malt beverages provided the wholesale cost of the
cereal malt beverage sold does not exceed 20% of the gross sales of the establishment on an annual basis.

6) In no case shall the noise level exceed 60 dB A at repeated intervals or for a sustained length of time measured at any point along the property line.

7) Loading docks and service areas are not permitted on a street side of a building unless completely landscaped and totally screened from view and approved as a part of the development plan by the Plan Commission.

H) Open Space: Not less than 20% of the lot area shall be open space exclusive of buildings, parking facilities, and access drives. This open space shall be devoted to plazas, courts or other landscaped areas.

I) Building Coverage: Not more than 25% of the lot area shall be covered by buildings.

J) Parking Requirements: (See Section 4-4 of this ordinance).

K) Landscaping and Screening Requirements: (See Section 4-6 of this ordinance).

L) Signs: (See Section 4-5 of this ordinance).

M) Seasonal flower and plant sales

1) Seasonal flower and plant sales events shall not exceed a total of ninety (90) days per year and shall remain subject to the following requirements:

   a) Merchandise shall be limited to bedding plants, flowers, pumpkins, straw bales (10 bales maximum within 25 feet of any structures) and evergreen ornamentals.

   b) Merchandise shall be displayed at or near the store frontage without impeding ingress / egress, or general convenience to pedestrian or vehicular traffic.

   c) Outdoor storage of the following material, equipment and accessories shall be prohibited: mulch, manure, soil, rock, sand, lime, fertilizer, landscape construction materials, wood pallets, trailers, tents and greenhouses.
2) Merchants shall make application to the City of Leawood and shall provide a scaled plot plan, which accurately depicts the proposed location of the sales event. The applicant shall also provide verification of the following items:

   a) Preservation of all existing parking spaces and emergency access corridors;
   b) Type and quantity of material to be sold;
   c) Proposed advertising / signage;
   d) Method of trash containment;
   e) Sales start and completion dates.

Duly received applications shall be reviewed within five (5) business days from the date of submittal receipt. Under no circumstance shall the sale event commence without the applicant first obtaining the required Administrative Special Use Permit.

Section 2. Existing Section Repealed. That existing Section 3-8 of the Leawood Development Ordinance is hereby repealed.

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 19th day of June, 2000.

Approved by the Mayor the 19th day of June, 2000.

Peggy J. Dunn
Mayor

Attest:

Martha Heizer
City Clerk

APPROVED FOR FORM:

Patricia A. Bennett
City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes
and says that she is Legal Notices Administrator of The Legal
Record which is a newspaper printed in the State of Kansas,
published in and of general paid circulation on a weekly,
monthly or yearly basis in Johnson County, Kansas, is not a
trade, religious or fraternal publication, is published at least
weekly fifty (50) times a year, has been so published
continuously and uninterrupted in said County and State for a
period of more than five (5) years prior to the first publication
of the notice attached, and has been admitted at the post office
as second class matter (now called periodicals class).

That a notice was published in all editions of the regular and
entire issue for the following subject matter (also identified by
the following case number, if any) for _ consecutive
week(s), as follows:

ORDINANCE NO. 1866--7/18/00

Signed

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:

JULY 19, 2000

DEBRA VALENTI
Notary Public - State of Kansas

ORDINANCE NO. 1866

AN ORDINANCE AMENDING SECTION 3-8 OF THE LEAFWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO THE PLANNED NEIGHBORHOOD RETAIL AND REPEALING EXISTING SECTION.

Repealed by the governing body of the City of Leafwood.

Section 1. Leafwood Development Ordinance Amended. That Section 3-8 of the Leafwood Development Ordinance is hereby amended to read as follows:

3-8 CP-1 (PLANNED NEIGHBORHOOD RETAIL)

A) General Purpose and Description: Property zoned and developed as CP-1 Planned Neighborhood Retail shall be to provide for neighborhood retail business uses within the City. The intended purpose is to provide for neighborhood shopping centers properly landscaped to ensure open space and promote compatibility to surrounding neighborhoods.

B) Permitted Uses: In District CP-1 no building, structure, land or premises shall be used or hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

1) Art galleries, museums, and libraries
2) Artist studio
3) Bakery (retail only)
4) Banks, savings and loans, credit unions
5) Barber/beauty shops
6) Bicycle shop (sales/rental)
7) Books/stationery store
8) Camera photo supply store
9) Clothing/accessory store
10) Convenience store
11) Convenience store
12) Drug store/health care supplies
13) Electronic sales and service
14) Flower/garden store
15) General office
16) Gift shop
17) Grocer store
18) Hardware store
19) Home accessory shop and boutiques
20) Jewelry store
21) Lawn care
22) Laundry and cleaners
23) Medical office/clinic
24) Medical lab
25) Movie rentals and sales
26) Music store (sales/service/rental)
27) Office supply
28) Personal services
29) Photographic studio
30) Restaurant (at downtown level)
31) Schools of private instruction
32) Sewing/fabric store
33) Shoe repair
34) Shoe store
35) Sporting goods (sales/rental)
36) Tailoring/alterations
37) Toy shop

D) Accessory Uses: (See Section 4-1 of this ordinance).

E) Special Uses: (See Section 4-3 of this ordinance).

F) Temporary Uses: The following uses shall be permitted as temporary uses within the CP-1 District in accordance with Section 2-4 of this ordinance:

1) Reserved for future use.
2) Promotional/sales, etc.

G) Bulk Regulations:

1) No wholesale sales shall be conducted.
2) No merchandise or equipment shall be stored or displayed outside a building.
3) All products shall be sold and services rendered inside a building except that banks and savings and loan establishments may have drive-up or walk-up service.
4) No smoke, radiation, vibration or concussion, heat or flammable material shall be produced that is perceptible outside a building, and no dust, fly ash or gas that is toxic, caustic or obviously injurious to humans or property shall be discharged.
5) Alcoholic beverages and cereal milk beverages shall not be sold for consumption on the premises except that places serving food for consumption inside the building may serve cereal milk beverages provided the wholesale cost of the cereal milk beverage sold does not exceed 25% of the gross sales of the establishment on an annual basis.
6) In no case shall the noise level exceed 50 dB A at repeated intervals or for a sustained length of time measured at any point along the property line.
7) Loading docks and service areas are not permitted on a street side of a building unless completely landscaped and totally screened from view and approved as a part of the development plan by the Plan Commission.

H) Open Space: Not less than 20% of the lot area shall be open space exclusive of buildings, parking facilities, and access drives. This open space shall be devoted to plazas, courts or other landscaped areas.

I) Building Coverages: Not more than 25% of the lot area shall be covered by buildings.

J) Parking Requirements: (See Sections 4-4 of this ordinance).

K) Landscaping and Screening Requirements: (See Sections 4-5 of this ordinance).

L) Signs: (See Sections 4-5 of this ordinance).

M) Seasonal flowers and plant sales

1) Seasonal flower and plant sales events shall not exceed a total of ninety (90) days per year and shall remain subject to the following requirements:
   a) Merchandise shall be limited to bedding plants, flowers, pumpkins, straw bales (10 bales maximum within 25 feet of any structures) and evergreen ornamentals.
   b) Merchandise shall be displayed at or near the store frontage without impeding ingress / egress, or general convenience to pedestrian or vehicular traffic.
   c) Outdoor storage of the following material, equipment and accessories shall be prohibited: mulch, manure, soil, rock, sand, lime, fertilizer, landscape construction materials, wood pallets, trailers, tents and greenhouses.
2) Merchants shall make application to the City of Leawood and shall provide a scaled plot plan, which accurately depicts the proposed location of the sales event. The applicant shall also provide verification of the following items:

a) Preservation of all existing parking spaces and emergency access corridors;

b) Type and quantity of material to be sold;

c) Proposed advertising / signage;

d) Method of trash containment;

e) Sales start and completion dates.

Duly received applications shall be reviewed within five (5) business days from the date of submittal receipt. Under no circumstance shall the sale event commence without the applicant first obtaining the required Administrative Special Use Permit.

Section 2. Existing Section Repealed. That existing Section 3-8 of the Leawood Development Ordinance is hereby repealed.

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 19th day of June, 2000.

Approved by the Mayor the 19th day of June, 2000.

(S E A L)

Peggy J. Dunn
Mayor

Attest:

Martha Heizer
City Clerk

APPROVED FOR FORM:

Patricia A. Bennett
City Attorney
ORDINANCE NO. 1865

AN ORDINANCE REZONING PROPERTY LOCATED AT APPROXIMATELY 141ST STREET AND MISSION ROAD (MISSION PRAIRIE), FROM AG (AGRICULTURAL) TO R-1 (SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

The North half of the South half of the Northwest quarter of the Southwest quarter of Section 34, Township 13, Range 25, in the City of Leawood, Johnson County, Kansas, except any part in roads now zoned AG, is hereby rezoned to R-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance."

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 5th day of June, 2000.

Approved by the Mayor the 5th day of June, 2000.

Peggy J. Dunn
Mayor

Attest:

Martha Heizer
City Clerk

APPROVED FOR FORM:

Patricia A. Bennett
City Attorney
ORDINANCE NO. 1865

First published in The Legal Record, Tuesday, June 6, 2000.

ORDINANCE NO. 1865

AN ORDINANCE REZONING PROPERTY LOCATED AT APPROXIMATELY 141ST STREET AND MISSION ROAD (MISSION PRAIRIE), FROM AG (AGRICULTURAL) TO R-1 (SINGLE FAMILY RESIDENTIAL), DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

SECTION 1. Rezoning of Property. That the real estate hereby described, to wit:

The North half of the South half of the Northwest quarter of the Southwest quarter of Section 14, Township 13, Range 75, in the City of Leawood, Johnson County, Kansas, except any part in roads now zoned AG, is hereby rezoned to R-1.

SECTION 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

SECTION 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2-0 of the "Leawood Development Ordinance."

SECTION 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 5th day of June 2000.

Approved by the Mayor the 5th day of June 2000.

(S E A L)

Peggy S. Dunn Mayor

Attends:

Martha Heizer City Clerk

APPROVED FOR FORM 4

Patricia K. Bennett City Attorney

$18.32
ORDINANCE NO. 1864

AN ORDINANCE ACCEPTING A PERMANENT DRAINAGE EASEMENT FOR STORM DRAINAGE FACILITIES AS SHOWN ON THE PLANS FOR THE WOODS.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent drainage easement more particularly designated and described, to wit:

From Village Associates, L.L.C.: Part of the Northeast Quarter of Section 16, Township 13, Range 25, in the City of Leawood, Johnson County, Kansas. A strip of land 15.00 feet in width across part of Tract C, The Woods, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, as recorded in Book 113, at Page 3, in the Office of the Register of Deeds, in Johnson County, Kansas, lying 7.50 feet on the right and 7.50 feet on the left of the following described centerline: Commencing at the Northwest corner of said Tract C; thence N 87°45'35" E, along the North line of said Tract C, a distance of 60.07 feet to the true point of beginning; thence S 17°42'00" W, a distance of 131.09 feet; thence S 18°14'10" E, a distance of 29.25 feet; thence S 22°09'31" W, a distance of 149.63 feet; thence S 0°36'47" W, a distance of 28.69 feet; thence S 15°26'15" W, a distance of 44.77 feet to a point on the South line of said Tract C, said point being the point of terminus of this description. All side lines are to be extended or shortened to meet at angle points and to terminate on the North and South lines of said Tract C.

Section 2. That a copy of said easement is attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 15th day of May, 2000.

Approved by the Mayor the 15th day of May, 2000.

Peggy J. Dunn
Mayor

Martha Heizer
City Clerk

APPROVED FOR FORM:

Patricia A. Bennett City Attorney
CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS,

Penny Knight, of lawful age, being first duly sworn, deposes and
says that she is Legal Notices Administrator of The Legal
Record which is a newspaper printed in the State of Kansas,
published in and of general paid circulation on a weekly,
monthly or yearly basis in Johnson County, Kansas, is not a
trade, religious or fraternal publication, is published at least
weekly fifty (50) times a year, has been so published
continuously and uninterrupted in said County and State for a
period of more than five (5) years prior to the first publication
of the notice attached, and has been admitted at the post office
as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and
entire issue for the following subject matter (also identified by
the following case number, if any) for consecutive
week(s), as follows:

ORDINANCE NO. 1864--5/16/00

Subscribed and sworn to before me on this date:

MAY 17, 2000

Legal Notices Administrator

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


ORDINANCE NO. 1864

First published in The Legal Record, Tuesday, May 16, 2000.

AN ORDINANCE ACCEPTING A PERMANENT DRAINAGE EASEMENT FOR
STORM DRAINAGE FACILITIES AS SHOWN ON THE PLANS FOR THE
WOODS.

It is hereby ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a
permanent drainage easement more particularly designated and
described, to wit:

From Village Associates, L.L.C.: Part of the Northeast Quarter of Section 13, Township 13, Range 25, in the City of Lea-
wood, Johnson County, Kansas, a strip of land 15.00 feet in
width across part of Tract C, The Woods, a platted subdivi-
sion of land in the City of Leawood, Johnson County, Kansas,
as recorded in Book 113, at Page 2, in the Office of the Reg-
ister of Deeds, in Johnson County, Kansas, lying 7.50 feet on the
right and 7.50 feet on the left of the following described centerline:
Commencing at the Northwest corner of said Tract C; thence N 87°44'15" E, along the North line of
said Tract C, a distance of .00 feet to the true point of
beginning; thence S 17°42'00" W, a distance of 131.05 feet;
thence S 18°14'10" E, a distance of 29.25 feet; thence S 22°
59'31" W, a distance of 149.61 feet; thence S 0°10'47" E, a
distance of 28.69 feet; thence S 15°26'15" W, a distance of
44.77 feet to a point on the South line of said Tract C; said
point being the point of terminus of this description. All
side lines are to be extended or shortened to meet at angle
points and to terminate on the North and South lines of said
Tract C.

Section 2. That a copy of said easement is attached
hereeto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be
in force from and after its publication in the official City
newspaper.

Passed by the Council the 15th day of May, 2000.
Approved by the Mayor the 15th day of May, 2000.

[Seal]

Peggy D. Dunn
Mayor

Martha Keizer
City Clerk

$18.32
ORDINANCE NO. 1863

AN ORDINANCE REZONING PROPERTY (WILSHIRE PLACE) LOCATED AT APPROXIMATELY 132ND STREET AND HIGH DRIVE FROM AG (AGRICULTURAL) TO RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

Parts of the Southwest One-Quarter and the Southeast One-Quarter of Section 27, Township 13 South, Range 25 East in the City of Leawood, Johnson County, Kansas, being more particularly described as follows: Commencing at the center of the above-described Section 27; thence South 02° 08' 00" East on the West line of the said Southwest One-Quarter a distance of 399.34 feet to the Southwest Corner of The Greenbrier of Leawood, a subdivision of land in the said City of Leawood; said point being the POINT OF BEGINNING; thence North 87° 52' 00" East on the South line of said subdivision, a distance of 176.07 feet to a point; thence South 75° 00' 00" East on the said South line, a distance of 535.10 feet to a point; thence South 69° 24' 55" East on the said South line, a distance of 176.55 feet to a point; thence South 59° 41' 21" East on the said South line, a distance of 135.98 feet to a point; thence South 67° 00' 00" East on the said South line, a distance of 362.78 feet to a point; thence South 65° 28' 23" East on the said South line, a distance of 407.10 feet to a point; thence South 58° 20' 08" East on the said South line, a distance of 235.05 feet to a point; thence South 62° 00' 00" East on the said South line, a distance of 80.00 feet to the most Southerly corner of said subdivision; thence South 28° 00' 00" West a distance of 84.31 feet to a point of curvature; thence Southwesterly on a curve to the right having a radius of 900.00 feet, a Central Angle of 59° 55' 28" and a Length of 941.29 feet to a point; thence South 87° 55' 28" West a distance of 2425.58 feet to a point on the West line of the Northeast One-Quarter of the Southwest One-Quarter of said Section 27; thence North 02° 04' 32" West on the said West line and on the East line of Lots 18 and 17, Block 12, Waterford Plat No. 3, a subdivision of land in the said City of Leawood, a distance of 617.28 feet to a point; thence North 21° 37' 16" West on the East line of Lots 17, 16 and 15, Block 12, of said subdivision, a distance of 213.55 feet to a point; thence North 78° 53' 19" East on the South line of Lots 13, 12, 11, 10, 9 and 8, Block 12 of said subdivision a distance of 622.24 feet to a point; thence North 59° 46' 00" East on the South line of Lots 8, 7 and 6, Block 12, of said subdivision,
ORDINANCE NO. 1863

a distance of 304.58 feet to a point; thence North 69°53'01" East on the South line of Lot 5, Block 12, of said subdivision, a distance of 95.12 feet to a point; thence North 78°19'49" East on the South line of Lot 4, Block 12, of said subdivision, a distance of 94.80 feet to a point; thence North 88°31'57" East on the South line of Lot 3, Block 12, of said subdivision, a distance of 95.30 feet to a point; thence South 87°33'34" East on the South line of Lots 1 and 2, Block 12, of said subdivision, a distance of 234.20 feet to a point on the East line of the Southwest One-Quarter of said Section 27; thence North 02°08'00" West on the said East line a distance of 240.64 feet to the POINT OF BEGINNING and containing 71.6857 acres, more or less

now zoned AG, is hereby rezoned RP-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 15th day of May, 2000

Approved by the Mayor the 15th day of May, 2000.

[Signature]
Mayor
ORDINANCE NO. 1863

Attest:  

Martha Heizer  City Clerk

APPROVED FOR FORM:  

Patricia A. Bennett  City Attorney
Will do!!

-----Original Message-----
From: Diane Binckley
Sent: Monday, May 14, 2001 10:55 AM
To: Martha Heizer
Subject: Wilshire Place

Martha,  
It is okay to publish the rezoning for Wilshire Place now.  
thanks,

Diane M. Binckley, AICP  
Planning & Development Director  
City of Leawood  
(913) 339-6700 ext.163
The Legal Record

213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes
and says that she is Legal Notices Administrator of The Legal
Record which is a newspaper printed in the State of Kansas,
published in and of general paid circulation on a weekly,
monthly or yearly basis in Johnson County, Kansas, is not a
trade, religious or fraternal publication, is published at least
weekly fifty (50) times a year, has been so published
continuously and uninterrupted in said County and State for a
period of more than one year prior to the first publication of the
notice attached, and has been entered at the post office as
Periodicals Class mail matter. That a notice was published
in all editions of the regular and entire issue for the following
subject matter (also identified by the following case number,
if any),

for ___ consecutive week(s), as follows:

ORDINANCE NO. 1863--5/15/01


$35.49
ORDINANCE NO. 1863

ORDINANCE NO. 1863
AN ORDINANCE REZONING PROPERTY IN THE CITY OF WILSHIRE PLACE, LOCATED AT:
APPROXIMATELY 1332ND STREET AND HIGH DRIVE FROM AG (AGRICULTURAL) TO RP-1 (PLANNED SINGLE FAMILY RESIDENTIAL), DIRECTING AND REZONING PROPERTY IN THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

Parts of the Southwest One-Quarter and the Southeast One-Quarter of Section 27, Township 13 South, Range 23 East in the City of Leawood, Johnson County, Kansas, being more particularly described as follows:

Section 27, thence South 02°08'00” East on the West line of the said Southwest Quarter a distance of 199.36 feet to the Southwest Corner of The Greenbrier of Leawood, a subdivision of land in the said City of Leawood, said point being the POINT OF BEGINNING; thence North 87° 25' 45” East on the said South line a distance of 176.97 feet to a point; thence South 78°00'00” East on the said South line a distance of 245.95 feet to a point; thence South 69°24'55” East on the said South line, a distance of 176.85 feet to a point; thence South 59°41'21” East on the said South line, a distance of 238.68 feet to a point; thence South 67°00'00” East on the said South line, a distance of 393.06 feet to the South line of said Leawood, a subdivision of land in the said City of Leawood, a distance of 407.10 feet to a point; thence South 59°20'08” East on the said South line a distance of 240.00 feet; thence South 91°29'52” East on the said South line, a distance of 90.00 feet to the most South line of said Plat No. 3, a subdivision of land in the said City of Leawood, a distance of 64.31 feet to a point of curvature; thence Southwesterly on a curve to the right having a Radius of 400.00 feet and a Length of 941.29 feet to a point; thence South 89°55'28” West a distance of 538.23 feet to a point on the West line of the Northeast One-Quarter of the Southwest One-Quarter of said Section 27, thence North 02°04'32” West on the said West line of said Plat No. 3, a subdivision of land in the said City of Leawood, a distance of 234.20 feet to a point, thence North 31°57'58” West on the South line of Lots 11, 10, and 9 on the said Plat No. 3, a subdivision of land in the said City of Leawood, a distance of 240.64 feet to the POINT OF BEGINNING and containing 71,685.7 acres, more or less.

now some said AG, is hereby rezoned RP-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions in this Ordinance is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 15th Day of May 2000
Approved by the Mayor the 15th Day of May 2000.

(S.B.A.L.)
Peggy Dunn
Mayor

Marcha Neiser
City Clerk

APPROVED FOR FIRM:
Patricia A. Hennessy
Attorney
ORDINANCE NO. 1862

AN ORDINANCE ACCEPTING DEEDS OF DEDICATION AND EASEMENTS FOR NALL AVENUE WIDENING FROM 119TH STREET TO 107TH STREET.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts deeds of dedication and easements more particularly designated and described, to wit:

From Nooney Income Fund (deed): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northwest corner of said Lot 1; thence N 37°37'49" E along the North line of said Lot 1, a distance of 33.34 feet to the true point of beginning; thence S 01°43'05" E, a distance of 5.00 feet; thence S 28°16'34" W, a distance of 42.72 feet; thence S 01°41'29" E, a distance of 349.61 feet; thence S 88°18'31" W, a distance of 4.15 feet to the Easterly right-of-way of Nall Avenue; thence N 03°03'02" W along said Easterly right-of-way, a distance of 330.92 feet; thence N 01°41'29" W along said Easterly right-of-way, a distance of 27.46 feet; thence N 43°18'34" E along said Easterly right-of-way, a distance of 47.15 feet to the true point of beginning; said parcel of land containing 3,347 square feet, more or less.

From Nooney Income Fund (deed): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Beginning at the Southwest corner of said Lot 1; thence N 01°41'29" W along the West line of said Lot 1, a distance of 20.00 feet; thence S 52°41'44" E, a distance of 32.17 feet to the South line of said Lot 1, said point lying on a curve, concave southerly, having a radius of 1300.00 feet, and an initial tangent bearing of S 89°24'38" W; thence westerly along said South line of Lot 1 through a central angle of 01°06'07", a distance of 25.00 feet to the point of beginning; said parcel of land containing 249 square feet, more or less.

From Nooney Income Fund (retaining wall easement): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northwest corner of said Lot 1; thence N 37°37'49" E along the North line of said Lot 1, a distance of 33.34 feet; thence S 01°43'05" E, a distance of 5.00 feet; thence S 28°16'34" W, a distance of 18.70 feet to the true point of beginning; thence S 28°16'34" W, a distance of 24.02 feet; thence S 01°41'29" E, a distance of 309.05 feet; thence N 88°18'31" E, a distance of 12.00 feet; thence N 01°41'29" W, a distance of 329.86 feet to the true point of beginning; said parcel of land containing 3,833 square feet, more or less.
From Nooney Income Fund (utility easement): All that part of Lot 1, LEAWOOD COUNTRY MANOR, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Southwest corner of said Lot 1; thence N 01° 41'29" W along the West line of said Lot 1, a distance of 208.97 feet to the true point of beginning; thence N 01° 41'29" W along the West line of said Lot 1, a distance of 34.91 feet; thence N 58° 44'44" E, a distance of 11.50 feet; thence S 01° 41'29" E, a distance of 40.58 feet; thence S 88° 18'31" W, a distance of 10.00 feet to the true point of beginning; said parcel of land containing 377 square feet, more or less.

From Commerce Bank, National Association (traffic signal easement): All that part of Lot 1, LEAWOOD COMMONS, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Beginning at the Southwest corner of said Lot 1; thence N 88° 18'31" E along the South line of said Lot 1, a distance of 10.00 feet; thence N 46° 41'29" W, a distance of 14.14 feet to the West line of said Lot 1; thence S 01° 41'29" E along said West line of Lot 1, a distance of 10.00 feet to the point of beginning; said parcel of land containing 50 square feet, more or less.

Section 2. That copies of said easements and deeds are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 1st day of May, 2000.

Approved by the Mayor the 1st day of May, 2000.

[Signatures]

APPROVED FOR FORM:
Patricia A. Bennett City Attorney
The Legal Record
Lewis Legal News, Inc.
213 E. Santa Fe, Suite 2
Olathe, KS 66061
(913) 780-5790

CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication
STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for consecutive week(s), as follows:
ORDINANCE NO. 1862--5/9/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 10, 2000

Patricia A. Dziadura
Notary Public

ORDINANCE NO. 1862

AN ORDINANCE ACCEPTING DEEDS OF DEDICATION AND EASEMENTS FOR NAIL AVENUE WIDEKING FROM 19TH STREET TO 20TH STREET.

Be it ordaned by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts deeds of dedication and easements more particularly described as follows:

From Mooney Income Fund (deed): All that part of Lot 1, LEAWOOD COUNTRY MANSION, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northwest corner of said Lot 1; thence N 37°49' R along the North line of said Lot 1, a distance of 33.12 feet to the true point of beginning; thence S 01°41'20" E, a distance of 19.00 feet; thence S 28°16'30" W, a distance of 42.72 feet; thence S 01°41'20" E, a distance of 349.61 feet; thence E 66°30'10" N, a distance of 4.13 feet to the Easterly right-of-way of Nail Avenue; thence N 0°33'03" W along said Easterly right-of-way, a distance of 330.92 feet; thence S 01°41'29" W along said Easterly right-of-way, a distance of 37.46 feet; thence N 43°19'34" E along said Easterly right-of-way, a distance of 41.18 feet to the true point of beginning; said parcel of land containing 3,347 square feet, more or less.

From Mooney Income Fund (deed): All that part of Lot 1, LEAWOOD COUNTRY MANSION, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Beginning at the Southwest corner of said Lot 1; thence N 43°37'49" E along the North line of said Lot 1, a distance of 20.00 feet; thence S 52°42'44" E, a distance of 32.15 feet to the South line of said Lot 1, said point lying on a curve, concave southerly, having a radius of 290.10 feet, and an initial tangent bearing of S 86°24'28" W, thence westerly along said South line of Lot 1 through a central angle of 0°02'35" and a distance of 0.02 feet, to the point of beginning; said parcel of land containing 249 square feet, more or less.

From Mooney Income Fund (retaining wall easement): All that part of Lot 1, LEAWOOD COUNTRY MANSION, FOURTH PLAT, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northwest corner of said Lot 1; thence N 37°36'59" E along the North line of said Lot 1, a distance of 5.00 feet; thence S 28°16'34" W, a distance of 18.70 feet to the true point of beginning; thence S 16°41'14" W, a distance of 24.02 feet; thence S 01°41'29" W, a distance of 0.02 feet; thence N 88°18'11" E, a distance of 12.00 feet; thence N 01°41'29" E, a distance of 319.46 feet to the true point of beginning; said parcel of land containing 3,833 square feet, more or less.

From Commerce Bank, National Association (traffic signal easement): All that part of Lot 1, LEAWOOD COMMONS, a subdivision in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northeast corner of said Lot 1; thence N 03°41'29" W along the West line of said Lot 1, a distance of 19.14 feet; thence S 28°16'30" W, a distance of 0.02 feet; thence N 01°41'29" W along the West line of said Lot 1, a distance of 14.91 feet; thence N 88°19'31" E along the South line of said Lot 1, a distance of 10.00 feet; thence N 01°41'29" W, a distance of 14.14 feet to the North line of said Lot 1; thence S 03°41'29" E along said West line of Lot 1, a distance of 10.00 feet to the point of beginning; said parcel of land containing 50 square feet, more or less.

Section 2. That copies of said easements and deeds are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force forthwith and after its publication in the official City newspaper.

Passed by the Council the last day of May, 2020.
Approved by the Mayor the last day of May, 2020.

Attorney:

Peggy J. Dunn
Mayor

Martha Heizer, Clerk

APPROVED FOR FOIR

S & L J

Mayor

Faye A. Bennett
City Attorney
ORDINANCE NO. 1861

AN ORDINANCE LEVYING AN ADDITIONAL CITY RETAILERS' SALES TAX IN THE AMOUNT OF ONE-EIGHTH OF ONE PERCENT (.125%) IN ADDITION TO THE ONE PERCENT (1.0%) CURRENTLY LEVIED, WITHIN THE CITY OF LEAWOOD, KANSAS, EFFECTIVE JULY 1, 2000 AND ENDING JUNE 30, 2005.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1 Levy of Tax and Expiration of Tax. A majority of the electors of the City of Leawood having approved, at an election held April 4, 2000, the levying of an additional one-eighth of one percent (.125%) City Retailers' Sales Tax in the City of Leawood, Kansas, in addition to the one percent (1.0%) currently levied, which revenue will fund the design, construction and inspection of the accelerated residential and thoroughfare street improvement program and otherwise make the necessary improvements to stormwater drainage in the City when such improvements are not otherwise eligible for funding from other governmental sources, as authorized by K.S.A. 12-187 et seq., as amended, there is hereby levied an additional City Retailers' Sales Tax in the amount of one-eighth of one percent (.125%) beginning on July 1, 2000 and ending on June 30, 2005. Such tax shall be in addition to the one percent (1.0%) City Retailers' Sales Tax currently levied in the City of Leawood, Kansas.

SECTION 2 Pledge of Revenue The revenues derived from the levy of the additional City Retailers' Sales Tax levied by this Ordinance are hereby pledged to paying the costs of the design, construction and inspection of the accelerated residential and thoroughfare street improvement program and otherwise make the necessary improvements to stormwater drainage in the City when such improvements are not otherwise eligible for funding from other governmental sources.

SECTION 3 Collection of Tax The additional City Retailers' Sales Tax shall be identical in its applications and exemptions therefrom to the Kansas Retailers' Sales Tax Act, and all laws and administrative rules and regulations of the Kansas Department of Revenue relating to the State Retailers' Sales Tax insofar as such laws and regulations may be made applicable. The services of the Kansas Department of Revenue shall be utilized to administer, enforce and collect such additional City Retailers' Sales Tax.

SECTION 4 Take Effect This Ordinance shall be published in the official City newspaper, and a copy duly certified shall be submitted to the State Director of Taxation.

PASSED this 1st day of May, 2000 by the Governing Body of the City of Leawood, Kansas.

APPROVED by the Mayor of the City of Leawood, Kansas, this 1st day of May, 2000.

Peggy Dunn, Mayor

Martha Heizer, City Clerk

APPROVED AS TO FORM

Patricia A. Bennett, City Attorney
Proof of Publication
STATE OF KANSAS, JOHNSON COUNTY, SS;

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterruptedly in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodical class).

That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for ___ consecutive week(s), as follows:

ORDINANCE NO. 1861--5/9/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 10, 2000

Patricia A. Dziadura
Notary Public

ORDINANCE NO. 1861
First published in The Legal Record, Tuesday, May 9, 2000.

ORDINANCE NO. 1861

AN ORDINANCE LEVING AN ADDITIONAL CITY RETAILERS' SALES TAX IN THE AMOUNT OF ONE-EIGHTH OF ONE PERCENT (1.25%) IN ADDITION TO THE ONE PERCENT (1.0%) CURRENTLY LEVIED, WITHIN THE CITY OF LEAWOOD, KANSAS, EFFECTIVE JULY 1, 2000 AND ENDING JUNE 30, 2005.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION 1. Levy of Tax and Expiration of Tax. A majority of the electors of the City of Leawood having approved, at an election held April 4, 2000, the levying of an additional one-eighth of one percent (.125%) City Retailers' Sales Tax in the City of Leawood, Kansas, in addition to the one percent (1.0%) currently levied, which revenue will fund the design, construction and inspection of the accelerated residential and thoroughfare improvement program and otherwise make the necessary improvements to stormwater drainage in the City when such improvements are not otherwise eligible for funding from other governmental sources, as authorized by K.S.A. 12-187 et seq., as amended, there is hereby levied an additional City Retailers' Sales Tax in the amount of one-eighth of one percent (1.25%) beginning on July 1, 2000 and ending on June 30, 2005. Such tax shall be an addition to the one percent (1.0%) City Retailers' Sales Tax currently levied in the City of Leawood, Kansas.

SECTION 2. Pledge of Revenue. The revenue derived from the levy of the additional City Retailers' Sales Tax levied by this Ordinance are hereby pledged to paying the costs of the design, construction and inspection of the accelerated residential and thoroughfare improvement program and otherwise make the necessary improvements to stormwater drainage in the City when such improvements are not otherwise eligible for funding from other governmental sources.

SECTION 3. Collection of Tax. The additional City Retailers' Sales Tax shall be identified in its applications and exemptions therefrom in the Kansas Retailers' Sales Tax Act, and all laws and administrative rules and regulations of the Kansas Department of Revenue relating to the State Retailers' Sales Tax and such laws and regulations may be made applicable. The services of the Kansas Department of Revenue shall be utilized to administer, enforce and collect such additional City Retailers' Sales Tax.

SECTION 4. Take Effect. This Ordinance shall be published in the official City newspaper, and a copy duly certified shall be submitted to the State Director of Taxation.

PASSED this 1st day of May, 2000 by the Governing Body of the City of Leawood, Kansas.

APPROVED by the Mayor of the City of Leawood, Kansas, on May 1st, 2000.

(Seal)

Peggy Dole, Mayor

ATTEND:

Martha Husen, City Clerk

APPROVED AS TO FORM

Pamela A. Bennett, City Attorney


$18.32
ORDINANCE NO. 1860

AN ORDINANCE REZONING PROPERTY (IRONHORSE CENTRE) LOCATED AT
THE SOUTHEAST CORNER OF 151ST STREET AND NALL AVENUE FROM AG
(AGRICULTURAL) TO CP-1 (PLANNED NEIGHBORHOOD RETAIL); DIRECT-
ing AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEA-
WOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate
hereinafter described, to wit:

A part of the North 1/2 of the Northwest 1/4 of Section 9,
Township 14, Range 25, City of Leawood, Johnson County, Kan-
sas, more particularly described as follows: Beginning at
the Northwest corner of said Northwest 1/4; thence N 87°
18'10" E along the North line of said Northwest 1/4 a dis-
tance of 1,417.73 feet; thence S 12°53'12" W a distance of
637.22 feet; thence S 04°17'06" E a distance of 181.49 feet;
thence S 88°38'48" W a distance of 106.28 feet; thence N 61°
36'58" W a distance of 1,032.04 feet; thence S 87°43'19" W a
distance of 264.32 feet to a point on the West line of said
Northwest 1/4; thence N 02°03'42" W along said West line a
distance of 258.01 feet to the Point of Beginning, containing
15.30 acres, more or less

now zoned AG, is hereby rezoned CP-1.

Section 2. Official Zoning Map Amended. That the Di-
rector of Planning and Development of the City of Leawood,
Kansas, is hereby directed to amend the Official Zoning Map
of the City in accordance with the above and foregoing
changes in zoning.

Section 3. Reincorporation of Official Zoning Map as
Amended. That the Official Zoning Map of the City, as
amended by the provisions of this ordinance, is hereby rein-
corporated and declared to be the Official Zoning Map of the
City as provided for and adopted pursuant to the provisions
of Section 2-2 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take
effect and be in force from and after its publication in the
official City newspaper.
ORDINANCE NO. 1860

Passed by the Council the 1st day of May, 2000.

Approved by the Mayor the 1st day of May, 2000.

Peggy J. Dunn Mayor

Attest:

Martha Heizer City Clerk

APPROVED FOR FORM

Patricia A. Bennett City Attorney
CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

ORDINANCE NO. 1860
First published in The Legal Record, Tuesday, May 9, 2000.

ORDINANCE No. 1860

AN ORDINANCE REZONING PROPERTY (HORSESHOE CENTRE) LOCATED AT THE SOUTHEAST CORNER OF 151ST STREET AND NAIL AVENUE FROM AG (AGRICULTURAL) TO CP-1 (PLANNED NEIGHBORHOOD RETAIL); DIRECTING AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY OF LEAWOOD, KANSAS; AND REINCORPORATING SAID ZONING MAP.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. Rezoning of Property. That the real estate hereinafter described, to wit:

A part of the North 1/2 of the Northwest 1/4 of Section 9, Township 14, Range 35, City of Leawood, Johnson County, Kansas, more particularly described as follows: Beginning at the Northwest corner of said Northwest 1/4; thence N 89° 18'10" W along the North line of said Northwest 1/4 a distance of 1,417.72 feet; thence S 12° 53'13" W a distance of 637.22 feet; thence S 0°47'15" E a distance of 161.49 feet; thence S 89° 35'46" W a distance of 164.28 feet; thence N 61° 36'57" W a distance of 1,032.04 feet; thence S 87° 33'12" W a distance of 264.32 feet to a point on the West line of said Northwest 1/4; thence N 02° 03'42" W along said West line a distance of 219.91 feet to the Point of Beginning, containing 15.30 acres, more or less.

now zoned AG, is hereby rezoned CP-1.

Section 2. Official Zoning Map Amended. That the Director of Planning and Development of the City of Leawood, Kansas, is hereby directed to amend the Official Zoning Map of the City in accordance with the above and foregoing changes in zoning.

Section 3. Reincorporation of Official Zoning Map as Amended. That the Official Zoning Map of the City, as amended by the provisions of this ordinance, is hereby reincorporated and declared to be the Official Zoning Map of the City as provided for and adopted pursuant to the provisions of Section 2-4 of the "Leawood Development Ordinance".

Section 4. Take Effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 1st day of May, 2000.

Approved by the Mayor the 3rd day of May, 2000.

J.S. & J. L.
Peggy O'Donnell
Mayor

Attest:

Martha Moir

City Clerk

APPROVED FOR FILING:
Pattie A. Bennett
City Attorney

$29.48
ORDINANCE NO. 1859

AN ORDINANCE VACATING A STREET RIGHT-OF-WAY OR PORTION THEREOF, LOCATED AT APPROXIMATELY 111 TH STREET AND STATE LINE ROAD, WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a street right-of-way within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described street right-of-way and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

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

SECTION ONE: That any existing private easements located in the below described area shall not be affected by this street right-of-way vacation.

SECTION TWO: That the following described real estate, previously dedicated as a street right-of-way in a document filed with the Johnson County Public Works Department on October 26, 1899 in Packet No. 457, should be and is hereby vacated, to wit:

A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10′14″ West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01′55″ West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02′19″ West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course; thence South 22°01′53″ East along said Golf Course boundary a distance of 42.59 feet; thence North 88°02′19″ East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance
of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less.

SECTION THREE: That notwithstanding Section Two hereof, the City of Leawood hereby reserves a limited public utility easement in the below described land, whereby the City and the owners of existing easements granted therein by the City, and their respective successors and assigns, shall have the rights to operate, inspect, maintain, repair and reconstruct any utility line or facility which now exists on such land and to enter upon such land for such purposes on the condition that if in the exercise of such rights any line, facility or other improvement on such land is damaged, the party causing such damage shall restore the same to its condition prior to such damage.

TO WIT:
A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02'19" West parallel with the South line of the Northeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course; thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet; thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less. The above described "deed" references were taken from Ordinance 998 filed for record at Book 2669, Page 447.

SECTION FOUR: That said ordinance shall take effect from and after its passage and publication as required by law.
SECTION FIVE: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 1st day of May, 2000.

APPROVED by the Mayor this 1st day of May, 2000.

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney
AN ORDINANCE VACATING A STREET RIGHT-OF-WAY OR PORTION THEREOF, LOCATED AT APPROXIMATELY 111TH STREET AND STATE LINE ROAD, WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a street right-of-way within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described street right-of-way and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

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

SECTION ONE: That any existing private easements located in the below described area shall not be affected by this street right-of-way vacation.

SECTION TWO: That the following described real estate, previously dedicated as a street right-of-way in a document filed with the Johnson County Public Works Department on October 26, 1899 in Packet No. 457, should be and is hereby vacated, to wit:

A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course; thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet; thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance
of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less.

SECTION THREE: That notwithstanding Section Two hereof, the City of Leawood hereby reserves a limited public utility easement in the below described land, whereby the City and the owners of existing easements granted therein by the City, and their respective successors and assigns, shall have the rights to operate, inspect, maintain, repair and reconstruct any utility line or facility which now exists on such land and to enter upon such land for such purposes on the condition that if in the exercise of such rights any line, facility or other improvement on such land is damaged, the party causing such damage shall restore the same to its condition prior to such damage:

TO WIT:
A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of fractional Section 11, Township 13 South, Range 25 East and the North half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half; a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet [calculated] 1003.72 feet [deed] to a point on the West line of said South Half; thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet [calculated] 142.57 [deed] to a point on the existing East boundary of the Hallbrook Country Club Golf Course; thence South 22°01'53" East along said Golf Course boundary a distance of 42.39 feet; thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet [calculated] 127.93 feet [deed] to a point on the East line of the said Northeast Quarter; thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 [calculated] 1003.87 feet [deed] to the East line of the said North Half; thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less. The above described "deed" references were taken from Ordinance 998 filed for record at Book 2669, Page 447.

SECTION FOUR: That said ordinance shall take effect from and after its passage and publication as required by law.
SECTION FIVE: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 1st day of May, 2000.

APPROVED by the Mayor this 1st day of May, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney
CERTIFICATE

State of Kansas  
County of Johnson  
City of Leawood    

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the attached is a true and correct copy of Ordinance No. 1859 as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the Seal of said City this 4th day of May, 2000.

[Signature]

[Seal]
PETITION FOR VACATION OF RIGHT OF WAY

COMES NOW Hallbrook Office Center, L.L.C., and files this petition with the City Clerk of the City of Leawood, Kansas praying for vacation of the dedicated right of way legally described as follows:

TO WIT:

[See attached Exhibit "A"]

Petitioner further states that, after publication by the Governing Body of the City of Leawood at least once 20 days prior to the date of hearing in a newspaper of general circulation in the vicinity, then this petition shall be presented to the Governing Body of the City of Leawood, Kansas, for a hearing thereon, and that at such time and place, all persons interested can appear and be heard under the petition.

Dated this 23rd day of March, 2000.

PETITIONER:

Mel J. Lavery, Manager

VERIFICATION

STATE OF KANSAS ]
] ss.
COUNTY OF JOHNSON ]

BE IT REMEMBERED, that on this 23 day of March 2000, before me, the undersigned, a Notary Public in and for said County and State, came Mel J. Lavery, Manager, who is known to me to be such officer and who is known to me to be the same person who executed the within instrument on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

IT WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

JULIE A. MINEGAR

My Commission Expires: 06-25-2003
Exhibit “A”
111th Street Vacation
State Line Road to Hallbrook Golf Course

A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of Fractional Section 11, Township 13 South, Range 25 East and the North Half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast Corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet;
Thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet (calculated) 1003.72 feet (deed) to a point on the West line of said South Half;
Thence South 88°02'19" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.55 feet (calculated) 142.57 (deed) to a point on the existing East boundary of the Hallbrook Country Club Golf Course;
Thence South 22°01'53" East along said Golf Course boundary a distance of 42.59 feet;
Thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet (calculated) 127.93 feet (deed) to a point on the East line of the said Northeast Quarter;
Thence North 88°01'55" East parallel with the North line of the North Half of Fractional Section 14, Township 13 South, Range 25 East a distance of 1003.86 (calculated) 1003.87 feet (deed) to the East line of the said North Half;
Thence North 02°10'14" West along the East line of the said North Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less.

The above described “Deed” references were taken from Ordinance 998 filed for record at Book 2669, Page 447.
EXHIBIT "A" FOR VACATION OF 111TH. STREET STATE LINE ROAD TO HALLBROOK GOLF COURSE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS

SEC. 10T13S,R25E FRAC. SEC. 11,T13S,R25E

POINT OF BEGINNING SE CORNER, SOUTH 1/2 FRAC. SEC. 11-T13S-R25E

SEC. 15T13S,R25E FRAC. SEC. 14,T13S,R25E

EAST LINE NORTHEAST QUARTER SEC. 15-T13S-R25E

1" = 200'

VACATION LOCATION

111TH ST. STATE LINE R.D.

VICTORY MAP N.T.S. PAGE 2 of 2
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).

That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for consecutive week(s), as follows:

ORDINANCE NO. 1859--5/9/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MAY 10, 2000

Notary Public

PATRICIA A. Dziadura
Notary Public--State of Kansas
My Appl. Expires

$48.54
ORDINANCE NO. 1859
First published in The Legal Record, Tuesday, May 9, 2000.

ORDINANCE NO. 1859

AN ORDINANCE VACATING A STREET RIGHT-OF-WAY OR PORTION THEREOF LOCATED AT APPROXIMATELY 111TH STREET AND STATE LINE ROAD, WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS:

WHEREAS, the City of Leawood, Kansas, has received a request for a vacation of a street right-of-way within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described street right-of-way and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have presented against said vacation; and

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

SECTION ONE: That any existing private easements located in the below described area shall not be affected by this street right-of-way vacation.

SECTION TWO: That the following described real estate, previously dedicated as a street right-of-way in a document filed with the Johnson County Public Works Department on October 26, 1899 in Packet No. 457, should be and is hereby vacated, to wit:

A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of Fractional Section 11, Township 13 South, Range 25 East and the North Half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet; thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet (calculated) 1003.75 feet [ted] to a point on the West line of said South Half, thence South 18°00'29" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.15 feet [calculated] 142.17 feet [ted] to a point on the existing East boundary of the Valley Brook Country Club Golf Course thence South 27°01'55" East along said Golf Course boundary a distance of 42.39 feet, thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet (calculated) 127.93 feet [ted] to a point on the East line of the said South Half, thence North 02°10'14" West along the East line of the said East Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less.

SECTION THREE: That notwithstanding Section Two hereof, the City of Leawood hereby reserves a limited public utility easement in the below described land, whereby the City and the owners of existing easements granted therein by the City, and their respective successors and assigns, shall have the rights to operate, suspet, maintain, repair and reconstruct any utility line or facility which now exists on such land and to enter upon such land for such purposes on the condition that if in the exercise of such rights any line, facility or other improvement on such land is damaged, the party causing such damage shall restore the same to its condition prior to such damage.

TO WIT:

A tract of land lying in part of the Southeast Quarter of Section 10, Township 13 South, Range 25 East, the Northeast Quarter of Section 15, Township 13 South, Range 25 East, the South Half of Fractional Section 11, Township 13 South, Range 25 East and the North Half of Fractional Section 14, Township 13 South, Range 25 East.

Beginning at the Southeast corner of the South Half of Fractional Section 11, Township 13 South, Range 25 East, in the City of Leawood, Johnson County, Kansas;

Thence North 02°10'14" West along the East line of the said South Half, a distance of 20.00 feet, thence South 88°01'55" West parallel with the South line of said South Half a distance of 1003.74 feet (calculated) 1003.76 feet [ted] to a point on the West line of said South Half, thence South 18°00'29" West parallel with the South line of the Southeast Quarter of Section 10, Township 13 South, Range 25 East a distance of 142.15 feet (calculated) 142.17 feet [ted] to a point on the existing East boundary of the Valley Brook Country Club Golf Course thence South 27°01'55" East along said Golf Course boundary a distance of 42.39 feet, thence North 88°02'19" East parallel with the North line of the Northeast Quarter of Section 15, Township 13 South, Range 25 East a distance of 127.94 feet (calculated) 127.93 feet [ted] to a point on the East line of the said South Half, thence North 02°10'14" West along the East line of the said East Half, a distance of 20.00 feet to the Point of Beginning, less that part in the existing State Line Road Right-of-Way, containing 1.046 acres more or less. The above described [ted] references were taken from Ordinance 998 title for record at Bleak 1659, Page 647.

SECTION FOUR: That said ordinance shall take effect from and after its passage and publication as required by law.

SECTION FIVE: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.
ORDINANCE NO. 1858

AN ORDINANCE VACATING A PERMANENT DRAINAGE EASEMENT OR PORTION THEREOF WITHIN TRACT "C" LOCATED IN THE WOODS, A PLATTED SUBDIVISION WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a permanent drainage easement within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described permanent drainage easement and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

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

SECTION ONE: That the following described real estate, previously dedicated as a permanent drainage easement in a document filed with the Johnson County Register of Deeds Office in Book 113, Page 3, should be and is hereby vacated, to wit:

An existing permanent drainage easement 15.00 feet in width across part of Tract "C," as shown on the Woods, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, as recorded at the Johnson County Register of Deeds Office in Book 113, at Page 3; lying 7.50 feet on the right and 7.50 feet on the left of the following described centerline:

Commencing at the Southeast corner of Lot 38, Brittany Court replat, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, said corner also being an angle point of said Tract "C," The Woods; thence South 87°45'35" West along the North line of said Tract "C," a distance of 133.58 feet to a point on the centerline of said existing drainage easement, said point also being the True Point of Beginning; thence South 15°13'57" West, along said centerline of existing drainage easement, a distance of 376.29 feet to a Point of Terminus on the South line of said Tract "C." All side lines are to be extended or shortened to terminate on the north and south lines of said Tract "C".
SECTION TWO: The City of Leawood, Kansas reserves to itself the right to, at any time after the effective date of this ordinance, reenter or permit a public utility to reenter that portion of said tract of land hereby vacated for the purpose of repairing, installing, constructing or reconstructing any public utilities.

SECTION THREE: That said ordinance shall take effect from and after its passage and publication as required by law.

SECTION FOUR: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 17th day of April, 2000.

APPROVED by the Mayor this 17th day of April, 2000.

Peggy Dunn, Mayor  

ATTEST:  

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney
AN ORDINANCE VACATING A PERMANENT DRAINAGE EASEMENT OR PORTION THEREOF WITHIN TRACT "C" LOCATED IN THE WOODS, A PLATTED SUBDIVISION WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a permanent drainage easement within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments thereto; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and evidence has been presented, and the Governing Body of the City has determined that due and legal notice has been given by publication as required by statute, that there will be no public inconvenience or harm as a result of the vacation of said described permanent drainage easement and that no private rights will be injured or endangered, that in justice to the petitioners the vacation ought to be granted and that no interested parties have protested against said vacation; and

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

SECTION ONE: That the following described real estate, previously dedicated as a permanent drainage easement in a document filed with the Johnson County Register of Deeds Office in Book 113, Page 3, should be and is hereby vacated, to wit:

An existing permanent drainage easement 15.00 feet in width across part of Tract "C," as shown on the Woods, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, as recorded at the Johnson County Register of Deeds Office in Book 113, at Page 3; lying 7.50 feet on the right and 7.50 feet on the left of the following described centerline:

Commencing at the Southeast corner of Lot 38, Brittany Court replat, a platted subdivision of land in the City of Leawood, Johnson County, Kansas, said corner also being an angle point of said Tract "C," The Woods; thence South 87°45'35" West along the North line of said Tract "C," a distance of 133.58 feet to a point on the centerline of said existing drainage easement, said point also being the True Point of Beginning; thence South 15°13'57" West, along said centerline of existing drainage easement, a distance of 376.29 feet to a Point of Terminus on the South line of said Tract "C". All side lines are to be extended or shortened to terminate on the north and south lines of said Tract "C".
SECTION TWO: The City of Leawood, Kansas reserves to itself the right to, at any time after the effective date of this ordinance, reenter or permit a public utility to reenter that portion of said tract of land hereby vacated for the purpose of repairing, installing, constructing or reconstructing any public utilities.

SECTION THREE: That said ordinance shall take effect from and after its passage and publication as required by law.

SECTION FOUR: That the City Clerk is hereby directed to certify a copy of this ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 17th day of April, 2000.

APPROVED by the Mayor this 17th day of April, 2000.

[SEAL]

Peggy Dunn, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa R. Wetzler, Assistant City Attorney
CERTIFICATE

State of Kansas )
County of Johnson )
City of Leawood )

I, Martha Heizer, City Clerk of the City of Leawood, Kansas, hereby certify that the attached is a true and correct copy of Ordinance No. 1858 as the same appears in my office.

In testimony whereof, I have hereunto signed my name and affixed the Seal of said City this 4th day of May, 2000.

[Signature]

Martha Heizer
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS:

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).

That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for    consecutive week(s), as follows:

ORDINANCE NO. 1858--4/18/00

[Signature]

Legal Notices Administrator

Subscribed and sworn to before me on this date:
APRIL 19, 2000

[Signature]

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


$38.81
ORDINANCE NO. 1858
First published in The Legal Record, Tuesday, April 18, 2000.

AN ORDINANCE VACATING A PERMANENT DRAINAGE EASEMENT OR
PORTION THEREOF WITHIN TRACT "C" LOCATED IN THE WOODS, A PLATTED
SUBDIVISION WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS.

WHEREAS, the City of Leawood, Kansas has received a request for a vacation of a
permanent drainage easement within the city limits of Leawood, Kansas; and

WHEREAS, pursuant to said petition, the City has caused Notice of Hearing to be
published in the official City paper, in accordance with K.S.A. 12-504, et seq., and amendments
thereof; and

WHEREAS, the Governing Body of the City has held a hearing on said Petition and
evidence has been presented, and the Governing Body of the City has determined that due and
legal notice has been given by publication as required by statute, that there will be no public
inconvenience or harm as a result of the vacation of said described permanent drainage easement
and that no private rights will be injured or endangered, that in justice to the petitioners the
vacation ought to be granted and that no interested parties have protested against said vacation;

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

SECTION ONE: That the following described real estate, previously dedicated as a
permanent drainage easement in a document filed with the Johnson County Register of Deeds
Office in Book 113, Page 3, should be and is hereby vacated, to wit:  

An existing permanent drainage easement 15.00 feet in width across part of Tract "C," as
shown on the Woods, a plat, subdivision of land in the City of Leawood, Johnson
County, Kansas, as recorded in the Johnson County Register of Deeds Office in Book
113, at Page 3; lying 7.50 feet on the right and 7.50 feet on the left of the following
described centerline:

Commencing at the Southeast corner of Lot 18, Brittany Court replat, a divided
subdivision of land in the City of Leawood, Johnson County, Kansas, and corner also
being an angle point of said Tract "C," the Woods, thence South 87°43'35" West along
the North line of said Tract "C," a distance of 133.28 feet to a point on the centerline
of said existing drainage easement, said point also being the True Point of Beginning;
then South 18°13'57" West, along said centerline of existing drainage easement, a
distance of 376.29 feet to a Point of Terminus on the South line of said Tract "C." All
side lines are to be extended or shortened to terminate on the north and south lines of said
Tract "C."

SECTION TWO: The City of Leawood, Kansas reserves to itself the right to, at any
time after the effective date of this ordinance, reenter or permit a public utility to reenter that
portion of said tract of land hereby vacated for the purpose of repairing, installing, constructing
or reconsecrating any public utilities.

SECTION THREE: That said ordinance shall take effect from and after its passage and
publication as required by law.

SECTION FOUR: That the City Clerk is hereby directed to certify a copy of this
ordinance to the Register of Deeds of Johnson County, Kansas, for filing, in accordance with
K.S.A. 12-504, et seq., and amendments thereto.

PASSED by the Governing Body this 17th day of April, 2000.

APPROVED by the Mayor this 17th day of April, 2000.

[SEAL]

Peggy Ollis, Mayor

ATTEST:

Martha Heizer, City Clerk

APPROVED AS TO FORM:

Lisa A. Welsch, Assistant City Attorney
AN ORDINANCE AMENDING ORDINANCE NO. 1855 AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,500,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, by Ordinance No. 1855 the Governing Body of the City has heretofore authorized and provided for the issuance of temporary notes of the City in the principal amount of $5,500,000 to provide funds to finance the cost of certain public improvement projects within the City as described therein; and

WHEREAS, the amount necessary to pay and retire certain Prior Notes as provided in Ordinance No. 1855 is incorrect, and it is therefore necessary to amend said Ordinance as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Repeal and Amendment of Section 5 of Ordinance No. 1855. Section 5 of Ordinance No. 1855 is hereby repealed in its entirety and there is hereby inserted in lieu thereof the following new Section 5:

"Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $2,100,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions."

Section 2. Effect and Construction. This Ordinance amends Ordinance No. 1855 and shall be a part thereof. Except as amended hereby, Ordinance No. 1855 is hereby ratified and confirmed and shall be and remain in full force and effect.
Section 3. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 4. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 17th day of April, 2000.

APPROVED by the Mayor the 17th day of April, 2000.

Peggy J. Dunn, Mayor

Marcia Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).

That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for ____ consecutive week(s), as follows:

ORDINANCE NO. 1857--4/18/00

[Signature]
Legal Notices Administrator

Subscribed and sworn to before me on this date:
APRIL 19, 2003

[Signature]
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

ORDINANCE NO. 1857

First published in The Legal Record, Tuesday, April 18, 2000.

ORDINANCE NO. 1857

AN ORDINANCE AMENDING ORDINANCE NO. 1855 AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,500,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, by Ordinance No. 1855 the Governing Body of the City has heretofore authorized and provided for the issuance of temporary notes of the City in the principal amount of $5,500,000 to provide funds to finance the cost of certain public improvement projects within the City as described therein; and

WHEREAS, the amount necessary to pay and retire certain Prior Notes as provided in Ordinance No. 1855 is incorrect, and it is therefore necessary to amend said Ordinance as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Repeal and Amendment of Section 5 of Ordinance No. 1855. Section 5 of Ordinance No. 1855 is hereby repealed in its entirety and there is hereby inserted in lieu thereof the following new Section 5:

"Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $5,500,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions."

Section 2. Effect and Construction. This Ordinance amends Ordinance No. 1855 and shall be a part thereof. Except as amended hereby, Ordinance No. 1855 is hereby ratified and confirmed and shall be and remain in full force and effect.

Section 3. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 4. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 17th day of April, 2000.

APPROVED by the Mayor the 17th day of April, 2000.

(S E A L)

Peggy L. Dunn, Mayor

ATTEST:

Marcia Heizer, City Clerk

APPROVED FOR FORM:

Pamela A. Benett, City Attorney
ORDINANCE NO. 1856

AN ORDINANCE AMENDING SECTION 4-2 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO PROHIBITED USES; AND REPEALING EXISTING SECTION.

Be it ordained by the governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 4-2 of the Leawood Development Ordinance, is hereby amended to read as follows:

4-2.1 Buildings in Residentially Zoned Area

No business building shall be erected in a residentially zoned district, nor shall any dwelling be converted to or used for any business purpose or character in a residentially zoned district except as specifically authorized in Section 4-7 Home Occupations.

4-2.2 Detached Structures

No garage, barn, shed, greenhouse, above ground pool (type sold to be placed above ground), outbuilding or any other detached structure, except dog houses, dog runs, dog kennels, children's playground equipment such as swing sets, jungle-gyms, teeter totters, sand boxes and similar types of recreational equipment, shall be built, placed, or constructed in any R-1 (Single Family Residential), RP-1 (Planned Single Family Residential), or RP-2 (Planned Two Family Residential) District. Architecturally attached detached structures shall be allowed only when in the opinion of the Director the definition of "Architecturally Attached" has been satisfied. The Board of Zoning Appeals may, in its discretion, when deemed advisable, authorize exceptions to this regulation and restriction after conducting a public hearing thereon and due notice thereof by publication in the official city newspaper prior thereto.

4-2.3 Ceasing or Abandonment of Construction

No building, structure or appurtenance shall be permitted or maintained upon which construction has ceased for a period longer than 6 months.

4-2.4 No Damaged Building Left Unrepaired Over Three Months

No building, structure or appurtenance damaged by fire, windstorm, hail, water, tree or any other means shall be permitted to remain in such damaged condition for a period longer than 3 months, except with permission of the Governing Body of the City of Leawood.

4-2.5 No Building Material Stored, Etc.

No building material, inoperable vehicle, construction equipment, machinery, trailer, construction trailer or refuse shall be maintained or kept in the open upon any lot, plot, tract or premises other than during actual construction operations upon said premises or related premises.
4-2.6 Septic Tanks

The use of septic tanks for disposal of sewage from buildings hereafter erected or moved into the City of Leawood is prohibited, except in areas where sewer mains of a public or private sewer system are found to be impractical by the Governing Body after report of the City Engineer. In such cases, use of septic tanks shall be subject to the approval of a permit for the septic tank system by the Governing Body after recommendation of the County Health Department.

4-2.7 Storage of Hazardous Materials

See Uniform Fire Code as adopted by the City of Leawood for restrictions on placement and allowable quantities.

4-2.8 Individually Owned Television Antenna

Not to include satellite dishes.

4-2.9 Use of Temporary Protective Coverings on Buildings

The use of temporary protective coverings, (i.e. tarp, salvage covers, tarpaper) on external portions of buildings, structures or appurtenances shall not be allowed to exceed 30 days. Provided that the property owner or representative has provided a set of plans and / or written strategy for repairing the structure within the initial 30 days of installing the temporary protective covering, then the Building Official may grant an addition 30-60 day extension. The temporary protective covering may not be allowed to exceed 90 days without permission from the Governing Body of the City of Leawood.

Section 2. Existing Section Repealed. That existing Section 4-2 of the Leawood Development Ordinance is hereby repealed. (Prior law: Ord. No. 1674)

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the ______ day of April ______, 2000.

Approved by the Mayor the ______ day of April ______, 2000.

Peggy J. Dunn Mayor

Martha Heizer City Clerk

APPROVED FOR FORM: Patricia A. Bennett City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class). That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for consecutive week(s), as follows:

ORDINANCE NO. 1856--4/18/00

Penny Knight  
Legal Notices Administrator

Subscribed and sworn to before me on this date:

APRIL 19, 2000

Notary Public

ORDINANCE NO. 1856

First published in The Legal Record, Tuesday, April 18, 2000.

ORDINANCE NO. 1856
AN ORDINANCE AMENDING SECTION 4-2 OF THE LEAWOOD DEVELOPMENT ORDINANCE, SPECIFICALLY PROVIDING FOR CHANGES TO PROHIBITED USES, AND REPEALING EXISTING SECTION.

Be it ordained by the governing Body of the City of Leawood:

Section 1. Leawood Development Ordinance Amended. That Section 4-2 of the Leawood Development Ordinance, is hereby amended to read as follows:

4-2.1 Buildings in Residentially Zoned Area
No business building shall be erected in a residentially zoned district, nor shall any dwelling be converted to or used for any business purpose or character in a residentially zoned district except as specifically authorized in Section 4-7 Home Occupations.

4-2.2 Detached Structures
No garage, shed, greenhouse, above ground pool (type sold as a bid above ground), outbuilding or any other detached structure, except dog houses, dog runs, dog kennels, children’s playground equipment such as swing sets, jungle-gym, letter boxes, sand boxes and similar types of recreational equipment, shall be built, placed, or constructed in any R-1 (Single Family Residential), R-2 (Planned Family Residential), or R-3 (Planned Two Family Residential) District. Architecturally designed detached structures shall be allowed only when the design of the Director of Architectural Review has been approved.

The Board of Zoning Appeals may, in its discretion, when deemed advisable, authorize exceptions to this regulation and resolution after conducting a public hearing thereon and due notice thereof by publication in the official city newspaper prior thereto.

4-2.3 Cessing or Abandonment of Construction
No building, structure or appurtenance shall be permitted or maintained upon which construction has ceased for a period longer than 6 months.

4-2.4 No Damaged Building Left Unrepaired Over Three Months
No building, structure or appurtenance damaged by fire, windstorm, hail, water, ice or any other means shall be permitted to remain in such damaged condition for a period longer than 3 months, except with permission of the Governing Body of the City of Leawood.

4-2.5 No Building Material Stored, Etc.
No building material, insurable vehicles, construction equipment, machinery, trailer, construction trailer or refuse shall be maintained or kept in the open upon any lot, plot, tract or premises other than during actual construction operations upon said premises or as required permits.

4-2.6 Septic Tanks
The use of septic tanks for disposal of sewage from buildings hereafter erected or moved into the City of Leawood is prohibited, except in areas where sewer mains of a public or private sewer system are found to be impractical by the Governing Body after report of the City Engineer. In such cases use of septic tanks shall be subject to the approval of a permit for the septic tank system by the Governing Body after recommendation of the County Health Department.

4-2.7 Storage of Hazardous Materials
See Uniform Fire Code as adopted by the City of Leawood for restrictions on placement and allowable quantities.

4-2.8 Individually Owned Television Antenna
Not to include satellite dishes.

4-2.9 Use of Temporary Protective Coverings on Buildings
The use of temporary protective coverings, (i.e. tarp, salvage covers, tarps) on external portions of buildings, structures or appurtenances shall not be allowed to exceed 30 days. Provided that the property owner or representative has provided a set of plans and or written strategy for repairing the structure within the first 30 days of installing the temporary protective covering, then the Building Official may grant an additional 30-90 day extension. The temporary protective covering may not be allowed to exceed 90 days without permission from the Governing Body of the City of Leawood.

Section 2. Existing Section Repealed. That existing Section 4-2 of the Leawood Development Ordinance is hereby repealed. (Prior laws: Ord. No. 1674)

Section 3. Take effect. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 17th day of April 2000
Approved by the Mayor the 17th day of April 2000

[SEAL]

Peggy J. Dunn
Mayor

Affidavit.

Martha Heiser

City Attorney
ORDINANCE NO. 1855

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,500,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the “City”) is a city of the first class, duly created, organized and existing under the laws of the State of Kansas; and

WHEREAS, the Governing Body of the City has heretofore authorized the following described public improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement and reimprovement of College Boulevard within the City pursuant to K.S.A. 12-685, et seq. and Ordinance No. 1488;

(b) Acquisition, construction and installation of improvements to existing City Parks pursuant to K.S.A. 12-1302 and Ordinance No. 1742;

(c) Acquisition of certain real property in Leawood South Park leased by the City and acquisition, construction and installation of a new fire station thereon, including parking facilities and access roads, and furnishing and equipping the same pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;

(d) Improvement and reimprovement of Mission Road and 119th Street in the vicinity of the intersection thereof pursuant to K.S.A. 12-685, et seq. and Resolution No. 1505;

(e) Improvement, reimprovement, excavation and repair of damaged sections of roads within the Normandy Place Subdivision and certain storm water drainage improvements within said subdivision pursuant to K.S.A. 12-6a01 et seq. and Resolution No. 1489;
(f) Improvement and reimprovement of Lee Boulevard between 103rd Street and Mission Road pursuant to K.S.A. 12-685 et seq. and Ordinance No. 1807;

(g) Improvement and reimprovement of 151st Street between Nall Avenue and Glenwood pursuant to K.S.A. 12-685 et seq. and Resolution No. 1506;

(h) Improvement and reimprovement of Roe Avenue between 137th Street and 138th pursuant to K.S.A. 12-685 et seq. and Resolution No. 1504;

and

(i) Reconstruction, remodeling and replacement of the bathhouse at the municipal pool complex in the City Park at 10601 Lee Boulevard pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1735;

(collectively, the "City Improvement Projects"); and

WHEREAS, the City has heretofore issued its Temporary Notes dated August 1, 1999, in the principal amount of $3,300,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects heretofore incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $3,400,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become
due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Five Million Five Hundred Thousand Dollars ($5,500,000) (the “Notes”). The amount of the Notes together with other temporary notes heretofore issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated City of Leawood, Kansas Temporary Notes with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be dated, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of each such series of Notes (the “Note Resolutions”).

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent said special assessments shall not be so collected and to the extent of the City’s portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax
upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to procure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefor as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,600,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "arbitrage bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax
purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City.

The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a “private activity bond” within the meaning of Section 141(a) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948;

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 265(b)(3)(D) of an aggregate amount in excess of $10,000,000.

3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 265(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will such proceeds or any of the City Improvement Projects be in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity.

The Governing Body of the City hereby designates the Notes to be “qualified tax-exempt obligations” within the meaning and for the purposes of Section 265 of the Code, for calendar year 2000.
Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Note Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.
PASSED by the Council the 3rd day of April, 2000.

APPROVED by the Mayor the 3rd day of April, 2000.

Peggy J. Dunn, Mayor

Marcia Heizer, City Clerk

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).

That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for consecutive week(s), as follows:

ORDINANCE NO. 1855--4/4/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
APRIL 5, 2000

DEBRA VALENTI
Notary Public
Notary Public - State of Kansas

ORDINANCE NO. 1855
First published in The Legal Record, Tuesday, April 4, 2000.

ORDINANCE NO. 1855

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF TEMPORARY NOTES OF THE CITY OF LEAWOOD, KANSAS, IN THE PRINCIPAL AMOUNT OF $5,500,000 TO PROVIDE TEMPORARY FINANCING OF THE COST OF PUBLIC IMPROVEMENT PROJECTS IN THE CITY OF LEAWOOD.

WHEREAS, the City of Leawood, Kansas (the "City") is a city of the first class, duly created, organized and existing under the laws of the State of Kansas, and

WHEREAS, the Governing Body of the City has heretofore authorized the following described public improvement projects within the City pursuant to the following authority, to wit:

(a) Improvement and improvement of College Boulevard within the City pursuant to K.S.A. 12-685 et seq. and Ordinance No. 1488;

(b) Acquisition, construction and installation of improvements to existing City Parks pursuant to K.S.A. 12-1202 and Ordinance No. 1742;

(c) Acquisition of certain real property in Leawood South Park leased by the City and acquisition, construction and installation of a new fire station thereon, including parking facilities and access roads, and furnishing and equipping the same pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1704;

(d) Improvement and improvement of Mission Road and 119th Street in the vicinity of the intersection thereof pursuant to K.S.A. 12-685 et seq. and Resolution No. 1225;

(e) Improvement, re-improvement, excavation and repair of damaged sections of roads within the Normandy Place Subdivision and certain storm water drainage improvements within said subdivision pursuant to K.S.A. 12-685 et seq. and Resolution No. 1489;

(f) Improvement and improvement of Lee Boulevard between 10th Street and Mission Road pursuant to K.S.A. 12-685 et seq. and Ordinance No. 1507;

(g) Improvement and realignment of 151st Street between Nall Avenue and Glenwood pursuant to K.S.A. 12-685 et seq. and Resolution No. 1506;

(h) Improvement and improvement of Roe Avenue between 137th Street and 138th pursuant to K.S.A. 12-685 et seq. and Resolution No. 1504; and

(i) Reconstruction, remodeling and replacement of the bathhouse at the municipal pool complex in the City Park at 10601 Lee Boulevard pursuant to K.S.A. 12-1736 et seq. and Ordinance No. 1735;

(Collectively, the "City Improvement Projects"); and

WHEREAS, the City has herefore issued its Temporary Notes dated August 1, 1999, in the principal amount of $3,300,000 (the "Prior Notes") to provide funds to pay the costs of certain of the City Improvement Projects hereinafter incurred by the City; and

WHEREAS, the Prior Notes become due and payable in the immediate future but all aspects of the City Improvement Projects will not be completed at the date of maturity thereof, and the City has incurred or expects to incur additional costs payable in respect of the City Improvement Projects within the next six months in the amount of $2,400,000; and

WHEREAS, the City is authorized by law and in particular K.S.A. 10-123, as amended, to issue temporary notes of the City to provide funds to redeem and pay the Prior Notes and to pay the costs of the City Improvement Projects as the same become due and payable;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Notes. That in order to provide funds to redeem and pay the Prior Notes and to pay costs of the City Improvement Projects now due or to become due in the immediate future, including necessary engineering, legal and incidental costs, there shall be issued and the City is hereby authorized to issue temporary notes of the City in the aggregate principal amount of Five Million Five Hundred Thousand Dollars ($5,500,000) (the "Notes"). The amount of the Notes together with other temporary notes hereafter issued to finance each of the City Improvement Projects which remain outstanding does not exceed the total estimated cost of each such City Improvement Project.

Section 2. Terms of the Notes. The Notes shall be issued in separate series designated by the Governing Body of the City with such further appropriate designation incorporated in such title of the Notes of each series to identify the particular project for which such series is issued as shall be provided in the Note Resolution providing for the issuance thereof. Said Notes shall be due, shall mature and be payable by their stated terms at such times, shall be in such form, shall be subject to redemption and payment prior to maturity, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the resolutions adopted by the Governing Body of the City providing for the issuance of such series of Notes (the "Note Resolutions").

Section 3. Security for the Notes. The Notes shall be general obligations of the City, and the full faith, credit and resources of the City of Leawood, Kansas, shall be and the same are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes.

The Governing Body of the City shall make provision for the payment of said Notes by the issuance of renewal notes or general obligation bonds of the City to provide permanent financing of each of the City Improvement Projects upon the completion thereof. If said renewal notes or bonds shall not be so issued and the Notes shall not be so paid, the Governing Body shall levy and collect special assessments on property specially benefited by the City Improvement Projects, and to the extent of such special assessments shall not be so collected and to the extent of the City's portion of the principal of and interest on said Notes not first payable from special assessments, the Governing Body shall levy and collect a tax upon all taxable tangible property, real and personal, within the territorial limits of the City in an amount sufficient to pay the principal of and interest on said Notes as the same become due and payable.

Section 4. Execution and Delivery. The Mayor and City Clerk of the City are hereby authorized and directed to prepare and execute the Notes herein authorized in the form and substance hereinbefore described and as provided by law and to secure the proper registration in the office of the City Clerk and in the office of the Treasurer of the State of Kansas, and when so executed and registered, said Notes shall be countersigned by the City Clerk and delivered to the original purchaser or purchasers thereof, upon payment of the purchase price therefore as provided in the Note Resolutions.

Section 5. Disposition of Proceeds. The proceeds of the sale of the Notes shall be deposited with the City Treasurer. The sum of $1,600,000 of such proceeds shall be used to redeem and retire the Prior Notes, and the balance of such proceeds shall be deposited in special funds created for the purpose of paying costs and expenses of each of the respective City Improvement Projects as provided in the Note Resolutions.

Section 6. Tax Covenants. The City covenants and agrees that: (1) it will comply with each and every provision of the Internal Revenue Code of 1986, as amended (the "Code"); including Sections 103 and 141 through 150, that is or may become applicable to the Notes, necessary to maintain the excludability of gross income for federal income tax purposes (the "Interest on the Notes"); (2) it will comply with the requirements of Section 148 of the Code to the extent applicable to the Notes; (3) it will use the proceeds of the Notes as soon as practicable and with reasonable dispatch for the purposes for which the Notes are issued; (4) it will not invest or directly or indirectly use or permit the use of any of the proceeds of the Notes or other funds of the City in any manner or take or permit any other action, that would cause the Notes to be "tradeable bonds" within the meaning of Section 148(a) of the Code; and (5) it will not use or permit the use of any proceeds of the Notes or any other funds of the City nor take or permit any action to be taken, or fail to take any action, if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes (the "Interest on the Notes") of the Notes or the proceeds thereof.
purposes of the interest on the Notes. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the City. The City covenants and agrees that it will not use any portion of the proceeds of the Notes, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any of the Notes to be a "private activity bond" within the meaning of Section 141(b)(1)(B) of the Code.

Section 7. Designation of Notes as Qualified Tax-Exempt Obligations. The Governing Body hereby finds, determines, represents and warrants, as follows:

1. The City is a duly created, organized and validly existing municipal corporation of the State of Kansas in existence since 1948.

2. Since January 1, 2000, neither the City, any related issuer on behalf of the City nor any subordinate issuing entity to the City have issued bonds or notes or other tax-exempt obligations taken into account under Section 263(b)(3)(D) of an aggregate amount in excess of $10,000,000.

3. The City does not reasonably anticipate issuing tax-exempt obligations taken into account under Section 263(b)(3)(D) during calendar year 2000 in an aggregate amount in excess of $10,000,000.

4. No portion of the proceeds of the sale of the Notes will be loaned to or will be used for or by any of the City Improvement Projects in any manner used on a basis different from the general public in the trade or business of any person, firm or corporation other than a governmental entity. The Governing Body of the City hereby designates the Notes to be "qualified tax-exempt obligations" within the meaning and for the purposes of Section 365 of the Code, for calendar year 2000.

Section 8. Remedies. The provisions of this Ordinance, including the covenants and agreements herein contained, shall constitute a contract between the City and the Owners of the Notes and may be enforced in accordance with the provisions of the respective Notes Resolutions.

Section 9. Further Authority. The duly elected and appointed officers of the City, including the Mayor, the City Clerk and the Finance Director, are hereby further authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Note Resolutions, and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents heretofore approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Governing Law. This Ordinance and the Notes shall be governed exclusively by and construed in accordance with applicable laws of the State of Kansas.

Section 11. Effective Date. That this Ordinance shall take effect and be in force after its publication as provided by law.

PASSED by the Council the 3rd day of April, 2000.

APPROVED by the Mayor the 3rd day of April, 2000.

(S E A L) 

[Signature]

Mayor

[Signature]

City Clerk

[Signature]

City Attorney

APPROVED FOR FORM:

Patricia A. Bennett, City Attorney

CONTINUED FROM PAGE 5
ORDINANCE NO. 1854

AN ORDINANCE ACCEPTING A PERMANENT SIDEWALK EASEMENT FOR A SIDEWALK AS SHOWN ON THE PLANS FOR HORIZON NATIONAL BANK AT RANCHMART SHOPPING CENTER, 95TH AND MISSION ROAD.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent sidewalk easement more particularly designated and described, to wit:

From Ranch Mart, Inc.: Part of the S.W. 1/4, Sec. 34, T. 12S., R. 25E., Johnson County, Kansas, being more particularly described as follows: Commencing at the S.W. corner of the S.W. 1/4, Sec. 34, T. 12S., R. 25E., Johnson County, Kansas; thence E. along the S. line of the said S.W. 1/4, 1108.1 feet to a point; thence N. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of said S.W. 1/4, 40 feet to the true point of beginning; thence W. along a line parallel to and 40 feet N. of the S. line of the said S.W. 1/4, 240.20 feet to a point; thence N. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of the said S.W. 1/4, 3.25 feet to a point; thence E. along a line parallel to and 43.25 feet N. of the S. line of the said S.W. 1/4, 240.2 feet to a point; thence S. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of the said S.W. 1/4, 3.25 feet to the true point of beginning.

Section 2. That a copy of said easement is attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

Peggy J. Dunn
Mayor

Martha Heizer
City Clerk

APPROVED FOR FORM:

Patricia A. Bennett
City Attorney
CITY OF LEAWOOD
4800 TOWN CENTER DR
LEAWOOD, KS 66211

Proof of Publication
STATE OF KANSAS, JOHNSON COUNTY, SS:

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).

That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for __ consecutive week(s), as follows:

ORDINANCE NO. 1854--3/21/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:

MARCH 22, 2000

Debra Valent
Notary Public

DEBRA VALENTI
Notary Public - State of Kansas


ORDINANCE NO. 1854

AN ORDINANCE ACCEPTING A PERMANENT SIDEWALK EASEMENT FOR A SIDEWALK AS SHOWN ON THE PLANS FOR HORIZON NATIONAL BANK AT RANCHMART SHOPPING CENTER, 15TH AND MISSION ROAD.

It is hereby ordered by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent sidewalk easement more particularly described, to wit:

From Ranch Mart, Inc.: Part of the S.W. 1/4, Sec. 34, T. 128 S., R. 25E., Johnson County, Kansas, being more particularly described as follows: Commencing at the S.W. corner of the S.W. 1/4, Sec. 34, T. 128 S., R. 25E., Johnson County, Kansas; thence E. along the S. line of the said S.W. 1/4, 1195.1 feet to a point; thence N. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of the said S.W. 1/4, 40 feet to the true point of beginning; thence W. along a line parallel to and 40 feet N. of the S. line of the said S.W. 1/4, 240.20 feet to a point; thence N. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of the said S.W. 1/4, 3.25 feet to a point; thence E. along a line parallel to and 3.25 feet W. of the S. line of the said S.W. 1/4, 240.20 feet to a point; thence S. along a line parallel to the W. line of the E. 1/2 of the S.W. 1/4 of the said S.W. 1/4, 3.25 feet to the true point of beginning.

Section 2. That a copy of said easement is attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March 2000.

Approved by the Mayor the 20th day of March 2000.

(P E A L)

Peggy J. Reiter
Mayor

Attest:

Marcia Hamer
City Clerk

APPROVED FOR FORCE:

Patricia A. Baaske
City Attorney

ORD1854
Publication Fees: $18.32
ORDINANCE NO. 1853

AN ORDINANCE ACCEPTING 2 STORM SEWER EASEMENTS FOR STORM DRAINAGE FACILITIES AS SHOWN ON THE PLANS FOR HIGHLANDS RANCH 2ND PLAT.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts 2 storm sewer easements more particularly designated and described, to wit:

From Highwoods Realty Limited Partnership: A permanent storm sewer easement in the Northwest Quarter (1/4) of Section 34, Township 13, Range 25 in Leawood, Johnson County, Kansas described as follows: Commencing at the southeast corner of the Northwest Quarter (1/4) of said Section 34; thence North 00 degrees 01 minutes 51 seconds East, along the East line of the Northwest Quarter (1/4) of said Section 34, a distance of 103.06 feet to the Point of Beginning; thence South 72 degrees 17 minutes 13 seconds West a distance of 21.76 feet; thence South 26 degrees 30 minutes 40 seconds West a distance of 57.61 feet; thence North 63 degrees 29 minutes 20 seconds West a distance of 35.00 feet; thence North 26 degrees 30 minutes 40 seconds East a distance of 72.39 feet; thence North 72 degrees 17 minutes 13 seconds East a distance of 47.74 feet to a point on said East line of said Northwest Quarter (1/4); thence South 00 degrees 01 minutes 51 seconds West, along said East line, a distance of 36.75 feet to the Point of Beginning. Containing 0.08 acres, more or less.

AND

From Highwoods Realty Limited Partnership: A permanent storm sewer easement in the Northwest Quarter (1/4) of Section 34, Township 13, Range 25 in Leawood, Johnson County, Kansas described as follows: Commencing at the Southeast corner of the Northwest (1/4) of said Section 34; thence North 00 degrees 01 minutes 51 seconds East, along the East line of said Northwest Quarter (1/4), a distance of 736.35 feet to the Point of Beginning; thence South 11 degrees 05 minutes 44 seconds West a distance of 25.60 feet; thence North 78 degrees 54 minutes 16 seconds West a distance of 35.00 feet; thence North 11 degrees 05 minutes 44 seconds East a distance of 42.72 feet; thence North 28 degrees 44 minutes 31 seconds East a distance of 42.72 feet; thence South 61 degrees 15 minutes 29 seconds East a distance of 12.02 feet to a point on the East line of said Northwest Quarter (1/4); thence South 00 degrees 01 minutes 51 seconds West, along said east line, a distance of 55.20 feet to the Point of Beginning. Containing 0.05 acres, more or less.
Section 2. That copies of said easements are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

Peggy J. Dunn
Mayor

Martha Heizer
City Clerk

Patricia A. Bennett
City Attorney
ORDINANCE NO. 1853

First published in The Legal Record, Tuesday, March 21, 2000.

ORDINANCE NO. 1853

AN ORDINANCE ACCEPTING 2 STORM SEWER EASEMENTS FOR STORM DRAINAGE FACILITIES AS SHOWN ON THE PLANS FOR HIGHLANDS RANCH 2ND PLAT.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts 2 storm sewer easements more particularly designated and described, to wit:

From Highwoods Realty Limited Partnership: A permanent storm sewer easement in the Northwest Quarter (1/4) of Section 34, Township 13, Range 25 in Leawood, Johnson County, Kansas described as follows: Commencing at the southeast corner of the Northwest Quarter (1/4) of said Section 34, thence North 06 degrees 05 minutes 05 seconds East a distance of 25.60 feet; thence North 28 degrees 44 minutes 31 seconds East a distance of 42.72 feet; thence North 12 degrees 44 minutes 31 seconds East a distance of 42.72 feet; thence South 45 degrees 05 minutes 31 seconds West a distance of 35.00 feet; thence South 11 degrees 05 minutes 44 seconds East a distance of 42.72 feet; thence South 28 degrees 00 minutes 01 seconds West a distance of 85.16 feet to the point of beginning. Containing 0.05 acres, more or less.

AND

From Highwoods Realty Limited Partnership: A permanent storm sewer easement in the Northwest Quarter (1/4) of Section 34, Township 13, Range 25 in Leawood, Johnson County, Kansas described as follows: Commencing at the southeast corner of the Northwest Quarter (1/4) of said Section 34, thence North 06 degrees 05 minutes 05 seconds East a distance of 25.60 feet; thence North 28 degrees 44 minutes 31 seconds East a distance of 42.72 feet; thence South 45 degrees 05 minutes 31 seconds West a distance of 35.00 feet; thence South 11 degrees 05 minutes 44 seconds East a distance of 42.72 feet; thence South 28 degrees 00 minutes 01 seconds West a distance of 85.16 feet to the point of beginning. Containing 0.05 acres, more or less.

Section 2. That copies of said easements are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

(S E A L)

Penny J. Daniel
Mayor

Attest:

Martha Halden
City Clerk

APPROVED FOR FILING

Pamela A. Bennett
City Attorney

$31.37
ORDINANCE NO. 1852

AN ORDINANCE ACCEPTING A PERMANENT DRAINAGE EASEMENT AND 4 DEEDS OF DEDICATION FOR IMPROVEMENTS TO 151ST STREET FROM METCALF TO NELL AVENUE.

Be it ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent drainage easement and 4 deeds of dedication more particularly designated and described, to wit:

From Highwoods Realty Limited Partnership: (Easement) All that part of the Southwest Quarter of Section 4, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Southwest corner of said Southwest Quarter; thence N 87°18'50" E along the South line of said Southwest Quarter, a distance of 109.110 meters (357.97 feet); thence N 02°41'10" W, a distance of 18.288 meters (60.00 feet) to the true point of beginning; thence N 02°41'10" W, a distance of 10.712 meters (35.14 feet); thence N 87°18'50" E, a distance of 6.000 meters (19.68 feet); thence S 02°41'10" E, a distance of 10.712 meters (35.14 feet); thence S 87°18'50" W, a distance of 6.000 meters (19.68 feet) to the true point of beginning; said parcel of land containing 64.3 square meters (692 square feet), more or less.

From Highwoods Realty Limited Partnership: (Deed) All that part of the Southwest Quarter of Section 4, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas described as follows: Beginning at the Southwest corner of said Southwest Quarter; thence N 02°18’10”W along the West line of said Southwest Quarter, a distance of 182.880 meters (600.00 feet); thence N 87°18’50” E, a distance of 18.288 meters (60.00 feet) to the East line of the West 18.288 meters (60.00 feet) of said Southwest Quarter; thence S 02°18’10” E along said East line of the West 18.288 meters (60.00 feet) of the Southwest Quarter, a distance of 153.621 meters (504.00 feet); thence S 47°29’39” E, a distance of 15.465 meters (50.74 feet) to the North line of the South 18.288 meters (60.00 feet) of said southwest Quarter; thence N 87°18’50” E along said North line of the South 18.288 meters (60.00 feet) of said Southwest Quarter, a distance of 232.868 meters (764.00 feet); thence S 02°18’10” E, a distance of 18.288 meters (60.00 feet) to the South line of said Southwest Quarter; thence S 87°18’50” W along said South line of the Southwest Quarter, a distance of 262.129 meters (860.00 feet) to the true point of beginning, EXCEPT that part previously dedicated for street purposes; said parcel of land containing 3,599.8 square meters (38,748 square feet), more or less.
From White Horse Development L.L.C.: (Deed) All that part of the Southwest Quarter of Section 4, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Southwest corner of said Southwest Quarter; thence N 87°18'50" E along the South line of said Southwest Quarter, a distance of 262.129 meters (860.00 feet) to the true point of beginning; thence N 02°18'10" W, a distance of 18.288 meters (60.00 feet) to the North line of the South 18.288 meters (60.00 feet) of said Southwest Quarter; thence N 87°18'50" E along said North line of the South 18.288 meters (60.00 feet), a distance of 5.859 meters (19.22 feet); thence S 02°41'10" E, a distance of 18.288 meters (60.00 feet) to said South line of the Southwest Quarter; thence S 87°18'50" W along said South line of the Southwest Quarter, a distance of 5.981 meters (19.62 feet) to the true point of beginning, EXCEPT that part previously dedicated for street purposes; said parcel of land containing 35.8 square meters (385 square feet), more or less.

From White Horse Development L.L.C.: (Deed) All that part of the Southwest Quarter of Section 4, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Southwest corner of said Southwest Quarter; thence N 02°18'10" W along the West line of said Southwest Quarter, a distance of 182.880 meters (600.00 feet) to the true point of beginning; thence N 87°18'50" E, a distance of 18.288 meters (60.00 feet) to the East line of the West 18.288 meters (60.00 feet) of said Southwest Quarter; thence N 02°18'10" W along said East line of the West 18.288 meters (60.00 feet), a distance of 68.579 meters (225.00 feet); thence S 87°18'50" W, a distance of 18.288 meters (60.00 feet) to said West line of the Southwest Quarter; thence S 02°18'10" E along said West line of the Southwest Quarter, a distance of 68.580 meters (225.00 feet) to the true point of beginning, EXCEPT that part previously dedicated for street purposes; said parcel of land containing 836.1 square meters (9,000 square feet), more or less.

From LMV Associates: (Deed) All that part of the Northwest Quarter of Section 9, Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the Northwest corner of said Northwest Quarter; thence S 02°03'08" E along the West line of said Northwest Quarter, a distance of 78.641 meters (256.01 feet); thence N 87°43'53" E, a distance of 18.288 meters (60.00 feet); thence N 02°03'08" W, a distance of 49.672 meters (162.97 feet); thence N 42°37'55" E, a distance of 15.377 meters (50.45 feet); thence N 87°18'50" E, a distance of
ORDINANCE NO. 1852

239.209 meters (784.80 feet); thence N 02°41'10" W, a distance of 18.288 meters (60.00 feet) to the North line of said Northwest Quarter; thence S 87°18'50" W along said North line of the Northwest Quarter, a distance of 268.110 meters (879.62 feet) to the true point of beginning, EXCEPT that part previously dedicated for street purposes, said parcel of land containing 2,224.1 square meters (23,940 square feet), more or less.

Section 2. That copies of said easement and deeds are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor the 20th day of March, 2000.

Peggy J. Dunn
Mayor

Attest:

Martha Heizer
City Clerk

APPROVED FOR FORM:

Patricia A. Bennett
City Attorney
STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for consecutive week(s), as follows:
ORDINANCE NO. 1852--3/21/00

Subscribed and sworn to before me on this date:
MARCH 22, 2000

Notary Public

ORDINANCE NO. 1852

First published in The Legal Record, Tuesday, March 21, 2000.

ORDINANCE NO. 1853

AS ORDNANCE ACCEPTING A PERMANENT DRAINAGE EASEMENT AND 4 DEEDS OR DESCRIPTION FOR IMPROVEMENTS TO 1151 STREET FROM MATHCAL TO NAIL AVENUE

As is ordained by the Governing Body of the City of Leawood:

Section 1. That the City of Leawood hereby accepts a permanent drainage easement on the southwest corner of said Northwest Quarter of Township 14 South, Range 25 East, in the City of Leawood, Johnson County, Kansas described as follows: Commencing at the southwest corner of said Northwest Quarter; thence N 36°15'35" E along the south line of said Northwest Quarter, a distance of 26.31 meters (86.00 feet); thence S 87°18'50" W along said north line of said Northwest Quarter, a distance of 26.110 meters (85.96 feet) to the true point of beginning.

Section 2. That copies of said easement and deeds are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor, the 20th day of March, 2000.

(S S A L)

Peggy Hartley
Mayor

Attest:

Mary Heiser
City Clerk

APPROVED FOR FORMAL

Patricia A. Bennett
City Attorney

239.299 meters (788.80 feet); thence N 22°41'10" W, a distance of 18.288 meters (60.00 feet) to the North line of said Northwest Quarter; thence S 87°18'50" W along said North line of the Northwest Quarter, a distance of 26.110 meters (85.96 feet) to the true point of beginning. EXCEPT that part previously dedicated for street purposes, said parcel of land containing 2,224.1 square meters (550.40 square feet), more or less.

Section 2. That copies of said easement and deeds are attached hereto and thereby incorporated by reference.

Section 3. That this ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the Council the 20th day of March, 2000.

Approved by the Mayor, the 20th day of March, 2000.

(S S A L)

Peggy Hartley
Mayor

Attest:

Mary Heiser
City Clerk

APPROVED FOR FORM

Patricia A. Bennett
City Attorney
RIGHT-OF-WAY ORDINANCE NO. 1851

AN ORDINANCE GRANTING TO AXON TELECOM, L.L.C. THE RIGHT, PRIVILEGE OR FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN CONDUIT FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAWOOD, KANSAS.

WHEREAS, Axon Telecom, L.L.C., desires to conduct, operate and maintain conduit facilities in the City right-of-way in order to lease or sell the use of such facilities to duly franchised entities for telecommunication, cable, and other similar services; and

WHEREAS, the City of Leewood, Kansas, a municipal corporation, duly organized and existing under the laws of the State of Kansas, has the right under statute to grant the right, privilege or franchise to construct, operate and maintain conduit facilities in the City right-of-way in accordance to K.S.A. 12-2001 et. al; and

WHEREAS, Axon Telecom, L.L.C. does not intend to install, operate or own its own cable, including but not limited to dark fiber, and will not do so without first coming back to the City for a franchise ordinance to do the same; and

WHEREAS, in addition to the terms of this ordinance, Axon Telecom, L.L.C. will meet the requirements of the City’s ordinance regarding the Use and Excavation of the Public Right-of-Way; and

WHEREAS, pursuant to K.S.A. 12-2001, the Governing Body of the City did order publication of a notice of a hearing to be held on 3/6/00 to afford the public-at-large, an opportunity to comment on the proposed ordinance, a copy of which was on file in the office of the City Clerk, and such notice was published in an official City newspaper on 2/29/2000

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

1. Definitions. For the purpose of this ordinance, the following words and phrases and their derivations shall have the following meaning:
   "Axon Telecom" means Axon Telecom, L.L.C., its duly authorized successors, transferees, or assigns.
   "Cable" includes both the coaxial cable used to transmit signals of high frequency, and fiber optic cable that consists of a bundle of thin insulated glass strands used to transmit data, voice, video and other communications, and any other assembly of materials so classified generically as cable.
   "City" means the City of Leewood, Kansas, a municipal corporation, and any duly authorized representative.
   "Facilities" means lines, pipes, wires, cables, conduits, ducts, innerducts, culverts, manholes, vaults, pedestals, boxes, appliances, gates, meters, appurtenances, or other equipment used by Axon Telecom for the purposes of conducting its business operations as authorized herein.
   "Fee" means the fee imposed by the City on Axon Telecom solely because of its status in accordance to K.S.A. 12-2001. It shall not include: (1) any tax, fee, or assessment of general applicability including any which are imposed on Axon Telecom; (2) requirements or charges incidental to the awarding or enforcement of this ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, (3) any permit fee or other fee imposed under any valid ordinance regulating the right-of-way, or (4) any other fee imposed by federal, state, or local law.
   "Person" means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
   "Right-of-way" means the area on, below or above the present and future City streets, alleys, bridges, bikeways, parkways and sidewalks.
   "Right-of-way ordinance" means this ordinance passed to grant the right, privilege or franchise to construct, operate and maintain conduit facilities within the right-of-way. This ordinance shall operate as an agreement or contract between the City and Axon Telecom and shall be subject to the laws of the State of Kansas.
Utility Easement means, for the purposes of this ordinance, an easement dedicated to the City for the purpose of utilities.

2. **Grant.** Axon Telecom is hereby granted the right, privilege or franchise to construct, operate, and maintain facilities in, through and along the City's right-of-way and utility easements in accordance with the plans submitted and approved by the Public Works Director for the purposes of supplying innerducts by lease or sale to other duly franchised entities on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, Axon Telecom is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity. This ordinance does not grant Axon Telecom the right, privilege or franchise to provide telecommunications services (as defined by 47 U.S.C. §153), cable service (as defined by 47 U.S.C. § 522), open video system service (as defined by 47 U.S.C. § 573) or any other service, or to install its own cable; provided that this restriction shall not preclude Axon Telecom from installing the facilities or cable of other duly franchised or otherwise authorized entities.

3. **Use of Public Right-of-Way and Utility Easements.** Axon Telecom's facilities shall be located in the right-of-way and utility easements in accordance with the plans currently proposed and approved by the Public Works Director. Modifications to such plans and/or any future requests for additional placement shall only be allowed as approved and authorized by the Public Works Director. Placement, modification, replacements, maintenance and repairs to Axon Telecom's facilities shall be conducted in compliance with all applicable laws, statutes, ordinances and permit requirements. Axon Telecom will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, Axon Telecom shall be subject to all technical specifications, design criteria, policies now or hereafter adopted or promulgated by the City, or any other appropriate governmental entity. In its use of the right-of-way and utility easements within the City, Axon Telecom shall be subject to all applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers, including, but not limited to the City's ordinance regarding the Use and Excavation of the Public Right-of-Way.

4. **Maintenance of Facilities.** Axon Telecom shall keep its facilities in good repair and working order and shall maintain its facilities in accordance all applicable law, statute and ordinance; provided that any related expense may be shared in whole or in part with entities leasing or purchasing the use of Axon Telecom's facilities. In the event Axon Telecom requests to transfer or relinquish its right, privilege or franchise herein granted, Axon shall provide the City with evidence that such maintenance responsibility has been appropriately assumed by another entity or entities.

5. **Fee.** Axon Telecom shall pay an initial one-time administrative fee of $1,000 for the right, privilege or franchise hereunder. Further, Axon Telecom shall pay the City one (1%) percent of all gross revenues collected for any and all leases and sales of its innerducts and other facilities in the right-of-way and utility easements within the City of Leawood. Such payments shall be made on a semiannual basis for any lease, and within thirty (30) days of the execution of any sale. All payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City. Axon Telecom shall pay interest at an annual rate of ten (10%) percent for each month or fraction thereof on any late payment of the charge provided for in this ordinance.

6. **Term.** This ordinance shall be effective for a term of one (1) year from the effective date. Thereafter, this ordinance will renew for ten (10) renewable one (1) year terms, unless either party notifies the other party of its intent to terminate the agreement created by this ordinance prior to one hundred and eighty (180) days before the termination of the then current term.
7. **Renegotiation of Ordinance Provisions.** If the City has a good faith belief that Axon Telecom is offering telecommunications, cable, OVS or any other service within the City beyond those services contemplated and granted by this ordinance, the City may seek renegotiation of this ordinance or require a separate franchise ordinance for such services. Axon Telecom agrees to negotiate with the City in good faith in a timely manner, and to pay for any prior unauthorized use in accordance with the terms of the amended or new ordinance. The purpose of this provision is to allow the City to ensure that Axon Telecom is paying a fee for all services for which a franchise fee is appropriate.

8. **Description of Service.** In the event Axon Telecom offers new services other than the lease or sale of its innerducts and the installation of other duly franchised entities' cable or other facilities therein, Axon Telecom shall immediately notify the City.

9. **Axon Telecom's Information.** Axon Telecom shall, at its own expense, annually submit to the City a summary of the previous year's development of its facilities, including but not limited to, the location of facilities during the year, and Axon Telecom's plan of development of facilities for the next year. Note: in lieu of this requirement, Axon Telecom's agent may meet in person with the City's Public Works Director to discuss these issues.

10. **Use of Facilities by Other Entities.**
    a. Axon Telecom may sell, transfer or lease its innerducts and related facilities to duly franchised entities; provided that such transaction shall not constitute authorization by the City for such entities to operate within the City, or a transfer in whole or part of the right, privilege or franchise herein granted. Axon Telecom shall timely notify the City of the identity of all entities that have leased or purchased in whole or in part the use of Axon Telecom's facilities.
    b. Axon Telecom shall not interfere with any City right-of-way or franchise requirements regarding any entity leasing in whole or in part the use of Axon Telecom's facilities. Further, Axon Telecom shall not interfere with or oppose any line charge fee imposed upon such entity.
    c. Axon Telecom understands that the City may request service providers to reasonably utilize any available space or capacity within Axon Telecom's facilities. In such event Axon Telecom will charge a fairly priced rate and will make a reasonable attempt to negotiate an appropriate agreement with any such service provider.

11. **Transfer of Right, Privilege or Franchise.** Pursuant to permission of the City, which shall not be unreasonably withheld, Axon Telecom shall have the right to assign as a whole the right, privilege or franchise herein granted to any person who, by accepting such assignment, shall be bound by the terms and provisions hereof. City approval may be denied only upon a good faith finding by the City that the assignee lacks the legal, technical or financial qualifications to perform its obligations under this ordinance or any applicable governmental requirement. Notice of Axon Telecom’s intent to assign its right, privilege or franchise granted by this ordinance shall be in writing. Upon completion of the assignment, an authenticated copy thereof shall be filed with the city clerk. The right, privilege or franchise granted by this ordinance shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. Any attempts to transfer, assign or otherwise dispose of the right, privilege or franchise granted herein by the City or Axon Telecom's facilities not conforming with the requirements of this section shall be null and void. This section is not intended to apply to or prevent Axon Telecom's leasing or sale of its innerducts to other entities, nor shall the same be considered a transfer of any right, privilege or franchise granted herein.

12. **Notification Procedure.** Any required or permitted notice under this ordinance shall be in writing. Notice upon the City shall be delivered to the city clerk by first class United States mail or by personal delivery. Notice upon Axon Telecom shall be delivered by first class United States mail or by personal delivery to: **Att: Legal Department, Axon Telecom, L.L.C., 450 Pryor Blvd., P.O. Box 409, Sturgis, KY 42459.**
13. **Indemnification.** Axon Telecom shall fully indemnify, release, defend and hold harmless the City, and agents of the City when acting in their capacity as municipal officials, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, to the extent caused by negligent acts or omissions of Axon Telecom in the performance of the permitted work. The City agrees to timely notify Axon Telecom of such claim, demand, suit, proceeding, and/or action by providing written notice to Axon Telecom. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve Axon Telecom from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

14. **Liability Insurance Requirement.** Axon Telecom shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas in an amount not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Axon Telecom, or alleged to so have been caused or occurred. If Axon Telecom is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

15. **Performance and Maintenance Bond Requirement.** Axon Telecom shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of $50,000, for a term consistent with the term of this ordinance plus one additional year, conditioned upon Axon Telecom’s faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period shall satisfy this requirement.

16. **Reservation of Rights.** In addition to any rights specifically reserved to the City by this ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Kansas, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals. Nothing in this ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of this ordinance, except those required by federal or state law, if the City determines: (a) that it is in the public interest to do so, and (b) that the enforcement of such provision will impose an undue hardship on Axon Telecom or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

17. **Forfeiture of Right, Privilege or Franchise.** In case of the failure of Axon Telecom to comply with any of the provisions of this ordinance, or if Axon Telecom should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, Axon Telecom shall forfeit any right, privilege or franchise granted by this ordinance and any such right, privilege or franchise shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

a. For violations concerning the use of the right-of-way and/or utility easements as described in Section 3 of this ordinance and deemed by the Public Works Director to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Axon Telecom of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Axon Telecom shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Axon Telecom
shall take to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If at the end of such period the City deems that the conditions created by this ordinance have not been complied with by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated. If Axon Telecom fails to take corrective action within the thirty (30) day period set forth above, nothing herein shall preclude the City from maintaining an action against Axon Telecom to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable costs of corrective action incurred by the City.

b. For all other violations of this ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Axon Telecom of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Axon Telecom shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this ordinance. If at the end of such period the City deems that the conditions have not been complied with by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated.

c. If within thirty (30) days after the effective date of an ordinance to terminate this ordinance, in accordance with the provisions herein, Axon Telecom shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not Axon Telecom has violated the terms of this ordinance and that this ordinance is subject to cancellation by reason thereof, this ordinance shall be canceled and terminated at the end of such thirty-day period. If within such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by reason of the violation of the terms, this ordinance shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, either party shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this ordinance and/or to abate nuisances maintained in violation thereof.

20. Revocation of This Ordinance. In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this ordinance and all right, privilege or franchise of Axon Telecom as a result of and in response to any of the following events or reasons:

   a. Any provision of this ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this ordinance as to cause the same to become null and void; or

   b. Axon Telecom commits an act of fraud or deceit against the City in obtaining the grant of this ordinance, or upon being granted Axon Telecom commits such an act against the City.

To revoke this ordinance in accordance with the provisions of this section, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated. Prior to the enactment of such ordinance, Axon Telecom shall be provided with timely written notice by certified mail, and Axon Telecom shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty (30) days after the effective date of such ordinance to terminate this ordinance Axon Telecom shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not this ordinance was appropriately terminated in accordance to the provisions of this section and is subject to
cancellation by reason thereof, this ordinance shall be canceled and terminated at the end of such thirty (30) day period. If within such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by the reason addressed by this section, this ordinance shall immediately terminate after such final judgment is rendered and all available appeals exhausted.


a. **Nonexclusive Clause.** The privilege to construct, erect, operate and maintain Axon Telecom’s facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other rights, privileges or franchises to other persons. However, no such additional grant shall in any way affect the rights or obligations of Axon Telecom.

b. **Exclusive Benefit of Axon Telecom.** The right, privilege or franchise granted to Axon Telecom by this ordinance shall be for the sole use of Axon Telecom to provide conduit services as authorized herein. These rights are for the exclusive benefit of Axon Telecom, except where otherwise provided herein, or when authorized by the City.

c. **Axon Telecom is Without Remedy Against the City.** Axon Telecom shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this ordinance, or for the failure of the City to have the authority to grant, all, or any part, of this ordinance granted. Second, Axon Telecom expressly acknowledges that it accepted this ordinance granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the right, privilege or franchise conferred upon Axon Telecom. Third, Axon Telecom acknowledges by its acceptance of this ordinance that it has not been induced to agree to the terms of this ordinance upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this ordinance not expressed herein. Finally, Axon Telecom acknowledges by the acceptance of this ordinance that it has carefully read the provisions, terms, and conditions of this ordinance and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. **Federal, State and City Jurisdiction.** This ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this ordinance to the contrary, the construction, operation and maintenance of Axon Telecom’s facilities by Axon Telecom or its agent shall be in accordance with all laws and regulations of the United States the state, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, Axon Telecom shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Axon Telecom’s rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Axon Telecom shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, Axon Telecom’s failure to comply with any law or regulation governing the operation of said facilities may result in a forfeiture of the granting of the right, privilege or franchise created by this ordinance.

e. **Failure to Enforce.** The failure of either party to enforce and remedy any noncompliance of the terms and conditions of the agreement created by this ordinance shall not constitute a waiver of rights nor a waiver of the other party’s obligations as provided herein.

f. **Force Majeure.** Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Axon Telecom’s or the City’s control.

g. **Severability.** Any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of
competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

22. **Effectiveness.** This ordinance is made under and in conformity with the laws of the State of Kansas. Before the final passage of this ordinance, it shall be read at three (3) regular meetings of the Governing Body. After final passage, this ordinance shall take effect and be in force after the expiration of sixty (60) days from the date of final passage by the governing body and after publication in the official City newspaper for two consecutive weeks following final passage, unless a proper protest is filed, or Axon Telecom fails to provide written acceptance within the sixty (60) day period.


Passed by the Council the 6 day of March, 2000.

Approved by the Mayor the 6 day of March, 2000.

Peggy J. Dunn, Mayor

APPROVED AS TO FORM:

Lisa R. Wetzler, Asst. City Attorney

City of Leawood  Axon Telecom, L.L.C. Right-of-Way Ordinance  Page 7
CITY OF LEAWOOD, KANSAS

NOTICE OF HEARING

NOTICE OF HEARING ON PROPOSED FRANCHISE ORDINANCE FOR AXON TELECOM, L.L.C.

Notice is hereby given that the Governing Body of the City of Leawood, Kansas, will meet on Monday, the 6th day of March, 2000, at seven-thirty (7:30) P.M., or shortly thereafter, at the Leawood City Hall Council Chambers, 4800 Town Center Drive, for the purpose of holding a public hearing as provided by K.S.A. 12-2001 to consider the proposed franchise ordinance regarding the operation of a system network by Axon Telecom, L.L.C.

Written or oral objections will be considered at the meeting. All persons desiring to be heard with reference to the proposed franchise ordinance shall be heard at this hearing.

Martha Heizer, City Clerk
City of Leawood
Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;

Penny Knight, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Administrator of The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than five (5) years prior to the first publication of the notice attached, and has been admitted at the post office as second class matter (now called periodicals class).

That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for _ consecutive week(s), as follows:

NOTICE OF HEARING, PROPOSED FRANCHISE ORDINANCE--2/29/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 1, 2000

Notary Public

DEBRA VALENTI
Notary Public - State of Kansas

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Penny Knight, of lawful age, being first duly sworn, deposes
and says that she is Legal Notices Administrator of The Legal
Record which is a newspaper printed in the State of Kansas,
published in and of general paid circulation on a weekly,
monthly or yearly basis in Johnson County, Kansas, is not a
trade, religious or fraternal publication, is published at least
weekly fifty (50) times a year, has been so published
continuously and uninterrupted in said County and State for a
period of more than five (5) years prior to the first publication
of the notice attached, and has been admitted at the post office
as second class matter (now called periodicals class).
That a notice was published in all editions of the regular and
entire issue for the following subject matter (also identified by
the following case number, if any) for _2_ consecutive
week(s), as follows:

RIGHT-OF-WAY ORDINANCE NO.
1851--3/7/00 & 3/14/00

Penny Knight
Legal Notices Administrator

Subscribed and sworn to before me on this date:
MARCH 15, 2000

Debra Valenti
Notary Public

Notary Public • State of Kansas


$229.51
AN ORDINANCE GRANTING TO AXON TELECOM, L.L.C. THE RIGHT, PRIVILEGE OR FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN CONDUIT FACILITIES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAWOOD, KANSAS.

WHEREAS, Axon Telecom, L.L.C., desires to construct, operate and maintain conduit facilities in the City of Leawood in order to lease or sale to or use of such facilities to duly franchised entities for telecommunications, cable, and other similar services; and

WHEREAS, the City of Leawood, Kansas, a municipal corporation, duly organized and existing under the laws of the State of Kansas, has the right under statutes to grant the right, privilege or franchise to construct, operate and maintain conduit facilities in the City right of way; and

WHEREAS, Axon Telecom, L.L.C. does not intend to install, operate or own its own cables, including but not limited to dark fiber, and will not do so without first coming back to the City for a franchise ordinance to do the same; and

WHEREAS, in addition to the terms of this ordinance, Axon Telecom, L.L.C. will meet the requirements of the City's ordinance regulating the Use and Encroachment of the Public Right-of-Way.

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

1. Definitions. For the purpose of this ordinance, the following words and phrases and their derivations shall have the following meaning:

   *Axon Telecom* means Axon Telecom, L.L.C., its duly authorized successors, transferees, or assigns.

   *Cable* includes the coaxial cable and any signals transmitted through it, frequency and other signals generated by, or transmitted through, this cable.

   *City* means the City of Leawood, Kansas, a municipal corporation, and any duly authorized successor to the City.

   *Facilities* means lines, pipes, wires, cables, conduits, ducts, interments, curbs, manholes, vaults, conduits, shafts, tunnels, stalks, poles, wires, conduits, ducts, interments, curbs, manholes, vaults, conduits, shafts, tunnels, stalks, poles, trees, plants, fences, buildings, grade, cable municipality, and any other assembly of materials to be classified generally as cable.

   *Right-of-way* means the land area on, above or below the present or future City streets, alleys, bridges, grade and sidewalks.

   *Right-of-way ordinance* means this ordinance passed to grant the right, privilege or franchise to construct, operate and maintain conduit facilities within the right-of-way. This ordinance shall operate in accordance with the terms and conditions herein set forth and shall be supplemental to the ordinance passed by the City and Axon Telecom shall be subject to the laws of the State of Kansas.

   *Utility Statement* means, for the purposes of this ordinance, an easement dedicated to the City for the purpose of installing and maintaining electrical and telephone utility wires and conduits, as hereinafter set forth.

2. Axon Telecom. Axon Telecom is hereby granted the right, privilege or franchise to construct, operate and maintain conduit facilities in the City of Leawood in order to lease or sale to or use of such facilities to duly franchised entities for telecommunications, cable, and other similar services.

3. Use of Public Right-of-Way and Utility Easements. Axon Telecom's facilities shall be located in the right-of-way and utility easements in accordance with the plans currently proposed and approved of by the City's right-of-way Director. Modifications to the plans for any such additions for public right-of-way shall be only as allowed and authorized by the Public Right-of-Way Director. Placement, modification, modifications, maintenance and repairs to Axon Telecom's facilities shall be conducted consistent with the requirements herein and such plans and specifications as one may provide. Axon Telecom will be responsible for obtaining all necessary permits required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fees. In addition, Axon Telecom will be required to comply with all applicable laws, statutes, ordinances, and rules and regulations as may be adopted or promulgated by the City, or any other appropriate governmental entity.

4. Maintenance of Facilities. Axon Telecom shall keep its facilities in good repair and operating order and repair and maintain its facilities to be in full accordance with all applicable laws, statutes, and ordinances, provided that any related expenses may be shared in whole or in part with any entity leasing or purchasing the use of Axon Telecom's facilities. In the event Axon Telecom requests the repair or relocation of any public rights or public facilities as governed, Axon Telecom shall use the City's right-of-way on the basis of the City's judgment that maintenance responsibility has been appropriately exercised by another entity or entity.

5. Fee. Axon Telecom shall pay an initial one-time administrative fee of $1,000.00 for the right, privilege or franchise herein granted. Further, Axon Telecom shall pay the City one (1%) percent of all revenues derived by Axon Telecom from the use of any and all lines and services provided or used other than in the right-of-way and utility easements within the City of Leawood. Such payments shall be made on a semianual basis for any line, and within thirty (30) days of the execution of any line. All payments shall be in advance of any additional services, lost, or unmetered services, fees and expenses of general applicability that are or may be imposed by the City. Axon Telecom shall pay interest at an annual rate of ten (10%) percent for each month or fraction thereof on any late payment.

6. Term. This ordinance shall be effective for a term of one (1) year from the effective date. Thereafter, this ordinance will renew for ten (10) renewable one (1) year terms, unless either party notifies the other party of its intent to terminate the agreement created by this ordinance prior to one hundred and eighty (180) days before the termination of the then current term.

7. Renunciation of Ordinance. This ordinance shall be effective for a term of one (1) year from the effective date. Thereafter, the ordinance will renew for ten (10) renewable one (1) year terms, unless either party notifies the other party of its intent to terminate the agreement created by this ordinance prior to one hundred and eighty (180) days before the termination of the then current term.

8. Determination of Services. In the event Axon Telecom offers new services other than the lease or use of its interments and the installation of any and all facilities, cable or other facilities therein, Axon Telecom shall notify the City of the new service and its introduction or use.

9. Axon Telecom's Termination. Axon Telecom shall, at its own expense, annually submit to the City a survey of the previous year's development of its facilities, including but not limited to, the location of facilities during the year, and Axon Telecom's plans of development of facilities for the next year. Within 30 days of Axon Telecom's agent's receipt of such survey, the Public Works Director shall meet with the City's Public Works Director to discuss these issues.

10. Use of Facilities by Other Entities. Axon Telecom may sell, transfer or lease in any manner related facilities to duly franchised entities provided that such transaction shall not constitute authorization by the City for such entities to enter into, to operate or to be used in a right-of-way or utility easement. Axon Telecom shall not sell, transfer, lease or assign any right, privilege or franchise granted herein to any person who, by accepting such assignment, shall be bound by the same terms and conditions of this ordinance as Axon Telecom. Axon Telecom shall not sell, transfer, lease or assign any right, privilege or franchise granted herein to any person who, by accepting such assignment, shall be bound by the same terms and conditions of this ordinance as Axon Telecom. Axon Telecom may sell, transfer or lease its facilities to or by its parent corporation, another entity, or any subsidiary of the same.
shall take to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If it is the end of such period the City deems that the conditions created by this ordinance have not been complied with by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be cancelled and terminated. If Axon Telecom fails to take corrective action within the thirty (30) day period set forth above, nothing herein shall preclude the City from instituting an action against Axon Telecom to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable costs of corrective action incurred by the City.

b. For all other violations of this ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Axon Telecom of any such violation, setting forth in detail the conditions of neglect, default or complaint of Axon Telecom which Axon Telecom shall have thirty (30) days after the mailing of such notice in which to comply with the requirements of this ordinance. If at the end of such period the City deems that the conditions have not been corrected by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be cancelled and terminated.

c. If, within thirty (30) days after the effective date of an ordinance to terminate this ordinance, in accordance with the provisions hereof, Axon Telecom shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not Axon Telecom has violated the terms of this ordinance and that this ordinance is subject to cancellation by reason thereof, such ordinance shall be cancelled and terminated, and in the event of any such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by reason of the violation of Axon Telecom, the ordinance shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or under law or equity, either party shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this ordinance and to assess muzzle penalties in violation thereof.

20. Revocation of This Ordinance. In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this ordinance and all rights, privileges or franchises of Axon Telecom as a result of and in response to any of the following events or reasons:

a. Any provision of this ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or inapplicable and such judicial act or decision is deemed by the Governing Body to cause such a material consideration for the granting of this ordinance as to change the same to become null and void;

b. Axon Telecom commits an act of fraud or deceit against the City in obtaining the grant of this ordinance, or upon being granted Axon Telecom commits such an act against the City.

To revoke this ordinance in accordance with the provisions of this section, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which this ordinance is to be cancelled and terminated. Prior to the enactment of such ordinance, Axon Telecom shall be provided with timely written notice by certified mail, and Axon Telecom shall be addressed at the District Court of Johnson County, Kansas to determine whether or not Axon Telecom has violated the terms of this ordinance and that this ordinance is subject to cancellation by reason thereof, such ordinance shall be cancelled and terminated, and in the event of any such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by reason thereof, such ordinance shall immediately terminate after such final judgment is rendered and all appeals exhausted.


a. Nonexclusive Clause. The privilege to construct, erect, operate and maintain Axon Telecom’s facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other rights, privileges or franchises to other persons. However, no such additional grant shall in any way affect the rights or obligations of Axon Telecom.

b. Exclusivity Benefit of Axon Telecom. The right, privilege or franchise granted to Axon Telecom by this ordinance shall be for the sole use of Axon Telecom to provide conduit services as authorized herein. These rights are for the exclusive benefit of Axon Telecom, except where otherwise provided herein, or when authorized by the City.

c. Axon Telecom is Without Remedy Against the City. Axon Telecom shall have no remedy or recourse whatsoever against the City for any fault, error, operating or damage arising from the enforcement of the provisions or requirements of this ordinance, or for the failure of the City to have the authority to grant, all, or any part, of this ordinance granted. Second, Axon Telecom expressly acknowledges that it accepted this ordinance granted in reliance upon the independent and impartial investigation and understanding of the power and authority of the City, and Axon Telecom acknowledges its acceptance of this ordinance which it has not been induced to agree to in the terms of this ordinance upon any understanding, or promise, whether given verbally or in writing, or on behalf of the City, or by any other person conversing with any term or condition of this ordinance not expressed herein. Finally, Axon Telecom acknowledges its acceptance of the terms and conditions of this ordinance which it has carefully read the provisions, terms, and conditions of this ordinance to the extent and in good faith, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. Federal, State and City Jurisdiction. This ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this ordinance, the provisions of Axon Telecom’s ordinance to the contrary, the construction, operation and maintenance of Axon Telecom’s facilities by Axon Telecom or its agent shall be in accordance with all laws and regulations of the United States, the state, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, Axon Telecom shall meet or exceed the requirements of the Federal Communications Commission, the Federal Trade Commission, and the State of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the City, and Axon Telecom shall comply with all applicable laws and regulations as may be required by the City or any political subdivision thereof, or any administrative agency thereof having jurisdiction. Axon Telecom’s rights are subject to the police powers now or hereafter vested in the City.

e. Failure to Prosecute. The failure of either party to enforce and remedy any noncompliance with the terms and conditions of the agreement created by this ordinance shall not constitute a waiver of rights nor a waiver of the other party’s obligations as provided herein.

f. Force Majeure. Each and every provision hereof shall be subject to acts of God, fire, strikes, war and other disturbances beyond the control of either party or the City’s counsel.

22. Effectiveness. This ordinance is made under and in conformity with the laws of the State. Before the final passage of this ordinance, it shall be read at three (3) regular meetings of the Governing Body. After final passage, this ordinance shall take effect and be in force and effect of sixty (60) days from the date of final passage by the governing body and other public bodies and commissions in the official city newspaper for two consecutive weeks following final passage, unless a proper protest is filed, or Axon Telecom fails to provide written acceptance within the sixty (60) day period.


Passed by the Council the ___ day of March, 2000

Approved by the Mayor the ___ day of March, 2000

(SEAL)

Roger F. Brack, Mayor

ATT: (Signature)

Martha Neece, City Clerk

Lisa W. Weller, Asst. City Attorney

APPROVED AS TO FORM