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**FRANK S. MCCULLOUGH (1905-1998)  
EVANS V. BREWSTER (1920-2005)**

**MEMORANDUM**

**TO: Mayor and Trustees of the Village of Larchmont**

**CC: Justin Datino, Village Administrator**

**FROM: James Staudt**

**DATE: April 9, 2021**

**RE: Distribution of Cable Franchise PEG Funds**

**QUESTION PRESENTED**

You have asked whether PEG funds paid by the Village of Larchmont's Cable TV Franchisees are to be distributed to the Village of Larchmont and the other two franchise signatories (Village of Mamaroneck and Town of Mamaroneck) on a proportionate basis, or are they to be used and distributed in the manner determined by a vote of the Cable TV Board of Control.

**BRIEF ANSWER**

On the basis of the legal agreements I am aware of, PEG funds, like franchise fees, are to be distributed to each of the municipalities on a proportionate basis.

**RELEVANT LEGAL DOCUMENTS**

For the purposes of this opinion, I am assuming the following are the relevant legal documents and that they are each in full force and effect:

1. CATV Sharing Agreement among the Village of Larchmont, the Village of Mamaroneck and the Town of Mamaroneck dated November 8, 1982.

2. Cable Franchise Agreement among the three above mentioned municipalities and Verizon New York, Inc. entered into in or about November of 2007.
3. Cable Franchise Agreement among the above-mentioned municipalities and Cablevision of Southern Westchester, Inc. entered into in or about November of 2007.
4. I am also aware of a memorandum dated March 12, 2007 from Leonard Verrastro, as Administrator of the Cable TV Board of Control, to the governing boards of each of the three municipalities requesting that the CATV Sharing Agreement be amended to allow the Board of Control to negotiate and interact with other cable providers in addition to UA-Columbia Cablevision.

### DISCUSSION

The CATV Sharing Agreement dated November 8, 1982 provides a direct answer to the question you have asked. The Agreement provides, in “Section 3. Board of Control” on page 5, as follows:

“Comptroller – The parties agree that the Town Comptroller of the Town of Mamaroneck is hereby appointed as the agent of the parties for receipt of any and all payments or sums due any of the parties hereto in consequence of said franchise agreement. Upon receipt by the Town Comptroller, all sums received shall be distributed in distributive shares to each of the three municipalities. The distributive share to each municipality shall be calculated as the proportionate share. . . less the chargeable expenses attendant to the administration of this agreement. . .”

As you can see, the Comptroller acts only as “agent” for the municipalities in receiving funds from the franchisees. The Comptroller is to then to distribute the funds proportionally to each municipality.

I have reviewed the copies of the Franchise Agreements I have in my files, and I find nothing inconsistent in these agreements with what I have said above.

As noted above, this opinion is based upon the assumption that there is not a later agreement which modified the CATV Sharing Agreement on this point. Section 10 of the CATV Sharing Agreement provides that it can be modified or amended upon the written consent of the governing bodies of the municipalities.

### CONCLUSION

Based upon the legal documents I am aware of, PEG Funds are the property of the municipalities in proportionate shares and are initially held in an account by the Town Comptroller, as agent of each municipality, for distribution to each municipality.

Please let me know if you have any questions.

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**Town of Mamaroneck**  
County of Westchester  
740 West Boston Post Road, Mamaroneck, NY 10543-3353

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WMakerJr@TownofMamaroneckNY.org

**ATTORNEY-CLIENT CONFIDENTIAL COMMUNICATION  
MEMORANDUM**

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**To:** Mamaroneck Town Board  
Town Board Meeting – May 19, 2021

**ccs:** Connie Green-O'Donnell, Deputy Town Administrator  
Tracy Yogman, Comptroller

**From:** William Maker, Jr., Attorney for the Town

**Subject:** The cable television franchise agreements and the Board of Control

**Date:** May 14, 2021

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In May 6, 2016 I wrote a memorandum that presented a concise analysis of the flow of money from the cable television providers to the Town and the two Villages. This memorandum repeats much of what was written in 2016 but also addresses the power of the Board of Control.

Before beginning it is important to recognize that Larchmont-Mamaroneck Community Television, Inc. was incorporated in 1983, the year following the year when the municipalities entered into the CATV Sharing Agreement. This explains why that agreement does not mention Larchmont-Mamaroneck Community Television, Inc.

It also leads one to realize that the system that has been in place for as long as anyone can remember whereby the Board of Control exerts power over Larchmont-Mamaroneck Community Television, Inc. is not grounded in the CATV Sharing Agreement or to my knowledge, any other written agreement.

**Abbreviations used in this memorandum**

**Board of Control** = the tri-municipal body created by the CATV.

**Cablevision** = Cablevision of Southern Westchester, Inc.

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**ccs:** Connie Green-O'Donnell and Tracy Yogman, Comptroller  
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**CATV = CATV Sharing Agreement dated November 8, 1982 among the Town of Mamaroneck, the Village of Larchmont and the Village of Mamaroneck. The 2008 Cablevision Agreement states that a CATV Sharing Agreement was executed on December 3, 1980 and that the 1980 CATV Sharing Agreement created the Board of Control (2008 Cablevision Agreement, p.1, third recital paragraph). The 2007 Verizon Agreement says the same thing (p. 1 [unnumbered], third recital paragraph). I could not locate a 1980 CATV Sharing Agreement.<sup>1</sup>**

**LFAs = Town of Mamaroneck, the Village of Larchmont and the Village of Mamaroneck.**

**LFA stands for "Local Franchise Authority" (2008 Cablevision agreement, p. 1, first recital paragraph and p. 6, par. 1.20 and 2007 Verizon agreement, p. 1 [unnumbered], first paragraph and p. 6, par. 1.19).**

**LMC = Larchmont-Mamaroneck Community Television, Inc.**

**PEG = "Public, Educational, and Governmental" (2008 Cablevision Agreement p. 7, par. 1.24 and 2007 Verizon Agreement p. 6, par. 1.23).**

**2007 Verizon Agreement = Cable Franchise Agreement between the LFAs and Verizon New York, Inc. dated November 14, 2007.**

**2008 Cablevision Agreement = Cable Franchise Agreement between the LFAs and Cablevision of Southern Westchester, Inc. dated March 12, 2008.**

### **The first cable television franchise agreement**

**The Town and the two Villages entered into a Franchise Agreement with UA-Columbia Cablevision of Westchester, Inc. on December 3, 1980 (CATV p. 1, first recital paragraph). I was not given a copy of that agreement but reviewed the 2008 Cablevision**

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<sup>1</sup> Section 3 of the CATV states that the Board of Control "is hereby created." If the recitations in the franchise agreements are correct (i.e. that the Board of Control was created in 1980), section 3 must be incorrect. I suspect that the drafter of the CATV simply 'lifted' the creation language from the 1980 agreement without recognizing the problem created by the lack of precise language. Practically speaking, however, the possible inconsistency is of no consequence today.

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Agreement and the 2007 Verizon Agreement which are the agreements in effect currently. The 2008 Cablevision Agreement and the 2007 Verizon Agreement are virtually identical. They terminate in March of 2023.

### Cablevision and Verizon Agreements

Paragraph 5.3.1 on p. 13 of the 2008 Cablevision Agreement provides that Cablevision "shall provide grants in the aggregate to the Villages of Larchmont and Mamaroneck and the Town of Mamaroneck to be used in support of local PEG programming" (emphasis added). The section continues: "Such grants shall be used by the LFAs for PEG Access equipment, including, but not limited to studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access equipment, and any other PEG related needs of the LFAs."

The specific items mentioned describe different components of broadcasting. While the last phrase, "and any other PEG related needs" seems to be expand the definition, the doctrine of contract construction known as *ejusdem generis* argues that "other PEG related needs" should be interpreted to mean needs related to broadcasting (see generally *Lend Lease (US) Constr. LMB, Inc. v Zurich Am. Ins. Co.*, 136 AD3d 52, 57 [1st Dept 2015], *affd on other grounds* 28 NY3d 675 [2017] ["Under the rule of *ejusdem generis*, the meaning of a word in a series of words is determined by the company it keeps. [A] series of specific words describing things or concepts of a particular sort are used to explain the meaning of a general one in the same series [citations and internal quotation marks omitted]" and *Miller Tabak + Co. v Senetek PLC*, 118 AD3d 520, 521-522 [1st Dept 2014]).

\* Accordingly, it can be argued that PEG money can be used only on broadcasting equipment and other costs associated with broadcasting.

"[Cablevision] shall pay a PEG grant (the "PEG Grant") to the Villages of Larchmont and Mamaroneck and the Town of Mamaroneck in the aggregate total amount of [\$1,100,000] . . ." (2008 Cablevision Agreement p. 13, par. 5.3.2). The balance of the paragraph establishes the installment payments for the PEG Grant. Paragraph

<sup>2</sup> Paragraph 5.3.1 on p. 13 of the 2007 Verizon Agreement is identical.

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5.3.2 on p. 13 of the 2007 Verizon Agreement is identical, except that it does not contain the parenthetical: (the "PEG Grant").

Cablevision and Verizon also are obligated to pay "to the LFAs a Franchise Fee of five percent (5%) of annual Gross Revenue (the 'Franchise Fee')" (2008 Cablevision Agreement p. 14, par. 6.1, 2007 Verizon Agreement p. 15, par. 6.1).

The Town Comptroller "is appointed as the agent of the LFAs for receipt of any and all payments or sums due to the LFAs under the Franchise Agreement, including, but not limited to, any PEG Grant payment under the Agreement and the Franchise Fee. However, "the LFAs may appoint a new representative of the LFAs to receive such payments or sums . . ." (2008 Cablevision Agreement p. 15, par. 6.5 and 2007 Verizon Agreement pp. 15-16, par. 6.5).

The only references to LMC in the franchise agreements are in paragraph 1.26 of the 2008 Cablevision Agreement (p. 7) and paragraph 1.25 of the 2007 Verizon Agreement (p.6), and in Exhibits D to both franchise agreements (2008 Cablevision Agreement, p. 33, and an unnumbered page in the 2007 Verizon Agreement).

Paragraphs 1.26 (Cablevision) and 1.25 (Verizon) are the paragraphs that define "Public Access Channel". Both define it as: "An Access Channel available for noncommercial use solely by the LFAs' residents or by those Persons approved by Larchmont-Mamaroneck Community Television ("LMC-TV" – the entity designated by the LFAs to administer the Public Access Channel) in the Franchise Area on a first-come, first-served, nondiscriminatory basis."

Exhibit D in each agreement designates the LMC-TV studio at the Town Center as a PEG Access Origination Point.

### **CATV Sharing Agreement**

Section 3 (p. 3) establishes the Board of Control and its membership as consisting of "one member from each of the governing bodies of the Village of Mamaroneck, Town of Mamaroneck and Village of Larchmont, and the Town Comptroller of the Town of Mamaroneck and Village Manager of the Village of Mamaroneck." In section 3 (p. 4) in

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the paragraph entitled Voting, the CATV grants the right to vote only to the members who are elected officials.

1. *The authority of the Board of Control*

In the paragraph entitled Function in section 3 on p.3, the CATV recites:

~~"It is the intention of the parties that the Board of Control shall act for the collective benefit of the parties hereto. Accordingly, the Board of Control is hereby empowered to take such action pursuant to the franchise agreement previously executed by the parties hereto with UA-Columbia Cablevision of Westchester, Inc. as will foster the interests of the parties hereto and maximize the benefits jointly conferred upon the parties pursuant to said franchise agreement; to protect and enhance the rights and interests of all subscribers conferred and created pursuant to said franchise agreement, and any renewal, extension or modification thereof.~~

~~"Subject to the provisions of this agreement, it is the intention of the parties that the Board of Control shall constitute a duly authorized board within in the meaning of [a section of the franchise agreement with UA-Columbia Cablevision of Southern Westchester, Inc.] with full power and authority to communicate directly with the franchisor (sic), its agents [etc.], for all purposes enumerated in said franchise agreement . . .~~<sup>3</sup> (emphases added).


Section 3 empowers the Board of Control to interact with the franchisees on behalf of the three municipalities. That concept is reinforced by the franchise agreements themselves. The sixth recital paragraph on page 1 of the 2008 Cablevision Agreement provides: "WHEREAS, each of the Members have (sic) delegated to the Board of Control the power and authority to act on behalf of the LFAs pursuant to negotiating, administering, and supervising the terms and conditions of this franchise agreement between the LFAs and Franchisee". The sixth recital paragraph on the unnumbered first page of the 2007 Verizon Agreement is identical, including the grammatical error.

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<sup>3</sup> The term "franchisor" also appears in other places in the CATV where the context of the sentence in which it appears indicates that "franchisee" was what was meant. I interpret these situations as scrivener's errors.

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In addition, while the 2008 Cablevision Agreement (p. 27, par. 12.18) and the 2007 Verizon Agreement (p. 27, par. 12.18) give the LFAs the right to "transfer or delegate any such responsibilities to the Control Board to act on behalf of the LFAs . . .", the responsibilities referred to in those paragraphs are the "continuing administration of this Agreement", i. e. interactions between the municipalities and the franchisees, not between the municipalities and LMC.

 History does not conform to the written agreements. The practice has been for the Board of Control to decide each year, based upon a budget request from LMC, how much of the Franchise Fee should be given to LMC, and how much of the PEG Grant is to be used by LMC and how much is to be retained. The CATV says nothing about the Board of Control having authority over LMC which is self-apparent when one recalls that the CATV was entered into before LMC existed.

Finally, on this point, it should be noted that the paragraph entitled Meetings in section 3 (p.4) provides: "Any resolution of the Board of Control shall be deemed to be the resolution of each of the parties to this agreement, unless two-thirds of the municipalities shall, by negative vote, overrule any action taken by the Board of Control."

2. *The money paid by the franchisees*

The Town Comptroller "is hereby appointed as the agent of the parties for receipt of any and all payments or sums due to any of the parties hereto in consequence of said franchise agreement" (section 3, p. 5. in the paragraph entitled Comptroller).

Here is where what has occurred over the years does not follow the agreements. The practice has been for the Town Comptroller to receive payments from the cable companies and hold them in a restricted account. The CATV actually provides that upon receipt by the Town Comptroller, "all sums received shall be distributed in distributive shares to each of the three municipalities" (section 3, p. 5, paragraph entitled Comptroller). The paragraph continues by defining 'distributive shares' which are a function of the number of cable television in each municipality.

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#### **LMC's Certificate of Incorporation**

LMC is a not-for-profit corporation. I did not see any documents that tell who the members of the corporation are or how the directors are elected. Paragraph (10) on p. 4 provides only that the Board of Directors "shall consist of not less than three (3) nor more than nine (9) (sic)."

Paragraph (11) on p. 5 lists the initial directors and their addresses. Six persons are listed. According to their addresses, two resided in the unincorporated area of the Town, two in the Village of Mamaroneck and two in the Village of Larchmont.

Paragraph is (13) which provides that if LMC were to dissolve, its net assets shall be distributed only to the municipalities of the Village of Larchmont, the Village of Mamaroneck and the Town of Mamaroneck or an appropriate office, bureau, agency, department, or board thereof for a public purpose or to [unspecified 501 (c) (3) organizations]."

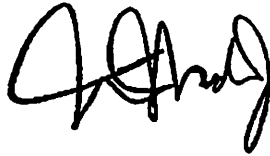
#### **Miscellaneous provisions**

Although not germane to the focus of this memorandum, it should be pointed out that:

- paragraph 5.3.5 (2008 Cablevision Agreement p. 14, 2007 Verizon Agreement p. 14), sometimes referred to as a 'most-favored nation clause', obligates the LFAs to impose an equivalent obligation to pay a PEG Grant on any other cable television franchisee.
- the LFAs have the right to audit the franchisees' books (2008 Cablevision Agreement p. 17, par. 7.4, 2007 Verizon Agreement pp. 17-18, par. 7.4),
- the franchisees are required to name the LFAs are named as additional insureds on certain insurance policies (2008 Cablevision Agreement p. 18, par. 8.1.2, 2007 Verizon Agreement p. 19, par. 8.1.2),
- the franchisees indemnify the LFAs under certain circumstances (2008 Cablevision Agreement p. 19, par. 8.2.1 *et seq.*, 2007 Verizon Agreement p. 19, par. 8.2.1 *et seq.*),
- the franchisees may become obligated to pay liquidated damages to the LFAs for certain violations of the franchise agreements (2008 Cablevision Agreement p. 21, par. 11.3, 2007 Verizon Agreement p. 19, par. 8.1.2),

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- the franchisees agree not to take the special franchise tax deduction allowed by the Real Property Tax Law that Cablevision and Verizon agree not to take the Real Property Tax Law that Cablevision and Verizon agree not to take "(whether in the form of a reduction in the franchise fee amount paid to the LFAs or as a credit against the special franchise tax payable to each of the Villages of Larchmont and Mamaroneck and the Town of Mamaroneck . . . )" (Cablevision Agreement p. 15, par. 6.6 and Verizon Agreement p. 16, par. 6.6).

A handwritten signature in black ink, appearing to be "W. Maker, Jr.", written in a cursive style.

Lorraine Walsh, Mayor

## Village of Larchmont

Justin Datino, Village Administrator

Peter Fanelli, Trustee  
Malcolm Frouman, Trustee  
Carol Casazza Herman, Trustee  
Sarah Bauer, Trustee



### Office of the Village Administrator

120 Larchmont Avenue  
Larchmont, New York 10538  
914-834-6230  
Fax: 914-833-2170  
[www.villageoflarchmont.org](http://www.villageoflarchmont.org)

March 26, 2021

Jerry Barberio, Cable Board of Control Administrator  
123 Mamaroneck Ave  
Mamaroneck, NY 10543

Re: Capital Improvement Project – PEG Funding

Dear Mr. Barberio:

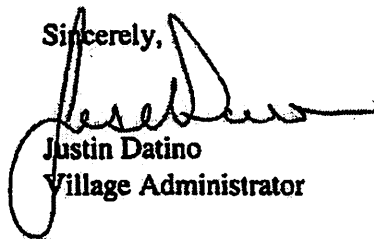
The Village of Larchmont is currently developing its 2021/22 Budget, which includes the Capital Budget & Plan. A Capital Improvement Project (CIP) to improve the Village's ability to broadcast its meetings to the public was discussed and presented to the Village Board during this budget cycle. While the need to improve audio/visual (A/V) technology and internet connectivity has been discussed for years, the anticipated re-opening of in-person meetings with an understanding that a significant portion of the public will likely continue to participate remotely has prioritized this effort.

The overall scope of work includes improving, replacing and installing A/V technology in all public meeting rooms (3 in Village Hall and 1 in the Village Center). In addition, Wi-Fi and other connectivity equipment will be installed as well. Staff has identified PEG money as an appropriate funding source for these projects given the scope of work and overall purpose. The Village Board concurs with these determinations.

Pursuant to the Sharing and Franchise Agreements which provide for PEG funds to be distributed proportionately to the municipalities, I have asked the Village Treasurer to coordinate with Tracy Yogman a transfer of \$100,000 of Larchmont's PEG money to the Village's Capital Project Fund, the bank account to be determined by the Village Treasurer. The \$100,000 cost estimate includes labor and equipment as well as some money for our IT Consultants to manage the project, coordinate with LMCTV and handle all connections to the Village's network.

Thank you for your continued cooperation and support.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Datino", written over the printed name and title.

Justin Datino  
Village Administrator

Cc: Trustee Carol Casazza-Herman  
Councilwoman Abby Katz  
Mayor Tom Murphy  
Kimberly Gutwein, Village Treasurer



CATV SHARING AGREEMENT

This agreement, executed as of this 8<sup>th</sup> day of NOVEMBER 1982, between the Village of Larchmont, hereinafter referred to as "Larchmont", the Village of Mamaroneck, hereinafter referred to as "Mamaroneck", and the Town of Mamaroneck, hereinafter referred to as "Town" (all of which shall hereinafter be collectively referred to as the "municipalities");

W I T N E S S E T H :

Whereas the municipalities have jointly executed as of the 3rd day of December, 1980 a single agreement (hereinafter referred to as the "CATV agreement") with UA-Columbia Cablevision of Westchester, Inc., a corporation organized and existing under the laws of New York (hereinafter referred to as the "Company"), giving the Company a franchise to install, operate and maintain a Cable Television System in the municipalities; and

Whereas the municipalities wish to provide for the manner in which certain provisions of the CATV Agreement which apply to the municipalities collectively shall be interpreted and carried out;

Now, therefore, the municipalities do hereby mutually covenant and agree as follows:

Section 1.

(a) The following officials of the municipalities are those authorized to override the audio signal on all channels originating at the main headend facility to transmit and report

emergency information from those locations described in Section 20.4 of the CATV agreement and provided for in Section 20.5.2 of the same agreement:

Mayors

Supervisor

Deputy Mayors

Deputy Supervisor

Police Chiefs

Fire Chiefs

One additional person designated by each of the governing boards of the municipalities

(b) The code numbers necessary for such override shall be recorded and secured in only two locations in each municipality. The security of each location shall be a specific responsibility of one of the authorized officials named above. Each authorized official shall be informed of each of the six locations and of the name of the authorized official responsible for its security.

(c) Authorized officials shall activate such override only in bona fide emergencies. Information and notices not relating to such an emergency shall be accessed directly to the channels provided for such purpose.

## Section 2.

The use of upstream capability provided for in the CATV agreement by persons other than the Company shall be regulated by the Board of Control referred to in Section 3 (a) hereof and no persons other than the Company shall use such capability without written authorization from such Board.

Section 3. Board of Control.

Creation - There is hereby created a tri-municipal cable television Board of Control. The Board of Control shall be composed of one member from each of the governing bodies of the Village of Mamaroneck, Town of Mamaroneck and Village of Larchmont and the Town Comptroller of the Town of Mamaroneck and Village Manager of the Village of Mamaroneck.

Function - It is the intention of the parties that the Board of Control shall act for the collective benefit of the parties hereto. Accordingly, the Board of Control is hereby empowered to take such action pursuant to the franchise agreement previously executed by the parties hereto with UA-Columbia Cablevision of Westchester, Inc. as will foster the interests of the parties hereto and maximize the benefits jointly conferred upon the parties pursuant to said franchise agreement; to protect and enhance the rights and interests of all subscribers conferred and created pursuant to said franchise agreement, and any renewal, extension or modification thereof.

Subject to the provisions of this agreement, it is the intention of the parties that the Board of Control shall constitute a duly authorized board within the meaning of Section 1.1 of the aforesaid franchise agreement with full power and authority to communicate directly with the franchisor, its agents, servants and/or employees or such other board, commission or entity having jurisdiction over the franchise agreement, for all purposes enumerated in said franchise agreement, and to tender such notices or communication as may be required to effectuate the

intention of this agreement consistent with the benefits and rights conferred to the parties hereto pursuant to said franchise agreement, and any renewal, extension or modification thereof.

Meetings - The Board of Control shall have the power and authority to schedule regular and/or special meetings at such times and in such manner as the Board of Control shall determine upon reasonable notice to its members. Two-thirds of the voting members shall constitute a quorum for all action of the Board of Control. Such meetings shall be conducted by a chairman to be selected by the Board of Control from its voting members. The Board of Control shall keep minutes of its meetings and shall promptly furnish same to each of the municipalities. Any resolution of the Board of Control shall be deemed to be the resolution of each of the parties to this agreement, unless two-thirds of the municipalities shall, by negative vote, overrule any action taken by the Board of Control. Notwithstanding the foregoing, any municipality shall be entitled to an additional thirty (30) day period within which to conduct a vote on any resolution of the Board of Control by tendering its written request for such extension to the other parties to this agreement.

Voting - All members of the Board of Control shall have one vote on all issues or questions considered by it, except that the Village Manager of the Village of Mamaroneck and the Town Comptroller of the Town of Mamaroneck shall be non-voting members of the Board of Control.

Administrator - The parties hereby agree that the Village Manager of the Village of Mamaroneck is hereby appointed as the

parties' administrator. The administrator shall be the agent of the Board of Control for purposes of executing the directives of the Board of Control.

In consideration of the services of the administrator, each municipality shall contribute the sum of \$1,000.00 per year to the Village of Mamaroneck in payment for the services of the administrator.

Comptroller - The parties hereby agree that the Town Comptroller of the Town of Mamaroneck is hereby appointed as the agent of the parties for receipt of any and all payments or sums due any of the parties hereto in consequence of said franchise agreement. Upon receipt by the Town Comptroller, all sums received shall be distributed in distributive shares to each of the three municipalities. The distributive share to each municipality shall be calculated as the proportionate share of the total sums received predicated upon the number of cable television subscribers residing in each municipality, less the chargeable expenses attendant to the administration of this agreement. Each municipality will bear the cost of chargeable expenses in the same proportion as its distributive share.

It is the intention of the parties that the franchisor will furnish to the parties the total number of subscribers and the total number of subscribers resident in each of the three municipalities.

Until such time as said figures are furnished by the franchisor, the distributive shares shall be calculated predicated upon the number of residents in each of the three municipalities as determined by the 1980 census.

The Town Comptroller shall prepare and distribute to the parties hereto an annual accounting of all sums received and all expenses incurred and shall promptly furnish said accounting to each of the parties hereto.

Advisory Committee - There is hereby created an advisory committee to assist the Board of Control in the performance of its functions pursuant to this agreement. The advisory committee shall consist of six persons, two of whom shall be appointed by each municipality. The term of appointment of the members shall be two years.

The advisory committee shall function in such fashion and perform such tasks as the Board of Control shall determine and is empowered to make non-binding advisory recommendations to the Board of Control.

Equipment - Notwithstanding anything to the contrary, the location of any and all cable television equipment conferred upon the municipalities as enumerated in Exhibit B of the franchise agreement shall be governed and determined by a majority vote of the governing bodies of at least two of the parties hereto.

Once located as aforesaid, the use of said equipment shall be governed by the Board of Control pursuant to such rules and regulations as the Board of Control may promulgate.

#### Section 4.

Upon receipt by all or one municipality of a petition from the Company pursuant to Section 25.2 et seq of the CATV Agreement for an adjustment in rates, the municipalities shall mutually agree upon a time and location and shall jointly call a concurrent

public hearing on the matter within 45 days of such receipt of a petition.

Each municipality shall appoint two members of its then existing governing Board (Board of Trustees or Town Council) to preside as a panel over said public hearing. Each member of the Board of Control shall also be a member of said panel. Each member of the Board of Control shall be designated as a co-chairperson of the panel.

Each governing board shall thereafter vote with respect to the petition and a majority of each of the governing boards of two municipalities shall be binding on all three municipalities. In the event such a 2/3 vote cannot be reached, the petition for adjustment shall be denied.

#### Section 5.

The municipalities shall direct that the Completion Bonds and Performance Bonds and security obligations provided for in Section 7 of the CATV Agreement shall be filed by the Company with the Administrator, Village of Mamaroneck.

At such time as the Board of Control determines and agrees that the System (as defined in the CATV Agreement) has been timely completed and fully activated as provided for in the CATV Agreement, the Administrator shall provide acknowledgment of such timely completion and full activation to the Company.

#### Section 6.

Any one of the three municipalities may withdraw such amount from the Security Fund provided for in Section 8 of the

CATV Agreement as may be necessary to comply with any court, governmental or administrative order or directive pursuant to Section 8.2 of the CATV Agreement by making application therefor to the Administrator.

Any other withdrawal from the Security Fund pursuant to Section 8 shall be upon mutual agreement of the municipalities, with payment of such damages to be made as follows:

SECTION 7 - DISTRIBUTION OF PENALTY PAYMENTS

For breach of the following provisions, payment will be divided equally between the municipalities of penalties levied under Section 9.5 of the CATV Agreement:

1. In connection with Article 4.
2. In connection with Article 20., failure to complete construction within 6 months.
3. In connection with Article 28.
4. In connection with Article 11.
5. In connection with Article 28.2.

For breach of the following provisions of said contract, payment of penalties will be divided equally between the municipalities except to the extent that such breach can be shown to affect one municipality or its subscribers more than the other, in which case the municipalities shall mutually agree upon an appropriate ratio of payment:

1. In connection with Article 20., failure of the system to perform pursuant to 20.5.2.
2. In connection with Article 20.2.

PAYMENT OF PENALTIES TO SUBSCRIBERS

For breach of the penalty provisions affecting subscribers,

payment will be collected by the Administrator and made directly to the subscriber or subscribers affected as shown on the Schedule of Penalties in Section 9.5 of the CATV Agreement. Penalty in connection with Article 25.35 is included.

Section 8.

In the event that any one of the three municipalities decides to attempt to recover from the principal and surety of the Completion Bond or the Performance Bond provided for in Section 7 et seq of the CATV Agreement, it shall so advise the other two municipalities in writing hand delivered to the office of the Clerk of the two other municipalities at least fourteen days before it undertakes such a recovery and shall thereafter keep the other municipalities fully informed of everything involved thereafter in its recovery attempt.

Section 9.

In the event that any one of the municipalities without the consent of the other two municipalities makes use of the audio alert system provided for in Section 20.5.2 of the CATV Agreement, and the Company is held liable for damages as a result of the use thereof, the municipality which made such use of said audio alert system shall be solely responsible to indemnify the Company and shall further hold the other two municipalities harmless and indemnify them from any damages or penalties resulting from such use.

Section 10. Amendment & Modification.

This contract may be modified or amended upon the written consent of the governing bodies of the municipalities.

Section 11. Term.

The term of this contract shall be the term of the underlying contract made by the municipalities with UA Columbia Television or any renewal of said underlying contract.

Section 12. Withdrawal.

Any municipality may rescind this contract on any anniversary date of this contract upon one year's prior notice.

Section 13.

The Administrator shall send all written notices required by the CATV Agreement.

BY: *Walter J. ...*  
Mayor, Village of Larchmont

BY: *Joseph B. ...*  
Manager, Village of Mamaroneck

BY: *L. ...*  
Supervisor, Town of Mamaroneck