

- (4) The franchisee shall provide at no cost and so long as same is available to franchisee, "Cable in the Classroom" programs listing or similar materials to each connected public and private school.
- (5) Within one year after the franchisee makes on-line service for personal computers commercially available on its cable television system, the franchisee shall, upon request by the Orange County School Board ("OCSB"), provide each public school that is passed by its cable system with a four free connections to such on-line service. At minimum, such on-line service will provide access to the Internet. Upon request, each connected public school shall receive four free cable modems and free, unlimited access to the franchisee's on-line service. Franchisee, as a condition for providing such service, may prohibit the OCSB from "networking" from the locations. Additional cable modems and operational support and services (for example, assisting connected schools in setting up and maintaining reliable Internet connections), shall be provided upon request, to connected public schools at a cost not to exceed the franchisee's lowest rate which the franchisee charges other commercial subscribers within the State of Florida. Free access to the franchisee's on-line service shall be provided through each such modem.
- (c) The franchisee shall not seek to recover the costs of these connections as external or other costs.
- (d) Nothing herein shall preclude the franchisee from providing services or benefits to the city or to public or private schools which exceed those provided or required herein.
- (e) STI agrees that it shall carry the West Orange Television Network and that its cable system shall be compatible and available to accept programming received from the City of Winter Garden for broadcast on the West Orange Television Network and other government access channels within three years from the execution of this franchise, unless the city has extended the

deadline or waived this obligation. For the limited purpose of carrying the West Orange Television Network and programming received from the City of Winter Garden for broadcast on the West Orange Television Network and other government access channels, the city hereby grants STI the right and privilege to construct, install, maintain and operate its cable system outside the franchise area and to utilize public rights-of-way and public easements.

#### **Section 6. System operations; system improvements.**

(a) STI shall maintain and operate its cable system, at a minimum, in full compliance with federal and state law and local law. STI shall further provide 48 hours prior notice to subscribers and the City before interrupting service for planned maintenance or construction. However planned maintenance that does not require more than two hours' interruption of service and that occurs between the hours of 12:00 midnight and 6:00 a.m. will not require such notice to subscribers or the city. Provided, however, the city may request that it and public educational institutions be given notice no less than 24 hours before such anticipated service interruptions, in which case notice will be given as requested.

(b) The city recognizes that STI may invoke the rights found under F.S. § 202.195, concerning proprietary confidential business information; public records exemption. The city further notes that it will undertake efforts to ensure that any business information produced by STI that is marked and labeled "proprietary and confidential" with citation to a particular section of Florida Statutes that it believes the records to be confidential will be kept confidential in accordance with said section of the Florida Statutes. The city will not knowingly release said information, except in accordance with Florida law.

#### **Section 7. INET/PEG support.**

STI agrees to provide the city with a grant of \$15,000.00 within 30 days of the acceptance of this franchise and an additional \$15,000.00 on the fifth anniversary of the award of this franchise to the city for the purchase by the city of

audio and visual equipment for future recording and broadcasting of municipal events, including but not limited to, city commission meetings.

### **Section 8. Interconnection with other cable systems.**

At the request of the city, STI shall interconnect its cable system with adjacent cable systems operating within the city pursuant to a city franchise as necessary to allow subscribers throughout the city to view public, educational, and government access programming, and, to the extent required by law, with other providers of video programming (i) through independent interconnection or (ii) through connection to a central facility designated by the city. Said interconnection shall be completed and activated no later than three months after the date of receipt of notice by the city unless the city has extended the deadline or waived this obligation. The cost of such Interconnection shall be equitably distributed among STI and the franchisees that interconnect their systems based on the benefits received by each affected franchisee and its subscribers. If STI and the franchisees are unable to agree on the distribution of expenses for interconnection, STI shall notify the city and the city shall then determine the amount of expense to be borne by each franchisee. The franchisees shall pay to the city equally the costs incurred by the city in making such a determination, and such payments shall not be deducted from taxes or franchise fees otherwise paid by the franchisees.

### **Section 9. Miscellaneous.**

(a) This franchise agreement shall be governed and construed in accordance with the statutes and laws of the State of Florida.

(b) STI agrees to pay the attorney's fees of the city attorney for work done regarding STI's franchise agreement which payment shall not serve to reduce any amount otherwise owed to the city or state. STI and the city agree that STI shall not be responsible to any of the city attorney's fee with respect to the drafting and enactment of the city's Cable Ordinance, Ordinance No. 02-03, enacting Chapter 71 of the City Code of Ordinances of the City of Winter Garden, Florida.

(c) In the event that suit shall be brought by either STI or the city, STI and the city agree that venue shall be exclusively vested in the Orange County Circuit Court, or, where otherwise appropriate, exclusively in the United States District Court for the Middle District of Florida.

(d) Unless otherwise expressly stated herein, notices required hereunder shall be mailed first class, postage prepaid, or sent overnight delivery to the addressees below. Each party may change its designee by providing written notice to the other party.

- (1) Notices to STI shall be mailed to:

Business Development Manager  
700 Northwest 107 Avenue, Suite 210  
Miami, FL 33172

with copies to:

Philip J. Kantor, Esq.  
Duane Morris LLP.  
200 S. Biscayne Blvd.  
Suite 3400  
Miami, FL 33131-2367

- (2) Notices to the City shall be mailed to:

City Manager  
251 W. Plant Street  
Winter Garden, FL 34787

with copies to:

City Attorney  
251 W. Plant Street  
Winter Park, Florida 34787

(e) Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required hereunder and a period of time or duration for the completion thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration/time.

(f) In determining whether STI has substantially complied with its franchise, the parties agree that time is of the essence. The maintenance of records and provision of reports in accordance with the franchise agreement is also of the essence to this franchise.

(g) The captions and headings of this franchise agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this franchise agreement.

#### **Section 10. Written notice of acceptance.**

Within 30 days of the city commission resolution approving the grant of the franchise, STI shall provide the city with written acceptance of all the terms and conditions of the franchise and this franchise agreement. STI's failure to comply in full with this section shall render this franchise agreement and the franchise null and void with no further action by the city, unless the city agrees to extend such period.

#### **Section 11. Execution in counterpart.**

This franchise agreement may be executed in counterpart.

### **ARTICLE VI. CABLE TELEVISION—TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE**

\*

#### **Franchise for Time Warner Entertainment-Advance/Newhouse**

ORDINANCE NO. 02-61

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, GRANTING A NON-EXCLUSIVE FRANCHISE FOR THE PROVISION OF CABLE TELEVISION SERVICES BY TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP; PROVIDING AU-

**\*Editor's note**—Printed herein is the cable television franchise, as adopted by Ordinance Number 02-61 on December 12, 2002. Amendments to the franchise are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets.

### **THORIZATION FOR THE EXECUTION OF A FRANCHISE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

Be it enacted by the City of Winter Garden, Florida:

#### **Section 1. Definitions.**

Except as otherwise provided herein, the definitions and word usage rules set forth in Chapter 71 of the Code of Ordinances of the City of Winter Garden, Article I, Section 2, shall govern this franchise agreement. References to "applicable laws" shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations as now in force or hereinafter enacted or amended. In addition, the following definitions shall apply:

- (a) *Chapter 71 of the City Code or "Ordinance"* shall mean Chapter 71 of the Code of Ordinances of the City of Winter Garden, Florida, as it is in effect on the date hereof.
- (b) *TWEAN* shall mean Time Warner Entertainment-Advance/Newhouse Partnership, and its lawful and permitted successors, assigns and transferees pursuant to Chapter 71, Article II, Section 11 of the City Code, including TWEAN Subsidiary, LLC.
- (c) *Franchise area* shall mean area within the legal boundaries of the city and such other areas as may be hereinafter annexed or incorporated by the city during the term of the franchise.
- (d) *Cable system or system* except where the context clearly indicates otherwise, shall mean TWEAN's cable system, and all devices, structures, conduits, poles and equipment appurtenant thereto.

#### **Section 2. Grant of franchise; nature of grant.**

- (a) Subject to the terms of this franchise agreement and except as otherwise provided herein, Chapter 71 of the City Code, the city hereby grants TWEAN a franchise for the right and privilege to own, construct, install, maintain and operate a cable system within the franchise area

to provide cable services. This franchise grants the right, subject to conditions, to construct, operate and repair a cable system in, over, along and under public rights-of-way within the franchise area for the purpose of providing cable service. The franchise term shall commence on the effective date of the franchise and continue through and including December 12, 2012, unless terminated prior to that date in accordance with this franchise agreement or applicable law. Except as may be provided by law, it does not authorize TWEAN to occupy or use other public or private property without the permission of the property owner, or other entity who may lawfully grant permission to use the property.

(b) Without limiting the foregoing, the city, among other things, does not waive the requirements of, or TWEAN's duty to obtain, all applicable permits, and to comply with the conditions thereof, unless precluded by the application of the ordinance; to comply with zoning laws; or to comply with codes, ordinances and regulations governing the construction of the cable system; or to pay any fees associated with the same.

### **Section 3. Non-exclusive franchise.**

TWEAN's franchise and its right to use and occupy the public rights-of-way to provide cable service shall be non-exclusive, and, without limitation the city expressly reserves the right to authorize itself or any person to engage in the same activities, and to grant any person the right to use and occupy the public rights-of-way, or to authorize itself to use and occupy the public rights-of-way for the same, similar or different purposes at any time during the term of this franchise agreement.

### **Section 4. Franchise subject to ordinance.**

(a) This franchise agreement is subject to and shall be governed by all terms, conditions and provisions of Chapter 71 of the City Code, in addition to the terms, conditions and provisions set forth in this franchise agreement. In the event of a conflict between this franchise agreement and Chapter 71 of the City Code, Chapter 71 of the City Code shall control except where a provi-

sion of this agreement expressly states that the agreement is meant to control, notwithstanding Chapter 71 of the City Code.

(b) The city and TWEAN agree that in the fourth sentence of Article II, Sec. 2.b. of Ordinance No. 02-3 ("the ordinance") the term "the general law or statutory requirements" means the "federal laws and regulations and state general law and regulations" as used in the immediately preceding sentence of the same subsection. This provision of the franchise is meant to control notwithstanding any contrary provisions of the ordinance.

(c) The city and TWEAN agree that the provisions of article II, section 13 of the ordinance are without prejudice to the rights of the city or TWEAN to challenge the appraisal decision in a court or other appropriate forum. This provision of the franchise is meant to control notwithstanding any contrary provisions of the ordinance.

(d) The city and TWEAN agree that in the context of article II, section 15(a)(3) of the ordinance, a material misrepresentation of material fact means a misrepresentation by TWEAN upon which the city has explicitly relied in granting the franchise. This provision of the franchise is meant to control notwithstanding any contrary provisions of the ordinance.

(e) The city and TWEAN agree that the provisions of article II, section 15(a)(5) of the ordinance apply only in situations where TWEAN's failure to comply with another agreement with the city for use of facilities and to cure such non-compliance in the time period set in that agreement causes TWEAN to be unable to operate its cable system. This provision of the franchise is meant to control notwithstanding any contrary provisions of the ordinance.

(f) The city and TWEAN agree that the provisions of article II, section 15(a)(8) of the ordinance shall apply only if TWEAN had actual knowledge of the violation which was the cause of death or injury, or should reasonably have known that the violation could be the cause of such death or injury; and failed to cure the violation within a reasonable time period after obtaining such knowl-



edge. This provision of the franchise is meant to control notwithstanding any contrary provisions of the ordinance.

(g) The city acknowledges that TWEAN objects to that portion of article II, section 15(b) of the ordinance which provides that "In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the city commission or its representative shall be conclusive." TWEAN believes the provision to be violative of its rights under Federal and state law. TWEAN acknowledges that the city believes that the provision merely restates applicable law. By entering into this franchise, neither the city nor TWEAN waives any rights with respect to the conclusiveness of any such findings and neither party shall claim such waiver by the other party. TWEAN reserves whatever rights it may have under applicable law to challenge such findings. The city reserves whatever rights it may have under applicable law with respect to the conclusiveness of such findings. This provision of the franchise is meant to control notwithstanding any contrary provisions of the ordinance.

#### **Section 5. Minimum facilities and services.**

- (a) (1) TWEAN agrees to provide one free installation for cable service without charge to all K-12 public schools and all buildings owned and/or occupied by the city for municipal purposes in the franchise area, and to all K-12 public schools and all buildings owned and/or occupied by the city for municipal purposes that may be constructed or opened within the city during the term of this franchise agreement in the franchise area provided that any such existing or future building can be served by a standard installation as defined in FCC regulations. City shall provide TWEAN a list from time to time of the locations to which cable service must be provided under this provision. Cable service provided shall consist of basic service and the most popular other cable programming tier ("CPST").
- (2) Any connected public school or municipal office may elect to install its own internal wiring (provided such wiring meets re-

quired technical specifications) and to bear the cost thereof. Free basic tier service and the CPST service tier shall be provided by TWEAN to one outlet in all connected public schools.

- (3) The franchisee shall provide at no cost and so long as same is available to and provided to other schools on the system by franchisee "Cable in the Classroom" program listings or similar materials to each connected public school.
- (4) Nothing herein shall preclude the franchisee from providing services or benefits to the city or to schools which exceed those provided or required herein.
- (5) Upon execution of this franchise, TWEAN shall carry on its system one channel for governmental access programming which shall be programmed by West Orange TV. Also, upon execution of this franchise, TWEAN shall pay to the city \$15,000.00 for the purchase of equipment to be used in the production of governmental access programming. At any time after the third anniversary of the franchise and upon preparation of a realistic plan for governmental access channel programming and six months notice to TWEAN by the city, TWEAN shall provide an additional \$15,000.00 to the city for the purchase of equipment to be used in the production of governmental access programming. The governmental access channel will be available to the great majority of TWEAN customers in the city (i.e. no less than 90 percent of such customers), but due to the technical configuration of the system some customers within the city may not receive the programming.

#### **Section 6. System operations: System improvements.**

- (a) TWEAN shall maintain and operate its cable system, at a minimum, in full compliance with federal and state law and local law. TWEAN shall further provide 48 hours prior notice to subscribers and the city before interrupting service for planned maintenance or construction.

However, planned maintenance that does not require more than two hours' interruption of service and that occurs between the hours of 12:00 midnight and 6:00 a.m. will not require such notice to subscribers or the city. Provided, however, the city may request that it and public educational institutions be given notice no less than 24 hours before such anticipated service interruptions, in which case notice will be given as requested.

(b) The city recognizes that TWEAN may invoke the rights found under F.S. § 202.195, concerning proprietary confidential business information; public records exemption. The city further notes that it will undertake efforts to ensure that any business information produced by TWEAN that is marked and labeled "proprietary and confidential" will be kept confidential in accordance with the Florida Statutes. The city will not knowingly release said information, except in accordance with Florida law.

#### **Section 7. Interconnection with other cable systems.**

At the request of the city, TWEAN shall interconnect its cable system with adjacent cable systems operating within the city pursuant to a city franchise as necessary to allow subscribers throughout the city to view access programming, (i) through independent interconnection or (ii) through connection to a central facility at 251 Plant Street. Said interconnection shall be completed and activated no later than three months after the date of receipt of notice by the city unless the city has extended the deadline or waived this obligation. The cost of such interconnection shall be equitably distributed among the interconnecting parties based on the benefits received by each affected franchisee and its subscribers and the terms of the interconnection arrangement shall be set by agreement of the affected franchisees on a commercially reasonable basis. The cost of such interconnection shall include without limitation: capital costs of the interconnection equipment needed for the interconnection, ongoing costs of service and maintenance related to the interconnection; costs associated with the interconnection going forward (e.g. undergrounding of the interconnection equipment); and any other costs reasonably

incurred by TWEAN related to the interconnection, but shall not include any prior costs incurred by TWEAN unrelated to the interconnection.

#### **Section 8. Miscellaneous.**

(a) This franchise agreement shall be governed and construed in accordance with the statutes and laws of the State of Florida.

(b) In the event that suit shall be brought by either TWEAN or the city, TWEAN and the city agree that venue shall be exclusively vested in the Orange County Circuit Court, or, where otherwise appropriate, exclusively in the United States District Court for the Middle District of Florida.

(c) Unless otherwise expressly stated herein, notices required hereunder shall be mailed first class, postage prepaid, or sent overnight delivery to the addressees below. Each party may change its designee by providing written notice to the other party.

- (1) Notices to TWEAN shall be mailed to:

Office of Public Affairs & Government Relations  
2251 Lucien Way  
Maitland, FL 32751

with copies to:

- (2) Notices to the City shall be mailed to:

City Manager  
251 W. Plant Street  
Winter Garden, FL 34787

with copies to:

City Attorney  
251 W. Plant Street  
Winter Garden, Florida 34787

(d) Unless otherwise indicated, when the performance or doing of any act, duty, matter or payment is required hereunder and a period of time or duration for the completion thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration/time.

(e) The captions and headings of this franchise agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this franchise agreement.

(f) This franchise may be amended only by agreement of the city and TWEAN.

**Section 9. Written notice of acceptance.**

Within 60 days of the city commission resolution approving the grant of the franchise, TWEAN shall provide the city with written acceptance of all the terms and conditions of the franchise and this franchise agreement. TWEAN's failure to comply in full with this section shall render this franchise agreement and the franchise null and void with no further action by the city, unless the city agrees to extend such period.

**Section 10. Execution in counterpart.**

This franchise agreement may be executed in counterpart.

