

Adopted

AN ORDINANCE GRANTING A FRANCHISE TO YAGER SATELLITE TELEVISION SERVICES, INC., ITS SUCCESSORS AND ASSIGNS TO ERECT, OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY OF CROOKS, SOUTH DAKOTA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE: PROVIDING FOR CITY REGULATION AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM AND AVOIDING PENALTY FOR UNAUTHORIZED CABLE ATTACHING TO AND RECEIVING CABLE TELEVISION SIGNALS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CROOKS, SOUTH DAKOTA:

SECTION 1. This ordinance shall be known and may be cited as the "Crooks Community Antenna Television Franchise Ordinance" (hereinafter sometimes referred to as "Franchise").

SECTION 2. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations, shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number. The word "Shall" is always mandatory and not merely directory.

- 1. "City" is the City of Crooks, South Dakota.
- 2. "Council" is the City Council of the City of Crooks, South Dakota.

3. "Cable Television System" or "Cable System" is a system utilizing coaxial cable and certain electronic and other components which deliver to subscribing members of the public various communications services.

4. "Cable Television Reception Service" means the simultaneous delivery by the Grantee to television receivers (or any other suitable type of audio-visual communications receivers) of the signals of over-the-air television broadcast stations licensed by the Federal Communications Commission and authorized to be carried over said system; and such additional closed-circuit channels at the option of Grantee for which no special charges are made.

5. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind and any other legally recognized entity.

6. "Grantee" is Yager Satellite Television Services, Inc., or anyone who succeeds Yager Satellite Television Services, Inc. in accordance with the provisions of this Franchise.

7. "Subscribers" are those persons contracting to receive cable television service (reception) furnished under this Franchise by Grantee.

SECTION 3.

1. There is hereby granted by the city to the Grantee the non-exclusive right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the city, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in said city of a Cable Television System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public.

2. This Franchise Ordinance grants only the right and privilege to conduct a Cable Television System within the City; and further communications or electronic services shall be granted only upon separate application and approval therefore. *According to procedures of Section 18.*

3. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive.

SECTION 4. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Grantee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the city and to any such reasonable regulation as the city shall hereafter provide.

SECTION 5. TERRITORIAL AREA INVOLVED. This Franchise relates to the present territorial limits of the city and to any area henceforth added thereto during the term of this Franchise. Grantee shall offer service to all persons, on request, inside the city limits of the city.

SECTION 6.

1. Grantee shall at all times while this Franchise is in effect carry public liability insurance naming the city as an added insured in amounts as follows: Property Damage liability insurance to the extent of Fifty Thousand Dollars (\$50,000.00), as to any person and One Hundred Thousand Dollars (\$100,000.00) as to any one accident, and personal Liability Insurance to the extent of One Hundred Thousand Dollars (\$100,000.00) as to any one person and Three Hundred Thousand Dollars (\$300,000.00) as to any one accident. The policies of insurance hereinabove mentioned are to be filed with the city before any work starts.

2. Grantee shall obtain and continually maintain Workers Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City.

3. Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workers Compensation law which may be caused by the erection, maintenance, use or removal of any of their attachments, poles, or other undertakings within the City, or by any action of grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, suits, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workers Compensation laws in effect that may be applicable to Grantee. The City shall give the Grantee prompt written notice of any such claims, demands, actions, suits, judgments, costs, expenses or liabilities. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder.

SECTION 7. TECHNICAL STANDARDS. This Franchise is governed by and subject to all applicable rules, regulations and policies of the Federal Communications Commission, specifically including Part 76 and by the laws of the State of South Dakota. Should there be any modifications of the provisions of Section 76.31 of the Rules and Regulations of the Federal Communications Commission which must be incorporated into this Franchise, the city and Grantee agree that such incorporation shall be accomplished within one (1) year after the effective date of FCC's adoption of the modification or upon renewal of this Franchise, whichever occurs first.

In addition to the FCC requirements the Grantee shall:

1. Transmit a video signal whether in black and white or in color, that is required by subscribers undistorted, free from ghost images and accompanied by prior sound on standard production television sets in good repair.

2. Promptly locate and correct malfunctions attributable to Grantee's equipment and in no event permit a malfunction to remain uncorrected

more than 72 hours after notice of the malfunction is given to Grantee, except in instances where repair equipment is unavailable, and in the latter instances, Grantee shall use all reasonable resources to obtain the needed equipment.

SECTION 8. OPERATION AND MAINTENANCE OF SYSTEM.

1. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

2. The Grantee shall maintain an office or serviceman locally which subscribers may telephone during regular business hours without incurring added messages or toll charges, so that complaints regarding cable television may be taken care of.

3. Notice will be given subscribers of procedures for reporting and resolving complaints at the time of the initial subscription to the cable system.

SECTION 9. EMERGENCY USE OF FACILITIES. In the case of any emergency or disaster, the Grantee shall, upon request of the city council, make available its facilities to the city for emergency use during the emergency or disaster period.

SECTION 9a. SERVICE TO SCHOOLS AND CITY. The Grantee shall provide service to elementary and secondary school locations within the City (one terminal junction to each) for educational purposes upon request by the City or the school system and at no cost to the City or to the school system. This shall mean only an energized cable to such buildings. The cost of any internal wiring shall be borne by the institution.

Grantee shall also provide the City, for connections to one municipal building to be selected by the City Council of the City, without charge, and one junction terminal to said building at a location therein to be selected by the City.

SECTION 10. INDIVIDUAL ANTENNAS. Nothing in this Ordinance shall limit or deny service as presently provided by direct reception or limit the right of individuals to erect and maintain antennas for their own use.

SECTION 11. SAFETY REQUIREMENTS. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries, or nuisances to the public.

1. The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code as promulgated by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, any City safety codes, and in such manner that they will not interfere with any existing installation of the City or of a public utility servicing the City.

2. All structures and all lines, equipment, and connections in, over, under, and upon the street, sidewalks, alleys and public areas or places of the city, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

3. The Grantee shall maintain a force of one (1) or more agents or employees at all times and shall have sufficient employees to provide safe, adequate, and prompt service for its facilities.

SECTION 12. NEW DEVELOPMENTS. It shall be the policy of the city liberally to amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals

which will afford it an opportunity more effectively, efficiently or economically to service its subscribers; provided, however, that this Section shall not be construed to require the city to make any amendments, or prohibit the City from unilaterally changing its policy stated herein.

SECTION 13. LIMITATIONS OF RIGHTS GRANTED.

1. All transmissions and distribution structures, lines, and equipment erected by the Grantee within the city shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

2. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of said city, affecting electrical installations which may be presently in effect. During construction and maintenance, Grantee shall post adequate barriers and warning signs to insure public safety.

3. In case of disturbance of any street, sidewalk, alley, public way, paved area, or boulevard, the Grantee shall, at its own cost and expense and in manner approved by the city engineer, replace and restore such street, sidewalk, alley, public way, paved area or boulevard in as good a condition as before the work involving such disturbance was done.

4. If at any time during the period of this Franchise the city shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, or for other good cause, the Grantee upon reasonable notice by the city, shall remove, relay and relocate its cables, underground conduits, manholes, poles and other fixtures at its own expense.

5. Any fixtures placed in any public way by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way.

6. The Grantee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

7. The Grantee shall have the authority to trim trees upon the overhanging streets, alleys, sidewalks and public ways and places of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the city, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.

8. Grantee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the city by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks; or any other types of structure or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Grantee shall in all such cases have the privileges and be subject to the obligations to abandon any

property of Grantee in places as hereinafter provided.

9. In anticipation of all future utility and power lines in the City being placed underground, the Grantee shall place its wires, cables or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

10. Grantee shall grant to the city, expense free, joint use of any and all poles owned and installed by Grantee for any proper municipal purpose that does not interfere with Grantee's transmission lines or other apparatus.

11. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall promptly remove from the streets, or public places all such property of such system other than any which the city may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city.

12. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the city may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the city an instrument to be approved by the city, transferring to the city the ownership of such property.

13. In the installation and maintenance of the system, Grantee shall promptly pay and reimburse the city for any cost or expense, including labor, materials and overhead, incurred by such city in locating or assisting in locating the placement of crossing of any other existing municipal utility, whatsoever.

14. Grantee shall obtain drop route approval or easements from property owners before installation of wires, cables or other facilities crossing privately owned property.

SECTION 14. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED. The Grantee shall not, as to rates, charges, services, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to any prejudice or disadvantage; however, this section shall not preclude the Grantee from establishing different rates for persons in different classifications, e.g., residential and commercial.

SECTION 15. REMOVAL OF FACILITIES UPON REQUEST. Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

SECTION 16. TRANSFER OF FRANCHISE. The Grantee shall not transfer this Franchise other than by corporate reorganization without prior approval of the city council.

SECTION 17. DURATION AND ACCEPTANCE OF FRANCHISE.

1. This Franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of fifteen (15) years, provided that within sixty (60) days after the date of passage of this Ordinance the Grantee shall file with the Municipal Finance Officer its unconditional acceptance of this Franchise and promises to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee before a Notary Public or other officer authorized by law to administer oaths. Any extension or renewal of the rights, privileges and authority herein granted, beyond the fifteen (15) year period provided for in this Ordinance, shall be re-negotiated with the city, upon the expiration of the present term hereof.

2. Should the Grantee fail to comply with sub-section 1 above, it shall acquire no rights, privileges or authority under this Franchise whatever.

3. Grantee shall have the option to request renewal of this Franchise for an additional period not to exceed fifteen (15) years. Should Grantee desire to exercise this option, it shall so notify the city in writing, not less than three (3) months prior to expiration of this Franchise. Upon exercise of this option by Grantee, the city shall conduct a full, open and public renewal proceeding upon prior notice and opportunity of all interested parties to be heard. The renewal proceeding shall be held for the purpose of considering Grantee's performance under this Franchise. Renewal shall not be unreasonably denied and shall be granted unless Grantee is found to be unqualified to continue operation of this cable television system. If this Franchise is renewed by the City, all of the terms and provisions contained herein shall be controlling during the renewal period, except to the extent that said terms and provisions are modified by the city, or unless this Franchise is superseded by a new Franchise. Should the city, for any reason, be unable to complete the renewal proceeding prior to expiration of this Franchise, Grantee shall have the right to continue operation of this cable television system pursuant to the terms of this Franchise until such time as the renewal proceeding is concluded. Should the city deny renewal of this Franchise, such denial shall be accompanied by a written statement setting forth the reasons for the denial. Grantee shall have the right to request review of any such denial by any Court of competent jurisdiction. Furthermore, in the event that the city denies renewal, Grantee shall be afforded a period of twelve (12) months following denial within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market value. During this twelve (12) month period, which shall run from the effective date of the final order or decision denying renewal, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the terms of this Franchise.

SECTION 18. RATES. The following initial base rates and charges are hereby authorized for service under this Franchise:

SCHEDULE

Initial connection, normal conditions:	
Overhead, one service outlet.....	\$25.00
Extra service outlets.....each	\$10.00
Disconnect and reconnect:	
Non-payment of monthly service charge.....	\$15.00
Transferring to new location with existing service.....	\$15.00

BASIC SERVICE RATE

Residential, first outlet.....	\$20.00	per month
Each additional outlet.....	\$ 1.50	per month
Commercial, first outlet.....	\$20.00	per month
Each additional outlet.....	\$ 2.50	per month

The above listed rate schedule may be adjusted by the Grantee based on the following procedure:

Grantee shall file with the Municipal Finance Officer any proposed rate change or new rate schedule. The same shall be filed at least 30 days prior to the proposed effective date for change. If the City Council takes no action to set the matter for hearing the proposed change

shall automatically take effect at the expiration of the 30-day period.

If the City Council sets the proposed rate change for hearing, said proposed rate change will not become effective until the City Council has taken action by means of a resolution. Any changed rates and charges shall be set in accordance with lawful rate setting procedures in amounts calculated to yield revenues at least sufficient to enable Grantee to pay and discharge all expenses of operation, including taxes and fees, when due, and also to make any payments with respect to principal and interest on indebtedness plus an amount sufficient to enable Grantee to earn a reasonable return on its investment in cable television facilities and related properties.

This provision shall not limit the right of Grantee to pass along to the subscribers state and local sales tax or any specific copyright fees.

SECTION 18a. CHANNEL OR STATION OFFERINGS.

1. Grantee shall offer at a minimum, without discrimination, and at the rates specified in Section 18, the following stations or channels:

- a. CBS
- b. NBC
- c. ABC
- d. PBS
- e. ESPN
- g. Showtime
- h. CNN
- i. WGN

SECTION 19. COMPLIANCE WITH FCC FRANCHISE STANDARDS. Pursuant to applicable FCC standards, the following recitations and provisions are set forth:

1. Grantee's legal character, financial, technical and other qualifications and the adequacy and feasibility of its construction arrangements have been approved by the city council after consideration in a full public proceedings affording due process to all interested persons.

2. The initial Franchise period shall be fifteen years (15) in duration and renewal Franchise periods shall also be fifteen (15) years in duration, pursuant to Section 17.

3. All complaints regarding the quality of service, equipment and malfunctions, disputes concerning installation, or subscription rates or violations of this Franchise shall be directed to Grantee and Grantee's local office. In the event Grantee fails to satisfy a complaint, then the complaint shall be forwarded by the person making the same to the Municipal Finance Officer of the City. Upon receipt of the complaint, the City shall immediately serve notice of such violation upon the Grantee with directions to correct such violation within thirty (30) days or show cause why such violation should not be corrected at a public hearing held in conjunction with the next regularly scheduled meeting of the council.

4. The Franchise fee pursuant to Section 21 shall be no more than three percent (3%) of Grantee's gross subscriber revenues per year

from cable television operations in the city (including all forms of considerations, such as initial lump sum payments).

SECTION 20. UNAUTHORIZED CABLE TAPPING. It shall be unlawful for any person or persons to obtain any cable television services from any cable television company, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of said cable television company unless the same is done with the knowledge of and with the permission of the cable television company. Any person or persons found guilty of a violation of any of the provisions of this section shall be deemed guilty of a misdemeanor.

SECTION 21. PAYMENT TO THE CITY. During the term of this granted Franchise, beginning with the service to subscribers, Grantee shall pay to the city (1) one percent on the first and second year. On the third and fourth year (2) two percent will be paid. On the fifth year and every year thereafter the fee will be (3) three percent of the total amount annual gross receipts.

Gross receipts shall include monthly basic cable service charges but shall not include monies received as installation charges and charges and fees for reconnection, inspections, and all State and Federal taxes relating thereto. This amount payable by Grantee to the city shall be the sole amount payable for all its rights under this Franchise, including but not limited to, the use of the streets and other facilities of the city in the operation of the cable system and for the city supervision thereof, but excluding any properly due property or real estate taxes or assessments and city sales tax.

Grantee shall file with the city within thirty (30) days after the expiration of the operating year during the term of the rights granted hereunder, a certified statement showing the gross receipts as defined herein. It shall be the duty of Grantee to pay to the city within fifteen (15) days after the time for filing such statement, the amount due for the operating year covered by such statement.

SECTION 22. RESERVATION OF RIGHTS BY THE CITY. The city hereby reserves the following rights in addition to those provisions contained herein and in existing ordinances and such additional regulations as the city deems necessary in the exercise of its police power, provided however, that no such additional ordinances and regulations are in conflict with the provisions of this Franchise.

a. The city shall have the right to require the filing by the Grantee of a proper map showing the exact location of all underground cables and equipment of the Grantee together with a statement showing the exact nature of the same.

b. The city shall have the right to inspect the map, plans and other like material of the Grantee upon reasonable notice to Grantee.

c. The city shall have the right to inspect and supervise all installation work performed by Grantee subject to the provisions of this Franchise for the purpose of insuring compliance with the terms of this Franchise.

d. At the termination of the term of this Franchise, or any renewal period thereafter, the city may require the Grantee to remove at Grantee's expense, all portions of the cable system from all public ways within the city.

e. The city may terminate and cancel this Franchise and all rights and privileges of the Grantee hereunder in the event the Grantee:

1. Continually violates any of the provisions of this Franchise or any amendment hereto or in the event of a violation of this Franchise and Grantee has failed to show good cause as provided in Section 18 herein why such violation should not be corrected, and the same has not been corrected within a reasonable period of time after the required public hearing.

2. Becomes insolvent, files an application to be adjudged bankrupt or enters into receivership or liquidation.

3. Attempts to dispose of any of the facilities or property of its cable system with the intention of preventing the city from exercising its right of purchase as hereinafter provided.

4. Perpetuates any fraud or deceit upon the city or subscribers therein.

5. Fails to utilize the Franchise within the period prescribed in the construction schedule hereinafter specified.

6. The termination herein authorized shall be by ordinance duly adopted after public hearing on the same. The city shall serve notice of such hearing on said Grantee at least 30 days prior to the public hearing. The Grantee shall have the right to appeal the termination of the Franchise to any Court of competent jurisdiction. In the event that the council votes to terminate the Franchise, the Grantee shall be offered a period of twelve (12) months following the date of the ordinance terminating the Franchise or the date of the final judgment on appeal therefrom, whichever is later, to operate the cable system pursuant to the terms of this Franchise.

CONSTRUCTION SCHEDULES AND STANDARDS

SECTION 23.

(a) Within sixty (60) days after the effective date of this Ordinance, the Grantee shall file with the appropriate governmental authorities all initial papers, applications, contracts and other documents necessary to obtain any and all necessary waivers, consents and licenses and to permit the commencement of construction and operation of the Cable Television System and shall thereafter make diligent efforts to obtain the proper execution, delivery of such documents and any amendments thereto. In the event that all necessary waivers, consents and licenses are not obtained within one year after the effective date of this Ordinance, this Franchise Ordinance may be repealed at the option of the City by the adoption of an appropriate repealer ordinance.

(b) Within sixty (60) days after all necessary waivers, consents and licenses have been obtained, the Grantee shall commence the construction of the Cable Television System and pursue such with diligence.

(c) The Grantee shall commence operation on or before June 1-1983 or this Franchise shall be subject to repeal as prescribed in subparagraph (a) above herein.

AMENDMENTS

SECTION 24. The City shall have the continuing inherent right, during the term herein or any renewal hereof, to amend this Franchise Endorsement from time to time as it shall see fit, subject to the conditions herein set forth. Before any Amendment hereto is adopted, except those Amendments proposed by Grantee herein, the City shall give reasonable notice of the Amendment to Grantee and Grantee shall have the right to appear before the City Council and give oral or written testimony regarding the amendment. Any Amendment hereto shall not materially alter the terms herein nor shall such amendment materially interfere with Grantee's privilege herein granted to conduct its business and to make a reasonable profit therefrom.

SECTION 25. SEPARABILITY. If any section, sub-section, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Court 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.

SECTION 26. PUBLICATION. The Grantee shall assume the cost of publication of this Franchise as such publication is required by law and such is payable upon the presentment to Grantee of a publication bill.

ADOPTED this 30th day of August, 1982.

First Reading: August 9, 1982.

Second Reading: August 30, 1982.

Passage and Adoption: August 30, 1982.

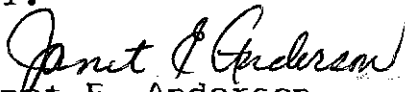
Publication: September 8, 1982.

Effective Date: September 28, 1982.



Vern C. Erickson,
Mayor.

ATTEST:



Janet E. Anderson
Municipal Finance Officer

(MUNICIPAL SEAL)