

MDU BROADBAND SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") dated as of July 31, 2000 is made and entered into by and between TCI Cablevision of Utah Inc. with an office located at 1245 East Brickyard Road, Salt Lake City, Utah 84106 (hereinafter referred to as "AT&T"), and Wade Properties ("Owner"), who owns or has control over certain real estate and improvements called Delmonico Apartments located at 4388 South Highland Drive, Salt Lake City, Utah and legally described on Exhibit A ("Premises"), consisting of all 48 units plus any units added or constructed in the future. AT&T is in the business of providing broadband services and Owner and AT&T desire to provide for (1) AT&T's access to the Premises in order to install the distribution plant and equipment necessary for AT&T to provide various services ("Service(s)") to any commercial unit, residential dwelling unit or resident ("Resident") of the Premises, and (2) AT&T's ability to provide and market such Services to the Residents of the Premises, all on the terms and conditions provided herein. Such Services may include, but not be limited to, local, intraLATA toll (or local toll), long distance, high-speed data, internet, video/cable television, cable Internet and other lawful services and applications that AT&T may provide now or in the future. Therefore, in consideration of the mutual covenants made by the parties hereto, and of other good and valuable consideration as provided in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

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1. GRANT OF EASEMENT AND ACCESS RIGHTS. Owner, on behalf of itself, its successors and assigns, hereby grants and conveys to AT&T, its successors and assigns, a non-exclusive Easement in gross on, over, under, within, and through the Premises (both land and improvements) as necessary or desirable for: (i) the routing and installation of, in accordance with mutually approved plans, the Facilities (as hereinafter defined), (ii) the maintenance, service, use, removal and operation of such Facilities, and (iii) the marketing and provision of the Services to the Residents of the Premises, together with rights of access, ingress and egress on and over the Premises as necessary for the use and enjoyment of the Easement herein granted. In addition, AT&T shall have the right to construct and install (in accordance with the Plans as set forth below) and use any cabling, wiring, (including home-run cable wiring and telephony inside wiring), power supplies, risers, conduits, distribution wiring and facilities, cross-connect facilities and/or distribution frames, and any rights of way and entrance facilities within and into the Premises and all buildings thereon, as necessary or useful, or which may become necessary or useful, for the provision of Services to the Residents, whether owned, installed, controlled or maintained by AT&T or not. A memorandum of this Easement is attached as Exhibit B and may be recorded in the appropriate records. Owner agrees that AT&T may from time to time enter into various agreements or arrangements with its approved assignees, designees, agents or authorized vendors (collectively, "Agents") and access to the Premises granted by Owner pursuant to this Section will extend to such Agents. Owner will provide AT&T's employees and Agents access to necessary portions of the Premises not readily accessible upon reasonable notice to perform installation and maintenance functions. In the event of an outage or other emergency, Owner will provide access to necessary portions of the Premises twenty-four (24) hours a day, seven (7) days a week so that AT&T may perform emergency repairs. AT&T will be allowed access to a residential unit by Owner only with the Resident present. The Easement hereby granted, and the covenants and agreements provided herein, shall run with the land and the burden upon the applicable Premises shall bind Owner, and each and every subsequent owner thereof, for the Term of this Agreement.

2. PROVISION OF SERVICES. AT&T and the AT&T Affiliates (as specified below) shall have the right, but not the obligation, to market and contract with Residents of the Premises for the provision of any or all of the Services on an individual subscriber basis, independent of Owner, or as may otherwise be agreed to by the parties and set forth in a separate attachment hereto. AT&T shall hold all right and title to the Services and retains the right, in its sole discretion, to control, add to, delete, and/or change such Services. In marketing the Services, AT&T shall be permitted to contact Residents directly and display company literature in common areas and leasing offices at the Premises. Except as specifically set forth to the contrary in any attachment to the Agreement executed by AT&T and Owner with respect to a particular Service, (i) orders for Service(s) shall be directly and solely between AT&T and individual subscribers/Residents, and AT&T retains the right to terminate such Service(s) to subscribers who fail to abide by the terms and conditions of any such service order, (ii) Owner shall not be responsible for installation charges, monthly subscription rates, equipment deposits, or other charges for subscribers' Service(s), and (iii) AT&T is responsible for collection of charges, billing, accounting, and other services related to subscriber accounts.

3. CONSIDERATION. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to be bound by the mutual covenants made by the parties hereto.

4. FACILITIES. AT&T shall have the right to construct, install, maintain, use, operate, control, upgrade, repair, replace and, to the extent AT&T has installed or purchased, own and remove all such cabling, wiring, fiber optic lines, power supplies, converters, amplifiers, risers, conduits, distribution wiring, molding, network system and equipment, facilities and components associated therewith, and other equipment or facilities necessary or useful, or which may become necessary or useful, for the provision of the Services up to the Point of Demarcation ("Facilities"). Facilities shall also include, but not be limited to, converters, cable modems, remote controls, and other equipment, which may be provided to Residents at the Premises for the purpose of receiving Services, even though they may be located on the customer's side of the Point of Demarcation. The Point of Demarcation for those Facilities used to provide local, intraLATA toll, and long distance telephony services shall be defined as the point of interface just on AT&T's side of the cross-connect box or block, such as the Intermediate Distribution Frame or Main Distribution Frame, as determined by AT&T, where AT&T's Facilities interconnect with the home-run, twisted-copper telephony inside wiring dedicated to an individual unit on the Premises. The Point of Demarcation for all other Services, including but not limited to video/cable television services, shall be the point at or about twelve (12) inches outside each individual unit on the Premises. Prior to the commencement of any construction and installation of the Facilities, AT&T shall, at its sole cost and expense, provide at least ten (10) days notice of such construction and prepare and deliver to Owner, if requested by Owner, complete working plans and specifications, detailing the Facilities and describing all proposed construction ("Plans"). No work shall commence until Owner has approved the Plans, which approval will not be unreasonably withheld or delayed. Owner will have no obligation to service or maintain the Facilities. All parts of AT&T Facilities located in and on the Premises, regardless of whether attached to or incorporated in the Premises, installed within or outside of the building, overhead, above or underground, shall at all times be owned by, and remain the personal property of AT&T, and shall not be considered a fixture to the real estate or fixture of the building located thereon. All such Facilities shall remain subject to AT&T's exclusive management and control, and unless otherwise required by law or expressly agreed to in writing by AT&T, neither Owner nor any Resident of the Premises will have or obtain any right, title or interest therein. Owner will not, and will not permit any third party to, interfere with the provision of Services or disturb, alter, move, attach to, interfere with or use in any manner the Facilities or any portion thereof. Owner warrants that it has not granted and shall not grant to any other service provider or entity any easements or rights which could materially and adversely interfere with AT&T's use and operation of the Facilities. AT&T will have the right to use, to the extent provided by applicable law, and Owner agrees to assist AT&T in locating, accessing, and interconnecting with, the distribution and inside wiring or cabling, the telephone/equipment room(s) and any already existing and available facilities, cross-connect boxes and/or distribution frames, any riser and conduit space and any rights of way, within and into the Premises as necessary for delivery of the Services. Owner shall provide without charge adequate space, including space within the telephone/equipment room, and electricity for the Facilities.

5. COVENANTS OF OWNER. Owner hereby represents, warrants and agrees: (a) Owner will cooperate with AT&T, except as may be limited by applicable law, on the repossession of channel converter boxes, cable modems, remote control devices or other equipment belonging to AT&T or the Agents that is in the hands of any unauthorized persons such as former Residents of the Premises; (b) Owner will direct all Residents of the Premises who receive Services to report all maintenance or other problems with respect to the Services directly to AT&T and Owner will use reasonable efforts to notify AT&T of any damages to AT&T's Facilities or Service problems of which Owner becomes aware; (c) Owner shall bear full responsibility for the location of private utilities on the Premises, and shall notify AT&T in writing not later than forty-eight (48) hours prior to allowing any excavation in or around the Facilities; and (d) Owner shall comply with all applicable laws, rules and regulations, including, without limitation, environmental laws, rules and regulations, that Owner is presently unaware of any environmental hazards or violations, including, without limitation, asbestos. If Owner or AT&T becomes aware of any suspected environmental condition, such party shall so notify the other in writing.

6. COVENANTS OF AT&T. AT&T will service and maintain the Facilities and provide Services to the Residents of the Premises as set forth herein. AT&T represents and warrants that AT&T and the AT&T Affiliates have all the necessary approvals, consents, and governmental authorizations, licenses, and permits, including those issued by the local cable franchise authority, the FCC and the relevant state Public Utility Commission (PUC), to provide the Services and shall comply

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with all federal, state and municipal laws, orders, rules and regulations applicable to the Facilities and the provision of Services. AT&T will repair at its expense any damage to the Premises to the extent caused by AT&T, its employees, or the Agents, normal wear and tear excepted. AT&T, at Owner's reasonable expense, will repair any damage to the Facilities caused by Owner, its agents, or employees.

7. **INDEMNIFICATION.** Each party shall indemnify, defend and hold harmless the other (and its employees, representatives and Agents) against all liabilities, claims, losses, costs, damages, and expenses resulting from its breach of any provision of this Agreement and from any injury to or death of any person (including injury to or death of their employees) or loss of or damage to tangible real or tangible personal property or the environment, but only to the extent that such liability, loss, damage or expense was proximately caused by its breach of this Agreement or by any negligent act or omission, willful misconduct or violation of law on the part of the party from whom indemnity is sought. Each party seeking such indemnification shall use reasonable efforts to promptly notify the other of any situation giving rise to an indemnification obligation hereunder and neither party shall enter into a settlement that imposes liability on the other without the other party's consent, which shall not be unreasonably withheld.

8. **TERM.** This Agreement will be effective on the date hereof and will continue for so long as AT&T or any AT&T Affiliate may lawfully provide the Services, not to exceed Ten (10) years from the date of this Agreement. Thereafter, this Agreement shall be automatically renewed for consecutive terms of five (5) years each, unless written notice of termination is given by one party to the other as described hereinafter in the Notices Paragraph at least ninety (90) days prior to the expiration of the initial or renewal term then in effect.

9. **TERMINATION.** This Agreement may be terminated prior to expiration of its term (a) by either party in the event of material breach of this Agreement after 30 days' written notice, unless the other party cures or commences to cure such breach during such 30-day period and diligently proceeds with such cure; or (b) by AT&T upon at least 60 days' written notice if AT&T is unable, or it becomes impracticable, to continue distribution of any one or more of the Services due to any law, rule, regulation, judgment, contract with third party or other reason beyond the reasonable control of AT&T. Upon termination of this Agreement and any other legally enforceable rights of access to provide Services, AT&T shall, at its sole option, have an additional ninety (90) days to remove or abandon part or all of the Facilities, in its sole discretion.

10. **LIMITATION OF LIABILITY.** AT&T and the AT&T Affiliates make no agreements, warranties or representations, express or implied either in fact or by operation of law, including warranties of merchantability and fitness for a particular purpose or use, except those expressly set forth herein. The parties disclaim all other warranties, without limitation whether such warranties were made before or after the execution hereof. Except where specifically set forth in this Agreement, AT&T and the AT&T Affiliates shall not be liable to Owner or any third party for any interruption of Service(s) from any cause. Liability for Service interruptions, if any, to Owner or its customers/Residents will be governed exclusively by applicable tariffs filed by the appropriate AT&T Affiliate with the appropriate state or federal regulatory agency, or, in the case of non-tariffed Services, by the applicable service order agreement. Notwithstanding any other provision of this Agreement, in no event will either party be liable to the other, or any third party, for incidental, indirect, special, punitive or consequential damages of any kind, including but not limited to any loss of use, loss of business, or loss of profit.

11. **LEGAL ACTIONS.** If legal action is necessary to enforce any provision of this Agreement or any agreement relating hereto, the prevailing party in such action will be entitled to recover its reasonable costs and expenses of such action, including reasonable attorneys' fees. Owner acknowledges that the breach by Owner of any of its obligations under this Agreement cannot be reasonably or adequately compensated in damages in any action at law and that a breach of this Agreement by Owner will cause AT&T irreparable injury and damage; Owner, therefore, expressly agrees that in the event of a breach or threatened breach of this Agreement, AT&T will be entitled to injunctive and other equitable relief against Owner. AT&T acknowledges that the termination of Services by AT&T under this Agreement may not be reasonably or adequately compensated in damages in any action at law and that such termination by AT&T may cause Owner irreparable injury and damage; AT&T, therefore, expressly agrees that in the event of such termination of its Services or threatened termination, Owner will be entitled to injunctive and other equitable relief against AT&T. Resort to equitable relief will not in any way be construed as a waiver of any other rights or remedies which either party may have for damages or otherwise.

12. **LEGAL STATUS.** This Agreement, unless otherwise specifically set forth in a separate attachment hereto, does not create any agency, employment, joint employer, joint venture or partnership between AT&T and Owner and neither party will have the right, power or authority to act for the other in any manner.

13. **FORCE MAJEURE.** Neither party shall be liable to the other party for any delay or its failure to perform any obligation under this Agreement if such delay or failure is caused by the occurrence of any event beyond such party's reasonable control, including (but not limited to) acts of God, weather, acts of public authority, war, riot, strike, work stoppages, or failures or delays of utilities, suppliers, or carriers.

14. **HOME RUN CABLE WIRING.** Upon termination of this Agreement and any other legally enforceable rights of access to provide Services, and to the extent federal law requires AT&T to provide in this Agreement for the disposition of AT&T's home-run coaxial cable wiring upon termination of the Agreement, AT&T and Owner agree that AT&T shall continue to own its home-run cable wiring and may either remove the home-run cable wiring or abandon the home-run cable wiring in place on the Premises, and shall have no further obligation to Owner. For the sole purpose of this subsection, the phrase "home-run cable wiring" shall mean only the cable wiring from the point at which the cable wiring becomes dedicated to an individual unit on the Premises to the cable demarcation point at or about twelve (12) inches outside that unit. "Home-run cable wiring" shall not be deemed to include risers or active devices, such as amplifiers. Notwithstanding anything to the contrary herein, AT&T shall retain ownership of the MDU Lock Box, which may be removed by AT&T or sold to Owner, in AT&T's sole discretion, by a separately signed agreement.

15. **ENGINEERING REVIEW.** Activation and installation of the Services are subject to engineering review by AT&T, including testing of equipment or facilities not provided by AT&T. If AT&T determines that activation of the Services will result in unanticipated expenses or that existing equipment is deficient, AT&T will have the right to terminate this Agreement upon written notice to Owner. Upon such termination, AT&T will refund to Owner any amounts prepaid hereunder in accordance with AT&T's refund policies.

16. **INSURANCE.** AT&T shall maintain general liability insurance coverage for bodily injury and property damage with no less than the minimum limits required by law. AT&T shall retain the right to self insure at its sole discretion provided it maintains all minimum limits required by law.

17. **ASSIGNMENT/SUCCESSORS.** The benefits and obligations of this Agreement run with the land and will inure to and are binding upon the successors, assigns, heirs, and personal representatives of AT&T and Owner during the Term hereof. Owner shall make the assumption of this Agreement a condition of any sale, transfer or assignment of the Premises and shall notify AT&T in the event of any such sale, transfer or assignment. Notwithstanding anything to the contrary set forth herein or otherwise, AT&T shall have the right to assign, sublet or apportion any right or obligation set forth herein to any entity which owns or controls, is owned or controlled by or is under common ownership or control with AT&T (collectively, the "AT&T Affiliates"). AT&T may express this right of assignment, sublease and apportionment to the AT&T Affiliates without further notice and Owner hereby consents thereto.

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18. **NO THIRD PARTY BENEFICIARIES.** This Agreement shall not provide any person not a party to this Agreement with any remedy, claim, liability, reimbursement, commission, cause of action or other right.

19. **SUBORDINATION.** This Agreement is subject and subordinate to all leases, mortgages, and/or deed of trust which may now or hereafter affect the Premises, to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument or subordination shall be required by any mortgagee, trustee, lessor or lessee. In confirmation of such subordination, AT&T shall execute promptly any certificate that Owner may reasonably request. Notwithstanding the foregoing, AT&T's obligation to subordinate this Agreement to any present or future mortgage, deed of trust or lease is subject to and contingent upon satisfaction of such mortgagee's, trustee's or lessor's obligation to recognize and not disturb AT&T's rights and obligations under this Agreement.

20. **NOTICE.** All notices pursuant to this Agreement shall be in writing and may be personally delivered or sent by overnight courier or by Certified or Registered mail to: **AT&T, 1245 East Brickyard Road, Salt Lake City, Utah 84106. Attn: Regional Counsel.** Notices of assignment or termination of the Agreement, shall be deemed to have been properly given, served and received only as follows: (i) if delivered by messenger, when delivered; (ii) if delivered by a reputable overnight courier, freight prepaid, one (1) business day after delivery to such courier service; or (iii) if mailed by deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, five (5) days after deposited in the US mail. Any party may designate a change of address upon ten (10) days prior written notice.

21. **CONFIDENTIALITY.** Neither party hereto, its employees, representatives or agents, shall disclose, directly or indirectly, or make any public statement regarding the terms and conditions of this Agreement, and/or any attachment, addendum schedule or exhibit hereto, or any information provided by the other and marked as proprietary to any person or entity, either prior to or after execution of this Agreement, without the prior written consent of the other party unless ordered or required by law or a Federal, State or local governmental authority; provided, however, that Owner may disclose this Agreement to any bona fide prospective purchaser of the Premises or any such purchaser or new owner of the Premises or to its accountants, financial advisers, attorneys, accountants, contractors and subcontractors with a need to know, and partners or lenders with a need to know. Unless directed by an order of a court or a regulatory agency, (1) Owner will not, at any time, knowingly or intentionally convey in any manner whatsoever, to any person or entity, all or any portion of the list of Residents which identifies those Residents as subscribing to the Services, except to its financial advisers, attorneys, accountants, subcontractors with a need to know, and prospective purchasers, partners or lenders, and (2) AT&T will not disclose or sell any list of Residents to any third party unless expressly authorized in writing by Owner.

22. **GOVERNING LAW.** This Agreement entered into hereunder shall be governed by the laws of the state in which the Premises is located as to interpretation, construction and performance.

23. **MISCELLANEOUS PROVISIONS.** The parties may execute certain Addenda, which upon execution, any such Addenda will become subject to this Agreement. This Agreement, including Addenda, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements between the parties, whether written or oral, express or implied, with respect to the subject matter hereof. This Agreement may not be amended, changed or modified, nor any provision waived, except by an agreement in writing signed by the parties. No party's failure to enforce any right or remedy available to it under this Agreement shall be construed to be a waiver of such party's right to enforce each and every provision of this Agreement in the future. The provisions of this Agreement are hereby declared to be severable, and the invalidity or unenforceability of any provision of the Agreement (in whole or in part) shall in no way be construed to affect the validity or enforceability of any other provision.

24. **NO WAIVER.** Nothing in this Agreement shall be interpreted as, and by entering into this Agreement AT&T is in no way, waiving, relinquishing or diminishing, in any way, any rights it may have to access the Premises to provide any lawful services under local, state or federal law.

25. **AUTHORIZATIONS.** Owner represents and warrants that he/she is the record holder of fee title to the Premises and the person signing on behalf of Owner represents that he/she is the owner of the Premises or the authorized agent of the owner, with full authority to bind Owner to the terms and conditions of this Agreement. This Agreement will not be binding upon either party until signed by an authorized representative of such party. Owner represents and warrants that he/she has not entered into any exclusive agreements for the provision of Services with any person or entity in regard to the Premises and will not, during the term of this Agreement, enter into any "bulk billed" video service Agreement for the Premises with any other service provider.

26. **SURVIVAL.** The termination or expiration of this Agreement will not impair either party's then accrued rights, obligations or remedies. The terms and conditions of paragraphs 4, 7, 9, 10 and 11 shall survive expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the month, day and year first written above.

OWNER: **Wade Properties**

By: [Signature]
Print Name: Adam Pasco
Title: Authorized Agent
Address: 2300 East 6955 South
Salt Lake City, Utah 84121
Telephone: : 801-259-1447
Telecop: 801-943-0985

AT&T:
TCI CABLEVISION OF UTAH, INC.
By: [Signature]
Print Name: GARY BOLES
Title: Regional Vice President
Address: 1245 East Brickyard RD.
Salt Lake City, Utah 84106
Telephone: 801-401-5600
Telecop: 801-401-5610

STATE OF Utah)
COUNTY OF Salt Lake) ss
This instrument was acknowledged before me on 8/11/2000 by _____ as _____ of _____
Given under my hand and seal of office.
My commission expires: 11/27/03
[Seal] Shaunice L Turpin
Notary Public
NOTARY PUBLIC
SHAUNICE L TURPIN
2389 East 6955 South
Salt Lake City, UT 84121
My Commission Expires
January 12 2003
STATE OF UTAH

STATE OF Utah)
COUNTY OF Salt Lake) ss
This instrument was acknowledged before me on 8/11/2000 by Gary Boles as Regional V.P. of TCI Cablevision of Utah, Inc.
Given under my hand and seal of office.
My commission expires: 11-4-2003
[Seal] Marnie Jensen
Notary Public
NOTARY PUBLIC
MARNIE JENSEN
1950 East 10000th St
Salt Lake City, UT 84116
My Commission Expires
November 4 2003
STATE OF UTAH

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MDU BROADBAND SERVICES AGREEMENT
Exhibit A
LEGAL DESCRIPTION OF PREMISES

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Exhibit A

VTDI 16-05-164-003
WADE, STANLEY L & JANET B.
261 SOUTH 800 EAST

#6A COM 5 RDS S & 11 RDS E OF NW COR OF LOT 3, BLK 44, PLAT B, SLC
SUR, E 5 RDS S 91 1/2 FT W 72 FT W 39 1/2 FT W 10 1/2 FT N 52
FT TO BEG.

VTDI 16-05-164-004
WADE, STANLEY L & JANET B.
261 SOUTH 800 EAST

#6B COM AT SW COR LOT 3, BLK 44, PLAT B, SLC SUR N 30.5 FT, E 192
FT, S 70 FT, W 114 FT, S 1 FT, W 78 FT, N 40.5 FT TO BEG.

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EASEMENT ACCESS COMPENSATION ADDENDUM

THIS ADDENDUM is made between Owner and Company described above. All undefined terms used herein will have the same meaning ascribed to them in the attached MDU Service Agreement ("Agreement") between the parties of equal date. The parties agree as follows:

1. **COMPENSATION.** In exchange for Owner granting Company exclusive marketing rights and access to the Premises to provide any information or communication services that the Company may lawfully provide, for the purposes described in the Agreement, Company agrees to provide to Owner the following:

- A) Company agrees to pay owner a sum equal to 3% of the gross monthly amount collected from Basic/Expanded Basic service sold to the residence of the property, during the term of this agreement for a 0-50% penetration rate.
- B) Company agrees to pay owner a sum equal to 5% of the gross monthly amount collected from Basic/Expanded Basic service sold to the residence of the property, during the term of this agreement for a 51-69% penetration rate.
- C) Company agrees to pay owner a sum equal to 7% of the gross monthly amount collected from Basic/Expanded Basic service sold to the residence of the property, during the term of this agreement for a 70-100% penetration rate.

Complimentary ~~Basic and Expanded Basic~~ ^{high speed internet e home} Basic for Complex Managers

Name: ADAM PASSEY
Address: 2377 East 16895 South #8
Phone: 801-299-1947

- 2. **LIMITATION.** Owner and Company agree that no other payment, compensation or remuneration (monetary or otherwise) will be due and owing to Owner by Company during the term of the Agreement in exchange for Owner providing Company access to the Premises.
- 3. **TAXES.** Owner will be responsible for all taxes attributable to any and all payments received by it pursuant to this Addendum. Company will provide to Owner all statements which it is required to prepare pursuant to the Internal Revenue Code of 1986, as amended, in connection with the payment made to Owner by Company as described in Section 1 above.
- 4. **CONFIDENTIALITY.** Owner and/or any person signing on behalf of Owner hereby agrees to not, directly or indirectly, disclose to any third party the terms of the Agreement or this Addendum, except as may be required by law.
- 5. **TERMINATION.** This Addendum will terminate upon the earlier to occur of the following: (a) the expiration of Company's exclusive arrangement with Owner; or (b) at the option of Company, the transfer, sale or exchange of the Premises so that, after such transfer, sale or exchange, Owner is no longer the record holder of fee title to the Premises.
- 6. **ENTIRE AGREEMENT.** This Addendum supersedes any and all other agreements (other than the Agreement and any Grant of Easement), either oral or written, between the parties hereto relating to the subject matter hereof. This Addendum contains the entire agreement between Owner and Company (other than the Agreement and any Grant of Easement) and may not be amended except by an agreement in writing signed by the parties. The person signing on behalf of the Owner represents that he/she is the owner of the Premises or the authorized agent of Owner, with full authority to bind Owner to the terms and conditions of this Addendum. This Addendum will not be binding upon Company until signed by an authorized representative of Company.
- 7. **SUPPLEMENT TO AGREEMENT.** The terms and conditions of the Agreement will remain in full force and effect, except as modified by this Addendum. This Addendum will serve only to supplement the Agreement.

OWNER:
Delmonico T.N.

By: ADAM PASSEY
Title: Authorized Agent

AT&T:
TCI Cablevision of Utah, Inc.
Gary Boles
By: Gary Boles
Title: Regional Vice President

MDU BROADBAND SERVICES AGREEMENT
Exhibit B
MEMORANDUM OF EASEMENT

This MEMORANDUM OF EASEMENT is to provide public notice that, for and in consideration of the mutual covenants made by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged Wade Properties ("Owner"), on behalf of it's self, it's successors and assigns, with an office at 2377 East 6895 South #8, Salt Lake City, Utah 84121 (hereinafter called "Grantor") has granted to TCI Cablevision of Utah, Inc., with an office at 1245 East Brickvard RD, Salt Lake City, Utah 84106 (hereinafter in the aggregate called "Grantee"), and its successors and assigns, a non-exclusive easement in gross, which easement runs with the land and is subject to, and more particularly defined in, the terms of that certain MDU Broadband Services Agreement dated July 31, 2000 (the "Agreement") between Grantor and Grantee. The purpose of the easement is to permit Grantee and any entity which owns or controls, is owned or controlled by or is under common ownership or control with Grantee, and to which Grantee has assigned, sublet or apportioned any right granted it under the Agreement, to provide Services, as defined in the Agreement, and to permit Grantee and such affiliated entities to operate and maintain the Facilities, as defined in the Agreement, necessary to provide those Services, to, over and upon the property described on Exhibit "A" attached to the Agreement, and all improvements thereon; together with the rights of ingress, entry and egress to and over the described property, solely in accordance with, and as provided in, the Agreement. The easement shall continue in effect for a Ten (10) year term and shall automatically renew for consecutive five (5) year terms unless otherwise terminated by the parties as set forth in the Agreement. The easement and this memorandum shall terminate ninety (90) days after the expiration or earlier termination of the Agreement. No easement or other rights are created in Grantee, or given by Grantor, in this Memorandum of Easement, as this Memorandum of Easement is for notification purposes only. In the event of any conflict between the terms and conditions of this Memorandum and the terms of the Agreement, as between the parties, their successors and assigns, the Agreement shall control.

EXECUTED on this ____ day of _____, 200__.

Grantor:

By:

Name

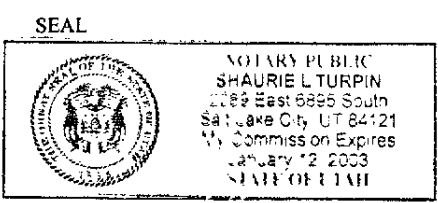
Title:

[Signature]
ADAM PASSEY
(Print or type)
Authorized Agent

STATE OF Utah)
COUNTY OF Salt Lake) ss.

On this 1 day of August, 2000, before me personally appeared Adam Passey to me personally known, who being duly sworn, did say that he signed the foregoing instrument and that said instrument was signed and sealed on behalf of Del Monaco, and acknowledged said instrument to be the free act and deed of _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year first above written.



[Signature]
Notary Public
11/21/03
My Commission Expires

7772408
12/01/2000 03:37 PM 23.00
Book - 8405 Pg - 4073-4079
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
AT&T
1165 E WILMINGTON AVE #295
SLC UT 84106
BY: ZJM, DEPUTY - WI 7 P.

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