

RIGHT OF ENTRY AGREEMENT

5076678

04 JUNE 91 03:16 PM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
TCI CABLEVISION OF UT INC
4424 S 700 E NO 210 SLC UT 84107
REC BY: KARMA BLANCHARD, DEPUTY

TCI CABLEVISION OF UTAH, INC
4424 South 700 East Suite 210
Murray, Utah 84107

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5076678

ATTN: Commercial Accounts
PROPERTY OWNER

PROPERTY

Name: SW Properties Limited Partnership Complex Name: Mountain Shadows Apartments

Address: 555 East 4500 South, Suite C-100 Address: 3763 South 700 West

City, State, Zip: Salt Lake City, Utah City, State, Zip: Salt Lake City, Utah

Contact Person: Stephen A. England Contact Person: Stephen A. England

Telephone: (801) 268-3947 Telephone: (801) 268-3947

This Right of Entry Agreement ("Agreement") is entered into this 14 day of March, 19 91, by and between TCI CABLEVISION OF UTAH, INC. ("COMPANY"), and SW Properties Limited Partnership ("OWNER"), whose principal place of business is at 555 East 4500 South, C-100.

-PDR COPY-
S.S. RECORDER

In consideration of the mutual covenants, benefits and promises set out herein, the parties mutually agree as follows:

- OWNER hereby grants to COMPANY exclusive rights to construct, install, own, operate, maintain, repair, disconnect, replace and remove the equipment necessary to provide cable television services ("SYSTEM"), in, on, over and across the property and within the building(s) consisting of 173 units located at Salt Lake City 3763 South 700 West and the county of Salt Lake in the city of, state of Utah ("The PROPERTY").
- Subject to the availability thereof, and subject to any limitations in the Company's agreements with applicable programmers or program suppliers, and the terms hereof, COMPANY agrees to provide the same cable television signals which the COMPANY is generally providing other subscribers within its Franchise area. Programming and other services contained on basic cable television service are subject to change. COMPANY may from time to time rearrange, delete from or otherwise offer programming contained on its basic cable television service. *OWNER MAY REQUEST A COMMUNITY CHANNEL AT THIS OFFICE. COMPANY WILL DELETE A CHANNEL TO INSURE A COMMUNITY CHANNEL. COMPANY WILL SUPPLY ALL EQUIPMENT FOR COMMUNITY CHANNEL.*
- OWNER shall provide, without charge, to the COMPANY, adequate space and electricity, and right of access for the construction, installation, operations, maintenance and repair of the SYSTEM, and for marketing, disconnecting and maintaining its service to residents of the PROPERTY, including, if necessary, a key to any locked room or door that contains the COMPANY'S SYSTEM.
- COMPANY shall construct, install, own and maintain the SYSTEM in the building(s) described above, in accordance with all applicable regulations and codes. All parts of the SYSTEM on the PROPERTY, regardless of whether installed within or outside of building(s) and whether installed overhead, above, or underground, shall remain the personal property of COMPANY, and shall not be considered a fixture of the real estate or fixtures of the building(s) located thereon, nor shall any part of the SYSTEM be used at any time by or for the benefit of any

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party other than the COMPANY.

5. COMPANY agrees to indemnify OWNER for any damage to the PROPERTY caused by COMPANY, arising from or relating to the construction, installation, operation or removal of such facilities by COMPANY. COMPANY agrees to maintain public liability insurance covering its activities on the property, in amounts of not less than \$500,000 for injury to any one person, \$500,000 aggregate for any single occurrence, and at least \$500,000 for property damage.
6. TYPE OF ACCOUNT. (Check one and have OWNER initial.)
 - a. _____ (Initials of OWNER)
OWNER agrees that COMPANY shall have the right to market and contract with individual residents of the PROPERTY for service, who shall be charged and billed individually for connection to the SYSTEM at the COMPANY'S regular and current monthly service rates and connection charges applicable to the service ordered ("Individual Rate Account").
 - ~~b. _____ (Initials of OWNER)
OWNER agrees to pay for cable television service provided to all of the units of the PROPERTY by COMPANY, and further agrees to enter into and sign COMPANY'S Bulk Rate Agreement. OWNER shall be responsible for and shall pay a monthly service charge under the conditions, rules and terms specified in the Bulk Rate Agreement ("Bulk Rate Account").~~
7. By execution of the Agreement, OWNER hereby grants COMPANY a Right of Entry and Exclusive Easement in, on, over, across, along and under the PROPERTY for the construction, installation, marketing, disconnecting, maintenance, repair, replacement and removal of all parts of the SYSTEM to serve the PROPERTY and/or adjoining properties.
8. OWNER agrees that resident managers will notify the COMPANY if and when they become aware of any damages to the COMPANY'S SYSTEM, including, but not limited to, lock boxes, cable, vault and converters.
9. It is understood and agreed that COMPANY may abandon its SYSTEM in place or render the SYSTEM inoperable, and COMPANY shall not be responsible for the removal thereof if such abandoned SYSTEM will not interfere with the use and occupancy of the PROPERTY. The SYSTEM will not be considered to be abandoned unless written notice to that effect is given by COMPANY to OWNER.
10. The term of this Agreement shall be for a period of 5 years, from the date first written above, and shall automatically renew from year to year unless written notice is given to the other party at least ninety (90) days prior to the expiration of any term of this agreement. If OWNER elects, in Section 6.b. above, to subscribe to a Bulk Rate Account term, the OWNER may opt to renew the Bulk Rate Agreement ("Bulk Renewal"), or in the absence of such Bulk Renewal, service to the Property shall automatically revert to an Individual Rate Account, as described in Section 6.a above, for the remainder of the term of this Agreement.

11. In the event either party fails to comply with any provision of this Agreement ("Default"), which Default shall not have been cured by the Defaulting party within 45 days, after receiving notice specifying such default from the non-defaulting party, then the non-defaulting party may immediately or any time thereafter terminate this Agreement upon written notice to the Defaulting party.
12. This Agreement supercedes any and all other Right of Entry Agreements between the parties, either oral or in writing, and replaces all other or previous Right of Entry Agreements relating to the subject matter hereof for the PROPERTY, including the Agreement between Ponderosa Equities and TCI dated May 21, 1987 and any supplemental amendments thereto.
13. The benefits and obligations of this Agreement shall be considered as a covenant running with the land, and shall insure the benefits of, and be binding upon, the successors, assigns, heirs and personal representatives of the OWNER and COMPANY. OWNER may not assign this Agreement without prior written notice to the COMPANY and in no event unless the assignee agrees in writing to be bound by the terms of this Agreement.
14. If legal action is necessary to enforce any provision of this Agreement, the prevailing party in such action shall be entitled to recover its costs and expenses of such action, including reasonable attorney's fees as determined pursuant to such action.
15. The undersigned OWNER or authorized agent hereby represents that he/she is the OWNER of the PROPERTY, or the authorized agent of the OWNER, with full authority to bind the OWNER to the terms and conditions of this Agreement.
16. It is understood and agreed that no agency, employment, joint venture or partnership is created between the parties by this Agreement; the COMPANY is not an affiliate of OWNER and that neither party, nor its agents or employees shall be deemed to be an agent of the other; nor shall either party have the right, power or authority to act for the other in any manner to create obligations or debts binding upon the other party.

OWNER:

SW Properties Limited Partnership

BY: THE HAYNAL CO. AGENT

BY: [Signature]

Print Name

Its: Acres - Trees

Title

DATE: 3-24-91

COMPANY:

TCI CABLEVISION OF UTAH

BY: [Signature]

Signature

BARRY MARSHALL - VP/COO

Print Name

Its: _____

Title

DATE: MAY - 2 1991

NOTARIZATION OF OWNER/AUTHORIZED AGENT SIGNATURE

STATE OF _____)
COUNTY OF _____) SS

On this _____ day of _____, 19____, before me, a Notary Public in and for the State of _____ appeared _____ personally individual described in and who executed the within and foregoing instrument, and acknowledged the he/she signed the same as he/she free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

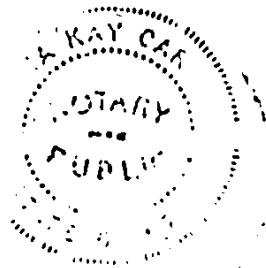
Notary Public

My Commission Expires: _____

STATE OF UTAH)
COUNTY OF SALT LAKE) SS

On March 28, 1991, before me, a Notary Public in and for the State of _____ appeared _____ personally of the corporation that executed the within Instrument, known to me to be the person who executed the within Instrument on behalf of the corporation therein named as COMPANY and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal,



Anna Kay Carney
Notary Public

My Commission Expires: 4-21-91

STATE OF WASHINGTON))
COUNTY OF KING) SS

On 5-2-91, before me, a Notary Public in and for said State, personally appeared Barry Marshall, known to me to be the Vice President/Chief Operating Officer of the corporation that executed the within Instrument, known to me to be the person who executed the within Instrument on behalf of the corporation therein named as COMPANY and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Patricia R. Tate
Notary Public

My Commission Expires: 8-20-93



BK 6322 PG 2540

ADDENDUM

1- Upon execution by both parties of the contracts for Park Capitol, Greenpointe, Mountain Shadows, and Shadow Brook. Company agrees to give title to and ownership of the Companys property located at Foothill Place Apartments.

2- Company will provide two on-site employees of Owner free basic cable in each complex. The Regional Manager of Hayman Company will receive free basic cable at his or her residence.

3- Regarding Park Capitol, Greenpointe, and Mountain Shadows, the Company will stop previous bulk billing as of March 31, 1991. Company agrees to provide free basic service to tenants from April 1, 1991, to May 31, 1991, during the conversion from bulk billing to individual billing described in Section 6 Subsection (a) of this agreement. During the sixty (60) day conversion period, Company and Owner agree to utilize best efforts to notify and market the services to the tenants of these properties

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CABLE TELEVISION SERVICE
Bonus Plan Agreement

Property Served:

Name: Mountain Shadows Apartments

Address: 3763 South 700 West

City, State, Zip: Salt Lake City, Utah

This Agreement entered into this 14 day of March, 1991, by and between TCI Cablevision of Utah, Inc ("Company"), and SW Properties Limited Partnership ("Owner") located at 3763 South 700 West.

WHEREAS, Company and Owner have entered into that certain Right of Entry Agreement dated March 14, 1991, whereby Owner has granted Company the right to construct, install, own, operate and maintain equipment necessary to provide cable television service to the above captioned property ("Property"); and

WHEREAS, Owner is willing to assist Company in the Company's marketing effort on the Property for obtaining premium cable television subscribers; and

WHEREAS, Company desires to provide to Owner a bonus payment, as consideration for Owner's assistance in marketing premium cable television service to the residents of the Property.

NOW THEREFORE, in consideration of the following mutual covenants and agreements, the parties mutually agree as follows:


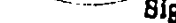
1. Owner agrees to assist Company in the marketing of premium cable television services ("Premium Service") to the residents of the Property, during the term of this Agreement, which shall include allowing Company to place Premium Service(s) advertising on the Property, at locations acceptable to Owner.
2. Company agrees to pay Owner a sum equal to 30 % of the gross monthly amount collected from Premium Service(s) sold to residents of the Property, during the term of this Agreement. "Premium Services" as referred to herein, shall be HBO, SHOWTIME, ~~MTM CHANNEL~~ and THE DISNEY CHANNEL.
3. Company shall deliver to Owner ~~quarterly~~ QUARTERLY Bonus Payments and Premium Service(s) accounting statements, within forty-five (45) days after the completion of each calendar quarter, during each year this Agreement is in effect.

-POOR COPY-
CO. RECORDER

DK 6322 PG 2542

4. The term of this Agreement shall commence June 1, 1991 and continue in full force and effect for a period of 5 years from this date, unless terminated sooner pursuant to the provisions of this Agreement. This Agreement shall automatically renew for a like period, unless the Right of Entry Agreement dated March 14, 1991 for the Property is terminated.
5. This Agreement may be terminated as provided below, upon the happening of any of the following events:
- (a) In the event the Right of Entry Agreement for the Property is terminated at any time, then and in this event, this Agreement shall automatically terminate, and Company shall have no further obligations or liability to Owner.
 - (b) In the event of the assertion or threatened assertion that the terms of this Agreement violate the provisions of any Programming Agreement including any amendments thereto, with applicable program suppliers of the Premium Service(s) herein, this Agreement shall automatically terminate without any liability to Company.
 - (c) In the event of the assertion or threatened assertion that this Agreement violates any federal, state or local law, regulations rules or judicial decisions, whether now or hereafter in effect, Company may, without any liability to Owner, terminate this Agreement without other cause.
6. Owner shall be responsible for all Federal and State income taxes attributable to the Bonus Payments received by it pursuant to this Agreement. Company shall provide Owner with yearly gross earnings statements, in the appropriate form prescribed by the Internal Revenue Service.
7. It is understood and agreed that no agency, employment, joint employer status, joint venture or partnership is created hereby or between the parties hereto; the Company is not an affiliate of Owner; and that neither party, nor its agents or employees shall be deemed to be an agent of the other; nor shall either party have the right, power or authority to act for the other in any manner to create obligations or debts which would be binding upon the other party.
8. This Agreement shall inure to and be binding upon the successors, assigns, heirs, and personal representatives of the parties, so long as the Right of Entry Agreement remains in full force and effect for the Property.

The above terms, specifications and conditions are satisfactory and are hereby accepted.

SW Properties Limited Partnership	TCL Cablevision of Utah, Inc.
OWNER	COMPANY
BY: THE HAYMAN Co., AGENT	
BY: <u>Cely Hayman, Sec'y-Treas</u>	
Signature	Signature
Print Name	BARRY MARSHALL - VP/COO
3-26-91	Print Name/Title
Date	MAY - 2 1991
	Date

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VIDI 15-36-302-014-0000 DIST 16
SW PROPERTIES LTD PTRSHIP

PRINT U UPDATE
LEGAL

TOTAL ACRES	7.82
REAL ESTATE	806000
BUILDINGS	2688200
MOTOR VEHIC	0
TOTAL VALUE	3494200

Z HAYMAN CU (THIRD FLOOR)

TAX CLASS NE

28588 NORTHWESTERN HWY EDIT 1
SOUTHFIELD, MI 48034

BATCH NO 0
BATCH SEQ 0

LOC. 3825 S 700 W

EDIT 1 BOOK 6140 PAGE 0237 DATE 07/07/89

SUB:

TYPE UNKN PLAT

PROPERTY DESCRIPTION

BEG AT SW COR OF LOT 2, BLK 13, TEN AC PLAT A BIG FIELD SUR;
N 0°02'50" W 922.35 FT; S 89°56'40" E 187.92 FT; S 0°15'47"
E 5.10 FT; S 89°56'40" E 180.91 FT; S 0°14'47" E 217.40 FT;
N 89°54'15" W 372.04 FT TO BEG. 7.82 AC M OR L. 5186-1486,
1488 5186-1489 5483-1125 5593-2450 5608-1674 5608-1681
5665-2944, 2950, 2952, 2954 5665-2957 5723-1509, 1521
5723-1526 5759-2509, 2514 5759-2520 5961-2137

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