

CABLE TELEVISION EASEMENT AND MAINTENANCE AGREEMENT

This Agreement is entered into as of the 1st day of June 1990, by and between United Artists Cable of Sarpy County a Nebraska corporation ("United"), and BHI Development, Inc.

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RECITALS

A. Owner owns an apartment or condominium complex known as Southwinds Apartments whose address is 4730 Virginia Street, Omaha, Nebraska consisting of 96 units, including any additional units added in the future (the "Complex"), the legal description of which is attached hereto as Exhibit A and incorporated herein by reference.

B. United owns and operates a cable television system (the "System") in Sarpy County (the "Community"), pursuant to a franchise agreement with the Community, Commissioner Record Book 14 Page 579. (the "Franchise"), dated July 31, 1979.

C. Owner desires to obtain and United is willing to provide cable television service (the "Service") to the Complex upon the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

1. Term. The initial term of this Agreement shall commence on the date hereof and shall end upon the expiration of the Franchise, unless sooner terminated as provided herein. If the Franchise is renewed for successive franchise terms, this Agreement shall automatically renew for the duration of such franchise term, unless sooner terminated as provided in Section 7 or unless terminated by either party giving the other party a written termination notice 90 days prior to the expiration date of the initial or any renewal term of this Agreement.

2. System.

(a) Installation. United shall install in the Complex all facilities and electronic equipment (the "Equipment") necessary to provide the Service to all household units therein, such installation to commence as soon as reasonably possible upon execution of this Agreement. Such installation will be performed in accordance with the Franchise and United's construction and service specifications.

(b) Ownership and Maintenance. United at all times shall retain title to and control of the Equipment. It is specifically agreed that the converters, wiring, cables, active

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and passive electronic devices so installed shall not be considered as fixtures to the Complex or otherwise part of the real estate constituting the Complex, but are the personal property of United. Upon termination of this Agreement United shall retain title to and control of the Equipment and, at its option, may either remove any or all of the Equipment from the Complex or leave any or all of it in place. If United chooses not to remove the Equipment upon such termination, United may, in addition to any other remedies it may have, obtain an injunction against unauthorized use of the Equipment by Owner or any other person or entity. United shall repair, replace and maintain all Equipment at its own expense.

(c) Damage to System. Any damage to the Complex caused by United, its agents or employees, will be promptly repaired to the reasonable satisfaction of Owner. Owner shall take reasonable precaution to notify its tenants, contractors, agents or employees of the location of United's Equipment and shall promptly notify United of any underground construction in the vicinity of the Complex. Owner shall promptly repair to the reasonable satisfaction of United any damage to the Equipment caused by Owner or its tenants, agents or employees, or at the option of United, shall reimburse United for the costs incurred by it in repairing such damage.

3. Easement, Access. Owner hereby grants to United an exclusive right to supply the Service, along with other communications and information services, now or hereafter offered by United, to the Complex for the term of this Agreement. In addition, Owner hereby grants United an irrevocable unrestricted easement in gross from the existing public right-of-way to the Complex, within the common areas of the Complex and from such common areas into each individual unit for the installation, maintenance, service and removal of the System in the Complex. Such grant shall include reasonable access (with right of ingress and egress) to the Complex, all for the installation, maintenance, service and removal of the Equipment, the solicitation of sales, the distribution of marketing information and the disconnection of the Service.

4. Service to the Tenants.

(a) Tenants' Accounts. Owner and United agree that the tenants within the Complex have the option of individually subscribing to the Service; provided, however, that United reserves the right in its sole option to refuse the Service, or to provide special promotional rates and schedules to certain tenants. United's salesmen shall have the right to visit the individual units in the Complex to market the Services. Each tenant so subscribing shall be charged and billed individually by United for connection to the System and for the Service provided, at installation charges and monthly rates set by United. Owner shall have no financial liability for the obligations of its individual tenants.

(b) Bulk Billing Arrangement. During the term of this Agreement, Owner, at its option, may choose to provide the Service to all of the individual units in the Complex in accordance with a bulk billing arrangement between Owner and United. At such time as Owner elects to enter into a bulk billing arrangement for the Complex, Owner and United will enter into a Bulk Billing Agreement substantially in the form attached hereto as Exhibit B. To the extent that the terms and conditions of the Bulk Billing Agreement are inconsistent with this Agreement, the terms and conditions of the Bulk Billing Agreement will control during the term thereof.

5. Covenants of Owner.

(a) Title; Authority. Owner warrants that it has title to the property on which the Complex is located and is authorized to enter into this Agreement, or is the authorized agent of Owner. This Agreement constitutes the legal, valid and binding obligation of Owner.

(b) Information. Owner agrees to use its best efforts to provide in writing to United the name of the manager of the Complex; the name of any tenant terminating his/her lease and the names of all new tenants. Owner will attempt to retain any Equipment of United that is in the possession of tenants who have terminated their leases.

(c) MATV System. Owner agrees to allow United, at its option, to utilize or modify any master antenna ("MATV") system presently on the Complex if necessary to facilitate distribution of the Service. If any such MATV system interferes with the Service, Owner agrees at its own expense to remove or repair the MATV system to eliminate such interference.

(d) Other Systems. Owner agrees not to install a satellite master antenna television system or similar television signal distribution system, nor to allow the installation or use of any outside television satellite or multiple distribution system on the Complex during the term of this Agreement.

6. Indemnification. United shall hold harmless and indemnify Owner from and against any and all damage or claims for damage asserted by reason of United's installation and maintenance of the System in the Complex, except loss or damage arising from any negligent act or omission of United, its agents or employees. If United is obligated to incur costs in order to enforce any provisions of this Agreement, Owner agrees to reimburse United for all costs so incurred.

7. Termination.

(a) By Notice. Either party may terminate this Agreement by giving written notice to the other party at least 90 days prior to the expiration date of the initial or any renewal term of this Agreement.

(b) By Default. This Agreement may be terminated by either party if the other party violates any provision of this Agreement, provided, however, that the defaulting party shall be given notice of the default and shall have 30 days from receipt of such notice in which to cure the default. If the defaulting party has not cured such default by the end of such 30 day period, this Agreement shall terminate on the date stated in the notice.

(c) By United. United may terminate this Agreement upon 60 days' written notice to Owner if United is unable to continue the distribution of the Service due to any governmental law, rule, regulation, judgment or any court, contract with a third party or any other similar reason beyond the reasonable control of United, or if the Franchise is terminated, surrendered or revoked for any reason.

## 8. General Terms.

(a) Service Interruption. In the event that during the term of this Agreement, the Service is interrupted or discontinued because of some occurrence beyond the control of United, such discontinuance or interruption shall not be considered to be a breach of this Agreement.

(b) Franchise Obligations. The parties acknowledge that United is subject to the provisions of the Franchise and to the provisions of applicable federal and state laws and regulations. Any duty or promise of United under this Agreement which conflicts with any provision of the Franchise, or with applicable federal or state laws or regulations, is to that extent void. Notwithstanding, the terms of this Agreement are considered severable, and in the event that any such term is rendered unenforceable due to any such conflict, this Agreement shall remain in full force and effect, except for such term.

(c) Binding Agreement. The rights granted herein shall run with the land and the covenants and agreements contained in the grant herein shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, successors and assigns.

(d) Assignment. This Agreement may be assigned by either party to any parent, affiliate or subsidiary of such party or to such party who agrees in writing to assume this Agreement and be bound thereby. Owner understands that United has made a significant capital investment in installing the System in the Complex, and agrees that, during the term hereof, Owner shall make the assumption of this Agreement a condition of any sale, transfer, assignment or devise of the Complex to any person or entity.

(e) Entire Agreement, Amendment. This Agreement constitutes the entire agreement between the parties and supersedes any and all previous agreements of whatever nature between the parties with respect to the subject matter. This

Agreement shall not be changed, amended or supplemented except by an agreement in writing signed by both parties.

(f) Waiver. The waiver of either party of the breach of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach or as a waiver of any other provision of this Agreement. All waivers of provisions of this Agreement or breaches thereof shall be in writing and executed by the waiving party.

(g) Governing Law. This Agreement shall be governed by the laws of the State of Nebraska whenever federal laws or regulations do not apply.

(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

(i) Recording. At the option of United, this Agreement may be recorded in the real property records of Sarpy County,

9. Notices. All notices to be given by either party to this Agreement to the other party hereto shall be in writing and addressed as follows.

If to United:

United Artists Cable of Sarpy County  
1500 Wall Street  
Bellevue, NE 68005

With a copy to:

United Artists Cablesystems, Inc.  
Legal Department  
4700 South Syracuse Parkway, Suite 1100  
Denver, CO 80237

If to Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Cable Television Easement and Maintenance Agreement as of the date first above written.

UNITED CABLE TELEVISION OF

Sarpy County Co.

By: James R. [Signature]

Its: Vice President

OWNER:

TONCO INVESTMENT INC.

By: [Signature]

Its: SECRETARY

STATE OF Illinois )  
 ) ss.  
COUNTY OF Kane )

Before me, a notary public in and for said state and county, appeared James R. Clark, known to me or proven to me to be the Sr. Vice-President of United Cable Television of Sarpy County, who executed the foregoing Cable Television Easement and Maintenance Agreement on behalf of the corporation.

Witness my hand and seal this 18th day of June, 1990.

My commission expires:

July 13, 1993



Gisela Hilton  
Notary Public  
317 Sedgebrook  
Address  
Carpentersville, IL 60110

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, a notary public in and for said state and county, appeared \_\_\_\_\_, known to me or proven to me to be the \_\_\_\_\_ of \_\_\_\_\_, who executed the foregoing Cable Television Easement and Maintenance Agreement on behalf of the corporation.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

My commission expires:

\_\_\_\_\_

Notary Public

Address

[ S E A L ]

Attached to and made a part of that Cable Television  
Basement and License Agreement  
dated as of June 17, 1990 between  
United Artists Cable of Sarpy County  
and BHI Development, Inc. |

LEGAL DESCRIPTION

on the following described property, to-wit:

THAT PART OF LOT 4, FAULKLAND HEIGHTS REPLAT I, WAS SURVEYED,  
PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA, BEING MORE  
PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST  
CORNER OF LOT 4; THENCE NORTH  $89^{\circ} 56' 00''$  EAST A DISTANCE OF  
530.14 FEET TO THE NORTHEAST CORNER OF LOT 4, THENCE SOUTHWESTERLY  
ALONG THE EAST LINE OF SAID LOT 4 AND A 170.64 FOOT RADIUS  
CURVE TO THE RIGHT AN ARC DISTANCE OF 56.48 FEET TO A POINT  
OF TANGENCY; THENCE SOUTH  $25^{\circ} 58' 24''$  WEST A DISTANCE OF 199.59  
FEET; THENCE NORTH  $64^{\circ} 05' 36''$  WEST A DISTANCE OF 32 FEET; THENCE  
NORTH  $28^{\circ} 57' 47''$  WEST A DISTANCE OF 55.73 FEET; THENCE NORTH  
 $90^{\circ} 00' 00''$  WEST A DISTANCE OF 14.22 FEET; THENCE SOUTH  $60^{\circ} 00' 00''$   
EAST A DISTANCE OF 18.00 FEET; THENCE NORTH  $90^{\circ} 00' 00''$  WEST  
A DISTANCE OF 277 FEET; THENCE NORTH  $20^{\circ} 33' 22''$  WEST A DISTANCE  
OF 51.26 FEET; THENCE NORTH  $90^{\circ} 00' 00''$  WEST A DISTANCE OF 32.00  
FEET TO A POINT ON THE WEST LINE OF LOT 4; THENCE NORTH  $00^{\circ}$   
 $00' 00''$  EAST A DISTANCE OF 170.00 FEET TO THE POINT OF BEGINNING.

CONTAINS: 93,414.60 SQUARE FEET OR 2.14 ACRES MORE OR LESS.

which is recorded in book 206, of real estate mortgages, page 11518 of the Records of the County of  
Sarpy, and State of Nebraska