

UNOFFICIAL COPY

VIDEO SERVICE AGREEMENT

1488-109-031-0000

THIS AGREEMENT is made and effective this 10 day of June, 1997, between Communications & Cable of Chicago, Inc. ("Company") and Emerald City Condo. Assoc. and 2230 N. Lincoln Limited Partnership, ("Owner"), who owns or has control over certain real estate and improvements thereon located at 2230 N. Lincoln, Chicago Illinois 60614. ("Premises") consisting of 20 units apartment condominium units.

The Company has been granted a franchise to construct and operate a cable television system in the area where the Premises are located. The Owner desires to provide cable television and other communication services to the Premises, and the Company is willing to install, maintain and operate its cable television system on the Premises in accordance with the terms below.

UNDERSTANDINGS

10/10/97

NOW, THEREFORE, the parties intending to be legally bound, agree as follows:

- The Company agrees to provide and install all facilities necessary to transmit cable television services to the Premises including, but not limited to, cable amplifiers, line splitting devices, cable amplifier housing and all facilities related thereto. The Company shall pay all costs and expenses incurred in installing the system. All work shall be done by the Company in a proper and workmanlike manner in accordance with industry standards and applicable laws, rules and regulations and prior to occupancy of first unit (estimated 6/1/97).
- The ownership of all parts of the system, including but not limited to, wires, equipment, amplifiers and appurtenant devices are and will remain the property of the Company or its designees and shall in no event become a fixture. At no time during or after the term hereof will Owner or any third party have the right to use the System or any portion thereof for any purpose.
- The Company will indemnify and defend the Owner and hold the Owner harmless from any and all claims arising out of any omission or negligence on the part of the Company with respect to the installation, operation, maintenance, servicing or removal of equipment installed pursuant to this Agreement. The Owner agrees that it will not interfere with the Company's performance under this Agreement and that it will protect the Company from any responsibility or liability arising as a result of the intentional or negligent act of any third party under Owner's control.
- The Owner has the authority to grant and does hereby grant to the Company, its employees and agents, during the term hereof the sole and exclusive right to license to provide cable services and to operate reception and distribution facilities on the Premises ~~whether by cable, fiber optic, or otherwise~~ including the exclusive right to construct, install, maintain, repair, replace and remove upon discontinuance of service all necessary equipment and appurtenant devices. In response to customer interest and requests, Company shall also have the non-exclusive right to provide other communication services over its facilities. The Owner ~~has~~ ^{will} the authority to grant and does hereby grant an easement in favor of the Company to place its lines across the Premises and operate the System, and shall cause such easement to run with the Premises binding all subsequent owners. The Owner agrees to execute the form of easement attached hereto as Exhibit A and shall remain in full force and effect so long as the easement shall be utilized for the purpose for which this easement is hereby granted. subject to reasonable rules
- The Owner will allow the Company, its employees and agents to enter all common areas of the Premises for the purposes of installing, selling or disconnecting service, installing, maintaining, repairing, replacing or removing equipment and apparatus associated with the provision of the services hereunder and will take all reasonable steps necessary to assure the Company access to all parts of the Premises over which the Owner does not have control for the same purposes. The Owner shall supply the names and apartment numbers of residents at reasonable intervals. The Owner shall cooperate with the Company on the repossession of channel selector, converter or other equipment of the company or its agents if the possession of any unauthorized person.
- The Company shall provide services to the Premises by way of individual rate accounts and/or a bulk rate agreement. If the service is provided on a bulk rate basis, an agreement shall be received between the Owner and the Company pursuant to the Bulk Rate Addendum attached hereto.
- The Company agrees to maintain public liability insurance and property damage liability insurance relating to its activities hereunder. (After the Condominium Director is recorded)
- The term of this Agreement shall be for a period of 2 years and shall automatically renew for additional one year terms, unless either party gives the other written notice of non-renewal at least 60 days prior to expiration or termination, including renewal terms thereof.
- Owner agrees that violation of this Agreement will result in irreparable injury to Company, that Company will have no adequate remedy at law and that in the event of such a violation, Company shall have the right to injunctive relief or other appropriate equitable relief.
- The Company and the Owner agree to abide by the Additional Terms and Conditions as set forth on subsequent pages. This Agreement constitutes the sole and entire Agreement between the parties and shall not be modified, amended, supplemented or revised, except by a writing duly executed by both parties hereto. Please read all parts of it, including what follows, carefully and initial or sign each page, as requested.

Emerald City Condo. Assoc.
 BY: [Signature]
 DATE: 6/2-1/97
 (Owner)

Communications & Cable of Chicago, Inc.
 BY: [Signature]
 DATE: 6/2/97
 (Local TCI Affiliate)

S-NO
 P-11
 IV-NO
 M-NO

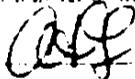
THIS GOES ON THE BACK OF THE TVDU SERVICE AGREEMENT
APPENDUMS

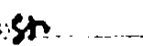
8/21/01

If the Premises are to be provided, please execute the Pre-Wire Installation Addendum which shall become a part of this Agreement. If the service to be provided under the Agreement is on a bulk account basis, please execute the Bulk Rate Addendum which shall become a part of the Agreement.

ADDITIONAL TERMS AND CONDITIONS

- a. If the service is to be provided on an individual rate basis, the Company, its employees or agents will market and contract with individual residents of the Premises for the services, and all arrangements for connecting, servicing and billing residents of the Premises for the services shall be made directly between the Company and such residents. The terms, conditions and charges for cable service provided to the Premises in such a manner shall be contained in contracts between the Company and the individual residents. During the term of this Agreement, the method of billing may be changed by the Company from a bulk rate to an individual account and vice versa or there may be a mix of services provided through such arrangements. This shall in no way affect the validity of this Agreement. Owner assumes no liability or responsibility for service charges contracted by the resident. All billing and collecting will be accomplished by the Company. The Owner agrees to reasonably assist the Company in those collection efforts.
 - b. Should the Company fail to construct or continue to operate the system, it shall not be liable to the Owner or any other person having an interest in the Premises for consequential or actual damages, and the Owner's sole remedy, or those claiming through or under the Owner, free of details or failure, shall be to terminate this Agreement and the easement granted hereunder if such defaults and failures are not remedied, or diligently attempted to be remedied, by the Company within sixty (60) days following receipt of written notice thereof from the Owner. Written notice must be in the case of a bulk arrangement, the Owner shall be entitled to a pro-rated credit for the periods of time that service is not provided to the Premises.
 - c. The Company shall not be liable for failure to construct or to continue to operate the System during the term hereof due to acts of God, failure of equipment or facilities not belonging to the Company, denial of access to facilities or right-of-way if necessary to service the Premises, governing order or regulation or any other circumstances beyond the reasonable ability of the Company to control.
 - d. During 30 days following the Owner's execution and the Owner's receipt of this Agreement, the Company shall review the technical and economic feasibility of providing service to the Premises. If in the Company's sole discretion it determines it is not feasible either technically or economically to proceed with this Agreement, the Company shall have the right to terminate this Agreement by written notice within said 30 day period without further liability hereunder.
 - e. The Company reserves the right to test any equipment or facilities not provided by the Company and which are currently being used for the transmission of television signals on the Premises. Should said equipment or facilities not comply with applicable standards, including but not limited to FCC signal leakage standards, the Company will with the Owner's consent and at the Owner's expense correct any such deficiencies. Until such deficiencies are corrected, the Company shall have no obligation to install or operate the System on the Premises.
 - f. Neither the Owner nor anyone operating on its behalf will tap, connect or otherwise interfere with the System for any purposes. The Company shall not interfere with the right of any individual resident to install or use his own private reception device located in a resident's unit for the reception of locally broadcast television signals, provided however that should any device or facility belonging to the Owner or a resident not comply with the technical specifications established by the FCC including but not limited to signal leakage, the Company reserves the right to discontinue service to the Premises until such non-conformance is cured by the Owner or resident, at the cost may be.
 - g. The Owner acknowledges and agrees that the Company has a right at any time to pre-empt, without prior notice, specific programs and to determine what substitute program, if any, shall be made available. Company may in its discretion make additional deletions or modifications to its current program line-up without liability to the Owner or anyone claiming through the Owner. The Company shall not be liable for failure to deliver any programming which is caused by the failure of the programmer to deliver or make such programming available to the Company or for any other reason beyond the reasonable control of the Company.
 - h. This Agreement does not create any agency, employment, joint merger, joint venture, or partnership between the Operator or the Owner. Neither party shall have the right, power or authority to act for the other.
 - i. The Company may record this Agreement or a memorandum hereof in the public records of the county or other proper locations, if it so desires.
- The Owner must provide written notice to the Company for any alleged breaches of the Agreement, and allow the Company a sixty (60) day period to remedy the alleged breach before Owner may terminate the Agreement.
- k. If either party brings legal action for enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including if applicable, payment for in-house counsel's time, fees and expenses. The failure on the part of either party to enforce any rate hereunder shall be considered a waiver or estoppel of such right.
 - l. The Agreement may be freely assigned by either party provided that the assignee agrees to be bound by the terms and conditions hereof. Should Owner sell or transfer ownership of the Premises, Owner must assign or transfer all rights and obligations hereunder to the new owner.

Initialed by the Owner: 

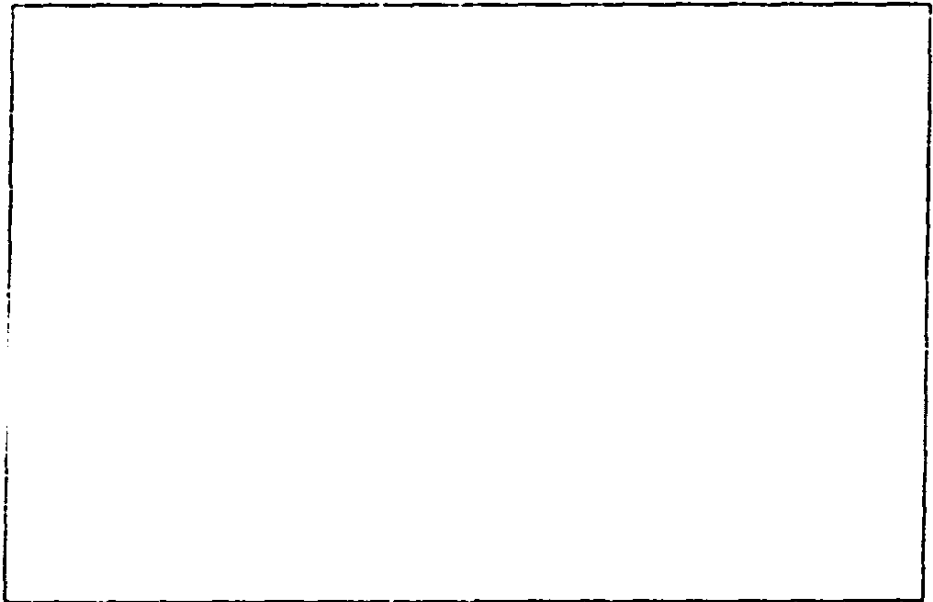
Initialed by the Company: 

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EXHIBIT A

GRANT OF EASEMENT



THIS GRANT OF EASEMENT AGREEMENT is made and is effective 10 day of June, 1997, between Communications & Cable of Chicago, Inc. ("Company"), and Emerald City Condo. Assoc. and 2230 Lincoln Ave Limited Partnership, to control certain real estate and improvements located at the street address of 2230 N. Lincoln Avenue, Chicago, Illinois 60614. ("Premises"), with a legal description of:

LOTS 8, 9 AND 10 IN S.S. SMITH'S SUBDIVISION OF THE EAST 1/2 OF BLOCK 10 IN CANAL TRUSTEES' SUBDIVISION OF THE NORTH 1/2 AND THE NORTH 1/2 OF THE SOUTHEAST 1/4 AND EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 16, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND OF LOT 21 IN WILSON'S SUBDIVISION OF THE WEST 1/2 OF BLOCK 10 IN CANAL TRUSTEES' SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

For ten dollars and other good and valuable consideration, Owner grants to Company a non-exclusive easement and free access of ingress and egress over, in, on, across, and under the Premises for use and benefit of the Company and its designees, agents, successors and assigns for the purpose of:

Construction, installation, operation, maintenance, location, replacement, repair or removal and reasonably associated activity of all equipment, facilities or apparatus necessary to provide multi-channel programming and any other services the Company may lawfully provide to the Premises (which grant of easement shall be for the additional benefit of any utilities necessary to provide such services, such as power.)

The Company agrees to undertake such activity in an orderly manner with as little inconvenience as possible and to substantially restore areas disturbed during such activity to their original condition. The Company agrees to indemnify the Owner against any losses and damages arising from the use of the Easement by Company, including mechanics' liens arising by reason of the Company's activities.

The benefits and burdens of this GRANT OF EASEMENT will run with the land and will bind and benefit the Owner and the Company and their respective successors and assigns.

The rule of strict construction shall not apply to this GRANT OF EASEMENT. It will be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment is carried out.

This GRANT OF EASEMENT shall be extinguished upon the expiration or termination of the MDU Service Agreement dated 6/10/97.

Initiated by the Owner [Signature]

Initiated by the Company [Signature]

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IN WITNESS WHEREOF, the parties hereto have executed this GRANT OF EASEMENT on the date first written above.

EMERALD CITY CONDOMINIUM ASSOCIATION

BY Alan D. Lev
[Owner]

BY Stacy
[Loc. UCI Affiliate]

2230 N Lincoln Ave. Limited Partnership
By: Belgrave Group, Ltd, its op
By: Alan D. Lev, V.P.

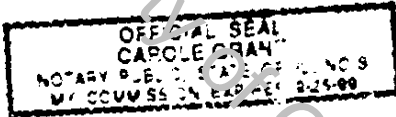
STATE OF IL

COUNTY OF COOK

The foregoing instrument was acknowledged before me this 8 day of June, 1977, by ALAN D. LEV and _____

WITNESS MY HAND AND OFFICIAL SEAL

My commission expires 9/25/78



Carol Grant
Notary Public

Address: _____

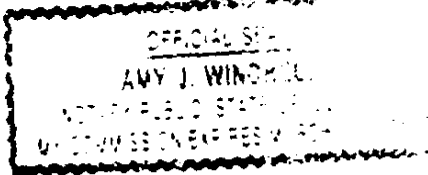
STATE OF Illinois

COUNTY OF Cook

The foregoing instrument was acknowledged before me this 8 day of June, 1977, by Stacy

WITNESS MY HAND AND OFFICIAL SEAL

My Commission expires 9/25/78



Amy J. Winchell
Notary Public

Address: _____

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(EXECUTE ONLY IF APPLICABLE)

BULK RATE ADDENDUM

THIS ADDENDUM is made between the Owner and the Company, described below. All undefined terms used herein shall have the same meaning ascribed to them in the attached Service Agreement between the parties of equal date.

NOW, THIS 6/24/97, the parties intending to be legally bound, agree as follows:

1. The Company agrees to provide services consisting of those described below to NA outlets in 30 units on the Premises. The Owner shall pay the Company a monthly per unit service fee of \$17.50 per unit for a total monthly billing of \$525.00 plus applicable franchise fees, governmental access fees, and sales taxes ("Monthly Service Charge"). The services will initially include ("Services") of more than is needed, use the back side of the Addendum.

This contract is on a Basic Expanded Basis.....\$17.50 per unit per month

Additional fees Franchise Fee of 5% of the City of Chicago Amusement Tax 2%

2. The Company shall use the Monthly Service Charge upon 30 days notice to the Owner. The initial Monthly Service Charge is guaranteed not to increase for 12 months from the date of the Agreement, and may increase no more than 3% during any twelve month period thereafter.

3. The Company may provide to residents of the Premises additional services other than those listed above for which it shall bill such residents directly. In respect to such individual services provided, the Owner shall have no responsibility for any service fees incurred by the customer.

4. The Company shall offer to residents of the Premises certain additional equipment which might be necessary to receive the Services or any other services provided to residents from an activated outlet. All charges for such equipment shall be at the retail rates of the Company. The Company will not connect services to any resident of a unit if such resident fails to timely tender payment for any services or equipment.

5. All statements rendered pursuant to this Addendum shall be due when rendered and shall be subject to late charges of 1% per month until paid within fifteen (15) days of receipt thereof.

6. The Company has delivered to Owner NA converter boxes for placement in individual units of the Premises which shall be considered to be equipment of the Company or third party agents. Owner shall be responsible for any loss or damage to such equipment and agrees to pay the Company the retail replacement value and other reasonable costs incurred by the Company because of such loss (De etc of cross-out paragraph 6 if applicable).

7. If this Bulk Rate Addendum is terminated for any reason prior to termination or expiration of the Agreement, the Company will have the right to contract with and provide services to individual residents of the Premises for which it shall bill such residents directly.

8. The Owner and/or any person signing on behalf of the 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.

9. In view of the difficulty of determining the amount of damages which may result from the Owner terminating this Agreement without adequate and full cause, Company may elect as its remedy payment from Owner to Company, not as a penalty but as liquidated damages, an amount equal to the product of its 75% of the Monthly Service Charge in effect immediately preceding the effective date of such termination, multiplied by (a) the number (1 to 3) of partial months remaining in the term, including any renewal term, if applicable.

10. It is understood and agreed that the parties have entered into an MDU Service Agreement of equal date and that the terms and conditions thereof shall remain in full force and effect, except as modified by this Addendum. This Bulk Billing Addendum shall serve only to supplement the Agreement.

EMERALD CITY CONDOMINIUM ASSOCIATION

BY [Signature]

DATE 6/24/97

[Print Name]

Communications & Cable of Chicago, Inc.

BY [Signature]

DATE 6/24/97

[Print Name]

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(EXECUTE ONLY IF APPLICABLE)

PRE-WIRE INSTALLATION ADDENDUM

This Addendum is made between Owner and the Company. All terms used herein shall have the same meaning ascribed to them in the attached Service Agreement between the Owner and the Company of equal date.

NOW, HEREBY, the parties come intending to be legally bound, agree as follows:

1. To provide that, if the Company, the Owner agrees to provide and install conduit, trenches or other areas as required by the Company's specifications. The Owner shall pay all costs and expenses incurred by the Company in installing the conduit.
2. The Owner shall provide the Company with the utility open trench plans ^{(if applicable) 1/16} as soon as such plans are available in order to facilitate the preparation of the Company's cable plan design. The Company shall provide Owner with specifications for installation and materials, including cable, within 30 days of receipt of the Owner's open utility trench plans. **ca**
3. When the units being constructed on the Premises are by the Owner and reach a stage where electrical wiring is necessary, the Company at its own expense agrees to furnish all necessary cable, specifications and the design plans for the purpose of pre-wiring each unit with up to 3 outlets per unit. The Owner at its own expense will wire each unit with all pre-wire materials including, but not limited to, wall plates, outlet boxes and all pre-wire materials related thereto. All materials installed or provided by the Company are and remain the personal property of the Company or its designees.
4. Owner agrees to provide supervision over and coordination among the various contractors working on and about the Premises in order to avoid damage to the System. The Owner agrees to assist the Company in identifying the party responsible for any damage to the System during construction of the Premises and to obtain reimbursement for the Company.
5. Owner shall provide the Company with 48 hours notice prior to the completion of each stage of installation so the Company may inspect such installation.
6. Owner assumes no responsibility for the System other than the work prescribed herein.

It is understood and agreed that the parties entered into an MDO Service Agreement of equal date and that the terms and conditions thereof shall remain in full force and effect, except as modified specifically by this Addendum. This Pre-Wire Installation Addendum shall serve only to supplement the Agreement.

EMERALD CITY CONDOMINIUM ASSOCIATION

BY Alan S. Lee

DATE 6/24/97
[Owner]

BY Stu

DATE 6/24/97
[Company or Affiliate]

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INTERNAL SECURITY CHANNEL AGREEMENT

This Agreement is effective as of June 10, 1997 by and between [TCI Entity] "Operator" and Emerald City Condo Assoc. "Owner" for the property located 2230 N Lincoln Ave Chicago, IL 60614 "Property."

Definitions

1. The term "Internal Security System" shall mean any and all electronic devices, including modulators, cameras, recording devices, monitors, computer, hardware, software and other equipment and materials, used to produce visual and or audio signals of persons, places, things or events located in or around the Property and to transmit such signals over Operator's cable located at the Property.
2. The term "Point of Demarcation" shall mean the point on the Property designated by Operator as the Point of Demarcation at which Owner may install equipment to provide a NTSC-compatible video and audio signal as part of an Internal Security System to be displayed on channel 17 within the Property.

Agreement

Owner desires to install, at its sole expense, an Internal Security System at the Point of Demarcation at the Property. Each component of such Internal Security System, specifically excluding Operator's cable, shall be and remain the sole property of Owner. Owner and Operator expressly agree that Operator shall have no interest in any components of the Internal Security System except Operator's cable.

Operator agrees to designate the Point of Demarcation at which Owner may install an Internal Security System on channel 18. Owner may, at its option, and for the sole purpose of creating an Internal Security System, connect a modulator at the Point of Demarcation in order to add a single channel to the service provided to the Property by Operator.

Operator makes no representation or warranty with respect to the Internal Security System and expressly disclaim any responsibility or liability for the functioning or malfunctioning of such system or for the cable system connect to it and for any damage to persons or property that may result from the failure of such systems to function properly.

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Operator shall in no way be held responsible for, nor liable to, Owner. Operator's subscribers or any other person with respect to the content or material of the Internal Security System.

It is understood by Owner that certain technical limitations apply to Operator's cable system and the components of the Internal Security System, and Owner agrees to hold Operator harmless for such limitation. Owners understands, for example, that the Internal Security System signal will not be available to television receivers which lack sufficient spectrum capacity to receive the channel designated for the Internal Security System. Owner further understands that an expansion of Operator's channel carriage system may cause termination of the Internal Security System channel.

Indemnification

Owner hereby agrees to indemnify, defend and hold harmless Operator, its parents, affiliates, agents, officers, directors, employees and partners for any claims, demands, lawsuits, judgments, liabilities, damages, losses or expenses arising out of or in connection with any of the following:

(a) any latent or patent defect, malfunction or interruption in the Internal Security system or Operator's cable system due to any cause whatsoever, including any act, omission or negligence of Operator;

(b) any injury, damage or loss to any person or property occurring during, arising from or arising in connection with any power failure, signal, plant damage or other failure of Operator's cable or cable system to function properly;

(c) negligence or other wrongdoing on the part of any employee, agent, servant or representative of Operator or its affiliates.

Operator reserves the rights to terminate without notice the designation of any channel as an Internal Security System channel in the event of a channel expansion in Operator's system.

It is understood and agreed that the indemnification provided by Owner for the benefit of Operator shall survive the expiration or earlier termination of this Agreement.

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Insurance

Owner shall carry Commercial General Liability coverage on form CG 00 01 11 88 as promulgated by the Insurance Services Office, or its minimum equivalent, that covers at least Premises and Operations, Owners and Contractors Protective Liability, Products and Completed Operations, Blanket Contractual Liability for both Oral and Written Contracts, Personal Injury, and Broad Form Property Damage.

Limits of Liability for such insurance shall be no less than \$1,000,000 per occurrence for bodily injury, property damage, personal and advertising injury, as defined in ISO form CG 00 01 88, and no less than \$2,000,000 in the aggregate for the Products-Completed Operations Hazard and the policy General Aggregate.

Such insurance policy shall be endorsed to provide that Operator is included as an Additional Insured using ISO form CG 20 10 11 85, or its minimum equivalent, with the added provision that Owner's policy shall provide primary coverage to Operator irrespective of any insurance carried by Operator, whether it be primary, excess, contingent or on any other basis.

The insurer waives any rights of subrogation it may have against Operator.

Termination

Either party hereto shall have the right to terminate this Agreement in accordance with the following:

- (a) Upon 30 days written notice;
- (b) Immediately upon expansion of the channel carriage capacity of Operator's system;
- (c) Immediately upon written notice if necessary to reduce exposure, or future/potential exposure to any claim, demand lawsuit or cause of action.

Miscellaneous

Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or continued breach or violation.

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Integration. This writing represents the entire agreement of the parties hereto with respect to the subject matter hereof and may not be altered or amended except by a writing signed by both parties.

Applicable Law. This Agreement shall be governed by and be construed in accordance with the laws of Illinois.

Severability. If any provision of this Agreement or the application thereof is held in any proceeding to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; provided, however, that Operator may immediately terminate the Agreement and its obligations thereunder if the indemnification provisions set forth herein are rendered invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Communications & Cable of Chicago Inc.
[TCI Entity]

Emerald City Center, Assoc.
[Owner]

By: Amie

By: Alan D. Lev

Name: Amie

Name: Alan D. Lev

Title: SP

Title: Officer

State of Illinois)

) ss.

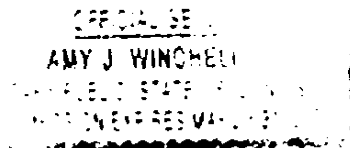
County of Madison)

Subscribed and Sworn to before me this 24 day of August 1998.

by Amie as SP of Operator.

Witness my hand and official seal.

My commission expires: 2/28/00



Amy J. Winchell
Notary Public

[Seal]

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State of IL)
) ss.
County of COOK)

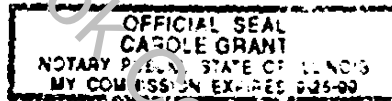
Subscribed and Sworn to before me this 24 day of June 1997.

by DEAL D LEL as Officer of Owner.

Witness my hand and official seal.

My commission expires: 9/25/99

Carole Grant
Notary Public



[Seal]