

RESOLUTION NO. 95-186

**A RESOLUTION APPROVING THE ATTACHED LEASE AGREEMENT BETWEEN THE CITY OF KEY WEST AND TCI CABLEVISION OF FLORIDA, INC.; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED** by the City Commission of the City of Key West, Florida as follows:

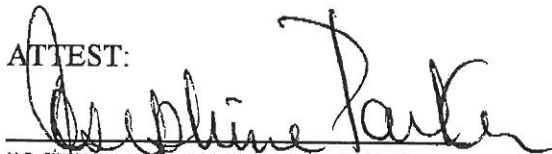
**Section 1.** The attached Lease Agreement between the City of Key West and TCI Cablevision of Florida, Inc. is hereby approved. The City Manager is hereby authorized and directed to execute said Agreement on behalf of the City.

**Section 2.** This Resolution shall go into effect upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

**Passed and adopted** by the City Commission at a meeting held this 16<sup>th</sup> day of May, 1995.

**Authenticated** by the Presiding Officer and Clerk of the Commission on this 16<sup>th</sup> day of May, 1995.

  
DENNIS J. WARDLOW, MAYOR

ATTEST:  
  
JOSEPHINE PARKER, CITY CLERK

Filed with the Clerk May 17, 1995.

95-186

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** made and entered into at Key West, Monroe County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 1995 by and between THE CITY OF KEY WEST, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter the Lessor, and TCI Cablevision of Florida, Inc., hereinafter the Lessee.

**WITNESSETH:**

**WHEREAS**, the City of Key West and TCI Cablevision of Florida, Inc., are currently parties to a Lease dated April 16, 1956, as amended by Amendment to Lease dated May 27, 1988; and

**WHEREAS**, the term of said Lease, as amended, will expire on June 30, 1995, and the parties wish to enter into a new Lease Agreement commencing July 1, 1995 and continuing for an initial five-year period with a certain option to renew more fully described below;

**NOW, THEREFORE**, the Lessor hereby leases that certain real property more specifically described in Exhibit "A" attached hereto ("Premises") for the exclusive purpose of furnishing or supplying inhabitants of the City of Key West with television programs and signals, and for no other purpose, subject to the following terms, conditions, and limitations:

1. **TERM.** The period of this Lease Agreement shall be five years, commencing on July 1, 1995 and ending on June 30, 2000. The Lessee shall have the option to renew the Lease Agreement for an additional term of five years upon written consent of the Lessor, which consent shall not be unreasonably withheld. Absent such written consent of the Lessor, this Lease Agreement shall expire at the conclusion of its five-year term and Lessee shall have no further rights hereunder.

2. RENTAL. Lessee shall pay Lessor yearly rental of \$10,000.00 during the term of this Lease Agreement, to be paid in equal prorated monthly installments on the first day of each month, beginning July 1995.

3. RULES AND REGULATIONS. The Lessee agrees to strictly execute, comply with and abide by all applicable laws, codes, ordinances, rules, regulations, and directives of the Lessor as presently existing and as may be promulgated by the Lessor during the term hereof, and it shall be the duty of the Lessee to become and remain informed and familiar with the same as and when promulgated, which laws, ordinances, rules, regulations, and directives are incorporated herein and by reference made a part hereof. Failure or refusal to comply with the provisions of this Paragraph shall be a default of the terms hereof and cause for termination of this Lease Agreement.

4. PERSONAL PROPERTY. All personal property placed or moved in or on the Premises shall be at the risk of the Lessee or owner thereof, and the Lessor shall not be liable for any damage or loss to said personal property for any act or negligence of the Lessee or of any other person whomsoever.

5. SAFETY, CORRECTION, ETC. The Lessee shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations, directives, and requirements of the Federal, State, County and City Government and of any and all of their departments and bureaus, applicable to the Premises for safety and correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the Premises and its operation. The Lessee shall obtain and maintain all licenses, permits, and other approvals necessary to operate its business.

6. MECHANICS' LIENS. It is hereby agreed to by the parties that there shall, during the

said demised term, be no mechanics' liens upon any building or improvements which may at any time be put upon or be upon the demised property, and that in case of any mechanics' liens the Lessee must pay off same; and that if default in payment thereof shall continue for thirty days after written notice, the Lessor shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the Lessor's option, be so much additional rent due from the Lessee at the next rent due after such payment, with interest thereon at the rate of 12% per annum.

7. PURPOSE; IMPROVEMENTS. The Lessee further agrees to use the Premises for the sole purpose of conducting a microwave receiving station and television receiving station, in connection with its franchise to furnish or supply the inhabitants of the City of Key West with television programs or signals. The Lessee shall not make any improvements to the Premises without the prior written approval of the Lessor.

8. USE OF PREMISES. It is expressly agreed between the parties hereto that the Lessee will not use or suffer nor permit any person to use in any manner whatsoever the Premises, or any building or improvements hereafter constructed or placed on the Premises, nor any portion thereof, for any purpose calculated to injure the reputation of the Premises, nor for any purpose or use in violation of the laws of the United States, or of the State of Florida, or of the Ordinances of the City of Key West, and that it will keep and save the Lessor forever harmless from any penalty or damage or charges imposed for any violation of any of said laws, whether occasioned by neglect of the Lessee, and that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage and expense arising out of any accident or other occurrence, causing injury to any person or property whomsoever or whatsoever, and due directly

or indirectly to the use of the Premises, or any part thereof, by the Lessee.

9. DEFAULT. The prompt payment of the rent for said premises upon the terms named, and the faithful observance of the rules, regulations and directives which are by reference made a part hereof, are the conditions upon which the Lease Agreement is made and accepted, and any failure on the part of the Lessee to comply with the terms of this Lease Agreement, or any of said rules and regulations or directives, now in existence or which may hereafter be made shall, at the option of the Lessor, work a forfeiture of this Lease Agreement, and all of the rights of the Lessee hereunder, and thereupon the Lessor, its agents or employees shall have the right to enter the Premises, and remove all persons and property, if desired, therefrom forcibly or otherwise, and the Lessee hereby expressly waives any and all notice required by the law to terminate tenancy, and also waives any and all legal proceedings to recover possession of the Premises, and expressly agrees that in the event of a violation of any of the terms of this Lease Agreement, or of said rules, regulations, or directives, now in existence, or which may hereafter be made, the Lessor, its agents or employees may immediately re-enter the Premises and may, if desired, remove all persons and property therefrom in accordance with law.

10. FIXTURES. The Lessee hereby pledges and assigns to the Lessor all fixtures, and goods and chattels of the Lessee, which shall or may be brought or placed on said premises as security for the payment of the rent herein reserved, and the Lessee agrees that the said security may be enforced by distress foreclosure or otherwise at the election of the said Lessor.

11. ENTRY. The Lessor, or any of its agents, shall have the right to enter the Premises during all reasonable hours, to examine the same as may be deemed necessary for the safety, comfort or preservation thereof, and to determine if the Lessee is in compliance with all of the

aforementioned rules, regulations, directives and otherwise.

12. **CONDITION OF PREMISES.** The Lessee hereby accepts the Premises in the condition they are in at the beginning of this Lease Agreement and agrees to maintain said Premises in the same condition, order and repair as they are at the commencement of this term, excepting only reasonable wear and tear arising from the use thereof under this Agreement, and to make good to the Lessor immediately upon demand any damage caused by any act or neglect of the Lessee, or of any agent, guest, passenger or person under the control of the Lessee, and the Lessee shall be liable to the Lessor and shall forever hold harmless the Lessor from any and all such damage or loss occasioned to the Premises caused by the acts or negligence of the Lessee or any agent, employee, guest, passenger or person under the control of the Lessee. There is no warranty of any kind as to the conditions of the Premises.

13. **LIABILITY; INDEMNIFICATION; RELEASE.** It is expressly agreed and understood by and between the parties to this Lease Agreement, that the Lessor shall not be liable for any damage, loss or injury which may be sustained by the Lessee or other persons for any other damage, loss or injury resulting from the carelessness, negligence or improper conduct on the part of Lessee or any other person other than the Lessor. The Lessee agrees to indemnify, defend, and hold harmless the Lessor, its officers, employees, and agents from and against any and all liability, actions, claims, costs, expenses, penalties, and judgments for damages at law or equity of any nature whatsoever arising, or alleged to arise, out of the use of the Premises by the Lessee or acts or omissions of the Lessee, its employees, agents, independent contractors, licensees, customers, or invitees, or out of the Lessee's operation of business or exercise of rights conferred by this Lease Agreement. The Lessee shall defend the Lessor and shall pay all reasonable

expenses incurred by the Lessor in defending itself, with regard to all damages and penalties the Lessor may legally be required to pay as a result of the rights granted hereunder. Expenses shall include all incidental expenses including attorney fees, and shall include a reasonable value of any services rendered by the Office of the City Attorney. The Lessee does hereby forever release and discharge the Lessor, its departments, agencies, agents and authorized personnel from any and all liability that has resulted or may result from or be suffered by the Lessee arising out of or in connection with this Lease Agreement, and the Lessee's operation hereunder.

14. **CLAIMS.** The Lessee shall defend, pay or settle any and all liability, demands and claims by or in favor of any third person including, but not limited to, the Lessee's agents, servants or employees, against the Lessor, its departments, agencies and authorized personnel arising out of, or in connection with this Lease Agreement or the Lessee's operation hereunder, and to forever hold harmless the Lessor, its departments, agencies, agents and personnel from any such liabilities, demands or claims asserted by any of the aforescribed, including cost of suit, attorney's fees and any other expenses in connection therewith, and to pay or settle any claims for the injury, loss or damages to personnel or property of or under the control of the Lessor arising out of this Lease Agreement or the Lessee's operation hereunder.

15. **INSURANCE.** The Lessee shall carry and provide during the term of this Lease Agreement at the Lessee's expense, insurance coverage which will protect the legal liability of the Lessor and the Lessee to pay claims for personal injury or death resulting therefrom, on account of injury to persons or property and accidents to third parties or the public, which might arise out or, or in connection with the conduct of the Lessee or the Lessee's agents, assignees, invitees, or employees. The minimum limits of such policy shall be One Million Dollars (\$1,000,000.00),

combined single limit coverage for bodily injury for any one person, and One Hundred Thousand Dollars (\$100,000.00) for property damage. Such policy or policies shall carry an endorsement stating that in any suit or action by the Lessee's servants, agents or employees brought against the Lessor, which might arise out of the operations and the conduct of the business by the Lessee on the Premises, such agents or employees shall be considered members of the public. The insurance policy shall be written by a solvent insurance company in good standing and fully licensed to do business in Florida. The policy shall show the Lessor as a named insured, and shall provide that it cannot be cancelled or revoked except after a minimum of thirty (30) days' written notice to the Lessor. A true copy of the insurance contract shall be filed with the City Clerk within ten (10) days after execution of this Lease Agreement, and shall be maintained on file throughout the lease term. Lessee's failure to maintain the insurance policy in full force and effect at any time during the lease term shall be a default hereunder, and upon such default the Lessee shall immediately suspend all lease use and shall provide to the Lessor written notice of the default.

The insurance amounts here provided shall not in any way operate to limit or release, or be construed to limit or release, the Lessee from any liability to the Lessor, or from any obligation to indemnify the Lessor as provided herein. Said insurance amounts are minimum requirements, and shall be supplemented by the Lessee as necessary to meet its obligations, and to fully indemnify the Lessor, as provided in this Lease Agreement.

16. **INSOLVENCY, ETC.** If the Lessee shall become insolvent or if bankruptcy proceedings shall be begun by or against the Lessee before the end of said term, the Lessor is hereby irrevocably authorized at its option to forthwith cancel this Lease Agreement, as for a default. The Lessee may elect to accept rent from such receiver, trustee or other judicial officer



during the term of their occupancy in their fiduciary capacity without affecting the Lessor's rights as contained in this Lease Agreement, but no receiver, trustee or other judicial officer shall ever have any right, title or interest in or to the above-described property by virtue of this Lease Agreement.

17. **ASSIGNS, ETC.** This Lease Agreement shall bind the Lessor and its assigns or successors, and the assigns, administrators, legal representatives, executors or successors as the case may be, of the Lessee.

18. **TIME OF THE ESSENCE.** It is understood and agreed between the parties hereto that time is of the essence of this Lease Agreement and that this also applies to all terms and conditions contained herein.

19. **RIGHTS.** The rights of the Lessor under this Lease Agreement shall be cumulative and failure on the part of the Lessor to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights.

20. **SIGNS AND ADVERTISING.** It is hereby understood and agreed that any signs or advertising to be used on the Premises leased hereunder shall be first submitted to the Lessor for approval before installing same.

21. **ADDITIONAL RENT: TAXES AND OTHER CHARGES.** Should any taxes be imposed upon the Premises involved in this Lease Agreement, or upon the Lessor, Lessee, occupant, or whomsoever, from any source whatsoever, by reason of said Agreement, including but not limited to sales tax or ad valorem tax, the same shall be the responsibility of the Lessee and the Lessee shall pay same promptly when due as additional rent hereunder.

22. **ASSIGNMENT.** The Lessee shall have the qualified right to assign its interest under

this Lease Agreement provided, however, that the Lessee shall not assign this Lease Agreement, or in any manner transfer this Lease Agreement, or suffer or permit any assignment thereof by operation of law, without the prior written consent of the Lessor first having been obtained. The Lessor may grant or withhold consent at its complete discretion.

23. PREVIOUS LEASE AGREEMENTS CANCELLED. The previous Lease Agreement dated April 16, 1956, the Lease Amendment dated May 27, 1988, and any other Lease Agreements in effect between the parties are hereby cancelled and shall be of no further force and effect.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date first above written

CITY OF KEY WEST

WITNESSES:

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

BY: \_\_\_\_\_  
G. Felix Cooper, City Manager

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Josephine Parker, City Clerk

WITNESSES:

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

TCI CABLEVISION OF FLORIDA, INC.

BY: \_\_\_\_\_  
President/Authorized Agent

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Secretary

(Corporate Seal)

