

City of Portland, Maine
IN THE CITY COUNCIL

#459
4-22-87

ORDER AUTHORIZING LEASE OF
LOOKOUT TOWER ON PEAKS ISLAND

Ordered,

that the City Manager be and hereby is authorized to execute a lease, substantially in the form attached, with Public Cable Company for the lease of the former lookout tower on Peaks Island.

RECEIVED

JUL 20 1987

DEPT OF BUILDING INSPECTIONS
CITY OF PORTLAND

GROUND LEASE

THIS LEASE is made and entered into this _____ day of _____, 19__ by and between the City of Portland, County of Cumberland, State of Maine, a Maine municipal corporation, hereinafter called "City" and Public Cable Company, a Maine partnership hereinafter called "Lessee".

1. PREMISES: The City, for an in consideration of the covenants hereinafter contained and made on the part of the Lessee, does hereby demise and lease unto Lessee, and Lessee does hereby lease from the City, the parcel of land which is located on Peaks Island, in Portland, County of Cumberland, State of Maine, being more particularly described in Exhibit A attached hereto and made a part hereof, together with all necessary easements required for Lessee's use of these leased premises as described in Paragraph 6 below (hereinafter collectively referred to as "the premises" or "demised premises").

2. LEASE TERM: Lessee shall have and hold the demised premises for an initial term of 8.5 years from May 15, 1986, with the option to extend the terms of this lease an additional 8.5 years under all of the same terms and conditions provided herein. To exercise the option to extend the terms, of this Lease, Lessee shall give the City ninety (90) days written notice, prior to the expiration of the initial term, of its intention to exercise said option.

3. RENT: Beginning on the date the Lessee completes construction of the Microwave Receiving Dish ("MRD") at the

demised premises, Lessee covenants and agrees to pay to the City, as rent for the demised premises, the sum of One Hundred Fifty Dollars (\$150.00) per month, due and payable in advance on an annual basis in the amount of Eighteen Hundred Dollars (\$1,800.00). Prior to the date Lessee completes construction of the MRD, no rent from Lessee to the City shall be due or owing. In addition, during each succeeding year of the term, the annual base rent shall be adjusted to an amount equal to the annual base rent during the first year of the term, multiplied by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and Clerical Workers ('CPI-W')," Boston Average "All Items Index," as published by the United States Bureau of Labor Statistics ("the Index") for the first month of the first year of the term, and the numerator of which shall be the Index for the first month of the succeeding year in question ("the Base Index"); provided, however, that the annual base rent during such succeeding year shall in no event be less than the annual base rent during the year preceding it. In the event that the Index is not then in existence, the parties shall use such equivalent price index as is published by any successor governmental agency then in existence or if none, then by such nongovernmental agency as may then be publishing an equivalent price index, in lieu of and adjusted to the Index. If the Index shall cease to use the 1967 average of 100 as the basis of calculation, or if a substantial change is made in

number of items contained in the Index, the
shall be adjusted to conform to such change,
adjustment thereof, if available, as shall be
United States Department of Labor in comput-
is understood that the determination of the
for each year after the first year of the
until after the commencement of such
event, Tenant shall continue to pay base
rate applicable to the preceding year
determination is made, at which time Tenant shall
additional rent, such unpaid base rent as then
accrued.

4. CITY'S WARRANTIES AND COVENANTS: The City hereby
covenants, represents and warrants as follows:

A. Covenant of Quiet Enjoyment: During the term
of this Lease and any extension hereof, the City covenants
that Lessee shall have the quiet enjoyment of the premises
for the uses described in Paragraph 6 below.

B. Other than this covenant of quiet enjoyment,
the City makes no other warranties, representations or
covenants, express or implied, with respect to the demised
premises. Lessee agrees to lease the demised premises from
the City, as is, and further agrees that the demised premis-
es are fit for the purposes for which Lessee intends to use
it.

5. LESSEE'S COVENANTS: Lessee covenants and agrees,
during the term of this lease and for such further time as

the Lessee, or any person claiming under it, shall hold the demised premises or any part thereof:

A. Rent: To pay the reserved rent and additional charges on the days in the manner herein described.

B. Repairs: To keep the premises in safe and good condition and repair, subject to ordinary wear and tear and to the City's obligations herein, if any.

C. Compliance with Law: To comply with all governmental laws, rules, regulations and ordinances applicable to the use, development or operation of the demised premises.

D. Indemnity: To hold the City harmless for and defend Lessor against all claims and the like arising out of Lessee's use of the premises excepting claim and the like arising from the City's negligence.

6. USE, ALTERATIONS AND TITLE TO IMPROVEMENTS:

Notwithstanding any other provisions herein to the contrary, Lessee shall have the right to use and/or occupy the demised premises for any lawful purpose or purposes and to make alterations and improvements to the demised premises from time to time, and all of such alterations, additions and improvements constructed by Lessee during the term of this Lease and any extension thereof, including the MRD described below, shall be and remain the property of the Lessee or Sublessee, as the case may be, and at all times during the term of Lease and any extensions or renewals thereof. In addition, Lessee shall have the right to construct, install,

operate and maintain an MRD at the demised premises for use in connection with the Lessee's business and to enter onto the premises for the operation, repair and maintenance of this MRD. Lessee, in connection with said construction, installation, operation, and maintenance of said MRD shall have the right to trim, cut down, and remove bushes and trees and to remove grass and underbrush growing upon, under, over or adjacent to the MRD which vegetation hinders, obstructs, or materially affects the transmission from the MRD. However, Lessee, in the construction of this MRD, in the operation, repair or maintenance of the same, and in the use of the premises for any other lawful purpose, shall not interfere with the City's use of the premises for its lawful purposes, and shall comply fully with the provisions of Paragraph 5(D) of this Lease. Lessee shall have the right to remove any such alterations, additions and improvements at any time during the term of this Lease or any extension or renewal thereof, and such removal shall be required to be performed by Lessee no later than ninety (90) days after the termination of this Lease, or any extension or renewal thereof, by lapse of time or otherwise and, for such purpose, Lessee shall be entitled to enter upon the premises. Once removed, Lessee shall restore the premises to the original condition, reasonable wear and tear excepted.

In addition, as part of its use of the demised premises, the Lessee shall have the right to make internal building improvements to the building currently located at the

-2-

" demised premises necessary to accommodate its receiving equipment and both internal and external improvements that would provide Lessee with full-time unobstructed access to the roof of this said building. The Lessee shall have the right to construct, use, maintain and repair a roof structure on this said building capable of supporting a steel eight foot parabolic antenna and other peripheral equipment necessary to and associated with said antenna.

The Lessee shall also have the right to erect a fence around a certain observation structure (the "Observation Structure") which currently exists upon the demised premises. Further, the Lessee shall have the right to park, store and/or leave vehicles at locations on the demised premises selected by the Lessee. All of these above-enumerated rights of the Lessee shall exist during the term of this Lease and any extensions thereof.

6A. EASEMENTS FOR ACCESS: The City hereby grants and conveys to the Lessee, during the term of this Lease and any extensions thereof, an easement of access and use over and for the road leading to the building currently located on the demised premises. The City also agrees that the Lessee shall have unrestricted rights to enter and exit this said building during the term of the Lease and any extensions thereof. To accomplish the purpose of this Section, the City shall execute and the Lessee shall record in the Cumberland County Registry of Deeds, an appropriately worded Easement.

6B. UTILITY EASEMENT: The City hereby grants and conveys to the Lessee during the term of this Lease and any extensions thereof, an easement to place, maintain, repair and use utility poles on the demised premises at locations selected by the Lessee in its reasonable discretion, for the purpose of routing cable service to the existing pole line on Central Avenue on Peaks Island, and for the secondary purpose of obtaining telephone and electrical service to the Observation Structure. The City further grants and conveys to the Lessee the right to trim, cut down and remove bushes and trees and to remove grass and underbrush growing upon said easement conveyed herein to such extent as in the judgment of the Grantee is necessary for any of the foregoing purposes, and to enter upon said easement at any and all times for any of the foregoing purposes. The City hereby acknowledges and agrees that it will not unreasonably interfere with the use of the easement granted herein to Lessee. The City further acknowledges and agrees that it shall not construct nor permit the construction of any building or other permanent structure upon the easement, nor remove or permit the removal of earth from said easement, nor place fill or cause fill to be placed upon said easement without the express written permission of Lessee, which permission may be withheld however in the event that such activity or use by the City shall impact upon the use and enjoyment by Lessee of the premises. To accomplish the purpose of this Section, the City shall execute and the

Lessee shall record in the Cumberland County Registry of Deeds an appropriately worded Easement.

7. ASSIGNMENT AND SUBLETTING: Lessee shall have the right, without the consent of the City, to assign or sublet all of its right, title and interest under the terms of this Lease to a business affiliate, subsidiary, parent entity, successor in interest, receiver and the like of the Lessee. Other than these entities, Lessee shall not assign or sublet this Lease or its rights hereunder without the prior written consent of the City. In such event Lessee shall remain liable for the payment of all rent required to be paid hereunder and for the performance of all terms, covenants and conditions herein undertaken by Lessee. With the City's prior written consent, the Lessee shall have the right to mortgage or otherwise encumber its leasehold interest.

8. THE CITY'S RIGHT OF RE-ENTRY: If Lessee shall fail to pay any installments of rent promptly on the day when the same shall become due and payable hereunder, and continue to fail to pay such rent for fifteen (15) days after written notice thereof by the City, or if Lessee shall fail to promptly keep and perform any other affirmative covenants of this Lease strictly in accordance with the terms of this Lease and shall continue in default for a period of thirty (30) days after written notice thereof by the City of default and demand for performance, then and in any event, and as often as any such event shall occur, the City may (a) declare the said term ended, and enter into

said demised premises, or any part thereof and expel Lessee or any person occupying the same in or upon said premises and so to repossess and enjoy said premises as in the City's former estate. Notwithstanding any of the above, if any default shall occur other than in the payment of money, which cannot with due diligence be cured within a period of thirty (30) days and Lessee, prior to the expiration of thirty (30) days from and after the giving of notice as aforesaid, commences to eliminate the cause of such default, then the City shall not have the right to declare the said term ended by reason of such default.

- 9. -HOLDING OVER: In the event Lessee continues to occupy the premises after the last day of the term hereby created, or after the last day of any extension of said term, and the City elects to accept rent thereafter, a tenancy from month to month only, shall be created and not for any longer period.

10. TRADE FIXTURES, MACHINERY AND EQUIPMENT: The City agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the demised premises by Lessee, its subtenants, agents or representatives which are integral with or appurtenant to the MRD or the Lessee's cable broadcasting services, shall not become the property of the City or a part of the realty no matter how affixed to the lease premises and shall be removed by Lessee, in its discretion, at any time and from time to time during entire term of this

Lease and any renewals, and, in any event, at the end of this Lease or any extension or renewal thereof, by agreement, lapse of time or otherwise. The Lessee, upon expiration or termination of this Lease, specifically agrees to leave and not to remove the new door and fences which it will install at the demised premises. All other improvements to the demised premises which would be considered fixtures under Maine law, and which are not described above, shall be left by the Lessee at the demised premises upon expiration or termination of this Lease. Upon request of Lessee or Lessee's assignees or any subtenant, the City shall execute and deliver any Real Estate Consent or Waiver forms submitted by any Vendors, Lessors, Chattel Mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed in the demised premises by any subtenant setting forth the fact that the City waives, in favor of such Vendor, Lessor, Chattel Mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such Vendor, Chattel Mortgagee, owner or holder. The City shall further acknowledge that property covered by such Consent to Waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the premises by the Vendor, Lessor, Chattel Mortgagee, owner or holder at any time upon default by the subtenant in the performance of such Chattel Mortgage or other similar

communications system (including, without limitation, appropriate zoning approvals and the permission to erect an equipment of sufficient height on the premises) or if Lessee does not execute such a compatible single antenna receiving dish Lease, Lessee may cancel this Lease immediately by written notice to the City and be under no further obligations hereunder.

13. MISCELLANEOUS PROVISIONS:

A. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

B. The terms, conditions and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors, or assigns, and shall run with the land; and where more than one party shall be Lessors under this Lease, the word Lessor whenever used in this Lease shall be deemed to include all parties hereto jointly and severally.

C. No waivers, alterations or modifications of this Lease or any agreements in connection therewith shall be valid unless in writing duly executed by both Lessor and Lessee herein.

documents, free and clear of any claim or lien of the City. Upon removal of such personal property, Lessee shall restore the premises to its original condition, reasonable wear and tear excepted.

11. INSURANCE: Lessee shall provide property insurance to insure the M.R.D., and any other alterations of improvements, additions and items of personal property at the premises up to their value (to be determined by Lessee). Lessee shall also provide liability insurance for its use of the subject property in an amount not less than One Million Dollars (\$1,000,000.00), which liability insurance shall name Lessor as an additional insured, and will provide the City with a certificate of insurance annually. Lessee states that it is self-insured for the first \$100,000.00 under its liability insurance policy.

12. CONDITIONS PRECEDENT: The City understands that, as a condition precedent to Lessee's ability to construct and operate any cable television or related communications system to which this Lease applies, Lessee must obtain the permission of the Federal Communications Commission (the "FCC") and other governmental entities, and associated licenses from the FCC, and Lessee must execute a Lease for a site for the installation of a single antenna transmitting dish, which site is compatible in Lessee's view, to the receiving site on the subject demised premises. If Lessee does not obtain the necessary FCC licenses, and any other governmental approvals necessary to operate the

D. The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such Paragraphs of this Lease or in any way affect this Lease. Any gender used herein shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular herein shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

E. If at any time after the execution of this Lease, it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing signed by the party serving the same, deposited in the registered or certified United States mail, return receipt requested, postage prepaid and (a) if intended for Lessee shall be addressed to:

Public Cable Company
118 Johnson Road
Portland, ME 04104

with a copy to:

Andrew J. Bernstein, Esq.
Bernstein, Shur, Sawyer & Nelson
One Monument Square
Portland, ME 04101

and (b) if intended for the City shall be addressed to:

City Manager, City of Portland
City Hall
389 Congress Street
Portland, ME 04101

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail. A copy of any such notice shall be also sent to the Chairman of the City of Portland Cable Television Committee.

14. AGENDA AND EXHIBITS: This Lease includes the following Rider(s) and/or Exhibits, which shall take precedence over conflicting provisions (if any) of this Lease, and are hereby made an integral part of this Lease and fully incorporated herein by reference.

Exhibit A (Legal Description)
Exhibit B (fence)

IN WITNESS WHEREOF, the parties have hereunto set their

hands and seals.

WITNESS:



PUBLIC CABLE COMPANY

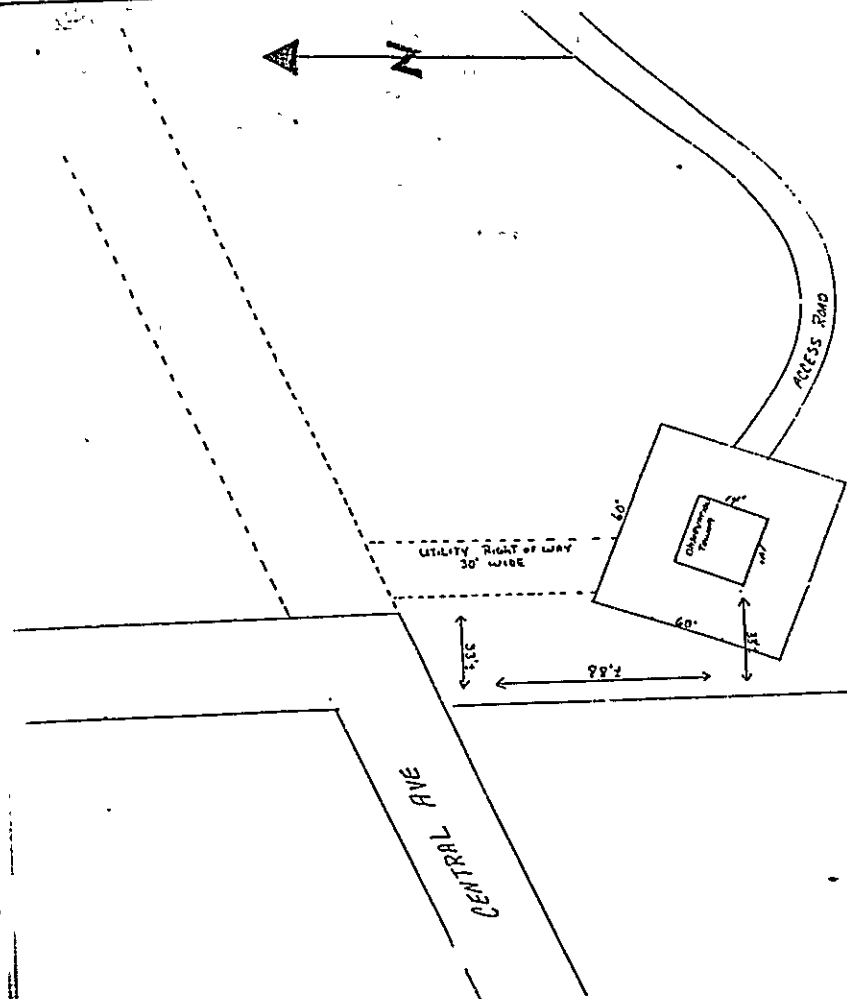
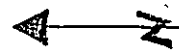
By: Keith E. Buckley
Its Vice-President of Engineering
(Lessee)

CITY OF PORTLAND

By: _____
Its
(Lessor)

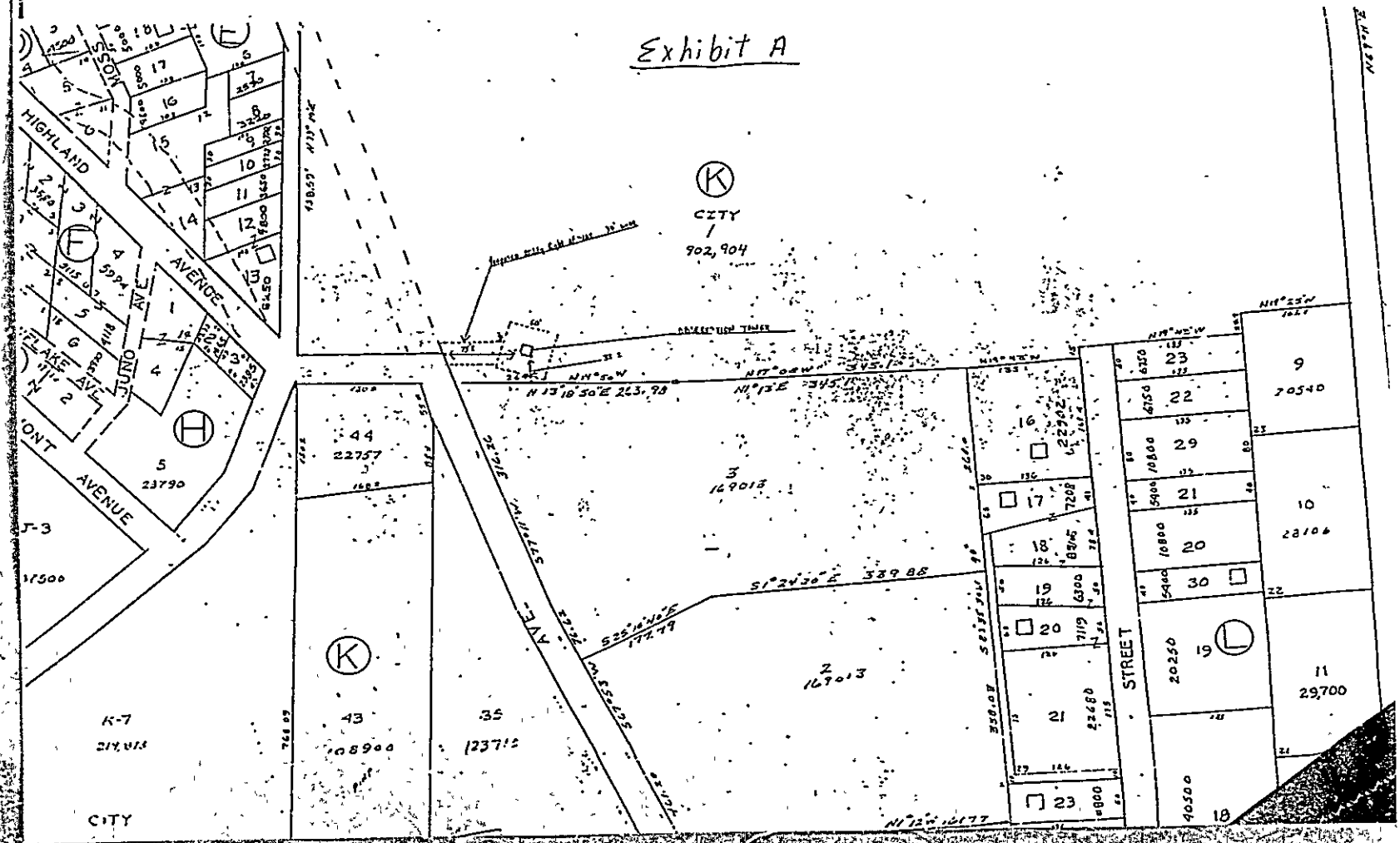
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Exhibit A (Blowup)



NOT TO SCALE

Exhibit A



RECEIVED MAR 24 1987



CITY OF PORTLAND

ROBERT B. GANLEY
CITY MANAGER

March 23, 1987

Mr. Keith E. Burkley,
Vice President/Engineering Operations
PUBLIC CABLE COMPANY
P. O. Box 8180
Portland, Maine 04104

Dear Keith:

I am responding to a couple of issues that have been raised by Public Cable. The first is the proposal to utilize the City-owned fortress on Peaks Island for your microwave facility for the purpose of providing cable service to island residents.

I have discussed this with George Hamilton and I will be asking the legal staff to prepare the necessary lease documents for this to occur. I will also be asking the Community Development Committee of the City Council to approve this lease. I will be bringing this to the City Council as soon as those bodies get the necessary documents and I would suggest you work through Clark Neily, Director of Economic Development to get this lease before the Community Development Committee.

I am working with Mayor Dorler on the Institutional Network that is part of our franchise agreement with Public Cable. I will be meeting with the Mayor on April 3rd and I will contact you after that to let you know how the City wants to proceed on the installation of the Institutional Network.

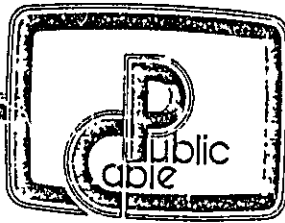
Sincerely,

A handwritten signature in cursive script, appearing to read "Bob".

Robert B. Ganley,
City Manager

RBG.k

cc: Mayor Ronald J. Dorler
✓ Clark Neily, Director/Economic Development
David Lourie, Corporation Counsel
George Hamilton, Director/Communications



March 23, 1987

Mr. George Hamilton
City of Portland
389 Congress Street
Portland, ME 04101

Dear Mr. Hamilton:

As we discussed, below is a list of considerations that Public Cable will need incorporated into the lease agreement for the Peaks Island Bunker site:

1. Term - The lease period needs to run concurrent with our franchise term. 8.5 years from the effective date of the Franchise Agreement (5/15/86) with a 8.5 year option to renew.
2. Access - We need an unconditional right to access the road leading to the building as well as the right to enter and exit the building.
3. Building Improvements - We need the right to make internal building improvements necessary to accomodate receiving equipment and either internal or external improvements that would enable full-time unobstructed roof access. In addition, we need the right to construct a roof structure capable of supporting a steel 8-foot parabolic antenna and other associated peripheral equipment.
4. Utility Pole Placement - We need the right to place utility poles on the property site for the purpose of routing cable service to the existing pole-line on Central Avenue and for the secondary purpose of obtaining telephone and electrical service to the Bunker. We estimate needing to place five to six poles.

Public Cable Company

Portland / South Portland P O Box 8180 Portland ME 04104 (207) 775-3431

5. Building Placement - We need the right to construct or place a prefabricated building on the property site and erect a fence around the building structure.
6. Vehicle Storage - We need the right to leave at least one vehicle stored and secured at the property site. This in essence will be the Peaks Island service vehicle.

While these are the issues that come to mind most immediately and in particular to the Bunker site, I am enclosing a ground lease agreement used by our parent company throughout the country for situations such as this. Hopefully, it can provide some of the ground work necessary to prepare an Agreement between Public Cable and the City of Portland for the Peaks Island Bunker site. If you need any further clarification, please feel free to contact me at your convenience.

Sincerely,

Keith E. Burkley

Keith E. Burkley
V.P. Engineering Operations

KEB/sob

Enclosure

by and between

County of Cumberland, State of Maine, a Maine corporation, hereinafter called "Lessor" and Public Cable Company, a Maine partnership hereinafter called "Lessee".

1. **PREMISES:** Lessor, for and in consideration of the covenants hereinafter contained and made on the part of the Lessee, does hereby demise and lease unto Lessee, and Lessee does hereby lease from Lessor, the parcel of land which is located on Pecks Island, in Portland, County of Cumberland, State of Maine, being more particularly described in Exhibit A attached hereto and made a part hereof, together with all necessary easements required for Lessee's use of these leased premises as described in Paragraph 6 below (hereinafter collectively referred to as "the premises" or "demised premises").

2. **LEASE TERM:** Lessee shall have and hold the demised premises for an initial term of 8.5 years with the option to extend the terms of this lease an additional 8.5 years under the same terms and conditions provided herein. To exercise this option, Lessee shall give Lessor 90 days written notice, prior to the expiration of the initial term, of its intention to exercise this option.

3. **RENT:** Beginning on the date the Lessee completes construction of the Microwave Receiving Tower at the demised premises, Lessee covenants and agrees to pay to Lessor, as rent for the demised premises, the sum of _____ per month, payable in advance on a semi-annual basis every six (6) months, in the amount of _____

4. **LESSOR'S WARRANTIES AND COVENANTS:** Lessor hereby covenants, represents and warrants as follows:

A. **Possession:** That the demised premises are free and clear of all tenancies, whether oral or written, and that Lessee shall have sole and actual possession from the date of last execution hereof.

B. **Covenant of Quiet Enjoyment:** That Lessor is well seized or has good title to the demised premises free and clear of all liens, encumbrances, easements, tenancies and restrictions, excepting Lessor's

nished proof satisfactory to it as to the party entitled thereto. During the term of this Lease and any extension hereof, Lessor covenants that Lessee shall have the quiet enjoyment of the premises for the uses described in Paragraph 6 below.

5. **LESSEE'S COVENANTS:** Lessee covenants and agrees, during the term of this lease and for such further time as the Lessee, or any person claiming under it, shall hold the demised premises or any part thereof:

A. **Rent:** To pay the reserved rent and additional charges on the days in the manner herein described.

B. **Liens and Encumbrances:** Not to suffer the estate of Lessor in the demised premises at any time during the said term to become subject to any lien, charge, or encumbrance whatsoever, and to indemnify and keep indemnified Lessor against all such liens, charges and encumbrances; it being expressly agreed that Lessee shall have no authority, expressed or implied, to create any lien, charge, or encumbrance upon the estate of Lessor in the demised premises, except as provided for herein.

C. **Real Estate Taxes:** To pay all real estate taxes assessed to the premises.

D. **Repairs:** To keep the premises in safe and good condition and repair, subject to ordinary wear and tear and and to Lessor's obligations hereof: if any.

E. **Compliance with Law:** To comply with all governmental laws, rules and regulations applicable to the use, development or operation of the demised premises.

F. **Indemnity:** To hold Lessor harmless for and defend Lessor against all claims and the like arising out of Lessee's use of the premises excepting claims and the like arising from Lessor's negligence.

6. **USE, ALTERATIONS AND TITLE TO IMPROVEMENTS:** Notwithstanding any other provisions herein to the contrary, Lessee shall have the right to use and/or occupy the demised premises for any lawful purpose or purposes and to make alterations, additions and improvements to the

Lessee or Sublessee, as the case may be, and at all times during the term of Lease and any extensions or renewals thereof. In addition, Lessee shall have the right to construct, install, operate and maintain a self-supporting M.R.T. of approximately 60 feet in height at the desired premises for use in connection with the Lessee's business and to enter onto the premises for the operation, repair and maintenance of this M.R.T. However, Lessee, in the construction of this M.R.T., in the operation, repair or maintenance of the same, and in the use of the premises for any other lawful purpose, shall not interfere with the Lessor's use of the premises for its lawful purposes. Lessee shall have the right to remove any such alterations, additions and improvements at any time during the term of this Lease or any extension or renewal thereof, and such removal shall be required to be performed by Lessee no later than ninety (90) days after the termination of this Lease, or any extension or renewal thereof, by lapse of time or otherwise and, for such purpose, Lessee shall be entitled to enter upon the premises. Once removed, Lessee shall restore the premises to the original condition, reasonable wear and tear excepted.

7. **ASSIGNMENT AND SUBLETTING:** Lessee may, with the prior written consent of Lessor, which consent shall not unreasonably be withheld, sublease or assign this Lease or its rights hereunder. In such event Lessee shall remain liable for the payment of all rent required to be paid hereunder and for the performance of all terms, covenants and conditions herein undertaken by Lessee. With the Lessor's prior written consent, the Lessee shall have the right to mortgage or otherwise encumber its leasehold interest.

8. **LESSOR'S RIGHT OF RE-ENTRY:** If Lessee shall fail to pay any installments of rent promptly on the day when the same shall become due and payable hereunder, and continue to fail to pay such rent for fifteen (15) days thereafter, and shall continue in default for a further period of thirty (30) days after written notice thereof by Lessor, or if Lessee shall fail to promptly keep and perform any other affirmative covenants of this

event, and as soon as any such event shall occur, Lessor may declare the said term ended, and enter into said demised premises, or any part thereof and expel Lessee or any person occupying the same in or upon said premises and so to repossess and enjoy said premises as in Lessor's former estate. Notwithstanding any of the above, if any default shall occur other than in the payment of money, which cannot with due diligence be cured within a period of thirty (30) days and Lessee, prior to the expiration of thirty (30) days from and after the giving of notice as aforesaid, commences to eliminate the cause of such default, then the Lessor shall not have the right to declare the said term ended by reason of such default.

9. **HOLDING OVER:** In the event Lessee continues to occupy the premises after the last day of the term hereby created, or after the last day of any extension of said term, and the Lessor elects to accept rent thereafter, a tenancy from month to month only, shall be created and not for any longer period.

10. **TRADE FIXTURES, MACHINERY AND EQUIPMENT:** Lessor agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the demised premises by Lessee, its subtenants, agents or representatives shall not become the property of Lessor or a part of the realty no matter how affixed to the lease premises and shall be removed by Lessee, in its discretion, at any time and from time to time during entire term of this Lease and any renewals, and, in any event, at the end of this Lease or any extension or renewal thereof, by agreement, lapse of time or otherwise. Upon request of Lessee or Lessee's assignees or any subtenant, Lessor shall execute and deliver any Real Estate Consent or Waiver forms submitted by any Vendors, Lessors, Chattel Mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed in the demised premises by any subtenant setting forth the fact that Lessor waives, in favor of such Vendor, Lessor, Chattel Mortgagee or any holder or owner, any lien, claim, interest or other right therei

forceable, the remainder of this Lease, or the application of such provision to persons whose circumstances other than those as to which is held invalid or unenforceable, shall not be affected thereby.

B. The terms, conditions and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the parties hereinafter their heirs, personal representatives, successors, or assigns, and shall run with the land; and where more than one party shall be Lessors under this Lease, the word Lessor whenever used in this Lease shall be deemed to include all parties hereto jointly and severally.

C. No waivers, alterations or modifications of this Lease or agreements in connection therewith shall be valid unless in writing and executed by both Lessor and Lessee herein.

D. The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such Paragraphs of this Lease or in any way alter the scope or intent of this Lease. Any gender used herein shall be deemed to refer to the gender more grammatically applicable to the party to whom such gender relates. The use of singular herein shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

E. If at any time after the execution of this Lease, it shall become necessary or convenient for one of the parties hereto to serve any demand or communication upon the other party, such notice, demand or communication shall be in writing signed by the party serving the same and deposited in the registered or certified United States mail, return receipt requested, postage prepaid and (a) if intended for Lessee shall be addressed to:

Public Cable Company
118 Johnson Road
Portland, Maine 04101

with a copy to:

Andrew J. Bernstein, Esq.
Bernstein, Shur, Sawyer & Nelson
One Monument Square
Portland, Maine 04101

of the realty no matter how affixed thereto and that such property may be removed from the premises by the Vendor, Lessor, Chattel Mortgagee, owner or holder at any time upon default by the sub-tenant in the terms of such Chattel Mortgage or other similar documents, free and clear of any claim or lien of Lessor. Upon removal of such personal property, Lessee shall restore the premises to its original condition, reasonable wear and tear excepted.

11. **INSURANCE:** Lessee shall provide property insurance to insure the M.R.T., and any other alterations of improvements, additions and items of personal property at the premises up to their value (to be determined by Lessee). Lessee shall also provide liability insurance for its use of the subject property in an amount not less than One Million Dollars (\$1,000,000), which liability insurance shall name Lessor as an additional insured. Lessee states that it is self-insured for the first \$100,000 under its liability insurance policy.

12. **CONDITIONS PRECEDENT:** Lessor understands that, as a condition precedent to Lessee's ability to construct and operate any cable television or related communications system to which this Lease applies, Lessee must obtain the permission of the Federal Communications Commission (the "FCC") and other governmental entities, and associated licenses from the FCC, and LESSEE must execute a Lease for a site for the installation of a single antenna transmitting dish, which site is compatible in Lessee's view to the receiving site on the subject demised premises. If Lessee does not obtain the necessary FCC licenses, and any other governmental approvals necessary to operate the communications system (including, without limitation, appropriate zoning approvals and the permission to erect an equipment of sufficient height on the premises) or if Lessee does not execute such a compatible single antenna receiving dish Lease, Lessee may cancel this Lease immediately by written notice to Lessor and be under no further obligations hereunder.

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail.

14. ADDENDA AND EXHIBITS: This Lease includes the following Rider(s) and/or Exhibits, which shall take precedence over conflicting provisions (if any) of this Lease, and are hereby made an integral part of this Lease and fully incorporated herein by reference:

- Exhibit A (Legal Description)
- Exhibit B (form)

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

WITNESSES:

PUBLIC CABLE COMPANY

By: _____
Its _____
(Lessee)

By: _____
Its _____
(Lessor)

STATE OF MAINE
Cumberland, ss.

1986

I, _____ (a Notary Public),
for the county and state aforesaid, DO HEREBY CERTIFY
that _____ in and
person whose name is subscribed to the foregoing instrument, appeared
before me this day in person and acknowledged that he signed, sealed
and delivered the said instrument as his free and voluntary act, and as
the free and voluntary act of said limited partnership for the uses and
purposes therein set forth.

Given under my hand this ___ day of _____,
Before me,

Notary Public

CITY OF PORTLAND, MAINE

MEMORANDUM

TO: Robert B. Ganley, City Manager

DATE: 4/14/87

FROM: Clark M. Nelly, Economic Development Director

SUBJECT: Item for City Council Agenda of April 22, 1987

ORDER AUTHORIZING LEASE WITH PUBLIC CABLE COMPANY - SPONSORED BY THE COMMUNITY DEVELOPMENT COMMITTEE, COUNCILOR ROBERT D. LEE, CHAIRMAN

STATEMENT OF FACT

The Public Cable Company wishes to lease the former look-out tower on Peaks Island that is the property of the City of Portland, including the area around it, for the purpose of mounting an antenna to supply cable television to the residents of Peaks Island.


The pertinent components of the lease are as follows:

1. The lease is for a term of 8 1/2 years, with an 8 1/2 year renewal option under certain conditions.
2. Rent is to begin after the antenna is installed, which rent shall be \$150.00 per month, payable in advance at the rate of \$1,800 per year. The annual rent is to be increased each year by the fractional increase as outlined in the Consumer Price Index.
3. The City assures Public Cable Company quiet enjoyment of the premises.
4. The City agrees to lease the premises "as is". The lessee agrees that the demised premises are fit for the purposes for which the lessee intends to use them.
5. The lessee agrees to keep the premises in safe and good condition and repair, subject to ordinary wear and tear.
6. The lessee agrees to comply with any laws, rules, regulations, and ordinances for use of the facility.
7. The lessee agrees to hold the City harmless and defend City against all claims arising out of the lessee's use of the premises.
8. The lessee has the right to make alterations, additions, and improvements to the property in order to accomplish the purposes for which they are leasing the property.
9. The lessee shall have the right erect a fence around the property to protect it.
10. The lessee will have the right to park, store, or leave vehicles at the location inside the fence.

Robert B. Ganley
April 14, 1987
Page 2

11. The City grants the lessee an easement of access over the road leading to the building.
12. The City grants lessee the right to erect utility poles to service the facility.
13. The lessee shall carry property insurance. Lessee will also carry liability insurance of not less than One Million Dollars, and the City shall be named as an additional insured.
14. The lessee shall obtain all required permits, whether federal, state, or local, to carry out the operations that they envision for this site.

The Community Development Committee reviewed this item at their meeting on April 14, 1987, and voted to recommend approval of it by the Portland City Council.


Clark M. Neily
Economic Development Director

CMN/ljn

cc: David A. Lourie, Corporation Counsel

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ORDER

AUTHORIZING LEASE OF LOOK-OUT
TOWER ON PEAKS ISLAND

(The Community Development
Committee, Councilor Robert D.
Lee, Chairman)

RECEIVED

JUL 2 0 1987

DEPT OF BUILDING INSPECTIONS
CITY OF PORTLAND

IN THE CITY COUNCIL

April 22, 1987

Attest:

James Williams
City Clerk.

Yeas

Nays

Given first reading. Councilor MacWilliams
amendment to add "for broadcasting
purposes only" and "additionally, "City
reserves for its own uses in a non-interfering
manner", passed, 8 Yeas, and passed, as
amended, 8 Yeas.