

## AGREEMENT

THIS AGREEMENT is made and entered into as of the 29<sup>th</sup> day of Dec, 1992, by and between SHELBY CABLE, INC., an Alabama corporation ("Company"), HIGHLAND POINTE PROPERTIES, LTD., an Alabama limited partnership, and HIGHLAND POINTE DEVELOPMENT, LTD., an Alabama limited partnership (both said limited partnerships being herein jointly and severally referred to as "Developer").

### W I T N E S S E T H:

WHEREAS, Company is in the business of furnishing and providing broad band communications services, including cable television services, to commercial and residential subscribers within the geographical boundaries of Shelby County, Alabama; and

WHEREAS, Developer is the owner and developer of a tract of land located in Shelby County, Alabama, known as "Highland Pointe", on which a planned unit development consisting of single-family, medium density and multi-family residences, and related amenities and improvements will be built, said development to include all that real estate described on Schedule "A" hereto, (the "Development"); and

WHEREAS, it is anticipated that prior to the sale of any land within the Development by the Developer to residents, certain portions of the Development will be made subject to certain covenants and restrictions to be set forth in a Declaration of Restrictions and Covenants (hereinafter collectively referred to as the "Declaration") under which Developer will establish and reserve various easements for access and installation of utility services (including broad band communications services) and the right to cause all roadways within the real property subject to the Declaration to be private roadways; and

WHEREAS, Developer desires to provide to occupants of the dwellings to be constructed in the Development the access to broad band communication service, and Developer is willing to grant to Company certain rights and privileges with respect to the Development to Company in order to induce Company to make the necessary investment in plant and equipment to make such service available and to encourage Company to provide broad band communications services to the Development; and

WHEREAS, Company desires to provide to Developer and to all subsequent owners and occupants of any dwellings constructed within the Development access to broad band communications services as hereinafter set forth.

## A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, each party intending to be bound hereto, the parties represent, warrant, covenant and agree as follows:

1. Grant of Exclusive License. Subject to the terms and provisions of this Agreement, the Developer hereby grants to Company the exclusive right to provide broad band communications services, including cable television services and similar audio and video services transmitted by means of underground cable, (all of which is herein referred to as "CATV Services") to all that parcel of land more particularly described on Schedule "A" (the "Development"), including, without limitation, the exclusive right to construct, install and maintain underground cable transmission lines and related transmission and receiving equipment (collectively, the "CATV System"), and to dispense CATV Services through those facilities, to each and every site and location within the Development; provided, however, that the grant contained in this Section 1 shall be subject to any rule of law or regulation of any federal, state or local governmental agency now or hereafter enacted which limits, restricts, or prohibits the granting of exclusive rights to provide CATV Services and shall be further subject to limitations on this section imposed by Sections 16, 17, and 18 hereof.

2. Grant of Easement. The Developer hereby grants, bargains, sells, and conveys to Company the exclusive right, easement and privilege (subject to the rights of all other parties [other than providers of CATV services] having any interest therein) to construct, install, repair, maintain, and replace cable and related devices and equipment for the purpose of furnishing CATV Services underground along and adjacent to each and every public or private street, drive, alleyway, and passage within the Development. The rights conveyed by this Section 2 shall be perpetual and Developer shall not grant to others easements for cable and related devices and equipment used for the transmission of CATV Services. The rights and easements conveyed by this Section 2 shall be nonexclusive and used in common with Developer, its successors and all other persons having any interest therein, with respect to other devices and equipment, and shall be exercised concurrently with other entities and utilities, other than providers of CATV Services, having easements across said areas. Developer further grants to Company the permanent and perpetual non-exclusive right, in common with Developer, its successors and assigns, and all other persons or entities having any interest therein, to exercise any and all of the rights retained by Developer pursuant to the Declaration, and to exercise any and all similar rights retained by Developer for utility and CATV Service



and lines and equipment pursuant to any other declaration of covenants, conditions, and restrictions existing with respect to all or any portion of the Development, now or in the future.

3. **Additional Easements.** The parties acknowledge and agree that the Declaration has not yet been filed and all public and private streets have not yet been planned or constructed within the Development, and Developer agrees, for itself and its successors and assigns, to grant to Company, its agents, employees and contractors, such further or additional easements over, across, through, under and upon all other public or private streets within the Development as may be reasonably required for the construction, installation, repair, maintenance and replacement of cable and related devices and equipment necessary for the furnishing of CATV Services underground along all future public or private roadways constructed within the Development. Developer shall not dedicate any future or existing private streets or roadways to public use without prior notice of such dedication to Company.

4. **Fiber Optic Connection.** The Company agrees to provide a direct fiber optic connection between the entrance to the Development and the Company's headend, with a capacity of approximately 100 channels. The signals provided by this connection will meet or exceed all applicable Federal Communications Commission technical specifications.

5. **Development Channel.** The Company will provide the Developer, at the Company's cost and expense, with one channel for reception within the Development for the sole use of the subscribers of the Development. The Company will provide a character generator, keyboard, and modulator for this channel.

6. **Parity with Greystone.** The Company will provide to the Development cable television programming, technical facilities, and services equal to those provided to the Greystone residential development at prices no greater than those charged to Greystone or other Shelby County subscribers of the Company for similar programming, facilities, or services.

7. **Furnishing of CATV Services.** Company shall proceed with the installation of such cable and related equipment within the Development as is necessary to make CATV Services available generally to residents of the Development. Company need not, however, install cable or other equipment from Company's main distribution cable to any specific residence until the owner of said residence shall have subscribed for cable service. Company shall bear all costs associated with the construction and installation of its equipment and cable and shall be responsible for obtaining all governmental approval permits, including franchises from the City of Hoover or Shelby County, as the case may be (the "Franchise Agreement") as shall be necessary to the

furnishing of CATV Services to the Development. Company shall comply with all laws and regulations promulgated by any state, local or federal authority applicable to the furnishing of CATV Services and agrees to abide by all the provisions of the Franchise Agreement. Company agrees to make CATV Services available to subscribers within the Development in exchange for payment by said subscribers of the installation and monthly service charges permitted under the applicable Franchise Agreement. Said service will be subject, however, to the provisions of the Franchise Agreement and other applicable laws and regulations and to the general availability of CATV Services to the Company's subscribers, which service may be interrupted by act of God, force majeure, equipment malfunction, and routine servicing requirements. In the event CATV Service is interrupted for any reason, Company shall promptly commence and diligently pursue to completion the complete restoration of all CATV Services.

8. **Technical Standards; Installation.** The CATV System shall at all times be maintained and operated by Company in good condition and repair. Company shall use reasonable industry practices in installation of the CATV System and shall cooperate with and coordinate with other utilities using the easement areas herein conferred to avoid damage to any said utility lines. Company shall not cut or break any asphalt streets to install cable or for any other purpose without the prior consent of Developer. Any utility lines damaged, broken or cut by Company shall be promptly repaired and replaced by Company. Company shall have the right to remove plant materials during the course of installation; provided, however, that after the installation of its cable, Company shall take all reasonable action necessary to restore and return the grounds located within the Development to the original appearance and condition.

9. **Access.** Developer hereby grants to Company, its agents, employees and contractors, the permanent, perpetual and non-exclusive right, in common with Developer and all other persons or entities having any interest therein, to use all public or private streets and roadways within the Development for vehicular and pedestrian access to the Development in connection with the installation, service, maintenance and repair of all cable equipment necessary to provide CATV Service to the Development. Furthermore, Developer agrees to grant to Company, its agents, employees and contractors, such further and additional easements over, across, through and upon all other public or private roads and streets within the Development which may be reasonably necessary to provide Company with vehicular and pedestrian access to all other portions of the Development for the installation, service, maintenance and repair of all cable equipment necessary to provide CATV Service to all other portions of the Development. All such equipment, except for manholes and other surface access areas,



and except for such other equipment as shall be agreed to by Developer, shall be located completely underground.

10. Unauthorized Use. The Company shall have the right to exercise the rights provided for herein and to take all other legal steps to prevent the unauthorized use of CATV Services within the Development, and the Developer agrees to cooperate with the Company in preventing any such unauthorized use.

11. Representations of Company. Company represents and warrants that it is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Alabama, that it has full corporate authority and power to enter into this agreement and to perform the provisions hereof, and that this agreement represents its valid and binding obligation.

12. Representations of Developer. Each Developer represents and warrants that it is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Alabama, that it has full authority and power to enter into this agreement and to perform the provisions hereof, and that this agreement represents its valid and binding obligation. Each Developer further represents that it holds fee simple interest in and to the land constituting the Development, free and clear of all liens and encumbrances except for such mortgages, liens, and restrictions of which it has been advised in writing by Developer prior to execution of this Agreement. The consent of all holders of mortgages or other liens against the Development shall be a condition precedent to the effectiveness of this Agreement.

13. Indemnity. The Company shall indemnify, defend and hold harmless the Developer, its officers, directors, agents and employees, from any and all liability, claims, suits, actions and damages, including without limitation, costs of court and reasonable attorneys' fees, resulting from the construction, installation and operation or maintenance of the CATV System within the Development except for such matters resulting from Developer's negligence or misconduct. Developer shall give prompt written notice to Company of any claim covered by the foregoing indemnity and Company shall have the right to compromise or defend, at its own expense and by its own counsel, any such matter. If Company shall undertake to compromise or defend, it shall promptly notify Developer of its intention to do so, and Developer shall cooperate fully with Company in the defense thereof and in any compromise thereof (so long as Developer incurs no expense in connection therewith). Such defense shall be by legal counsel determined by Company and reasonably approved by Developer. After Company has notified Developer of its intention to undertake to defend any such asserted liability, Company shall not be liable for any additional legal expenses incurred by Developer's separate legal counsel in connection with any defense of any such asserted liability. If the

Company shall desire to make a final and complete compromise of any such third party claim and the Developer shall refuse to consent to such compromise which does not require Developer to pay any compensation or other consideration with respect to such claim, then Company's liability with respect to such third party claim shall be limited to the amount so offered in compromise. Under no circumstances shall Developer compromise any third party claim without the written consent of the Company.

14. Remedies. The parties acknowledge and agree that the rights hereunder are of a unique nature and that in the event of default by either party hereunder, the non-breaching party shall be entitled, in addition to all other remedies available at law or equity, to preliminary and permanent injunctive relief and specific performance to halt any breach or threatened breach hereof or to require fulfillment on the part of the breaching party of its obligations hereunder.

15. Additional Instruments; Recording. Developer and Company agree to execute and deliver all such further deeds, instruments, and writings as shall be necessary to implement the provisions of this Agreement. This Agreement or an abbreviated form of this Agreement shall be recorded in the real estate records of the Judge of Probate of Shelby County, and each party agrees to cooperate with the other in preparing and filing such other writings, documents, and instruments as are necessary to implement, protect and preserve the rights accorded to each of the parties hereunder.

16. Exclusive Grant. During such time as Company is furnishing CATV Services to residents of the Development, Developer agrees that it shall not permit the installation of any cable television cable or equipment or any substitute master television system in the Development, nor will it grant any easement to any provider of a similar system, the intention of this provision being to grant to Company the exclusive right to provide CATV Services to the Development. The Developer shall not be deemed to be in violation of this Section if such installation lawfully takes place or any such service is lawfully rendered, in each case, without the need for the Developer's consent or the need for easements across lands within the Development owned by the Developer or dedicated by the Developer to the public use or to the common use of the residents of the Development, nor shall the Developer be deemed in violation of this Section if the Developer is required by law (pursuant to a court order or a written opinion of its counsel) to consent to or otherwise permit any such installation or service.

17. CATV Equipment. Developer acknowledges that notwithstanding the exclusive grant of rights set forth above, Company shall not be required to use equipment serving the Development solely for the furnishing of CATV Services to the Development but that said equipment may be used in conjunction with



other equipment of Company to furnish CATV Services to any of Company's subscribers, both within and outside of the Development. All of the CATV equipment shall remain at all times the sole and exclusive property of Company.

18. Covenant Running with the Land; Perpetuities. This Agreement shall constitute a covenant running with the land, binding upon and enforceable against Developer and Company, and their respective successors, and assigns. The grants hereunder shall all be deemed perpetual except to the extent expressly herein provided otherwise. If any of the covenants, conditions, restrictions or other provisions of this Agreement shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Company's present shareholders, Allan J. McDonald and William W. McDonald.

19. Severability. Each of the agreements and provisions herein contained shall be deemed separate, severable, and independent, and in the event any part or provision of any such agreement shall be declared invalid by any court of competent jurisdiction, such invalidity shall not in any manner affect or impair the validity or enforceability of any other part or provision of the agreements contained herein, it being the intent of the parties that this Agreement be construed in such manner as to give effect to the provisions hereof to the maximum extent permitted by law.

20. Notices. All notices and other communications provided for hereunder shall be in writing and shall be deemed received upon delivery in person or, if mailed, at the time deposited in U.S. Certified Mail, Return Receipt Requested, postage prepaid and in any case addressed as follows:

If to Developer:

Highland Pointe Properties, Ltd.  
Highland Pointe Development, Ltd.  
2700 Highway 280, Suite 325  
Birmingham, Alabama 35223

If to Company:

Shelby Cable, Inc.  
c/o McDonald Group, Inc.  
One Office Park Circle, Suite 300  
Birmingham, Alabama 35223

21. Governing Law. This Agreement shall be construed in accordance with, and the rights of the parties hereunder shall in all respects be governed by, the laws of the State of Alabama.

22. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter hereof. No amendment to or modification of the terms hereof shall be effective unless set forth in the written agreement signed by each of the parties hereto, ...

23. Use of Defined Terms. As used in this Agreement, the term "Developer" shall mean and include each of Highland Pointe Properties, Ltd., and Highland Pointe Development, Ltd., and its and their mortgagees, lenders, tenants, lessees, transferees, grantees and any other persons or entities who hereafter acquire any interest in any of the property constituting the Development and their respective heirs, executors, administrators, successors and assigns.

24. Lack of Government Permission. If Company is prevented from furnishing cable services for the reason that it does not have proper permission from any governmental entity having jurisdiction over the Development, then during such time as the Company is so prevented from furnishing CATV Services, the exclusive rights set forth herein shall be deemed non-exclusive with respect to CATV Services, but the prevention of the Company from furnishing said services shall not revoke the easements and other rights set forth herein, which said rights shall continue to be exercised by Company on a non-exclusive basis with others to whom Developer has granted similar rights.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective representatives as of the day and year first above written.

COMPANY:

SHELBY CABLE, INC., an Alabama corporation

By:

  
Its President

WITNESS:






**DEVELOPER:**

**HIGHLAND POINTE PROPERTIES, LTD.,  
an Alabama Limited Partnership**

By:   
Billy D. Eddleman  
General Partner

**HIGHLAND POINTE DEVELOPMENT, LTD.,  
an Alabama Limited Partnership**

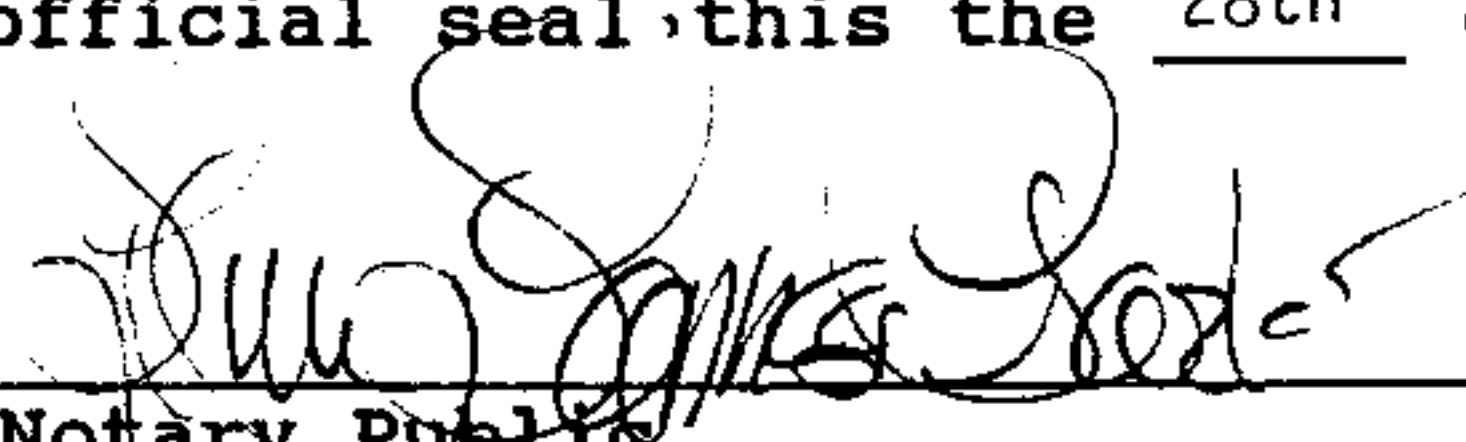
By: Eddleman Properties, Inc., its  
General Partner

  
Billy D. Eddleman  
Chairman of the Board and Chief  
Executive Officer

STATE OF ALABAMA     )  
                                  )  
COUNTY OF Jefferson     )

I, Lynn Lannes Parks a Notary Public in and for  
said County, in said State, hereby certify that William W.  
McDonald, whose name as President of Shelby  
Cable, Inc., an Alabama corporation, is signed to the foregoing and  
who is known to me acknowledged before me on this day that being  
informed of the contents he, as such officer and with full  
authority, executed the same voluntarily for and as the act of said  
corporation.

Given under my hand and official seal this the 28th day of  
December, 19 92.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires October 1, 1993

STATE OF ALABAMA     )  
                                  )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_ a Notary Public in and for  
said County, in said State, hereby certify that \_\_\_\_\_  
\_\_\_\_\_, whose name as General Partner of Highland Pointe  
Properties, Ltd., an Alabama Limited Partnership, is signed to the  
foregoing and who is known to me acknowledged before me on this day  
that being informed of the contents he, as such General Partner and  
with full authority, executed the same voluntarily for and as the  
act of said limited partnership, in his capacity as aforesaid.

Given under my hand and official seal this the \_\_\_\_\_ day of  
\_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_



STATE OF ALABAMA )

COUNTY OF Jefferson )

I, George Ann Bolue a Notary Public in and for said County, in said State, hereby certify that Billy D. Eddleman whose name as General Partner of Highland Pointe Properties, Ltd., an Alabama Limited Partnership, is signed to the foregoing and who is known to me acknowledged before me on this day that being informed of the contents he, as such General Partner and with full authority, executed the same voluntarily for and as the act of said limited partnership, in his capacity as aforesaid.

Given under my hand and official seal this the 29<sup>th</sup> day of December, 1992.

George Ann Bolue  
Notary Public  
My Commission Expires 8/15/94

STATE OF ALABAMA )

COUNTY OF Jefferson )

I, George Ann Bolue a Notary Public in and for said County, in said State, hereby certify that Billy D. Eddleman, whose name as Chairman of the Board and Chief Executive Officer of Eddleman Properties, Inc., an Alabama corporation, General Partner of Highland Pointe Development, Ltd., an Alabama Limited Partnership, is signed to the foregoing and who is known to me acknowledged before me on this day that being informed of the contents he, as such officer of such General Partner and with full authority, executed the same voluntarily for and as the act of said limited partnership in his capacity as aforesaid.

Given under my hand and official seal this the 29<sup>th</sup> day of December, 1992.

George Ann Bolue  
Notary Public  
My Commission Expires 8/15/94

## SCHEDULE A

### PARCEL I:

The West 1/2 of the Section and the W 1/2 of the E 1/2 of Section 4, Township 19 South, Range 1 West.

### PARCEL II:

The S 1/2 of NE 1/4 of NE 1/4; E 1/2 of SE 1/4 of NE 1/4; E 1/2 of NE 1/4 of SE 1/4 and SE 1/4 of SE 1/4 of Section 5, Township 19 South, Range 1 West.

The South 620 feet of the SW 1/4 of SE 1/4 of Section 5, Township 19 South, Range 1 West lying East of the right of way of U.S. Highway No. 280, except that part of said South 620 feet included in Parcel described in deed to C.B. Bragg and Ella Bragg recorded in Book 176, Page 522 and except that part described in deed to Jos. S. Vaughn and Mabel E. Vaughn recorded in Book 183, Page 498, both in the Office of the Judge of Probate of Shelby County, Alabama.

### PARCEL III:

All of Section 8, Township 19 South, Range 1 West lying East of the right of way of U.S. Highway No. 280 except the following parcels:

That part described in deed to State of Alabama recorded in Book 244, Page 11 in the Office of the Judge of Probate of Shelby County, Alabama.

That part included in Survey of Skyland recorded in Map Book 3, Page 66 in the Office of the Judge of Probate of Shelby County, Alabama.

That part described in deed to R.M. Srygley recorded in Book 176, Page 149 in the Office of the Judge of Probate of Shelby County, Alabama.

The part described in deed to Alabama Power Company recorded in Book 276, Page 672 in the Office of the Judge of Probate of Shelby County, Alabama.

That part described in deed to Stanley S. Swiney recorded in Book 122, Page 287 in the Office of the Judge of Probate of Shelby County, Alabama.

That part described in deed to C.T. Turner recorded in Book 137, Page 207 in the Office of the Judge of Probate of Shelby County, Alabama.

Any part included in Survey of Sunrise recorded in Map Book 3, Page 69 in the Office of the Judge of Probate of Shelby County, Alabama.



**SCHEDULE A**  
**(Continued)**

**PARCEL IV:**

All of Section 9, Township 19 South, Range 1 West, except the NE 1/4 of SE 1/4 and except that part of the SE 1/4 of SE 1/4 lying Southeast of the old county road.

**PARCEL V:**

All of the NW 1/4 of Section 10, Township 19 South, Range 1 West lying Northwest of the old county road.

**PARCEL VI:**

The N 1/2 of NW 1/4; SW 1/4 of NW 1/4 of Section 16, Township 19 South, Range 1 West.

Inst # 1997-33476

- 2 - 10/15/1997-33476  
09:25 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
013 MEL 30.50