

2012-007841

Klamath County, Oregon



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RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Charter Communications  
Attn: Jeanette Macall  
9335 Prototype Dr.  
Reno, NV 89521

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### NONEXCLUSIVE INSTALLATION AND SERVICE AGREEMENT

This Installation and Distribution Agreement ("Agreement") between **Falcon Cable Systems Company II, LP** ("Operator") and **Quail Park of Klamath Falls, LLC** ("Owner") is dated this **15** day of **May 2012** ("Effective Date"). Capitalized terms used in this Agreement shall have the same meaning as specified in the "Basic Information" section below.

BASIC INFORMATION	
<b>Premises (or Property) (further described in Exhibit A):</b>	
Premises Name:	<u>Quail Park at Crystal Terrace</u> Number of Units: <u>90</u>
Street Address:	<u>1000 Town Center Dr.</u>
City/State/Zip:	<u>Klamath Falls, OR 97601</u>
<b>Notices:</b>	
Owner Name:	<u>Quail Park of Klamath Falls, LLC</u>
Address:	<u>2040 Westlake Ave # 310</u>
City, State Zip:	<u>Seattle, WA 98109</u>
Phone:	<u>206-441-1770</u>
Fax:	<u>206-441-1977</u>
<b>Agreement Term:</b> The period starting on the Start Date and ending on the Expiration Date. The Agreement Term shall automatically be renewed for additional successive terms of 1 year unless either party provides written notice of termination not less than 6 months prior to the end of the Agreement Term then in effect.	
<b>Start Date:</b> <u>5/15/2012</u>	<b>Expiration Date:</b> <u>5/15/2017</u>
<b>Services:</b> Services shall mean all lawful communications services (including video/cable services) that Operator may provide.	
<b>Equipment:</b> All above-ground and underground coaxial cables, fiber, internal wiring, conduit, electronics and/or any other equipment or facilities necessary for, installed by, and/or used by Operator (or its predecessor(s)-in-interest) to provide the Services. The Equipment extends from the external boundary lines of the Premises up to and including the outlets in each unit.	

**1. Grant.** In consideration of the mutual promises and other consideration set forth herein, the sufficiency of which is hereby acknowledged, Owner grants Operator the right (including ingress and egress) to install, operate, improve, remove, repair and/or maintain its Equipment within the Premises. Upon termination of this Agreement, Operator shall have the right to remove its Equipment, as applicable, provided that any Equipment that Operator does not remove within 90 days of such termination, shall be deemed abandoned and become the property of the Owner. This Agreement may be recorded. This rights granted hereunder shall run with the land and shall bind and inure to the benefit of the parties and their respective successors and assigns.

**2. Services; Equipment.** Operator shall have the (i) nonexclusive right to offer and (ii) exclusive right to market the Services to residents of the Premises. Operator will install, maintain, and/or operate the Equipment in accordance with applicable law. The Equipment shall always be owned by and constitute the personal property of the Operator, except that from the Effective Date, the internal wiring located within any building, which includes "cable home wiring" and "home run wiring"<sup>1</sup> (the "Internal Wiring") and, without limitation, excludes set-top boxes, electronics, active components, and exterior Equipment, shall be deemed to be owned by and constitute the personal property of the Owner. Owner hereby grants to Operator the exclusive right to use the Internal Wiring during the Agreement Term and (i) shall not grant any other provider rights to use the Internal Wiring and (ii) shall prohibit other providers from using the same.

Without limiting Operator's exclusive rights to use Internal Wiring and its Equipment, should either (A) an antenna, or signal amplification system or (B) any Owner modification, relocation of, and/or work on the Internal Wiring interfere with the provision of Operator's Services, Owner shall eliminate such interference immediately. In the event (i) installation, repair, maintenance, or proper operation of the Equipment, and/or unhindered provision of the Services is not possible at any time as a result of interference, obstruction, or other condition not caused by Operator, or (ii) such interference, obstruction, or other condition (or the cause thereof) will have negative consequences to Operator's personnel safety or the Equipment, as Operator may determine in its sole discretion, Operator may terminate this Agreement without liability upon written notice to Owner.

**3.** Owner represents and warrants that it is the legal owner of and the holder of fee title to the Premises; that it has the authority to execute this Agreement. The person signing this Agreement represents and warrants that he/she is Owner's authorized agent with full authority to bind Owner hereto. If any one or more of the provisions of this Agreement are found to be invalid or unenforceable, such invalid provision shall be severed from this Agreement, and the remaining provisions of this Agreement will remain in effect without further impairment.

**4.** In the event of a default by a party hereunder in addition to rights available at law or in equity, the non-defaulting party may (i) terminate the Agreement after 30 days prior written notice, unless the other party cures or commences to cure such breach during such 30-day period and diligently proceeds with such cure (exercising commercially reasonable efforts). Neither party shall be liable to the other party for any delay or its failure to perform any obligation under this Agreement if such delay or failure is caused by the occurrence of any event beyond such party's reasonable control.

**5.** Each party shall indemnify, defend and hold harmless the other against all liability, claims, losses, damages and expenses (collectively, "Liability"), but only to the extent that such Liability arises from any negligent or willful misconduct, breach of this Agreement, or violation of a third party's rights or applicable law on the part of the party from whom indemnity is sought. Each party seeking such indemnification shall use reasonable efforts to promptly notify the other of any situation giving rise to an indemnification obligation hereunder, and neither party shall enter into a settlement that imposes liability on the other without the other party's consent, which shall not be unreasonably withheld.

**6.** Notwithstanding anything to the contrary stated hereunder, Operator will not be liable for any indirect, special, incidental, punitive or consequential damages, including, but not limited to, damages based on loss of service, revenues, profits or business opportunities.

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<sup>1</sup> The terms "cable home wiring" and "home run wiring" are defined at 47 CFR §§ 76.5(II) and 76.800(d).

IN WITNESS WHEREOF, the parties have set their hands on the date indicated in their respective acknowledgments.

**OPERATOR**

**Falcon Cable Systems Company II, LP**

By: Charter Communications, Inc., its Manager

By: 

Printed Name: Frank Antonovich

Title: Vice President/General Manager

Date: 6-11-12

**OWNER**

**Quail Park of Klamath Falls, LLC**

By: 

Printed Name: Denis R Bryant

Title: Managing Member

Date: 5-15-12

OPERATOR:  
STATE OF Washington  
COUNTY OF Clark }

On 6/11/12 before me, Cara Trautmann, Notary Public, personally appeared Frank Antonovich who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Washington that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Cara Denise Trautmann



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OWNER:  
STATE OF Washington )  
COUNTY OF King )

On May 15, 2012 before me, Ian C Gazarek, Notary Public, personally appeared Denis R Bryant who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Washington that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Ian C Gazarek



**EXHIBIT "A"**

**Legal Description**

**APN: 3809-020000-00500-000**

**TRACT 1:**

**PARCEL A:**

Parcel 1 of Land Partition 62-00 in the SE1/4 NE1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

**PARCEL B:**

Easement as disclosed in Agreement for Reciprocal Access Easement recorded June 8, 2001 in Volume M01, page 27242, Microfilm Records of Klamath County, Oregon.

**TRACT 2:**

A portion of land situated in the SE1/4 NE1/4 of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, as shown by City of Klamath Falls Property Line Adjustment 13-11 Map of Survey, and more particularly described as follows: Beginning at a point marked by a 5/8 inch iron rod from which the Southwest corner of Parcel 2 of Land Partition 62-00 bears South 15°02'53" East 320.94 feet; thence North 15°02'53" West 45.31 feet to a point marked by a 5/8 inch iron rod; thence North 74°57'07" East 19.29 feet to a point marked by a 5/8 inch iron rod; thence South 15°02'53" East 45.31 feet to a point marked by a 5/8 inch iron rod; thence South 74°57'07" West 19.29 feet to the point of beginning, with bearings based on Klamath County Land Partition 62-00.

**TRACT 3:**

Easement as disclosed in Perpetual Easement For Utilities and Access recorded October 7, 2011 as Instrument no. 2011-11193, Klamath County Records, Oregon.