

**BULK CABLE SERVICE ADDENDUM**  
**Standard Multiple Dwelling Unit (excluding senior housing)**

The Nonexclusive Installation and Service Agreement (the "Agreement") with an Effective Date of January 15, 2014 by and between Kapilana Estates HOA ("Owner") and Falcon Cablevision, a California Limited Partnership ("Operator") made with respect to the 74 multiple dwelling units known as the Kapilana Condominiums, located at 793 Winn Rd, Osage Beach, MO 65065 (the "Premises"), is hereby amended to include the following and is otherwise confirmed in all respects, provided that the event of any conflict between the terms of the Agreement and those of this Addendum, the terms of this Addendum shall control. Unless otherwise specified herein, all capitalized terms shall have the same meaning as set forth in the Agreement.

1. Bulk Service. Operator and Owner agree to activate and provide the following service(s) to one (1) existing outlet in each residential unit of the Premises excluding any Converters, Modems or other customer premises equipment required (the "Bulk Service"):

- Charter TVSelect ® (Digital)

(or "cable programming service")

\*As listed in Operator's current channel line-up set forth in Exhibit A, attached hereto and incorporated herein.

- Listed Premium Service(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. No Resale. Owner shall not resell the Bulk Service in whole or in part or impose any incremental fee for the Bulk Service.

3. Bulk Service Monthly Fee. Operator shall bill Owner monthly in advance and Owner shall pay Operator said monthly fee for the Bulk Service ("Bulk Billing Fee") based on the following calculation:

Bulk Billing Fee =  
Video Bulk Billing Fee per unit = \$ 13.94  
Total Bulk Monthly Fee = \$ 1031.56  
Bulk Billing Fee (8/1/2017) = Video Bulk Billing Fee per unit = \$21.44  
Total Bulk Monthly Fee (8/1/2017) = \$1,586.56  
X the total number of units on the Premises, whether occupied or not.

The Bulk Billing Fee excludes all applicable sales taxes, franchise fees, FCC regulatory Fees, government license fees, copyright fees, any public educational and government ("PEG") access fees, retransmission consent fees or costs, surcharges or rate increases imposed by programmers, any taxes, fees or assessments of general applicability imposed or assessed by any governmental entity or other fees which operator may lawfully pass through to Subscribers.

As part of the Bulk Service Addendum, Owner will provide a list of accurate addresses for each unit served as attached in Attachment B.

Operator shall have the right to increase the Bulk Billing Fee by up to five percent (5%) each year beginning in January of 2014. Such increases may be cumulative if not taken in the previous year(s).

Subject to Section 4, in the event Owner procures any Services from Operator on a bulk basis, Owner acknowledges that (i) it shall be responsible for paying Operator's standard equipment rental fees attributable to any equipment necessary for the reception and distribution of Services to the units on the Premises and (ii) it shall not take any action that would alter, modify or otherwise change the underlying signals comprising such Services.

Owner's failure to pay the Bulk Billing Fee or Service equipment rental fees, if any, in full by the balance due date of the month shall be a material breach of this Addendum, and Operator shall, in addition to any other remedies available to it, have the right at its sole option to (i) immediately suspend the Bulk Services and/or any other services Operator may be providing to the Premises and/or (ii) terminate this Addendum upon thirty (30) days prior written notice, in which event Owner shall be liable for immediate payment of its remaining Bulk Billing Fees through the expiration of the term hereof as if this Addendum had not been terminated. In addition and without limitation, Operator shall be entitled to solicit and offer to the occupants of the Premises ("Residents") any of its services (including without limitation those comprising the Bulk Services) on an individual subscription basis for the remainder of the Agreement Term without interference or objection from Owner, in which event Owner hereby ratifies and confirms all of Operator's rights under the Agreement.

Late fees will be charged to Owner in accordance with Operator's then current policies. Owner accepts sole responsibility for Bulk Billing Fees due hereunder for the term of this Addendum and any renewal or extension thereof.

4. Additional Services; Marketing to Residents. Each Resident shall have the option of purchasing from Operator additional services not included in the Bulk Services at his/her expense. The Residents shall be billed directly for any additional services so ordered. Owner agrees to assist Operator in marketing its services to Residents by providing Operator with a monthly Resident move-in/move-out listing.

5. Converter Equipment. . Operator will provide one (1) digital device per unit at no charge within thirty (30) days of Operator going digital in the Service Area as part of the Bulk Service. Each resident will be responsible for pick up and self installation of the converter or all related installation charges related to a professional installation by Operator. Residents may at their option rent additional converters at the normal monthly rental rates from Operator. Each Resident will be responsible for the return to Operator of all converters provided in connection with services purchased independently or as part of the Bulk Services from Operator. Owner will use reasonable care to ensure return to Operator of all converters left and/or abandoned by tenants in units at the time of moving out of the Premises. If applicable, Owner will be responsible for the return to Operator of all HD Service equipment used or provided in connection with the Service purchased by Owner on a bulk basis hereunder.

6. Additional Outlets Authorized. Owner hereby authorizes Residents to order (at their sole expense) and Operator to install, additional outlets in the individual dwelling units of the Premises. If Owner prohibits the installation of additional outlets, Owner accepts responsibility to notify tenants and residents of this policy as part of their lease and property rules and regulations.

7. Bulk Rate Term. This Addendum will remain in force for an initial term of five years commencing on January 15, 2014 and terminating on January 14, 2019. At the end of the original term, or any successive term, this Addendum shall automatically renew for successive terms of one (1) year each unless either party gives written notice of its intent not to renew to the other party at least ninety (90) days before the expiration of the then-current term. In the event Owner terminates this Addendum as

provided herein, Owner shall provide Operator at the time of termination a then-current Resident roster, including addresses that Operator can use to support its efforts to convert Residents to individually billed subscribers. In addition if requested by Operator, Owner shall send or otherwise distribute to all Residents an Operator-supplied letter that informs each Resident of his/her new service options resulting from Owner's termination of this Addendum.

#### **8. Omitted**

9. Termination. If the Bulk Service arrangement set forth in this Addendum is terminated for any reason whatsoever, Operator may offer and provide any of the services comprising the Bulk Services to residents on an individual subscription basis. The termination or expiration of this Addendum, for whatever reason, shall have no effect on the term of the Agreement.

10. Privacy. Operator treats private communications on or through its Network or using any Internet service it provides as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Operator also maintains a Privacy Policy with respect to such services in order to protect the privacy of its customers. The Privacy Policy can be found on Operator's website at [www.Charter-Business.com](http://www.Charter-Business.com). Owner represents and warrants that Owner has read the Privacy Policy and agrees to be bound by its terms. Owner expressly understands and agrees that the Privacy Policy may be updated or modified from time to time by Operator, with or without notice to Owner.

11. General Owner Representations and Obligations. The Owner shall be responsible for all access to and use of the Bulk Internet Service by means of the Owner's equipment, whether or not the Owner has knowledge of or authorizes such access or use. The Owner and not Operator shall be liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Bulk Internet Service, until the Owner informs Operator of any breach of security. Operator expressly prohibits using the Bulk Internet Service for the posting or transferring of sexually explicit images, material inappropriate for minors, or any material not in accordance with applicable laws.

12. Service Outages/Interruption. Temporary service interruptions/outages for reasons of scheduled/unscheduled maintenance or technical difficulties, as well as service interruptions/outages caused by the Owner, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Operator to perform its obligations under this Addendum, and Owner will not hold Operator at fault for loss of Owner revenue or lost employee productivity due to Service outages.

13. Limitation of Liability. At all times during the Service Term, Operator warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to the Owner. THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER. EXCEPT AS OTHERWISE STATED IN THIS ADDENDUM, OPERATOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. WITHOUT LIMITING ANY EXPRESS PROVISIONS PROVIDED FOR ELSEWHERE IN THIS ADDENDUM, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES

(INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS ADDENDUM OR THE PROVISION OF SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

14. Acceptance. This Addendum shall be binding upon Operator only after acceptance by an authorized officer of Operator as evidenced exclusively by said officer's signature.

15. Programming. Operator reserves the right, from time to time and without Owner's consent, to change, delete or preempt portions of the Service as required by law or good faith business decisions.

16. Advertising. Owner grants Operator permission to display, and advertise in a tasteful manner, information concerning the services provided over Operator's communications system in places where residents may easily observe such displays upon written consent of property manager of the Premises, not to be unreasonably withheld or delayed.

17. Owner Warranties. Owner warrants that (i) it holds all rights and has full authority to execute this Addendum and to grant the rights herein granted; (ii) this Addendum constitutes and shall constitute a binding obligation of Owner; and (iii) there are no prior or existing agreements, nor will there be any such agreements during the Term, with residents or third parties that would be breached or violated by the execution of this Addendum or by Operator's providing its services to the Premises.

18. No Third Party Beneficiaries. . The parties agree that the terms of this Addendum and the parties' respective performance of obligations hereunder are not intended to benefit any person or entity not a party to this Addendum, that the consideration provided by each party under this Addendum only runs to the respective parties hereto, and that no person or entity not a party to this Addendum shall have any rights hereunder nor the right to require the performance hereunder by either of the respective parties hereto.

19. Confidentiality. The parties will hold the terms and conditions of this Addendum in confidence, and will not reveal the same to any person or entity except (i) with the written consent of the other party; (ii) to the extent necessary to comply with the valid order of a court of competent jurisdiction (in which case the party making the disclosure shall notify the other party and shall seek confidential treatment of such information); (iii) as part of either party's standard reporting or review procedures to members, parent or affiliate corporations, auditors, financial and lending institutions, attorneys; (iv) to the limited extent necessary to disclose the terms of the Addendum to a prospective purchaser of the interests and rights under this Addendum who has a bona fide interest in acquiring such rights and obligations through assumption hereof and is subject to the terms of a nondisclosure and confidentiality agreement with terms at least as restrictive as those set forth herein, or (v) in order to enforce its rights pursuant to this Addendum. All parties shall be directed to abide by the confidentiality provisions of this Addendum. If any unauthorized disclosure is made by Owner and/or any agent or

representative thereof, the Operator shall have the option of pursuing any legal remedies available to it at law or in equity and/or terminating this Addendum and/or the Agreement.

IN WITNESS WHEREOF, the parties hereby agree to the terms and conditions contained herein on the date indicated below.

**OPERATOR:**

**Falcon Cablevision, a California Limited Partnership**

By: Charter Communications, Inc., its Manager

By:   
(Signature)

Printed Name: R. Adam Ray

Title: VP Direct Sales

Date: 2-20-14

**OWNER:**

**Kapilana Estates HOA**

By:   
(Signature)

Printed Name: Bill BUSCH

Title: KAPILANA HOA PRESIDENT

Date: 1-24/14

# Address list for Kapilana Estates

~~EXHIBIT A~~

[Owner to insert legal description of Premises and unit list here.]

I'll find the Legal Description for you.

Please write in all unit #'s for me below!

5079 Aqua Drive

Osage Beach, MO

Building 1 Units A-F

65065

Building 2 Units A-F

775 Winn Road

Building 4 Units A-L

783 Winn Road

Building 5 Units A-F

793 Winn Road

Building 6 Units B-F

803 Winn Road

Building 7 Units A-I

821 Winn Road

Building 10 Units A-L

831 Winn Road

Building 15 Units A-R

**Attachment B**

Address List of Units provided by Owner served under Bulk Cable Service Addendum

Above for recorders use only

**NONEXCLUSIVE INSTALLATION AND SERVICE AGREEMENT**

This Installation and Distribution Agreement ("Agreement") between **Falcon Cablevision, a California Limited Partnership** ("Operator") and **Kapilana Estates HOA** ("Owner") is dated this **January 15, 2014** ("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>Kapilana Condominiums</u>	Number of Units: <u>206 74</u>
Street Address: <u>793 Winn Rd. Winn Rd.</u>	
City/State/Zip: <u>Osage Beach, MO 65065</u>	
<b>Notices:</b>	
Name: <u>Neil Robinson</u>	
Address: <u>793 Winn Rd, Osage Beach, MO 65065</u>	
Phone: <u>5736923533</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 12 months 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>January 15, 2014</u>	<b>Expiration Date:</b> <u>January 14, 2019</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 up to the Premises.	

**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, and Owner acknowledges Operator's exclusive right to control and use its Equipment.

Without limiting Operator's exclusive rights to use its Equipment, should an antenna, signal amplification system or any other non-Operator facilities located either on the Premises or any property controlled by Owner in proximity to the Premises 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.