

dream big

6/2/2011

To: Management

RE: Fully Executed MDU Agreement

Dear: Management



Attached is your copy of the Fully Executed Agreement for:

**1. Dana Point Condominiums – Arlington Heights IL**

*Please allow me to extend my personal gratitude to you for allowing Comcast to be your cable provider of choice. As you know, Comcast highly values its relationship with you and the residents of your property and looks forward to fully servicing its needs in the years to come. Our MDU Operations Department is available Monday – Friday, 8am – 5pm, to assist you with any of your property service related issues. You can reach them at 1-888-824-8763. Our Customer Service Representatives are available 24 hours a day, seven days a week, to assist your Residents with their service-related issues. Your residents may reach them at 1-800-COMCAST (266-2278).*

Sincerely,

**Hurness Wooten**

Contract Administrator

COMCAST CABLE

1255 W. North Avenue

Chicago IL 60642

[hurness\\_wooten@cable.comcast.com](mailto:hurness_wooten@cable.comcast.com)

ORIGINAL

SERVICES AGREEMENT

This Services Agreement (the "Agreement") is dated MAY 26, 2011, and is between Comcast of Illinois XI, LLC (the "Company"), and Dana Point Condominium Association (the "Association"), who owns certain real estate and improvements thereon located at 1519 East Central Road, Arlington Heights, Illinois 60005 (the "Premises"), commonly known as Dana Point Condominiums consisting of 504 residential units plus any units added or constructed in the future.

The Company has been granted a franchise by an authorized governmental agency (the "Franchise Authority") to construct and operate a cable communications system in Arlington Heights/Cook Illinois (the ["City"/"County"]). The Association desires to provide broadband services to the Premises, including, but not limited to, multi-channel video, high speed data, information and voice services (collectively, the "Services") and the Company is willing to install, maintain and operate a broadband communications system for such purposes on the Premises in accordance with the terms and conditions below.

The parties, for good and valuable consideration, intending to be legally bound, agree as follows:

1. The System.

a) The Company has installed, and shall operate, maintain and repair, all facilities necessary to transmit the Services to the Premises (the "Company Wiring"). All work shall be done by the Company in a proper and workmanlike manner in accordance with Federal Communications Commission ("FCC") regulations, industry standards and local codes, unless otherwise provided in this Agreement. The Company shall be responsible for all costs and expenses incurred by it in operating, maintaining and repairing the System.

b) The cable home run wiring and cable home wiring has been installed at the Premises (the "Inside Wiring"). The System shall consist of the Company Wiring and the Inside Wiring. The Company shall operate, maintain and repair the System. The Company agrees to repair and/or replace any damage to the Premises resulting from the operation, maintenance or repair of the System, except as otherwise provided in this Agreement. The Company will be responsible for obtaining all necessary permits, licenses and approvals in connection with the operation of the System.

c) Neither the Association nor anyone operating on its behalf shall tap into, use or otherwise interfere with the System or any portion thereof for any purpose. The Company Wiring

is and will remain the personal property of the Company. The Inside Wiring is and will remain the property of the Association. The Company's use of any telephony wiring inside the individual units shall be governed by separate agreements between the individual unit owners and the Company.

2. Easement. The Association has the authority to grant and does hereby grant an easement in favor of the Company to place its lines across the Premises and to operate the System, and shall cause such easement to run with the Premises. The Association hereby agrees to execute the form of easement attached hereto as Exhibit A.

3. Access. The Association shall allow Company personnel to enter all common areas of the Premises for the purposes of auditing, selling or disconnecting service, installing, maintaining, repairing, replacing or removing equipment and apparatus connected with the provision of the Services and shall use reasonable efforts to assure the Company access to any parts of the Premises over which it does not have control for the same purposes. The Association shall supply the names and unit numbers of residents at reasonable intervals. The Association shall cooperate with the Company to prevent (i) the unauthorized possession of converters or channel selectors and (ii) the unauthorized reception of the Services.

4. Delivery of Services. The Association has the authority to grant and does hereby grant to the Company during the term hereof the right to operate, maintain, repair and replace, as necessary, the System on the Premises and to deliver the Services to the Premises, unless otherwise required by applicable law. Association shall not enter into a bulk services agreement with another service provider to provide services similar to the Services during the term of this Agreement regardless of the method used to deliver such services to the Premises.

5. Fees and Charges for Services. The terms, conditions, charges and fees for the Services provided to residents at the Premises shall be contained in contracts between the Company and individual residents. The Association assumes no liability or responsibility for service charges contracted for by residents. All billing and collections from residents will be accomplished by the Company.

6. Customer Service. The Company shall provide customer service in accordance with its franchise agreement with the Franchise Authority. The Company will maintain a local or toll-free telephone number which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week. Company representatives will be available to respond to customer telephone inquiries during normal business hours. The Company will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the Company.

7. Private Reception Devices. Notwithstanding anything else in this Agreement to the contrary, the Company shall not interfere with the right of an individual resident to install or use his

own private reception device.

8. Interference. If any device or facility belonging to a resident or the Association does not comply with the technical specifications established by the FCC, including, but not limited to, signal leakage, which interferes with the Company's delivery of the Services, the Company reserves the right to discontinue the Service to the Premises or, at the Company's discretion, to the individual unit until such non-conformance is cured by the Association or resident, as the case may be.

9. Term. This Agreement, when duly executed by both parties, shall constitute a binding agreement between the Association and the Company and their respective successors and assigns for a term of ten (10) years. This Agreement shall automatically renew for successive periods of six (6) months unless either party shall provide the other with a minimum sixty (60) days notice of its intention not to renew at the end of the then current term.

10. Insurance. The Company agrees to maintain public liability insurance and property damage liability insurance as required by the Company's franchise agreement with the Franchise Authority. Upon request, the Company will provide the Association with a certificate evidencing such insurance.

11. Indemnification. The Company shall indemnify, defend and hold harmless the Association, its personnel, directors, agents and representatives from or against any and all claims, damage or expense arising out of the actions or omissions of the Company, its personnel, directors, agents and representatives in the operation, maintenance of the System, the removal of the Company Wiring, the Services provided to residents at the Premises pursuant to this Agreement or a breach of this Agreement. The Association shall indemnify, defend and hold harmless the Company, its personnel, directors, agents and representatives from and against any and all claims, damage or expense arising out of the actions or omissions of the Association, its personnel, directors, agents and representatives in the operation or maintenance of the Premises or a breach of this Agreement.

12. LIMITATION OF LIABILITY. NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOSS OF PROFITS, LOSS OF CAPITAL, COST OF SUBSTITUTE PRODUCT(S), FACILITIES OR SERVICES, OR DOWN TIME COST, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Termination.

a) Default. In the event either party defaults in the performance of any of the material terms of this Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default and identifying the specific provision in this Agreement which gives rise to the default. The defaulting party shall have sixty (60) days to either (i) notify the non-defaulting party that no default occurred and provide reasonable proof thereof, (ii) cure the default, or (iii) if such default is incapable of cure within such sixty (60) day period, commence curing the default within such sixty (60) day period and diligently pursue such cure to completion. In the event if the defaulting party fails to do so within such sixty (60) day period, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice without further liability of either party.

b) Permanent Loss of Authority. This Agreement shall terminate automatically without any further liability on the part of the Company in the event the Company lacks authority to continue to provide the Services to the Premises due to loss of governmental authorization. This clause, however, shall not apply to periods of transition, such as franchises subject to review, transfer or reapplication, or where termination is the subject of dispute.

14. Removal of Company Wiring.

a) Upon expiration or termination of this Agreement for any reason, the Company shall have a period of six (6) months during which it shall be entitled, but not required, to remove the Company Wiring. The Company shall promptly repair any damage to the Premises caused by such removal.

b) Notwithstanding anything to the contrary contained in this Agreement, the removal period referenced in section (a) shall be tolled for as long as the Company has the right under applicable law to continue to provide any or all of the Services to any or all of the units on the Premises after the termination or expiration of this Agreement, in which case the Company shall have the right to continue to own and use the Company Wiring and to interconnect with and use the Inside Wiring to provide the Services. This Section shall survive the termination of this Agreement.

15. Dispute Resolution. All disputes under this Agreement shall be submitted to and settled by arbitration in accordance with the rules of the American Arbitration Association. The parties shall appoint a mutually agreeable arbitrator reasonably familiar with broadband communications systems and services. In the event the parties are unable to agree to a single arbitrator, the dispute shall be submitted to a panel of three (3) arbitrators, one of which shall be reasonably familiar with broadband systems and services. Each party shall appoint an arbitrator and the two arbitrators so appointed shall then select a third arbitrator. The arbitrators shall apply applicable federal laws and regulations and the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles. The decision of the arbitrators shall be binding and

conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to collect from the non-prevailing party all costs of the arbitration, including reasonable attorneys' fees.

16. **Marketing Support.** The Association shall provide exclusive Marketing Support for the Company for the Services. The term "Marketing Support" shall include, but not be limited to, the Association's presentation of the Company's marketing materials for the Services, including, but not limited to multi-channel video, high speed Internet and voice services to existing and prospective residents. Marketing materials may include, at the Company's discretion, brochures, channel lineups, door hangers, service descriptions, and information regarding prices and special offers. All marketing materials shall be provided by the Company.

17. **Miscellaneous.**

a) **Force Majeure.** The Company shall not be liable for failure to continue to operate the System or to provide the Services during the term hereof due to acts of God, the failure of equipment or facilities not belonging to Company (including, but not limited to, utility service), denial of access to facilities or rights-of-way essential to serving the Premises, government order or regulation or any other circumstances beyond the reasonable control of the Company.

b) **Assignability; Binding Effect.** In the event the Association sells, assigns, transfers or otherwise conveys the Premises to a third party, the Association shall give the Company prior written notice of such change of ownership or control. The Association shall cause any new owner or controlling party to expressly assume this Agreement and agree to be bound by its terms. The Company may assign this Agreement without the consent of the Association to any entity controlled by or under common control with the Company, to any entity acquiring all or substantially all of the Company's assets in the [City/County] or any surviving entity following a merger, acquisition or consolidation. The assignee shall agree in writing to be bound by all the terms and conditions hereof.

c) **Applicable Law.** This Agreement shall be governed and construed in accordance with applicable federal laws and regulations and by the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles.

d) **Invalidity.** If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.

e) **Recording.** The Company may record this Agreement (or a memorandum summarizing the material terms) in the public records of the county in which the Premises are located.

f) **Notices.** All notices, demands, requests or other communications given

under this Agreement shall be in writing and be given by personal delivery, United States Postal Service, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to the Association:

Dana Point Condominium Association  
1519 East Central Road  
Arlington Heights, IL 60005  
Attn.: Management

If to the Company:

Comcast of Illinois XI, LLC  
1500 McConnor Parkway  
Schaumburg, IL 60173  
Attn.: MDU Sales Contract Manager

With a copy to:

Comcast Cable Communications, LLC  
One Comcast Center  
Philadelphia, PA 19103  
Attn.: General Counsel

g) Confidentiality. Each party agrees to keep the terms and conditions of this Agreement in strict confidence and shall not divulge any specifics of the same to any third party except current and prospective lenders, purchasers, attorneys, accountants, financial advisors, partners and/or others with a need to know for the Association or the Company to reasonably conduct its business.

h) Entire Agreement; Amendments. All recitals set forth above are hereby incorporated into the body of this Agreement. This Agreement, including all exhibits attached, constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.

i) Authority. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

ASSOCIATION

WITNESS/ATTEST

  
Name: Mark S. Kuhne

Dana Point Condominium Association

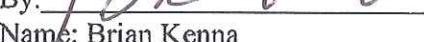
By:   
Name: Amy L. Spine  
Title: Board President

COMPANY

ATTEST:

  
Name: Brian Kenna

Comcast of Illinois XI, LLC

  
By:   
Name: Brian Kenna  
Title: Senior Vice President of Finance  
Greater Chicago Region

STATE OF Illinois )  
COUNTY OF Cook ) ss.

The foregoing instrument was acknowledged before me this 25 day of April, 2011 by Dana Sinc (name), the President (title) of Dana Point Condominium Association (entity), on behalf of said entity. He/she is personally known to me or has presented \_\_\_\_\_ (type of identification) as identification and did/did not take an oath.

Witness my hand and official seal.

Janice L. Costa  
JANICE L. COSTA Notary Public

(Print Name)

My commission expires: 8/15/14



STATE OF Illinois )  
COUNTY OF Cook ) ss.

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of May, 2011 by Brian Kenna (name), of Comcast of Illinois XI, LLC (entity), on behalf of said entity. He/She is personally known to me or has presented \_\_\_\_\_ (type of identification) as identification and did/did not take an oath.

Witness my hand and official seal.

Amy J Winchell  
AMY J WINCHELL Notary Public

(Print Name)

My Commission expires: 7/18/2013

