



11400 S.E. 6TH STREET  
SUITE 120  
BELLEVUE, WA 98004  
A PRIVATE CABLE COMPANY

AFTER RECORDING RETURN TO:  
Betsy Murray  
FOSTER PEPPER & SHEFELMAN  
SECURITY PACIFIC PLAZA - 18TH FLOOR  
777 108TH AVENUE N.E.  
BELLEVUE, WASHINGTON 98004

**COMMERCIAL EASEMENT AND RIGHT OF ENTRY AGREEMENT**

This agreement ("Agreement") is entered into on May 15, 19 90 by and between Cable Plus ("OPERATOR") and SunArbor Apartments Limited Partnership, a Utah limited partnership ("OWNER")

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1. **EXCLUSIVE RIGHT.** In consideration of the mutual promises contained herein it is agreed that OPERATOR has the sole, exclusive and irrevocable right to install, own, operate, replace and maintain a system to receive and distribute broadband communication signals including, but not limited to, video, audio, data and teletext ("System") in, on and through the 34 building(s), consisting of 540 units ("Units"), of the multi-family residential complex commonly known as (name) Sun Arbor Apartments (street) Sun Arbor Terrace (city) Salt Lake City (state) Utah, legally described in Exhibit A attached hereto ("Property"). Such exclusivity also pertains to any similar communications or distribution system service now existing or hereafter developed. The System shall include but not be limited to the antennas, leads, wires, cables, receivers, amplifiers, decoders and other electronic devices used therein. *And shall provide a minimum of 24 channels of television viewing*

2. **ALLOCATION OF RESPONSIBILITY.** Subject to provisions of Section 7 of this Agreement, OPERATOR will bear all expenses to install, maintain and repair the System. The System shall be installed, maintained and repaired by OPERATOR in a professional, workmanlike manner, with special consideration to maintaining the aesthetic appearance of the Property. OPERATOR shall carry and maintain liability insurance covering personal injury and property damage that may be caused to person(s), the Property or its contents by the System. OWNER shall be responsible for damage to the System caused by OWNER or OWNER's agent(s) and employees.

3. **REMOVAL OF SYSTEM.** The System, regardless of how attached or installed, shall at all times, be and remain the sole property of OPERATOR, its successors and/or assigns, including its Lender. OWNER acknowledges that it has no rights of ownership in any portion of the System. Upon termination of this agreement, OPERATOR shall have the right, without further demand or notice, within a reasonable time following termination, to enter upon Property and to dismantle and remove or render inoperative any and all equipment comprising the System. OPERATOR shall reasonably restore any affected portion of Property.

4. **TYPE OF ACCOUNT.** (OWNER to check one and initial):

INDIVIDUAL RATE ACCOUNT: \_\_\_\_\_ (INITIAL)

Residents/occupants, tenants ("Viewers") of Property shall be given the option to subscribe to signal distribution service ("Service"). Viewers electing to subscribe will be charged and billed individually for connection to System and monthly service fees, at standard rates as established solely by OPERATOR from time to time.

BULK RATE ACCOUNT: \_\_\_\_\_ (INITIAL)

Bulk Service ("Bulk") shall consist of all reasonably available local broadcast channels, one information channel (on which 20 "pages" shall be for OWNER's use and the remainder for use by OPERATOR), plus additional channels of programming to provide a minimum of 12 channels in total. OWNER shall pay OPERATOR a monthly charge of \$ 4.85 plus applicable sales/use taxes, for the greater of each Viewer receiving BULK or One hundred percent (100%) of the Units (540 Units) during the term of this Agreement.

PREMIUM BULK RATE ACCOUNT: \_\_\_\_\_ (INITIAL)

Premium Service ("Premium") shall consist of BULK plus \_\_\_\_\_ channel(s) of programming from any of the following: HBO, The Movie Channel, Showtime, the Disney Channel, and/or such other programming as OPERATOR shall designate as PREMIUM from time to time, in its sole discretion. OWNER shall pay a monthly charge of \$ \_\_\_\_\_ plus applicable sales/use taxes, for the greater of each Viewer receiving PREMIUM or \_\_\_\_\_ percent (\_\_\_\_%) of Units (\_\_\_\_ Units) during the term of this Agreement.

Monthly bulk rates may be revised by OPERATOR every twelve (12) months, but only after a thirty (30) day written notice by OPERATOR to OWNER. Any such rate increase shall not exceed the aggregate CPI-U since the previous revision plus any increase in BULK or PREMIUM programming costs to OPERATOR. Under either of the above bulk rate type accounts, additional channels of Service may be made available to Viewers by OPERATOR as per Individual Rate Account, above. Upon the second anniversary of the date hereof, either party may, upon ninety (90) days written notice to the other, convert this agreement from a bulk rate type account to an individual rate type account, with all other conditions remaining in full effect. *During the first year of this agreement only, the bulk rate shall include ESPN as one of the 12 channels*

5. **ACCESS.** OWNER shall provide, without charge to OPERATOR, the right, easement for and license the use of, suitable and adequate climate controlled space, electricity and right of access to all areas of Property for installation, maintenance, sales, marketing and disconnection of System and Service. OWNER will permit OPERATOR to affix a key box to Property for access should OPERATOR so require.

6. **TERM.** This Agreement shall remain in full force and effect for one hundred twenty six months from the date hereof and be automatically renewed for five (5) year periods thereafter, up to three (3) such periods, unless a written notice of termination is served by either party upon the other party no earlier than twelve (12) months and no later than six (6) months prior to the expiration of any such term. The benefits, obligations and grant of rights in this Agreement shall be deemed to be an easement and covenant running with the Property, and shall inure to and be binding upon the successors and assigns of the parties.

7. **TERMINATION.** This Agreement is contingent upon determination by OPERATOR of whether installation and/or operation of the System is technically and economically feasible. Should OPERATOR, in its sole judgment, and within ninety (90) days from the date hereof, determine that such installation and/or operation is not feasible for any reason, this Agreement may be immediately terminated, either in part or in whole, (with respect to all or some of Units which are or are to be wired). Anything to the contrary contained herein notwithstanding, OPERATOR may terminate this Agreement without notice if it is unable to operate System due to any governmental law, rule, or regulation or other reason beyond its control. Should either party fail to meet the obligations and terms set forth in this Agreement, and fail to correct such default within a reasonable period of time after written notice thereof, this Agreement may be terminated by the other party and the terminating party shall not thereby waive any of its rights at law or equity with respect to a breach thereof.

8. **TECHNOLOGY.** The technology and equipment used for operation of System will be in accordance with accepted industry standards as determined by OPERATOR. OPERATOR shall incorporate within System the capability of distributing such Service as OPERATOR deems feasible for and marketable to Viewers. The technical quality of Service provided by OPERATOR shall be reasonable in relation to the state-of-the-art of transmission and receiving of satellite-transmitted Service existing from time to time.

9. **MARKETING.** OPERATOR will provide OWNER with programming guides and/or marketing materials that OPERATOR, in its sole discretion, deems appropriate. Subject to provision by OPERATOR of necessary copies, OWNER shall ensure that all current programming guides and marketing materials are available to all of Viewers of Property at all times. OWNER shall use its best efforts to encourage Viewers to purchase premium programming and shall assist and cooperate with OPERATOR's marketing program for System, including, but not limited to, providing notification of move-in and move-out by Viewers to enable OPERATOR to make timely connects and disconnects of Service, including Bulk. OPERATOR shall have exclusive right and license to deal directly with Viewers including, without limitation, promoting Service to them, soliciting them as subscribers of Service, charging them reasonable fees and charges for Service as agreed by Viewers and OPERATOR, collecting such fees and charges and disseminating schedules, information and materials on Service.

10. **PAYMENT.** Payment of amounts owed by OWNER to OPERATOR pursuant to Section 4 hereof shall be made by OWNER to OPERATOR's address herein, or as otherwise directed by OPERATOR. OWNER shall not set off against, deduct from or reduce any revenue payment under this agreement for any reason. Payments shall be due upon the fifth (5th) day of each month for the Service to be provided during that month. If OWNER fails to make any payment within ten (10) days of its due date, OWNER shall pay OPERATOR any actual expenses incurred by

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OPERATOR in collection efforts. Further, OWNER shall pay OPERATOR interest on delinquent payments from the due date until paid at the rate of eighteen percent (18%) per annum or the lesser maximum rate of interest allowed by law. Notwithstanding anything herein to the contrary, in addition to other rights and remedies available to OPERATOR, OPERATOR shall be entitled to collect any or all past due amounts directly from Viewers.

11. **ASSIGNMENT.** OPERATOR may assign and/or grant a security interest in its rights under this Agreement and in the System to any person or entity, including any entity making a loan to OPERATOR ("Lender"). If OPERATOR gives OWNER written notice of the name and address of its Lender, OWNER agrees to afford Lender a reasonable opportunity to cure any default by OPERATOR prior to exercising remedies for such default. OWNER agrees to permit Lender to substitute another operator reasonably acceptable to OWNER pursuant to this Agreement, or pursuant to a substitute agreement with identical terms in the event that OPERATOR'S dissolution, bankruptcy or insolvency results in the termination or rejection of this Agreement or in the practical inability of OPERATOR to perform its obligations hereunder. This Agreement is made for the third party benefit of Lender. Upon the reasonable request of OPERATOR or Lender, OWNER will execute further confirmations, consents, waivers or other documents consistent with the terms hereof. OPERATOR (or its Lender) may enter into an agreement pursuant to which OPERATOR and/or a third party will manage System.
12. **ALTERATIONS, ENCUMBRANCES BY OWNER.** OWNER shall keep System on Property as and where installed and shall not use, operate, modify, alter, add to or remove it without the written consent of OPERATOR, not to be unreasonably withheld, and shall not so affix System or any part thereof to realty as to change its nature to real property. OWNER shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on System. OWNER shall promptly, at its own expense, take all actions necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or claim or obtain a waiver of the lien thereof and, in any event, to obtain or provide such lien or ownership waivers for System as OPERATOR may reasonably request.
13. **SECURITY ASSIGNMENT.** OWNER shall comply with all laws applicable to the use of System. In the event this Agreement should be construed as a "sale" or "lease" with a security as defined in the Uniform Commercial Code, then as security for the performance of OWNER'S obligations hereunder, OWNER grants to OPERATOR a security interest in all personal property comprising the System. The events of conversion of any or all of Units comprising Property to condominium units, cooperatives or similar forms of ownership, or sale, transfer or conveyance of all or a part of Property, whether voluntary or involuntary, shall also be deemed an assignment and delegation of this Agreement.
14. **TITLE WARRANTY.** OWNER warrants OWNER holds actual and record title to Property and has full power to grant to OPERATOR the exclusive rights and easements as provided herein. No party holds any interest with respect to the Property which conflicts with any rights or interests purported to be granted to OPERATOR hereunder.
15. **APPLICABLE LAW.** This Agreement shall be governed by the internal laws of the state in which the Property is located.
16. **COUNTERPARTS, PARTIAL INVALIDITY.** This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. If any provision of this agreement shall be held to be invalid, the remainder shall not be affected thereby.
17. **ATTORNEYS' FEES.** In the event of litigation between OPERATOR and OWNER to enforce or interpret the terms of this Agreement, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs incurred.
18. **NOTICES.** All notices, claims, certificates, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed to the addresses set forth below the signature to this Agreement or other such addresses as the party to whom notice is to be given may have previously furnished in writing to the other pursuant to this Section.
19. **ENTIRE AGREEMENT.** This document constitutes the entire agreement between the parties with respect to the subject matter contained in this agreement. It supercedes all prior oral and written representations and communications with respect to the subject matter of this agreement. There are no representations, commitments or other agreements with respect to the subject matter hereof which are not contained within this document. This agreement may only be amended by a written amendment signed by the parties hereto.
20. **FORCED ACCESS.** OWNER hereby assigns to OPERATOR during the term of this Agreement (i) any and all rights to receive compensation under any government law or regulation, now existing or arising hereafter, as a result of the right of access given pursuant to any government law or regulation to any person or entity for the purpose of providing television signal service to the Property or any tenant therein, and (ii) any and all rights which OWNER may have under any government law or regulation to contest, judicially or otherwise, the purported right of any person or entity to gain access to the Property for the purpose of providing television signal service to the Property or any tenant thereof. The foregoing assignment shall not apply to the extent that any such compensation is for actual damage to the Property resulting from the installation of the competing system. To the extent OPERATOR pursues or participates in any such action or proceeding, OPERATOR shall indemnify and hold OWNER harmless from any claims, damages, liabilities or costs associated with such action or proceeding.
21. **Operator will pay owner annually an amount equal to 6% of collected premium channel revenue**

OPERATOR:

Cable Plus  
(Name)  
11400 SE 6th Street  
Suite 120  
Bellevue, WA 98004  
(Address)  
By: Michael P. Lait  
(Signature)  
MICHAEL P. LAIT  
(Type or Print)  
Its Vice President  
(Title)

OWNER:  
SunArbor Apartments Limited Partnership,  
a Utah limited partnership  
By: Sun Partners, an Arizona partnership  
its General Partner  
By: Nu-Cary Companies, Inc., its  
General Partner  
6700 N. Oracle, #1000 Tucson, AZ 85704  
By: Thomas C. Arland  
(Signature)  
Thomas C. Arland, Authorized Agent  
(Type or Print)  
Its Authorized Agent  
(Title)

STATE OF Arizona  
COUNTY OF Pima

THIS IS TO CERTIFY THAT on this 15<sup>th</sup> day of May, 1990, before me, the undersigned, a notary public in and for the State of Arizona, duly commissioned and sworn, personally appeared Michael P. Lait to me known to be the Vice President of Cable Plus, a corporation, ~~to me known to be a general partner of~~ the partnership that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation and said partnership for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

Terri S. Swanson  
Notary Public in and for the State of Arizona  
Residing at Tucson  
My appointment expires 4-24-91

STATE OF ARIZONA )  
                          ) ss:  
COUNTY OF PIMA    )

THIS IS TO CERTIFY THAT on this 15th day of May, 1990, before me, the undersigned, a notary public in and for the State of Arizona, duly commissioned and sworn, personally appeared Thomas C. Arland, Authorized Agent of Nu-Cary Companies, Inc., General Partner of Sun Partners, an Arizona partnership, General Partner of SunArbor Apartments Limited Partnership, a Utah limited partnership, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation and said partnership for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

NOTARY PUBLIC  
COMMISSION EXPIRES  
April 24, 1991

*Jerry L. Sowers*  
Notary Public

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ADDENDUM

This addendum ("Addendum") to that certain Commercial Easement and Right of Entry Agreement ("Agreement") dated the 15<sup>th</sup> day of May, 1990, by and between CABLE PLUS ("Operator") and SUNARBOR APARTMENTS LIMITED PARTNERSHIP, a Utah limited partnership ("Owner") is made on an even date with said Agreement.

The Agreement shall be amended by the terms of this Addendum as set forth below. Each paragraph number designated below shall correspond to and, where applicable, be deemed an addition, deletion or replacement to its corresponding paragraph so enumerated in the Agreement.

3. REMOVAL OF SYSTEM. Notwithstanding the terms of paragraph 3, Operator shall first provide Owner with reasonable demand or notice of termination and shall enter only with a representative of Owner, if Owner so desires, provided that Owner shall make its representatives available at all reasonable times to supervise the dismantling and removal of any equipment.

6. TERM. Delete "six (6) months" and replace with "three (3) months" as the minimum time prior to the expiration of any term for written notice of termination.

7. TERMINATION. Delete entire paragraph and replace with:  
Anything to the contrary contained herein notwithstanding, Operator or Owner may terminate this Agreement without notice if Operator is unable to operate the System due to any governmental law, rule, or regulation or other reason beyond its control. Should either party fail to meet the obligations and

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terms set forth in this Agreement, and fail to correct such default within a reasonable period of time after written notice thereof, this Agreement may be terminated by the other party and the terminating party shall not thereby waive any of its rights at law or equity with respect to a breach thereof.

8. TECHNOLOGY. The term "accepted industry standards" shall be as is established by the industry and not by the Operator. The technical quality of service shall be in accordance with accepted industry standards and "reasonable" shall be deleted as a standard of technical quality.

10. PAYMENT. Owner shall pay Operator interest on payments which are more than thirty (30) days delinquent from the due date until paid at the rate of eighteen percent (18%) per annum. Operator's right to collect any and all past due amounts directly from viewers will be subject to those viewers who directly contract with Operator for service.

11. ASSIGNMENT. Operator may assign its rights under this Agreement provided the assignee agrees to provide comparable quality service as received under the term of the original agreement and to be bound by all terms, conditions and covenants contained in the Agreement.

12. ALTERATIONS, ENCUMBRANCES BY OWNER. Any mortgage, pledge, lien, charge, encumbrance or claim which Owner must obtain a waiver of shall only apply where the same materially affects the Operator.

22. MAINTENANCE. Operator shall maintain the System in such a manner that the technical quality of the television signals provided by the System shall meet or exceed the signal strength and quality requirements established by the Federal Communications Commission or accepted industry standard, whichever shall be the highest standard. Operator, or its designated agent, shall provide routine maintenance for parts and equipment and shall be available to receive service calls from Owner and residents of the Property and respond to such calls regarding problems with the entire System within twenty four (24) hours, and to other service calls within forty eight (48) hours. Owner shall in no way be responsible for any service requests from residents.

23. INSURANCE. Operator shall maintain single limit liability insurance in an amount of One Million and 00/100 (\$1,000,000.00) Dollars and in addition thereto a One Million and 00/100 (\$1,000,000.00) Dollar multi-peril umbrella coverage. Operator shall, upon written request from Owner, cause Owner to be added as an additional insured party on those insurance policies. With respect to the umbrella coverage, Operator shall use its best efforts to add Owner as a co-insured. In the event of any loss or damage, Operator shall be entitled to its portion of the proceeds of insurance, if any.

24. RESPONSIBILITY FOR DAMAGE. Operator shall be totally responsible for damage to any person or property arising from the installation or operation of the System to the extent such damage is caused by the negligence of Operator, its agents or employees.

During the term of the Agreement, Operator shall repair and/or replace any property of Owner on the Property that is damaged or destroyed during the installation, maintenance, operation or removal of the System including restoration of paving and landscaping and any damage to walls or windows.

25. COMPLIANCE WITH LAWS. Operator shall operate the System in compliance with federal, state and local laws, if any, which may be applicable thereto and shall procure any and all certificates from any governmental authority as may be necessary to install, operate and maintain the System.

26. OWNER'S RIGHT TO TERMINATE. The following events shall constitute a default on the part of Operator hereunder: (a) the failure of Operator to operate the System in such a manner that the video signals provided by the System shall meet or exceed the minimum signal strength and quality requirements as may be established by the Federal Communications Commission, or accepted Industry Standard, whichever shall be the highest standard, provided Owner shall give Operator thirty (30) days written notice of its intent to terminate this Agreement under this section together with notice of the reason for that proposed termination and Operator shall have the right to cure or remedy that defect within said forty-five (45) day period; (b) any breach or failure of Operator to observe or perform any of its other obligations hereunder and the continuance of such default for thirty (30) days after notice in writing to Operator of the existence of such default. Upon the occurrence of any of those defaults, Owner shall be entitled to terminate this Agreement.

The parties agree that in the event of termination under the provisions of this section 26, that all underground and interior cable and wiring shall be deemed forfeited to Owner without further obligation to Operator.

27. ASSIGNMENT OF PROPERTY BY OWNER. In the event that the Property shall be conveyed, assigned or transferred, in any manner, from Owner to any other party (the "Purchaser"), Owner shall be released from any liability for its obligations set forth in this Agreement, provided the Purchaser assumes all of Owner's obligations under this Agreement.

OPERATOR:

CABLE PLUS

BY: Michael P. Lauz  
Michael P. Lauz, Vice-President

ITS: VIC PRESIDENT

OWNER:

SUNARBOR APARTMENTS LIMITED  
PARTNERSHIP, a Utah limited  
partnership, by Sun Partners, an Arizona  
partnership, by Nu-Cary Companies, Inc., its  
BY: General Partner Thomas C. Arland

Thomas C. Arland, Authorized Agent  
ITS: Authorized Agent



EXHIBIT A

(Sunarbor)

BEGINNING ON THE NORTH LINE OF NORTH TEMPLE STREET AT A POINT SOUTH 0°11'08" EAST ALONG THE SECTION LINE 1,827.25 FEET, MORE OR LESS, AND NORTH 89°58'38" EAST 972.665 FEET FROM THE WEST QUARTER CORNER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT OF BEGINNING BEING ALSO NORTH 89°58'38" EAST 972.665 FEET AND NORTH 0°11'08" WEST 65.40 FEET FROM THE SALT LAKE CITY SURVEY MONUMENT AT NORTH TEMPLE AND THE WEST LINE OF SAID SECTION 34; AND RUNNING THENCE NORTH 0°11'08" WEST 1,560.55 FEET TO THE SOUTH LINE OF MORTON MEADOWS PLAT C; THENCE SOUTH 89°51'50" EAST ALONG SAID LINE 434.06 FEET; THENCE SOUTH 0°04'28" WEST 798.72 FEET TO THE SOUTHWEST CORNER OF MORTON MEADOWS PLAT B; THENCE SOUTH 89°51'50" EAST 111.54 FEET TO THE EAST LINE OF CHAS S. DESKY'S FIFTH ADDITION; THENCE SOUTH 0°08'36" EAST ALONG SAID EAST LINE 528.81 FEET TO THE CENTERLINE OF A 13 FOOT WIDE ALLEY IN BLOCK 1 OF SAID ADDITION; THENCE SOUTH 89°58'38" WEST 226.875 FEET; THENCE SOUTH 0°08'36" EAST 131.50 FEET TO THE NORTH LINE OF NORTH TEMPLE STREET; THENCE SOUTH 89°58'38" WEST 314.53 FEET TO THE POINT OF BEGINNING.

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11 JUNE 90 04:57 PM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
ASSOCIATED TITLE  
REC BY: REBECCA GRAY , DEPUTY

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