



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 3

**DATE:** October 25, 2019

**TO:** Mayor Jerry L. Demings  
and the  
Board of County Commissioners

**THROUGH:** Paul Sladek, Manager *PS*  
Real Estate Management Division

**FROM:** David L. Brown, Senior Title Examiner *DLB*  
Real Estate Management Division

**CONTACT PERSON:** Paul Sladek, Manager

**DIVISION:** Real Estate Management  
Phone: (407) 836-7090

**ACTION REQUESTED:** Approval and execution of Commercial Account Right of Entry Agreement between Orange County and Bright House Networks, LLC

**PROJECT:** 1944 E. Michigan Street, Orlando, FL 32806  
District 3

**PURPOSE:** To provide for access, construction, operation, and maintenance of communication facilities by Bright House Networks, LLC.

**ITEMS:** Commercial Account Right of Entry Agreement  
Revenue: None  
Size: 54.105 acres  
Term: 5 years, or 6 months after the date that Bright House Networks, LLC is no longer providing services, whichever is later

**APPROVALS:** Real Estate Management Division  
County Attorney's Office  
Facilities Management Division

**REMARKS:** The blanket right of entry provides Bright House Networks, LLC the right to install and maintain communication lines and related facilities for services to the Michigan Street Complex and is intended to be unrecorded.



## COMMERCIAL ACCOUNT RIGHT OF ENTRY AGREEMENT

This Commercial Account Right of Entry Agreement (hereinafter the "Agreement") is by and between Orange County, a charter county and political subdivision of the state of Florida (hereinafter the "Owner"), with a mailing address of P.O. BOX 1393, ORLANDO, FL 32802-1393, and owning real estate located at 1944 E. Michigan Street Orlando, FL 32806 (hereinafter the "Premises") and Bright House Networks, LLC on behalf of itself and its affiliates, (hereinafter collectively "Charter"), with a mailing address of 12405 Powerscourt Drive, St. Louis, MO 63131, Attn: Commercial Contracts Management. This Agreement commences on the later of the execution dates set forth below the signatures (hereinafter the "Effective Date"). Charter and Owner may individually be referred to as a "Party" or collectively as the "Parties".

### THE PARTIES AGREE AS FOLLOWS:

#### 1. RIGHT OF ENTRY AND EQUIPMENT.

- a. In consideration of the mutual benefits and obligations set forth herein, Owner hereby grants to Charter a non-exclusive right of entry to the Premises and those buildings of Owner located on the Premises (including building roof top(s)) ("Buildings") for the installation, attachment, maintenance, modification, inspection, relocation, repair, upgrade, replacement or removal of any equipment and facilities and other communications accessories, equipment, apparatus, fixtures, hardware, appliances, and appurtenances and any other associated equipment (collectively, "Equipment") to provide any of Charter's services (hereinafter the "Services") to any customers who can receive Services by such Equipment. Owner also hereby authorizes Charter to utilize those conduits and ducts of Owner that Owner may designate as available for Charter's use (collectively "Conduit").
- b. The rights herein granted to Charter shall include use of available power at the Premises, together with the right to access and use all i) risers in the Buildings, ii) Building entrance facilities, iii) Building utility entrance facilities, iv) utility closets in the Buildings, v) private rights-of-way, and vi) other areas on the Premises and Buildings as is reasonably required for the purpose set forth herein.
- c. All of the above grants and authorizations given by Owner are to the extent necessary or desirable for Charter to provide its Services to the Premises and shall extend to Charter's authorized agents.

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d. The Equipment is not, and shall not be deemed to be, affixed to or a fixture of the Premises. If requested by Owner, Charter shall provide to Owner the proposed route for installation of Equipment on the Premises. Charter shall install, operate and maintain the Equipment on the Premises at its own expense and in accordance with all applicable laws.

**2. OWNER REPRESENTATIONS.** Owner represents and warrants to Charter that Owner is the legal owner of the Premises, the Building(s) and Conduit (if applicable), and that no other person has any rights in the forgoing that conflict with Charter's rights under this Agreement. Owner recognizes Charter's right to have exclusive control over any Charter installed Equipment, and Owner will not attach to or use, and will not knowingly allow a third party to attach to or use, Charter's Equipment for any purpose without Charter's prior written consent. In the event the Owner is not executing this Agreement, the undersigned person executing on behalf of Owner represents that the undersigned is Owner's authorized agent and has full authority to bind Owner to the terms and conditions of this Agreement.

**3. RESPONSIBILITY TO CONTACT PUBLIC UTILITIES.** As may be required by law, Charter or its contractors will contact and coordinate with local agencies to physically mark the location of all public utility lines (including, but not limited to, water, electric, phone and sewer lines) that are located in areas in which Charter intends to install the Equipment. Owner shall not interfere with the markings designating such locations until installation is complete. Charter shall be responsible for any damage to public utility lines that are located along the routes or in the location in which Charter installs any Equipment, to the extent such damage arises from Charter's installation activities.

**4. RESPONSIBILITY TO MARK PRIVATE UNDERGROUND LINES.** If Owner has private underground lines at the Premises that could impact Charter's installation of Equipment, including, but not limited to, sprinklers, sprinkler heads, drains, cables, pipes and wires (collectively "Impacted Private Lines") then both Parties shall, in advance of any underground construction performed by Charter, work together, to the best of their abilities, to research the existence of all Impacted Private Lines (hereinafter "Joint Effort"). In order to facilitate the Joint Effort, Owner provides below its authorized representative (with contact information) regarding the Joint Effort. (Please print clearly)

Name: Manager, Orange County Facilities Management

Address: 2010 E. Michigan Street, Orlando, FL 32806

Phone: (407) 836-7400

After the Joint Effort, the following shall take place: (i) Charter will make a determination on the need to locate and mark Impacted Private Lines including, but not limited to, the methods and arrangements for same, and (ii) If deemed by Charter necessary to do so,

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a qualified Charter contractor shall locate (including verification of) and clearly mark all Impacted Private Lines to the extent required by Charter. In the event that Charter damages any clearly marked Impacted Private Lines along the routes or in the location in which Charter installs any Equipment, and only to the extent such damage(s) arise from Charter's Equipment installation activities on the Premises, then Charter shall promptly, within a reasonable period of time, repair said damage(s) to Owner's reasonable satisfaction, after receipt of written notice from Owner describing the scope and extent of such damage(s), which written notice, if needed, shall be provided to Charter no later than thirty (30) days after Charter's initial installation of Equipment.

5. **INSURANCE.** Charter shall maintain, at Charter's sole cost and expense, (i) commercial general liability insurance including Property Damage, Bodily Injury and contractual liability insurance subject to standard insurance carrier exclusions, in the amount of \$2,000,000 each occurrence covering (a) to the extent caused by acts of Charter, damages to the Premises and (b) the operations of Charter at the Premises, (ii) Auto Liability, including Bodily Injury and property damage in the amount of \$1,000,000 each accident, and (iii) worker's compensation insurance to comply with the applicable laws of the State the Premises is located in.
6. **TERM.** The term of this Agreement commences on the Effective Date and shall remain in full force and effect until the later of: (i) the date that is five (5) years after the Effective Date, or (ii) the date that is 6 months after the date that Charter is no longer providing Services to any tenant of the Premises (the "Term"). Following the Term, Owner may terminate this Agreement upon 90 days advance written notice to Charter in the event Charter is no longer providing Services to any tenant of the Premises. Should any tenant of the Premises request Services during such 90-day termination notice period, the related notice of termination shall be deemed rescinded and thereafter null and void. Charter may, within 90 days of the expiration or termination of this Agreement, elect to remove Charter's Equipment or abandon in-place all or certain portions of Charter's Equipment at the Premises which, upon abandonment, shall be deemed the property of the Owner, with lien free title thereto passing immediately to Owner at no cost to Owner.
7. **ASSIGNMENT** This Agreement may be freely assigned by either Party, provided that the assignee agrees to be bound by all of the terms and conditions hereof. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors, legal representatives and assigns.
8. **LIMITATION OF LIABILITY.** CHARTER MAKES NO REPRESENTATIONS OR WARRANTIES--EXPRESS OR IMPLIED-- REGARDING THE EQUIPMENT OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL CHARTER OR OWNER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL,

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SPECIAL, RELIANCE OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

- 9. INDEMNIFICATION.** Charter will indemnify, defend, and hold Owner harmless from and against all liability, loss, costs, damages, (together with reasonable attorneys' fees associated therewith) arising out of any third party claims resulting from the negligence, willful misconduct of Charter, or breach of this Agreement (including but not limited to any representation or warranty hereunder). To the extent provided by and without waiving its rights and protections pursuant to Section 768.28, Florida Statutes, or any successor law, Owner will indemnify, defend, and hold Charter harmless from and against all liability, loss, costs, damages, (together with reasonable attorneys' fees associated therewith) arising out of any third party claims resulting from the negligence, willful misconduct of Owner, or breach of this Agreement (including but not limited to any representation or warranty hereunder); notwithstanding any term or provision of this Agreement seemingly to the contrary, Owner shall not, by virtue of entering into this Agreement nor by virtue of anything set forth in this Agreement, waive (or be deemed to have waived) its right to sovereign immunity or the sovereign immunity limits established by Florida law (including, but not limited to, the limits established by Section 768.28, Florida Statutes). Nothing herein shall constitute an agreement by any party to assume any liability for the acts, omissions, and/or negligence of the other party."
- 10. JURY TRIAL WAIVER.** IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, THE PARTIES EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- 11. ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire agreement between the Parties with respect to, and supersedes all prior agreements, promises and understandings, whether oral or written, with respect to, the subject matter contained herein. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both Parties.
- 12. SEVERABILITY.** If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable in whole or in part, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable term or provision had not been contained herein.
- 13. NO WAIVER.** Neither the failure of either Party to exercise any power given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

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**14. COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Agreement may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement may be transmitted by electronic mail, and signatures so transmitted will be deemed the equivalent of delivery of an original signature.

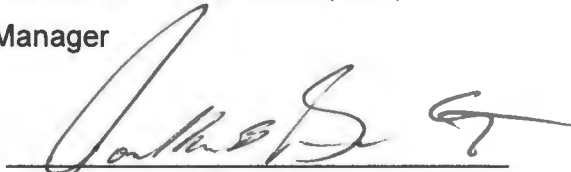
This Agreement shall be construed to be in accordance with the laws of the State where the Premises is located.

**CHARTER: (type in Charter Legal Entity Name below) OWNER: (type in Owner/Legal Entity Name below)**

Bright House Networks, LLC

Orange County, Florida

By Charter Communications, Inc.,  
its Manager

By:   
(Signature)

By:   
(Signature)

Printed Name: Jonathan E. Bentley

Printed Name: Jerry L. Demings

Title: Director, Market Expansion

Title: Orange County Mayor

Date: 9/30/19

Date: 12 Nov 19



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