



TELECOMMUNICATION AND BUILDING ACCESS AGREEMENT

This Agreement is made as of the 20th day of June, 2005 (the “**Effective Date**”).

In consideration of the mutual rights and obligations herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) **Bell Canada** and (the “**Owner**”) agree as follows:

1. Owner hereby grants to Bell Canada and the affiliates of BCE Inc. (as defined in the *Canada Business Corporations Act*, as amended) (hereinafter, collectively referred to as “**Bell**”) at no cost or charge to Bell, a non-exclusive right to (i) enter on and gain access in, over or under the building described in Schedule “A” (the “**Building**”) and the common elements and other common areas of the Building, (ii) use in-building wire or cabling owned or controlled by Bell, the Owner or any third party, and (iii) make available and provide telecommunications and other communication services (collectively the “**Bell Services**”) to local exchange carriers, prospective purchasers and the owners, tenants, invitees or other occupants of the Building (collectively the “**Occupant(s)**”). Nothing in this Agreement shall be construed or interpreted as granting Bell any exclusive rights or privileges in or to the Building, relating to access or installation rights, to the exclusion of any other third parties.
2. The rights in Section 1 include Bell’s right to construct, install, test, operate, maintain, repair, service, upgrade, modify, remove and replace its Equipment (as defined below) in the Building. “**Equipment**” includes but is not limited to any Bell equipment, in-building wire (as defined by the CRTC in Decision 99-10), copper and fiber optic cable, infrastructure or other, which is necessary and incidental to enable and deliver Bell Services to Occupants. Nothing herein limits Bell’s ability to change, alter or replace the Equipment with new or different equipment to provision the Bell Services. Bell agrees, if applicable, to perform installations of the Equipment in the Building as further described in Schedule “B”, if Schedule “B” does include such description and is duly signed and attached to this Agreement.
3. Bell and those for whom it is responsible for in law shall be permitted to use and access all portions of the Building necessary for the provision of Bell Services and for the matters as provided herein. The rights of access granted and uses permitted herein shall be available to Bell during normal business hours, three-hundred and sixty-five (365) days per year (except in case of emergency, where Bell shall be permitted to access the Building at any time), subject to Bell providing reasonable notice to the Owner or its agent of its intention to enter the Building for the purposes of this Agreement.
4. This Agreement is effective as of the date last signed by both parties below and shall continue to run for a period of ten (10) years from the Effective Date (the “**Term**”). Where title to the Building is transferred prior to the expiry of the Term, the Owner shall ensure that transferee shall, upon acceptance of title to the Building, assume and be bound by all the rights and obligations of the Owner as set out herein.
5. Bell shall, at its own cost (i) ensure that all Equipment is installed in accordance with all relevant fire and building code requirements in force at the time of installation, and (ii) be responsible for the provision, installation, maintenance and repair of the Equipment installed by Bell during the Term, although each individual Occupant may incur charges (at Bell’s then applicable rates) relating to post-installation activities specific to such Occupant’s requirements. The Equipment will remain the property of Bell at all times, and will not become a fixture despite any legal principle to the contrary. Owner agrees that it has no legal or equitable ownership interest in the Equipment nor any of the items reasonably contemplated by Section 2 above and shall not make any claim to the contrary.

6. Owner agrees to provide to Bell, at no charge to Bell, access to and use of, floor space in the main terminal room and/or other segregated, enclosed spaces in the Building to house or store the Equipment (the “**Equipment Space(s)**”) as further described in Schedule C duly signed and attached to this Agreement. Owner agrees that the access rights herein include a right to access the Equipment Space in the Building. The Equipment Space shall have adequate power supply and adequate natural or artificial ventilation for the proper operation of the Equipment. Nothing in this Agreement limits the Owner’s right to repair any common elements of the Building; provided that where any such repair may affect Bell’s Equipment, the Owner shall: (i) provide Bell with reasonable advance written notice to request Bell to adjust and/or move its Equipment before the repairs are made; and (ii) reimburse Bell for all reasonable costs Bell incurs as a result of any material relocation or adjustment. Subject to the Owner’s obligations under the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (PIPEDA), Owner shall provide Bell with the names of Occupants within ten (10) days of an Occupant signing a purchase and sale agreement with the Owner or other lease arrangement which permits an Occupant to occupy the Building for the sole purpose of enabling Bell to activate Bell Services.

7. Each party represents and warrants that: (1) it has full right, power and authority to enter into and perform its covenants and obligations in this Agreement; (2) it is under no obligation, statutory, contractual or otherwise, which could prevent or interfere with the complete performance of its covenants and obligations herein; (3) it is validly organized and existing under the name indicated on this Agreement; and (4) no by-law is in force that would prevent or limit Bell from entering into this Agreement. Bell further covenants to repair, at its sole expense, any damage to the Building or the Equipment Space where the damage is caused by Bell and those for whom it is responsible in law.

8. Bell will be liable for and will indemnify and save harmless the Owner, its directors, officers, employees, and contractors (collectively, the “**Owner Indemnitees**”), from and against any and all losses, suits, actions, causes of action, damages, costs, claims and expenses (collectively, the “**Losses**”) arising from physical damage to any tangible property or bodily injury, including death caused by negligent or willful act of Bell, its employees and subcontractor in the use or occupation of the Equipment Space or the Building, provided that Bell will not be required to indemnify the Owner Indemnitees to the extent any such Losses are caused by any negligent or willful act or omission of any of the Owner Indemnitees. Notwithstanding the foregoing, in no event will Bell be liable for or indemnify and save harmless any of the Owner Indemnitees from and against any indirect, special, incidental or consequential damages, including loss of revenue, loss or profits, loss of business opportunity or loss of use of any facilities or property, even if advised of the possibility of such damages. This Section shall survive the expiration or termination of this Agreement.

9. Unless a Party provides the other party hereto with written notice of its intention not to renew this Agreement at least one hundred and eighty (180) days prior to the expiration of the Term or Renewal Term (as defined below), this Agreement shall automatically renew for successive five (5) year renewal terms (the “**Renewal Term**”) on the terms and conditions herein. Either Party may terminate this Agreement: i) for a material breach hereof, where such breach is not cured within thirty (30) days of receipt of written notice by the other party of such breach, or ii) immediately, in the event of bankruptcy, reorganization, assignment, petition or appointment of a trustee or such other act of insolvency of the other party. Upon expiry or termination of this Agreement, Bell shall be allowed ninety (90) days to remove the Equipment.

10. This Agreement is subject to all applicable federal, provincial and local laws, and regulations, ruling and orders of governmental agencies, including, but not limited to, the *Telecommunications Act*, the *Broadcasting Act*, as amended or the Canadian Radio-Television

and Telecommunications Commission (the "CRTC"). If the action of a governmental agency requires modification of Bell's Services or the terms in which they are provided which is inconsistent with the terms of this Agreement or impairs Bell's ability to provide Bell's Services in a economical and technically practical fashion, Bell may terminate this Agreement upon thirty (30) days' written notice to Owner.

11. Any notice required or permitted to be given hereunder or any tender of delivery of documents may be sufficiently given by regular mail, personal delivery or by facsimile transmission to each party at the addresses listed below:

To Bell Canada:

78 O'Connor Street, Room 701
Ottawa, Ontario
K1P 5M7

Fax:

To Owner:

Port of Newcastle Development Ltd.
1029 McNicoll Ave
Scarborough, Ontario
M1W 3W6

Fax:

Attn: Manager – Building Access

with a copy to Bell Canada's
Legal Department

Notices shall be deemed to have been received by the Owner or Bell, as the case may be, on (i) the fifth (5) business day after the date on which it shall have been so mailed, (ii) at the time of delivery in the case of hand delivery, (iii) the date and time of transmission in the case of facsimile, provided that such transmission was made during normal business hours, with receipts or other verifications of such transmission.

12. Where a provision of this Agreement conflicts with a Schedule attached hereto, the provision of this Agreement shall prevail. This Agreement and Schedules will be governed by the laws of the Province where it is signed by Bell and the applicable laws of Canada therein, excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction. Except as provided for Section 4 above, none of the rights and obligations contained herein may be assigned or transferred by Owner, without the prior written consent of Bell.

13. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings on the subject matter hereof. Except as provided in Section 7, neither party makes any representation or warranty express or implied, statutory or otherwise to the other. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the other provisions of this Agreement shall not be affected or impaired, and the offending provision shall automatically be modified to the least extent necessary in order to be valid, legal and enforceable.

14. To the extent required by Bell, Owner agrees to grant to Bell a non-exclusive servitude to the property line from the Building, as the case may be and in or through the Equipment Space and the Building, if it is determined that Equipment must be installed into the Building and/or in the Equipment Space. Owner and Bell shall in advance, agree upon a suitable location to install the Equipment. Owner agrees to allow Bell to register, at Bell's expense, the servitude and/or notice of this Agreement.

In witness thereof the parties through their duly authorized representatives have executed this Agreement as of the date indicated below.

BELL CANADA

I/We have the authority to bind the Corporation

Name:

Title: V.P. Construction

Date: June 20, 2005

I have authority to bind the Corporation

Name:

Title: Manager Building Access

Date:

Schedule "A"

Address and Description of Building

A. For the Building:

This Agreement applies to the following Building:

Building A 395 Lakebreeze Dr. Newcastle

Building B 385 Lakebreeze Dr. Newcastle

Building C 375 Lakebreeze Dr. Newcastle