

Calgary Real Estate Office

Sun Life Assurance  
Company of Canada  
#210 - 140 - 4<sup>th</sup> Ave SW  
Calgary, AB  
Phone: 403-269-8384  
Fax: 403-266-7463  
Email:  
lynn.hart@sunlife.com

April 7, 2004

Bell West Inc.  
21st Floor, 111 - 5th Avenue S.W.  
Calgary, Alberta T2P 3Y6

Attention: General Manager, Real Estate

Dear Sir / Madam:

**Re: Permission to Access**

Sun Life Assurance Company of Canada ("Sun Life"), the owner of the building known as Sun Life Plaza and having the municipal address of 112, 140 & 144 - 4<sup>th</sup> Avenue S.W., Calgary, AB (the "Building") and legally described in Schedule "C", hereby permits Bell West Inc. ("Bell West") to access the Building, all in accordance with and subject to the provisions hereof.

1. **Purpose of Access**

Access by Bell West to the Building hereunder shall be for the sole purpose of installation, maintenance and removal of the Installations (defined below) required to provide to those tenants of the Building that are customers of Bell West such broadband telecommunications services as they from time to time request Bell West to provide a Point of Presence Room (POP) and a Dark Fiber Enclosure (DFE).

2. **Installations**

Sun Life permits Bell West to install, in accordance with and subject to the prior approval of Sun Life as to the exact size, location and other technical specifications (which Bell West shall provide in writing in accordance with the provisions of Section 8 below), the equipment necessary for provision of the Bell West services (collectively, the "Installations").

Without limiting any other provision herein, the Installations shall be located only in the premises of Bell West customer's in such portion of the telephone room of the Building as Sun Life may direct, and in such portion of the existing riser in the Building as Sun Life may direct. For greater certainty, however, nothing in this letter grants Bell West permission to access the premises of any other tenant of the Building, and any such permission must be sought by Bell West from any such party directly.

3. Ownership, Expense and Risk

Bell West will provide Sun Life evidence that it maintains general liability insurance with limits of at least Five Million Dollars (\$5,000,000.00) naming Sun Life as an additional insured. The insurance will not be altered in any material way or terminated or cancelled to the detriment of Sun Life without at least ten (10) days prior written notice to Sun Life. Bell West will also maintain all risk property insurance for the full replacement cost of its Equipment including loss of use of that Equipment.

Bell West will indemnify Sun Life in respect of any direct loss, cost, claim, action or other expense which Sun Life suffers as the result of Bell West's activities limited to the negligence of Bell West and those over whom it is responsible in law. Bell West includes for the purpose of this paragraph the officers, directors, employees, agents and contractors of Bell West, and for the purpose of enforcement of this indemnity Bell West acts as agent for or trustee for the benefit of those entities.

4. No Interference

In installing, maintaining and removing the Installations, Bell West shall not interfere with any installations or services then serving the Building, any part of the Building, or any tenants in the Building.

5. Duration of Permission to Access

- a) "Term" means the continuous period of five (5) years commencing on the 1<sup>st</sup> day of April, 2004 (the "Commencement Date").
- b) Bell West shall have two (2) options to renew and extend this permission for consecutive periods of five (5) years each (each of which is a "Renewal Term"). Bell West shall provide ninety (90) days' written notice to Sun Life prior to end of the Term or Renewal Term, as the case may be, as to whether or not it will exercise its option to renew and extend this permission. Fees will be renegotiated at the beginning of each renewal term and if at the time of renewal there are alternative telecommunication providers providing similar services in the Building then such renewal fee shall be mutually agreed by the parties in writing based on the then current market rates and on similar telecommunications license agreements within the building.

6. Permission to Access Non-Exclusive

Nothing in this letter precludes Sun Life from providing or permitting others to provide the same or similar services as those provided by Bell West to the tenants or future tenants of the Building or any other buildings.

7. Payment for Permission to Access

As at the date of this letter, Sun Life is charging \$4,500.00 per year excluding GST, which shall be paid in advance on the Commencement Date and, thereafter, on each anniversary of the Commencement Date during the Term for the granting of the permission in this letter. However, Sun Life is formulating a policy relating to telecommunications providers' access to its buildings, and if such policy is formulated during the time the permission granted in this letter is in effect and includes telecommunications providers being charged a standard amount for access to its buildings, Bell West agrees that in the event alternative telecommunication providers are requested to provide telecommunications services to the Building, Bell West will negotiate the terms of payment for access granted herein with Sun Life. If Sun Life and Bell West are unable to negotiate a mutually satisfactory agreement within ninety (90) days of Sun Life providing written notice of such policy and copies of Sun Life's form of license agreement to Bell West, then: (i) the permission granted by this letter shall cease immediately, and (ii) the Installations shall immediately be removed by Bell West in accordance with paragraphs 3, 4, 8 (c) and (e), and 11 herein.

8. Specific Requirements

Before commencing work on the Installations, Bell West will, at its sole cost and expense, prepare and deliver to Sun Life working drawings for the installations prepared in accordance with Sun Life's construction requirements for the Building, detailing the type, size and location of Installations and the Building communications spaces that Bell West proposes to use from the point of access to the Building through the main telephone room to the premises of the Bell West customer, and:

- (a) no work shall commence on any installations required in respect of a Bell West customer unless Bell West has first provided to Sun Life a duly completed authorization in respect of that Bell West customer in the form of Schedule A attached hereto and Sun Life has approved it and returned it signed to Bell West.
- (b) no work shall commence until Sun Life has approved, in writing, all applicable construction or installation plans, which approval shall not be unreasonably withheld or delayed;

- (c) the working drawings provided to Sun Life shall include any information which Sun Life or its designated representatives may require to undertake, if the need arises, the safe and appropriate removal of the Installations. Bell West shall effect the Installations in a manner that will accommodate their easy and immediate removal upon the termination or expiry of the permission given in this letter. Bell West shall not affix any equipment to the Building which may cause damage upon removal. If damage occurs to the Building during the course of such removal, Bell West will be responsible to restore the damaged area to its original condition.
- (d) Bell West shall comply with all reasonable rules and regulations as adopted and altered by Sun Life from time to time and generally applicable to the tenants, licensees and other occupants of the Building.
- (e) Bell West's employees or anyone else used by Bell West in connection with the installation, maintenance and removal of the Installations must check in with Building security and show a photo identification prior to entering the telephone closets. Such persons shall be entitled to access to the Building seven (7) days a week, twenty-four (24) hours a day during the Term, subject to Sun Life's reasonable security requirements.

9. Termination by Sun Life

Notwithstanding the foregoing, Sun Life may terminate this permission upon thirty (30) days' written notice to Bell West following the termination of the service agreement between Bell West and its customers in the Building.

10. Termination by Bell West

Bell West shall have the right to terminate this Permission upon written notice to Sun Life in the event of the occurrence of any of the following:

- (a) Bell West is unable to secure, on terms and conditions reasonably satisfactory to the Bell West, all necessary consents, approvals, permits and authorizations of any federal, provincial or municipal governmental authority having jurisdiction over the installation, operation, maintenance, repair, removal and use of Bell West's equipment;
- (b) Bell West's equipment is damaged or destroyed and Bell West determines that it will not effect repairs to, or replace, their equipment;
- (c) Bell West no longer requires the equipment room or the building risers for the purpose of providing its communications services to customers in the Building;

- (d) Sun Life defaults in the observance or performance of any of Sun Life's obligations under this permission, and such default continues for more than thirty (30) days after receipt of written notice of such default by Bell West to Sun Life, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that Sun Life promptly commences such cure with reasonable diligence.

#### 11. Surrender

Upon the expiration or earlier termination of this Permission to Access, Bell West shall remove its equipment from the equipment room and the Building, and shall be responsible for repairing any damage caused by such removal, except damage caused by ordinary wear and tear. Bell West will be responsible to restore the areas of the building affected by the installation of its equipment to the same condition they were in prior to such installation.

#### 12. Sublicense

Subject to the prior written consent of Sun Life, which consent shall not be unreasonably withheld or unduly delayed, Bell West shall have the right to sublicense a portion of the 16 square feet of wall space (as defined as "Equipment Area" in Schedule A of this permission) to an affiliate (as such term is defined in the *Canada Business Corporations Act*) for the purpose of permitting such affiliate to provide communications services to its existing customers in the Building.

#### 13. Non-Disclosure

Sun Life and Bell West each agree to use good faith efforts to refrain from disclosing the financial terms of this permission, except that either party may disclose the financial terms of this permission if required by law or regulation.

#### 14. Force Majeure

Without limiting or restricting the applicability of the law governing frustration of contracts, in the event either party fails to meet any of its obligations under this permission within the time prescribed, and such failure shall be caused, or materially contributed to, by force majeure, such failure shall be deemed not to be a breach of the obligations of such party under this permission, and the time for the performance of such obligation shall be extended accordingly as may be appropriate under the circumstances. For the purpose of this permission, force majeure shall mean any acts of God, war, natural calamities, strikes, lockouts or other labour stoppages or disturbances, civil commotions or disruptions, riots epidemics, acts of government or

Bell West Inc.  
Permission to Access Sun Life Plaza  
April 7, 2004  
Page 6 of 11

any competent authority having jurisdiction, or any other legitimated cause beyond the reasonable control of such party, and which, by the exercise of due diligence, such party could not have prevented, but lack of funds on the part of such party shall not be deemed to be a force majeure.

15. CRTC

Sun Life and Bell West acknowledge that the access rights of telecommunications providers in multi-tenant buildings is presently subject to a regulatory proceeding initiated by the CRTC. In the event the CRTC issues a ruling or decision in respect of such access rights while this permission is in effect, this permission shall be amended by the parties in such a manner so as to give effect to such ruling or decision, including, without limitation, the termination of the permission if necessary.

16. Mailing Address for Payments and Notices:

SUN LIFE ASSURANCE COMPANY OF CANADA  
140 – 4<sup>th</sup> Avenue S.W.  
Suite 210,  
Calgary, AB T2P 3N3

Attn: Lynn Hart, Property Manager  
Tel: (403) 269-8384  
Fax (403) 266-7463

Bell West Inc.  
21st Floor, 111 - 5th Avenue SW  
Calgary, Alberta T2P 3Y6

Attn: General Manager, Real Estate  
Tel: 1-888-333-2811  
Fax: (403) 410-4019

17. Schedules

The following are the Schedules attached to and forming part of this permission:

Schedule A – Authorization for Bell West to Service the Building  
Schedule B – Equipment Room Plan  
Schedule C – Description of Lands

**Title:** \_\_\_\_\_

## **SCHEDULE A**

### **Sun Life Plaza AUTHORIZATION FOR BELL WEST TO SERVICE THE BUILDING**

1. Date of Request: **November 18, 2003**
2. Building Name: **Sun Life Plaza**
3. Building Contact: **Lynn Hart** Phone: **(403) 781-2255**
4. Building Address: **112, 140 & 144 – 4<sup>th</sup> Avenue S.W., Calgary, AB**
5. Commencement Date: **March 1, 2004**
6. Term of Permission to Access: **As per paragraph 5.0 of this document**
7. Details of Proposed Service (DS1, ADSL, ISDN, etc.): **Point of Presence Room (POP) & Dark Fiber Enclosure (DFE) – fiber optic cable termination and distribution panel**
8. "Equipment Area" means the enclosed premises located on the C Level of the Building and shown on the floor plan attached to this permission as Schedule B, comprising approximately 150 square feet in the main telephone room of 112 – 4<sup>th</sup> Avenue S.W. and approximately 16 square feet of wall space in the main telephone room of 144 – 4<sup>th</sup> Avenue S.W., which premises shall be provided by the Sun Life to Bell West for the sole and exclusive use of the Bell West.
9. Description of cabling as shown on the floor plan attached to this permission as Schedule B (detail the type of cabling, the quantity, whether it is existing or new cable and any other relevant details):
10. Description of the communications equipment required for the installation and any relevant details as shown on the floor plan attached to this permission as Schedule B.

**SCHEDULE B**

**See Attachments**

## **SCHEDULE C**

### **LEGAL DESCRIPTION OF LANDS:**

City of Calgary

Plan C, Block 15, Lots 14, 15, 25 and 26, 27  
Excepting thereout a portion as to surface only for road widening on Plan 8310213  
*(112 – 4<sup>th</sup> Avenue S.W., Calgary, AB)*

&

Descriptive Plan 9212003  
Block 15  
Lot 1A  
*(140 & 144 – 4<sup>th</sup> Avenue S.W., Calgary AB)*

### **MUNICIPAL DESCRIPTION OF LANDS:**

Sun Life Plaza  
112, 140 & 144 – 4<sup>th</sup> Avenue S.W., Calgary, AB



**SNC-LAVALIN**  
**Nexacor**

**Nexacor Realty Management Inc.**  
2100, 111 - 5th Avenue SW  
Calgary, Alberta  
Canada T2P 3Y6

March 18, 2004

**Sun Life Assurance Company of Canada**  
210, 140 -- 4th Avenue SW  
Calgary, Alberta  
T2P 3N3

**Attention: Lynn Hart**

Dear Lynn:

**Re: Permission to Access – Sun Life Plaza, Calgary, Alberta**

Find enclosed four (4) originals of the above noted agreement executed by Bell West for your review and execution.

Once executed, please return two (2) originals to my attention for our files. Thank you for your cooperation in this matter and in the event you have any questions, please call.

Sincerely,

**SNC LAVALIN**  
**Nexacor Realty Management Inc.**

S  
Transaction Manager

encl.