



## **TELECOMMUNICATION AND BUILDING ACCESS LICENSE – BUILDINGS**

This License is made as of the 2<sup>nd</sup> day of December, 2008 (the "Effective Date").

In consideration of the sum of \$2.00 paid by each party to the other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), Bell Canada, in its own capacity and in its capacity as agent acting on behalf of Bell Expressvu Limited Partnership (hereinafter, collectively referred to as "Bell") and Berkley Developments (Avenue) Inc. (the "Developer") agree as follows:

1. Developer hereby grants to Bell at no charge to Bell a non-exclusive, non-preferential license (the "License") to:

- (a) enter on and gain non-exclusive, non-preferential access in, on, over or under the multi-unit dwelling building proposed to be constructed by the Developer as described in and shown on Schedule "A" (the "Building") and the common element (save and except exclusive use common element areas) areas of the Building ("Access Points"), including, one room in, the Building subject to the specifications set forth in Schedule "B" hereto (the "Equipment Space(s)"), as approved by the Developer, acting in good faith. For clarity, Bell shall be permitted to use and access the Access Points in the Building and Equipment Space for the provision of Bell Services and for the matters as provided herein all in relation to the Building in accordance with the Declaration, By-Laws and Rules of the condominium of which the Building is to form a part of, provided that such Declaration, By-Laws and Rules shall not prohibit the use of the satellite dish(es) referred to in Schedule "B" herein;
- (b) subject to CRTC rulings and regulations, (i) use wire owned, controlled or installed by Bell or the Developer; and (ii) make available and provide the Bell Services to owners, tenants, invitees or residents of the Building (collectively, the "Occupant(s)"). Notwithstanding the foregoing, in the event that Bell is compelled to do so by CRTC rulings and regulations (and Bell shall pay any costs applicable in accordance with such CRTC rules and regulations), Bell may be obligated to make available and provide the Services to local exchange carriers (on a non-exclusive basis) and to provide the Services to other telecommunications providers; and
- (c) construct, install, test, operate, maintain, repair, service, upgrade, modify, remove and replace the Equipment owned by Bell in the Building in a good and workman like manner and provided Bell immediately repairs any damage to the Building and lands upon which the Building is located (the "Lands") (notwithstanding that Bell acknowledges that it has no claims or interest in the Lands). Nothing herein limits Bell's ability to change, alter or replace the Equipment (all in accordance with applicable CRTC requirements and Bell obtaining any necessary third party approval at Bell's sole cost and expense) with new or different equipment to provision the Bell Services.

1A. Bell acknowledges and agrees that the License does not in any manner whatsoever provide or grant to Bell any rights to market or promote its Bell Services to the Building or any part thereof, or to the Occupants of the Building and Bell acknowledges and agrees that this Agreement does not prevent the Developer from entering into marketing or access agreements with other telecommunications service providers.

1B. (a) In this License, "Equipment" means the equipment, together with inside wire and infrastructure or otherwise, owned, controlled or installed by Bell, or the Developer which is necessary and incidental to enable and deliver Bell Services to Occupants;

(b) In this License, "Services" means telecommunications and other communication services subject to CRTC rulings from time to time and "Bell Services" shall mean the Services provided by Bell.

2. Except in the case of emergencies, all rights of access granted and uses permitted herein shall be available to Bell during normal service hours, three-hundred and sixty-five (365) days per year subject to Bell providing not less than 3 hours' prior written notice during normal service hours to the Developer or its property manager of its purpose and duration of its intention to enter the Access Points or Equipment Space for the purposes of this License.

3. Bell shall, at its own cost (i) ensure that all work performed by Bell within the Building shall be performed in a good, workmanlike manner and in accordance with all applicable laws, regulations and codes and 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 owned by Bell (the "Bell Equipment") during the Term and any renewal thereof, although each individual Occupant may incur charges (at Bell's then applicable rates) relating to post-installation activities specific to such Occupant's in-suite requirements; and (iii) repair forthwith, at its sole expense, any damage to the Building, the Lands or Equipment Space where the damage is caused by Bell and those for whom it is responsible in law. Bell further covenants to forthwith repair, at its sole expense, any damage to the Building, the Lands or Equipment Space where the damage is caused by Bell and those for whom it is responsible in law. Except as otherwise provided in Section 22 of the Condominium Act, 1998, the Bell Equipment will remain the property of Bell at all times, and will not become a fixture despite any legal principle to the contrary. Developer agrees that it has no legal or equitable ownership interest in the Bell Equipment and shall not make any claim to the contrary. Nothing in this License limits the Developer's right to repair any common elements of the Building; provided that where any such repair may affect Bell's Equipment, the Developer 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.

4. 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 License; (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 License; and (4) no condominium rule or by-law is or will be in force that would prevent or limit Bell from entering into this License.

5. Bell agrees to consent to and execute, if necessary, as a consenting party only, all documents presented to it by Developer which may be required to make application for or obtain a building permit or any other licences or permits required in connection with the development of the Building including, without limitation, any development agreement, collateral agreement, site plan agreement or

any agreement required pursuant to the Planning Act (Ontario), or any other similar agreement required by the municipality, or any other governmental body having jurisdiction therein and shall not object to any Official Plan amendment, rezoning, minor variance, severance, or other consent application filed by the Developer provided that the same is consistent with the intended use of the Building by the Developer and Bell as set out herein.

6. Despite anything contained herein to the contrary, Bell will be liable for and will indemnify and save harmless the Developer, its directors, officers, employees, and contractors, and those for whom it is responsible in law (collectively, the "Developer Indemnities"), from and against any and all losses, suits, actions, causes of action, proceedings, damages, costs, claims and expenses including, without limitation, all reasonable legal fees in relation thereto (collectively, the "Losses") arising from this License or this Agreement (including physical damage to any tangible property or bodily injury, including death, to any person caused by or arising out of any negligent act or omission relating to Bell's access to the Building. Notwithstanding the foregoing, in no event will either party be liable for or indemnify and save harmless the other party or any of its directors, officers, employees, and contractors, and those for whom it is responsible in law from and against any indirect, incidental or consequential damages, including loss of revenue, loss of 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 License.

7. The term of this License is effective as of the Effective Date and shall continue to run for a period often (10) years from the Effective Date (the "Term"). Bell shall execute and deliver promptly upon request by the Developer and without charge any reasonable acknowledgement, release, consent or status statement, in respect of this License and any easement or right-of-way registered on title as may be required to permit the registration of a declaration and description on all or any part of the Building and/or the Lands and subject to advice of Developer's counsel. Subject to the provisions of the Condominium Act, 1998, as amended, upon registration of a condominium plan in respect of the Building whereby a condominium corporation or similar entity is created (the "Corporation") prior to the expiry of the Term, the Developer shall, upon such registration, cause the Corporation to assume, duly ratify, and be bound by all the rights and obligations of the Developer as set out herein, including any easement or right-of-way registered on title on all or any part of the Building and/or the Lands. Unless a Party provides the other party hereto with written notice of its intention not to renew this License at least one hundred and eighty (180) days prior to the expiration of the Term or Renewal Term (as defined below), this License shall automatically renew for successive one (1) year renewal terms (the "Renewal Term") on the terms and conditions herein. Either Party may terminate this License: 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. 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 License or impairs Bell's ability to provide Bell's Services in an economical and technically practical fashion, Bell may terminate this License upon thirty (30) days' written notice to Developer all at no cost the Developer or the Corporation. Upon expiry or termination of this License, Bell shall be allowed thirty (30) days to remove the Bell Equipment at its sole cost and expense if Bell exercises such right to remove the Bell Equipment and shall promptly repair the Building, Lands and Equipment Spaces(s) to their state immediately prior to such removal. Bell shall ensure that such removal does not interfere with any other telecommunications or communications services being provided to the Occupants (other than the applicable Bell Services) and that such removal does not render the use of telecommunications or communications by Occupants invalid.

8. 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:

100 Wynford Drive, Floor 6  
Toronto, Ontario  
M3C 4B4

Fax:

Attn: Director, New Construction Sales

with a copy to Bell Canada's  
Legal Department

To Developer:

20 Rivermede Road, Suite 204  
Concord, Ontario  
L4K 3N3

Fax:

Attn: President

Upon turnover, the notice address for the Developer shall transfer to the Corporation as follows:

609 Avenue Rd  
Toronto Ontario

Fax:

Attn: Board of Directors

Notices shall be deemed to have been received by the Developer 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.

9. This License constitutes the entire agreement of the parties and supersedes all prior agreements and understandings on the subject matter hereof. This License is subject to all applicable federal, provincial and local laws, and regulations, ruling and orders of governmental agencies, including, but not limited to, the Condominium Act, 1998, as amended, the Telecommunications Act, as amended, the Broadcasting Act, as amended or the Canadian Radio-Television and Telecommunications Commission (the "CRTC") and applicable federal privacy legislation (including without limitation, the Personal Information Protection and Electronic Documents Act, as amended). In the event that a provision of this License conflicts with a Schedule attached hereto, the provision of this License shall prevail. This License and Schedules will be governed by the laws of the Province of Ontario 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.

10. Except as provided in Section 7 herein and save and except for an assignment or transfer by either party to an affiliate, subsidiary or related company, none of the rights and obligations contained herein may be assigned or transferred by either party, without the prior written consent of the other party hereto which consent shall not be unreasonably or arbitrarily withheld or delayed. The Developer covenants and agrees with Bell that upon any sale or transfer of any Building (other than a conveyance without consideration of a portion of a Building to a governmental authority required as part of or in the course of the development thereof), the Developer will cause the transferee to execute and deliver to Bell an agreement whereby the transferee agrees to be bound by and observe the Developer's covenants and obligations hereunder and after the sale or transfer as if it were an original signatory hereto, including, without limitation, the covenant contained in this paragraph, as it applies to the Building being acquired by the transferee. Upon such assumption, Bell will pay the consideration amounts noted above, or the relevant proportion thereof, to the transferee and not to the Developer herein. In the event this agreement is in respect of multiple buildings (as listed on Schedule "A", if applicable attached hereto), and anyone such Building is severed from this agreement, then the terms and conditions of this agreement shall continue unaffected or impaired with respect to the remaining Buildings. If any provision of this License is found to be invalid, illegal or unenforceable, the other provisions of this License 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.

11. To the extent applicable, Developer agrees to grant to Bell a non-exclusive easement and statutory right of way and/or a path to the property line from the Building, as the case may be and in or through the Equipment Space if it is determined that a fibre optic cable or such other Equipment must be installed to the Building and/or in the Equipment Space. Developer and Bell shall in advance, agree upon a suitable location to install the fibre optic cable on the property of the Developer. Developer agrees to allow Bell to register, at Bell's expense, the easement and right of way in the form attached hereto as Schedule "C".

12. Bell agrees to forthwith release or partially release this License and all easements and rights-of-way in relation to same and as referred to herein and any other rights herein granted as to all or any part of the Building and/or the Lands which are or will be transferred to the City of Toronto or any other municipal authority and to execute, forthwith at no cost to the Developer, such documentation necessary to release this License and all easements and rights-of-way in relation to same and as referred to herein and any other rights herein granted from those portions of the Building and/or the Lands which are or will be transferred to the municipality or any other municipal authority.

13. Bell and the Developer acknowledge and agree that upon the registration of a declaration and description pursuant to the Condominium Act, 1998, as amended, against (or in respect of) the Building and/or the Lands (or any portion thereof), this License and all easements and rights-of-way in relation to same and as referred to herein are hereby released against all of the residential units and any other units as described in the declaration and description and those portions of the common elements appurtenant to such residential units and other units designated as exclusive use common elements (if applicable), and all of the other lands subject to this License and all easements and rights-of-way in relation to same and as referred to herein (collectively the "Additional Development Lands"), which are not included in the declaration and description to be registered on the Building and/or the Lands, and within ten (10) days of Bell being provided with evidence of the particulars of the registration of the declaration and description Bell shall, without payment, forthwith deliver a release and abandonment of this License and all easements and rights-of-way in relation to same and as referred to herein as they apply to the Additional Development Lands.

14. Bell agrees, forthwith upon request and at no cost to the Developer, to postpone and subordinate this License and any easement or right-of-way registered on title to any mortgagee or chargee, financing or refinancing of the Building and/or the Lands and to any development agreement in relation to the lands.

15. At no cost to the Developer, Bell shall not, and shall cause each of its employees, agents and contractors (hereinafter referred to as "Bell Agents") not to: (i) cause any other telecommunications or communications service provider (an "Other Service Provider") having equipment installed within the Building prior to the installation of Bell's Equipment (the "Prior Equipment") to relocate or reconfigure the Prior Equipment except with the prior written consent of the Other Service Provider; (ii) cause any Other Service Provider to install additional equipment to accommodate Bell, except to the extent agreed upon by the Other Service Provider; (iii) cause any damage to an Other Service Provider's equipment through any act or omission of Bell or Bell Agents; and (iv) do any act that will cause any Other Service Provider, acting in a commercially reasonable fashion, to replace components of its Prior Equipment at the Equipment Space(s), in the Building or in, on or under the Building and/or the Lands. Bell shall forthwith pay all costs arising from matters in this section.

16. In the event Bell is unable to obtain any necessary third party approval in accordance with this Agreement, Bell acknowledges and agrees that the Developer shall not be held liable in any manner whatsoever provided that Developer shall take no action to influence such third party to withhold such approval.

17. Throughout the Term of this Agreement, Bell, at its sole cost and expense, shall take out and keep in full force and effect comprehensive general liability insurance, including but not limited to personal injury liability, contractual liability and owners' and contractors' protective insurance coverage with respect to Bell's access and rights upon the Building, Access Points, Bell Equipment and Equipment Spaces; such coverage shall include the activities and operations conducted by Bell and any other person(s) performing work on behalf of Bell or on whose behalf Bell is in law responsible. Such policy shall be written with inclusive limits of not less than Five Million Dollars (\$5,000,000.00) for each occurrence involving bodily injury, death or property damage, and name the Developer as an additional insured limited to the negligence of Bell and those for whom it is responsible in law, and with the required insured limit composed of any combination of primary and excess (umbrella) insurance policies. A Certificate of Insurance shall be furnished to the Developer at the time of execution of this Agreement and promptly at any time thereafter upon request, provided that no such policy shall be cancelled and not simultaneously replaced with a policy providing equivalent or better coverage: without 60 days prior written notice to the Developer.

18. The Developer agrees to grant Bell a right and license to enter the Building to access closed-circuit enter-phone cameras and associated equipment (collectively, the "CCTV") for the sole purpose to make available the features presented by the CCTV services to the Occupant who subscribes to Bell's TV package of services. The parties agree as follows:

- (a) Upon Developer (i) taking ownership and/or lawful control of the use and operation of the CCTV's, and (ii) gaining the right to grant to Bell Canada access to the CCTV's and any signal feed coming from the CCTV as contemplated by this letter, Developer shall be deemed to have: (i) granted Bell Canada a right and license to enter the Building to access the CCTV and to use the signal feed from such CCTV's for the sole

purpose of making available the features presented by the CCTV services to the Occupant who subscribes to Bell's TV package of services ..

- (b)

Subject to the provisions of Subsection (a) herein, (i) the Developer hereby agrees to provide Bell Canada with a standard interface to the CCTV ("Standard Interface" means an interface where Bell Canada has the ability to interconnect into the CCTV using NTSC base band video at a I v peak-to-peak measured across a 75 ohm termination); and (ii) Bell will interface with the CCTV at a demarcation point mutually agreed to using RG6 coaxial cable and BNC connectors; and
- (c)

Bell Canada makes no representation or warranty in connection with its access to the CCTV or use, content or quality of the signal feed.

19. Save and except for the easement referred to herein, Bell acknowledges that this Agreement creates no interest in the lands upon which the Building is situated. This License nor any notice or caution, shall not be registered on title to the Building.

In witness thereof the parties through their duly authorized representatives have executed this License as of the date first written above.

Berkley Developments (Avenue) Inc.

BELL CANADA

\_\_\_\_\_  
I/We have the authority to bind the Corporation

\_\_\_\_\_  
I have authority to bind the Corporation

Name:

Name:

Title: President

Title: Director New Construction Sales

Date: December 2<sup>nd</sup>, 2008

Date: December 2<sup>nd</sup>, 2008

**SCHEDULE "A"**

**ADDRESS AND DESCRIPTION OF BUILDING**

**A.     For the Building:**

This License applies to the following Building:

Building Name:

The Wentworth

Municipal Address:

609 Avenue Road, Toronto, On