

Bell

Bell

TELECOMMUNICATION AND BUILDING ACCESS LICENSE

This License is made as of the date last signed by both parties below (the "Effective Date").

In consideration of the mutual rights and obligations herein expressed, the sum of \$100.00 now paid by each party to the other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) Bell Canada and West Harbour City (III) Residences Corp. (the "Owner") agree as follows:

1. Owner hereby grants to Bell Canada and any Affiliates of BCE Inc. ("Affiliates" as defined in the *Canada Business Corporations Act*, as amended) including without limitation, those for whom Bell Canada is responsible in law (hereinafter, collectively referred to as "Bell"), a non-exclusive right and license (the "License"), throughout the Term hereof as it may be extended or renewed from time to time, and for a period of thirty (30) days after the expiry or other termination of the Term of the within License, to:
  - i. subject to the Owner's reasonable control of the multi-unit dwelling building (the "Building") constructed by the Owner on the lands described in Schedule "A" during the Owner's construction of the same, and further subject to the reasonable rules and regulations governing entry and access to the Building that are from time to time passed by the condominium corporation established by the registration of a condominium plan and declaration in respect of the Building (the "Corporation") (provided such rules and regulations are applied consistently to all broadcasting and telecommunications services providers), enter upon and gain access in, on, over or under the common elements of the Building to use the Building's main telephone room communications closets, junction boxes, spaces within conduits, ducts, shafts, sleeves and pipes in the Building (the "Conduits") (consistent with the Bell Canada Access Proposal and Wiring Plans, as revised March 26, 2014 and Bell Canada Wiring Configuration attached thereto as Schedule "B-1") or other segregated spaces designated by the Owner, acting reasonably, within the common elements of the Building (collectively, the "Equipment Spaces") (it being acknowledged by Bell that some of the Equipment Spaces (i.e. those that are in closets of the units or proposed units that also house the junction boxes, and some of the Conduits, i.e. those from a point where the particular conduit is diverted for the exclusive use and benefit of a particular unit or proposed unit in the Building to the junction box within that particular unit or proposed unit (the "Unit Conduits"), are located within the unit boundaries of that particular unit or proposed unit and as such, the within grant of License herein does not apply in respect of such Equipment Spaces and the spaces within the Unit Conduits, provided that it is further acknowledged and agreed by Bell that all references to the term "Equipment Spaces" in the within License shall include both the Unit Conduits, and the other Conduits and shall include both the Equipment Spaces within the common elements of the Building and the Equipment Spaces that are within the unit or proposed unit) for the purpose of making available and providing broadcasting and telecommunications services, including internet access services, telephony services and broadcasting distribution and other programming services, the provision of which is governed respectively by the *Broadcasting Act* and the *Telecommunications Act* (collectively, the "Bell Services") to purchasers, owners, tenants and residents (the "Occupants") of the Building; and
  - ii. use, construct, install, test, operate, maintain, repair, service, upgrade, modify, remove and replace Bell's telecommunication equipment (including its wiring) within the Equipment Spaces (the "Bell Equipment"). The Bell Equipment (initially as specified in Schedule "B") shall include but is not limited to any hardware, wire, cabling and infrastructure or otherwise, which is necessary and incidental to enable and deliver Bell Services to those Occupants of units or proposed units in the Building who are desirous of receiving Bell Services, provided that such Bell Services can be made available pursuant to the terms of the within License. The Bell Equipment shall not include any (i) Conduits, or (ii) any wiring from a point where the wiring is diverted for the exclusive use and benefit of a particular unit or proposed unit in the Building to the junction box or other terminal device(s) inside such unit (the "Inside Wire"), which Inside Wire shall be installed by Bell at Bell's sole cost and expense, and which shall become part of the unit or proposed unit upon such installation, all notwithstanding that any of the same have been supplied and installed by Bell. Upon installation of the Inside Wire, Bell shall be deemed to have transferred ownership of the Inside Wire to and for the benefit of the owner of the unit or proposed unit in the Building; and
  - iii. use the signal feed from the closed-circuit security television cameras and/or other video equipment at the Building (e.g. amplifiers, splitters) (collectively, the "CCTV") for the purpose of injecting such feed into the Bell Services, provided that the same does not adversely affect the use, content or quality of the signal feed. Bell acknowledges that the Owner makes no representation or warranty in connection with the CCTV at the Building or the use, content or quality of the signal feed.

Nothing herein shall be construed or interpreted as granting Bell any exclusive access rights or access privileges in or to the Building (or the common elements thereof) to the exclusion of any other third parties.

2. Except in the case of emergencies, all rights of access granted herein shall be as follows: (i) access to the Equipment Spaces to maintain, operate and repair the various aspects of Stages 1 and 2 of the Bell Canada Access Proposal and Wiring Plans, as revised March 26, 2014 and Bell Canada Wiring Configuration attached thereto shall be available to Bell on Mondays to Fridays, inclusive (excluding statutory holidays), from 8:00 am to 5:00 pm; and (ii) where requested by an Occupant to install, test, upgrade, operate, inspect, repair, remove, alter, replace, supplement and/or maintain the Inside Wire for a particular unit, or proposed unit, to complete Stage 3 of the aforementioned March 26, 2014 Bell Access Proposal and Wiring Plans, Bell shall be permitted limited access to the Equipment Spaces appurtenant to that unit or proposed unit and to the communications closet that provides service to such Equipment Spaces between 8:00 am to 9:00 pm in order to complete such work without the requirement of providing prior written notice to the Owner or the Building's property management company, provided that such Occupant meets the Bell representatives in one of the Building lobbies to give access to the Building.
3. Bell confirms, acknowledges and agrees that the Equipment Spaces are hereby licensed on an "as is, where is, with all faults" basis. The Owner expressly makes no representation or warranty of any kind that the Equipment Spaces (and any other aspects of the Building) are fit, functional or adequate for Bell's purposes or for the Bell Equipment, including its wiring, and that the Owner shall not be required under any circumstances whatsoever to make any changes, alterations, upgrades to, or removal and/or replacement of any portions of the units or proposed units or the common elements of the Building or the Equipment Spaces, including any existing work or installation therein, in order to render the same fit, functional or adequate for Bell's purposes or for the Bell Equipment, including its wiring and cabling. Further, Bell specifically acknowledges that it is not relying on any representations or warranties of any kind whatsoever, express or implied, made by the Owner as to any matter concerning the Equipment Spaces (and any other aspects of the Building), and that Bell is relying entirely on its own inspections and other due diligence investigations already undertaken and to be deemed satisfactory to it, and not on any representations or warranties of any kind made by the Owner. Bell hereby represents and warrants that the Equipment Spaces, both initially and throughout the term of this License, shall have adequate power supply, fireproofing and firestopping, and adequate natural or artificial cooling and ventilation for the proper operation of the Bell Equipment, as prescribed under the applicable fire, electrical safety and building codes.
4. Based on Bell's prior inspections of the Building, Bell agrees to install the Bell Equipment in such a manner so as to permit another telecommunications service provider ("TSP") to install its equipment, wiring and cabling in the Building, Conduits and Equipment Spaces. Bell agrees to supply and install a set of pull strings in any of the Conduits that it uses, such that the Conduits can be readily utilized by such other TSP. If another TSP is granted access to the Equipment Spaces, in circumstances where Bell is required to relocate or reconfigure the Bell Equipment or install additional equipment to accommodate such other TSP, or to repair damage to (or replace) components of the Bell Equipment caused by the acts of other TSP's or their contractors, then as a term and condition of such other TSP's access to such Equipment Spaces, the other TSP shall be required to forthwith pay or reimburse Bell for all reasonable costs and expenses so incurred. Bell shall, at its own cost: (i) ensure that the Bell Equipment is installed in a good and workmanlike manner and accordance with all laws, including without limitation, all applicable fire, electrical safety and building code requirements in force at the time of installation, and (ii) be responsible for the provision, installation, maintenance and repair of the Bell Equipment in first class condition during the Term, although each individual Occupant may incur charges (at Bell's then applicable rates) specific to such Occupant's in-suite requirements.
5. (a) Notwithstanding anything to the contrary in this License, Bell covenants that the Bell Equipment and/or the installation thereof shall not disrupt, adversely affect or interfere with other providers of existing communication services in the Building or the Building's operating, elevator, safety, security or other systems (an "Interference"). Bell shall test for and correct such Interference immediately but in any case within not more than twelve (12) hours after receiving written notice of such Interference from the Owner, failing which the Owner shall be permitted to disconnect the Bell Equipment causing the Interference and the Owner shall have no liability whatsoever or to Bell.  
 (b) Notwithstanding anything to the contrary in this License, Bell covenants that the Bell Equipment shall not disrupt, adversely affect, or interfere with any tenant's or occupant's rights of enjoyment, including their respective use or operation of communications or computer devices or with the systems facilities, and devices situated on neighbouring properties (a "Neighbouring Interference"), provided that this obligation does not apply to providers, facilities and devices installed after the date of this License. Bell shall correct such Neighbouring Interference as soon as possible but not more than five (5) Business Days after receiving written notice of such Neighbouring Interference.
6. Prior to performance of any work, or the making of any installation, and prior to any changes, alterations, upgrades to, or removal and/or replacement of, any existing work or installation in the Equipment Spaces (or any other part or parts of the Building), Bell shall, at its sole cost and expense, prepare and deliver to the Owner working drawings, plans and specifications for the work or installation detailing the type, size and location of the Bell Equipment that is proposed to be supplied, installed, altered, upgraded or removed and/or replaced in the Equipment Spaces (or any other part or parts of the Building), and a specific description of the proposed work and installation and its purpose. All working drawings, plans and specifications shall be prepared in accordance with applicable engineering standards. No work or installation shall be commenced by Bell until the Owner has given its written approval of the working drawings, plans and specifications, and any other relevant construction or installation plans or information

required by the Owner. The Owner's approval of any of the same (i) may be pre-conditioned by its requirement for Bell to perform "mock-up" installations of the same, and (ii) shall not be unreasonably withheld or delayed (if approval is not given, an explanation of such refusal including the technical details associated therewith must be concurrently provided to Bell), and if granted, the Owner's approval shall not under any circumstances (i) constitute the Owner's representation, confirmation or acceptance that the Bell Equipment and/or Bell's work or installation will not cause any interference or will comply with all applicable fire, electrical safety and building code requirements, or (ii) constitute a waiver of the Bell's obligation to pay the Recoverable Costs to the Owner, all of which obligations shall at all times be and remain those of Bell.

7. Bell agrees to pay to the Owner any recoverable costs (the "**Recoverable Costs**") referred to in Schedule "C", and such payment shall be made by Bell, without deduction or set-off, within thirty (30) days after Bell's receipt of an itemized invoice from the Owner for any such Recoverable Costs.
8. Forthwith after completion of Bell's work or installation, Bell shall (i) provide "as-built" plans, giving complete details of Bell's work and installations, to the Owner to demonstrate material conformity with the pre-approved plans, and (ii) tag all Bell Equipment, including all wiring.
9. Bell covenants to pay for the Owner's cost of repairing any damage to the Equipment Spaces (and any other part or parts of the Building), caused by or resulting from any act or omission relating to the Bell Equipment or Bell's work or installation, its use or occupancy of the Equipment Spaces (and any other part or parts of the Building), or its exercise of any of its rights under the within License (the "**Covenant**") and the same shall be treated in the same manner as Recoverable Costs.
10. Except as otherwise provided in the within License and in Section 22 of the *Condominium Act, 1998*, the Owner agrees that it has no legal or equitable ownership in the Bell Equipment, and that the Bell Equipment shall remain the property of Bell at all times, and shall not become a fixture despite any legal principle to the contrary.
11. Nothing in the within License shall limit the Owner's right to maintain or repair any common elements of the Building; provided that where any such maintenance or repair may affect the Bell Equipment, the Owner shall: (i) provide Bell with reasonable advance written notice to request Bell to adjust and/or move the Bell Equipment before the maintenance or repairs are made and which notice shall contain necessary particulars to permit Bell to comment as provided for in item (ii); and (ii) provide Bell with an opportunity to recommend changes to the planned nature, timing, commencement, duration or completion of such maintenance or repairs or such other matter in respect thereof that could have an impact on the Bell Equipment or Bell's ability to deliver the Bell Services. Despite the foregoing, where maintenance or repairs undertaken by the Owner require Bell to move or relocate any of the Bell Equipment, Bell shall provide one Bell technician for a maximum of one eight (8) hour period; and, in the event such move or relocation exceeds the duration of eight (8) hours, Bell shall pay fifty percent (50%) of any remaining costs to facilitate the movement or relocation of the Bell Equipment as required by the Owner and provide the Owner with a written estimate of the total cost of such movement or relocation of such Bell Equipment prior to undertaking such movement or relocation.
12. Bell Canada shall be liable for and shall indemnify and save harmless the Owner, the owners of the units or proposed units, their directors, officers, employees, agents, property managers, contractors and those for whom it is responsible in law (collectively, the "**Owner Indemnitees**") from and against any and all losses, suits, actions, causes of action, proceedings, damages, costs, claims and expenses (collectively, the "**Losses**"), caused by or arising out of any act or omission relating to Bell's use and occupation of the Equipment Spaces or the Building (including, without limitation, the **Covenant** set forth in Section 9 herein), provided that Bell Canada will not be required to indemnify the Owner Indemnitees to the extent that any such Losses are caused by any negligent act, wilful misconduct or omission of any of the Owner Indemnitees. Notwithstanding the foregoing, in no event will Bell Canada be liable for or indemnify and save harmless the Owner Indemnitees from and against any indirect, special, incidental or consequential damages, in the nature of 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 other termination of this License.
13. The Owner shall indemnify and save Bell harmless from any loss of or damage to the Bell Equipment caused by any negligent act or omission of, or any, wilful misconduct or misuse of the Bell Equipment by the Owner, its employees, agents, property managers or contractors and other service providers or for those whom the Owner is responsible for in law. It being agreed and understood that none of them shall be responsible in law for any acts or omissions of, or misconduct or misuse of the Bell Equipment by the Occupants of the Building and their guests, visitors or invitees. The Owner shall not be liable to Bell under the within License, or in tort (including negligence), or otherwise, for any indirect, special, incidental or consequential damages, or any punitive damages of any kind, or for the loss of revenue or profits, loss of business or opportunity, or loss of information or data, or other financial loss, or loss of use of any facilities or property, even if the Owner has been advised of the possibility of such damages and regardless of whether such damages were foreseeable.
14. Throughout the Term, or any extended term (if applicable), 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, 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 Owner 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 Owner promptly 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 Owner.

15. The term of this License is effective as of the Effective Date and shall continue to run for a period of five (5) years from the Effective Date (the "Term"). Upon the expiry of the Term, so long as there is at least one (1) Occupant of the Building receiving one or more Bell Services, the parties agree that the Term will be automatically extended for one (1) additional period of five (5) years (the "Extended Term") on the same terms and conditions as contained in this Agreement. Thereafter, this Agreement may be terminated by the Corporation at the expiration of the Extended Term or at any time thereafter, provided that the Corporation has given Bell one hundred and twenty (120) days prior written notice of such termination. Subject to the provisions of the *Condominium Act, 1998, as amended*, upon the registration of a condominium plan and declaration in respect of the Building so as to constitute the Building as a condominium, the Owner shall be immediately released from its obligations under this License, and the condominium corporation shall thereupon assume and be bound by all of the rights and obligations of the Owner as set out herein. Save and except for such assumption by the Corporation and Section 16 below, none of the rights and obligations contained herein may be assigned or transferred by either party to this License without the prior written consent of the other party, which may be withheld in such other party's sole and unfettered discretion.
16. Bell shall not assign this License in whole or in part without obtaining the prior written consent of the Owner, which consent may not be unreasonably withheld. Despite what is stated above, Bell may assign its rights under this License, on a bona fide basis, to an Affiliate or to a purchaser of all or substantially all of the assets of Bell without the prior written consent of the Owner, provided at least 30 days prior written notice is given to the Owner. Any assignment whether required to be consented to by the Owner or not, shall be subject to the following: (i) the assignee must execute an agreement with the Owner to be bound by the terms of this License and agrees to pay the reasonable costs of the Owner incurred in connection with the preparation, negotiation and finalization of that agreement; (ii) if the transferee is an Affiliate, an assignment in respect of which the Owner's consent is required as provided above will be considered to occur, and (iii) the assignee provides to the Owner those reasonable particulars which the Owner requires in order to satisfy itself concerning the requirements stipulated above, and provides to the Owner reasonable advance notice to enable it to prepare, negotiate and obtain the execution of the agreement mentioned above and to satisfy itself that the requirements stipulated above are satisfied. No assignment, whether to an Affiliate or otherwise, shall release Bell from any liability or obligation under this License, unless the Owner provides a release in writing. Despite what is stated above, Bell will be permitted to assign its rights under this License to a bona fide lender, as collateral security for any bona fide secured financing of all or part of its business undertaking. However, this permission does not imply or allow the inference that the Owner waives, or is willing to forbear from the exercise of its remedies under this License, should Bell default, or that any lender will have any greater rights than Bell in respect of this License, including, but not limited to, the restriction set out in this Section.
17. Either party may terminate this License: (i) upon a party providing to the other party hereto with written notice of its intention not to renew this License at least one hundred and twenty (120) days prior to the expiration of the Term, provided no Occupants are active subscribers to any Bell Services in the Building; (ii) upon a party providing the other party hereto with at least one hundred and twenty (120) days' prior written notice in advance of the expiration of the Extended Term, or any time thereafter, of its intention to terminate this License; or (iii) in the event of a material breach hereof, where such breach is not cured within thirty (30) days (or such shorter period as is otherwise provided herein) following the other party's receipt of written notice of such breach (or if such breach would reasonably require more than thirty (30) days to rectify, unless such party proceeds with the rectification of the breach within the thirty (30) day notice period and thereafter promptly, effectively and continuously proceeds with the rectification of the breach); or (ii) immediately, in the event the other party becomes bankrupt or insolvent, becomes unable to pay its liabilities when they become due, has insolvency proceedings commenced by or against it, makes an assignment for the benefit of its creditors, takes the benefit of any statute relating to bankrupt or insolvent debtors; or where an order is made or a resolution is passed for the winding up of the other party; or a receiver, receiver and manager, interim receiver, trustee in bankruptcy or liquidator is appointed to take possession of the assets of the other party; or a creditor takes steps to issue an Application for a Bankruptcy Order against Bell; 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 the modification of Bell's Services or the terms upon which they are provided, and such requirements are inconsistent with the terms of this License or impair Bell's ability to provide Bell Services in an economical and technically practical fashion, Bell may terminate this License upon sixty (60) days' written notice to the Owner. Upon the expiry or other termination of this License, Bell shall remove all of the Bell Equipment from the units or proposed units and the common elements of the Building within thirty (30) days following Bell's receipt of written notice by the Owner requiring it to do so.
18. In the event that, at any time, including upon the expiry or other termination of this License, Bell removes its wiring from any of the Equipment Spaces, then Bell agrees that (i) such removal shall not compromise the existing pull strings, wiring tags and/or the Owner's or the Occupants' or any other TSP's wiring in such Equipment Spaces, failing which such wires shall be replaced at Bell's sole cost and expense, and (ii) if there are no pull strings in such

Equipment Spaces, then as part of Bell's installation or removal of its wiring from the Equipment Spaces, Bell shall supply and install a set of pull strings in such Conduits at its sole cost and expense.

19. Any notice required or permitted to be given hereunder or any tender of delivery of documents shall be sufficiently given by regular mail, personal delivery or by email or facsimile transmission to each party at the addresses listed below, or at such other address that one of the parties may from time to time give written notice thereof to the other party:

To Bell Canada:

100 Wynford Drive, Floor 3  
Toronto, Ontario  
M3C 4B4

Fax: (416) 446-3016

Email:

Attn: Vice President of Sales and Distribution

Together with a copy to Bell Canada's  
Legal Department, Fax: (416) 383-6269

To the Owner:

10 Wanless Avenue, Suite 201  
Toronto, Ontario  
M4N 1V6

Fax: (416) 481-8000

Attn:

Together with a copy to the Owner's  
Property Manager,

Berkley Property Management Inc.,

Fax: (905) 736-7446

Notices shall be deemed to have been received by the Owner or Bell, as the case may be (i) on the fifth (5th) business day after the date on which it shall have been so mailed, (ii) the next business day following the date of delivery in the case of hand delivery, (iii) on the next business day following the date of time of transmission in the case of facsimile or email, provided that such transmission was made prior to 5:00 p.m. on that date.

20. 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 declaration, by-law, rule or regulation is in force that would prevent or limit either party from: (i) entering into this License and/or (ii) performing its covenants and obligations hereunder.
21. A waiver of any provision in the within License shall not constitute either a waiver of any other provisions herein or a continuing waiver, unless otherwise expressly indicated in writing.
22. This License (including the Schedules hereto) shall 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 to the laws of another jurisdiction. This License shall also be 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*, as amended, the *Broadcasting Act*, as amended and the rules and regulations of the Canadian Radio-Television and Telecommunications Commission (the "CRTC").
23. The parties hereby acknowledge and agree that this License (including the Schedules hereto) constitutes the entire agreement of the parties and supersedes all prior agreements and understandings on the subject matter hereof. If any provision of this License is found to be invalid, illegal or unenforceable, then 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.

In witness whereof the parties, through their duly authorized representatives, have executed this License as of the Effective Date.

**WEST HARBOUR CITY (III) RESIDENCES CORP.**

Per: 

I have authority to bind the Corporation

Name:

Title: President

Date: May 16, 2014

**BELL CANADA**

Per: 

I have authority to bind the Corporation

Name:

Title: Director, Field Sales

Date: May 15, 2014

**Schedule "A"****DESCRIPTION AND ADDRESS OF BUILDING****A. Building:**

This License applies to the following Building:

Building Name:

The York Harbour Club

Municipal Addresses:

35 Bastion Street, Toronto, ON  
M5V 0C2

38 Grand Magazine Street, Toronto, ON  
M5V 0B1