

ACCESS AGREEMENT dated 1st day of May, 2015 and entered into between Bell Canada and any Affiliates (as defined below) of BCE Inc. ("Carrier") and OMERS Realty Corporation (Rosewell Gardens) represented by its manager (without personal liability) OPGI Management GP Inc., as general partner of OPGI Management Limited Partnership ("Owner").

Owner grants to Carrier access to the premises outlined in Schedule A (the "Premises") being the Properties which are situated on the lands described in Schedule A to permit Carrier to provide television, internet, telephony and other telecommunication services subject to CRTC rulings from time to time ("Communication Services") on the following terms and conditions:

1. TERM

The term (the "Term") of this Agreement starts on May 1, 2015 and shall continue to run for a period of ten (10) years. The Term will be automatically extended for additional one (1) year terms, for so long as the Communication Services are available to the Building on the terms and conditions herein, unless the parties, who shall negotiate renewal terms and conditions in good faith, agree in writing to alternative terms and conditions,

2. ACCESS

Carrier will, subject to the Owner's reasonable rules and regulations, Clause 3 herein, and subject to the rights of tenants and occupants of the Premises, have access over the Premises at times and in locations mutually agreed by the parties, to install, upgrade, remove, replace, repair, supplement and maintain signal distribution and processing equipment (all at Carrier's sole discretion, cost and expense – collectively, being the "Installation, Operation and Maintenance") including without limitation all necessary cables, wires, conduit structures, markers, amplifiers, distribution boxes, modems, addressable wall plates, fixtures and other equipment and accessories (the "Distribution System") that may be installed by Carrier and necessary to provide Communication Services to the Premises.

Where material Installation, Operation or Maintenance is planned, Carrier shall provide Owner with plans, specifications, and scope of work for approval as set out in Section 3. In connection with such access, a portion of the Distribution System is, or will be located in a space mutually agreed upon by both parties ("Equipment Space") and Carrier shall, subject to the Owner's reasonable rules and regulations, have access to the Equipment Space during normal business hours, except in the event of an emergency, if it provides written notice to the Premises superintendent, except that notice will not be required in emergencies and no written notice will be required for responses to service calls.

Owner acknowledges that Carrier shall also have access to a path and/or conduit along, over, under or on the property, from the property line to the Premises (the "Conduit"), and in or through the Equipment Space(s). If Carrier determines that a fibre optic cable or any other equipment must be installed to the Conduit, the Premises and/or the Equipment Space(s), Carrier may install, maintain, and upgrade any equipment or installation within the Conduit, the Premises and/or the Equipment Space(s). The Carrier shall provide the Owner with plans, specifications, and a scope of work and the parties shall agree in advance (both acting reasonably) upon a plan of installation, upgrade or maintenance of the equipment or installation within the Conduit as set out in Section 3.

Access to all other portions of the Premises including the tenants' or occupiers' space shall be by appointment during normal business hours except for emergencies. Carrier shall, in the course of carrying out any work within the Premises and/or any tenant's or occupier's space, conduct the same in a good and workmanlike manner causing as little noise, disruption, disturbance or interference with quiet enjoyment of such tenants or occupiers of the Premises as possible.

3. PLANS, SPECIFICATIONS, AND WORKING DRAWINGS

Plans, specifications and working drawings for all major work and installation will be provided by the Carrier to the Owner for this approval prior to the commencement of any work and all work will comply with the approved plans and specifications. Approval by the Owner with respect of any plans and specifications does not constitute a representation, warranty or acknowledgement that the work satisfies the requirements noted above but is to be construed merely as a permission to proceed and to complete the work. The Carrier will, at its expense, make good any damage caused to the Premises in connection with the performance of its work and in connection with any damage to persons or property caused by reason of the installation, repair, maintenance, removal or operation of the Distribution System. If the Carrier breaches this Section, and does not remedy the breach within fifteen (15) days of written notice, the Owner may do what is needed to remedy the breach and the Carrier will pay, upon receipt of a detailed invoice, the costs reasonably incurred by the Owner plus an administration fee equal to fifteen percent (15%) of the costs; however, if it would reasonably take more than fifteen (15) days to remedy the breach, and the Carrier is proceeding reasonably and diligently to remedy the breach, the Owner will not exercise this right.

4. ELECTRICAL POWER

Carrier may connect the Distribution System to the electrical power source of the Premises. Carrier shall be responsible for electrical power costs exceeding a 15 amp service. Carrier will obtain the Owner's approval for the timing, methods and location of the installation work.

5. NON-EXCLUSIVITY

The parties acknowledge that the access rights granted to Carrier are non-exclusive. If the Owner permits another service provider to have access to the Premises, and Carrier is required to or reconfigure its equipment or install additional equipment to accommodate such other service provider, or, to repair damage to or replace components of its equipment caused by the acts of such other service providers or its contractors, the Owner will require the other service provider to forthwith pay Carrier for all reasonable costs so incurred. If a relocation is for the purpose of accommodating another service provider, it shall be to a location that is, in Carrier's opinion, acting reasonably, economically and technologically equivalent or better than its then current location.

6. OWNER'S RIGHT TO REPAIR

Nothing in this Agreement limits the Owner's right to repair any common elements of the Premises; provided that where any such repairs may affect the Carrier's equipment or Equipment Space, the Owner shall (i) provide the Carrier with reasonable advance written notice to enable the Carrier to adjust and/or move the equipment or Equipment Space before the maintenance or repairs are made and which notice shall contain necessary particulars to permit the Carrier to comment as provided for in item (ii), and (ii) provide the Carrier with an opportunity to recommend changes to the planned nature, timing, duration or completion of such maintenance or repairs or such other matter in respect thereof that could have an impact on the equipment or Equipment Space or the Carrier's ability to deliver the Communication Services.

7. BUILDER'S LIEN

If a construction or builder's lien is registered in connection with any work or improvements performed by or on behalf of Carrier, Carrier will obtain its removal within seven (7) days after notice to it by the Owner. If Carrier fails to comply with that obligation, the Owner may pay into court the amount and take whatever steps are required to obtain the removal, all at Carrier's cost, plus fifteen (15%) of the cost. Carrier will ensure that no other lien or interest is claimed in respect of the Premises by any third party in respect of the work or improvements provided by or on behalf of Carrier.

8. INDEMNIFICATION

Carrier agrees to perform its work in a good and workmanlike manner. The installation and use of the Distribution System will comply with all government requirements including fire and building code regulations. Carrier shall indemnify the Owner and its Released Persons from any and all liability for direct damage or injury to property or person, caused by any fault, negligent act, willful misconduct of the Carrier or for those whom the Carrier is responsible for in law. For the purpose of this Agreement "Released Persons" means "Owner", the property manager, the asset manager, the Owner, every beneficial owner of the Premises and any of their respective Affiliates (a body corporate affiliated with another with the meaning of the *Canada Business Corporations Act*).

The "Owner" shall indemnify and save "Carrier" harmless from any loss of or damage to the Distribution System caused by any fault, negligent act, willful misconduct of the Owner, or for those whom the Owner is responsible for in law. This Section shall survive the expiration or termination of this Agreement.

9. INSURANCE

During the Agreement Carrier shall maintain comprehensive general liability insurance with an insured limit of at least Five Million Dollars (\$5,000,000.00) per occurrence covering legal liability for damage to physical property, bodily injury and death, and with Owner added as an additional insured. Umbrella or excess liability insurance may be used to achieve the required insured limit. "Carrier" shall arrange to provide "Owner" with an insurance certificate at inception upon request.

10. OWNERSHIP OF DISTRIBUTION SYSTEM

Carrier is the owner of the Distribution System which will remain the property of Carrier and will not be or become a fixture despite any rule of law or equity to the contrary subject to CRTC regulations. This Agreement in no way restricts the Owner from contracting with any other service provider as aforesaid to provide Communications Services to the Premises provided said alternative service providers shall not be permitted to use the Distribution System installed and paid for by Carrier except for the inside wire as defined by the CRTC which may be used if sanctioned and mandated by and in accordance with CRTC rules regarding such use.

11. SIGNAL INTERFERENCE

Carrier will promptly remedy any problems related to interference of signals primarily created by the Distribution System and its operation. In particular, but without limited that requirement, Carrier will use reasonable commercial efforts to ensure that the Distribution System does not interfere with any premises operating equipment, computers, security camera signals, security systems or other building systems, and any other telecommunication equipment or services operating in accordance with Industry Canada standards.

12. ASSIGNMENT

If the Owner sells the Premises, the purchaser will be required to expressly assume this Agreement and, upon the express assumption of this Agreement by the purchaser and delivery of evidence thereof to Carrier, the Owner will be released in respect of all those obligations that would otherwise have been required to be performed by the Owner in respect of the period from and after the date of the sale or other disposition.

13. TERMINATION

The Owner may terminate this Agreement if, by no act of the Owner, Carrier ceases to provide Communication Services using the Distribution System ~~and the marketing agreement between the Carrier and the Owner terminates.~~ 

Upon expiration or termination of this Agreement and provided there are no further active subscribers to the Communication Services in the Building (in which case the Carrier will retain title to the Distribution System), the Carrier shall be allowed thirty (30) days to remove the Distribution System. After expiration of the said thirty (30) days, title to the remaining Carrier's Distribution System will be assumed by the Owner, at no cost or expense to the latter, and the ownership and title relating to such equipment will be automatically transferred. The Carrier further covenants, at its sole cost and expense, to repair or refinish all damage caused by the operation or removal by Carrier of the Carrier's Distribution System. However, in no event will the Carrier assume costs arising from the removal of inside wiring equipment, including wires, cables, or addressable wall plates

14. EVENT OF DEFAULT

An Event of Default by a party will be considered to occur either:

- (a) in the event of a material breach hereof, where such breach is not cured within (60) days of receipt of written notice by the other party of such breach; or
- (b) 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 Bankruptcy Order against the other party; bankruptcy, reorganization, assignment, petition or appointment of a trustee or such other act of insolvency of the other party.

If an Event of Default occurs then either party may, without further written notice, terminate this Agreement.

15. ACTION OF GOVERNMENTAL AGENCY

If the action of a governmental agency requires modification of the Communication Services or the terms in which they are provided which is inconsistent with the terms of this Agreement, the Carrier may terminate this Agreement upon thirty (30) days written notice to Owner.

16. VALIDITY

If any provision of this Agreement is declared invalid such provision shall be deemed severed and shall not affect the remaining provisions. Delay in the performance by either party of the respective obligations under this Agreement for reasons or circumstances beyond their reasonable control shall be excused for the period of such delay.

17. NOTICE

Any notice or communication relating to this Agreement will be in writing and sent by registered mail to the other party, delivered personally or transmitted by facsimile to the following addresses:

To: OMERS Realty Corporation
c/o Oxford Properties Group
200 Bay Street
Suite 900
Toronto, Ontario M5H 2J2

Facsimile: _____
Attn: Vice President, Legal

To: Bell Canada
100 Wynford Drive, Floor 3
Toronto, Ontario
M3C 4B4

Facsimile: _____
Attn: VP Sales and Distribution

With a copy to:
Legal Department
Facsimile: _____

18. TITLE REGISTRATION

This Agreement may not be registered on title to the Premises.

Carrier agrees, upon request and at no cost to the Owner, to postpone and subordinate this Agreement to any mortgagee or charge, financing or refinancing of the Premises in return for such lender's standard non-disturbance agreement.

19. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants that: (i) it has full right, power and authority to enter into and perform its covenants and obligations in this agreement; (ii) it is under no obligation, statutory, contractual or otherwise, which could prevent or interfere with the complete performance of its covenants and obligations herein; (iii) it is validly organized and existing under the name indicated on this Agreement; and (iv) no building rule is in force that would prevent or limit either party from entering this Agreement and/or performing its obligations hereunder.

20. CONFIDENTIALITY

The Owner and the Carrier hereby agree that this Agreement and any information provided by one party to the other party herein, including, without limitation, information relating to third parties obtained, shall remain the confidential information of the parties and neither party shall disclose such confidential information without the prior written consent of the other party, or unless disclosure of such confidential information is compelled by judicial or regulatory process or otherwise by law or if the confidential information has been made public without any action by the disclosing party. For greater certainty, this provision shall not be construed to prevent either party from disclosing any of the terms of this Agreement to its auditors, financial and legal advisors, potential mortgager, potential purchasers of the Premises or brokers representing potential purchasers. This section shall survive expiry or termination of this Agreement.

21. ENTIRE AGREEMENT

This is the entire agreement among the parties regarding the subject matter herein contained. No amendments shall be made to this Agreement unless they are in writing signed by the parties or their authorized agents. If any provisions of this Agreement are found by a court of competent jurisdiction or regulatory authority to be invalid or unenforceable they will be severed from this Agreement and the parties will negotiate in good faith such changes as may be necessary to preserve for the parties, in a fair and equitable manner, the intended benefits and obligations of the severed provision.

22. GOVERNING LAW

This Agreement will be governed by the laws of the Province of Ontario and the applicable laws of Canada therein, excluding any conflict of laws, rules or principle which might refer to the laws of another jurisdiction. This agreement 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 or the rules and regulations of the Canadian Radio-Television and Telecommunications Commission (the "CRTC").

BELL CANADA
Carrier

Per: 
Name:
Title: MDU Partnerships

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

OMERS Realty Corporation,
represented by its manager (without personal liability), OPGI Management GP Inc., as general partner of OPGI Management Limited Partnership
Owner

Per: 
Name:
Title: Director, Residential

Per: 
Name:
Title: Vice-President, Legal

I/We have the authority to bind the Corporation.

Schedule "A"

Address and Description of Building

A. Building

This Licence applies to the following Buildings:

# Suites		Municipal Address	Postal Code
89	515	Rosewell Av, North York, Ontario	M4R2J3

