

**LICENSE AGREEMENT**  
(the "Agreement")

THIS AGREEMENT dated as of November 1, 2003.

BETWEEN:

**CONSOLIDATED PROPERTIES (ATRIUM<sub>II</sub>) LTD.**

(hereinafter referred to as the "Licensor")

OF THE FIRST PART

- and -

**BELL WEST INC.**

(hereinafter referred to as "Licensee")

OF THE SECOND PART

**RECITALS:**

- A. The Licensor is owner of an office building (the "Building") located at the municipal address and situated on the lands (the "Lands") described on Schedule 1.
- B. The Licensor has agreed to grant the Licensee license to occupy and utilize certain ducts and conduits within the Building and a portion of the Building as agreed to from time to time between the Licensor and the Licensee for the purpose of installing, operating, maintaining, and removing communications equipment and their related fixtures, structures and facilities (collectively, the "Equipment") on the area contained within the Building as shown for illustrative purposes as outlined in heavy black on the attached Schedule 2 (the "Site") for the purpose of supplying the Buildings and its occupants with connections to the Licensee's private network and the Internet (such connections hereinafter collectively called the "Services").

**NOW THEREFORE**, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

**1. License**

The Licensor hereby grants to the Licensee, its employees, agents and contractors, a license (but only with respect to the portion of the Building the Licensor controls as the common elements of the Building and subject to the rights of the tenants of the Building) to:

- (a) access, use and occupy the Site, for the purpose of constructing, installing and interconnecting the Equipment and thereafter operating, repairing, maintaining, and removing the Equipment, all at the Licensee's own risk and expense; and
  - (b) provide the Services to occupants within the Building, all at the Licensee's own risk and expense.
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**2. Non-Exclusive License**

The right and privilege to operate the Equipment necessary to supply the Building with the Services granted hereby is not exclusive to the Licensee, and the Licensor expressly reserves the right at any time to grant other or similar rights and privileges for the same or similar uses as expressed herein to other persons.

**3. Term**

- (a) The term (the "Term") of this Agreement shall be for a period of three (3) years, commencing on March 1, 2004 and ending on February 28, 2007 (the "Term") except as the Term is renewed under the provisions of this Agreement from time to time.
- (b) The Licensor may extend the Term in accordance with Schedule 3.

**4. Fee**

During the Term, the Licensee shall pay to the Licensor at its office in the Building or to such other place as the Licensor may otherwise direct by written notice, an annual license fee (the "Fee") of \$3,000.00 per year plus goods and services tax thereon, without set-off, deduction or abatement whatsoever, payable on the Commencement Date of the Term and each subsequent anniversary date.

**5. Licensee's Covenants**

The Licensee covenants with the Licensor that the Licensee shall:

- (a) Use the Site only for:
    - (i) the purpose of the construction, installation, operation, and removal of the Equipment necessary to supply the Building with the Services and for no other purpose; and
    - (ii) the connection through the Equipment with the communication facilities of the Licensee and its affiliated companies and the Equipment shall be used only to provide Services to occupants of the Building and shall not be used for any other purpose or for any other person.
  - (b) Pay, in addition to the Fee, on a monthly basis (as reasonably estimated by the Licensor) all taxes, costs, fees and expenses relating to and allocated by the Licensor to the use of the Site.
  - (c) Not use nor permit the Equipment or any part of the Site to be used in such a manner as to annoy, disturb, cause nuisance to or interfere with the Licensor or the occupiers, licensees or tenants of the Building or interfere or disrupt signals for the Equipment that interfere with the telecommunication equipment of the Licensor or the occupiers, licensees or tenants of the Building and, without limitation, the causing or permitting the emission of annoying noises, vibrations and offensive or dangerous electro-magnetic radiation. No structural or electrical load shall be imposed upon the Site beyond that which is acceptable to the Licensor and approved in writing by the Licensor.
  - (d) The Licensee in constructing, installing and thereafter operating, repairing and maintaining (collectively the "Work") the Equipment on the Site shall, at all times, comply with all applicable laws, regulations, by-laws, rules, orders and ordinances of any
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competent authority and shall at the request of the Licensor, supply the Licensor with reasonable proof of such compliance and with a minimum of interference with the Building, the tenants, other licensees and occupiers of the Building and the Work shall be performed only by persons approved or designated by the Licensor and at the request and direction of the Licensor.

- (e) Pay, in addition to the Fee, on a monthly basis (as reasonably estimated by the Licensor) all taxes, costs, fees and expenses relating to and allocated by the Licensor to the use of the Site.
  - (f) Not, without first obtaining the prior written approval of the Licensor of the plans, specifications, working drawings, blueprints, schedules and similar renderings (the "Plans") for the construction and installation of the Equipment at, or in the Site and the interconnection of the Equipment with the electrical, structural, communication and mechanical systems of the Building, commence any Work and shall reimburse the Licensor for all of its reasonable costs associated with or arising from review of the Plans.
  - (g) Carry out all construction, alteration, maintenance, repair, replacement, installation and removal of the Equipment to the satisfaction of the Licensor and in a good workmanlike manner and shall be subject to supervision by the Licensor, and shall be performed only by persons approved or designated by the Licensor and at the request and direction of the Licensor, restore the Site to its former condition if any such work or construction has not been approved by the Licensor.
  - (h) At its own expense, keep the Site and Equipment in a safe and properly maintained condition, failing which the Licensor may, after and providing the Licensee with 3 business days' prior notice, have them repaired at the cost of the Licensee; provided in order to preserve or protect life or property or other emergency situation, the Licensor may immediately repair the Site and the Equipment; all costs and expenses incurred by the Licensor for such repairs shall be for the account of the Licensee and shall be payable by the Licensee 30 days from receipt of an invoice for same from the Licensor.
  - (i) Promptly pay all charges incurred by or on behalf of the Licensee for any work, materials or services furnished or supplied to the Licensee, its agents, employees and contractors in respect of the Work or the purchase, installation, construction, repair, maintenance, operation, interconnection, alteration, replacement and removal of the Equipment or the Site as the case may be.
  - (j) Promptly cause any builders' lien to be discharged forthwith from title to Building or commence legal proceedings to have the such lien vacated or cancelled and, if the Licensee fails to do so, then, in addition to any other right or remedy the Licensor may have, the Licensor may, but shall not be obligated to discharge the lien and shall then charge the Licensee with the cost of discharging the lien plus administration fee equal to 20% of the cost of discharging the lien provided that the Licensor first gives the Licensee 10 days written notice of its intention to discharge the lien.
  - (k) At its sole cost and expense, repair forthwith all damage howsoever caused to the Building or the Site by the installation, maintenance, repair or removal of the Equipment, and, at the option of the Landlord, post security in the form of cash or a letter of credit with a financial institution satisfactory to the Landlord.
  - (l) Upon prior written notice of not less than 5 business days from the Licensor, relocate, temporarily or otherwise, the Site (the "Relocated Site") in order to allow the Licensor to effect repairs or maintenance of the Building and the Relocated Site shall be deemed to
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be the Site following any such relocation and all terms and conditions of this Agreement shall apply to the Relocated Site except as are inconsistent with the context of this provision.

- (m) Immediately inform the Licensor of the installation or use of any electrical power consuming equipment or facilities in or on the Site,
- (n) Pay the cost of connecting the Equipment to the electric power distributing system within the Building and all electricity consumed by the Licensee on a load and usage basis and if the Licensor requires, at its sole expense install a separate meter to determine the Licensee's consumption of electricity.
- (o) At its own expense, take out and keep in force during the Term hereof, comprehensive general liability insurance for third party property damage, bodily injury or personal injury, including contractual liability, tortious liability and Tenant's legal liability, which coverage shall be in the amount of at least \$3,000,000.00 with a recognized insurance company or companies licensed to conduct business in Canada. Such insurance shall contain cross liability and severability of interests clause. The Licensee shall furnish the Licensor with evidence of such insurance, in the form of a certificate of insurance, if requested. The Licensee will not do or permit to be done, or omit to be done, upon the Site, anything which shall cause the rate of insurance of the Building to be increased by reason of the use made of the Site or by reasons of anything done or permitted to be done or omitted to be done by the Licensee or by anyone permitted by the Licensee to be upon the Site.
- (p) Provided that the Licensee has pre-paid the annual licence Fee, at the end or earlier termination of the Term, remove all the Equipment from the Site, the Building and the Lands which the Licensor requires to be removed on written notice to the Licensee and repair all damage caused by such removal and restore the Site, the Building and the Lands to their previous condition, at the Licensee's cost, failing which the Licensor will be entitled to effect such removal and restoration and the Licensee shall pay the Licensor the cost of doing so plus an administration fee of 20% of such cost.

#### **6. Licensor Not Liable**

The Licensor shall not be liable nor in any way responsible for any death or bodily injury of any nature whatsoever sustained by the Licensee or any employee, agent, contractor, invitee or permitted sub-Licensee of the Licensee including, without limitation, death or bodily injury caused by or related to radiation along the electro-magnetic spectrum, or any loss or damage of any nature whatsoever to any property belonging to the Licensee its employees, agents, contractors or invitees in, or about the Site and Building, unless such death, bodily injury, loss or damage results from the negligence or wilful misconduct of the Licensor and those for whom the Licensor is responsible at law. Notwithstanding the preceding sentence of this section 6, in no event shall the Licensor be liable or in any way responsible for any death, injury, loss or damage suffered by the Licensee, its employees, agents, contractors, invitees and permitted sub-licensees in respect of:

- (a) any loss or damage to the property of Licensee, its employees, agents, contractors, invitees or others from theft;
  - (b) indirect or consequential damage or damages or personal discomfort or illness or loss of business resulting from the interruption or failure of heating, ventilation and air conditioning services, as may be applicable, or any electrical, mechanical, structural or any other utility service to be provided under this Agreement by the Licensor;
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- (c) death, injury, loss or damage caused by anything done or omitted to be done by other tenants, licensees, occupants or persons in or about the Site or other premises in the Building or by occupants of the property adjacent thereto, or caused by the public, or caused in the course of construction or operation of any private, public or quasi public work;
- (d) death, injury, loss or damage to persons or property resulting from fire, lightning, tempest, explosion, falling plaster, steam, gas, electricity, water, rain, or snow or leaks in any part of the Building, including the Site, or from the pipes, appliances or plumbing works, herein, or from the roof, street or subsurface or from any other place or by dampness;
- (e) any action or omission (including theft, malfeasance or negligence) on the part of any agent, contractor or persons, from time to time employed to perform janitorial services or security services in or about the Site or the Building;
- (f) any loss or damage however caused to money, securities, negotiable instruments, paper or other valuables of the Licensee; and
- (g) any death, injury, loss or damage suffered or incurred by the Licensee or others **except to the extent caused by the negligence of Licensor and those over whom it is responsible at law.**

#### 7. Licensee's Indemnity of the Licensor

The Licensee shall indemnify and save harmless the Licensor from and against all liabilities, damages, costs, claims, suits or actions arising directly or indirectly out of any damage to property, or any injury to persons, including death, occurring in or around, upon or about the Site or the Building occasioned by or related to the use or occupation of the Site by the Licensee or its employees, agents, contractors invitees or sub-licensees, **except to the extent caused by the negligence or wilful misconduct of the Licensor or those for whom the Licensor is responsible at law**, such indemnification to survive the termination or expiration of this Agreement. **Notwithstanding the foregoing, the Licensee's liability for damages incurred by the Licensor excludes all indirect and consequential damages whatsoever.**

#### 8. Default

If the Licensee fails to pay the Fee or any other monies required to be paid to the Licensor when due, and such default continues for 5 days after written notice thereof by the Licensor to the Licensee, or if the Licensee is in breach of any covenant or condition contained herein (other than the Licensee's covenant to pay the Fee and other amounts payable to the Licensor hereunder) or in any other agreement with the Licensor and such default continues for 10 days after a written notice from the Licensor, the Licensor may, by notice in writing terminate this Agreement forthwith and such termination shall be without prejudice to the rights and remedies the Licensor may have at law or in equity. If the Licensor should fail to remedy any default by it, the Licensor may remedy or attempt to remedy any such default of the Licensor at the cost of the Licensor and enter upon the Site for such purposes. The Licensor shall not be liable to the Licensee for any loss, injury or damage caused by acts of the Licensor in remedying or attempting to remedy such default and the Licensee shall pay to the Licensor all expenses incurred by the Licensor in connection with remedying or attempting to remedy such default. All rights and remedies of the Licensor in this Lease shall be cumulative and not alternative. An act or omission on the part of a sublicensee of the Licensee that if done, or omitted to be done, by the Licensee would constitute a breach of a covenant or condition in this Lease or would impose obligations on the Licensee or entitle the Licensor to exercise its remedies under this Agreement or at law, will be considered for all purposes to be the act or omission of the Licensee and entitle the Licensor to enforce its remedies under this Lease or at law against the Licensee.

9. **Termination by Licensor**

This Agreement shall terminate, at the option of the Licensor :

- (a) if there is a default of this Agreement by the Licensee which is not corrected within curative periods set out in section 8; or
- (b) if the Term expires; or
- (c) upon the insolvency, bankruptcy, reorganization or other arrangement for the benefit of the Licensee's creditors under any of the *Bankruptcy and Insolvency Act* (Canada), the *Company Creditors Arrangement Act* (Canada) or applicable federal or provincial legislation governing corporations or any successor legislation to any such legislation; or
- (d) upon the fraud or wilful misconduct of the Licensor or its representatives with respect to this Agreement and its obligations under this Agreement; or
- (e) if the Licensee's licence issued by a governmental authority or regulatory body of such authority is revoked and not reinstated within ten days of such revocation; or
- (f) if the Licensor is in default under any lease or sub-lease of premises in the Building or other building owned by the whole Licensor or any one of the entities comprising the Licensor and such default is not corrected within the applicable curative period, if any; or
- (g) if the Licensor is in default of any other license agreement or other agreement with the Licensor or any entity comprising of the Licensor and such default is not corrected within the applicable curative period, if any.

10. **General Provisions**

- (a) The term "Agreement" refers to and means this Telecommunications License Agreement and includes all amendments, modifications, supplements, schedules and attachments hereto. The terms "herein", "hereof", "hereunder", "pursuant hereto" and like terms refers to this Agreement. The division of this Agreement into articles, sections, sub-sections, paragraphs, sub-paragraphs, clauses and other similar divisions and the insertion of headings are for convenience and reference only and shall not affect the construction or interpretation of this Agreement. Words imparting the singular shall include persons and individuals and vice versa where the context requires. Each obligation of the Licensee in this Agreement, although not expressed as a covenant, is considered to be a covenant for all purposes. This Agreement shall be deemed to be executed under seal by each party to this Agreement even if a party does not affix its seal.
- (b) This Agreement shall be construed and governed by the laws of the Province of Alberta. Any and all disputes arising hereunder, not determined by arbitration shall be subject to the exclusive jurisdiction of the courts of the Province of Alberta and the parties hereto irrevocably attorn to the jurisdiction of such courts.
- (c) If any provision of this Agreement is illegal, invalid or unenforceable at law it shall be deemed to be severed from this Agreement and the remaining provisions hereto shall nevertheless continue to be in full force and effect.
- (d) Time shall, in every respect, be deemed to be the essence hereof.

- (e) This Agreement shall not be assigned by the Licensee without the prior written consent of the Licensor, which consent may be unreasonably and arbitrarily withheld. This Agreement shall enure to the benefit of and be binding upon the Licensor, the Licensee and to each of their respective successors, administrators, receivers and permitted assigns.
- (f) The right granted to the Licensee hereunder is a license only and shall not constitute a partnership, joint venture or lease agreement between the parties hereto. Neither the leave to occupy granted to the Licensee by this Agreement, nor any of the rights, privileges or obligations in connection therewith shall create any interest or estate in the Building or Site.
- (g) This Agreement constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations and agreement. The Licensee acknowledges and agrees that the Licensor has not made any representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Licensee, its employees and agents, other than those contained in this Agreement. No agreement collateral hereto shall be binding upon the Licensor unless made in writing and duly executed and delivered by the Licensor.
- (h) No revision, amendment or modification of this Agreement shall be valid unless made in writing and duly executed by the respective officers of the Licensee and of the Licensor.
- (i) Any notice, demand or request provided for in this License shall be in writing and shall be effectually given:
  - (i) to the Licensor by registered or certified mail addressed to, or by delivery to, the Licensor at:

Suite 1200, 833 – 4th Avenue S.W.  
Calgary, Alberta T2P 3T5

Attention: Property Manager  
Facsimile: (403) 216-2661

or at such other address as the Licensor may, from time to time designate by notice; or
  - (ii) to the Licensee by registered or certified mail addressed to, or by delivery to, the Licensee at:

Bell West Inc.  
21<sup>st</sup> Floor, 111-5<sup>th</sup> Avenue SW  
Calgary, AB T2P 3Y6

Attention: Access & Right of Way Division  
Facsimile: (403) 410-4019

with a courtesy copy to: Bell West Legal  
Facsimile: (403) 410-4019

or at such other address as the Licensee may, from time to time designate in writing.

- (iii) Every notice, demand or request sent pursuant to subsection 10(i) shall be deemed to have been given to the addressee thereof as of the earliest of:
  - (A) 2 business days following the day it was mailed; or
  - (B) the day the original notice, demand or request was delivered; or
  - (C) if the notice, demand or request was transmitted by facsimile transmission then:
    - (1) on the day the transmission is sent if the facsimile was received by the addressee prior to 4:30 p.m. (local time for the addressee) on any weekday (excluding statutory or civic holidays observed in the city or other municipality where the transmission is directed); or
    - (2) the immediate following weekday that is not a statutory or civic holiday observed in the city or other municipality where the facsimile is directed if the facsimile is received by the addressee after 4:30 p.m. (local time for the addressee) on any weekday, or at any time during Saturday, Sunday or a statutory or civic holiday observed in the city or other municipality where the transmission is directed.
- (j) No covenant, term or condition of this Agreement shall be waived except by the written consent of the Licensor and the forbearance or indulgence of the Licensor in any regard whatsoever shall not constitute a waiver of the covenant, term or condition to be performed or observed by the Licensee, and the Licensor shall be entitled to invoke any remedy available under the Agreement or at law or in equity despite such forbearance or indulgence. The waiver of any breach of any covenant, term or condition by the Licensor shall not constitute a waiver of any breach regardless of the Licensor's knowledge thereof. The subsequent acceptance of Fee by the Licensor shall not be deemed to be a waiver of any preceding breach of any obligation thereunder by the Licensee other than the failure to pay the particular Fees so accepted. For any condoning, excusing or overlooking by the Licensor of any default, breach or non-performance of the Licensee at any time in respect of any payment, covenant, agreement, proviso or condition contained in this Agreement shall not operate as a waiver of the Licensor's right in respect of any subsequent or continuing default, breach, or non-performance, or defeat or effect in any way the rights of the Licensor herein in respect of any subsequent default, breach or non-performance.



- (k) If the Licensee fails to pay when due any amount required by this Agreement to be paid to the Licensors, the unpaid amount shall bear interest from the due date to the payment date at a rate of the aggregate sum of 5% percent per annum plus the rate of interest charged by at the main branch of the Royal Bank of Canada in Calgary, Alberta for loans in Canadian dollars to its most credit worthy customers and such interest shall be calculated and payable monthly.
- (l) The Licensee warrants that it has the necessary authority and corporate power to execute and deliver this Agreement and that this Agreement constitutes a legally valid and binding obligation of the Licensee, enforceable against the Licensee in accordance with the terms and conditions set out herein, and that any and all consents, approvals and authorizations in respect to the execution and delivery of this Agreement have been obtained.
- (m) The Licensee agrees that this Agreement is and shall be subordinate to any ground lease affecting the Building and to any mortgage or charge which may now or hereafter be placed against the Lands, the Building or the Site by the Licensors or any party having a superior interest to the Licensee in the Building. The Licensee further agrees that on the request at any time and from time to time of the Licensors or of any mortgage or encumbrancer of the Building to either:
- (i) attorn to such mortgage or encumbrancer and become bound to it as its Licensee of the Site for the then unexpired residue of the Term of this Agreement and upon the terms herein contained; or,
  - (ii) postpone and subordinate this Agreement to the mortgagee or encumbrance held by such mortgagee or encumbrancer with the intent and effect that this Agreement and all the rights of the Licensee shall be subject to the rights of such mortgagee or encumbrancer as fully as if the mortgage or encumbrancer has been made before the making of this Agreement.
- Whichever of the foregoing may be requested, and notwithstanding that any previous attornment and subordination to such mortgage or encumbrancer shall have been given, the Licensee shall execute promptly any instrument or attornment, postponement or subordination which may be so requested to give effect to the foregoing.
- (n) The Licensee hereby accepts this license of the above described Site to be held by it, as Licensee, subject to the covenants, obligations, conditions, and restrictions specified herein and in the schedules attached hereto set forth.
- (o) Any marketing material that mentions the Building or the Licensors or its property manager, must be approved in writing by the Licensors or its property manager.
- (p) The following schedules are attached to and form an integral part of this Agreement:
- (i) Schedule 1                      Municipal Address of Building and Legal Description of the Lands
  - (ii) Schedule 2                     Diagram of Site
  - (iii) Schedule 3                    Option to Extend

IN WITNESS WHEREOF the parties hereto have executed this Agreement by affixing their corporate seals by their respective duly authorized officers in that behalf as of the day and year first above written.

**Licensors:**

**CONSOLIDATED PROPERTIES (ATRIUM II) LTD.**

Per: \_

Authorized Signatory

PRESIDENT & CHIEF  
EXECUTIVE OFFICER

**Licensee:**

**BELL WEST INC.**

Per: \_

Authorized Signatory

*Am Logistics*

Per: \_\_\_\_\_

Name:

Authorized Signatory

c/s

SCHEDULE 1

1.
- Municipal Address of the Building:

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Atrium II – 840 – 6<sup>th</sup> Avenue SW, Calgary, Alberta

2.
- Legal Description of the Lands:

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Atrium II:  
Plan “A1”, Block 27  
Lots 35 to 40 Inclusive Excepting  
Plan  
Street Widening  
Corner Cut

Number  
7910048

Hectares More or Less  
PTNS

Acres More or Less  
PTNS

### SCHEDULE 3

#### 1. Option to Extend

The Licensee shall have the option to extend the Term (the "Extension Option") and the Agreement for 2 extension terms (the "Extension Term") of two (2) years upon giving the Licensors not less than 6 months and not more than 9 months prior written notice before the expiration of the Term of the Licensee's intention to extend, if:

- (a) the Licensee has paid all Fees when due under this Agreement;
- (b) at the time the Licensee exercises the Extension Option, an unremedied event of default is not then existing; and
- (c) [Licensee's name] (the "Original Licensee") is in possession of all of the Site and has not sublicensed the Site or portion thereof or assigned this Agreement or otherwise parted with possession of the Site to another third party.

The Extension Option shall be on the same terms and conditions as set out in the Agreement with amendments to reflect the Licensors' then current standard form Agreement or on the same terms and conditions as set out in the Agreement incorporated into the Licensors' then current standard form Agreement except in either case for Fees, any further option to extend after commencement of the Extension Term or any inducements granted hereunder. The Fees during the Extension Term shall be the greater of: (i) Market Fees (as hereinafter defined in this section) agreed upon or determined (as hereinafter set out); or (ii) the Basic Fees payable during the last year of the Term.

For the purposes of this section, "Market Fees" shall mean the then current market fees as at the date the Licensee exercises the Extension Option as agreed to by the Licensors and the Licensee to be applicable during the Extension Term by the 90th day before the end of the Term for comparable sites in comparable buildings of the same quality and similar location in the jurisdiction as the Building. Failing agreement by the parties as to the Market Fees applicable during the Extension Term by the 90th day before the end of the Term, the Market Fees shall be determined by a third party expert selected by the Licensors and the decision of such expert shall be binding on the parties to this Agreement.

The Licensee shall either (i) enter into an amending agreement or (ii) enter into the Licensors' then current standard form Agreement, as determined by the Licensors and in either case prepared by the Licensors' solicitors at the Licensee's cost evidencing the terms of the exercise of the Extension Option.