**THIS AGREEMENT** made this xx day of xxxx, 20xx

**BETWEEN: THE CORPORATION OF THE TOWN OF**

**NIAGARA-ON-THE-LAKE**

Hereinafter called the “Town”

OF THE FIRST PART

-and-

**BELL MOBILITY INC.**

Hereinafter called “Bell”

OF THE SECOND PART

**WHEREAS THAT:**

**WHEREAS** the Town is the owner of the lands more particularly described in Exhibit “A”

attached hereto, (hereinafter called the “Premises”); and,

**WHEREAS** at the Council meeting held on the xx day of xxxx, 201x, By-law No. xx-xx was passed by the Council of the Town of Niagara-on-the-Lake authorizing the entering into of this Option and Lease with the LESSEE of that part of the Premises, shown on Exhibit “B” attached hereto, (hereinafter called the “Leased Space”) for the purposes and upon the conditions described herein.

**NOW THEREFORE IN CONSIDERATION** of the Leased Space and the mutual covenants, terms and conditions herein set forth, the parties agree as follows:

**1. The Option**

a. For the sum of one dollar ($1.00) (the “Option Fee”), to be paid to the Town by the LESSEE upon execution of this Lease and other good and valuable consideration, the Town hereby grants to the LESSEE the exclusive and irrevocable option for one (1) year from the date hereof (the “Option Period”), to lease the Leased Space (as defined below) on the terms and conditions set forth below (the “Option”).

b. During the Option Period, the LESSEE shall have the right to enter the Town’s property to conduct tests and studies, at the LESSEE’S expense, to determine the suitability of the Leased Space for the LESSEE’S intended use. The tests may include, without limitation, surveys, soil tests, environmental assessments and radio wave propagation measurements.

c. The LESSEE may exercise the Option by delivery of written notice to the Town in accordance with the Notice provision specified herein. Upon the LESSEE’S exercise of the Option, the Lease which follows will take effect.

**2. Leased Space and Premises**

Upon the LESSEE’S exercise of the Option, the Town shall lease, and hereby leases, to the LESSEE ( m x m ) square meters of space as depicted approximately in Exhibit “B” attached hereto (the “Leased Space”) within the property commonly known as xxxxxxxxxxxx, PIN xxxxxxxxxxx (LT) (the “Premises”) with the legal description set forth in Exhibit “A” attached hereto. The Town also hereby grants to the LESSEE the right to survey the Leased Space at the LESSEE’S cost. The Leased Space will be utilized to construct, support and operate a wireless communications facility, including a monopole communications tower, antennas, cables, and related structures and improvements (collectively the “Structures”), including the uses as permitted and described in Section 11 of this Lease and for any other purpose required to maintain, support and operate a wireless communication facility upon obtaining the Town’s prior written consent which shall not be unreasonably withheld, conditioned or delayed but which may be subject to approval by Town Council.

**3. Term**

The initial term of this Lease will be five (5) years from the “Commencement Date” specified below (“Initial Term”) (in no event shall this date be earlier than the date on which the LESSEE exercised the Option) and shall automatically renew for up to eight (8) additional terms of five (5) years each (“Renewal Term(s)”) unless the LESSEE notifies the Town of its intention not to renew prior to commencement of the succeeding Renewal Term. This Lease and all the terms, covenants, grants, easements and agreements contained herein shall be conditional upon compliance with the applicable subdivision control legislation of the jurisdiction in which the Premises are located. Unless and until any required consents are obtained under the aforesaid subdivision control legislation (if applicable), the maximum term of this Lease, including any possible renewals or extension terms, shall be one (1) day less than the maximum term permitted under the aforesaid subdivision control legislation.

**4. Rent**

a. The rent for the first five (5) years of the Lease will be XXXXXXXXXX Canadian Dollars **(CAD $**XXXXXXXX**)** plus applicable taxes (Provincial Sales Tax, Goods and Services Tax and/or Harmonized Sales Tax) per year (the “Rent”), paid in advance on or before the 1st day of January of each year of the term, which the LESSEE will pay to the Town at 1593 Four Mile Creek Road, PO Box 100, Virgil ON L0S 1T0, Attention: Town Clerk. If the Initial Term or any Renewal Term does not begin on the first day of January, the Rent for that partial year will be prorated by multiplying the annual Rent by a fraction, the numerator of which is the number of days of the partial year included in the Initial Term and the denominator of which is the total number of days in the full calendar year. The then current annual rental fee will be increased by fifteen percent (15%) every fifth year during the Term and any renewal or extensions.

b. In addition to the Rent, the Town shall receive an additional XXXXXXXXXXX Canadian Dollars (CAD XXXXXX) (plus applicable taxes (Provincial Sales Tax, Goods and Services Tax and/or Harmonized Sales Tax) revenue sharing beginning with the second (2nd) carrier for each broadband telephony sublessee, including but not limited to, PCS providers such as Rogers, Telus, Shaw, Mobilicity or Public Mobile, using the Leased Space. Notwithstanding the foregoing, all Rent contained herein shall be payable one month in arrears upon the LESSEE’S receipt of rental payment from its sublessee. The LESSEE shall provide the Town with a summary report listing the sublessees on the Equipment with the Town’s monthly Rent check. In the event the first (1st) sublessee is no longer a tenant on the Leased Space, the second (2nd) sublessee who collocated on the Leased Space will take the place of the first (1st) sublessee for purposes of being excluded from the revenue sharing provisions of this section.

**5. Ingress and Egress**

The Town hereby grants to the LESSEE an easement (the “Easement”) for ingress, egress and regress over the Premises adjacent to the Leased Space attached hereto, for construction, operation and maintenance of the Structures on the Leased Space, and for installation, construction, operation and maintenance of underground and above ground telephone, telegraph, and power lines, in connection with its use of the Leased Space. The term of this Easement will commence upon exercise of the Option and will continue until the last to occur of:

a. Expiration of the Initial Term or Renewal Term; or,

b. Removal by the LESSEE of all of its property from the Leased Space after expiration of the Initial Term or a Renewal Term.

The location and configuration of the Easement will be shown on the survey prepared by the LESSEE and be approved by the Town prior to the LESSEE’S exercise of the Option, or the LESSEE’S approval of the survey. The Easement shall be included in any recorded Memo (as hereinafter defined) of this Lease. In addition, at the LESSEE’S request and expense, this Easement will be set forth in a separate easement agreement (the “Easement Agreement”) which the Town and the LESSEE agree to execute and which the LESSEE will, upon receiving the Town’s approval as to the form and content of the Easement Agreement, register on title at the LESSEE’S expense on the Premises. In all events, the Easement and this Lease shall be binding upon all subsequent owners, successors and assigns.

The LESSEE agrees that the Town may, at the Town’s expense, relocate the above described easements to another comparable location on the Premises provided that:

1. The LESSEE receives no less than sixty (60) days prior written notice

thereof;

b. The LESSEE approves the proposed new location of the easement, which approval will not be unreasonably withheld or delayed;

c. The LESSEE’S access and beneficial use and enjoyment of the Leased Space is not interrupted, obstructed or materially affected; and,

d. The utility services to the Leased Space are not interrupted.

**6. Title and Quiet Possession**

The Town is not aware of any lien, easement or other encumbrance that would render the Leased Space unsuitable for the LESSEE’S intended use and the Town represents and covenants that the Town owns the Leased Space in fee simple.

The Town represents and warrants that there are no matters affecting title that would prohibit, restrict or impair the leasing of the Leased Space or use or occupancy thereof in accordance with the terms and conditions of the Lease. The Town represents and warrants to the LESSEE that the Town has the full right to make this Lease and that the LESSEE will have quiet and peaceful possession of the Leased Space throughout the Initial Term and Renewal Term(s). The Town represents, warrants and declares that the Premises, being located in Ontario, are not a family residence within the meaning of the *Family Law Act* (Ontario).

**7. Subordination, Non-disturbance and Attornment**

a. The LESSEE agrees that this Lease will be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Leased Space and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided that, the holder of any such instrument agrees in writing that the LESSEE’S possession of the Leased Space will not be disturbed so long as the LESSEE will continue to perform its duties and obligations under this Lease and the LESSEE’S obligation to perform the duties and obligations will not be in any way increased or its rights diminished by the provisions of this paragraph. The LESSEE agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser in a sale pursuant to the foreclosure thereof; provided that, the LESSEE’S possession of the Leased Space will not be disturbed so long as the LESSEE will continue to perform its duties and obligations under this Lease. The LESSEE’S obligations hereunder are conditioned upon receipt by the LESSEE, within ten (10) business days after the LESSEE’S notice of its intent to exercise the Option, or within ten (10) business days after the date of creation of any future mortgages or deeds of trust, of a Subordination, Non-disturbance and Attornment Agreement in form reasonably acceptable to the LESSEE, from any holder of a mortgage, deed to secure debt, or deed of trust to which this Lease is, or will become, subordinate.

b. The LESSEE may from time to time grant to certain lenders selected by the LESSEE and its affiliates (the “Lenders”) a lien on and security interest in the LESSEE’S interest in the Lease and all assets and personal property of the LESSEE located on the Leased Space (the “Personal Property”) as collateral security for the repayment of any indebtedness to the Lenders. The LESSEE hereby agrees to subordinate any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent, the Town may have in or on the Personal Property, whether arising by agreement or by law, to the liens and/or security interests in favor of the Lenders, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant a lien upon or security interest in any of the Town’s assets. Should the Lenders exercise any rights of the LESSEE under the Lease, including the right to exercise any renewal option(s) or purchase option(s) set forth in the Lease, the Town agrees to accept such exercise of rights by the Lender as if same had been exercised by the LESSEE, and the LESSEE, by signing below, confirms its agreement with this provision. If there shall be a monetary default by the LESSEE under the Lease, the LESSEE shall accept the cure thereof by the Lenders within fifteen (15) days after the expiration of any grace period provided to the LESSEE under the Lease to cure such default, prior to terminating the Lease.

If there shall be a non-monetary default by the LESSEE under the Lease, the Town shall accept the cure thereof by the Lenders within thirty (30) days after the expiration of any grace period provided to the LESSEE under the Lease to cure such default, prior to terminating the Lease. The Lease may not be amended in any respect which would be reasonably likely to have a material adverse effect on the Lenders’ interest therein or surrendered, terminated or cancelled, without the prior written consent of the Lenders. If the Lease is terminated as a result of a default by the LESSEE or is rejected in any bankruptcy proceeding, the Town will enter into a new lease with the Lenders or their designee on the same terms as the Lease within fifteen (15) days of the Lenders’ request made within thirty (30) days of notice of such termination or rejection, provided the Lenders pay all past due amounts under the Lease. The foregoing is not applicable to normal expirations of the term of the Lease. In the event the Town gives the LESSEE any notice of default under the terms of the Lease, the Town shall simultaneously give a copy of such notice to the Lenders at an address to be supplied by the LESSEE. The LESSEE shall have the right to record a memorandum of the terms of this paragraph.

**8. Governmental Approvals and Compliance**

During the Initial Term and Renewal Term(s), the LESSEE shall comply with all applicable laws affecting the LESSEE’S use or occupancy of the Leased Space. The LESSEE will not commit, or suffer to be committed, any waste on the Leased Space. In accordance with applicable law, the Town agrees to fully cooperate with the LESSEE in order to obtain the necessary permits for construction and use of the Leased Space and its Structures (including any modification(s) to the tower or Leased Space or the addition(s) of equipment or sublessee to the tower or Leased Space), including, but not limited to, processing any zoning approvals/permits and building permits. The Town agrees not to take any action that may adversely affect the LESSEE’S ability to obtain all of the necessary permits required for construction of the Structures. The LESSEE will obtain any necessary governmental licences or authorizations required for the construction and use of the LESSEE’S intended Structures on the Leased Space and will furnish copies of same to the Town’s Director of Community and Development Services, or designate as same are issued.

**9. Assignment and Subleasing**

Provided that the LESSEE is not in breach of any of its obligations as contained herein, it may; (a) sublet all or part of the Leased Space without the Town’s consent, and (b) assign or transfer this Lease in whole or in part with the Town’s consent, which the Town shall not unreasonably withhold, save and except that the LESSEE may assign or transfer this Lease to an affiliated company of the LESSEE with notice to the Town, but without the Town’s consent. If the LESSEE assigns or transfers the Lease in whole to a third party, upon such assignment, the LESSEE shall be relieved of all rights, liabilities and obligations under this Lease provided that the assignee first executes an agreement with the Town to be bound by all terms and conditions of the Lease instead of the LESSEE.

The Town may not assign this Lease or any rights thereunder, except in connection with conveyance of fee simple title to the Premises.

In the event that the LESSEE from time to time subleases all or a portion of the Leased Space or as otherwise reasonably required by the LESSEE to erect or maintain the Structures within the Leased Space, the Town hereby grants to the LESSEE a temporary construction easement over such portion of the Premises approved by the Town in writing, not to be unreasonably withheld or delayed, as is reasonably necessary for such work. Following the completion of such work, the LESSEE shall, at the LESSEE’S sole cost and expense, promptly repair any damage to the temporary easement area arising from the LESSEE’S use thereof to the reasonable satisfaction of the Town’s Director Operations or designate.

The LESSEE shall permit the Town to install one (1) antenna and one (1) line and equipment (“Equipment”), (which Equipment will be specifically depicted further in the ASA defined below) on the LESSEE’S communication tower in the future only at a location lower than the reserved location of the LESSEE sublessees, at no charge and provided that the Town’s use does not interfere with The LESSEE’S existing or future operations on the Leased Space. In addition, the height of the Town’s antenna on the tower will be mutually agreed upon by both the Town and the LESSEE at a later date. However, the Town and the LESSEE agree that the Town’s antenna and equipment shall be at a one height level. In the event, the Town requires ground space in order to install a shelter or pad, Town agrees that it shall be located outside of the LESSEE’S Leased Space. Prior to installation of any equipment, the Town agrees to execute an Antenna Site Agreement (“ASA”), substantially similar to the one attached hereto as Exhibit “C”. The Town, at it’ sole cost and expense, shall be responsible for the installation of its antennas and equipment on the tower.

**10. Notices**

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Lease will be in writing, signed by the notifying party, or officer, agent or attorney of the notifying party, and will be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or by overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission, and addressed as follows:

To the Town: Town of Niagara-on-the-Lake

1593 Four Mile Creek Road

PO Box 100

Virgil ON, L0S 1T0

Attention: Town Clerk

Phone #: 905-468-3266

Fax #: 905-468-2959

Rent Payable to: Town of Niagara-on-the-Lake

1593 Four Mile Creek Road

PO Box 100

Virgil ON, L0S 1T0

Attention: Treasurer

To the LESSEE: The LESSEE Canada, ULC

address Attention: Phone #: Fax #:

Re:

Copy to: The LESSEE Canada, ULC Address

Attention: Phone #: Fax #:

Re:

The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by the party as provided above. Simultaneously with any notice of default given to the LESSEE under the terms of this Lease, the Town shall deliver a copy of such notice to Lender at an address to be provided by the LESSEE.

**11. LESSEE Improvements**

The LESSEE has the right, at its sole expense, to make improvements on the Leased Space for any improvements it may deem necessary for the construction and operation of the Structures. The LESSEE will be responsible for the cost of any site preparation work necessary to prepare the Leased Space to support the Structures. All the LESSEE’S improvements, including but not limited to, prefabricated buildings, generators, fencing, Structures and any other improvements will remain the property of the LESSEE. The Structures shall only be used for the transmission, reception and relay of communication signals, including, without limitation, radio frequency signals. Upon termination of this Lease, the LESSEE shall restore the Leased Space to its original condition at the commencement of this Lease to a level of two (2) feet below grade, except for ordinary wear and tear and damages by the elements or damages over which the LESSEE had no control to the reasonable satisfaction of the Town’s Director of Operations, or designate.

All leasehold improvements shall be subject to the LESSEE complying with the Town’s procedures for development and/or redevelopment of telecommunication towers, including the filing of an application for those installations not excluded from consultation.

Following construction of the Structures, the LESSEE shall repair and restore the Leased Space and Premises to a condition equivalent to that existing prior to commencing construction, including without limitation, restore all earth, topsoil and sod and do all requested or necessary grading.

The LESSEE shall dispose of all surplus excavated materials outside the Leased Space and Premises at a disposal site of its choice. Upon completion of the disposal operation, the LESSEE shall submit to the Town a letter of release from the owner of the disposal site.

**12. Insurance**

a. The LESSEE shall, at all times during the term(s) of this Lease maintain in full force a General Liability Insurance policy covering all of its operations, activities, liabilities and obligations having limits of not less than Two Million Dollars ($2,000,000) per occurrence with a deductible of no more than $10,000 or as mutually agreed to by the Town and the LESSEE. Coverage shall include but not be limited to bodily injury including death, personal injury, property damage including loss of use thereof, products and completed operations, blanket contractual liability, owners' and contractors' protective, products and completed operations, contingent employers' liability, tenants legal liability and non-owned automobile and contain cross liability and severability of interests clauses. The Town shall be named as an additional insured but only with respect to the Leased Space. Any insurance required to be provided by the LESSEE may be provided by a blanket insurance policy covering the Leased Space and other properties leased or owned by the LESSEE provided that such blanket insurance policy complies with all of the other requirements with respect to the type and amount of insurance.

With respect to the above:

i) The LESSEE shall on or before the commencement date of the Lease, provide the Town with a certificate of insurance evidencing that such insurance and coverage therewith is in effect. The LESSEE shall deliver annually prior to the expiry date and within ten (10) business days of written request, a renewal certificate to the Town;

ii) All policies shall be endorsed to provide the Town with not less than 30 days written notice of cancellation, non-renewal, amendment restricting coverage, or termination;

iii) All policies shall be with insurers licenced to underwrite insurance in the Province of Ontario, except for any portion of the coverage which may be covered by a blanket insurance policy;

iv) If the LESSEE fails to maintain insurance as required by this Lease, the Town shall have the right to provide and maintain such insurance and give evidence to the LESSEE. The LESSEE shall pay the cost thereof to the Town on demand;

v) The LESSEE may be required to provide any other form of insurance as the Town, acting reasonably, may require from time to time in form, in amounts and for insurance risks against which a prudent The LESSEE would insure;

vi) All applicable deductibles under the above required insurance policies are at the sole expense of the LESSEE; and,

vii) All policies taken out by the LESSEE, shall be primary, non-contributing with and not excess of any other insurance available to the Town.

b. The Town shall, at all times during the term(s) of this Lease maintain in full force a General Liability Insurance policy covering all of its operations, activities, liabilities and obligations having limits not less than Two Million Dollars ($2,000,000) per occurrence. On or before the Commencement Date, the Town shall give a certificate of insurance evidencing that such insurance is in effect and annually thereafter if requested by the LESSEE. The insurance policy shall be issued by an insurance company authorized to do business in the Province of Ontario.

c. The LESSEE agrees to protect, indemnify, keep indemnified and save harmless the Town and its employees, directors, officers, members of council, servants and agents, and persons for whom the Town is in law responsible, from and against all claims, demands, costs, actions, causes of action, expenses, legal fees whatsoever which may be taken or made against them or any of them incurred or become payable by them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever arising out of or in consequence of: (i) the LESSEE’S use and occupancy of the Leased Space and/or the Premises; and (ii) any act, negligence, neglect, error or omission of the LESSEE or any employee(s) or subcontractors of the LESSEE in connection with any and all operations associated with said Lease.

d. The LESSEE shall ensure that carriers to whom the LESSEE has sublet the

Leased Space maintain in full force such insurance policies as shall comply with the insurance obligations of the LESSEE under this Lease

**13. Operating Expense**

The LESSEE will pay for all water, gas, heat, light, power, telephone service, and other public utilities furnished to the Leased Space and used by the LESSEE throughout the Initial Term or Renewal Term hereof, and all other costs and expenses of every kind whatsoever in connection with the use, operation, and maintenance of the Leased Space and all activities conducted thereon.

**14. Taxes**

The LESSEE will pay any municipal property taxes assessed on, or any portion of the taxes attributable to the Structures. The LESSEE will pay, when due, all municipal property taxes and all other fees and assessments attributable to the the LESSEE’S improvements located on the Premises.

**15. Maintenance**

The LESSEE shall maintain the Leased Space in good condition and state of repair. Except insofar as the LESSEE is made responsible by this Lease, the Town will maintain the Premises surrounding the Leased Space according to its usual practices.

**16. Hold Harmless**

a. The Town will be held harmless by the LESSEE from any liability (including reimbursement of reasonable legal fees and all costs) for damages to any person or any property in or upon the Leased Space at the LESSEE’S invitation, or for damages to any person or property resulting from the actions of the LESSEE (including damages caused by or resulting from the existence of the Structures) on the Leased Space, unless the damages are caused by, or are the result of, the misconduct or negligence of the Town or any of the Town’s agents, servants, employees, licensees or invitees.

Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored or maintained in or upon the Leased Space by the LESSEE will be so installed, kept, stored or maintained at the risk of the LESSEE.

The Town will not be responsible for any loss or damage to equipment owned by the LESSEE and which might result from tornadoes, lightning, wind storms, or other Acts of God; provided, however, the Town will be responsible for, and agrees to hold the LESSEE harmless from any liability (including reimbursement of reasonable legal fees and all costs), for damages to any person or any property in or upon the Leased Space arising out of the misconduct or negligence of the Town or any of the Town’s agents, servants, employees, licensees or invitees.

Except for willful misconduct, neither the Town nor the LESSEE will in any event be liable in damages to each other’s property including business loss or business interruption, regardless of the cause of the property damages, and each party expressly waives all claims against each other for such damages.

**17. Termination Rights**

a. The LESSEE may terminate this Lease, at its option, after giving the Town no less than sixty (60) days prior written notice to cure, if:

i. Any governmental agency denies a request by the LESSEE for a permit, licence or approval which is required for the LESSEE to construct or operate the Structures on the Leased Space or any such permit is revoked;

ii. The LESSEE determines that technical problems or radio interference problems from other antennas or from nearby radio transmitting facilities, problems which cannot reasonably be corrected, impair or restrict the LESSEE from using the Leased Space for the LESSEE’S intended purpose;

iii. The LESSEE determines that it does not have acceptable and legally enforceable means of ingress and egress to and from the Leased Space;

iv. The Town does not have legal or sufficient ownership of or title to the

Leased Space or Premises or the authority to enter into this Lease;

v. Utilities necessary for the LESSEE’S contemplated use of the Leased Space are not available;

vi. The Leased Space is damaged or destroyed to an extent which prohibits or materially interferes with the LESSEE’S use of the Leased Space or the LESSEE’S equipment and attachments thereto;

vii. The Premises now or hereafter contains a Hazardous Material not caused by the LESSEE which would prohibit or materially interfere with the LESSEE’S use of the Leased Space or would damage the LESSEE’S equipment or Structures and attachments thereto

viii. A material default by the Town occurs;

ix. The Town fails to perform any of the material covenants or provisions of this Lease or if any representation or warranty contained herein is found to be untrue;

x. The Leased Space is the subject of a condemnation or expropriation proceeding or taking by a governmental authority, or quasi-governmental authority with the power of condemnation or expropriation, or if the Leased Space is transferred in lieu of condemnation (rent will be abated during the period of condemnation or taking);

xi. If the LESSEE determines, in its sole discretion, that it will not be viable to use the site for its intended purpose; or,

xiii. If the LESSEE determines, in its sole discretion, that it will be unable to use the site for any reason.

In the event of termination by the LESSEE pursuant to this provision, the LESSEE will be relieved of all further liability hereunder, except restoration of the Leased Space pursuant to Section 11 hereof. Any rental fees paid prior to the termination date will be retained by the Town. In the event the Town fails to perform its obligations under this Lease for any reason other than the LESSEE’S breach, the LESSEE may pursue all remedies available at law and in equity.

In the event the Town fails to comply with the terms of this Lease, the LESSEE may, after giving the Town no less than sixty (60) days written notice to cure the default, in its sole and absolute discretion, cure any such default, and to the extent the LESSEE incurs any expenses in connection with such cure the Town agrees to promptly reimburse the LESSEE for such expenses incurred and hereby grants the LESSEE a security interest and lien on the Premises, to secure the Town’s obligation to repay such amounts to the LESSEE. In addition, the LESSEE may offset the amount of any such expenses incurred against any rent payable hereunder.

b. The Town may terminate this Lease, at its option, if:

i. The Town has given the LESSEE sixty (60) days prior written notice to cure a material default. No such failure to cure a material default, however, will be deemed to exist if the LESSEE has commenced to cure such default within said period and provided that such efforts are prosecuted to completion with reasonable diligence in accordance with a binding timeline provided to the Town. Delay in curing a material default will be excused only if due to causes beyond the reasonable control of the LESSEE; and,

ii. The LESSEE fails to pay Rent when due, which default or failure is not cured within fifteen (15) business days after the LESSEE’S receipt of written notice of such default or failure.

**18. Exclusivity**

a. During the Initial Term or Renewal Term(s), neither the Town, nor its successors or its assigns, will use or suffer or permit another person, corporation, company, or other entity to use the Premises for the uses permitted herein.

b. Concerning any adjacent parcel of land now or hereafter owned, leased or managed by the Town, its successors or assigns, the Town shall give reasonable consideration to the limited exclusivity granted to the LESSEE in Article 18 a. and make its own determination about whether a proposed use on an adjacent parcel of land poses a reasonable risk of interfering with the LESSEE’S, or with any sublessee of the LESSEE’S reasonable use and enjoyment of the Leased Space.

c. The LESSEE acknowledges that the Town might reasonably permit within or upon an adjacent parcel of land, the establishment of structures to be used for the transmission, reception and relay of communication signals, including, without limitation, radio frequency signals for reasons of public safety, including police, fire and ambulance service communications.

**19. Binding on Successors**

The covenants and conditions contained herein will apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto. Further, this Lease will run with the land and all subsequent purchasers will be subject to the terms and conditions specified herein.

**20. Access to Leased Space/Premises**

The LESSEE shall have, at all times during the Initial Term or Renewal Term(s), the right of access to and from the Leased Space and all utility installations servicing the Leased Space on a 24 hours per day/7 days per week basis, on foot or by motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits and pipes over, under and along the right-of-way extending from the nearest accessible public right-of-way. Notwithstanding the foregoing, the LESSEE shall comply with all applicable Town by-laws, including the Town’s Noise By-law, when exercising its right of access.

**21. Governing Law**

The parties intend that this Lease and the relationship of the parties will be governed by the laws of the province in which the Leased Space is located.

**22. Entire Lease**

All of the representations and obligations of the parties are contained herein, and no modification, waiver or amendment of this Lease or of any of its conditions or provisions will be binding upon a party unless in writing signed by that party or, a duly authorized agent of that party, empowered by a written authority signed by that party. The waiver by any party of a breach of any provision of this Lease will not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Lease.

**23. Survey and Testing**

The LESSEE will have the right during the Initial Term or Renewal Term(s) of this Lease (and the Option Period, if applicable) to survey, soil test, and make any other investigations necessary to determine if the surface and subsurface of the Leased Space are: (i) suitable for construction and operation of the Structures and (ii) free of all Hazardous Materials. If the LESSEE, prior to completion of the Structures, determines that for any reason the surface or subsurface of the Leased Space is not suitable to construct and operate the Structures, this Lease, upon written notice given to the Town prior to completion of the Structures, will become null and void; provided that at the LESSEE’S sole expense the Leased Space will be promptly restored to the extent contemplated by the “LESSEE Improvements”, Section 11 above and provided further that the LESSEE will deliver copies of all soil tests and investigation reports to the Town’s Director of Operations or designate.

**24. Oil, Gas and Mineral Rights**

The Town shall not grant, lease, let or demise any rights to drill or explore for oil, gas and other minerals in, on or under the Leased Space. The Town covenants that it shall not permit drilling or other activity to be undertaken on or beneath the surface of the Leased Space or Easement area to recover any oil, gas or minerals.

**25. Hazardous Waste**

a. The term “Hazardous Materials” will mean any substance, material, waste, gas or particulate matter which is regulated by the Provincial governmental authority where the Leased Space is located or the federal governments, including, but not limited to, any material or substance which is:

i. Defined as “hazardous waste,” “hazardous material,” “hazardous substance,” or is otherwise regulated or controlled under any provision of environmental Laws;

ii. Petroleum; iii. Asbestos;

iv. Polychlorinated biphenyl; or,

v. Radioactive material.

The term “Environmental Laws” will mean all statutes specifically described in the foregoing sentence and all applicable federal, provincial and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with the environment, public health, occupational health and safety or Hazardous Materials.

b. The Town represents and warrants that, to the best of the Town’s knowledge:

i. The Leased Space has not been used for the use, manufacturing, storage, discharge, release or disposal of hazardous waste;

ii. Neither the Leased Space nor any part thereof is in breach of any

Environmental Laws;

iii. There are no underground storage tanks located on or under the Leased

Space; and,

iv. The Leased Space is free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability to an extent which would prohibit or materially interfere with the LESSEE’S use of the Leased Space or would damage the LESSEE’S equipment or Structures and attachments thereto.

1. During the Option Period, the Town grants to the LESSEE the right to satisfy itself that the Leased Space is not in a condition that: (i) would prohibit or materially interfere with the LESSEE’S intended use of the Leased Space or would damage the LESSEE’S equipment or Structures and attachments thereto; or (ii) pose a significant cause for concern for anyone’s health or well-being.
2. The LESSEE’S exercise of the Option shall be deemed to be the LESSEE’S representation and warranty that it has satisfied itself that the Leased Space is suitable for the LESSEE’S intended use and that the LESSEE has satisfied itself that the Leased Space does not pose a significant cause for concern for anyone’s health or well-being.
3. The LESSEE covenants and agrees that it shall not use or permit the use of any part of the Leased Space for storage, discharge, release or disposal of hazardous waste.

**26. Mechanic’s and Lessor’s Liens**

The LESSEE will not cause any construction, mechanic’s, materialman’s or other similar lien to be placed on the Leased Space or the Premises and the LESSEE agrees to indemnify, defend and hold harmless the Town from any such lien from a party claiming by, through or under the LESSEE.

**27. Headings**

The headings of sections and subsections are for convenient reference only and will not be deemed to limit, construe, affect, modify or alter the meaning of the sections or subsections.

**28. Time of Essence**

Time is of the essence of the Town’s and the LESSEE’S obligations under this Lease.

**29. Severability**

If any section, subsection, term or provision of this Lease or the application thereof to any party or circumstance will, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of the Lease or the application of same to parties or circumstances, other than those to which it was held invalid or unenforceable, will not be affected thereby and each remaining section, subsection, term or provision of this Lease will be valid or enforceable to the fullest extent permitted by law.

**30. Further Assurances**

Each of the parties agree to do such further acts and things and to execute and deliver the additional agreements and instruments (including, without limitation, requests or applications relating to zoning or land use matters affecting the Structures) as the other may reasonably require to consummate, evidence or confirm this Lease or any other agreement contained herein in the manner contemplated hereby. If the Town agrees to provide documentation required by this Lease it will use its best efforts to do so within thirty (30) calendar days of the LESSEE’S request for same. For greater certainty, the Town shall provide a Non-Disturbance Agreement required in this Lease.

**31. Right to Register**

The Town consents to the registration of a Notice of this Lease against the title to the Leased Space in the local Land Registry Office, at the LESSEE’S sole expense, and in a form acceptable to the Town and if requested by the LESSEE, agrees to execute an Acknowledgment and Direction Form in the form approved by the Law Society of Upper Canada. The Town agrees and authorizes the LESSEE to attach and/or insert a legal description of the Leased Space in such Notice, and once approved by the Town, to register such Notice in the local Land Registry Office.

**32. Interpretation**

Each party to this Lease and its counsel have reviewed and had the option to revise this Lease. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Lease or of any amendments or exhibits to this Lease.

**33. Condemnation/Expropriation**

a. The Town shall fully advise the LESSEE in a timely manner of all condemnation or expropriation proceedings or prospective condemnation or expropriation proceedings in order that the LESSEE may fully protect and prosecute its rights and claims relating to the Leased Space.

b. If the whole of the Leased Space shall be taken or condemned or expropriated by, or transferred in lieu of condemnation or expropriation to, any governmental or quasi-governmental authority or agency with the power of condemnation or expropriation during the Option Period or Initial Term or Renewal Term(s) of this Lease, the LESSEE shall be entitled to any award based upon its leasehold interest as set forth in this Lease, along with the value of all the LESSEE’S improvements, including, but not limited to, the Structures, prefabricated buildings, generators, fencing and any other improvements and for all of the LESSEE’S other personal property, trade fixtures, fixtures, moving expenses, business damages, business interruption, business dislocation, prepaid Rent or other losses or expenses as may be incurred. In the event that only a portion of the Premises, such portion which does not include the whole of the Leased Space, shall be taken or condemned or expropriation by, or transferred in lieu of condemnation or expropriation to any governmental or quasi-governmental authority or agency with the power of condemnation or expropriation during the Option Period or Initial Term or Renewal Term(s) of this Lease, the LESSEE shall have the option to either:

i. Terminate this Lease; or,

ii. Continue in possession of the property pursuant to the terms of this Lease with a proportionate reduction in Rent equal to that portion, if any, of the Leased Space so taken, condemned, expropriated or transferred in lieu of condemnation or expropriation.

In either event, the LESSEE shall be entitled to any award based upon its leasehold interest in the portion of the Premises condemned, expropriated, taken or transferred in lieu of condemnation or expropriation, along with the value of all the LESSEE’S improvements, including, but not limited to, the Structures, prefabricated buildings, generators, fencing and any other improvements and for all of the LESSEE’S other personal property, trade fixtures, fixtures, moving expenses, business damages, business interruption, business dislocation, prepaid Rent or other losses or expenses as may be incurred. Nothing contained herein shall prohibit the LESSEE from making its own claims against any condemning or expropriating authority for any losses or damages the LESSEE shall incur as a result of a condemnation or expropriation, or sale in lieu of condemnation or expropriation, of the whole or any portion of the Premises.

**34. Right of First Refusal**

If at any time during the Initial Term or Renewal Term(s) of this Lease, the Town receives a bona fide written offer from a third person or company who is in telecommunications or is a lease consolidator (“Offer”) to sell, assign, convey, lease or otherwise transfer its interest in the Leased Space, or any portion thereof, which the Town desires to accept, the Town shall first give the LESSEE written notice (including a copy of the proposed contract) of such Offer prior to becoming obligated under such Offer. The LESSEE shall have a period of thirty (30) days after receipt of the Town’s notice and terms to accept the Offer and exercise the LESSEE’S right of first refusal by notifying the Town in writing. If the LESSEE has not accepted the Offer in writing to the Town within such thirty (30) day period, the Offer will be deemed rejected. In addition to the above, the Town shall not, at any time during the Initial Term or Renewal Term(s) of this Lease, grant any interest in any portion of the Leased Space (other than the conveyance of fee simple title to the entire Premises) to any third party or company who is in telecommunications or is a lease consolidator without the prior written consent of the LESSEE, which shall not be unreasonably withheld.

**35. Date of Lease**

The parties acknowledge that certain obligations of the Town and the LESSEE are to be performed within certain specified periods of time which are determined by reference to the date of execution of this Lease. The parties therefore agree that wherever the term “date of execution of this Lease”, or words of similar import are used herein, they will mean the date upon which this Lease has been duly executed by the Town and the LESSEE, whichever is the later, to so execute this Lease. The parties further agree to specify the date on which they execute this Lease beneath their respective signatures in the space provided and warrant and represent to the other that such a date is in fact the date on which each duly executed his or her name.

**COMMENCEMENT DATE: The date that the LESSEE exercises its Option.**

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the last day and year specified below.

**THE TOWN: The Corporation of the THE LESSEE: THE LESSEE** XXXXXX

**Town of Niagara-on-the-Lake** XXXXXXXXXXXXXXX

By:

Print Name: Patrick Darte

By:

Print Name:

Title: Lord Mayor Title:

Date:

Date:

**THE TOWN: The Corporation of the**

**Town of Niagara-on-the-Lake**

By:

Print Name: Holly Dowd

Title: Town Clerk

Date:

**EXHIBIT “A” LEGAL DESCRIPTION**

**ATTACH LEGAL DESCRIPTION FROM DEED**

XXXXXXXXX

**EXHIBIT “B”**

Current Sketch/Survey of the Leased Space within the Premises

The Leased Space shall consist of **( m x \_m)** square meters ground space along with easement rights for access to the Leased Space by vehicle or foot from the nearest public way and for the installation of utility wires, poles, cables, conduits and pipes on the Premises in the approximate locations as depicted below:

**EXHIBIT “C” FORM OF ASA**