

**THE CORPORATION  
OF THE  
TOWN OF NIAGARA-ON-THE-LAKE  
BY-LAW NO. 5179-19**

A BY-LAW TO AUTHORIZE THE LORD MAYOR AND TOWN CLERK TO EXECUTE ALL NECESSARY DOCUMENTS PERTAINING TO THE ASSIGNMENT, ASSUMPTION AND AMENDING AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE AND TM MOBILE INC. AND BELL MOBILITY INC. (176 Wellington Street)

BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE as follows:

1. THAT the Lord Mayor and Town Clerk are hereby authorized to execute any and all necessary documents pertaining to the Assignment, Assumption and Amending Agreement between The Corporation of the Town of Niagara-on-the-Lake and TM Mobile Inc. and Bell Mobility Inc.
2. THAT the Lord Mayor and Town Clerk be authorized to affix their hands and the Corporate Seal; and,
3. THAT this by-law shall come into force and take effect immediately upon the passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 16TH DAY OF SEPTEMBER, 2019**

\_\_\_\_\_  
LORD MAYOR BETTY DISERO

\_\_\_\_\_  
TOWN CLERK PETER TODD

**ASSIGNMENT, ASSUMPTION AND AMENDING AGREEMENT**

**THIS AGREEMENT** is dated \_\_\_\_\_ (the “**Assignment Agreement**”).

**BETWEEN:**

**TM MOBILE INC.**

(the “**Assignor**”)

- and -

**BELL MOBILITY INC.**

(the “**Assignee**”)

- and -

**THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE**

(the “**Landlord**”)

**RECITALS:**

1. The Assignor and The Niagara Hospital (predecessor in interest to the Landlord) are parties to an agreement dated March 20, 2003 (the “**Lease**”), as same has been amended on November 3, 2003 (the “**First Amendment**”) and April 28, 2015 (the “**Second Amendment**”), copies of which are attached hereto as Schedule “A” (the Lease, the First Amendment and the Second Amendment, being collectively the “**Agreement**”);
2. The Assignor and the Landlord confirm that the Agreement commenced on March 1, 2003; and that the rent pursuant to the Agreement, as of the date of this Assignment Agreement, is \$18,000.00 per annum;
3. The Assignor wishes to assign the Agreement to the Assignee as well as to transfer some or all of its right, title and interest in any construction erected on the leased premises under the Agreement and owned by the Assignor (collectively, the “**Assignment**”), including, without limitation, any wireless telecommunications antennae, cabling, generator and other related equipment used for wireless telecommunications transmission or reception (the “**Telecommunications Equipment**”), any tower structure, a mast or a mount (including a rooftop structure, if applicable) to which telecommunications antennae and certain other Telecommunications Equipment can be attached, and including, without limitation, the following infrastructure: poles, conduits, piping, brackets, pedestals, roof piers, all necessary cabling, wiring, fibre optic wiring, hydro-electric wiring, telephone wiring,

antenna mounts, and similar items (the “**Telecommunications Towers**”), any upright enclosure or similar structure used for the storing of Telecommunications Equipment (the “**Cabinet**”) and any building or similar structure used for the storing or housing of Telecommunications Equipment (the “**Shelter**”); the Telecommunications Equipment, the Telecommunications Towers, the Cabinet and the Shelter are hereinafter collectively, referred to as the “**Constructions**”), as part of a sale of assets to the Assignee (the “**Transaction**”) expected to occur at a later date; and

4. The Landlord has agreed to grant its consent to the within Assignment, subject to the terms and conditions herein set out.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements between the parties to this Assignment Agreement and the sum of One Dollar (\$1.00) that has been paid by each of the parties to each of the other, the receipt and sufficiency of which is acknowledged, the parties hereto covenant and agree as follows:

1. **Recitals**. The parties hereto hereby acknowledge, confirm and agree that the foregoing recitals are true in substance and fact and are incorporated herein.
2. **Assignment**. As of the Effective Date (as defined below), the Assignor assigns, transfers and sets over to the Assignee the Assignor’s undivided right, title and interest in and to the Agreement and the Constructions.
3. **Assumption**. The Assignee covenants and agrees that from and after the Effective Date, it shall at all times do, observe, perform, keep, be liable under and be bound by every covenant, provision, condition, agreement, stipulation and other obligation on the part of the Assignor contained in the Agreement arising from and after the Effective Date.
4. **Landlord’s Consent**. The Landlord hereby: (i) consents to this Assignment of the Agreement and transfer of the Constructions from the Assignor to the Assignee as of and from the Effective Date; (ii) confirms that except as detailed in paragraph 3 and amended in Schedule E of the Lease it has no other right, title and interest in the Constructions and, to the extent necessary, waives herein any right, title and interest it may have in such Constructions and undertakes to sign any deed of transfer the Assignee may see fit to acknowledge Assignee’s right of ownership in the Constructions as of the Effective Date; (iii) confirms that, notwithstanding that the Lease and the First Amendment were only signed by The Niagara Hospital, when both The Niagara Hospital and The Niagara Cottage Hospital (predecessors in interest to the Landlord) were the registered owners of the property affected by the Lease and the First Amendment at the time such agreements were entered into, and notwithstanding that the Second Amendment was signed by Niagara Health System when The Niagara Hospital and The Niagara Cottage Hospital were the registered owners of the property affect by the Second Amendment at the time such agreement was entered into, the Agreement is valid and binding upon the Landlord, and the Landlord hereby ratifies the Agreement and all terms and conditions there, as amended from time to time, including by this Assignment Agreement; and (iv) authorizes the Assignee to register on title the subject Agreement, as amended from time to time,

including, pursuant to this Assignment Agreement, as well as its right, title and interest in the Constructions.

5. **Representations and Warranties.** The Landlord hereby represents and warrants to the Assignee that:

- (a) to the best of the Landlord's knowledge and belief, the Agreement represents the full agreement between the Landlord and the Assignor and has not been amended;
- (b) the Agreement is in good standing and in full force and effect, and there are no defaults by the Assignor or the Landlord under the Agreement;
- (c) there are no claims, set-offs or other disputes between the Assignor and the Landlord under the Agreement; and
- (d) the rent and all other payments required to be paid by the Assignor under the Agreement have been paid in full until the date hereof.

6. **Release of Assignor.** The Landlord hereby releases the Assignor of and from any and all obligations to observe and perform the terms, covenants and conditions contained in the Agreement that occur from and after the Effective Date.

7. **Condition.** Notwithstanding anything to the contrary, this Assignment Agreement shall automatically become null and void and shall be deemed to have never been executed should the Transaction, or the portion of the Transaction which relates to the Agreement, not close by **May 31, 2020**. The Assignee undertakes to notify the Landlord of the closing of the Transaction and of the effective date of this Assignment Agreement, which shall be concurrent with such closing, (the "**Effective Date**") within 30 days of the closing of the Transaction. The Assignor undertakes to notify the Landlord should closing of the Transaction, or closing of the portion of the Transaction which relates to the Agreement, not occur for any reason.

8. **Amendment to Agreement.** The Landlord and the Assignee hereby agree to amend and modify the Agreement as follows, the whole effective as of the Effective Date:

a) Assignment

The following paragraph shall be inserted after the last sentence of Section 14 of the Agreement:

9. The Lessor is not permitted to assign or transfer this Lease in any form to a third party tower management company/ telecommunications provider Intentionally deleted **Registration.** Landlord is (**check appropriate box(es) and provide required information**):

- a registrant for the purposes of the Excise Tax Act (Canada) under registration number \_\_\_\_\_ (GST/HST).

- a registrant for the purposes of the Act respecting the Quebec sales tax under registration number \_\_\_\_\_ (QST).
- not registered for the purposes of the Excise Tax Act (Canada) and the Act respecting the Quebec sales tax (GST/HST/QST).

Landlord shall provide Assignee with immediate written notice upon and of any change to its GST/HST or QST registration status described above.

10. **Further Assurances**. Each of the parties shall promptly do, make, execute, deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other parties may reasonably require from time to time at the expense of the requesting party for the purpose of giving effect to this Assignment Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Assignment Agreement.
11. **Assignment**. This Assignment Agreement and the obligations of each of the parties shall not be assigned, in whole or in part, except in accordance with the Agreement.
12. **Enurement**. This Assignment Agreement enures to the benefit of and is binding on the parties and their respective successors and permitted assigns.
13. **Notice**. The address of the Assignee for notices under the Agreement is:

**Bell Mobility Inc.**  
**5099 Creekbank Road**  
**Building D, Floor 6N**  
**Mississauga, ON**  
**L4W 5N2**  
**Attention: Real Estate Services**  
**Phone: 1-800-667-5263 opt. 1**  
**E-mail: bmresi@bell.ca**

14. **Severability**. Each provision of this Assignment Agreement is declared to constitute a separate and distinct covenant and to be severable from all other such separate and distinct covenants. Without limiting the generality of the foregoing, if any of the capacities, activities, periods or areas specified in this Assignment Agreement are considered by a court of competent jurisdiction as being unreasonable, the court has the authority to limit the capacities, activities, periods or areas to those that the court deems proper in the circumstances. If, in any jurisdiction, any provision of this Assignment Agreement or its application to either party or circumstance is restricted, prohibited or unenforceable, that provision will, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Assignment Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to the other parties or circumstances.

15. **Counterparts.** This Assignment Agreement may be executed in any number of counterparts, and/or by facsimile or email transmission of Adobe Acrobat files, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument. Any party executing this Assignment Agreement by fax or PDF file shall, as soon as practical following a request by any other party, provide an originally executed counterpart of this Assignment Agreement provided, however, that any failure to so provide shall not constitute a breach of this Assignment Agreement.
16. **Governing Law.** This Assignment Agreement is governed by, and interpreted and enforced in accordance with, the laws of the province in which the leased premises under the Agreement are located and the laws of Canada applicable in that province, excluding the choice of law rules of that province.
17. **Language.** The parties hereto have requested that this Agreement be drafted in English only. *Les parties aux présentes ont demandé à ce que la présente convention soit rédigée en anglais seulement.*

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF the parties hereto have duly executed this Assignment Agreement as of the day and year first above written.

**TM MOBILE INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

I have authority to bind the corporation.

**BELL MOBILITY INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

I have authority to bind the corporation.

**THE CORPORATION OF THE TOWN OF  
NIAGARA-ON-THE-LAKE**

Per:

\_\_\_\_\_  
Name:  
Title:

Per:

\_\_\_\_\_  
Name:  
Title:

We/I have authority to bind the corporation.

**SCHEDULE "A"**  
**AGREEMENT**

See attached.



**SECOND AMENDMENT TO HEAD LEASE**

**THIS SECOND AMENDING AGREEMENT** is made as of the 28<sup>th</sup> day of April, 2015.

**BETWEEN:**

**NIAGARA HEALTH SYSTEM**  
("Lessor")

- and -

**TELUS Communications Company**  
("TELUS")

**BACKGROUND:**

- A) WHEREAS the Lessor and TELUS (formerly " TMI Mobile Inc. ) entered into a site lease dated the 20<sup>th</sup> of March, 2003 (the "Lease"); and
- B) AND WHEREAS the parties wish to amend the Lease as provided herein.

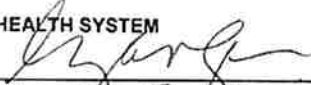
**AGREEMENT:**

NOW THEREFORE, in consideration of the mutual promises set out in this agreement and for other valuable consideration, the receipt and sufficiency of which are acknowledged by each party to this agreement, the parties hereto agree as follows:

- 1. In addition to the Rental Rate payable under the Lease, TELUS will pay the Lessor an additional SIX THOUSAND (\$6,000.00) per annum payable annually in advance on the anniversary date of the Lease. Payment shall commence May 1, 2015 and shall be prorated for the first year. Payment of this additional rent relates to Rogers Communication Inc.'s installation at the Site. In the event Rogers Communication Inc. ceases to operate at the Site, this additional rent payment shall no longer be payable.
- 2. Delete Schedule "B-1" of the Amendment to Site Lease dated November 3<sup>rd</sup>, 2003 and replaced with the attached Schedule "B-2).
- 3. EXCEPT TO THE EXTENT expressly amended hereby, the Lease shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF the parties hereto have executed this Second Lease Amending Agreement as of the date first above written.

**NIAGARA HEALTH SYSTEM**

  
 Name: ANGELA ZAGARI  
 Title: VP FINANCE, OPERATIONS & CFO

**TELUS Communications Company**

  
 Name: Kirti Mani  
 Title: Manager, Technology Strategy  
Real Estate & Government Affairs  
TELUS



## AMENDMENT TO SITE LEASE

**THIS AMENDING AGREEMENT** is made as of the 3rd day of November, 2003.

**B E T W E E N:     THE NIAGARA HOSPITAL**

("Lessor")

- and -

**TM MOBILE INC.**

("TELUS Mobility")

### BACKGROUND:

- A) the Lessor and TM Mobile Inc. entered into a site lease as of the 20th day of March, 2003 (the "Lease"); and
- B) the parties wish to amend the Lease as provided herein.

### AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises set out in this amending agreement and for other valuable consideration, the receipt and sufficiency of which are acknowledged by each party to this amending agreement, the parties hereto agree as follows:

#### 1. Amendment of Section 1:

The following sentences are inserted at the end of Section 1 of the Lease:

"In addition to the aforementioned rental rate (the "Original Rental Rate"), TELUS Mobility will pay to the Lessor a further sum of SIX THOUSAND (\$6,000.00) per annum (the "Additional Rental Rate") plus applicable provincial sales tax and goods and services tax, in equal monthly instalments of FIVE HUNDRED (\$500.00), pursuant to Section 13 of the Lease. The Additional Rental Rate is payable to the Lessor by TELUS Mobility to license space to Bell Mobility and to add an equipment shelter (the "Expanded Area"), as shown on Schedule "B1" attached hereto."

In the event TELUS Mobility no longer requires the Expanded Area to license to a third party, TELUS Mobility shall have the right, at it's sole option, to return the Expanded Area to the Lessor and restore the Expanded Area to the condition prior to the date first above written, reasonable wear and tear excepted. Upon TELUS Mobility returning the Expanded Area to the Lessor as provided herein, the



rental rate shall return to the Original Rental Rate, save and except as provided for in any right of extension.”

2. Delete Schedule “B” and Insert Schedule “B1”.

3. EXCEPT TO THE EXTENT expressly amended hereby, the Lease shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the date first above written.

THE NIAGARA HOSPITAL

By: 

Name: Barry Lockhart

Title: Vice President Patient Services

TM MOBILE INC.

By: 

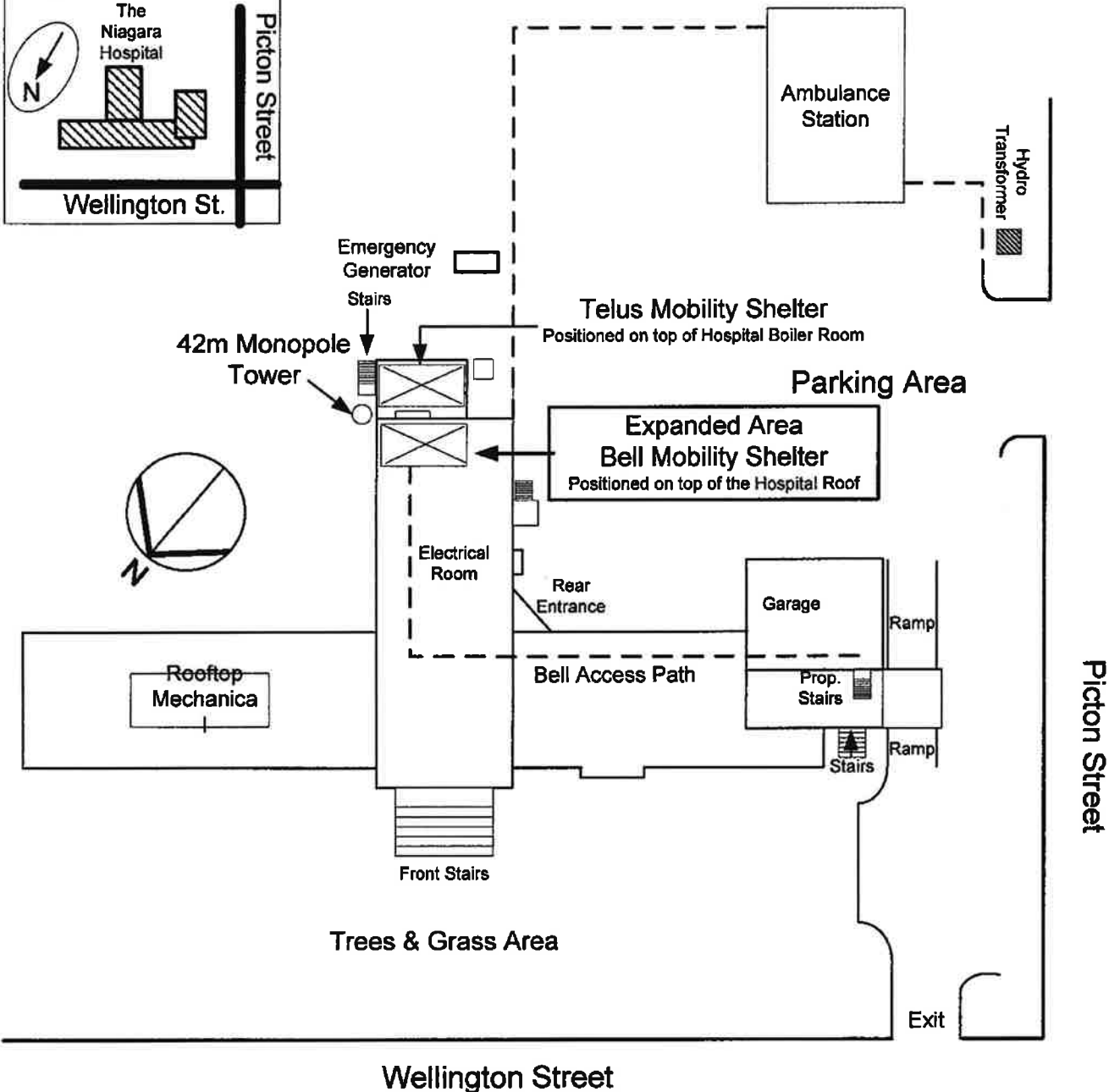
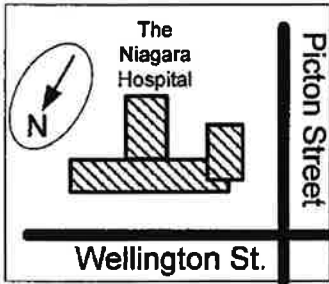
Name: James R. Kennedy

Title: Manager Government Affairs & Real Estate

Schedule “B1”



**Locator Map**



**Site description and Sketch: The Niagara Hospital**  
 Niagara Health System, 176 Wellington Street  
 Niagara-on-the-Lake, Ontario

**Notes:** Plan not to scale  
 Antenna mount locations are "proposed only", locations are subject to change.  
 Notwithstanding any antenna mounts currently shown (or not shown).  
 Lease allows for modification, addition or reconfiguration.  
 Easements identified in the sketch are approximations to be confirmed on a survey.



**Schedule B1**

**ON1750.02p**

Drawn By: GJC  
 Date Created: June 4, 2002  
 Revised: March 20, 2003

Initials

**SITE LEASE**

*This Lease is made as of March 20, 2003.*

**BETWEEN:** THE NIAGARA HOSPITAL, (the "Lessor") and TM Mobile Inc. ("TELUS Mobility")

*A. The Lessor represents and warrants to TELUS Mobility that it is the owner or lessee of the real property(ies) described in Schedule "A" (the "Premises") or is the properly authorized agent of such owner or lessee and has the authority to enter into this Lease.*

*B. The Lessor has agreed to grant to TELUS Mobility a lease to it of the area(s) described in Schedule "B" (the "Site") being a portion of the Premises.*

*NOW THEREFORE for the rent (plus applicable sales tax and goods and services tax) set out in Section 1 payable by TELUS Mobility to the Lessor and the following covenants, conditions and agreements, the Lessor hereby leases to TELUS Mobility the Site together with its appurtenances herein described all on the Terms and Conditions set out below.*

Subject to receipt by TELUS Mobility of necessary regulatory and municipal consents with respect to TELUS Mobility's proposed use of the Site, the Lessor grants to TELUS Mobility:


- (i) the right to build, maintain, occupy and use on the Site an equipment building (the "Shelter") or other designated room described in Schedule "B";
- (ii) the right to construct, install, operate, maintain and repair on the Site such equipment, devices and trade fixtures (collectively, the "Equipment") as may be necessary for the carrying on of TELUS Mobility's telecommunications business;
- (iii) rights of access, including appropriate easements, servitudes and rights of way on, over and through the Premises, with personnel, vehicles and necessary equipment to the Site and its appurtenances; and
- (iv) the right to use the Site, including the Shelter and the Equipment, for the purpose of a telecommunications business and any other purposes as are incidental thereto.

*TO HAVE AND TO HOLD for a term of five (5) years (the "Term") commencing on March 1, 2003 (the "Commencement Date") and ending on February 29, 2008 and any extension term(s) as provided in Section 2; all in accordance with and subject to the Terms and Conditions hereinafter provided.*


**Address of Lessor:**  
142 Queenston Street  
St. Catharines, Ontario, L2R 7C6  
Attention: Barry Lockhart  
Facsimile: (905) 923-3800  
Telephone: (905) 323-3100

TM Mobile Inc.  
200 Conslitium Place, Suite 1600  
Scarborough, Ontario M1H 3J3  
Attention: Real Estate Director  
Facsimile: 1-800-788-6622  
Telephone: 1-800-815-5715

**THE NIAGARA HOSPITAL**

By:   
Name: Barry Lockhart  
Title: Vice President - Patient Services  
GST Registration No.: \_\_\_\_\_

**TM MOBILE INC.**



By:   
Name: James P. Kennedy  
Title: Manager, Government Affairs & Real Estate



## TERMS AND CONDITIONS

1. **Rental Rate.** For the rights granted by the Lessor to TELUS Mobility, TELUS Mobility shall pay to the Lessor rent at the rate of \$ \_\_\_\_\_ per annum plus applicable provincial sales tax and goods and services tax, in equal monthly instalments of \$ \_\_\_\_\_ on or before the first (1st) day of each month, during the Term (and any extension term(s) as provided below); provided that the Lessor has properly obtained a registration number for GST purposes and has communicated same to TELUS Mobility.
2. **Rights of Extension.** The Lessor hereby grants to TELUS Mobility the rights to extend the Term of this Lease for three (3) further and consecutive period(s) of five (5) years each without notice. Each right shall be automatically exercised and shall not require any prior notice in writing and shall take effect unless TELUS Mobility specifically elects not to exercise any such right at least ninety (90) days prior to the end of the Term or relevant extension term. Each such extension term will be upon the same terms and conditions as are herein contained for the Term except that the rent in each such extension term shall be equal to the rent prevailing in the immediately preceding five year period changed by an amount equal to the change in the Canadian Consumer Price Index (all items) in such immediately preceding period.
3. **Unsuitability For TELUS Mobility's Purposes.** At any time during the Term or any extension thereof, for any reason whatsoever, TELUS Mobility may terminate this Lease without damages or penalty by giving ninety (90) days written notice to the Lessor.
4. **Covenants of TELUS Mobility.**
  - (a) **Safety and Maintenance** - TELUS Mobility shall install, operate, ground and maintain its Equipment and the Shelter, in a good and workmanlike manner in accordance with sound engineering standards and at a level of repair consistent with first class building standards.
  - (b) **Taxes, Rates and Assessments** - TELUS Mobility will pay as and when due all taxes, rates and assessments, including increases in real or immovable property taxes, that are levied, charged or assessed with respect to any business carried on by TELUS Mobility on or from the Premises.
  - (c) **Electricity Charges** - TELUS Mobility shall pay for the electrical connections and all electricity charges attributable to TELUS Mobility's operations at the Site either by having installed a separately metered hydro service or, in circumstances where the local utility will not install a separate meter, TELUS Mobility shall install a submeter and shall compensate the Lessor for TELUS Mobility's electricity consumption on a monthly basis, provided that any such compensation is based on existing rates of the local utility. If technologically feasible, the Lessor shall allow TELUS Mobility to install electrical connections to the Lessor's emergency power generator on the Premises for emergency use by TELUS Mobility in the case of any failure of hydro service to the Site and TELUS Mobility shall pay all costs attributable to such connections.
  - (d) **Government Regulation** - TELUS Mobility shall, at its own expense, at all times ensure that the installation, operation and maintenance of its Equipment (including any antenna tower that may be constructed by TELUS Mobility) and the Shelter comply with all required laws, directions, rules and regulations of relevant governmental authorities, including all applicable building codes, and Industry Canada and Transport Canada requirements.
  - (e) **Interference** - TELUS Mobility covenants that TELUS Mobility's operation of its radio system(s) shall not cause material interference or degradation of any other signals lawfully transmitted or received within or on the Premises. If such interference or degradation is reasonably demonstrated to TELUS Mobility, TELUS Mobility upon receiving notice from the Lessor shall use all reasonable endeavours to immediately correct the problem.
  - (f) **Removal of Equipment by TELUS Mobility** - TELUS Mobility shall remove the Equipment from the Premises within ninety (90) days after the termination of this Lease and shall restore the Site to the condition it was at the date first above written, reasonable wear and tear excepted.
5. **Covenants of the Lessor.**
  - (a) **Quiet Possession** - The Lessor has good right, full power and absolute authority to grant this Lease to TELUS Mobility and covenants that TELUS Mobility shall peacefully and quietly hold and enjoy the Site and its appurtenances, subject to the terms and conditions of this Lease. The Lessor shall not make any change to the Site and its appurtenances at any time throughout the duration of this Lease without the prior written consent of TELUS Mobility and no such change shall adversely affect the use being made by TELUS Mobility of the Site.
  - (b) **Access** - By way of appropriate easements, servitudes and rights of way on, over and through the Premises, the Lessor shall provide to TELUS Mobility and its authorized representatives and agents, uninterrupted access with or without vehicles on a twenty-four (24) hours a day, seven (7) days a week basis to the Site and its appurtenances, and such other rights as are necessary to enable TELUS Mobility to install, maintain and operate the Shelter and the Equipment, including but not limited to connecting its installation to the local utility.
  - (c) **Exclusivity** - Throughout the Term and all extensions thereof, the Lessor shall not use or grant a licence or lease space to any other person(s) for the purpose of the installation and operation of wireless communications equipment on or about the Premises or adjacent lands owned by the Lessor, without the prior written consent of TELUS Mobility.
6. **TELUS Mobility's Equipment.**
  - (a) The Shelter and the Equipment will remain the property of TELUS Mobility and notwithstanding the attachment or affixation of any of the Shelter and the Equipment to the Premises in any manner, all of the Shelter and the Equipment shall remain items of personal or moveable property and not fixtures.
  - (b) TELUS Mobility may make any alterations and/or improvements on the Site during the Term and any extensions thereof without obtaining the prior consent of the Lessor. Such alterations and/or improvements may include, but are not limited to the addition of antennas, microwave dishes, equipment shelter expansions and/or various equipment deemed necessary by TELUS Mobility on the Site.
7. **Insurance.** TELUS Mobility will at all times throughout the Term and any extension(s) thereof maintain:
  - (a) All-Risk Property Insurance covering the full insurable replacement cost of all of its undertaking, the Shelter and the Equipment located pursuant to this Lease without deduction for depreciation and with reasonable deductibles; and
  - (b) Commercial General Liability Insurance coverage in an amount not less than Five Million Dollars (\$5,000,000) per occurrence for Bodily Injury and Property Damage. At the Lessor's request, such policy shall extend to include the Lessor as an Additional Insured to the policy but only arising out of the Named Insured's operations. Policy limits are not increased by such additions.At the Lessor's request, TELUS Mobility shall provide a Memorandum of Insurance evidencing that said coverages are in force and shall also notify the Lessor in advance of any material change in coverage or cancellation of any such policy.
8. **Lessor not Liable.** Except for the negligent acts or omissions or the wilful and wrongful acts or omissions of the Lessor or the Lessor's employees or those persons authorized by the Lessor to be on the Premises, the Lessor shall not be liable to TELUS Mobility for any interference, inconvenience or damage to the Shelter or any part of TELUS Mobility's Equipment or any indirect or consequential damage resulting from any cause including, without limitation, by failure or interruptions in the supply of electricity or other utility or by fires, severe conditions or other natural catastrophes or for any cause whatsoever which is beyond the reasonable control of the Lessor.

INITIALS:

	
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9. **TELUS Mobility not Liable.** Except for the negligent acts or omissions or the wilful and wrongful acts or omissions of TELUS Mobility or TELUS Mobility's employees and those persons authorized by TELUS Mobility to be on the Premises, TELUS Mobility shall not be liable to the Lessor for any costs incurred or losses or damages suffered by the Lessor.

10. **Default.** Upon the material default by either party of any of its covenants or obligations under this Lease, the party not in default may terminate this Lease if such default is not remedied within thirty (30) days of the defaulting party receiving Default written notice from the party not in default of such default or within such longer period as is reasonable in the circumstances so long as the party in default is diligently moving to remedy the same.

11. **TELUS Mobility's Financing Arrangements.**

(a) The Lessor acknowledges that TELUS Mobility has entered into, and will be entering into, certain financing arrangements which may require an assignment or hypothecation of TELUS Mobility's rights and obligations under this Lease as well as the granting of security interests in the personal or moveable property of TELUS Mobility located at the Premises. The Lessor consents to any such assignment, hypothecation or granting of security interests and to any transfers occurring on the enforcement of same; and the Lessor shall, at the request of TELUS Mobility, acknowledge in writing the foregoing in such form as the relevant financier may reasonably require.

(b) For the purposes of this Section 11, TELUS Mobility is executing this Lease for itself and as an agent for the financiers referred to herein with whom TELUS Mobility may be entering into financing arrangements from time to time.

12. **Registration.** TELUS Mobility shall not publish or register this Lease. TELUS Mobility may register a notice of lease or caveat on title to the Premises in respect hereof stipulating TELUS Mobility's interest, the Term, any rights to extend and, when applicable, a short form of lease and the Lessor will execute any documents required to effect such registration. Such registration may be effected on behalf of TELUS Mobility by an affiliated corporation as bare nominee for registration purposes only. The Lessor also agrees to use its best efforts to obtain a non-disturbance agreement from any mortgagee(s) on the Premises in such form as TELUS Mobility may reasonably require.

13. **Assignment.** Subject to Section 11 above, this Lease shall not be assignable by TELUS Mobility without the prior written consent of the Lessor, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, TELUS Mobility may, without consent: (i) assign its rights and obligations under this Lease to any related or affiliated entity including a partnership; (ii) sublet a portion of the Site and its appurtenances to any related or affiliated entity including a partnership; and (iii) license to a third party a portion of the Site and its appurtenances, for use as a telecommunications antenna site.

14. **Successors and Assigns.** This Lease shall enure to the benefit of and be binding upon the successors and assigns of the Lessor and the successors and permitted assigns of TELUS Mobility, and no assignee or successor of the Lessor (including any transferee of or successor in title to the Premises) shall challenge the validity or enforceability of any aspect of this Lease and every assignee or successor of the Lessor shall be bound by all obligations of the Lessor hereunder.

15. **Governing Law; Language.** The provisions of this Lease shall be governed by and interpreted in accordance with the laws of the Province in which the Site is located and the parties hereto attorn to the exclusive jurisdiction of the courts of that Province. The parties have requested that this Lease and all related documents be in English. *Les parties ont exigé que ce bail et tous les documents s'y rapportant soient rédigés en anglais.*

16. **Entire Lease; Survey.** This lease contains the entire agreement between the Lessor and TELUS Mobility with respect to the Site and there are no prior representations, either oral or written, between them other than those set forth in this Lease. This Lease, including the Schedules, may not be amended or modified except by written instrument executed by both parties. Notwithstanding the foregoing, if, following the execution of this Lease, TELUS Mobility obtains a survey which identifies the location of the Site, it shall be attached hereto as Schedule "C" and shall take precedence over Schedule "B" and form part of this Lease. Each of the parties respectively acknowledges that the nature and scope of each of the clauses of this Lease have been adequately explained to it.

17. **Facsimile Transmissions; Notice.** The parties agree that this Lease may be executed by either party and forwarded to the other party by facsimile transmission and receipt by facsimile transmission of a copy of this Lease executed by a party shall bind the party so sending the facsimile transmission. Any notice contemplated or provided for under this Lease shall be given by personal delivery or facsimile transmission, which transmission is to be confirmed, to the addresses set out opposite the signatures of the parties above.

18. **Additional Properties.** The Lessor hereby grants to TELUS Mobility for a period of twenty-four (24) months following the Commencement Date an irrevocable and exclusive option to lease from the Lessor any or all of the properties described in the attached Schedule "D" upon the same terms and conditions as are herein contained.

19. **Severability.** Should any provision or provisions of this Lease be determined to be void or unenforceable in whole or in part, it or they shall be deemed not to affect or impair the validity or enforceability of any other provision and it or they shall be considered separate and severable from the Lease and its remaining provisions which shall remain in force and be binding on the parties.

20. **Authorization.** As provided in the attached letter, the Lessor hereby authorizes TELUS Mobility to obtain any information from any person, with respect to the Premises, that TELUS Mobility may require for the purposes of exercising its rights under this Lease and the Lessor agrees to execute same to confirm the foregoing.

21. **Schedules.** Schedules and other documents attached or referred to in this Lease, including without limitation, the Schedules indicated below, are an integral part of this Lease.

- Schedule "A" -
- Schedule "B" -
- Schedule "C" -
- Schedule "D" -
- Schedule "E" -
- Authorization Letter -

INITIALS:





SITE NO.: ON1750

SCHEDULE "A"

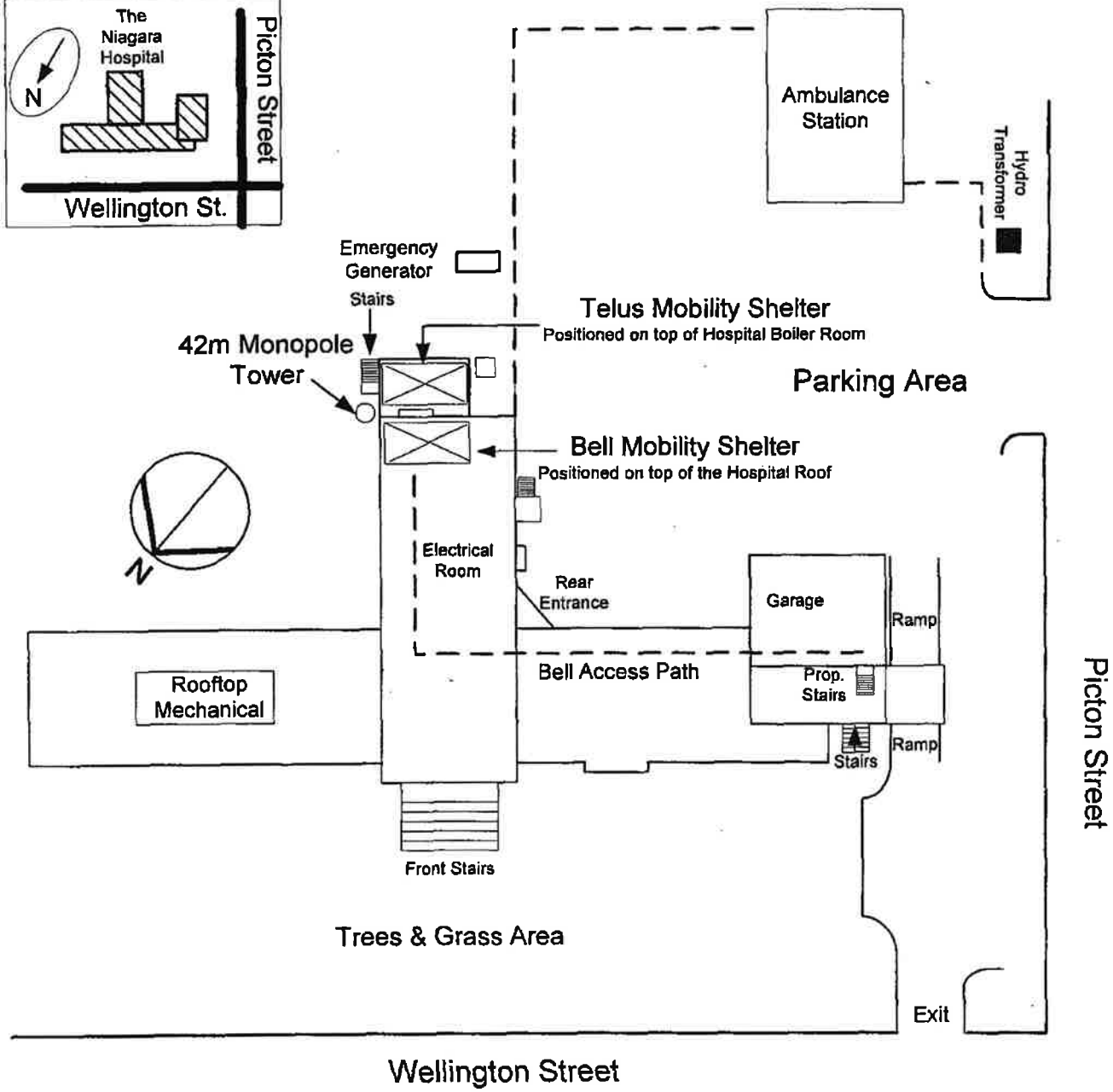
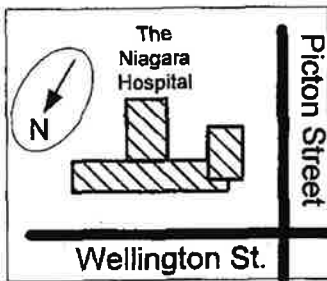
DESCRIPTION OF PREMISES

Real property located in the Town of Niagara-on-the-Lake, in the Region of Niagara, in the Province of Ontario, known municipally as 176 Wellington Street, Niagara-on-the-Lake and with the following legal description: Lot 6, Registrar's Compiled Plan 691, Niagara-on-the-Lake.

INITIALS:  

nc	m
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**Locator Map**



**Site description and Sketch: The Niagara Hospital**  
 Niagara Health System, 176 Wellington Street  
 Niagara-on-the-Lake, Ontario

**Notes:** Plan not to scale  
 Antenna mount locations are "proposed only", locations are subject to change.  
 Notwithstanding any antenna mounts currently shown (or not shown).  
 Lease allows for modification, addition or reconfiguration.  
 Easements identified in the sketch are approximations to be confirmed on a survey.



**Schedule B**

**ON1750.02p**

Drawn By: GJC  
 Date Created: June 4, 2002  
 Revised: March 20, 2003

Initials

## SCHEDULE "E"

The terms and conditions contained within the Site Lease made between The Niagara Hospital and TM Mobile Inc. ("TELUS Mobility") is amended as follows:

1. Paragraph B is hereby amended in the third paragraph after the word "consents" by inserting the words "permits and/or approvals"; and in (ii) line 1 after the word "such" insert "permanent tower, "; and add at the end of the Paragraph "The Lessor is not making any representations or warranties relative to the Site such that: (i) TELUS Mobility agrees to accept the Site in its then existing condition, and (ii) TELUS Mobility shall satisfy itself as to whether its proposed use of the Site is in compliance with all governing laws and by-laws."
2. Paragraph 1 (Rental Rate) is hereby amended in line 1 after the word "pay" by inserting the words "without deduction, abatement or set-off whatsoever to the Lessor rent at the rate of \$12,000.00 per annum, following the installation of the permanent tower..."; and in line 3 insert a period after the parenthesis, delete the balance of the paragraph and replace with one final sentence that reads "...The Lessor shall obtain a registration number for GST purposes and communicate same to TELUS Mobility."
3. Paragraph 2 (Rights of Extension) is hereby amended in line 1 by inserting opening words that read "...Provided that TELUS Mobility is not in default of any of its obligations under this Site Lease, then..."; delete the balance of this Paragraph following the word "rent" in line 4 and replace with the words "for the three (3) five (5) year extension periods be equal to the then fair market rent for comparable property in the immediate vicinity as agreed upon by the Lessor and TELUS Mobility at least thirty (30) days prior to the commencement of any given extension term, and failing agreement then such rent per annum for any given extension term shall be determined by a single arbitrator in accordance with the *Arbitrations Act of Ontario*; it being understood and agreed that:
  - (a) The arbitrator is qualified by education and experience to make such determination, and any decision made by the arbitrator shall be final and binding on the parties; and
  - (b) The rent payable for each year of any given extension term shall not be less than the rent paid per annum in the immediately preceding term, or extension term, as the case may be."
4. Paragraph 3 (Unsuitability for TELUS Mobility's Purposes) is hereby deleted and replaced by the following: "If, at any time during the Term or any extension thereof, any structure, work, or other impediment of any nature whatsoever screens, or materially interferes with the signals sent from or received in the Site, or should the construction of or the operation of the Site, Shelter or the Equipment (i) be or become impossible to

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function by reason of government decision, law, order or regulation, TELUS Mobility may terminate this Lease without damages or penalty by giving one hundred and eighty (180) days written notice to the Lessor.

The parties agree that if this Lease is terminated pursuant to this Section 3, TELUS Mobility will offer Lessor the right of first refusal (the "Offer") to purchase the tower (excluding any Shelter, equipment, devices and fixtures affixed or located on or near the tower) located at the Site (the "Tower"), free and clear of any encumbrances. Lessor shall have Fourteen (14) days after receipt of Offer to advise Lessee in writing if it has accepted the Offer.

The purchase price (the "Price") for the Tower shall be the cost incurred by TELUS Mobility in building, or rebuilding pursuant to Section 27 of this Agreement, the Tower, as determined by the accounting records of TELUS Mobility (the "Cost") multiplied by the amount obtained when the number of days since the tower has been completed, or the rebuilding of the Tower has been completed pursuant to Section 27 of the Agreement, as determined by the accounting records of TELUS Mobility, is subtracted from 3653 and then divided by 3653. The closing date of the acquisition shall be Sixty (60) days after the agreement on Price."

[Note: The formula states that: Price = cost of tower x (3653- number of days since built)/3653. The number 3653 represents the number of days in 10 years (including 3 days for leap years). For example, on a \$100 tower built 5 years ago (approx. 1826 days) would be sold for  $P = 100 \times (3653 - 1826) / 3653 = \$50$ .]

5. Paragraph 4(e) (Interference) is hereby deleted and replaced by the following: "TELUS Mobility covenants that TELUS Mobility's operation of its radio system(s) shall not cause material interference or degradation of any other signals lawfully transmitted or received within or on the Premises. If such inference or degradation is reasonably demonstrated to TELUS Mobility, TELUS Mobility upon receiving notice from the Lessor shall use all reasonable best efforts, including but not limited to the installation of applicable filters, to immediately correct the problem. The Lessor shall provide information to TELUS Mobility regarding the wireless equipment it uses on the Premises (i.e. frequency band utilized) so that TELUS Mobility can utilize this information during its tests of the Equipment prior to the Equipment going on air, to reduce the possibility of any material interference. If the interference continues for a period in excess of seventy-two (72) hours following notification of said interference, the Lessor shall have the right to cause TELUS Mobility to cease operating the offending Equipment or to reduce the power sufficiently to remove the interference until the condition can be remedied.

Moreover, TELUS Mobility's obligations in respect of interference/degradation shall extend to the equipment of any third party which TELUS Mobility permits to be installed on the permanent tower."

6. Paragraph 5(a) (Quiet Possession) is amended in the third line by deleting the balance of this paragraph following the word "Lease" and to be replaced by the words "...that have

an adverse affect on the use being made by TELUS Mobility of the Site without first obtaining the prior written consent of TELUS Mobility, such consent not to be unreasonably withheld or unduly delayed."

7. Paragraph 5(b) (Access) is hereby amended by adding the following:

"Notwithstanding the foregoing:

- (i) Any easements, servitudes and rights of way shall be temporary and on a non-exclusive basis. The Lessor may relocate such access in a reasonably convenient location as the Lessor may determine, acting reasonably. Prior to the commencement of any relocation, the Lessor agrees to consult with TELUS Mobility so that the parties can work together to limit the need to relocate any easements, servitudes and rights of way.
- (ii) TELUS Mobility's access shall be subject to Lessor's reasonable security requirements; and
- (iii) TELUS Mobility's access shall be subject to any events of force majeure which are beyond the control of Lessor."

8. Paragraph 5(c) (Exclusivity) is hereby deleted and replaced by the following: "TELUS Mobility shall use the Site and Equipment for wireless telecommunication services for the exclusive use of TELUS Mobility, its agents, sub lessees and licensees. TELUS Mobility acknowledges that the Lessor may grant rights to third parties to install equipment on the roof or other Parts of the Premises and agrees that the Lessor may grant such rights to whomever it deems fit, and the Lessor shall use best efforts to ensure that such equipment does not interfere with TELUS Mobility's signals or transmissions. Prior to the Lessor granting such rights to a third party, the Lessor shall provide TELUS Mobility with prior written notice of the proposed third party installation, so that both parties can take all reasonable steps to ensure that there will be no degradation to each other's transmissions by the operation of the other party's Equipment."

9. Paragraph 7 (Insurance) is hereby amended in (b) after the words "Property Damage" by inserting "which policy shall include provisions for cross-liability and severability of interest; and in the last sentence after the word "Lessor" insert "at least thirty (30) days"

10. Paragraph 8 (Lessor not Liable) is hereby amended by deleting "Except for the negligent acts or omissions or the wilful and wrongful acts or omissions of the Lessor or the Lessor's employees or those persons authorized by the Lessor to be on the Premises,"

11. Paragraph 10 (Default) is hereby deleted and replaced by the following: "The Lessor may terminate this Lease and/or discontinue the supply of hydro service to the Equipment if:

- (i) TELUS Mobility fails to pay rent to the Lessor within ten (10) business days after written notice; or

- (ii) TELUS Mobility fails to perform its material non-monetary obligations under this Lease within thirty (30) days after written notice from the Lessor, however, if such obligation is not capable of being remedied within thirty (30) days, then TELUS Mobility shall be required to have commenced to remedy the said default within the aforementioned thirty (30) day period and thereafter TELUS Mobility shall be required to actively and diligently pursue complete rectification of said default.

TELUS Mobility shall have the right to terminate this Lease if the Lessor commits a fundamental breach of its obligations hereunder and such breach is not remedied within thirty (30) days after written notice or if such obligation is not capable of being remedied within thirty (30) days, then Lessor shall be required to have commenced to remedy the said default within the aforementioned thirty (30) day period and thereafter Lessor shall be required to actively and diligently pursue complete rectification of said default. For purposes of this provision, a material breach means:

- (i) A discontinuance of the hydro supply to the Equipment due to any event within the Lessor's reasonable control; or
- (ii) The Lessor willfully and deliberately denies TELUS Mobility permanent access to the Equipment, or otherwise substantially damages the Equipment; or
- (iii) The Lessor knowingly makes a change to the Site and /or its appurtenances which shall materially and adversely affect TELUS Mobility's ability to continue using the Site for its intended purposes."

Upon the occurrence of an event of default committed by TELUS Mobility then, without prejudice to other rights and remedies of Lessor, the then current and next 3 (three) months rent shall be immediately be due and payable, and Lessor shall have the following rights and remedies (which are cumulative and not in the alternative) as follows:

(i) to terminate the lease in respect of the Site upon giving written notice to TELUS Mobility, and

(ii) enter the Site as agent of TELUS Mobility and as such agent to relet the Site on whatever terms and conditions as Lessor may determine (which may include a lease term extending beyond the term set out herein); however, such entry or taking possession of or performing alterations to or reletting of the Site shall be construed as an election on Lessor's part to terminate this lease ; and

(iii) remedy any default of TELUS Mobility in performing any repairs, work or other covenants of TELUS Mobility hereunder and, in so doing, to make any payments due by TELUS Mobility to third parties and to enter upon the Site, without any liability to TELUS Mobility or for any damages resulting thereby, and without constituting a re-entry of the Site or termination of this lease, and in such case, TELUS Mobility shall pay to Lessor forthwith upon demand all amounts paid by Lessor to such third parties in respect of such default; and

12. Paragraph 11(a) (TELUS Mobility's Financing Arrangements) is hereby amended by adding "Notwithstanding the foregoing, any acknowledgement as between the Lessor and financier shall be subject to mutual agreement."
13. Paragraph 12 (Registration) is hereby amended in line 2 by replacing "Premises" with "Site"; and adding to the end of the Paragraph "Upon expiry of the term, TELUS Mobility shall be obliged to discharge any registration from title."
14. Paragraph 13 (Assignment) is hereby amended in line 2 after the words "without consent" by adding "but upon written notice"; add to the end of (iii) "provided that TELUS Mobility agrees to remit an additional fee to the Lessor in the amount of five hundred (\$500.00) dollars per month per licensee following the licensee's installation of its equipment on the Site, with the exception of the Lessor's Service Provider; and add the following sentence to the end of the Paragraph "Upon any transfer by the Lessor of its interest in the Site, the Lessor shall be relieved of any further obligations or liabilities under the Lease."
15. Paragraph 18 (Additional Properties) is hereby deleted.
16. Paragraph 22 (Engineers Report/Building Plan Approval) is hereby added:

"TELUS Mobility, at its sole cost and expense, shall obtain to the reasonable satisfaction of the Lessor, reasonable assurances by way of detailed construction drawings and supporting documentation signed and stamped by a professional engineer, indicating the addition of the Shelter to the roof will not negatively impact the structural integrity of the building nor the building electrical system."
17. Paragraph 23 (Wooden Pole) is hereby added: "TELUS Mobility shall, at its own cost, re-deploy Lessor's antenna equipment from the wooden pole to the permanent tower structure.
  - (a) TELUS Mobility itself commits to build a temporary 90 foot "wooden pole" on the Site on or before April 1, 2003 or as such time as is reasonable after the execution of this Lease, as agreed to by both parties, thereby enabling the installation by TELUS Mobility of Lessor's radio antennae thereon. Moreover, TELUS Mobility commits to construct a permanent tower structure on the Site, in replacement of the temporary pole, so long as:
    - (i) any tower installed by TELUS Mobility, including plans and specifications related thereto, shall be subject to the prior written approval of the Lessor, such approval not to be unreasonably withheld; and
    - (ii) TELUS Mobility relocates the Lessor's radio antennae from the temporary pole to the permanent tower, at TELUS Mobility's cost, and without any interruption such that Lessor's service shall be continuous throughout all construction activities. Upon completion of the permanent tower, the wooden pole will be removed by TELUS Mobility."

18. Paragraph 24 (One Time Payment) is hereby added:

“TELUS Mobility shall make a one time payment of FIFTEEN HUNDRED DOLLARS (\$1,500.00) to the Lessor upon the completion of the installation of the Equipment.”

19. Paragraph 25 (Equipment Relocation) is hereby added:

Prior to the commencement of any roof repairs, the Lessor agrees to consult with TELUS Mobility so that the parties can work together to limit the need to remove or relocate the Equipment. In this regard, TELUS Mobility will provide assistance, if required, to the Lessor to facilitate repair work on the area under the Equipment. If it is necessary to remove or relocate some or all of the Equipment, the Lessor agrees to provide ninety (90) days written notice to TELUS Mobility and the Lessor shall carry out any such repairs in a diligent and timely manner so as to enable TELUS Mobility to replace its Equipment in the same location on the roof immediately following roof repairs or replacement. TELUS Mobility shall repair, at its sole cost and expense, any damage done to the roof or elsewhere on the Premises attributable to TELUS Mobility's activities and operations.

20. Paragraph 26 (Co-Location with Lessor's Service Provider) is hereby added:

- (a) “The Lessor's Service Provider and/or its affiliates or assignees shall have the right to install and operate communications systems on TELUS Mobility's tower on the Site, as herein provided.
- (b) Mutually agreed upon space on TELUS Mobility's tower shall be reserved for use by the Lessor's Service Provider, provided the use of the Lessor's Service Provider does not interfere with TELUS Mobility's existing use or operations at this site, both parties acting reasonably. The use of the reserved tower space for the Lessor's Service Provider's attachments shall be in accordance with applicable engineering, safety, standards, certifications, and regulations and laws. The Lessor's Service Provider shall prepare at its own cost for approval by TELUS Mobility, a formal co-locate request, attachment plans, designs, specifications, certifications, permits, and schedules, and a copy of the work plan. All plans and documentation shall be subject to TELUS Mobility's approval. Use of the tower space by the Lessor's Service Provider shall be in accordance with the terms and conditions of this agreement and TELUS Mobility's standard Co-Location License Agreement. Prior to the Lessor's Service Provider installing or operating its communication(s) systems, the Lessor's Service Provider must receive TELUS Mobility's approval and enter into TELUS Mobility's standard Co-Location License Agreement.
- (c) The Lessor's Service Provider will operate and maintain its own equipment on the Premises, which is separate from TELUS Mobility's shelter.

21. Paragraph 27 (Damage and Destruction) is hereby added:

Notwithstanding anything in this Lease contained to the contrary, if the Leased Premises, the Equipment, including the Lessor's radio antennae, or their appurtenances, including access, shall be damaged or destroyed to the extent that the same shall be incapable of



being repaired or restored, then TELUS Mobility shall rebuild the tower unless, at the time of the damage, there is less than 1 year left in the term. If necessary during such rebuilding, TELUS Mobility shall install a temporary tower to accommodate the Equipment and the Lessor's radio antennae, until such rebuilding is completed.

22. Paragraph 28 (Legal Fees) is hereby added:

"TELUS Mobility shall within thirty (30) days of receipt of a detailed invoice therefore pay all reasonable legal and administrative costs incurred by the Lessor, up to a maximum of \$1,000.00 dollars plus applicable GST, in respect of the review, negotiation and finalization of this Agreement."

March 20, 2003

RE: Site Lease: 176 Wellington Street, Niagara-on-the-Lake, Ontario

To Whom it May Concern:

We, THE NIAGARA HOSPITAL, the representative of the above mentioned property, hereby give TM Mobile Inc. and/or its affiliate TELE-MOBILE COMPANY c.o.b. TELUS Mobility permission to act as my agent to acquire the necessary permits, drawings, hydro information from the public utility and information from the Municipality or authorities concerned, needed to approve the construction of the site mentioned above and shown on the attached plans.

per. \_\_\_\_\_



THE NIAGARA HOSPITAL

Site ON1750

