

Bell

February 17, 2004

Delivered by e-mail to sbalsamo@dzlaw.com Private and Confidential Mr. Sam Balsamo
Lofty Communications Inc. 4800 Dufferin Street Toronto, Onto
M3H 5S9

Dear Mr. Sam Balsamo,

Re: Bell Canada Telecommunications Access Agreement

This letter agreement (the "Agreement") is between Bell Canada and Lofty Communications Inc. (the Owner"), and provides the terms and conditions under which Bell Canada and the affiliates of BCE Inc. (as defined in the *Canada Business Corporations Act*, as amended) (collectively, "Bell") are authorized to gain access to the telecommunications unit as further described in Schedule "A" attached hereto (the "Telecom Unit").

1. Grant of License. In exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner hereby grants to Bell throughout the Term and any Renewal Term, a right and license to enter on and gain access in, over or under the Telecom Unit and the right to use any existing in-building Cat 3 or Cat 5 copper voice grade wiring used to deliver telephony, DSL or internet services and VDSL video signals under the control or responsibility of the Owner (the "Owner's Infrastructure") to:

(a) make the telecommunications and other communication services offered by Bell (collectively the "Bell Services") available to prospective purchasers and the owners, tenants or residents of the Building (the "Residents") and to deliver the Bell Services to the Residents (as defined below) in the Building;

(b) conduct pre-installation tours and inspections (with plans provided by the Owner) of the Telecom Unit in order to enable the installation of its Equipment (as defined below) in the Telecom Unit for the purpose of delivering Bell Services to Residents;

(c) install, at Bell's sole cost and expense, all equipment, in-building wire (as defined by the CRTC in Decision 99-10), infrastructure or otherwise, necessary and incidental to the delivery of Bell Services including, without limitation: entrance cables, USAM's, switches, routers, racking, backboards, risers, cabling, wiring and other networking and fibre optic equipment used to enable and distribute Bell Services (the "Equipment") to Residents, without disrupting the provision of services by other service providers currently providing cable services in the Building. For greater certainty Equipment excludes: individual receiver -decoders, whether VDSL or otherwise, or any other equipment that can be individually addressed either electronically or manually by Bell (each an "IRD"), which will be sold or rented to Residents by Bell or any other authorized sales agent.

Owner shall allow Bell to gain access to the Telecom Unit for the purpose of picking up any IRD no longer required by a Resident;

d) operate, maintain, repair or replace any component forming a part of the Equipment and any other item of equipment necessary or incidental under this Agreement.

Nothing in this Agreement shall be construed or interpreted as granting Bell any exclusive rights or privileges in or to the Telecom Unit, particularly relating to access or installation rights, to the exclusion of any other third parties.

Equipment Installation. Bell shall ensure that all Equipment is installed in accordance with all relevant government requirements, including fire and building code requirements in force at the time of installation. Bell shall, at no cost to Owner, be responsible for the maintenance and repair of the equipment installed by Bell during the Term and any Renewal Term, although each individual Resident may incur charges (at Bell's then applicable rates) relating to post-installation activities specific to such resident's in-suite requirements. The Equipment will remain the property of Bell at all times, and will not become a fixture despite any legal principle to the contrary. Owner agrees that it has no legal or equitable ownership interest in the Equipment nor any of the items specified or reasonably contemplated by subsection I (a)-(d) above and shall not make any claim to the contrary.

Equipment Space. Owner also agrees to provide to Bell, at no charge, access to and use of, one or more rooms or other segregated, enclosed spaces in the Telecom unit (the "Equipment Space(s)"), as needed and mutually agreed upon by the parties, acting in good faith, which is suitable in all respects for the purpose of housing or storing the applicable Equipment, provided however, that such granting of space or demands by Bell to such space does not interfere with other service providers currently providing services to the Building at the time of execution of this Agreement. Owner agrees that these access rights include a right to access the Equipment Space in the Telecom Unit. The Equipment Space shall have adequate power supply and adequate natural or artificial ventilation for the proper operation of the equipment. Bell shall have reasonable and continuous access into the Telecom Unit and to the Equipment space subject to giving reasonable notice to the Owner or its building manager, property manager or superintendent, as applicable, of its intention to enter the Telecom Unit in order to install, operate, maintain, repair or replace the Equipment, provided that entry will be made during normal business hours except in the case of emergency. Nothing in this Agreement limits Bell's right to provision the Bell services in any manner it sees fit. In the event that the condominium corporation installs separate check meters for the monitoring of hydro usage and thereafter requires the Owner to pay for such usage then Bell agrees to pay such costs and expenses associated with Bell's hydro consumption.

Easement. To the extent applicable, Owner agrees to grant to Bell a non-exclusive easement and statutory right of way in and to the Telecom Unit, and in or through the Equipment Space situated in the Telecom Unit. Owner agrees to allow Bell to register, at Bell's expense, the easement and right of way, and/or notice of this Agreement against the Telecom Unit.

Representations/Warranties. The Owner represents and warrants that: (1) it has full right, power and authority to enter into and perform its covenants and obligations in this Agreement; (2) it is under no obligation to a property manager, any Resident or any third party, statutory, contractual or otherwise, which could prevent or interfere with the complete performance of its covenants and obligations herein; (3) it is validly organized and existing under the name indicated on this Agreement; and (4) no rule or by-law is in force that would prevent or limit Bell from providing the Bell Services Under this Agreement.

Intellectual Property/Public Announcements. Except as otherwise agreed in writing, Bell shall obtain and/or retain all title, ownership rights and intellectual property rights in or to all forms of intellectual property in connection with any Bell know-how or the Equipment or Bell Services. Such intellectual property constitutes confidential information and shall be treated in accordance with the terms of this Agreement. Owner shall not use Bell's logo, trade names, trademarks, or any other intellectual property unless Owner obtains the prior written consent of Bell. There shall be no public announcements unless agreed to by the parties from time to time

7. Confidential Information. Each party agrees that this Agreement and any information provided by a party to the other party, including, without limitation, information relating to third parties obtained through a party, shall remain the confidential information of the disclosing party and the receiving party shall not disclose such confidential information without the prior written consent of the disclosing party, or unless disclosure of such confidential information is compelled by judicial or regulatory process or otherwise by law (in which case, prior consent is not required) or if the confidential information has been made public without any action by the receiving party. For greater certainty, this provision shall not be construed to prevent either party from disclosing any of the terms of this Agreement to its auditors, financial and legal advisors, or as may otherwise be required by law. This section shall survive the expiry or early termination of this Agreement for a period of two (2) years from the date of expiry or termination.

8. Indemnity and Limitation of Liability. Bell agrees to perform its work in a good and workmanlike manner, and further agrees to indemnify and save the Owner, its directors, officers, servants, agents and employees harmless from any damage to persons or property solely caused by reason of the improper installation, operation, repair, removal or maintenance of the Equipment and Bell's improper use of the Owner's Infrastructure in the Telecom Unit except to the extent such damages result from the negligence of the Owner or its agents, employees, contractors or person for whom it is responsible for in law. In no event shall any party be liable to any other party for any consequential damage, economic loss, loss of profits, indirect damage or for any punitive, special or exemplary damages of any kind whatsoever. This Section 8 shall survive the expiration or termination of this Agreement.

9. Term, Termination and Renewal. Both Bell and Owner acknowledge and agree that the term of this Agreement is effective as of the date last signed by both parties below and shall continue to run for a period of ten (10) years from the date hereof (the "Term"). Unless a Party provides the other party hereto with written notice of its intention not to renew this Agreement at least one hundred and eighty (180) days prior to the expiration of the Term or Renewal Term (as defined below), as the case may be, this Agreement shall automatically renew for successive one (1) year renewal terms (the "Renewal Term") on the terms and conditions herein. Either Party may terminate this Agreement: i) for a material breach hereof, where such breach is not cured within thirty (30) days of receipt of written notice by the other party of such breach, or ii) immediately, in the event of bankruptcy, reorganization, assignment, petition or appointment of a trustee or such other act of insolvency of the other party. Upon expiry or earlier termination of this Agreement, Bell shall be allowed ninety (90) days to remove the Equipment.

10. Applicable Law. This Agreement is subject to all applicable federal, provincial and local laws, and regulations, ruling and orders of governmental agencies, including, but not limited to, the *Telecommunications Act*, the *Broadcasting Act*, and any amendments thereto or the Canadian Radio-Television and Telecommunications Commission (the "CRTC") and the obtaining and continuance of any required approval or authorization of the CRTC, or any other governmental body. Either party may terminate its obligations under this Agreement if ordered to do so by the formal order or ruling of a court, or any governmental tribunal or agency or if any such order or ruling is inconsistent with the terms of this Agreement or would make it impractical or uneconomical for either party to carry out its obligations under this Agreement. In addition, if at any time during the Term of this Agreement, the action of a governmental agency requires modification of Bell's Services or the terms in which they are provided which is inconsistent with the terms of this Agreement or impairs Bell's ability to provide Bell's Services in a economical and technically practical fashion, Bell may terminate this Agreement upon thirty (30) days' written notice to Owner.

11. General. Any notice required or permitted to be given hereunder or any tender of delivery of documents may be sufficiently given by regular mail, personal delivery or by facsimile transmission to each party at the addresses listed in Schedule "B" attached hereto. Owner and Bell agree that where a provision of this Agreement conflicts with a Schedule attached hereto, the provision of this Agreement shall prevail and both the Agreement and Schedules will be governed by the laws of the Province of Ontario and the applicable laws of Canada therein, excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction. None of the rights and obligations contained herein may be assigned or transferred by Owner, without the prior written consent of Bell. Should a dispute arise between Bell and Owner as to any issue hereunder, every effort will be made to resolve the dispute within ten (10)

days. If resolution cannot be achieved, the dispute will be referred to the senior management of each of Bell and Owner who shall try to reach agreement within five (5) days, failing which, either party can pursue any remedy it sees fit. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings whether written or oral relative to the subject matter hereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty express or implied, statutory or otherwise to the other. This Agreement may not be amended or modified except by a written instrument executed by both parties. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the other provisions of this Agreement shall not be affected or impaired, and the offending provision shall automatically be modified to the least extent necessary in order to be valid, legal and enforceable. The parties hereto have requested that this Agreement and all correspondence and all documentation relating to this Agreement, be written in the English language. Les parties aux presentes ont exige que la presente entente, de meme que toute la correspondance et la documentation relative a cette entente, soient redigees en langue anglaise.

If you are in agreement with the foregoing terms and the attached documents, please sign and return this Agreement to Bell on before February 27, 2004.

Lofty Communications Inc

Bell Canada