

ABRIDGED  
*Bell*

September 30, 2003 Delivered by hand

Private Confidential

Bloor Walk Development Corp  
85 Scarsdale Rd, #200 Don Mills, Ontario M3B 2R2

Dear Philip Macarz,

Re: Bell Canada Telecommunications Access Agreement

This letter agreement (the "Agreement") provides the terms and conditions between Bell Canada and its respective affiliates (as defined in the *Canada Business Corporations Act*, as amended), employees, agents, contractors and sub-contractors (collectively, "Bell") and Philmor (Bloorwalk) Development Corp. and its affiliates, employees, agents and subcontractors (collectively the "Owner") upon which Bell wishes to gain access to the planned condominium sales centre located at The Bloorwalk, Phase 1 and 2 and as further described in Schedule "A" (the "Sales Centre") and as provided below, access to the multi-unit dwelling buildings to be constructed by Owner at The Bloorwalk Phase 1 -100 Hayden St. and Phase 2 (address TBO) as further described in Schedule "A" (the "Building").

I. Grant of License. In consideration of Bell installing certain Equipment, as well as copper-wiring in the Building without cost or charge to the Owner as described herein, Owner hereby grants to Bell throughout the Term and any Renewal Term, at no cost or charge to Bell, a right and license to enter on and gain access in, over or under the Sales Centre and/or Building as the case may be, and any other equipment and/or telecommunications room, the roof, existing cabling owned by the Owner, if any, which connects central riser wiring to individual units within the Building, the common elements and other common areas of the Building or the Sales Centre to:

- (a) install, at no cost to the Owner, basic telephony equipment (including but not limited to equipment ' ) in the Sales Centre on an exclusive basis to Bell, to allow Bell to provide prospective real estate purchasers with access to telephone services to order Bell Services;
- (b) make Bell telephone and telecommunications services as listed in available to prospective purchasers of real estate and to deliver the Bell Services to the Sales Centre and to Residents in the Building;
- (c) conduct pre-installation tours and inspections of the Sales Centre and/or Building in order to determine the technical, operational and economic feasibility of installing Equipment (as defined below) in the Sales Centre and Building for the purpose of delivering Bell Services to prospective " . purchasers and Residents; ""
- (d) install all equipment, infrastructure or otherwise, necessary and incidental to the delivery of Bell Services including, without limitation USAM's, switches, routers, racking, backboards, risers, cabling, wiring and other networking and fibre optic equipment used to enable and distribute Bell

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Services (including very high rate digital subscriber line "VDSL" technology) as may be further described in -to the Sales Centre and to tenants, owners or Residents in the Building (collectively the "Residents"). For greater certainty Equipment excludes (1) any cabling owned by the Owner or any other third party, and (2) individual receiver -decoders, whether VDSL or otherwise, or any other equipment that can be individually addressed either electronically or manually by Bell (each an "IRO"), 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 Building for the purpose of picking up any IRD no longer required by a Resident.

(e) operate, maintain, repair or replace any component forming a part of the Equipment and any other item of equipment necessary or incidental to perform its obligations under this Agreement and/or to enjoy the rights granted herein; and

(f) make the Bell Services generally available to Residents including such other equipment to be furnished to those Residents who agree to subscribe to applicable Bell Services,

(collectively, the "Access Terms"). Nothing in this Agreement shall be construed or interpreted as granting Bell any other exclusive rights or privileges in or to the Building, particularly relating to access or installation rights, to the exclusion of any other third parties.

2. Equipment Installation. Bell shall ensure that all Equipment is installed in accordance with all relevant government requirements, including fire and building code requirements. 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. Except as otherwise provided in the *Condominium Act, /1998*, 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)-(f) above and shall not make any claim to the contrary.

3. 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 Sales Centre and/or Building (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. Owner agrees that these access rights include a right to access the Equipment Space in the Building. The Equipment Space shall have the 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 Building 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 Sales Centre or Building 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 provide the Bell Services in any manner it sees fit.

4. Easement. To the extent applicable, Owner agrees to grant to Bell a non-exclusive easement and statutory right of way and/or a path to the property line over the Sales Centre and/or Building, as the case may be and in or through the Equipment Space if it is determined that a fibre optic cable or such other Equipment must be installed to the Sales Centre, Building and/or in the Equipment Space. Owner and Bell shall in advance, agree upon a suitable location to install the fibre optic cable on the property of the Owner. Owner agrees to allow Bell to register the easement and right of way, and/or notice of this Agreement.

5. 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 or conducting the Marketing Program under this Agreement.

**6. 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 resulting from the terms of this Agreement. 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. Owner and Bell shall provide the other with reasonable advance notice of any public announcements or publications with respect to the general intent or existence of this Agreement or the business obtained under this Agreement and agree to obtain the other party's prior approval and incorporate the other Party's comments before release. All public announcements or publications concerning any term of this Agreement shall explicitly name or refer to both Bell and the Owner.

**7. Confidential Information.** The Owner hereby agrees that this Agreement and any information provided by Bell to the Owner herein, including, without limitation, information relating to third parties obtained through Bell, shall remain the confidential information of Bell and the Owner shall not disclose such confidential information without the prior written consent of Bell, or unless disclosure of such confidential information is compelled by judicial or regulatory process or otherwise by law or if the confidential information has been made public without any action by the Owner. For greater certainty, this provision shall not be construed to prevent the Owner 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. 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 not to exceed 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. Where title to the Sales Center and/or Building transfers to a condominium corporation (the "Condominium Corporation") before the end of the Term, the Condominium Corporation shall assume and agrees to be bound by all the rights and obligations of the Owner as set out herein pursuant to the terms of the *Condominium Act*, 1998. Upon expiry or earlier termination of this Agreement, Bell shall be allowed ninety (90) days to remove the Equipment.

**10. CRTC/Government Review.** 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 ("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 final 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 hereunder 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. 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. Any of the rights and obligations contained herein may not 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 you are in agreement with the foregoing terms and the attached documents, please sign and return this Agreement to Bell on before September 30, 2003.

Philmor (Bloorwalk) Development Corp

Signed on the 30 day of Sept. 2003

# ***Bell*** ABRIDGED

September 30, 2003 .

Delivered by hand Private

Philmor Bloorwalk Development

85 Scarsdale Rd. 3200  
Don mills, Ontario  
M3B 2R2

Dear Philip Macarz

## Re: Bell Canada Marketing Agreement

This letter agreement (the "Agreement") provides the terms and conditions between Bell Canada and its respective affiliates (as defined in the *Canada Business Corporations Act*, as amended), employees, agents, contractors and sub-contractors (collectively, "Bell") and Philmor (Bloorwalk) Development Corp. and its affiliates, employees, agents and subcontractors (collectively the "Owner") upon which Bell wishes to market and advertise the Bell Services to the planned condominium sales centre located at The Bloorwalk Phase 1 and 2 and as further described in Schedule "A" (the "Sales Centre") and as provided below, to Residents of the multi-unit dwelling building to be constructed by Owner at The Bloorwalk Phase 1 -100 Hayden St. and Phase 2 -(address THO) as further described in Schedule "A" (the "Building").

1. Grant of License. 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 Sales Centre and/or Building as the case may be, and the common elements and other common areas of the Building or the Sales Centre to:

- (a) develop and implement reasonable marketing programs to promote and sell Bell Services to prospective purchasers and Residents (the "Marketing Programs") including but not limited to the following activities:
- i) conducting one or more information meetings to inform prospective purchasers or Residents, as the case may be, of the availability of Bell Services;
  - ii) distribution by the Owner or Bell, (with the Owner's consent), of information packages to prospective purchasers or Residents;
  - iii) posting of notices of available Bell Services on bulletin boards located within the Sales Centre or Building;
  - iv) subject to the provisions of the *Personal Information Protection and Electronic Documents Act*, contacting prospective purchasers or Residents from a list containing their names, addresses and telephone numbers to be provided by Owner, to market Bell Services before or after prospective purchasers or Residents move into the Building;

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- v) displaying and/or distributing information and/or advertising material regarding Bell's respective Bell Services on or within the Sales Centre or Building;
- vi) provision of promotional information regarding their respective Bell Services to superintendents, property managers and other employees or agents active in the Sales Centre or Building;
- vii) implementing specific marketing programs or initiatives targeting existing, new or changed Residents, which shall be contained in updated lists provided to Bell by the Owner from time to time;
- viii) entering onto the Sales Centre and/or Building by Bell for the purpose of providing information, demonstrations or any other information to prospective purchasers and Residents regarding the Bell Services, all in accordance with this Agreement;

(b) make the Bell Services generally available to Residents including such other equipment to be furnished to those Residents who agree to subscribe to applicable Bell Services.

2. Exception. Nothing in this Agreement limits Bell's right to generally market or advertise Bell Services in a manner that is not specific to the Sales Center and/or Building (including, without limitation, telemarketing, mail campaigns and email/on-line marketing) and which does not form part of the Marketing Program above.

3. Bell's Payment Obligations. In consideration of the Owner granting Bell the *right* to market some or all of the Bell Services at or through the Sales Centre and the Building and for the Owner using reasonable commercial efforts to promote Bell Services to prospective purchasers and Residents, Bell agrees to pay the Owner the fees set out in -attached hereto.

4. 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 or conducting the Marketing Program under this Agreement.

5. 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 resulting from the terms of this Agreement. 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. Owner and Bell shall provide the other with reasonable advance notice of any public announcements or publications with respect to the general intent or existence of this Agreement or the business obtained under this Agreement and agree to obtain the other party's prior approval and incorporate the other Party's comments before release. All public announcements or publications concerning any term of this Agreement shall explicitly name or refer to both Bell and the Owner.

6. Confidential Information. The Owner hereby agrees that this Agreement and any information provided by Bell to the Owner herein, including, without limitation, information relating to third parties obtained through Bell, shall remain the confidential information of Bell and the Owner shall not disclose such confidential information without the prior written consent of Bell, or unless disclosure of such confidential information is compelled by judicial or regulatory process or otherwise by law or if the confidential information has been made public without any action by the Owner. For greater certainty, this provision shall not be construed to prevent the Owner 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.

**7. 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 caused solely by Bell's gross negligence or wilful misconduct under this Agreement. 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 7 shall survive the expiration or termination of this Agreement.

**8. 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 up to the Date of Turnover 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

**9. CRTC/Government Review.** 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 ("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 final 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 hereunder 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.

**10. General.** 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. Any of the rights and obligations contained herein may not 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 you are in agreement with the foregoing terms and the attached documents, please sign and return this Agreement to Bell on before September 30, 2003.

Philmor (Bloorwalk) Development Corp.  
Signed on the 30<sup>th</sup> day of Sept 2003

Bell Canada  
Signed on the 23<sup>rd</sup> day of Oct 2003