

THIS MARKETING AND ACCESS AGREEMENT is made as of December 20, 2001.

BETWEEN: **BELL CANADA**, a corporation incorporated under the *Business Corporations Act* (Canada) located at 483 Bay Street, Toronto, Ontario, M5G 2E1 (**“Bell Canada”**)

- and -

BELL EXPRESSVU LIMITED PARTNERSHIP, a limited partnership formed under the laws of Ontario, having its chief executive offices at 115 Scarsdale Road, Toronto, Ontario, M3B 2R2 (**“Bell ExpressVu”**)

- and -

YORK CONDOMINIUM CORPORATION NO. 382 located at **2045 Lakeshore Blvd. West, Toronto, Ontario M8V 2Z6** (the **“Corporation”**)

RECITALS

A. Bell Canada and Bell ExpressVu, and their respective agents, contractors and sub-contractors (each a **“Bell Entity”** and collectively, **“Bell”**) wish to gain access to the multi-unit dwelling building described on Schedule A (the **“MDU”**) for the purpose of (1) installing the infrastructure equipment necessary for the delivery of Bell Services (as such term is defined below) to tenants, owners or residents of the MDU (**“Residents”**) including, without limitation, equipment required to deliver such Bell Services to Residents using technology solutions such as very high rate digital subscriber line technology (**“VDSL”**) in the MDU, and (2) promotions and marketing of the Bell Services, and (3) the delivery of such Bell Services to Residents (Bell ExpressVu’s television and audio service (the **“ExpressVu Service”**), the Bell Sympatico High Speed Edition Internet service (**“Sympatico High Speed Service”**) and certain telephone services offered by Bell Canada (the **“Bell Canada Services”**) being referred to collectively as the **“Bell Services”**). For the purposes of this Agreement, the Bell Entities and the Corporation have determined that Bell Canada’s Office of the Vice President, Consumer Channels, shall be the Corporation’s initial point of contact should any issues or concerns relating to this Agreement arise during the Term.

B. Subject to the terms and conditions of this Marketing and Access Agreement (the **“Agreement”**), the Corporation of the MDU is prepared to grant to Bell a right to access the MDU for the purposes outlined above.

FOR VALUE RECEIVED, the parties hereby agrees as follows:

SECTION 1- TERM

1.1 Term. The term of this Agreement (the “Term”) shall commence on the later of (i) the date of execution hereof by the Corporation; and (ii) the latest date of execution hereof by a Bell Entity, and shall remain in force and effect until the date which is one hundred and eighty (180) days subsequent to the expiration or earlier termination of the Bulk Service Agreement outlining the specifics of the ExpressVu Service to be offered in the MDU which is to be executed by the Corporation and ExpressVu on or about the effective date of this Agreement (the “Service Agreement”), the term of which is initially set at one (1) year, with the Corporation having the right to extend for an additional term of one (1) year and a subsequent right to extend for an additional one (1) year.

1.2 Subject to Change. The Corporation acknowledges that each Bell Entity may, at any time during the Term of this Agreement, but subject to any order, ruling or decision of the CRTC (as defined in Section 11.12), elect at its sole option and discretion and without liability, but at no cost to the Corporation, (i) to discontinue offering any or all of its respective Bell Services using VDSL technology in favour of delivery of the applicable Bell Service through alternate delivery techniques and equipment and/or (ii) terminate this Agreement as it relates to the delivery of any of its respective Bell Services through VDSL technology.

SECTION 2 - ACCESS

2.1 Access to MDU. Subject to the timing set forth in Section 2.2 below, the Corporation hereby grants to all properly identified (in accordance with the Corporation’s reasonable security procedures) employees, contractors, sub-contractors or other agents of each of the Bell Entities throughout the Term a non-exclusive right and license to enter on and gain access over or under the MDU, including the equipment and/or telecommunications room, the roof, existing cabling owned by the Corporation, if any, which connects central riser wiring to individual units within the MDU, the common elements and other common areas of the MDU to:

- (a) conduct the MDU Marketing Programs (as defined in Section 4) for Bell Services, as may be permitted and further described in Section 4;
- (b) conduct pre-installation tours and inspections of the MDU in order to determine the technical, operational and economic feasibility of installing Equipment (as defined in Section 2.1(d) below) in the MDU for the purpose of delivering the Bell Services to Residents;
- (c) install, at no cost to the Corporation: (1) all equipment necessary and incidental to VDSL technology including, without limitation, USAMs, switches, routers, racking, backboards, cabling, wiring and other networking and fibre optic equipment used to enable and distribute Bell Services to Residents of the MDU (“**VDSL Equipment**”), and (2) in the event that one or more of the Bell Entities wish to provide the applicable Bell Services to Residents using technology other than the VDSL technology, all equipment necessary and incidental to the provision of the Bell Services to Residents using any such alternate technology (“**Alternate Equipment**”) including,

without limitation, switches, routers, racking, backboards, cabling, wiring and other networking and fibre optic equipment;

- (d) operate, maintain, repair or replace any component forming a part of the VDSL Equipment or the Alternate Equipment (collectively, 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
- (e) make the Bell Services generally available to Residents, including the installation, maintenance and repair of set-top receiver/decoders, set-top boxes and other equipment to be furnished to those Residents who agree to subscribe to the applicable Bell Services.

2.2 Equipment Space. The Corporation will also provide to Bell, at no charge, access to and use of, one or more rooms or other segregated, enclosed spaces (the “**Equipment Space**”), 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. The Corporation agrees that the access rights granted pursuant to Section 2.1 includes a right to access the Equipment Space in the MDU. The Equipment Space shall have the adequate power supply and adequate natural or artificial ventilation for the proper operation of the Equipment. Each Bell Entity and their respective affiliates, agents, contractors and sub-contractors and employees, as the case may be, shall have 24 hour / 7 day pedestrian access to install, operate, maintain, repair or replace the Equipment, provided that entry will be made during normal business hours, and subject to giving reasonable prior notice to the MDU’s General Manager of its intention to enter the MDU except in the case of emergency.

2.3 Compliance. Bell agrees to comply with all reasonable rules, by-laws and regulations of the Corporation with respect to access to the MDU.

SECTION 3 - INSTALLATION OF EQUIPMENT

3.1 Installation of Equipment. Bell shall ensure that all Equipment is installed in accordance with all relevant government requirements, including fire and building code requirements.

3.2 Maintenance and Repair. Bell shall, at no cost to the Corporation, be responsible for the maintenance and repair of the Equipment installed by Bell during the 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 the applicable Bell Entity at all times, and will not become a fixture despite any legal principle to the contrary. The Corporation agrees that it has no legal or equitable ownership interest in the items specified or reasonably contemplated by Sections 2.1(e), and shall not make any claim to the contrary. In addition, the Corporation agrees that it has no legal or equitable ownership interest in the Equipment other than as provided in Subsections 22(11) and (13) of the *Condominium Act* (1998).

3.3 Easement. To the extent applicable, the Corporation agrees to grant to the applicable Bell Entity a non-exclusive easement and statutory right of way and/or a path to the property

line over the MDU if it is determined that a fibre optic cable must be installed to the MDU from a Bell Canada Central Office for the purpose of enabling the Equipment in the MDU. The Corporation and such Bell Entity shall in advance, agree upon a suitable location to install the fibre optic cable on the property of the Corporation. The Corporation agrees to allow such Bell Entity to register the easement and right of way, and/or notice of this Agreement.

SECTION 4 – MDU MARKETING PROGRAMS

4.1 MDU Marketing Programs. In addition to the various marketing and advertising initiatives generally undertaken by the Bell Entities which are not MDU-specific (including, without limitation, telemarketing, mail campaigns and e-mail/on-line marketing), Bell will develop and implement MDU-specific marketing programs to promote and market their respective Bell Services (which may include, in Bell's sole discretion, a description of the VDSL Technology) to Residents (“**MDU Marketing Programs**”). Such MDU Marketing Program(s) may include, but are not limited to, the following activities, and are subject to the approvals on behalf of the Corporation as specified below:

- (a) display or distribution of information and/or advertising material regarding their respective Bell Services on or within the MDU by way of town hall meetings with the consent of the Corporation’s General Manager and/or its Board of Directors. For greater certainty, lobby advertising and door hangs are not permitted;
- (b) provision of promotional information regarding their respective Bell Services to superintendents and other employees or agents active in the MDU, provided that such promotional information and the recipients thereof shall be subject to the prior approval of the Corporation’s General Manager and/or its Board of Directors;
- (c) specific marketing programs or initiatives targeting existing, new or changed Residents, which shall, subject to all necessary approvals having been obtained from the Corporation’s General Manager and/or its Board of Directors, be contained in updated lists provided to Bell by the General Manager of the Corporation from time to time; and
- (d) entry onto the MDU (which shall be subject to the prior approval of the Corporation’s General Manager unless restricted to entry into a unit within the MDU at the invitation of the applicable Resident) by each Bell Entity and their respective affiliates, agents, contractors and sub-contractors and employees, as the case may be, for the purpose of soliciting or providing information, demonstrations or any other information to Residents regarding the Bell Services.

4.2 Compliance. Subject to the terms of this Agreement, the MDU Marketing Programs shall at all times comply with the Corporation’s standards, acting reasonably. Bell shall obtain the prior approval of the Corporation’s General Manager and/or its Board of Directors as to the date, frequency, location and time of access and use of the MDU for the MDU Marketing Programs.

SECTION 5- REPRESENTATIONS AND WARRANTIES

5.1 The Corporation represents and warrants to Bell as follows:

- (a) There is no current agreement, arrangement or enforceable contract, and agrees that it will not enter into any agreement, arrangement or contract, with any television or audio service provider, satellite television company, broadcast distribution unit, SMATV operator, internet access service provider or telecommunications service provider which would prevent or interfere with its grants to, and covenants with, Bell under this Agreement.
- (b) The Corporation represents and warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement, and that it is under no obligation, contractual or otherwise, which might in any way interfere with its full and complete performance of this Agreement. The Corporation represents and warrants that it is validly organized and existing under the name indicated on this Agreement.
- (c) The Corporation further represents and warrants that no rule or by-law is in force in the MDU that would prevent or limit Bell from conducting its MDU Marketing Programs.

SECTION 6-COVENANTS

6.1 During the Term of this Agreement, the Corporation (a) covenants that it will not allow more than two (2) providers of television or audio service, including Bell ExpressVu, to provide service within the MDU at any one time, (b) shall not enter into any arrangement, agreement or other contractual relationship with another Internet service provider which would result in more than two (2) providers of Internet access service, including Bell Canada, being granted access to the MDU for the purpose of marketing their respective Internet access services and (c) will take all reasonable steps to assist Bell with its efforts to market and deliver the Bell Services to Residents including, without limitation, providing Bell with lists of Residents as contemplated in Section 5.1(c).

SECTION 7-CONFIDENTIALITY

7.1 The Corporation hereby agrees that this Agreement and any information provided by or on behalf of any Bell Entity to the Corporation pursuant to this Agreement including, without limitation, any information relating to third parties obtained through Bell, shall remain the confidential information of Bell and the Corporation 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 Corporation. For greater certainty, this provision shall not be construed to prevent the Corporation from disclosing: (a) this Agreement to owners of units in the MDU or to any third party, to the extent such disclosure is required pursuant to the *Condominium Act*, 1998,

or (b) any of the terms of this Agreement to its auditors, financial and legal advisors. Any public announcements regarding this Agreement shall be subject to the prior written approval of the parties, such approval not to be unreasonably withheld.

SECTION 8-INDEMNITY AND LIMITATION OF LIABILITY

8.1 Bell Indemnity. The Bell Entities agree to perform their work in a good and workmanlike manner, and further agree to indemnify and save the Corporation harmless, on a several basis only, from any damage to persons or property solely caused by reason of the improper installation, repair or maintenance of the Equipment, or otherwise as a result of the negligence or wilful misconduct of employees of the Bell Entities or those for whom the Bell Entities are responsible at law. Each Bell Entity maintains a policy of general liability insurance including protection against personal injury or property damage arising from the installation, operation and maintenance of the Equipment.

8.2 Limitation of Liability. In no event shall any party be liable to any other party for any consequential economic loss, loss of profits, any indirect damages, or for punitive, special or exemplary damages of any kind whatsoever.

8.3 Force Majeure. In the event that a Force Majeure Event prevents a party from performing any of its obligations under this Agreement, then such party shall not be liable to any other party for any damages caused by such non-performance for so long as such contingency continues; provided that, in the event such contingency continues to prevent such party from performing the obligation for a period of at least sixty (60) days and the obligation is a material part of this Agreement, then any party shall have the right to terminate the Agreement by written notice to the others, effective as of the date that written notice thereof is given to the other party. A “**Force Majeure Event**” shall mean any cause reasonably beyond the control of any party including but not limited to fire, tempest, earthquake, inclement weather, act of God, power interruption, failure of satellite or other transmission facilities or equipment, fuel shortage, strike, lockout or other labour dispute, default or delays by suppliers, riot or civil commotion, act of public enemy or enactment, rule, order or act of government or governmental agency (including delays or failures to acquire any regulatory approval, provided however that commercially reasonable efforts have been used to obtain same).

SECTION 9-TERMINATION

9.1 If any party breaches any material term or condition of this Agreement and is so notified by any other party in writing, the party so notified will have thirty (30) days from the receipt of such notice to cure the alleged breach or to demonstrate that no breach has occurred. If at the conclusion of such thirty (30) day period, the defaulting party has not effected a cure or satisfactorily demonstrated that no breach has occurred, then the non-defaulting parties may terminate this Agreement by giving written notice to the defaulting party specifying the effective date of termination.

9.2 Each party may terminate this Agreement upon written notice to the other if the other party becomes insolvent or is the subject of a bankruptcy or insolvency proceeding or applies for or consents to the appointment of or the taking of possession by a receiver, custodian,

trustee, or liquidator of itself or of all or a substantial part of its property or makes a general assignment for the benefit of creditors.

9.3 At the expiry or earlier termination of this Agreement, Bell shall be allowed a period of time permitted in accordance with the *Condominium Act*, 1998, which shall in no event exceed sixty (60) days, to remove the Equipment. Bell shall be responsible for repairing any material damage to the MDU caused by the installation, maintenance, repair or removal of the Equipment.

SECTION 10-NOTICE

10.1 Notice. Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by facsimile transmission addressed to the recipient. Any demand, notice or other communication to the parties shall be sent to the addresses marked on the front page of this Agreement, or to such other address, individual or facsimile number as may be designated by notice given by a party to the other parties. Any demand, notice or other communication given by personal delivery or registered mail shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by facsimile.

SECTION 11- GENERAL PROVISIONS

11.1 Headings and References. The division of this Agreement into sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

11.2 Extended Meanings. Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. "Including" means "including without limitation". "Include" and "includes" have corresponding meanings.

11.3 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable in Ontario. Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario.

11.4 Severability. If any term of this Agreement is or becomes illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of that term will not affect the legality, validity or enforceability of the remaining terms of this Agreement.

11.5 Time of the Essence. For every term of this Agreement, time is of the essence.

11.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties respecting the subject matter of this Agreement. This Agreement supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or verbal. Each of the parties confirms that there are no agreements, negotiations, discussions, undertakings, representations, warranties or understandings between any of the parties respecting the subject matter of this Agreement, except as expressly set out in this Agreement.

11.7 Amendments. This Agreement may only be amended, modified or supplemented by a written agreement signed by each of the parties.

11.8 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

11.9 Incorporation of Schedules. The schedules attached hereto shall for all purposes hereof form an integral part of this Agreement.

11.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

11.11 Assignment. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. The parties agree not to assign this Agreement or otherwise transfer any right or obligation hereunder, in whole or in part and any such purported assignment or transfer shall be void and of no effect.

11.12 Regulatory Requirements. The Corporation acknowledges that this Agreement, Bell Canada and Bell ExpressVu and their respective Bell Services are subject to regulation by the Canadian-Radio and Telecommunications Commission (“CRTC”). The Corporation also acknowledges that Bell may not be able to offer all or a part of Bell Services due to changes that may arise in the regulatory environment or with respect to Bell ExpressVu’s current license with the CRTC. In the event that there are changes in the regulatory environment that would impact on this Agreement, the Equipment and any of Bell Services, other than linkage or other programming requirements imposed by the CRTC, the applicable Bell Entity shall notify the Corporation of such regulatory change. Nothing in the foregoing shall effect or limit the rights of Bell under Section 9.3.

11.13 Language. The parties each acknowledge having specifically requested that this Agreement as well as all other documents relating thereto be drawn up in the English language only. Les parties reconnaissent avoir spécifiquement exigées que ce contrat de même que tous les documents s'y rattachant soient rédigés en langue anglaise uniquement.

IN WITNESS WHEREOF each of the parties hereto has duly executed this Agreement under the hands of its proper officers duly authorized in that behalf as of the day and year first written above.

BELL CANADA

Per: _____

Name:

Title:

Date:

**YORK CONDOMINIUM
CORPORATION NO. 382**

Per: _____

Name:

Title:

Date:

**BELL EXPRESSVU LIMITED
PARTNERSHIP, by its general
partner Bell ExpressVu Inc.**

Per: _____

Name:

Title:

Date:

SCHEDULE A
MARKETING AND ACCESS AGREEMENT
DESCRIPTION OF MDU

Municipal Address:

2045 Lakeshore Blvd. West

Toronto, ON M8V 2Z6

Legal Description:

All units and their pertinent common interests in York Condominium Plan No. 382.

