

AGREEMENT OF PURCHASE AND SALE

This Agreement is dated for reference as of June 20th, 2002

BETWEEN:

CONCORD ADEX DEVELOPMENTS CORP.

(the "Vendor")

- and -

BELL CANADA

(the "Purchaser")

WHEREAS the Purchaser is desirous of providing telecommunication services to the Development (as hereinafter defined);

AND WHEREAS to provide such telecommunication services, the Purchaser wishes to construct, install, and maintain a telecommunications room within the Development;

AND WHEREAS to construct, install and maintain such a telecommunication room, the Vendor agrees to sell the Unit (as hereinafter defined) to the Purchaser and the Purchaser agrees to purchase the Unit from the Vendor on the terms and conditions expressed in this Agreement.

NOW THEREFORE in consideration of the mutual covenants expressed in this Agreement and other good and valuable consideration, the parties agree as follows:

1. Definitions

As used in this Agreement, the following terms shall have the following meanings:

- (a) **"Agreement"** means the agreement of purchase and sale between the Purchaser and Vendor resulting from the acceptance of this offer by both parties.
- (b) **"Approval Authority"** means the City of Toronto and/or any governmental or non-governmental authority having jurisdiction with respect to the development of the Condominium.
- (c) **"Business Day"** shall mean any day that is not a Saturday, Sunday or statutory holiday in the Province of Ontario.
- (d) **"Closing Date"** means the date set out in paragraph 13 hereof, being that date on which the Vendor shall transfer registered title of the Unit to the Purchaser.
- (e) **"Condominium"** means those parts of the Development which are designated or intended by the Vendor to be designated as a condominium upon the registration of a declaration and description pursuant to the provisions of the *Condominium Act*.
- (f) **"Condominium Act"** means the *Condominium Act, 1998*, S.O. 1998, c.19, as same may be amended from time to time.
- (g) **"Condominium Corporation"** means Toronto Standard Condominium Corporation No 1438.

- (h) **"Condominium Documents"** means the proposed declaration, by-laws, rules and description plans by which the Vendor shall create, register and organize the Condominium.
- (i) **"Development"** means the Lands and the mixed-use development known as the Matrix at CityPlace, and all other structures, improvements, facilities and appurtenances, now or hereafter constructed on or comprising part of such Lands.
- (j) **"GST"** means goods and services tax payable pursuant to Part IX of the *Excise Tax Act (Canada)*.
- (k) **"Lands"** means the lands which are the subject of the Condominium which are legally described as part of Parcel Lot 24-1, Section Index Plan D-970, being part of Lot 24 on Index Plan D-970, designated as Parts 1, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 23, 25 and 26 on Plan 66R-19593, City of Toronto, Land Registry Office of the Land Titles Division of Toronto (No. 66).
- (l) **"Land Titles Office"** means the Land Titles Division of the Toronto Registry Office (No. 66)
- (m) **"Prime Rate"** means the variable rate of interest quoted or announced by The Bank of Nova Scotia from time to time as being its prime rate for Canadian dollar loans made in Canada.
- (n) **"Purchase Price"** means the sum of SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00) of lawful money of Canada, exclusive of GST.
- (o) **"Purchaser's Solicitor"** means Borden Ladner Gervais LLP, Scotia Plaza, 40 King Street West, Toronto, Ontario M5H 3Y4; Attention: Murray B. Shopiro, Telephone No.: 416.367.6264, Facsimile No.: 416.361.2449.
- (p) **"Purchaser's Work"** means all improvements to be constructed by or on behalf of the Purchaser with respect to the Unit and the common elements of the Condominium necessary for the provision of telecommunication services as contemplated by the Telecommunication Agreement in accordance with the plans and specifications approved by the Vendor.
- (q) **"Telecommunication Agreement"** means the license agreement executed by the Purchaser and Condominium Corporation regarding telecommunications services.
- (r) **"Transfer"** means the Transfer/Deed of Land executed by the Vendor to the Purchaser.
- (s) **"Unit"** means the unit in the Condominium to be acquired by the Purchaser pursuant to this Agreement together with its appurtenant common interest, and more particularly described in Schedule "A" attached hereto.
- (t) **"Vendor's Architect"** means Page and Steele Limited.
- (u) **"Vendor's Solicitor"** means Aird & Berlis, 181 Bay Street, Suite 1800, Toronto, Ontario, M5J 2T9; Attention: Andrew R.C. Webster, Telephone No.: 416.863.1500, Facsimile No.: 416.863.1515.

2. Purchase and Sale

The Purchaser agrees to purchase the Unit from the Vendor and the Vendor agrees to sell the Unit to the Purchaser subject to the terms and conditions expressed herein.

3. Payment of Purchase Price

The Purchaser agrees that on the Closing Date, the Purchaser shall pay the Purchase Price to the Vendor (or as the Vendor may otherwise direct in writing) by way of a certified cheque or bank draft, subject to the adjustments contemplated by this Agreement.

4. Adjustments

The following adjustments shall be made to the balance due on the Closing Date:

- (a) All amounts payable by the Purchaser to the Vendor pursuant to Section 28;
- (b) The annual access fee contemplated by Section 30;
- (c) The LPIC fee imposed on the Vendor's Solicitor by the Law Society of Upper Canada in connection with the delivery of a transfer/deed of land to the Purchaser on the Closing Date; and
- (d) Any other adjustments contemplated by this Agreement.

If any adjustment cannot accurately be determined at the time of calculation, then the Vendor may estimate the adjustment to be made and the closing shall take place in accordance with this estimate subject to a later and final reconciliation when such adjustment can be accurately determined.

5. Goods And Services Tax

GST shall be in addition to, and not included in the Purchase Price, and shall be collected and remitted in accordance with the *Excise Tax Act (Canada)*. Notwithstanding the foregoing, the Vendor acknowledges and agrees, that the Purchaser shall not be required to pay to the Vendor on closing any GST nor shall the Vendor be required or entitled to collect GST from the Purchaser on closing provided that the Purchaser delivers to the Vendor on closing a confirmation and indemnity which provides as follows:

- (a) that the Purchaser is a registrant under the *Excise Tax Act (Canada)*, setting out the Purchaser's GST registration number;
- (b) that the Purchaser shall undertake to remit within the time period stipulated in the *Excise Tax Act (Canada)*, all GST payable in respect of this transaction under the *Excise Tax Act (Canada)*; and
- (c) that the Purchaser shall indemnify the Vendor in respect of any claim, liability, penalty, interest, cost or expense whatsoever arising directly or indirectly out of the failure by the Purchaser to remit to the appropriate taxing authority any and all GST payable in respect of this transaction.

6. Vendor's Work

The Purchaser acknowledges and agrees that it has inspected the Unit and that it accepts the Unit on an "as is" basis.

7. Construction Warranties

The Vendor warrants to the Purchaser as follows:

- (a) The Vendor shall complete the common elements of the Condominium in accordance with standards prescribed by the Ontario Building Code. The Purchaser acknowledges and agrees that it shall have no claim against the Vendor for any higher or better standard of workmanship or materials other than as prescribed by the Ontario Building Code.
- (b) The Vendor shall repair major structural defects in the common elements of the Condominium which become manifest during the one year period commencing on

the date of substantial completion of the Condominium (as determined by the Vendor's Architect) and expiring on the first anniversary of such date.

The Purchaser acknowledges and agrees that the following items shall not be considered defects in workmanship and/or materials and the Purchaser acknowledges and agrees that it shall have no claim against the Vendor for any of the following:

- (a) defects in materials, appliances, design and workmanship supplied by the Purchaser;
- (b) normal cracks in plaster, paint, drywall, masonry, stucco and concrete;
- (c) normal shrinkage or warpage of materials;
- (d) defects arising from improper maintenance by the Purchaser including damage caused by or resulting from dampness or condensation due to failure of the Purchaser to maintain adequate heat and/or ventilation in the Unit;
- (e) defects in workmanship or materials supplied by the Vendor as a result of such alterations made by the Purchaser;
- (f) surface defects in workmanship and materials apparent to and accepted by the Purchaser on closing; and
- (g) defects arising as a result of any third-party action for which the Vendor is not responsible in law.

8. Access Prior to the Closing Date

The Purchaser shall be entitled to have access to the Development prior to the Closing Date to perform the Purchaser's Work, provided the Purchaser is accompanied by a representative of the Vendor or otherwise is authorized to have such access by direction of a representative of the Vendor and provided the Purchaser has complied with its obligations pursuant to this Agreement (including, without limiting the generality of the foregoing, the obligations expressed in Section 9).

9. Completion of Purchaser's Work

The Purchaser covenants and agrees that it shall complete the Purchaser's Work, at its sole cost and expense, in compliance with the following terms and conditions:

- (a) The Purchaser shall submit to the Vendor any plans, drawings, specifications, construction schedules, list of contractors and construction contracts relating to the Purchaser's Work for approval by the Vendor (which approval shall not be unreasonably withheld or delayed) prior to commencement of the Purchaser's Work. Any changes required by the Vendor to the Purchaser's plans or specifications shall be communicated by the Vendor to the Purchaser in writing within five (5) Business Days following the Vendor's receipt thereof. The Purchaser covenants and agrees to revise its plans and specifications in accordance the Vendor's requirements and re-submit same to the Vendor for final approval.
- (b) The Purchaser acknowledges and agrees that it shall not commence any of the Purchaser's Work until its plans and specifications have been approved in writing by the Vendor (which approval shall not be unreasonably withheld or delayed), City of Toronto and any other Approval Authority having jurisdiction with respect to such matters. The Purchaser's Work shall be performed strictly in accordance with the approved plans and specifications.
- (c) The Purchaser acknowledges and agrees to retain those contractors and consultants utilized by the Vendor in the construction of the Development, if directed to do so by the Vendor in writing prior to the commencement of the construction of the Purchaser's Work. When such contractors or consultants lack the technical knowledge required by the Purchaser, as determined by the Purchaser, acting

reasonably, then the Purchaser is entitled to retain the services of contractors or consultants not associated with the Vendor.

- (d) The Purchaser acknowledges and agrees that it is responsible for any connections and/or installations with respect to utilities that are necessary for the Unit. The Vendor acknowledges that the installation of a separate meter will not be required.
- (e) The Purchaser agrees to keep a full set of the Purchaser's plans and specifications (with the Vendor's consent endorsed thereon) at the Unit at all times until the Purchaser's Work has been completed.
- (f) The Purchaser shall not be permitted to perform any of the Purchaser's Work in the common elements except in compliance with the Condominium Documents and with the consent of the Vendor and the Condominium, where applicable.
- (g) The Purchaser shall obtain all necessary consents, permits, licences, certificates and inspections from all Approval Authorities and shall make available to the Vendor copies of same and shall post permits as required.
- (h) The Purchaser covenants and agrees that, in performing the Purchaser's Work, the Purchaser shall comply with all applicable laws, by-laws, regulations, building codes, permits and approvals.
- (i) In no event shall the Purchaser make any structural alteration which may impair the structural integrity of the common elements or any other part of the Condominium.
- (j) The Purchaser shall immediately repair any damage to the Unit, any other unit, the common elements or any other part of the Condominium caused by the Purchaser or its contractors, subcontractors, tradesmen, material suppliers or other invitees.
- (k) Forthwith after the Purchaser's Work has been completed, the Purchaser shall notify the Vendor in writing. The parties acknowledge and agree that, after receiving such notice, the Vendor shall inspect the Purchaser's Work for the purpose of certifying that the Purchaser's Work has been completed in accordance with the approved plans and specifications. The Purchaser covenants and agrees to complete any unfinished work and/or rectify any deficiencies regarding the Purchaser's Work identified by the Vendor, acting reasonably, forthwith after receiving written notification from the Vendor.
- (l) As a condition to this Agreement, the Purchaser shall provide to the Vendor on Closing a statutory declaration confirming that the Purchaser has paid in full any and all contractors retained by the Purchaser to complete the Purchaser's Work, subject to any relevant amount held back pursuant to the *Construction Lien Act* (Ontario).

The Purchaser acknowledges and agrees that the foregoing items of this section and any and all other expenses related to the construction of Unit shall be the sole responsibility of the Purchaser.

10. Purchaser's Responsibility for Damage

The Purchaser acknowledges and agrees that it shall be responsible for any damage to the common elements, other units or any other part of the Condominium caused by the Purchaser, its contractors, subcontractors, tradesmen, material suppliers or other invitees in connection with the performance of the Purchaser's Work. The Purchaser agrees to rectify any such damage, at its sole cost and expense, forthwith after receiving written notice.

The Purchaser covenants and agrees to indemnify and save harmless the Vendor and the Condominium Corporation with respect to any claim, loss, cost or expense sustained by any such party as a result of the construction, installation, operation, maintenance, repair, service, upgrade, modification, removal and/or replacement of the Purchaser's Work, including any loss or expense caused by the acts or omissions of the Purchaser, its contractors and subcontractors and those for whom the Purchaser is responsible in law (notwithstanding, however, that the Purchaser does not

agree to provide any indemnity with respect to the operation or functionality of any equipment installed pursuant to the Telecommunications Agreement). Prior to commencing the Purchaser's Work, the Purchaser shall obtain public liability and property damage insurance coverage of not less than \$5,000,000 per occurrence and the Purchaser shall add the Vendor (and the Condominium Corporation forthwith after notice that the Condominium has been registered) to such insurance policies as additional insureds.

Notwithstanding the above, the Vendor shall be responsible for all losses, costs and expenses suffered by the Purchaser as the result of any damage caused by the Vendor's negligence or wilful misconduct.

11. Permitted Use

The Purchaser acknowledges and agrees that occupation and use of the Unit shall be in accordance with the following restrictions which may be registered against title to the Unit as restrictive covenants and/or contained in the declaration of the Condominium:

- (a) The Purchaser covenants and agrees to use the Unit for a telecommunication room and for no other purpose. The Vendor and Purchaser acknowledge and agree that the Purchaser's intended use shall be subject to and exercised in compliance with the Condominium Act, and in particular section 22 of the Condominium Act. The Vendor shall cause the Condominium Corporation to pass a By-Law approving the Telecommunication Agreement thereby approving the use of the Unit for the provision of telecommunication services to the Condominium.

12. Title Requisition Date

The Purchaser shall be allowed until 5:00 pm on July 12th, 2002 to examine title to the Unit at its own expense. If within that time any valid objection to title is made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, then the Agreement shall, notwithstanding any intermediate acts or negotiations in respect of such objections, become null and void, the Purchaser shall surrender to the Vendor vacant possession of the Unit and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objection to title made within such time, the Purchaser shall be deemed to have accepted the title of the Vendor to the Unit.

13. Closing Date

The parties acknowledge and agree that the Closing Date shall be July 22nd, 2002.

14. Permitted Encumbrances

The Purchaser agrees to accept title to the Unit subject to the following encumbrances provided same do not restrict or prohibit the permitted use set out in section 11 herein ("**Permitted Encumbrances**"):

- (a) Condominium Documents;
- (b) all subdivision, development, site plan and other agreements relating to the use and development of the Condominium and/or the Lands with any governmental authority having jurisdiction over the Lands and the Condominium;
- (c) any by-law, regulation, restriction, easement, noise attenuation provision, environmental notice, warning, restrictive covenant, lease, licence or other agreement relating to the use or development of the Unit, the Condominium and/or the Lands;
- (d) any easement, right-of-way, licence or agreement relating to the installation or maintenance of any public utility or other service to the Unit, the Condominium and/or the Lands;

- (e) any easement, lease, licence or other agreement relating to the supply of telecommunication services to the Condominium and/or the Lands;
- (f) any agreement which is necessary for the operation, maintenance or repair of the Condominium;
- (g) an insurance trust agreement and a management agreement;
- (h) any charge, obligation, restrictive covenant, easement, right-of-way or other agreement with any adjoining landowner;
- (i) any agreement between the Condominium and the owner of any adjoining lands relating to services, easements, licences, roadways, shared facilities or any other matter;
- (j) a temporary easement and right of re-entry in favour of the Vendor for the purpose of completing construction of the Condominium and complying with its obligations pursuant to any agreement with any governmental authority; and
- (k) any restrictive covenant or building restriction relating to the Unit or the Condominium.

15. Vendor's Mortgages

The Purchaser acknowledges that the Unit may be encumbered by mortgages which are not intended to be assumed by the Purchaser and that the Vendor shall not be obliged to obtain and register complete or partial discharges of such mortgages on the Closing Date. The Purchaser agrees to accept the Vendor's Solicitor's undertaking to obtain and register complete or partial discharges of such mortgages as soon as reasonably possible after the Closing Date subject to the Vendor providing to the Purchaser or to the Purchaser's solicitor the following:

- (a) a mortgage statement or letter from the mortgagee confirming the amount required to be paid to the mortgagee to obtain a discharge (or partial discharge) of the mortgage with respect to the Unit;
- (b) a direction from the Vendor to the Purchaser to pay such amount to the mortgagee on the Closing Date; and
- (c) an undertaking from the Vendor's solicitor to deliver such amount to the mortgagee and to register the discharge (or partial discharge) of the mortgage with respect to the Unit upon receipt thereof and to advise the Purchaser or the Purchaser's solicitor concerning registration particulars.

16. Direction Regarding Title

The Purchaser shall, at least 10 days before the Closing Date, advise the Vendor in writing of the manner in which the Purchaser intends to take title to the Unit. If the Purchaser does not so advise the Vendor as to how the Purchaser intends to take title to the Unit, the Vendor shall be entitled to tender the transfer of title to the Unit on the Closing Date engrossed in the name of the Purchaser.

17. Acknowledgments and Covenants

The Vendor and Purchaser acknowledge that all schedules attached hereto shall form a part of this Agreement. Each of the Vendor and Purchaser acknowledges that it has read all paragraphs, schedules and amendments of this Agreement.

The Purchaser acknowledges that the Vendor intends to construct buildings and facilities on lands adjacent to or in the vicinity of the Condominium. The Purchaser covenants and agrees not to object to any development, minor variance, rezoning, Official Plan amendment or other application made by the Vendor or any related company to any governmental authority relating to the development of lands adjacent to or in the vicinity of the Lands including, without limiting the generality of the foregoing, the lands which are the subject of the development known as the "CityPlace Project". The Purchaser acknowledges and agrees that this covenant may be pleaded by the Vendor as a

complete defense to any opposition or objection raised by the Purchaser in this regard.

The Purchaser covenants and agrees not to object to any construction by the Vendor on adjoining lands or claim that such construction and/or the resultant noise, dust or vibration is an inconvenience or nuisance. The Purchaser acknowledges and agrees that this covenant may be pleaded by the Vendor as a complete defense to any opposition or objection raised by the Purchaser in this regard.

The Purchaser acknowledges that no representation or warranty has been made to the Purchaser by the Vendor or any of its agents, employees or representatives with respect to municipal taxes, utility costs or other expenses relating to the ownership or operation of the Unit. The Purchaser acknowledges that it shall be responsible for making its own inquiries to the appropriate municipal authorities or utilities in this regard.

18. Modifications

Provided that the modifications do not restrict, inhibit or prohibit the Purchaser's use or require alterations to the Purchaser's Work to carry out its intended use and provided that the modifications will not be performed directly to the Unit, the Purchaser acknowledges and agrees that the Vendor may from time to time, without notice to the Purchaser, in its discretion or as required by any Approval Authority, change, vary or modify the plans, colours, materials, finishes, equipment, fixtures and specifications pertaining to the Condominium (including architectural, structural, landscaping, grading, mechanical or other plans) from the plans, colours, materials, finishes, equipment, fixtures and specifications existing at the time the Purchaser entered into this Agreement.

The Purchaser acknowledges that the Condominium Documents required by the *Condominium Act* have not been registered by the Vendor. Provided that the modifications do not restrict, inhibit or prohibit the Purchaser's use or require alterations to the Purchaser's Work to carry out its intended use and provided that the modifications will not be performed directly to the Unit, the Purchaser acknowledges and agrees that the Vendor may, from time to time, without notice to the Purchaser, make any modifications to such documentation as required by the Vendor, any governmental authority, any mortgagee or the *Condominium Act*.

19. Risk Prior to the Closing Date

The Unit shall be and remain at the risk of the Vendor until the Closing Date. If any part of the Condominium is damaged before the Closing Date, the Vendor may either repair the damage and complete this transaction or the Vendor may (at the Vendor's sole option) cancel this Agreement and, in this event, the Purchaser acknowledges and agrees that the Vendor shall not be liable for any losses, costs or damages incurred by the Purchaser as a result thereof.

Notwithstanding the above, the Vendor shall not cancel this Agreement unless the Vendor has similarly cancelled all of its agreements with unit purchasers in the Condominium.

20. Right of Re-Entry

Notwithstanding the Purchaser occupying the Unit or the closing of this transaction and the delivery of title to the Unit to the Purchaser, the Vendor and its authorized representatives shall be entitled at all reasonable times and upon reasonable prior notice to the Purchaser to enter the Unit in order to make inspections or to do any work or repairs which may be deemed necessary by the Vendor in connection with the completion, repair or servicing of any other unit or the common elements of the Condominium.

21. Assignment

The Purchaser shall not assign, sell, lease or otherwise convey its interest in this Agreement without the prior written approval of the Vendor, which approval may be arbitrarily withheld. Notwithstanding the foregoing, the Vendor acknowledges and agrees that the Purchaser shall have the right to assign its interest in this Agreement to a corporation related to the Purchaser (the "Assignee") provided that the Assignee agrees in writing to assume all of the obligations of the Purchaser under this Agreement. The Purchaser acknowledges that no such assignment shall relieve the Purchaser of its obligations under this Agreement.

22. No Registration

The Purchaser covenants not to register this Agreement, notice of this Agreement, or any caution hereunder against title to the Lands.

23. Default

The Purchaser shall be deemed to be in default under this Agreement upon the occurrence of any one or more of the following events:

- (a) upon default in payment of the Purchase Price or any part thereof when due, which default is not rectified within two Business Days after written notice thereof has been provided to the Purchaser;
- (b) upon default in payment of any other amount required to be paid by the Purchaser to the Vendor pursuant to this Agreement which default is not rectified within 10 days after written notice thereof has been provided to the Purchaser;
- (c) upon default in the performance or observance of any other covenant, restriction or provision of this Agreement to be performed or observed by the Purchaser and upon such default not being cured within 15 days after the Purchaser receives written notice of such default (except in the case of an emergency, in which event the default shall be cured forthwith). If such default requires more than 15 days to rectify, as long as the Purchaser promptly commences to remedy the default and diligently continues to do so, the Purchaser shall not be considered to be in default;
- (d) upon the registration of a construction lien, certificate of action or any other encumbrance against title to the Unit or any other part of the Lands as a result of any aspect of the Purchaser's Work, which encumbrance is not discharged or vacated within 15 days after its registration; and
- (e) upon the Purchaser becoming bankrupt or insolvent or making a general assignment for the benefit of the Purchaser's creditors, or upon any distress or execution or any similar process being levied or enforced against the Unit or any other part of the Lands.

In the event that the Purchaser is in default with respect to the payment of any amount owing pursuant to this Agreement, the Purchaser agrees to pay interest on the amount which is in arrears calculated at the Prime Rate plus 5% per annum commencing on the date on which such amount was due and payable by the Purchaser until the date on which all arrears are paid in full.

In the event of default by the Purchaser, the Vendor shall have the right to terminate this Agreement and any deposit provided by the Purchaser (and all accrued interest thereon) shall be forfeited to the Vendor without prejudice to the Vendor's other rights and remedies as a consequence of the Purchaser's default.

24. Termination

In the event that this Agreement is terminated through no fault of the Purchaser, any deposit provided by the Purchaser shall be returned to the Purchaser with interest and without deduction. The Purchaser further acknowledges that the Vendor shall not be liable for any damages or costs whatsoever incurred by the Purchaser resulting from the termination of this Agreement including, without limiting the generality of the foregoing, relocation costs, professional fees and disbursements, opportunity costs, loss of bargain or any other damages or costs incurred by the Purchaser, directly or indirectly. The Purchaser acknowledges and agrees that this provision may be pleaded by the Vendor as a complete defense to any claim which may be made by the Purchaser against the Vendor.

25. Vendor's Closing Deliveries

The Vendor covenants that it will deliver to the Purchaser on or before the Closing Date each of the following:

- (a) an executed Transfer/Deed of the Unit in registerable form duly executed in favour of the Purchaser;
- (b) statement of adjustments;
- (c) Telecommunication Agreement;
- (d) a direction regarding payment of funds; and
- (e) such other documents as the Purchaser or its solicitors may reasonably require in order to implement the intent of this Agreement.

26. Purchaser's Closing Deliveries

The Purchaser covenants that it will deliver to the Vendor on or before the Closing Date:

- (a) a certified cheque or bank draft for the balance of the Purchase Price due on the Closing Date;
- (b) a direction as to title;
- (c) GST confirmation and indemnity;
- (d) a statutory declaration as outlined in Section 9(1);
- (e) evidence of insurance coverage as contemplated by Section 10;
- (f) Telecommunication Agreement;
- (g) Option Agreement as contemplated by Section 29; and
- (h) such other documents as the Vendor or its solicitors may reasonably require in order to implement the intent of this Agreement.

27. Telus

The Purchaser acknowledges and agrees:

- (a) that it has received notice from the Vendor of an existing marketing and telecommunication agreement between the Vendor and Telus Entertainment Inc. (formerly BC TEL Entertainment Inc.) ("**Telus**"), whereby Telus has been granted rights to provide telecommunication services to the Development;
- (b) that it will contract directly with Telus to access the structures, installations, improvements and facilities constructed by Telus within the Development; and
- (c) that in the event it is unable to reach a mutual agreement with Telus in respect to subsection (b) of this paragraph, then the Purchaser acknowledges that the Vendor shall not be liable for any damages or costs whatsoever incurred by the Purchaser in failing to reach such arrangement including, without limiting the generality of the foregoing, professional fees and disbursements, opportunity costs, loss of bargain or any other damages or costs incurred by the Purchaser, directly or indirectly.

28. Fees

Except as otherwise expressly provided in this Agreement, the Purchaser shall be responsible for and shall pay all legal and other reasonable professional/consultant fees and disbursements incurred by the Vendor directly relating to the subject of this Agreement whether or not the transaction contemplated by this Agreement is completed, unless such non-completion is due to the negligence or wilful misconduct of the Vendor.

In addition, the Purchaser shall be further responsible for and agrees to pay, at a rate of \$250.00 per hour, for any time reasonably incurred by any employee of the Vendor in connection to the subject

matter of this Agreement whether or not the transaction contemplated by this Agreement is completed. The Vendor shall provide the Purchaser with a detailed, itemized estimate of such time incurred fifteen (15) days before the Closing Date.

The Purchaser covenants and agrees to pay all fees owing to the Vendor pursuant to this section on the Closing Date.

29. Option to Purchase

If at any time the Condominium Corporation terminates the Telecommunication Agreement with the Purchaser in accordance with applicable laws, the Purchaser shall be obligated:

- (a) to sell the Unit to the Condominium Corporation for the sum of One Dollar (\$1.00); and
- (b) to provide to the Condominium Corporation an executed Transfer/Deed of the Unit in registerable form duly executed in favour of the Vendor.

A Vendor's form of agreement (the "**Option Agreement**") setting forth the foregoing obligations shall be registered on title to the Unit on the Closing Date immediately after the registration of the Transfer and in priority to any mortgage or other financial encumbrance.

30. Access Fee

The Vendor and Purchaser acknowledges that the Unit shall not be subject to the obligation to pay any Condominium common expenses or any costs with respect to utilities supplied to the Unit. Instead, the Purchaser covenants and agrees to pay to the Condominium Corporation an annual fee of \$15,000.00 payable yearly in advance (the "**Access Fee**"). The first payment shall be due on July 1, 2002 and subsequent payments shall be due on July 1 of each year during the term of the Telecommunications Agreement. The Vendor acknowledges that the first payment of the Access Fee will be made payable in escrow to the Vendor's Solicitor, in trust and such payment shall be released from escrow upon the Purchaser becoming the registered owner of the Unit. The Vendor acknowledges that any amount paid to the Vendor on account of the Access Fee will be accordingly adjusted with the Condominium Corporation upon registration of the Condominium Corporation and that the Purchaser is indemnified for any payment made by the Purchaser to the Vendor on account of the Access Fee prior to registration of the Condominium Corporation.

31. Notice

Any notice required to be given by the Vendor to the Purchaser pursuant to this Agreement or the *Condominium Act* shall be in writing and shall be personally delivered, sent by ordinary mail or transmitted by facsimile to the Purchaser at:

Nexacor Realty Management Inc.
300 The East Mall
Suite 600
Toronto, Ontario
M9B 6B7

Attention: Phillip Young, Manager Transactions
Telephone: 416.207.3232
Facsimile: 416.207.3208

and to the Purchaser's solicitor at:

Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y4

Attention: Murray B. Shopiro

Telephone: 416.367.6264
Facsimile: 416.361.2446

The Purchaser acknowledges and agrees that the Vendor may also provide valid notice to the Purchaser by providing such notice to the Purchaser's solicitor by means of personal delivery, ordinary mail or facsimile transmission.

Any notice required to be given by the Purchaser to the Vendor pursuant to this Agreement or the *Condominium Act* shall be in writing and shall be personally delivered or transmitted by facsimile addressed to the Vendor at:

Concord Adex Developments Corp.
23 Spadina Avenue
Toronto, Ontario
M5V 3M5

Attention: David McComb, Vice-President
Telephone: 416.813.0333
Facsimile: 416.813.0300

and to the Vendor's solicitor at:

Aird & Berlis LLP
Barristers & Solicitors
Suite 1800
181 Bay Street
Toronto, Ontario
M5J 2T9

Attention: Andrew R.C. Webster
Telephone: 416.863.1500
Facsimile: 416.863.1515

The Vendor acknowledges and agrees that the Purchaser may also provide valid notice to the Vendor by providing such notice to the Vendor's solicitor by means of personal delivery, ordinary mail or facsimile transmission.

Any notice delivered personally or by facsimile transmission shall be deemed to have been validly and effectively given and received on the date of such delivery or transmission provided that such notice is delivered or transmitted prior to 5:00 p.m. (Toronto time) on such date and provided that such date is a Business Day. If such notice is delivered or transmitted after 5:00 p.m. (Toronto time) or if such notice is delivered or transmitted on a date that is not a Business Day, such notice shall be deemed to have been given and received on the next following Business Day. Any notice which has been mailed shall be deemed to have been validly and effectively given and received on the third Business Day following the date on which such notice was mailed. Each party agrees to immediately notify the other party in the event of a change of address.

32. Warning Clauses

The Purchaser acknowledges that development and/or site plan agreements to be entered into by the Vendor with the City of Toronto and other approval authorities may require the Vendor to provide the Purchaser with notice regarding noise, vibration and/or air quality levels from adjacent roadways, railways lines and/or other sources. The Purchaser agrees to be bound by the content of any such notice, whether given to the Purchaser at the time this Agreement is entered into, or at any time thereafter up to and including the Closing Date. The Purchaser covenants and agrees to execute, forthwith upon the Vendor's request and at no cost to the Vendor, any acknowledgment confirming the Purchaser's receipt of any such notice if and when required to do so by the Vendor. In addition, the Purchaser is hereby notified as follows:

- (a) The Purchaser may be inconvenienced by ongoing construction activities relating to the development of the Condominium and/or other construction activities of the Vendor with respect to other aspects of the CityPlace Project.
- (b) The Purchaser is advised that noise levels from increasing road and rail traffic will continue to be of concern, occasionally interfering with some activities of the owners and occupants of the Unit as the noise level exceeds the City of Toronto's and the Ministry of the Environment's noise criteria.
- (c) The Purchaser is advised that the Condominium is situated adjacent to the SkyDome, that the SkyDome is and will be utilized by the general public for a variety of cultural, athletic, entertainment and recreation purposes and that events, including new events that may not have been held in the past, may occur at all hours of the day or night that attract large and sometimes unruly crowds that create considerable noise and traffic in the vicinity. The SkyDome has a retractable roof which provides that events are held outdoors. Maintenance and operations of the SkyDome may occur at all hours of the day and night. As a consequence, the uses at the SkyDome may result in circumstances where noise levels, lights, signage and crowds may interfere with the activities of owners and occupants of Units, both inside and outside the Condominium. The Purchaser specifically acknowledges and agrees that the operation of the SkyDome as aforesaid (including the choice of the SkyDome to keep the roof open for an event) is not and will not be a nuisance. The Purchaser acknowledges and agrees that this acknowledgement may be pleaded by the Vendor and/or the owner of the SkyDome as a complete defense to any application or objection raised by the Purchaser in this regard.
- (d) Canadian National Railway Company (CN) and the Toronto Terminals Railway Company Limited (TTR) or their assigns or successors in interest have or may have rights-of-way within 300 meters of the Lands. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future, including the possibility that CN, TTR or their assigns or successors as aforesaid or GO Transit or VIA Rail Canada Inc. may expand their operations, which expansion may effect the noise, vibration and air quality attenuating measures in the design of the Condominium and the Units. Furthermore, the Purchaser is advised that diesel odours generated by the adjacent railway operations may be experienced in outdoor areas of the Condominium. CN, TTR, GO Transit and/or VIA Rail Canada Inc. will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over, or under the aforesaid rights-of-way.

33. No Waiver

No omission by the Vendor to enforce the strict performance of its rights under this Agreement shall operate as a waiver of any such rights, and no waiver by the Vendor of the performance of any covenant or provision of this Agreement shall, of itself, constitute a waiver of any subsequent breach of such covenant or provision of any other covenant or provision.

34. Non-Merger

The covenants and agreements of each party expressed in this Agreement which have not been fully completed as of the Closing Date shall not merge upon but shall survive such date, in full force and effect, and shall enure to the benefit of each of the parties hereto and their respective successors and assigns.

35. Amendment

This Agreement may be altered or amended only by an agreement in writing signed by the parties hereto.

36. Severability

If any obligation contained in this Agreement or the application thereof to any person/entity or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement and the

application of such obligation to persons/entities or circumstances other than those to whom/which it is held invalid or unenforceable, shall not be affected thereby and each obligation contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

37. Entire Agreement

This Agreement and the schedules attached hereto, and the Telecommunication Agreement constitutes the entire agreement between the Vendor and the Purchaser in respect of the acquisition of the Unit.

38. Remedies Cumulative

No remedy conferred upon or reserved to one or both of the parties hereto is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

39. Statutory References

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph or paragraphs and/or clause or clauses of any statute or regulations shall be deemed to include a reference to any corresponding provisions of future law.

40. Force Majeure

In the event that the Vendor or Purchaser, as the case may be, is delayed, hindered or prevented from performing any of its obligations under this Agreement by reason of fire, storm, flood, earthquake, explosion, accident, energy shortage, sabotage, strikes, labour disputes, labour shortages, transportation delays, adverse weather conditions, shortage of materials, men or machinery, default by its contractors, processing delays caused by any Approval Authority, acts of God, or any other event beyond the control of the Vendor or Purchaser, as the case may be, the performance of such obligation shall be excused for the period of the delay and the period for the performance of any such obligation shall be extended for the period equivalent to the period of such delay. For greater certainty, the parties acknowledge and agree that financial inability shall not be considered an event of *force majeure* for the purpose of this Agreement.

41. Time of the Essence

Subject to the qualification that the time within which the Vendor or the Purchaser is obligated to complete its obligations may be extended as a result of an event of *force majeure*, time shall in all respects be of the essence hereof. Notwithstanding the foregoing, the parties agree that the time for doing or completing any matter referred to herein may be extended or abridged by an agreement, in writing, executed by the Vendor and the Purchaser or their respective solicitors who are hereby expressly appointed for that purpose.

42. Canadian Funds

All references to dollar amounts contained in this Agreement shall be deemed to refer to Canadian funds.

43. Tender

Any tender of notices, documents or funds pursuant to this Agreement may be made upon the Vendor or the Purchaser or their respective solicitors. The Purchaser acknowledges and agrees that any tender shall be validly and effectively made by the Vendor, in the absence of any other mutually acceptable arrangement, if the Vendor's Solicitor shall attend at the Land Titles Office with the documentation required by this Agreement at 1:00 p.m. on the Closing Date (as the case may be) and remain there until 1:30 p.m. In the event that the Purchaser or its solicitor fails to appear, such attendance by the Vendor's Solicitor shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the transaction at such time. Payment shall be tendered by the

Purchaser by certified cheque or bank draft drawn on a Canadian chartered bank or trust company.

Notwithstanding the foregoing, if the Purchaser or its solicitor indicates to the Vendor or its solicitor either verbally or in writing on or before the Closing Date (as the case may be) that the Purchaser is unable or unwilling to complete the purchase, then the Vendor shall be relieved of any obligation to make formal tender upon the Purchaser or its solicitor and may exercise forthwith any and all of its rights and remedies provided for in this Agreement and at law.

44. Further Assurances

Except as otherwise expressed herein to the contrary, each party shall, without receiving additional consideration, co-operate with and take such additional action as may be reasonably requested by the other party in order to carry out the purpose and intent of this Agreement.

45. Governing Law

This Agreement has been executed in the Province of Ontario and, for all purposes, shall be construed in accordance with and governed by the laws in effect within the Province of Ontario.

46. Successors/Assigns

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

47. Counterparts/Facsimile

This Agreement may be executed in counterparts and by means of facsimile transmission.

48. Interpretation

Whenever the singular is used in this Agreement, it shall mean and include the plural and whenever the masculine gender is used in this Agreement it shall mean and include the feminine gender if the context so requires.

IN WITNESS WHEREOF, the parties have executed this Agreement.

BELL CANADA

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

CONCORD ADEX DEVELOPMENTS CORP.

Per: _____
Name: David McComb
Title: Vice President

I have the authority to bind the Corporation.

::ODMA\PCDOCS\CCT\3043649

SCHEDULE "A"
LEGAL DESCRIPTION OF UNIT

Unit 30, Level A, together with its appurtenant common interest, Toronto Standard Condominium Corporation No. 1438, City of Toronto, Land Titles Division of the Toronto Registry Office (No. 66)

::ODMA\PCDOCS\CCT\304364\10