

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 1647 East Pender Street**

On or about December 17, 2014 the Director of Planning approved Development Application Number DE418323 to develop on the referenced lands a five-storey mixed-use building, subject to a number of conditions, including a condition that the owner of these lands first make arrangements to the satisfaction of the Managing Director of Social Development and the Director of Legal Services to enter into a Housing Agreement for 60 years or the life of the building, whichever is greater, securing five of the 15 dwelling units proposed in this application as rental housing, and subject to a number of other specified conditions.

A Housing Agreement has been accepted and signed by the owner applicant and its mortgagees. Enactment of the attached By-law, as required by section 565.2 of the *Vancouver Charter*, will complete the process to implement the Director of Planning's condition regarding a Housing Agreement.

Director of Legal Services
September 29, 2015

1647 East Pender Street



BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 1647 East Pender Street**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Housing Agreement with the owner of certain lands described as:

PID: 002-678-985

LOT A (EXPLANATORY PLAN 4552)
EXCEPT PART INCLUDED IN PLAN 14558 OF
BLOCK 14 OF
BLOCK C
DISTRICT LOT 183
PLAN 631

in substantially the form and substance of the Housing Agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2015

Mayor

City Clerk

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Lynn Copeland, TERRA LAW CORPORATION
Suite 2800 - 650 West Georgia Street
PO Box 11506
Vancouver BC V6B 4N7

Phone 604-628-8978
Client No. 12544 Doc No. 317985
File No. 250370/500642
(Housing Agreement and Building Use Covenant)

Deduct L.T.S.A. Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [LEGAL DESCRIPTION]
002-678-985 LOT A (EXPLANATORY PLAN 4552) EXCEPT PART INCLUDED IN PLAN 14558
OF BLOCK 14 OF BLOCK C DISTRICT LOT 183 PLAN 631

STC? YES

3. NATURE OF INTEREST

CHARGE NO. ADDITIONAL INFORMATION

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms D.F. No.
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.
(b) Express Charge Terms Annexed as Part 2

5. TRANSFEROR(S):

SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

CITY OF VANCOUVER

453 WEST 12TH AVENUE
VANCOUVER BRITISH COLUMBIA
V5Y 1V4 CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Greg Fabbro
Barrister & Solicitor
Terra Law Corporation
Suite 2800 - 650 West Georgia St.
Vancouver, BC V6B 4N7
604-628-8993

Execution Date		
Y	M	D
15	09	14

Transferor(s) Signature(s)
EPIX/PENDER GP INC. by its
authorized signatory/ies:

Print Name: Jeremy Waldman
Print Name:

OFFICER CERTIFICATION:

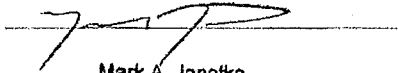
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

16_01_14W

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)



Mark A. Janetka
Commissioner for Taking Affidavits
for the Province of British Columbia
Expiry: March 31, 2016

BLUESHORE FINANCIAL CREDIT UNION
1250 LONSDALE AVE
NORTH VANCOUVER BC
V7M 2H0

Execution Date

Y	M	D
15	09	03

Transferor / Borrower / Party Signature(s)

NORTH SHORE CREDIT UNION by its
authorized signatory/ies:

Print Name: JOHN DESANTIS

Print Name: CHRIS MACEY

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)



RUI ZHEN FENG
BARRISTER & SOLICITOR
Suite 530 North Office Tower
650 W. 41st Avenue
Vancouver, B.C. V5Z 2M9
Tel: (604) 266-5828

Execution Date

Y	M	D
15	09	11

Transferor / Borrower / Party Signature(s)

54TH AVENUE CAPITAL
CORPORATION by its authorized
signatory/ies:

Print Name: Kurt T. Agdin

Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)



RUI ZHEN FENG
BARRISTER & SOLICITOR
Suite 530 North Office Tower
650 W. 41st Avenue
Vancouver, B.C. V5Z 2M9
Tel: (604) 266-5828

Execution Date

Y	M	D
15	09	11

Transferor / Borrower / Party Signature(s)

KTA HOLDINGS LTD. by its
authorized signatory/ies

Print Name: Kurt T. Aydin

Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

STEPHEN HAYWARD
453 WEST 12TH AVENUE
VANCOUVER, B.C. V5Y 1V4
BARRISTER & SOLICITOR

Y	M	D
15		

CITY OF VANCOUVER by its
authorized signatory/ies:

Print Name:

Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM E

SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 219 Covenant

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Page 19

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Page 20

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Page 21

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

WA_5_V22

LAND TITLE ACT
FORM E

PAGE 7 OF 22 PAGES

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. TRANSFEROR(S):

EPIX PENDER GP INC., Inc. No. BC0986642 (as to the Section 219 Covenant),
NORTH SHORE CREDIT UNION, Inc. no. FI 18 (as to Priority),
54th AVENUE CAPITAL CORPORATION, Inc. no. BC0878328 (as to priority) and
KTA HOLDINGS LTD., Inc. No. BC0911585 (as to Priority)

TERMS OF INSTRUMENT - PART 2
HOUSING AGREEMENT AND BUILDING USE COVENANT
1647 EAST PENDER STREET

WHEREAS:

A. It is understood and agreed that this instrument and Agreement, dated for reference February 15, 2015, shall be read as follows:

- (i) the Transferor, Epix Pender GP Inc., is called the "Owner" as more particularly defined in Section 1.1; and
- (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to corporate entity, and "Vancouver" when referring to geographic location;

B. The Owner is the registered owner, and is the general partner and nominee of the beneficial owner, of the Lands, Epix (Pender Street) Limited Partnership;

C. The Owner has applied under Development Application number DE418323 (the "Development Permit Application") to redevelop the Lands with a new five-storey, mixed-use building containing two levels of office on the first and second floors and three levels of residential on the third, fourth and fifth floors containing 15 Dwelling Units, and 14 surface parking spaces having vehicular access from the lane;

D. The Development Permit Application was approved subject to, among other things, fulfillment of the condition that the Owner enter into a Housing Agreement with the City to secure as rental housing five of the Dwelling Units to be located on the third floor and occupying at least 2,306 square feet of the developments floor space, on the terms and conditions set out in the Director of Planning's prior-to DE letter of December 17, 2014, by By-law pursuant to Section 565.2 of the *Vancouver Charter* (the "Rental Housing Condition"); and

E. The Owner and the City are now entering into this Agreement to satisfy the Rental Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 565.2 of the *Vancouver Charter* and to Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the Building:

ARTICLE 1
DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. In this Agreement the following terms have the definitions now given:

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) "Building" means the new building or structure built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (c) "Building Permit" means any building permit issued by the City authorizing the building of the Building as contemplated by the Development Permit;
- (d) "City Manager" means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (e) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) "Commencement Date" means the date as of which this Agreement has been executed by all parties to it;
- (g) "Development" means the development on the Lands described in Recital C and approved by the Development Permit;
- (h) "Development Permit" means a development permit issued by the City means as a result of the Development Permit Application;
- (i) "Development Permit Application" has the meaning ascribed to that term in Recital C;
- (j) "Director of Legal Services" means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (k) "Dwelling Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (l) "*Land Title Act*" means the *Land Title Act*, R.S.B.C. 1996, c. 250;
- (m) "Lands" means the lands described in Item 2 in the Form C attached hereto, and includes any lots or parcels into which such land is consolidated or further subdivided;
- (n) "Losses" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;

- (o) "Managing Director of Social Development" means the chief administrator from time to time of the City's Social Development Department and his/her successors in function and their respective nominees;
- (p) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any Building, development or partial development on the Lands;
- (q) "Owner" means the Transferor, Epix Pender GP Inc., and all assigns, successors and successors in title to the Lands or any part thereof;
- (r) "Related Person" means, where the registered or beneficial owner of the Rental Housing Units is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act* (British Columbia)), then a Related Person is:
 - A. an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - B. the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and
 - (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (s) "Rental Housing" means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arms length, for use as rental accommodation in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (t) "Rental Housing Condition" has the meaning ascribed to that term in Recital D;
- (u) "Rental Housing Units" has the meaning ascribed to that term in Section 2.1(c);
- (v) "Rental Housing Units Strata Lot" has the meaning ascribed to that term in Section 3.1(a);
- (w) "Residential Tenancy Act" means the *Residential Tenancy Act* S.B.C. 2002, c. 78;
- (x) "Term" means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
 - (i) the date as of which the Building is demolished or substantially destroyed; or

- (ii) 60 years from the date when the final Occupancy Permit is issued for the Rental Housing Units Strata Lot; and
- (y) "Vancouver Charter" means the *Vancouver Charter* S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) Singular; Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to the or this "Agreement" and the words "hereof" "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

ARTICLE 2
RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) if it carries out any development on the Lands after the date of this Agreement, at its sole cost and expense, it will construct, and thereafter throughout the Term will maintain, a Building containing a total of not less than 15 Dwelling Units, in accordance with the Development Permit, the Building Permit and this Agreement;
- (c) when the Building is completed and an Occupancy Permit issued and thereafter throughout the Term, not less than five of such 15 Dwelling Units, which Dwelling Units will be located on the third floor and will occupy not less than 2,306 square feet of the Building's floor space, will be used only for the purpose of providing Rental Housing (the "Rental Housing Units");
- (d) when the Building is completed and an Occupancy Permit issued and thereafter throughout the Term, the Rental Housing Units will only be rented on a month-to-month or longer basis, and in no case for less than at least 30 consecutive days except for the month of February;
- (e) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Rental Housing Unit to be sold or otherwise transferred unless title to every Rental Housing Unit is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and unless such transferee concurrently enters into an assumption agreement as contemplated by Section 9.9;
- (f) throughout the Term, it will not suffer, cause or permit the Lands or the Building to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld, subject to Article 3;
- (g) throughout the Term, any sale of a Rental Housing Unit in contravention of the covenant in Section 2.1(e), and any subdivision in contravention of Section 2.1(f), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (h) throughout the Term, it will insure, or cause to be insured, the Building and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; and

- (i) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the Rental Housing Units or any part of any thereof are/is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred

**ARTICLE 3
SUBDIVISION OF THE LANDS**

3.1 Notwithstanding Section 2.1(f):

- (a) subject to compliance by the Owner with all applicable requirements of the Director of Legal Services, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands by the deposit of a strata plan, provided that all, and only, the Rental Housing Units are contained within a single strata lot (the "Rental Housing Units Strata Lot");
- (b) following such a subdivision and the issuance of a final Occupancy Permit for the Building, the Owner may apply to the City for a partial discharge of this Agreement with respect to any strata lot other than the Rental Housing Units Strata Lot (but not with respect to or from the common property), and the City will on request of the Owner execute and deliver a registrable discharge of this Agreement in respect of such other strata lot(s) (but not with respect to or from the common property); provided, that:
 - (i) the Director of Legal Services is satisfied that such discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the Rental Housing Units, or in respect of the Rental Housing Units Strata Lot, as applicable, pursuant to this Agreement;
 - (ii) any such discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
 - (iii) the City will have a reasonable amount of time to execute and return any such discharge; and
 - (iv) the preparation and registration of any such discharge will be without cost to the City.

Upon the filing of the discharge at the applicable Land Title Office this Agreement will be deemed to amended as follows:

- (v) references to "Building" in Sections 2.1(a), (b), (f) and (i) will be replaced with "Rental Housing Units Strata Lot";

- (vi) the obligation to insure in subsection 2.1(h) will be satisfied if the Owner obtains typical insurance obtained by a prudent owner of a strata lot in Vancouver; and
- (vii) the obligation to maintain, restore and repair in subsection 2.1(i) will be satisfied if the Owner votes in favour of any strata corporation resolution addressing maintenance, restoration and repairs.

**ARTICLE 4
OCCUPANCY RESTRICTION ON THE LANDS**

- 4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the Building, that:
- (a) the Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the Building until such time as the Owner is able to apply for an Occupancy Permit for the Rental Housing Units Strata Lot and all its component parts and facilities; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit permitting the use and occupation of the Building, notwithstanding completion of construction of the Building until such time as an Occupancy Permit can be issued for the Rental Housing Units Strata Lot and all its component parts and facilities; and
 - (b) without limiting the general scope of Article 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this Article 4.

**ARTICLE 5
RECORD KEEPING**

- 5.1 The Owner will keep accurate records pertaining to the use, rental rates charged and occupancy of/for the Rental Housing Units, such records to be to the satisfaction of the City. At the request of the City, from time to time, the Owner will make such records available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

ARTICLE 6
ENFORCEMENT

- 6.1 This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it shall be entitled to court costs on a solicitor and own client basis.

ARTICLE 7
RELEASE AND INDEMNITY

- 7.1 Release and Indemnity. Subject to Section 7.2, the Owner hereby:

- (a) releases and discharges the City and all City Personnel from all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:
- (i) by reason of the City or City Personnel:
 - A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the Building or any part thereof;
 - B. withholding any permit pursuant to this Agreement; or
 - C. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or
 - (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;
- whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel; and
- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:
- (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
 - (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

The indemnities in this Article 7 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

7.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 7.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 7.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 7.2(b); and

- (c) Regardless of whether the claim is being defended under Section 7.2(a) or Section 7.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

- 7.3 Survival of Release and Indemnities. The release and indemnities in this Article 7 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 8
NOTICES

8.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, shall be in writing and shall be given by registered mail or personal delivery, addressed as follows:

(a) If to the City:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: City Clerk, with concurrent copies to the Managing Director of Social Development and the Director of Legal Services

(b) If to the Owner:

Epix Pender GP Inc.
900 - 900 West Hastings Street
Vancouver, British Columbia
V6C 1E5

Attention: President

and any such notice, demand or request will be deemed given:

(c) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the third day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and

(d) if personally delivered, on the date when delivered,

or to such other address in Canada as either party may specify in writing to the other party in the manner described above, provided that if and when the owner of the Land or any part thereof should change, in the absence of any such specification, then to the address as set out in the State of Title Certificate for that particular parcel of land.

ARTICLE 9
MISCELLANEOUS

9.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated, subject to Article 3.

- 9.2 Enurement. This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.
- 9.3 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.
- 9.4 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.5 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 9.6 Perfection of Intention. The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter* and also registered as a charge against title to the Lands.
- 9.7 Priority of Registration. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
 - (c) which the Director of Legal Services has determined, in her/his sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

- 9.8 Further Assurances. Each party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.
- 9.9 Transfer of Lands. The Owner covenants and agrees with the City that concurrent with any sale, transfer or conveyance of the Lands charged by this Agreement, or any portion thereof, to any person, trust, corporation, strata corporation, partnership or other entity, the Owner will obtain from such person, trust, corporation, strata corporation, partnership or entity and deliver to the City a duly executed acknowledgement, in form and substance satisfactory to the Director of Legal Services, of the terms of this Agreement and an assumption of the continuing obligations of the Owner pursuant to this Agreement relative to that portion of the Lands sold, transferred or conveyed to such person, trust, corporation, strata corporation, partnership or entity. Provided any such purchaser/transferee enters in to an assumption agreement as provided in this Section 9.9, the selling/transferring Owner shall not be bound by the continuing obligations of the Owner pursuant to this Agreement following such sale, transfer or conveyance relative to that portion of the Lands sold, transferred or conveyed.
- 9.10 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full power, authority, directions and instructions to enter into this Agreement on behalf of, and to thereby bind to strictly comply with the terms and conditions hereof, the beneficial owner of the Lands, Epix (Pender Street) Limited Partnership;
 - (b) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
 - (c) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
 - (d) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
 - (e) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA3552622 and the Assignment of Rents registered under number CA3552623;
- (b) "Existing Chargeholder" means North Shore Credit Union;
- (c) "New Charge" means the Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA3552741 and the Assignment of Rents registered under number CA3552742;
- (b) "Existing Chargeholder" means 54th Avenue Capital Corporation;
- (c) "New Charge" means the Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA3552741 and the Assignment of Rents registered under number CA3552742;
- (b) "Existing Chargeholder" means 2888 Enterprises Ltd.;
- (c) "New Charge" means the Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.