NO. 21-070

HOUSING AGREEMENT (1120 BURDETT) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for rental housing for the lands known as 1120, 1124 and 1128 Burdett Avenue, Victoria, BC.

Under its statutory powers, including section 483 of the *Local Government Act*, the Council of The Corporation of the City of Victoria in an open meeting enacts the following provisions:

Title

1 This Bylaw may be cited as the "HOUSING AGREEMENT (1120 BURDETT) BYLAW (2021)".

Agreement authorized

2 The Director of Sustainable Planning and Community Development is authorized to execute the Housing Agreement:

(a) substantially in the form attached to this Bylaw as Schedule A;

(b) between the City and Empresa Properties Ltd., Inc. No. BC1291268 or other registered owners from time to time of the lands described in subsection (c); and

(c) that applies to the lands known as 1120, 1124 and 1128 Burdett Avenue, Victoria, BC, legally described as:

PID: 000-188-778 Lot 11, Fairfield Farm Estate, Victoria City, Plan 392

PID: 006-975-020 Parcel B (DD 177944I) of Lot 12, Fairfield Farm Estate, Victoria City, Plan 392

PID: 000-049-891 Parcel A (DD 81442I) of Lots 12 and 13, Fairfield Farm Estate, Victoria City, Plan 392

READ A FIRST TIME the	day of	2021
READ A SECOND TIME the	day of	2021
READ A THIRD TIME the	day of	2021
ADOPTED on the	day of	2021

CITY CLERK MAYOR

HOUSING AGREEMENT
(Pursuant to section 483 of the *Local Government Act*)

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA
#1 Centennial Square
Victoria, B.C. V8W 1P6

(the "**City**")

AND:

EMPRESA PROPERTIES LTD. Inc. No. BC12912168
#204 – 655 Tyee Road
Victoria, B.C. V9A 6X5

(the "**Owner**")

AND:

CANADIAN IMPERIAL BANK OF COMMERCE
Commercial Sales and Service Centre
595 Bay Street, Suite 500
Toronto, Ontario M5G 2C2

("**CIBC**")

AND:

CANADIAN WESTERN BANK
1201 Douglas Street
Victoria, B.C. V8W 2E6

("**CWB**")

WHEREAS:

A. Capitalized terms used herein will have the respective meanings ascribed to them in section 1.1 of this Agreement, unless the context otherwise clearly requires or they are elsewhere defined herein.

B. Under section 483 of the *Local Government Act* the City may, by bylaw, enter into a housing agreement with an owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*.

C. The Owner is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with the civic addresses of 1120 Burdett Avenue, 1124 Burdett Avenue and 1128 Burdett Avenue, Victoria, B.C. and legally described as:

1120 Burdett Avenue:
PID: 000-188-778
Lot 11, Fairfield Farm Estate, Victoria City, Plan 392

1124 Burdett Avenue:
PID: 006-975-020
Parcel B (DD 177944I) of Lot 12, Fairfield Farm Estate, Victoria City

1128 Burdett Avenue:
PID: 000-049-891
Parcel A (DD 81442I) of Lots 12 and 13, Fairfield Farm Estate, Victoria City, Plan 392

(collectively, the "**Lands**").

D. The Owner has applied to the City to rezone the Lands to permit a 5-storey 42 unit apartment building within the Development in accordance with this Agreement.

E. The City and the Owner wish to enter into this Agreement, as a housing agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement of the Owner that all Dwelling Units within the Development on the Lands will be used and held only as rental housing.

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of the premises and covenants contained in this agreement (the "**Agreement**"), the parties agree each with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

"**Business Day**" means Monday to Friday, other than any such day which is a statutory holiday in Victoria, British Columbia;

"**Development**" means the new 42-unit building consisting of residential housing and related facilities on the Lands;

"**Dwelling Units**" means any or all, as the context may require, of the 42 self-contained residential dwelling units within the Development and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise, and "**Dwelling Unit**" means any of such residential dwelling units located on the Lands;

"Immediate Family" includes a person's spouse, child, grandchild, parent, grandparent, sibling, niece and nephew, and includes the Immediate Family of the person's spouse;

"**Non-owner**" means a person other than a Related Person or the Owner;

"**Owner**" includes a person who acquires an interest in the Lands or any part of the Lands or the Development and is thereby bound by this Agreement, as referred to in section 8.3;

"**Related Person**" includes, where the registered or beneficial owner of the Lands or Dwelling Unit, as applicable, is:

(a) a corporation or society:

(i) an officer, director, shareholder, or member of such corporation or society, or of another entity which is a shareholder or member of such corporation or society; or

(ii) an Immediate Family of a person to whom paragraph (i) applies, or

(b) an individual, an Immediate Family of the registered or beneficial owner;

"**Strata Corporation**" means, for the portions of the Lands or any building on the Lands that is subdivided under the *Strata Property Act,* a strata corporation as defined in that Act, including the Owner while in control of the strata corporation and subsequently the individual strata lot owners collectively acting as the strata corporation.

"**Tenancy Agreement**" means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by that Act.

2.0 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS

2.1 The Owner covenants and agrees that the Dwelling Units shall only be used as rental housing in perpetuity, and for that purpose shall only be occupied by a Non-owner under the terms of a Tenancy Agreement between the Owner and the Non-owner who occupies the Dwelling Unit.

3.0 NO RESTRICTIONS ON RENTALS

3.1 The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any rules or regulations whatsoever, the effect of which would be to prevent or restrict the Owner of a Dwelling Unit from renting that Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.

4.0 REPORTING

4.1 The Owner covenants and agrees to provide to the City's Director of Sustainable Planning and Development, within thirty (30) days of the Director's written request, a report in writing confirming that:

(a) all Dwelling Units are being rented to Non-owners or are vacant, and

(b) all other requirements of this Agreement are being compiled with by the Owner and the Development,

along with such other information as may be requested by the Director from time to time.

4.2 The Owner hereby authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

4.3 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

5.1 Notice of this Agreement (the "**Notice**") will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483 of the *Local Government Act*, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Lands after registration of the Notice.

6.0 LIABILITY

6.1 The Owner agrees to indemnify and saves harmless the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from all claims, demands, actions, damages, costs and liabilities, which all or any of them shall or may be liable for or suffer or incur or be put to by reason of or arising out of failure of the Owner to comply with the terms and conditions of this Agreement, or otherwise that would not have arisen "but for" this Agreement.

6.2 The Owner hereby releases and forever discharges the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from any and all claims, demands, actions, damages, economic loss, costs and liabilities which the Owner now has or hereafter may have with respect to or by reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement, or otherwise that would not have arisen "but for" this Agreement.

7.0 PRIORITY AGREEMENT

7.1 CIBC, as the registered holder of charges by way of a mortgage and an assignment of rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA4774575 and CA4774751, respectively, for and in consideration of the sum of One Dollar ($1.00) paid by the City (the receipt whereof is hereby acknowledged), agrees with the City that upon filing of a Notice with the Land Title Office that the Lands are subject to this Agreement, pursuant to section 483(5) of the *Local Government Act*, this Agreement shall be an encumbrance upon the Lands in priority to the said charges in the same manner and to the same effect as if Notice had been filed prior to the said charges.

7.2 CWB, as the registered holder of charges by way of a mortgage and an assignment of rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA8115038 and CA8115039, respectively, for and in consideration of the sum of One Dollar ($1.00) paid by the City (the receipt whereof is hereby acknowledged), agrees with the City that upon filing of a Notice with the Land Title Office that the Lands are subject to this Agreement, pursuant to section 483(5) of the *Local Government Act*, this Agreement shall be an encumbrance upon the Lands in priority to the said charges in the same manner and to the same effect as if Notice had been filed prior to the said charges.

8.0 GENERAL PROVISIONS

8.1 NOTICE. If sent as follows, notice under this Agreement is considered to be received:

(a) upon confirmation of delivery by Canada Post if sent by registered mail,

(b) on the next Business Day if sent by facsimile or email with no notice of failure to deliver being received back by the sender, and

(c) on the date of delivery if hand-delivered, and

in the case of the City, addressed to:

City of Victoria
#1 Centennial Square
Victoria, BC V8W 1P6

Attention: Director of Sustainable Planning and
Community Development
Fax: 250-361-0386
Email: khoese@victoria.ca

and in the case of the Owner, addressed to:

Empresa Properties Ltd.
#204 – 655 Tyee Road
Victoria, BC V9A 6X5

Attention: Karl Robertson
Fax: 250-381-1181
Email: krobertson@empresaproperties.com

or upon registration of a strata plan for the Lands, to the Strata Corporation, and to the Owner of any Dwelling Unit that is subject to the restrictions under section 2.1.

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.

If normal mail, email or facsimile service is interrupted by strike, work slowdown, force majeure, or other cause,

(d) notice sent by the impaired service is considered to be received on the date of delivery, and

(e) the sending party must use its best efforts to ensure prompt receipt of a notice by using other uninterrupted services, or by hand-delivering the notice.

8.2 TIME. Time is of the essence of this Agreement.

8.3 BINDING EFFECT. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and

permitted assignees. In accordance with section 483(6) of the *Local Government Act*, this Agreement and all obligations hereunder is binding on all who acquire an interest in the Lands, and the Owner only during the Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner has an interest.

8.4 **WAIVER.** The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

8.5 **HEADINGS.** The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.

8.6 **LANGUAGE.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

8.7 **LEGISLATION**. Reference to any enactment includes any regulations, orders or directives made under the authority of that enactment, and is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

8.8 **EQUITABLE REMEDIES.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement

8.9 **CUMULATIVE REMEDIES.** No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

8.10 **ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

8.11 **FURTHER ASSURANCES.** Each of the parties will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.

8.12 **AMENDMENT.** This Agreement may be amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

8.13 **LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

8.14 **NO DEROGATION FROM STATUTORY AUTHORITY.** Nothing in this Agreement shall:

(a) limit, impair, fetter or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled and no permissive bylaw enacted by the City, or permit, licence or approval, granted, made or issued thereunder, or pursuant to

statute, by the City shall estop, limit or impair the City from relying upon and enforcing this Agreement; or

(b) relieve the Owner from complying with any enactment, including the City's bylaws, or any obligation of the Owner under any other agreement with the City.

8.15 SEVERABILITY. If any section, term or provision of this Agreement is found to be partially or wholly illegal or unenforceable, then such sections or parts will be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, will be unaffected thereby and will remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.

8.16 JOINT AND SEVERAL. The Owner, if more than one, are jointly and severally obligated to perform and observe each and every of the covenants, warranties and agreements herein contained by the Owner to be observed and performed.

8.17 COUNTERPARTS. This Agreement may be executed in counterparts and delivered by emailed PDF file, each of which will have the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

8.18 EFFECTIVE DATE. This Agreement is effective as of the date of the signature of the last party to sign.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year last below written.

City:

THE CORPORATION OF THE CITY OF VICTORIA by its authorized signatory:

_____

Karen Hoese, Director of Sustainable Planning and Community Development

Date signed:_____

Owner:

EMPRESA PROPERTIES LTD.
by its authorized signatory(ies):

_____
Print Name: Karl Robertson

Date signed: July 5, 2021

CIBC:

CANADIAN IMPERIAL BANK OF COMMERCE
by its authorized signatory(ies):

_____
Print Name: _____

_____
Print Name: _____

Date signed: _____

CWB:

CANADIAN WESTERN BANK
by its authorized signatory(ies):

_____
Print Name: _____

_____
Print Name: _____

Date signed: _____

Owner:

EMPRESA PROPERTIES LTD.
by its authorized signatory(ies):

Print Name: Karl Robertson

Date signed: July 5, 2021

CIBC:

CANADIAN IMPERIAL BANK OF COMMERCE
by its authorized signatory(ies):

Print Name: Tanner Rybchinsky

Print Name: Angie Bains

Date signed: July 19, 2021

CWB:

CANADIAN WESTERN BANK
by its authorized signatory(ies):

Print Name: _____

Print Name: _____

Date signed: _____

Owner:

EMPRESA PROPERTIES LTD.
by its authorized signatory(ies):

Print Name: Karl Robertson

Date signed: July 5, 2021

CIBC:

CANADIAN IMPERIAL BANK OF COMMERCE
by its authorized signatory(ies):

Print Name: _____

Print Name: _____

Date signed: _____

CWB:

CANADIAN WESTERN BANK
by its authorized signatory(ies):

Sean T. Tiernay
Mgr Commercial Accounts

Print Name: _____

Print Name: MARY ELLEN ECHLE AVP-BD

Date signed: July 14/2021