

NO. 17-048

HOUSING AGREEMENT (1120, 1124 AND 1128 BURDETT AVENUE) 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, 1124 AND 1128 BURDETT AVENUE) BYLAW (2017)".

Agreement authorized

- 2 The Mayor and the City Clerk are 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. BC1052014) 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	25th	day of	May	2017
READ A SECOND TIME the	25th	day of	May	2017
READ A THIRD TIME the	25th	day of	May	2017
RESCIND THIRD READING the		day of		2018
REREAD A THIRD TIME the		day of		2018
ADOPTED on the		day of		2018

CITY CLERK

MAYOR

Schedule A

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")

OF THE FIRST PART

AND:

EMPRESA PROPERTIES LTD. (INC. NO. BC1052014)c/o 204 – 655 Tyee Road
Victoria, BC V9A 6X5

(the "Owner")

OF THE SECOND PART

AND:

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

(the "Existing Chargeholder")

OF THE THIRD PART

WHEREAS

- A. 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*;
- B. The Owner is the registered owner in fee simple of following lands:
- (i) 1120 Burdett Avenue, Victoria, B.C.
PID: 000-188-778
LOT 11 FAIRFIELD FARM ESTATE VICTORIA CITY PLAN 392
 - (ii) 1124 Burdett Avenue, Victoria, B.C.
PID: 006-975-020

PARCEL B (DD 177944I) OF LOT 12, FAIRFIELD FARM ESTATE, VICTORIA
CITY PLAN 392

(iii) 1128 Burdett Avenue, Victoria, B.C.

PID: 000-049-891

PARCEL A (DD 81442I) OF LOTS 12 AND 13 FAIRFIELD FARM ESTATE
VICTORIA CITY PLAN 392

(collectively, the "Lands"); and

- C. On _____, 2017, the City adopted Bylaw No. _____ (the "Rezoning Bylaw") to rezone the Lands to permit the development and construction of the Development (as defined below) on the Lands, and it was a condition of the City adopting such bylaw that the Owner agree to provide rental housing within the Development for a period of twenty (20) years; and
- D. 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 to provide rental housing for a period of twenty (20) years, and that all Dwelling Units within the Development on the Lands will be used and held only as rental housing for a period of twenty (20) years, and to establish certain other terms and conditions regarding the occupancy of the Dwelling Units identified in this Housing Agreement.

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:

"**Development**" means the proposed multi-family residential development to be developed and constructed on the Lands, which development may include up to or more than forty-four (44) Dwelling Units.

"**Dwelling Unit**" means a self-contained residential dwelling unit within the building that will be located on the Lands, and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise, and "**Dwelling Units**" means, collectively, all of such residential dwelling units located or to be located on the Lands.

"**Immediate Family**" includes a person's husband, wife, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece and nephew.

"**Market Rent**" means the rent that a willing tenant would pay to a willing landlord, to rent the Dwelling Unit in question pursuant to a Tenancy Agreement, in the open market in Victoria, having regard to any utility or other services or amenities available to the tenant or provided by the Owner as landlord.

"**Non-owner**" means a person who occupies a Dwelling Unit for residential purposes,

other than the Owner of that Dwelling Unit, and other than a member of the Owner's Immediate Family.

"Owner" includes a person who acquires an interest in the Lands or any part of the Lands and is thereby bound by this Agreement, as referred to in section 9.3.

"Restricted Period" means the period of twenty (20) years commencing on the date that the City adopts the Rezoning Bylaw in respect of the Development.

"Tenancy Agreement" means a tenancy agreement regulated by the *Residential Tenancy Act*.

1.2 In this Agreement:

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

2.0 **Dwelling Units to Be Used and Occupied Only as Rental Units for Restricted Period**

2.1 The Owner covenants and agrees that, for and during the Restricted Period, the Dwelling Units shall only be used as rental housing, 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.

2.2 For clarity, nothing in this Agreement is intended to restrict the rents at which the Owner may rent any Dwelling Unit to any Non-Owner, it being acknowledged and agreed that the Owner may and intends to rent the Dwelling Units at the Market Rent for each such Dwelling Unit.

3.0 **No Restrictions on Rentals**

3.1 From and after the expiry of the Restricted Period, the Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any bylaws, 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.

3.2 Without limiting the generality of section 3.1, the Owner covenants and agrees that it will not make application to deposit a strata plan for or in respect of the Lands or a building on the Lands unless the strata bylaws in no way restrict rental of any Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement, whether during or after the expiry of the Restricted Period.

3.3 For certainty, if the Lands or the Development on the Lands are subdivided under the *Strata Property Act*, then, from and after the expiry of the Restricted Period, the Dwelling Units within the Development may be occupied by the Owners of the strata lots.

4.0 No Restrictions on Age

- 4.1 The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any bylaws, rules or regulations whatsoever, the effect of which would be to restrict the age of an Owner or a Non-Owner who may reside in any Dwelling Unit.
- 4.2 Without limiting the generality of section 4.1, the Owner covenants and agrees that it will not make application to deposit a strata plan for or in respect of the Lands or a building on the Lands unless the strata bylaws in no way restrict the age of an Owner or a Non-Owner who may reside in any Dwelling Unit, whether during or after the expiry of the Restricted Period.

5.0 Reporting

- 5.1 The Owner covenants and agrees to provide to the City, upon written request from the City's Director of Sustainability Planning and Community Development, a report in writing confirming:
- (a) the number, type and location by suite number, of Dwelling Units that are being rented to Non-owners;
 - (b) the number, type and location by suite number, of Dwelling Units that located on the Lands; and
 - (c) any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Agreement.
- 5.2 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications to this Agreement and that such consent may be withheld for any reason.

6.0 Notice to be Registered in Land Title Office

- 6.1 Notice of this Agreement ("Notice") will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483(5) 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.

7.0 Liability

- 7.1 The Owner agrees to indemnify and save 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.

- 7.2 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.

8.0 Priority Agreement

- 8.1 The Existing Chargeholder, as the registered holder of charges by way of a Mortgage and 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.

9.0 General Provisions

- 9.1 **Notice.** If sent as follows, notice under this Agreement is considered to be received

- (a) seventy-two (72) hours after the time of its mailing (by registered mail) or faxing, and
- (b) on the date of delivery if hand-delivered,

to the City:

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

Attention: Director of Sustainability Planning and
Community Development
Fax: 250-361-0386

to the Owner:

Empresa Properties Ltd., Inc. No. BC1052014
216 – 1642 McKenzie Avenue
Victoria, BC V8N 0A3

with a copy to

Johns Southward Glazier Walton & Margetts LLP
204 – 655 Tyee Road
Victoria, BC V9A 6X5

Attention: Eric Kerr
Fax: 250-381-1181

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

If normal mail service or facsimile service is interrupted by strike, work slow-down, force majeure, or other cause,

- (a) notice sent by the impaired service is considered to be received on the date of delivery, and
- (b) 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.

- 9.2 **Time.** Time is to be the essence of this Agreement.
 - 9.3 **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.
 - 9.4 **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.
 - 9.5 **Headings.** The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
 - 9.6 **Language.** Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
 - 9.7 **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.
 - 9.8 **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.
 - 9.9 **Entire Agreement.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
 - 9.10 **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.
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- 9.11 **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.
- 9.12 **Law Applicable.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 9.13 **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.
- 9.14 **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.
- 9.15 **Counterpart.** This Agreement may be executed in counterparts and delivered by facsimile or 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.
- 9.16 **Effective Date.** This Agreement is effective as of the date of the signature of the last party to sign.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the parties have hereunto set their hands as of the dates inscribed at a place within British Columbia:

THE CORPORATION OF THE CITY OF)
VICTORIA by its authorized signatories:)

Mayor)

City Clerk)

Date signed: _____, 2017)

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

Print Name: Paul Robertson)

Print Name: _____)

Date signed: October 9, 2017)

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

Print Name: MATT GILBERG)

Print Name: _____)

Date signed: OCTOBER 11, 2017)