

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2877

A Bylaw to enter into a Phased Development Agreement between the Township of Esquimalt and Aragon Esquimalt TC Properties Ltd.

WHEREAS under Section 516 of the Local Government Act a local government may enter into a phased development agreement with the owner of land to provide the municipality with amenities, works and services and other things; provide the assurances related to future changes to land use regulations; and allow development to proceed in phases over an extended period of time;

AND WHEREAS Council has considered the bylaw in conjunction with the Official Community Plan;

NOW THEREFORE, the MUNICIPAL COUNCIL OF THE TOWNSHIP OF ESQUIMALT, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as the "Township of Esquimalt Phased Development Agreement Authorization Bylaw No. 2877".
2. Attached to this bylaw as Schedule "A" and forming part of this bylaw is a copy of the phased development agreement between the Township of Esquimalt and Aragon Esquimalt TC Properties Ltd.
3. The Mayor and Corporate Officer are authorized to execute the Phased Development Agreement on behalf of the Township of Esquimalt.

READ a first time by the Municipal Council on the 30th day of May, 2016.

READ a second time by the Municipal Council on the 30th day of May, 2016.

A Public Hearing was held pursuant to Sections 464, 465, 466, and 468 of the *Local Government Act* on the 27th day of June, 2016.

READ a third time by the Municipal Council on the 27th day of June, 2016.

ADOPTED by the Municipal Council on the 11th day of July, 2016.



BARBARA DESJARDINS
MAYOR



ANJA NURVO
CORPORATE OFFICER

PHASED DEVELOPMENT AGREEMENT

THIS AGREEMENT dated for reference _____, 2016

BETWEEN:

ARAGON ESQUIMALT TC PROPERTIES LTD.

201-1628 1st Ave West
Vancouver, BC V6J 1G1

(the “**Developer**”)

AND

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Esquimalt, BC
V9A 3P1

(the “**Township**”)

GIVEN THAT:

- (1) The Township is the owner of the Lands;
- (2) The Township and Developer have entered into an Agreement of Purchase and Sale dated for reference April 26, 2016 pursuant to which the Purchaser will acquire title to the Lands on the Closing Date defined in that agreement; and
- (3) The Developer and Township entered into a non-binding Memorandum of Understanding on March 11, 2016 setting out the proposed rights and obligations of the parties;

THIS AGREEMENT WITNESSES that, pursuant to section 516 of the *Local Government Act*, and in consideration of the promises herein contained, the parties agree as follows:

A. Definitions

1. In this Agreement

“**Approving Officer**” means the Approving Officer having jurisdiction for subdivision approval under the *Land Title Act* and *Strata Property Act*;

“**Assumption Agreement**” means an assumption agreement under sections 21(7) through (11);

“**Lands**” means the lands legally described in Schedule A;

“**Library**” means a built space to be used for a public library branch of the Greater Victoria Public Library, located in a strata lot or airspace parcel in a building on the Lands;

“**Library Acquisition Agreement**” means the agreement pursuant to which the Township will acquire title to the Library strata lot or airspace parcel on the Lands;

“**MOU**” means the non-binding Memorandum of Understanding entered into by the Parties on March 11, 2016, a copy of which is appended as Schedule B;

“**PDA Bylaw**” means the bylaw authorizing the entering into of this Agreement, being the “Phased Development Agreement Bylaw, 2016, No. 2877;

“**Release**” means a release or discharge sufficient to remove a charge or other interest registered against the title to land at the Land Title Office;

“**Section 219 Covenant**” means a covenant that precludes construction of a building on the Lands, other than for servicing infrastructure, until the conditions of use of buildings or land are satisfied in accordance with the covenant, which Section 219 Covenant will be released when the Township has certified in writing that the conditions have been satisfied;

“**Site Plan**” means the plan attached as Schedule “C” to this Agreement;

“**Specified Bylaw Provisions**” means:

(a) any and all provisions of the Zoning Bylaw that are applicable to the Lands as of the date of this Agreement, that regulate:

(i) the use of land, buildings and other structures;

(ii) the density of the use of land, buildings and other structures;

(iii) the siting, size and dimensions of:

A. buildings and other structures; and

B. uses that are permitted on the land; and

(iv) the location of uses on the land and within buildings and other structures;

(v) the shape, dimensions and area, including the establishment of minimum and maximum sizes, of parcels of land that may be created by subdivision; or

(vi) the conditions that will entitle an owner to different density regulations,

as set out in the copy of the bylaw provisions attached at Schedule “E” to this Agreement; and

(b) the subdivision and development standards set out in Parts 1 through 8 of the Subdivision Bylaw as of the reference date of this Agreement;

“**Subdivision Bylaw**” means Subdivision and Development Servicing Bylaw, 1997, No. 2175 as it stands on the date of this Agreement, a copy of which is certified by Corporate Officer and delivered to each of the Parties as of the reference date of this Agreement;

“**Term**” means ten (10) years from the date of adoption of the PDA Bylaw;

“**Zoning Bylaw**” means Zoning Bylaw, 1992, No. 2050 as it stands on the date of this Agreement, a copy of which is certified by the Corporate Officer and delivered to each of the Parties as the reference date of this Agreement;

B. Phases

2. The phasing of the development of the Lands may proceed in accordance with the phasing plan set out in Schedule C.

C. Amenities and Other Terms and Conditions

3. (a) The Developer shall be responsible for making all land use and development applications in respect of the Lands, and, without limitation, satisfying all of the Township’s development application requirements.
 - (b) The Developer shall at all times comply with Best Management Practices from the Ministry of Environment respecting protection of endangered species and species at risk.
 - (c) The Developer shall enter into, or make binding legal commitments reasonably satisfactory to the Township, in relation to the following agreements with the Township, in accordance with the MOU but otherwise satisfactory to the Township, on or before September 18, 2016:
 - (i) the Library Construction Contract;
 - (ii) the Parking Agreement;
 - (iii) the Public Spaces Operating Agreement;
 - (iv) the Library Acquisition Agreement; and
 - (v) a lease of an area of a building on the Lands to the Justice Institute of British Columbia.
4. The Developer shall
 - (a) at the time of the first subdivision of the Lands, or the first building permit issuance for a building on the Lands, grant to the Township a Statutory Right of Way Agreement in the form of the Township’s standard agreement over the Public Spaces and all access routes shown on the Site Plan, including an area that is at least three metres distant from each of

the HMCS Esquimalt Memorial, the Sailor's Walk Monument and the Totem pole referred to in the MOU, to the extent these are located on the Lands;

- (b) at the time of the first subdivision of the Lands, or the first building permit issuance for a building on the Lands, transfer ownership to the Township, by way of agreements satisfactory to the Township, of the HMCS Esquimalt Memorial, the Sailor's Walk Monument and the Totem pole referred to in the MOU, and prior to the date the Township issues an occupancy permit for every building permitted on the Lands pursuant to the Zoning Bylaw the Developer shall take all reasonable measures to protect the HMCS Esquimalt Memorial, and protect and relocate the Sailor's Walk Monument and the Totem pole referred to in the MOU to a location satisfactory to the Township;
- (c) take all reasonable measures to protect the health and integrity of the two oak trees located on the Lands, until the Township issues an occupancy permit for every building permitted on the Lands pursuant to the Zoning Bylaw;
- (d) construct buildings on the Lands only in accordance with the green building features described in Schedule G;
- (e) pursuant to section 483 of the *Local Government Act*, prior to the date the Township issues an occupancy permit for every building permitted on the Lands pursuant to the Zoning Bylaw, enter into and register against title to the Lands a housing agreement that protects, to the reasonable satisfaction of the Township, 34 dwelling units as market rental dwelling units;
- (f) prior to the date the Township issues an occupancy permit for every building permitted on the Lands pursuant to the Zoning Bylaw, provide public art satisfactory to the Township in the Public Spaces, such art to have a fair market value at the time of installation in an amount exceeding \$300,000; and
- (g) prior to the date the Township issues an occupancy permit for every building permitted on the Lands pursuant to the Zoning Bylaw, without limiting paragraphs (a) through (f), comply with the terms and conditions, and satisfy the obligations, set out in the MOU, provided that in the event of a conflict between this Agreement and the MOU, this Agreement shall prevail.

5. The Developer shall install electric vehicle charging facilities as follows:

- (i) Twenty percent (20%) of the parking stalls shall be equipped with at least one 110V plug and a rough-in capacity for a future 220 v upgrade. For clarification, a

standard double-gang receptacle has two plug-ins, and they may be provided on a column or wall between two adjacent parking spaces; and

- (ii) in respect of the commercial customer parking stalls, two 220V electric vehicle charging stations for a minimum of four vehicles, and a minimum of two of the applicable parking spaces shall be signed as for electric vehicle parking only.

D. Bylaw Changes

6. Changes to the definition of the Specified Bylaw Provisions can only be made by amending this Agreement.
7. Changes made during the Term to provisions of the Zoning Bylaw that fall within the definition of the Specified Bylaw Provisions will not apply to the development of the Lands, including any parcels created therefrom, unless:
 - (a) the changes fall within the limits established by section 516 of the *Local Government Act*, being:
 - (i) changes to enable the Township to comply with an enactment of British Columbia or of Canada;
 - (ii) changes to comply with the order of a Court or arbitrator or another direction in respect of which the Township has a legal requirement to obey;
 - (iii) changes that, in the opinion of the Township, are necessary to address a hazardous condition of which the Township was unaware at the time it entered into this Agreement; and
 - (iv) other changes that may be made as a result of an amendment to the *Local Government Act*;
 - (b) this Agreement has been terminated pursuant to sections 15 or 16; or
 - (c) the Developer has agreed in writing that the changes apply, in accordance with section 10.
8. Changes made during the Term to provisions of the Subdivision Bylaw that fall within the definition of the Specified Bylaw Provisions will not apply to the development of the Lands, including any parcels created therefrom, unless:
 - (a) the change is a change to standards for water, sanitary sewer, or storm sewer that are of general application across the Township;
 - (b) the changes fall within the limits established by section 516 of the Local Government Act, being:
 - (i) changes to enable the Township to comply with an enactment of British Columbia or of Canada;
 - (ii) changes to comply with the order of a Court or arbitrator or another direction in respect of which the Township has a legal requirement to obey;
 - (iii) changes that, in the opinion of the Township, are necessary to address a hazardous

condition of which the Township was unaware at the time it entered into this Agreement; and

(iv) other changes that may be made as a result of an amendment to the *Local Government Act*;

(c) this Agreement has been terminated pursuant to sections 15 or 16; or

(d) the Developer has agreed in writing that the changes apply, in accordance with section 10.

9. In the event of the repeal by the Township of the Zoning Bylaw or the Subdivision Bylaw in its entirety, including where that bylaw is replaced by one or more bylaws under the Local Government Act, the Developer and the Township agree that the Specified Bylaw Provisions continue to apply to the Lands for the balance of the term of this Agreement, despite such repeal.
10. (1) The agreement of the Developer that changes to provisions of the Zoning Bylaw and the Subdivision Bylaw that fall within the definition of the Specified Bylaw Provisions will apply to the Lands will only be effective if it is in writing and includes the terms set out in Schedule "D";
- (2) Following execution of the agreement that includes the terms set out at Schedule "D", section 7 of this Agreement will continue to apply, and further or subsequent changes made by the Township to its Zoning Bylaw and Subdivision Bylaw that fall within the definition of the Specified Bylaw Provisions will not apply to the development of the Lands unless the Developer agrees in writing that they apply, by way of a further agreement that includes the terms set out at Schedule "D"; and
- (3) In the event of the transfer of title to a portion of the Lands, the right of consent of the transferee is limited to the lands acquired by the transferee, and the transferee shall not have any right of consent as regards lands that it has not acquired.
11. Changes made to the provisions of the Zoning Bylaw and Subdivision Bylaw that do not fall within the definition of the Specified Bylaw Provisions will apply to the development of the Lands, including any parcels created therefrom. For certainty, the interpretation of whether a section in the Zoning Bylaw and Subdivision Amendment Bylaw is one of the Specified Bylaw Provisions is not impacted by the headings used in the Zoning Bylaw and Subdivision Bylaw.
12. In the event of the transfer of title of a portion of the Lands, the right of consent of the transferee under section 516 of the *Local Government Act* is limited to the lands acquired by the transferee, and the transferee shall not have any right of consent as regards any land that the transferee has not acquired.

F. Amendment, Termination, Enforcement, Arbitration and Title Transfer

F.1. Amendment

13. (1) No amendment to this Agreement shall be effective unless it is made in writing and is duly executed by the Developer and the Township.
- (2) The Township, by resolution without a new public hearing, and the Developer, may agree to “minor amendments” of this Agreement. For the purposes of this Agreement, a “minor amendment” is any amendment other than one that proposes the renewal or extension of this Agreement or changes to any of the following provisions of this Agreement:
 - (a) the Lands;
 - (b) the definition of the Specified Bylaw Provisions’
 - (c) the Term of this Agreement;
 - (d) the provision of this Agreement regarding what cannot constitute a minor amendment; or
 - (e) the provisions of this Agreement regarding transfer.
- (3) Nothing in subsection (2) prevents the Township from deciding to hold a public hearing in advance of a minor amendment to this Agreement if it so chooses.
- (4) A public hearing is required as a precondition to an amendment to this Agreement that is not a minor amendment.

F.2 Term, Termination, Enforcement and Arbitration

(1) Term

14. The Term of this Agreement is ten (10) years from the date of the adoption of the PDA Bylaw, unless otherwise terminated in accordance with the provisions hereof.

(2) Termination

15. The parties may terminate this Agreement by mutual written agreement at any time before the transfer of a subdivided parcel within the Lands to a third party.
16. The Township may, but is not obliged to, terminate this Agreement before the expiry of the Term if the Developer does not, at the time it registers the Precinct Subdivision at the Land Title Office, also register the Servicing Covenant against the title to each Precinct to which it applies.
17. Sections 30 and 33 shall survive the termination of this Agreement.
18. The Developer and the Township agree that neither party may terminate this Agreement before

the expiry of the Term, except as provided in sections 15 and 16.

(3) Enforcement

19. (a) The Developer and the Township agree that the following enforcement procedures and remedies will be available if the other does not comply with any other section hereof when required:
- (i) apart from disputes related to such matters that are referred to in section 20, either party may commence proceedings for a declaration or to otherwise enforce against any breach, and, if successful, will be entitled to recover costs from the other on a solicitor and his own client basis;
 - (ii) either party may commence proceedings for injunctive relief in connection with a breach, and, if successful, will be entitled to receive costs from the other on a solicitor and his own client basis; and
 - (iii) the Developer or the Township, as the case may be, will be responsible to the other for the cost, losses and damages that flow from any breach of the terms of the Agreement by the other;

provided however that, in the event of a default in performance of any such sections, each will give the other written notice within thirty days after it becomes aware that any default has occurred, and the other will have thirty days from the date of the written notice to correct the default.

- (b) The Developer covenants and agrees that expiry of the Agreement and any termination in accordance with section 15 or 16 or otherwise, does not entitle to recover any portion of the Amenities or to seek restitution in relation thereto or in relation to any other obligation of as performed (and specifically agrees that the Specified Zoning Bylaw Provisions of this Agreement for the period prior to expiry or termination provides sufficient consideration for the Amenities) and the release and indemnity provisions under section 33 apply in this regard.
- (c) The Developer covenants and agrees it will not commence or advance a legal proceeding of any kind to seek to quash, set aside, hold invalid this Agreement, or the Zoning Bylaw, or to recover any portion of the Amenities provided under this Agreement, or seek restitution in relation to any of the Amenities provided under this Agreement, and if does any of the foregoing, the Township may provide this Agreement to the Court as a full and complete answer.
- (d) Without limitation, paragraphs (b) and (c) apply whether or not the Developer proceeds with any development on the Lands.

- (e) The Developer shall execute, deliver and register in the Land Title Office a Covenant under section 219 of the *Land Title Act*, in the form and with the content of Schedule F, concurrently with and conditional upon the adoption of the PDA Bylaw, with the intention that this covenant shall be registered against title to the Lands in order to secure the obligations of the owner of the Lands to use and develop the Lands in accordance with the provisions of this Agreement.
- (f) Following termination of this Agreement development of the Lands shall continue to be governed by the section 219 Covenants attached as Schedule B and F.

(4) Interpretation and arbitration

20. (1) In the event of any dispute related to matters under the following provisions:
- (a) Schedule F [terms of section 219 Covenant];
 - (b) sections 3 and 4 [all issues related to the amenities and other terms and conditions];
 - (c) section 21 (7) to (10) [Assumption Agreement terms];
- and any failure to reach agreement on any matter related thereto, such dispute or disagreement may be submitted by either party to and be finally settled by a single arbitrator pursuant to the *Arbitration Act* (British Columbia), provided that it is understood and agreed that:
- (d) the Developer's ability to proceed with construction is not to be delayed while any arbitration related to any of the above matters other than Assumption Agreement terms occurs, but rather the Developer may proceed on the basis of the position it takes on any such matter, provided it first provides security to the Township by way of a clean irrevocable letter of credit securing the reasonable difference in cost of satisfying the matter according to the Developer's position and the costs of satisfying the matter according to the Township's position; and
 - (e) this section 20 is not intended to, nor is to be construed as, preventing the parties hereto, or either of them, from seeking relief from the courts to establish appropriate terms on which the Developer may proceed with construction pending an arbitration (i.e. regarding the scope of the dedication, obligation, Assumption Agreement terms, etc.);
- (2) If the parties cannot agree to a single arbitrator, then such arbitrator shall be chosen by reference to a Judge of the Supreme Court of British Columbia;

- (3) The parties shall share equally in the costs of:
 - (a) referring the choice of an arbitrator to a Judge of the Supreme Court of British Columbia, and
 - (b) any arbitration;
- (4) The determination made by a single arbitrator will be final and binding upon the Developer and the Township; and
- (5) The provisions of this section will be deemed to be a submission to arbitration within the provisions of the *Arbitration Act* (British Columbia), except on the question of arbitrator remuneration.

F.3 Rights and obligations upon title transfer

Rights of Developer

21. (1) Nothing in the Agreement in any way limits the right of the Developer to sell all, or any portion of, the Lands.

Rights of transferees – generally

- (2) In the event of a sale, the “class of persons” by whom the rights set out in this Agreement may be exercised without further consent by the Township, as contemplated by section 516 of the *Local Government Act*, is any company, partnership, individual or other entity to whom the Developer transfers the Lands, or individual parcels subdivided therefrom, other than companies, partnerships, individuals or entities that are in receivership or bankruptcy. By signing this Agreement, the Township gives its consent to the assignment of such rights to any party within such ‘class of persons’ consent, with such rights being as more particularly set out in subsections (4) through (10) inclusive of this section.
- (3) A company, partnership, individual or entity that is in receivership or bankruptcy may only exercise the rights set out in this Agreement if it first obtains the consent of the Township to the assignment of such rights.

Obligations of transferees – generally

- (4) Further to sections 503 and 516 of the *Local Government Act*, the terms of this Agreement are binding on all persons who acquire an interest in the land affected by this Agreement, with such obligations being as more particularly set out in subsections (5) through (10) inclusive of this section.

Obligations of the Developer and transferee – transfer of the whole of the Lands

- (5) In the event of a transfer of the whole of the Lands to a party within the “class of

persons” referenced in subsection (2), then:

- (a) this Agreement is, effective immediately upon such transfer, assigned to the transferee such as to be a Phased Development Agreement between the Township of the transferee, and enforceable as between the Township and the transferee;
- (b) the obligations of the Developer to the Township under this Agreement (as compared to the obligations of the transferee to the Township) will cease if, but only if, the Developer provides the Township with an acknowledgement signed by the transferee that the transferee assumes the obligations of the Developer under this Agreement; and
- (c) notwithstanding subsection (b), the Developer will not be released as regards any breach of this Agreement that occurred while the Developer was the owner of or had an interest in the Lands, unless the Township provides the Developer with a release to that effect.

Rights of transferee – transfer of a subdivided portion of the Lands

- (6) In the event of a transfer of any subdivided portion of the Lands:
 - (a) the transferee shall have all right, title, benefit, interest, privilege and advantage of the Developer further to Part E [Bylaw changes and development permits] of this Agreement in respect of the portion of the Lands transferred to the transferee, but only in respect of that portion of the Lands transferred; and
 - (b) for greater certainty, the agreement of the transferee is not and will not be required under Part E [Bylaw changes and development permits] of this Agreement on the issue of whether a change made to the Specified Bylaw Provisions is applicable to the development of lands other than the portion of the Lands transferred to the transferee;
 - (c) subject to subsection (8), the transferee:
 - (i) shall not have any rights under any provision of this Agreement other than those in Part E [Bylaw changes and development permits], as against either the Developer or the Township; and
 - (ii) notwithstanding subsection (1), the transferee shall have no rights, or remedies against either the Developer or the Township, in the event of the termination of this Agreement further to the provisions hereof.

Obligations of the Developer and the transferee – transfer of a subdivided portion of the Lands

- (7) Unless an Assumption Agreement is entered into between the Township, the Developer and the transferee, a transfer of a subdivided portion of the Lands does not in any way affect:
- (a) the rights and obligations of the Township as against the Developer (as compared to the transferee) under this Agreement;
 - (b) the rights and obligations of the Developer (as compared to the transferee) as against the Township under this Agreement; or
 - (c) the Township's right to terminate this Agreement (and by doing so terminate the rights of the transferee) under section 16 of this Agreement.
- (8) An Assumption Agreement under subsection (7), entered into between the Township, the Developer and the transferee, can provide that some or all of the rights and obligations of the Developer to the Township under this Agreement are transferred to the transferee and cease to be rights or obligations of the Developer, as set out in the Assumption Agreement.
- (9) Unless otherwise provided for in an Assumption Agreement under subsections (7) and (8), the obligation of the transferee in respect of a subdivided portion of the Lands includes an obligation to:
- (a) cooperate fully and promptly execute all documentation that the Developer may require; and
 - (b) provide all authorizations, access and information that the Developer may require
- to facilitate or enable the performance and discharge by the Developer of its rights and obligations under this Agreement.
- (10) In the event that a transferee transfers all or any part of the transferee's land to a subsequent transferee, the respective rights and obligations of the transferee and the subsequent transferee in respect of such part of the transferee's land, will, insofar as the matters dealt with in subsections (6), (7), (8) and (9) are concerned, be on the basis as set out in those subsections.
- (11) The Township will not act unreasonably in deciding whether to enter into an Assumption Agreement, including considering whether its interests are prejudiced in a substantial practical way.

G. Other

Binding Effect and statutory approval

22. This Agreement shall, subject to section 21, enure to the benefit of and be binding upon the parties hereto, and their respective successors and permitted assigns.
23. This Agreement does not restrict any discretion of the Township's Council or officials under its or their statutory powers, apart from the restrictions expressly provided for herein and as provided for at section 516 of the *Local Government Act*.
24. All obligations of the Developer hereunder are subject to the Developer being able to obtain all bylaw and statutorily required approvals therefor.

Further Acts

25. The Developer and the Township shall do all further acts as may be necessary for carrying out this Agreement, including without limitation execution of all required documentation and alterations required to achieve registration at the Land Title Office.

No Other Agreements

26. This Agreement is the entire agreement between the parties regarding its subject. It is mutually understood, acknowledged and agreed by the parties that the Township has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Developer other than those contained in this Agreement. For certainty, the parties also acknowledge and agree that they have also entered into covenant agreements, statutory right of way agreements, a development cost charge front-ender agreement, a latecomer agreement and an agreement of purchase and sale.

Time of the Essence

27. Time is of the essence of this Agreement.

Force Majeure

28. All obligations of the parties shall be suspended so long as the performance of such obligation is prevented, in whole or in part, by reason of labour dispute, fire, act of God, unusual delay by common carriers, earthquake, act of the elements, riot, civil commotion or inability to obtain necessary materials on the open market, and the period in which any party is required to perform any such obligation is extended for the period of such suspension. The impact of the Developer's financial circumstances upon the Developer's ability to perform this Agreement does not suspend the Developer's obligations under this Agreement. This provision does not extend the Term.

No Waiver

29. No provision of this Agreement is to be considered to have been waived by a party unless the waiver is expressed in writing by the party. The waiver by a party of any breach by another party of any provision is not to be construed as or constitute a waiver of any further or other breach.

Severability

30. If any part of this Agreement other than Part E [Bylaw changes and development permits] is held to be invalid, illegal or unenforceable by a Court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part. In the event that Part E is held to be invalid, illegal or unenforceable by a Court having jurisdiction to do so, such a holding shall not limit such nonconforming use protection as has accrued to the Developer or transferee under section 528 of the *Local Government Act* in connection with the subdivision and development of the Lands in keeping with the Site Plan, including by way of the doctrine of “commitment to use”, nor the application of the law related to unjust enrichment.

Interpretation

31. In this Agreement:
- (a) the headings and captions are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions;
 - (b) the word “including” when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope;
 - (c) a reference to currency means Canadian currency;
 - (d) a reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time and any statute or regulation that supplements or supersedes such statute or any such regulation;
 - (e) a reference to time or date is to the local time or date in Esquimalt, British Columbia;
 - (f) a word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa;
 - (g) a reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice; and
 - (h) a reference to a section means a section of this Agreement, unless a specific reference is provided to a statute.

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

Indemnity and Release

33. (a) The Developer shall indemnify and keep indemnified the Township from any and all claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever, whether based in law or equity, whether known or unknown, which anyone has or may have against the Township or which the Township incurs as a result of any loss, damage or injury, including economic loss or deprivation, arising out of or connected with or any breach by the Developer of this Agreement.
- (b) The Developer hereby releases, saves harmless and forever discharges the Township of and from any claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever which the Developer can or may have against the Township, whether based in law or equity, whether known or unknown, for any loss, damage or injury, including economic loss or deprivation, that the Developer may sustain or suffer arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement, the provisions of the Amenities and the development of the Lands as contemplated under this Agreement, or any breach by the Developer of any covenant in this Agreement, save and except as a result of any breach by the Township of this Agreement.
- (c) The indemnity and release provisions of sections 33(a) through (c) shall survive the expiry or termination of this Agreement.

Notice

34. A notice, demand, statement, request or other evidence required or permitted to be given hereunder must be written and will be sufficiently given if delivered in person or transmitted by facsimile addressed as follows:
- (a) if to the Developer:

ARAGON ESQUIMALT TC PROPERTIES LTD.

Attention: Lenny Moy
201-1628 1st Ave West
Vancouver, BC V6J 1G1
Telephone: 604-732-6170

E-mail: lmoy@aragon.ca
with copies to:

BAILLIE LAW CORPORATION
Barristers & Solicitors
Suite 1870 – One Bentall Centre
Vancouver, B.C. V7X 1M6

Attention: Thomas E. Baillie, Q.C.
Fax No. (604) 684-9997
Email: teb@baillielaw.com

(b) if to the Township:

TOWNSHIP OF ESQUIMALT
Attention:
1229 Esquimalt Road
Esquimalt, BC V9A 3P1

Attention: Laurie Hurst

Telephone: 250-414-7133

E-mail: laurie.hurst@esquimalt.ca
with a copy to:

LIDSTONE & COMPANY
Barristers and Solicitors
Suite 1300 – Sun Tower
128 Pender Street West
Vancouver, B.C. V6B 1R8

Attention: Don Lidstone, Q.C.

Fax No. 604-899-2281

Email: lidstone@lidstone.ca

and a party at any time may give notice to the others of a change of address after which the address so specified will be considered to be the address of the party who gave the notice. Any notice, demand, statement, request or other evidence delivered in person will be considered to have been given at the time of personal delivery and any notice, demand, statement, request or other evidence transmitted by facsimile will be considered to have been given to the party to whom it is addressed on the next business day following the date of such transmission.

Execution

35. This agreement may be executed in counterparts, and such counterparts together shall constitute a single instrument.

Costs

36. Every obligation of the Developer under this Agreement must be satisfied by the Developer at its sole cost.

Schedules

37. The following schedules are annexed to and form part of this Agreement:

Schedule “A” – Lands

Schedule “B” – Site Plan

Schedule “C” – Form for Agreement to Bylaw Changes

Schedule “D” – Specified Bylaw Provisions

Schedule “E” – Enforcement Covenant

Schedule “F” – Green Building Features

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

ARAGON ESQUIMALT TC PROPERTIES LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

TOWNSHIP OF ESQUIMALT

Per: _____

Per: _____

SCHEDULE A

LANDS

PID: 029-349-311

LOT 1, SECTION 11, SUBURBAN LOT 40, ESQUIMALT DISTRICT, PLAN EPP32782

SCHEDULE B

SITE PLAN

The Site Plan comprises Schedules A and B of the MOU. The phasing shall be as determined by the Developer, acting reasonably, subject to commitments of the Developer under this Agreement and the MOU in respect of the Library and the lease to the Justice Institute of British Columbia.

SCHEDULE C

FORM FOR AGREEMENT TO BYLAW CHANGES

This AGREEMENT dated for reference the ____ day of _____, _____

BETWEEN:

ARAGON ESQUIMALT TC PROPERTIES LTD.

201-1628 1st Ave West
Vancouver, BC V6J 1G1

(the “**Developer**”)

AND:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Esquimalt, BC V9A 3P1

(the “**Township**”)

WHEREAS:

A. The Township has entered into a Phased Development Agreement authorized by Bylaw No. _____ dated the _ day of _ , _____ (the “**PDA**”);

B. The Developer is the registered owner of the lands described below, being all or part of the lands that are the subject of the PDA:

[set out legal description] (the “**Lands**”);

C. The Township has, pursuant to Bylaw No. _____, _____ amended the provisions of its Zoning Bylaw or Subdivision Bylaw as set out below:

[set out the amendments that the Township and the Developer agree apply to the Lands]

(the “**Amended Provisions**”)

D. The Developer and the Township wish to agree that the Amended Provisions apply to the Lands;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT:

1. The Developer and the Township hereby agree, further to section 516 of the *Local Government Act*, that the Amended Provisions apply to the development of the Lands.
2. Apart from the amendment of the Amended Provisions, the agreement of the Township and the Developer hereunder is not intended to, and does not, in any way:
 - (a)) limit or otherwise alter the rights and responsibilities of the Developer and the Township under the PDA, which shall continue in full force and effect, and be enforceable by both parties, notwithstanding section 1; or
 - (b) impact lands that may be the subject of the PDA other than the Lands.
3. Without limiting the generality of section 1, the Township and the Developer, noting that neither the definition of Specified Bylaw Provisions in the PDA, nor the provisions of the PDA relating to the Specified Bylaw Provisions, have been amended, agree and confirm that:
 - (a)) the foregoing agreement in respect of the Amended Provisions does not imply, and shall not be construed as implying, that the Developer has waived the protection that the PDA provides to it in respect of the Specified Bylaw Provisions, apart from the application of the Amended Provisions; and
 - (b) any further or subsequent changes to the Township's Zoning Bylaw or Subdivision Bylaw made by the Township that fall within the definition of Specified Bylaw Provisions in the PDA, other than the Amended Provisions, shall not apply to the development of the Lands unless the Developer agrees in writing that they apply on the basis set out at sections 2 and 3 of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

THE DEVELOPER by its authorized signatory

Per: Authorized Signatory

THE TOWNSHIP OF ESQUIMALT by its authorized signatories

Per: Authorized Signatory

Per: Authorized Signatory

SCHEDULE D

SPECIFIED BYLAW PROVISIONS

The Specified Bylaw Provisions are the:

- (a) Zoning Bylaw; and
- (b) Subdivision Bylaw.

SCHEDULE E
ENFORCEMENT COVENANT

TERMS OF INSTRUMENT - PART 2

W H E R E A S:

- A. The Grantor is the registered owner in fee simple of:
- PID
- (the "**Lands**");
- B. The Grantee is the Township of Esquimalt;
- C. The Grantor has agreed to develop the Lands in accordance with a Phased Development Agreement dated for reference the day of , 2013 and made between the Grantor and the Grantee (the "**Phased Development Agreement**").

NOW THEREFORE, in consideration of the payment of the sum of \$10.00 by the Grantee to the Grantor and the premises and the covenants herein contained and for other valuable consideration, receipt and sufficiency of which is hereby acknowledged by the parties, each of the parties hereto covenants and agrees with the other as follows:

1. In this Covenant the following terms have the following meanings:
- (a) "**Development**" means the Development of the Lands contemplated by the Phased Development Agreement and includes an activity that alters the Lands or any vegetation on the Lands in preparation for or in connection with the installation on the Lands of buildings, improvements, works or services, including without limitation, a highway;
- (b) "**Grantor**" means _____; and
- (c) "**Grantee**" means _____.

2. The Grantor covenants with the Grantee that it will construct and cause to be constructed any building or structure on the Lands in accordance with the Phased Development Agreement and the Development Permit issued in respect the Lands Under No. _____.
3. If the Grantor is in breach of an obligation under the Phased Development Agreement, or the Grantee terminates the Phased Development Agreement as a result of a breach of the Phased Development Agreement by the Grantor, the Grantor covenants that it will not further subdivide the Lands, under the *Land Title Act (British Columbia)* or the *Strata Property Act (British Columbia)* or Regulations under those Acts without the consent of the Township.
4. The restrictions and covenants herein contained shall be covenants running with the Lands and shall be perpetual, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Land Title Office pursuant to section 219 of the *Land Title Act*. Notwithstanding the foregoing, the Grantee agrees to discharge this Agreement from title to the Lands (or the applicable portion thereof) forthwith upon the issuance by the Township of an occupancy permit in respect of any building constructed on the Lands (or the applicable portion thereof).
5. The Grantor and the Grantee agree that the enforcement of this Agreement shall be entirely within the discretion of the Grantee and that the execution and registration of this covenant against the title to the Lands shall not be interpreted as creating any duty on the part of the Grantee to the Grantor or to any other person to enforce any provision or the breach of any provision of this Agreement.
6. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantee in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Grantor.
7. The Grantor hereby releases and forever discharges the Grantee, its officers, employees and agents, of and from any claim, cause of action, suit, demand, expenses, costs and expenses, and legal fees whatsoever which the Grantor can or may have against the said Grantee for any loss or damage or injury, including economic loss, that the Grantor may sustain or suffer arising out of the breach of this Agreement by the Grantor or a party for whom the Grantor is at responsible at law.
8. The Grantor covenants and agrees to indemnify and save harmless the Grantee, its officers, employees and agents, from any and all claims, causes of action, suits, demands,

expenses, costs and expenses, and legal fees whatsoever that anyone might have as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or by anyone who suffers loss of life or injury, including economic loss, to his person or property, that arises out of the breach of this Agreement by the Grantor or a party for whom the Grantor is at responsible at law.

9. It is mutually understood, acknowledged and agreed by the parties hereto that the Grantee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Grantor other than those contained in this Agreement.
10. This Agreement shall be registered as a first charge against the Lands and the Grantor agrees to execute and deliver all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
11. The Grantor shall pay the legal fees of the Grantee in connection with the preparation and registration of this Agreement. This is a personal covenant between the parties.
12. The Grantor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions hereinbefore set out. Notwithstanding the foregoing, it is understood and agreed by the Grantee that this Agreement shall only be binding upon the Grantor as personal covenants during the period of its ownership of the Lands.
13. This Agreement shall enure to the benefit of the Grantee and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.
14. Wherever the expressions "Grantor" and "Grantee" are used herein, they shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.
15. The Grantor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
16. Time is of the essence of this Agreement.
17. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.

*, the registered holder of a charge by way of * against the within described property which said charge is registered in the Land Title Office under number *, for and in consideration of the sum of One (\$1.00) Dollar paid by the Grantee to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Grantee, its successors and assigns, that the within section 219 Covenant shall be an encumbrance upon the within described property in priority to the said charge in the same manner and to the same effect as if it had been dated and registered prior to the said charge.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C (pages 1 and 2) attached hereto.

SCHEDULE F GREEN BUILDING FEATURES

Green Building Strategies Summary w letterhead - file

Page 1 of 3

May 4, 2016

Esquimalt Town Square Project: Summary of Green Building Strategies

The DAU team has employed an ecological urbanism approach to the Esquimalt Town Square project. This approach draws upon our formal environmental design expertise and experience with planning and architectural projects. Ecological urbanism means community planning has been considered comprehensively, from the level of the watershed catchment area through to the climate aspects of the Esquimalt Town Square site. Buildings, open spaces and infrastructure patterns of the community, are considered to be integrated parts of the ecology of the site and accordingly.

For the Public Library and the building intended as the future home of the Justice Institute, LEED Certification will not be sought. The green building strategies and so, as an incentive program, the Canadian Green Building program is not deemed applicable.

The design process for Esquimalt Town Square has given significant priority to energy production, daylighting, adaptability to change, and the long-term sustainability of the infrastructure. Material palettes and technical methods that adhere to green building principles are incorporated into the architecture and site design.

Passive solutions have been given priority over mechanically dominant and highly controlled systems such as community recycling, heating, lighting, rainwater control, etc. The viability for geothermal systems has been investigated for heating and cooling. On-site storm-water management will be explored through solutions such as rain gardens and cisterns. Environmental principles underlay the proposed development. A consultative approach by a multi-disciplinary, integrated design team is the development approach to the project, from the outset.

This project is considered part of the urban regeneration and densification of Esquimalt. The principles of resilient, sustainable community planning. Towards this end, the principles of 'Complete Communities' underlay the Esquimalt Square proposal.

The design team includes professionals with Canadian Green Building Council LEED-registered environmental responsibility as a natural priority throughout the design of this project.

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the core of the design process. The following are specific strategies that are deployed on the Town Square project.

Green Mobility

- i. Promote use of alternative methods of transportation including provision of bicycle racks and electric vehicle charging stations. Minimum requirements of the Township of Esquimalt's bylaws.
- ii. Electric vehicle charging stations will be provided for 20% of the total parking to provide for electric vehicles.
- iii. Promote pedestrian movement throughout the site by incorporation of an "art walk" and adjacent public streets at multiple locations.

Water Management

- i. Low flow plumbing fixtures and water efficient appliances will be specified in all buildings.
- ii. Selection of native and adaptive planting and water efficient irrigation techniques to reduce water consumption.
- iii. Collection of rainwater for use in landscape features.
- iv. Limit conventional turf for landscaping.

D'AMBROSIO architects + urbanists

Enhanced Building Performance

- i. Energy modelling has been commissioned to ensure high energy performance in all buildings.
- ii. Enhanced wall insulation to exceed minimum building code requirements.
- iii. Incorporate use of heat recovery units in residential suites for superior heating and cooling.
- iv. Incorporate energy star rated appliances.
- v. Incorporate no or low VOC emitting paints and finishes.
- vi. Incorporate motion sensors in underground garage lighting to reduce energy consumption.
- vii. Buildings are designed to manage solar heat gains.

Sincerely,



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Franc D'Ambrosio, architect maibc mraic
D'AMBROSIO architecture + urbanism

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