

PURCHASE AND SALE AGREEMENT

For acquisition of new Esquimalt Branch of the Greater Victoria Public Library

THIS AGREEMENT is dated for reference October 16, 2017.

BETWEEN:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT
1229 Esquimalt Road
Esquimalt, BC V9A 3P1

(“Esquimalt”)

AND:

ARAGON ESQUIMALT TC PROPERTIES LTD. (INC. NO. BC1068481)
201-1628 1st Ave West
Vancouver, BC V6J 1G1

(“Aragon”)

WHEREAS:

- A. Aragon has been assigned the rights and obligations of Aragon Investments Ltd. under the Original Purchase and Sale Agreement herein described to acquire the Lands herein described situate in the Township of Esquimalt, British Columbia, and more particularly known and described as:

Parcel Identifier: 029-349-311, LOT 1, SECTION 11, SUBURBAN LOT 40, Esquimalt District, PLAN EPP32782;
- B. Aragon wishes to develop the Lands pursuant to the Phased Development Agreement and the Library Construction Contract herein described;
- C. In accordance with the Prior Agreements herein described, part of the development of the Lands will include the design and construction of the Library herein described which Library will be transferred to Esquimalt in accordance with the terms of this Agreement;

THEREFORE, In consideration of the covenants and agreements contained in this Agreement, the sum of \$1.00 now paid by Esquimalt to Aragon, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties covenant and agree with each other as follows:

2. AGREEMENT

2.1 Purchase and Sale

In accordance with the terms and conditions of this Agreement:

- (a) Aragon will on the Closing Date transfer the Library to Esquimalt with the fee simple title in the Library conveyed as either a strata lot within the Library Building or as a separate legal parcel created by means of air space parcel subdivision;
- (b) the parties shall jointly elect at least 60 days before the Closing Date which form of title shall be conveyed to Esquimalt under section (a) and in the event of disagreement between them, title to the Library shall be conveyed as a separate legal parcel created by means of air space parcel subdivision;
- (c) the parties agree that if title to the Library is conveyed to Esquimalt as a strata lot in the Library Building, the Library Building must be structured as a stand-alone commercial strata corporation; and
- (d) for greater certainty, Aragon shall be responsible for all costs of subdivision of the Library from the Library from the Lands or the Library Building as the case may be.

2.2 Definitions

In this Agreement:

- (a) “**Business Day**” means Monday to Friday inclusive of each week, excluding any day which is a statutory holiday in British Columbia and any day when the LTO is closed for business;
- (b) “**Closing Date**” means the date that is the first Business Day occurring ten (10) days after substantial completion of the Library under the Library Construction Contract, or such other date as the parties may mutually agree;
- (c) “**Joint Agreements**” means an easement, covenant and such other agreements as may be required in respect of access, use, occupancy, fire, building and safety protection measures, cost sharing and related issues in respect of the Library and the Library Building;
- (d) “**Lands**” means, collectively, those lands and premises set out in paragraph A of the preamble of this Agreement;
- (e) “**Library**” means the new Esquimalt branch of the Greater Victoria Public Library to be designed and constructed by Aragon in accordance with the Prior Agreements, to be located in the Library Building and on a portion of the Lands;
- (f) “**Library Building**” means the building that will house the Library and that will be constructed on a portion of the Lands in accordance with the Phased Development Agreement;
- (g) “**Library Construction Contract**” means the agreement between Esquimalt and Aragon dated for reference July 17, 2017 for the design and construction of the Library;
- (h) “**Library Construction Payment**” means any portion of the Construction Price that remains payable by Esquimalt to Aragon under the Library Construction Contract on the Closing Date;
- (i) “**LTO**” means the Victoria Land Title Office;

- (j) “**Original Purchase and Sale Agreement**” means the agreement of purchase and sale between Esquimalt and Aragon Investments Ltd for the purchase of the Lands dated for reference April 26, 2016;
- (k) “**Permitted Encumbrances**” means and includes the liens, charges and encumbrances listed or referred to in Schedule A;
- (l) “**Phased Development Agreement**” means the agreement under sections 515 through 522 of the *Local Government Act* between Esquimalt and Aragon dated for reference October 13, 2017;
- (m) “**Prior Agreements**” means the Phased Development Agreement and the Library Construction Contract;
- (n) “**Public Spaces Operating Agreement**” means the agreement between Aragon and Purchaser dated for reference October 13, 2017 governing public access, operation, maintenance, repair and cost sharing for the public spaces and public access routes developed on the Lands;
- (o) “**Purchase Price**” has the meaning ascribed to it in section 3.1;
- (p) “**Purchaser’s Solicitors**” means Lidstone & Company, Barristers & Solicitors or such other law firm as the Purchaser may designate;
- (q) “**Sales Taxes**” means Goods and Services Tax, Harmonized Sales Tax, value added Tax or similar and other such taxes;
- (r) “**Statement of Adjustments**” has the meaning described in section 7.2(b) of this Agreement;
- (s) “**Transfer**” has the meaning described in section 7.2(a) of this Agreement; and
- (t) “**Vendor’s Solicitors**” means Baillie Law Corporation or such other law firm as the Vendor may designate.

3. PRICE, DEPOSIT AND PAYMENT

3.1 Purchase Price

Subject to the terms and conditions of this Agreement, the consideration for the transfer of the Library under this Agreement will be one dollar (\$1.00) (the “**Purchase Price**”), exclusive of Sales Taxes.

3.2 Payment of Purchase Price

Esquimalt will pay the Purchase Price, subject to adjustments, at the direction of Aragon on the Closing Date as provided in part 7 of this Agreement.

3.3 Deposit

There will be no deposit provided in connection with this Agreement.

4. ACCESS, INFORMATION AND REPRESENTATION

4.1 Access

Esquimalt and its authorized representatives, consultants and agents will, upon reasonable prior notice, be given reasonable access to the Lands and may, acting reasonably, carry out such tests, inspections and surveys as Esquimalt may consider appropriate for the purposes of this Agreement. Esquimalt will repair any damage to the Lands arising from such entry and use reasonable efforts to restore the Lands to the condition in which they existed prior to such entry and will indemnify and hold Aragon harmless from any and all liabilities, actions, costs, damages and liens (including builders' liens) arising from the entry of Esquimalt or its representatives, consultants and agents on the Lands pursuant hereto.

4.2 Authorizations

Aragon will, at Esquimalt's request, promptly execute and deliver any authorizations reasonably required by Esquimalt to permit statutory or governmental authorities to release information to Esquimalt concerning the Lands or title thereto.

4.3 Representations of Aragon

Aragon represents and warrants to Esquimalt that as of the Closing Date, it will have full and sufficient authority to convey legal title and beneficial ownership of the Library to Esquimalt in accordance with this Agreement.

5. CONDITIONS AND JOINT AGREEMENTS

5.1 Purchaser's Conditions

Esquimalt's obligation to purchase the Library is subject to the following conditions (the "**Purchaser's Conditions**") on or before the Closing Date:

- (a) Aragon shall not be in breach of any of its obligations under the Phased Development Agreement;
- (b) the Library shall be completed in accordance with the Library Construction Contract;
- (c) the parties shall have agreed to the Joint Agreements; and
- (d) all governmental approvals and permits shall have been issued in respect of Esquimalt's ownership and occupation of the Library.

Esquimalt's Conditions are for the sole benefit of Esquimalt and may be waived in writing on or before the Closing Date.

5.2 Vendor's Conditions

Aragon's obligation to transfer the Library to the Purchaser is subject to the Purchaser's full payment of the Contract Price to Aragon under the Library Construction Contract.

5.3 Joint Agreements

For greater certainty, the parties agree that the Joint Agreements shall include a provision that the Library's share of the operating costs in the Library Building will be a proportionate share of the operating costs for the entire Library Building, including the Library Building's share of costs under the Public Spaces Operating Agreement, based on the following formula: Library's share of operating costs = total operating costs for Library Building X Gross floor area of Library/Gross floor area of Library Building.

6. PURCHASER'S DEVELOPMENT

6.1 Vendor's Approvals and Cooperation

Aragon, acting reasonably and in its capacity as land owner, will execute all applications, consents or forms for approval or licenses and permits as may reasonably be requested by Esquimalt as part of its permit applications to acquire the Library.

7. CLOSING DATE AND PROCEDURE

7.1 Closing Date

The date for completion of the purchase of the Library will be the Closing Date.

7.2 Vendor's Closing Documents

On or before the Closing Date, Aragon will deliver to Esquimalt's Solicitors, properly executed and in registrable form where applicable, the following documents:

- (a) Form A – freehold transfer (the “**Transfer**”), transferring title of the Library to Esquimalt, free and clear of all liens, charges, claims and encumbrances, save and except the Permitted Encumbrances;
- (b) a statement of adjustments for the purchase and sale of the Library (the “**Statement of Adjustments**”);
- (c) discharges in registrable form of all liens, charges, claims and encumbrances not constituting Permitted Encumbrances against the Library or undertakings from Aragon's Solicitors, satisfactory to Esquimalt's Solicitors, acting reasonably, to discharge such liens, charges, claims and encumbrances within a reasonable time after the Closing Date; and
- (d) such further and other documents as Esquimalt's Solicitors, acting reasonably, may require.

7.3 Purchaser's Closing Documents

On or before the Closing Date, Esquimalt will duly execute and deliver to Aragon's Solicitors the following:

- (a) a certificate satisfactory to Aragon's Solicitors, acting reasonably, and sufficient to relieve Aragon from any obligation to collect and remit any Sales Taxes with respect to the sale of the Library to Esquimalt and an indemnity of Aragon in respect thereof;

- (b) the Statement of Adjustments; and
- (c) such further and other documents as Aragon's Solicitors, acting reasonably, may require;

and Esquimalt will deliver to Esquimalt's Solicitors by wire transfer, bank draft or certified cheque drawn on a Canadian chartered bank in British Columbia payable to Esquimalt's Solicitors, in trust, in an amount equal to the Purchase Price (as adjusted in accordance with the Statement of Adjustments) and the Library Construction Payment.

7.4 Registration

Following receipt by Esquimalt's Solicitors of the funds referred to in section 7.3 and of the documents and items referred to in section 7.2 and receipt by Aragon's Solicitors of the documents referred to in section 7.3, Esquimalt will cause Esquimalt's Solicitors to submit the Transfer for registration in the LTO. Esquimalt's Solicitors will undertake to Aragon's Solicitors that if the Purchase Price and the Library Construction Payment are not paid to Aragon on the Closing Date, they will, upon the written request of Aragon's Solicitors, forthwith cause the application for registration of the Transfer to be withdrawn and cancelled with respect to the Library.

7.5 Closing Procedure

Forthwith following the filings referred to in section 7.4 and upon Esquimalt's Solicitors, acting reasonably, being satisfied as to the title to the Library, after conducting a post-submission LTO search of the Library disclosing only the following:

- (a) the Permitted Encumbrances;
- (b) pending number(s) assigned to the Transfer; and
- (c) any other charges and encumbrances approved by Esquimalt;

Esquimalt will cause Esquimalt's Solicitors to deliver to Aragon's Solicitors by wire transfer, bank draft or a certified trust cheque drawn on a Canadian chartered bank, an amount equal to the balance due to Aragon in respect of the Purchase Price and Library Construction Payment (evidenced by the Statement of Adjustments).

7.6 Completion of Closing

Registration of all the requisite documents in the LTO on the Closing Date and all matters of payment and delivery of documents by each party to the other in respect of the Closing Date will be deemed to be concurrent requirements of closing.

8. DOCUMENTS, COSTS AND TAXES

8.1 Registration Fees and Property Transfer Tax

Esquimalt will pay the Property Transfer Tax and fees for the registration of the Transfer and any other documents required by Esquimalt to be filed in the LTO in respect of the purchase and sale transaction contemplated by this Agreement.

8.2 Closing Documents

Unless otherwise agreed between Aragon's Solicitors and Esquimalt's Solicitors, each acting reasonably, Esquimalt's Solicitors will prepare the documents required to be delivered by the parties for the purposes of closing, all of which documents will be delivered for execution at least 3 Business Days prior to the Closing Date and will be in form approved by Esquimalt's Solicitors and Aragon's Solicitors, each acting reasonably.

8.3 Cost to Clear Title

The cost of obtaining and registering any documents required to clear title to the Library of any liens, claims or encumbrances not constituting Permitted Encumbrances will be borne by Aragon.

8.4 Sales Taxes

Esquimalt is responsible for all Sales Taxes in respect of the purchase and sale of the Library contemplated herein and will be responsible to account for Sales Taxes in respect thereof in accordance with applicable legislation.

9. POSSESSION

9.1 Possession

Esquimalt will be entitled to vacant possession of the Library on the Closing Date, immediately following payment of the Purchase Price.

10. ADJUSTMENTS

10.1 Adjustments

Property taxes and similar charges, if applicable, and all other matters relating to the Library and customarily the subject of adjustment on the sale of comparable lands will be adjusted and pro-rated between Aragon and Esquimalt as at the Closing Date and Aragon will bear and pay all expenses and receive all income, if any, related to the Library accrued in respect of any time prior to the Closing Date and Esquimalt will bear and pay all expenses related to the Library which accrue in respect of any time from and including the Closing Date. If the Library are exempt from property taxes and similar charges as of the Closing Date, Esquimalt must pay Aragon an amount equal to the pro rata amount of property taxes and similar charges that would have been payable if the Library were not exempt. This amount will be included in the Statement of Adjustments.

11. CONDITION OF LANDS

11.1 Condition of Lands

Esquimalt hereby waives any requirement for Aragon to provide Esquimalt with a site profile under the *Environmental Management Act* (British Columbia).

12. RISK

12.1 Risk

The Library will be at the risk of Aragon up to the time of submission for registration of the Transfer in the LTO, and will be at the risk of Esquimalt thereafter.

13. MISCELLANEOUS

13.1 Tender

Any tender of documents or money may be made upon a party or upon its solicitors and money may be tendered by certified solicitor's cheque or bank draft drawn on a Canadian chartered bank.

13.2 Time of Essence

Time will be of the essence of this Agreement.

13.3 Business Days

In the event that any date established or stipulated herein for performance or for the expiry of a period of time falls upon a day which is not a Business Day, then such date will be deemed to be the next following Business Day.

13.4 Interpretation

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

13.5 Notices

Any notice to be given under this Agreement will be in writing and will be validly given if delivered, transmitted by facsimile or email or mailed in British Columbia by prepaid registered post to the parties as follows:

(a) To Aragon at:

ARAGON ESQUIMALT TC PROPERTIES LTD.

Attention: Lenny Moy
201-1628 1st Ave West
Vancouver, BC V6J 1G1
Telephone: 604-732-6170
E-mail: vancouver@aragon.ca

(b) To Aragon at:

Township of Esquimalt
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: Lindsay Parcels
Fax No. 604-899-2281
Email: parcels@lidstone.info

or to such other address, email or facsimile number as a party may advise the other by written notice hereunder. Any notice addressed and provided as aforesaid will be deemed to have been given on the day of delivery or transmission by email or facsimile if a Business Day, and if not a Business Day, then on the next Business Day or if mailed, on the third Business Day following the posting thereof. Notices will not be mailed during the currency of a postal strike, dispute or slowdown, and during such time, notice will only be effective if emailed or transmitted (without a failure notice) or if delivered.

13.6 Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the sale and purchase of the Library and supersedes all prior agreements, negotiations and discussions, whether oral or written, of Aragon and Esquimalt. There are no agreements, covenants, representations or warranties, express, implied, statutory, collateral or otherwise, save as set forth herein.

13.7 Amendment in Writing

This Agreement will not be amended except in writing.

13.8 Survival

All representations and warranties, if any, of Aragon or Esquimalt in this Agreement or in any document delivered in connection herewith will survive the closing of the sale and purchase of the Library for a period of one year from the Closing Date, after which they will be of no further force or effect except in respect of claims made by either party within such one year period.

13.9 Assignment

This Agreement is not assignable by either party without the prior written consent of the other party.

13.10 Agency and Commission

Esquimalt warrants to Aragon that Esquimalt has not utilized the services of any real estate agent or salesperson in connection with the purchase or sale of the Library to whom any fees, commission or compensation would be payable by Aragon. Aragon will be solely responsible for any real estate commission payable to any real estate agent that Aragon has engaged in respect of the sale of the Library.

13.11 Confidentiality

This Agreement, and the information it contains, may be the subject of an access to information request made to Esquimalt under the *Freedom of Information and Protection of Privacy Act* and Aragon and Esquimalt agree that Esquimalt may be obliged by that enactment to disclose all or part of this Agreement and the information it contains and all or part of any information of Aragon supplied to Esquimalt in connection with this Agreement, whether or not Aragon has expressly stipulated that the information in question is confidential for the purposes of that enactment.

13.12 Costs and Expenses

Each of the parties will bear their own costs, expenses and legal fees incurred or to be incurred in negotiating and preparing this Agreement and otherwise in connection with this transaction.

13.13 References

Wherever the singular or masculine is used in this Agreement, the same will be deemed to include references to the plural, feminine or body corporate or politic, as the context may require.

13.14 Governing Law

This Agreement will be governed by and construed in accordance with the laws of British Columbia and Aragon and Purchaser hereby attorn to the jurisdiction of the courts of British Columbia.

13.15 Binding Effect

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

13.16 Execution in Counterparts or by Facsimile

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

END OF PAGE

13.15 Binding Effect


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

13.16 Execution in Counterparts or by Facsimile

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

IN WITNESS WHEREOF this Agreement has been executed and delivered.

ARAGON ESQUIMALT TC PROPERTIES LTD.

Per: 
Authorized Signatory
Lenny Moy, President
Per: _____
Authorized Signatory

TOWNSHIP OF ESQUIMALT

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

IN WITNESS WHEREOF this Agreement has been executed and delivered.

ARAGON ESQUIMALT TC PROPERTIES LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

TOWNSHIP OF ESQUIMALT

Per: Barbara Desjardins
Authorized Signatory *Barbara Desjardins, Mayor*

Per: L. Hurst
Authorized Signatory *Laurie Hurst, CAO.*

SCHEDULE A

PERMITTED ENCUMBRANCES

1. The encumbrances, rights, and exceptions, restrictions, provisos, conditions and reservations referred to in Section 23(2) of the *Land Title Act*.
2. The Joint Agreements.