

NO. 13-063

HOUSING AGREEMENT (80 SAGHALIE ROAD) BYLAW**A BYLAW OF THE CITY OF VICTORIA**

The purpose of this Bylaw is to authorize an agreement for supportive seniors' housing for the lands known as 80 Saghalie Road, Victoria, BC.

Under its statutory powers, including section 905 of the *Local Government Act*, the Council of The Corporation of the City of Victoria enacts the following provisions:

Title

- 1** This Bylaw may be cited as the "HOUSING AGREEMENT (80 SAGHALIE ROAD) BYLAW".

Agreement authorized

- 2** The Mayor and the City's Corporate Administrator are authorized to execute the Housing Agreement
- (a) substantially in the form attached to this Bylaw as Schedule A;
 - (b) between the City and Bayview Properties Ltd. or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 80 Saghalie Road, legally described as:
Lot 4, District Lot 119, Esquimalt District, Plan VIP74716.

READ A FIRST TIME the **12th** day of **September,** 2013.

READ A SECOND TIME the **12th** day of **September,** 2013.

READ A THIRD TIME the **12th** day of **September,** 2013.

ADOPTED on the **24th** day of **October,** 2013.

CORPORATE ADMINISTRATOR

MAYOR

HOUSING AGREEMENT
(Pursuant to Section 905 of the *Local Government Act*)

THIS AGREEMENT is made the ____ day of _____, 20__.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

#1 Centennial Square
Victoria, BC V8W 1P6

(the "City")

OF THE FIRST
PART

AND:

BAYVIEW PROPERTIES LTD. (Inc. No. C0958965)

80 Saghalie Road
Victoria, BC V9A 0B8

(the "Owner")

OF THE SECOND
PART

AND:

CDPQ MORTGAGE INVESTMENT CORPORATION
(Extrajurisdictional Reg. No. A0052097) (as to priority only)

OF THE THIRD
PART

WHEREAS

- A. Under Section 905 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 905(2) of the *Local Government Act*;
- B. The Owner is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 80 Saghalie Road and legally described

as: PID: 025-563-475 LOT 4, District Lot 119, Esquimalt District, Plan VIP74716 (the "Lands").

- C. The Owner proposes to subdivide the Lands to create Parcel A (Lot A) and Parcel B (Lot B) as shown on the Tentative Plan of Subdivision, a copy of which is attached as Schedule "A" hereto (the "Plan of Subdivision").
- D. The Owner proposes to construct upon Lot A the Development, which will include Seniors' Housing-Assisted Living, and Seniors' Housing-Independent Living with associated Accessory Facilities, but may elect not to construct the Development thereon.
- E. In order to develop Lot A as proposed, the Owner has applied to the City to rezone the Lands;
- F. Some of the Dwelling Units may be stratified and therefore will be subject to the *Strata Property Act* (British Columbia) and the bylaws of the Strata Corporation, but the intent of this Housing Agreement is to ensure the perpetual availability of rental units (in addition to owner-occupied units, if stratified) and the availability of supportive seniors' housing;
- G. The City and the Owner wish to enter into this Agreement, as a Housing Agreement pursuant to Section 905 of the *Local Government Act*, to establish the terms and conditions regarding the occupancy of the residential units identified in this Housing Agreement; and
- H. Performance of this Agreement by the Owner is a condition, as contemplated by s.904 of the *Local Government Act*, of the Owner becoming entitled to certain density bonuses respecting the development of the Lands.

NOW THIS AGREEMENT WITNESSES that pursuant to Section 905 of the *Local Government Act*, and in consideration of the premises and covenants contained in this Agreement, the parties agree each with the other as follows:

1.0 Definitions

1.1 In this Agreement:

"**Accessory Facilities**" means, collectively, all of the following: commercial grade kitchen, commercial dining area, laundry facility, entertainment room, recreation and hobby room, administrative office space and landscaped outdoor gathering area, for the exclusive use of an Eligible Person who occupies a Dwelling Unit and their permitted guests but does not mean or include any other commercial space, as permitted within the *Rezoning Bylaw*, to be constructed by the Owner within the Development.

"Base Density" means a floor space ratio that exceeds .72:1.

"CPI" means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function, where Occupancy Permit Year = 100.

"Daily Amount" means \$100 per day as of December 31, 2013 adjusted thereafter by an amount determined by multiplying \$100.00 by the percentage changes in the CPI since December 31, 2013 to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to section 7.3 herein.

"Development" means proposed multiple residential buildings to be constructed on Lot A with a floor space ratio that exceeds the Base Density.

"Dwelling Unit" means a residential self-contained dwelling unit within the Development, and includes a Seniors' Housing-Assisted Living Unit and a Seniors' Housing-Independent Unit and any Dwelling Unit that is developed on the Lands in future, whether as part of the Development or otherwise.

"Eligible Person" means a person of the age of at least 65 years or a Person with a Disability.

"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.

"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.

"Occupancy Permit Year" means the calendar year in which the City issues an occupancy permit for a Dwelling Unit.

"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 6.1.

"Person with a Disability" means a person who, in the written opinion of a medical doctor or registered psychologist, has a significant permanent disability that cannot be significantly improved by medical treatment, and that produces a loss or impairment of physical or mental ability.

"Rezoning Bylaw" means Zoning Regulation Bylaw 12-084, Amendment Bylaw (No. 948).

"Seniors' Housing-Assisted Living Unit" means a Dwelling Unit within a building where regular care or supervision is given to the occupant of that Dwelling Unit by a health care professional, as well as assistance with the performance of the personal functions and activities necessary for daily living.

"Seniors' Housing-Independent Living Unit" means a Dwelling Unit within a building that includes ancillary common areas and accessory personal service and convenience uses, for the exclusive use of residents and tenants of the building and their permitted guests.

"Strata Corporation" means, for the portions of the Lands or the building 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" has the same meaning as under 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 **Seniors' Housing**

- 2.1 If the Owner constructs the Development, then the Owner covenants and agrees that all Dwelling Units within the Development shall be used only as a Seniors' Housing-Assisted Living Unit or a Seniors' Housing-Independent Living Unit.
- 2.2 The Owner further covenants and agrees that if the Owner constructs the Development, then all Dwelling Units shall only be occupied by:
 - (i) an individual who is an Eligible Person; and
 - (ii) one further individual who is living in the Seniors' Housing-Independent Living Unit or Seniors' Housing-Assisted Living Unit with an Eligible Person.
- 2.3 If the permanent occupant of a Seniors' Housing-Independent Living Unit who is an Eligible Person dies or is institutionalized, then the individual who regularly cohabited with the Eligible Person immediately prior to the death or institutionalization of the Eligible Person may continue to occupy the Seniors' Housing-Independent Living Unit until that person's death or until such person ceases to occupy the Senior's Housing-Independent Living Unit as his or her principal residence for 30 days, whichever occurs first. When that individual ceases to occupy the Seniors' Housing-Independent Living Unit as a permanent residence, the restrictions in Section 2.1 will continue to apply to any subsequent occupancy.

- 2.4 If the Owner constructs the Development, then the Owner shall construct the Accessory Facilities within the Development, which Accessory Facilities (excluding the landscaped outdoor gathering area) shall occupy not less than 19% of the gross building area of all buildings constructed upon Lot A, and shall otherwise be constructed to the satisfaction of the Director of Planning and Development for the City of Victoria.
- 2.5 The Owner will obtain all registration required under the *Community Care and Assisted Living Act* (British Columbia) as it may be amended from time to time, or any replacement Act thereto, with respect to the occupancy of a 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 for residential purposes to a Non-owner.
- 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 the Dwelling Units to Non-owners.
- 3.3 For certainty, if the Lands or the Development on the Lands are subdivided under the *Strata Property Act*, the Dwelling Units within the Development may be occupied by the Owners of the strata lots.
- 3.4 The Owner covenants and agrees that any Dwelling Unit used as rental housing 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.
- 3.5 Notwithstanding any provision in this Agreement to the contrary, the provisions of this Section 3.0 are subject always to the restrictions contained in Section 2.2.
- 4.0 Reporting**
- 4.1 The Owner covenants and agrees to provide to the City's Director of Planning and Development on the 1st day of February in each calendar year following the issuance of an occupancy permit for the Development, a report in writing confirming:
- (a) that all Dwelling Units are being used and occupied by an Eligible Person in compliance with this Agreement;
 - (b) the number, type and location by suite or strata lot number (if applicable), of Dwelling Units that are being rented to Non-owners; and

- (c) any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Agreement (if applicable).

4.2 The Owner covenants and agrees:

- (a) that the Strata Corporation will not pass any bylaws that would restrict the availability for rental of any Dwelling Unit unless this Agreement is amended; and

- (b) to notify the City of any proposed amendments to its strata bylaws.

4.3 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.

4.4 The requirements of this Article 4.0 shall not apply if the Owner does not construct the Development.

5.0 Priority Agreements

- 5.1 CDPQ Mortgage Investment Corporation, as the registered holder of a charge by way of Mortgages against the within described property, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA1063244, CA1063248 and CA3273626, 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 905(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.

6.0 Notice to be Registered in Land Title Office

- 6.1 Notice of this Agreement will be registered in the Land Title Office by the City at the cost of the Owner in accordance with Section 905(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. The Owner acknowledges that (a) these Covenants are enforceable against the Owner and his successors in title, but (b) the Owner is not personally liable for breach of these Covenants where such liability arises by reason of an act or omission occurring after the Owner named herein or any future owner ceases to have interest in the Lands, and (c) that if the Lands are subdivided by the deposit of a Strata Plan, the registered owner ceases to be personally liable for breach of those Covenants to be performed by the Strata Corporation, which Covenants shall be enforceable against the Strata Corporation.

7.0 Liability and Remedies

- 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.
- 7.3 The Owner acknowledges that the City requires supportive seniors' housing for the social benefit of the community. The Owner therefore agrees that, in addition to any other remedies available to the City under this Agreement or at law or in equity, if the Owner constructs the Development upon the Lands and a Dwelling Unit is used or occupied in breach of this Agreement, the Owner will pay, as a rent charge under section 7.4 the Daily Amount to the City for every day that the breach continues after 30 days written notice from the City to the Owner stating the particulars of the breach. The Daily Amount is increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CPI between that previous January 1 and the immediately preceding December 31. The Daily Amount is due and payable immediately upon receipt by the Owner of an invoice from the City for the same.
- 7.4 The Owner hereby grants to the City a rent charge under s.219 of the *Land Title Act* (British Columbia), and at common law, securing payment by the Owner to the City of any amount payable by the Owner pursuant to this Agreement. The Owner agrees that the City, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the City at law or in equity.

8.0 General Provisions

Notice

- 8.1 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 Planning and Development
Fax: 250-361-0386

to the Owner:

Bayview Properties Ltd.
80 Saghalie Road
Victoria, BC V9A 0A1

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 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.

Time

8.2 Time is to be the essence of this Agreement.

Binding Effect

8.3 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.

Waiver

8.4 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.

Headings

- 8.5 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.

Language

- 8.6 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.

Cumulative Remedies

- 8.7 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.

Entire Agreement

- 8.8 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

Further Assurances

- 8.9 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.

Amendment

- 8.10 This Agreement may be amended from time to time upon terms and conditions acceptable to the parties.

Law Applicable

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

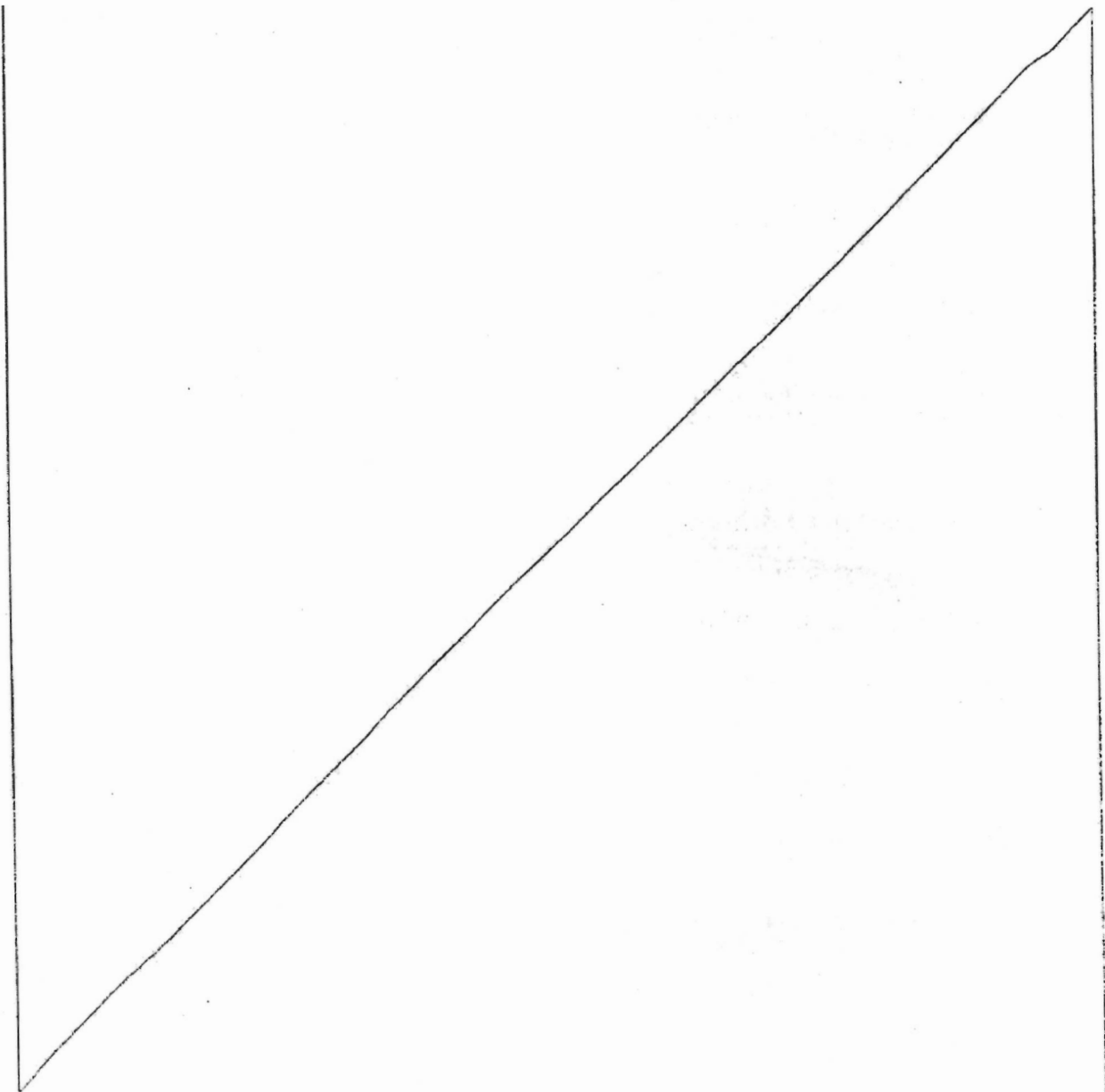
Termination

- 8.12 The City covenants and agrees that:

- (a) At the time of the final approval of the subdivision of the Lands by the approving officer of the City, the City shall execute and deliver to the Owner a discharge of the Notice of this Agreement referred to in Section 6.1 herein, a discharge of the

Housing Agreement and Rent Charge filed under s. 219 of the *Land Title Act* referred to in Section 7.4 herein as to the proposed Lot B as shown on the Plan of Subdivision (collectively the "Registrations"), and;

- (b) If the council of the City has not adopted a resolution granting fourth reading and final adoption to the Rezoning Bylaw on or before the date which is six months after the registration of the first of the Registrations registered as in the Land Title Office then the City shall execute and deliver to the Owner a discharge of all of the Registrations as to the Lands.

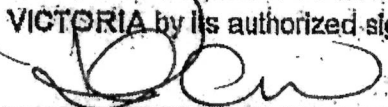


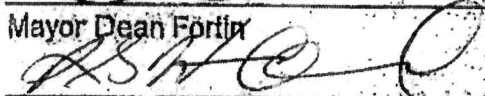
No Derogation from Statutory Authority

8.13 Nothing in this Agreement shall 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 stop, limit or impair the City from relying upon and enforcing this Agreement.

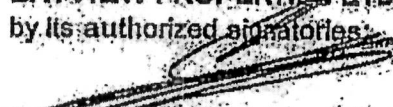
IN WITNESS WHEREOF the parties hereto have set their hands as of the day and year first above written.

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


Mayor Dean Fortin


Corporate Administrator Robert Woodland

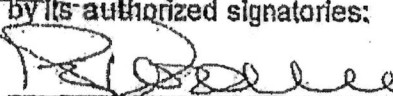
BAYVIEW PROPERTIES LTD.
by its authorized signatories:

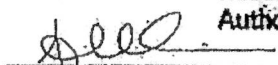

Print Name: KEN MARSHALL

Print Name:

CDPQ MORTGAGE INVESTMENT
CORPORATION

by its authorized signatories:


Print Name: Robert Duranceau
Authorized signatory


Print Name: ALISON K. CHAVE
AUTHORIZED SIGNATORY

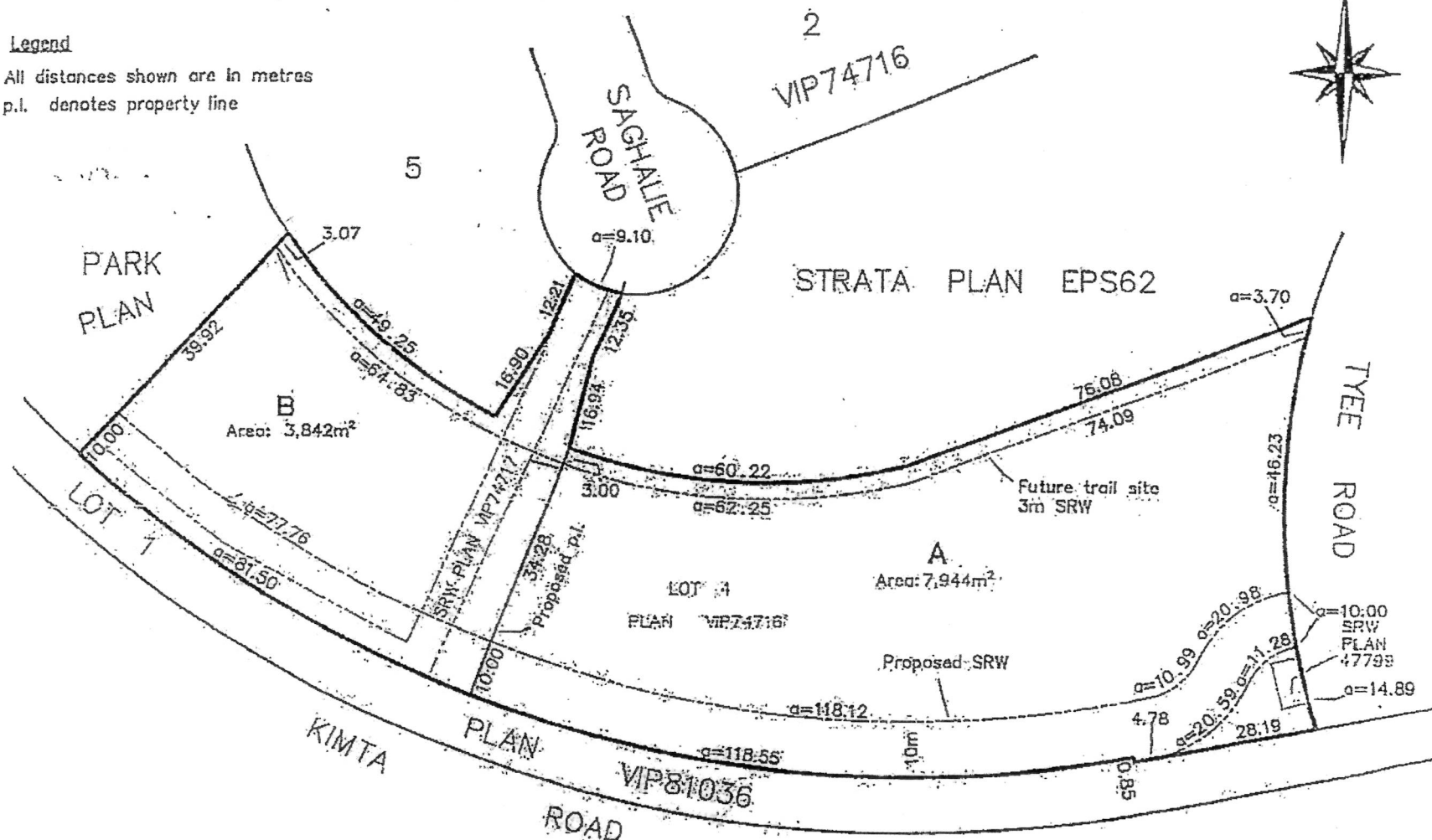
19-12-2012

SCHEDULE "A"
PLAN OF SUBDIVISION

TENTATIVE PLAN OF SUBDIVISION OF LOT 4, PLAN VIP74716, DISTRICT LOT 119, ESQUIMALT DISTRICT

Legend

All distances shown are in metres
p.l. denotes property line



J.E. ANDERSON & ASSOCIATES
B.C. Land Surveyors - Consulting Engineers
Victoria, Nanaimo & Parksville, B.C. phone: 727-2214
File : 27115

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Scale 1:1000

