




TITLE: PROPOSAL TO SUBDIVIDE 1501 BRAECREST DRIVE TINES O/B/O BRADLEY SAND & GRAVEL LTD.		
PRESENTER: T. E. Snure	AGENDA NO:	
DEPARTMENT: Development Services	DATE: December 6, 2007	
CLEARANCES: None.	ATTACHMENTS: 1. Development Agreement – Phase 1 (11 pages) 2. Development Agreement – Phase 2 (7 pages)	
APPROVALS:		
 _____ Department Head	<u>December 6, 2007</u> Date	 _____ City Manager
		<u>06/12/07</u> Date

DISCUSSION:

On March 7, 2007, City Council considered a report from the Planning Department concerning a request to subdivide 1501 Braecrest Drive. City Council approved the subdivision with conditions:

“152 That the application of Peter Tines on behalf of the owner, Bradley Sand and Gravel to subdivide 1501 Braecrest Drive (Plan of Survey 863 BLTO Exc Wly 125 ft. Perp SW ¼ 35-10-19 WPM) to create two (2) lots and a public road in the DR Development Reserve Zone to accommodate future residential condominiums, life lease condominiums and seniors assisted living be approved, subject to the following conditions:

- 1) the City of Brandon Planning Dept. receiving a true copy of a zoning amendment by-law re-zoning the said property from DR Development Reserve Zone to RHD Residential High Density Multiple Family Zone;
- 2) confirmation from the Senior Building Inspector to the City of Brandon Planning Dept. that the issues pertaining to site access with respect to applicable building and fire codes have been resolved to the Senior Building Inspector’s satisfaction;
- 3) the owner or successor entering into a development agreement with the City of Brandon as attached to the report to the Planning Commission dated February 14, 2007;
- 4) the applicant submitting a drainage plan, prepared by a qualified expert, to Manitoba Infrastructure and Transportation indicating how the said property will be drained, the impact that the additional run-off will have on the highway facility (if any), and what revision will have to be made to the existing system to accommodate any additional run-off;
- 5) the applicant submitting a payment of \$26,460.00 to the Brandon School Division pursuant to Part 8, s. 136 (1) of the Planning Act; and

- 6) *the applicant submitting to the Planning Dept. an engineering report relating to the drainage of the site, such report to compare pre- and post-development site drainage and establishing control mechanism to ensure no further rate of run-off water generated from the site after development in comparison to the site in its present condition.*”

During 2007, the developer (Peter Tines) continued his negotiations for purchase of lands and as a result of his negotiations has requested the City to consider modifications to the conditions of the subdivision by including some of the conditions in the Development Agreement. Based on recent discussions with the Developer and reviewing the potential impacts of his request, the Development Services Division agrees that some modifications to the conditions of subdivision approval and the development agreement are appropriate. In addition, two development agreements are required for the lands as the Developer will only be developing Phase 1 immediately and Phase 2 lands are to be developed at a future date.

RECOMMENDATIONS:

That City Council Motion No. 152 (March 19, 2007) approving with conditions the application of Peter Tines on behalf of the owner, Bradley Sand and Gravel to subdivide 1501 Braecrest Drive (Plan of Survey 863 BLTO Exc.Wly 125 ft. Perp SW1/4 35-10-19 WPM) be amended by:

- (a) deleting conditions 2) and 6) in their entirety; and
- (b) deleting the wording in condition 3) and replacing it with the following wording:
 - 3) *“the owner or successor of Phase 1 and Phase 2 of the lands to be developed enter into development agreements with the City of Brandon as attached to the report to City Council from the General Manager of Development Services dated December 6, 2007”;*

and further, that conditions #3, 4 and 5 be relabeled #2, 3 and 4 respectively.

THIS AGREEMENT made in duplicate this _____ day of _____, A.D. 2007.

BETWEEN:

GARDEN HEIGHTS INC.

(hereinafter called the "Developer"),
OF THE FIRST PART,

- and -

THE CITY OF BRANDON,

(hereinafter called the "City"),
OF THE SECOND PART.

DEVELOPMENT AGREEMENT – PHASE 1

WHEREAS the Developer is the owner or is entitled to be the owner of all or part of property commonly known as 1501 Braecrest Drive and legally described as Plan of Survey 863 BLTO exc WLY 125 feet perp SW ¼ 35-10-19 WPM and illustrated on the attached Schedule "A" (hereinafter called the "lands");

AND WHEREAS the Developer or its Agent has made application for subdivision of the said lands;

AND WHEREAS the City of Brandon Planning Commission conducted a Public Hearing on the application for subdivision on February 21, 2007 and submitted a report and recommendation to Brandon City Council for approval of the subdivision;

AND WHEREAS the Council of the City of Brandon at its meeting held March 19, 2007, considered the report and recommendation of the Planning Commission and agreed by resolution that the subdivision of the lands be approved subject to a Development Agreement being entered between the Developer and the City containing the terms set out hereinafter, as well as conditions of subdivision approval as shown in Schedule "B" which is a copy of the resolution of City Council;

AND WHEREAS the Council of the City of Brandon at its meeting held December 17, 2007, considered a report from the General Manager of Development Services dated December 6, 2007 complete with the Phase 1 and Phase 2 Development Agreements for the lands and by resolution (Schedule "C") authorize changes to the conditions of subdivision of the lands and required the execution of the Phase 1 and Phase 2 Development Agreements;

AND WHEREAS the Brandon and Area Planning District gave conditional approval to the subdivision on April 5, 2007 as shown in Schedule "D" which is a copy of the resolution of the Brandon and Area Planning District Board and will consider the new City Resolution at their meeting on January 17, 2008;

Initials

AND WHEREAS the Developer plans to proceed with Development of the lands in phases with this agreement being for Phase 1 only, and includes the construction of a New Public Road "Whistler Drive" as per attached concept illustrated on the attached Schedule "E";

NOW THEREFORE this Agreement witnesseth that in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The preamble hereof and the attached Schedules shall form an integral part of this Agreement.

2. DEFINITIONS

Where the context so implies the following definitions shall apply in the singular and the plural:

(a) "City Engineer" shall mean the Senior Engineer employed by the City of Brandon or any person delegated to act on his behalf;

(b) "Consulting Engineer" shall mean the firm or person employed by the Developer for the designs, drawings, specifications and supervision of the works necessary to be carried out by the Developer and the City of Brandon;

(c) "Municipal above ground improvements" shall include all improvements installed by the Developer in or on existing or proposed municipal streets, lanes, easements, land or Rights of Way (hereinafter called "Municipal Lands") as per approved plans and specifications said improvements in or on municipal lands to become the responsibility of the City, or others to own and maintain after acceptance by the City and shall include but not be limited to the following:

1. Construction and installation of all roads, walkways, sidewalks, retention ponds, etc. as laid out in the approved construction drawings;
2. All street lighting of roadways and lane ways;
3. All signing including street names, and traffic control signs as directed by the City Engineer; and
4. Landscaping of all publicly owned land including the planting of trees and sodding of boulevards and ditches, parkland, and public reserve land; and

(d) "Municipal Underground Improvements" shall include all improvements installed by the Developer in or on existing or proposed municipal lands as per approved plans and specifications said improvements in or on municipal lands to become the responsibility of the City, or others to own and maintain after acceptance by the City and shall include and not be limited to a storm water drainage system with detention pond, potable water system, waste water system, below ground electrical power, telephone and natural gas distribution systems, together with all laterals, branches, manholes, service connections, fire hydrants, valves, pedestals, culverts and usual engineering appurtenances necessary to fully service the lands, and all excavation of frost susceptible material, back fill, sub-base construction to roads and grading of right-of-ways to levels and grades acceptable to the City Engineer.

3. The Developer shall:

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a) engage a Consulting Engineer, duly licensed to practice by the Association of Professional Engineers & Geoscientists of the Province of Manitoba, for the purpose of design and project management for all aspects of construction of the lands;

b) provide a lot grading and drainage plan for the lands, which plan

shall be acceptable to the City Engineer prior to issuance of a building permit, and the Developer covenants and agrees that the lands shall be graded to, conform to, and be maintained in accordance with the said lot grading and drainage plan;

- c) provide a landscape plan of the lands, which plan shall be acceptable to the Director of Operations prior to issuance of a building permit, and the Developer covenants and agrees the lands shall be landscaped in accordance with the plan immediately upon the completion of the development;
 - d) grade and level all boulevards and ditches within the subdivision including a minimum of six inches of top soil and shall sod all of the said boulevards and ditches and the Developer shall plant trees of no less than 5 years maturity on the said boulevards which trees shall be spaced and shall be of such species as shall be prescribed by the Director of Community Services but such spacing shall not be more than 50 feet apart;
 - e) provide a storm water management plan for the lands, which plan shall be acceptable to the City Engineer prior to issuance of a building permit;
 - f) provide all plans of ingress and egress to the lands, which plans shall be acceptable to the City Engineer;
 - g) provide all plans of above and below ground infrastructure, which plans shall be acceptable to the City Engineer prior to issuance of a building permit; and
 - h) obtain from the City Engineer a certificate to state that the construction of the above and below ground improvements as required by this Agreement for the lands has been satisfactorily completed, and this certificate must accompany application made to the Brandon & Area Planning District for a building permit.
4. The Developer acknowledges and agrees that once each development stage/phase has commenced, the construction and servicing of the lands must be finalized within two (2) years. Failure to do so may in the determination of the City render said agreement null and void, and be termed a default to the agreement. The Developer may however, by notice in writing, request an extension of time within to complete the construction and servicing. No extension of time shall be allowed unless such written request is made by the Developer and approved by the City.
5. From and effective on the date of written acceptance from the City Engineer for all municipal above and below ground improvements required pursuant to this Development Agreement, the Developer agrees to and shall provide a full and comprehensive warranty for all such improvements, concerning any and all defects and failures, for a period of two (2) years. The Developer agrees to be responsible for all engineering and maintenance costs during such warranty period. Failure on the part of the Developer to comply with the terms with respect to this warranty shall result in default of the agreement and shall give rise to the City exercising its rights and remedies. In addition though, and while the warranty is to be for a period of two (2) years, the Developer agrees and acknowledges that the warranty and obligations thereunder to the City shall not be released or determined satisfied until such time as a final inspection is arranged at or upon the end of the two (2) year warranty period. The onus to arrange such final inspection shall be on the Developer. The Developer shall not be released of any and all obligations pursuant to this Development Agreement or the warranty until such time as any defects or failures, if

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any, which are determined upon final inspection for completion of the warranty period, are remedied to the complete satisfaction of the City. As a result, the Developer understands and acknowledges that the warranty period can extend farther than a period of two (2) years in these circumstances, and until same is released by the City.

6. The Developer acknowledges and agrees to:

- a) that the estimated cost to construct one half of Braecrest Drive for the entire length of the lands bordering the said Drive is \$126,850.00 and will contribute, on a one time basis, the amount of \$38,232.00, payable to the City, to said future construction of one half of Braecrest Drive for the length of the lands bordering the said Drive for Phase 1 as follows:

Phase 1 per Schedule "E":

- i) a payment of \$12,774.00 due upon transfer of Phase 1 lands to the Developer but not later than May 1, 2008;
- ii) a payment of \$12,774.00 due on or before May 1, 2009;
- iii) a payment of \$12,774.00 due on or before May 1, 2010.

The City will undertake to complete said upgrade of Braecrest Drive without further contributions from the Developer as demand calls for. Said payments will be held in a dedicated reserve for this purpose until required by the City.

- b) seek approval from the Brandon City Council for any change in the use or design set forth within the concept plan attached to this Agreement as Schedule "E" deemed to be substantial by the City of Brandon Planning Department;
- c) submit to the Planning Department an engineering report relating to drainage of the site whereby such report shall compare pre- and post-development site drainage and establish control mechanisms to ensure no further rate of run-off water will be generated from the site after development in comparison to the site in its present condition. Said report to be submitted prior to the issuance of a building permit for Phase 1;
- d) provide temporary access to Phase 1 from Braecrest Drive in order to allow construction of buildings W-1 and W-3 on Schedule "E". At the time of construction of buildings W-2 and W-4, the developer agrees to construct Whistler Drive, remove the temporary access to Phase 1 from Braecrest Drive and provide proper access to Phase 1 from Whistler Drive;
- e) supply confirmation from the Senior Building Inspector to the City of Brandon Planning Department that the issues pertaining to the site access with respect to applicable building and fire codes have been resolved to the Senior Building Inspectors satisfaction prior to issuance of a building permit for Phase 1;
- f) provide a letter to the City from the Developer's legal representative confirming that this Development Agreement for Phase 1 and the Development Agreement for Phase 2 will be held in trust and on the condition that the Developer's legal representative will register this Development Agreement for Phase 1 and the Development Agreement for Phase 2 in series with the Plan and Transfer of Land for the Phase 1 lands to Garden Heights Inc. from Bradley Sand and Gravel Ltd. The Developer shall supply proof to the City of land transfer and registration of the Development Agreement for Phase 1 and the Development Agreement for Phase 2 on behalf of

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the City against the lands by May 1, 2008. The Developer covenants not to discharge such Development Agreement for Phase 1 once registered against title to the Phase 1 lands without authorization from the City;

- g) development of Phase 1 shall not commence until the City is given written documentation to satisfy the City that:
 - i) this Development Agreement has been registered against the Phase 1 lands;
 - ii) the Development Agreement for Phase 2 has been registered against the Phase 2 lands; and
 - iii) the Letter of Credit in Clause 7 below is received by the City Engineer.

7. The Developer agrees to:

- a) furnish security for any and all of its obligations pursuant to this Development Agreement, by means of an Irrevocable Letter of Credit for the amount of \$150,000.00. The issuer of the Irrevocable Letter of Credit, and the form and content thereof, shall be subject to the full and complete approval of the City. City approvals and building permits for the lands will not be issued until the Irrevocable Letter of Credit is received by the City along with proof of land transfer for Phase 1 lands and verification of registration of agreements against Phase 1 and Phase 2 lands. The Developer agrees to supply the required irrevocable Letter of Credit to the City not later than May 1, 2008. The irrevocable Letter of Credit shall be in full force and effect, the duration of which must operate continuously throughout the currency of this Agreement with the City, the warranty period, and until the City is agreeable to the release of this security, should there be deficiencies to remedy as a result of final inspections for purposes of the warranty. Upon final inspection and written acceptance by the City of all improvements for purposes of completing the warranty period, and once and only once any and all outstanding deficiencies as a result of inspections for the completion of the warranty period are met to the satisfaction of the City will the Irrevocable Letter of Credit be released back to the Developer and cancelled. Failure on the part of the Developer to comply with the terms of the Development Agreement shall result, at the discretion of the City, in action against the security as presented by the Developers in addition to and without prejudice to any and all rights and remedies of the City pursuant to statute, common law, equity, or otherwise as it relates to compelling full and complete compliance and enforcement of the obligation of the Developer;
- b) notwithstanding the requirement of paragraph 7a of this Agreement, the Developer may, in writing, request and the City may grant, in writing, a reduction in the value of the irrevocable Letter of Credit by not more than 50% of the contracted value of the infrastructure to be conveyed to the City upon completion of installation of the municipal above ground and municipal underground improvements. Said request for reduction in value from the Developer shall not be made until the Developer has been advised in writing from the City Engineer that the warranty period for the municipal above ground and municipal underground improvements has commenced;

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8. The City and the Developer agree that there will be no waiver of rights on the part of the City should it not immediately enforce its rights and remedies pursuant to this Agreement.

9. The Developer shall be required to reference survey monuments prior to development, and confirm that these monuments have been replaced (if disturbed) in compliance with *The Surveys Act* when construction is completed.
10. The Developer shall obtain all necessary permits relating to the development on the lands from the City prior to issuance of a building permit(s) by the City of Brandon Planning and Building Department.
11. The Developer agrees to indemnify and save harmless the City, its officers, employees and agents from and against all claims, proceedings, demands, damages, actions, judgements of any kind, including without limiting the generality of the foregoing, all damages for personal injury or death arising out of or attributable to all actions or conduct of the Developer, their employees, agents and contractors upon the development lands including but not limited to any work or act committed or omitted by the Developer in the performance of the agreement.
12. In the event of the Developers legal representative fails to register this Phase 1 Development Agreement against the title, the City shall be entitled to register a Caveat against all of the Phase 1 lands affected by this Development Agreement reflecting the provisions of this Agreement.
13. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators and assigns, provided however that no assignment shall be made by the Developer unless and until such assignment has been approved in writing by the City, such approval should not or will not be unreasonably withheld.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and/or caused their corporate seals to be affixed duly attested to by the hands of their proper signing officers in that behalf, the day and year first above written.

GARDEN HEIGHTS INC.

Per:

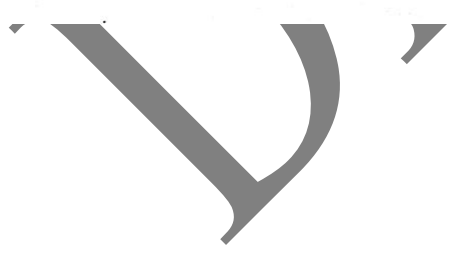
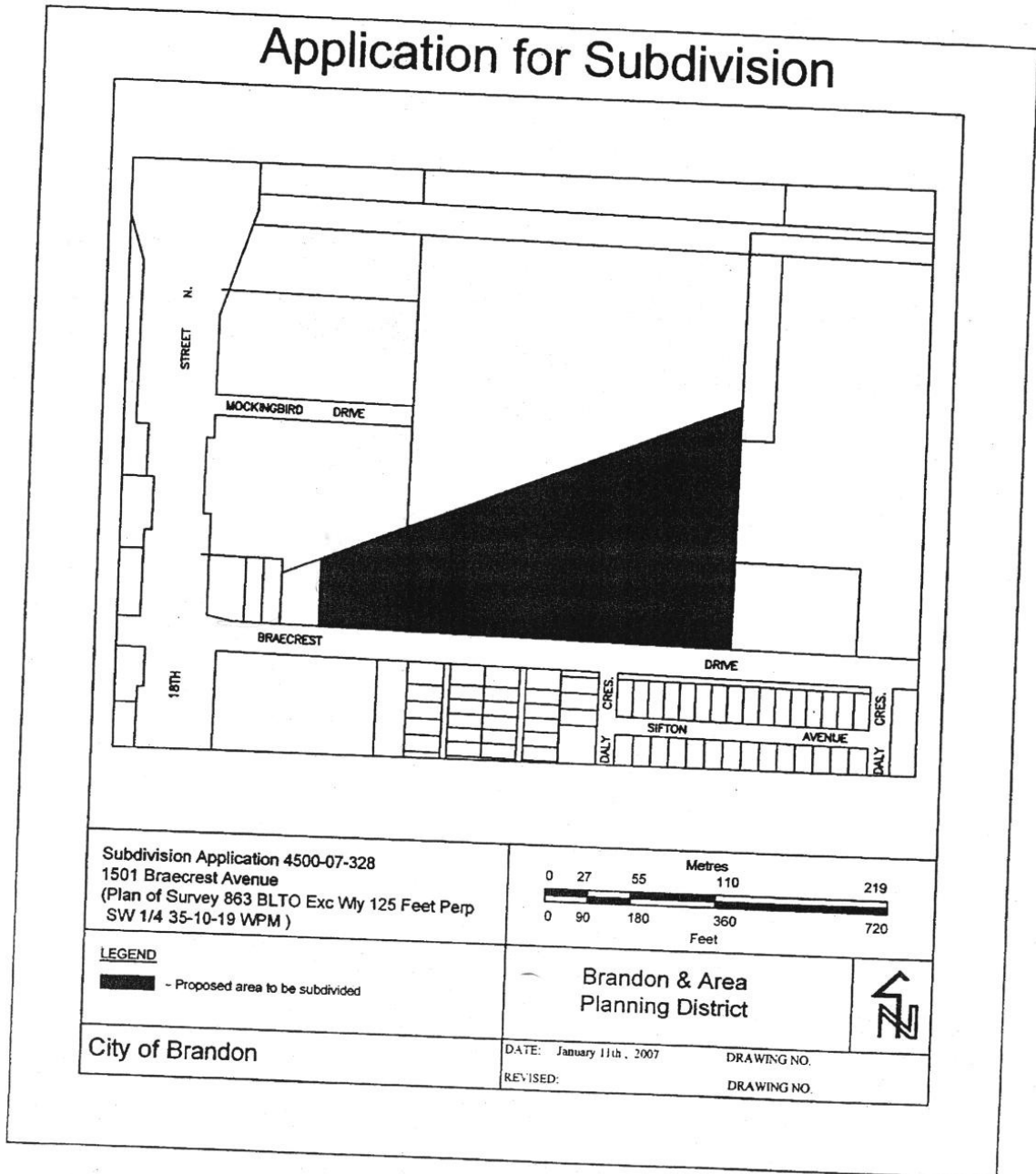
 "Authorized Signatory
 I am authorized to bind the corporation."

 "Authorized Signatory
 I am authorized to bind the corporation."

CITY OF BRANDON

Ted Snure, P. Eng., CITY ENGINEER

Schedule "A"

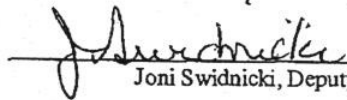


Schedule "B"



I, Joni Swidnicki, Deputy City Clerk of the City of Brandon, DO HEREBY CERTIFY the resolution written hereunder to be a true and correct copy of a resolution of the Council of the City of Brandon passed at a meeting held on the 19th day of March A.D. 2007 of which it purports to be a copy.

Dated at the City of Brandon this 20th day of March A.D. 2007.


Joni Swidnicki, Deputy City Clerk

"That the application of Peter Tines on behalf of the owner, Bradley Sand & Gravel Ltd., to subdivide 1501 Braecrest Drive (Plan of Survey 863 BLTO Exc Wly 125 Feet Perp SW 1/4 35-10-19 WPM) to create two (2) lots and a public road in the DR Development Reserve Zone to accommodate future residential condominiums, life lease condominiums and seniors assisted living be approved, subject to the following conditions:

- 1) the City of Brandon Planning Department receiving a true copy of a zoning amendment by-law rezoning the said property from DR Development Reserve Zone to RHD Residential High Density Multiple Family Zone;
- 2) confirmation from the Senior Building Inspector to the City of Brandon Planning Department that the issues pertaining to site access with respect to applicable building and fire codes have been resolved to the Senior Building Inspector's satisfaction;
- 3) the owner or successor entering into a development agreement with the City of Brandon as attached to the report to the Planning Commission dated February 14, 2007;
- 4) the applicant submitting a drainage plan, prepared by a qualified expert, to Manitoba Infrastructure and Transportation indicating how the said property will be drained, the impact that the additional runoff will have on the highway facility (if any) and what revisions will have to be made to the existing system to accommodate any additional runoff;
- 5) the applicant submitting a payment of \$26,460.00 to the Brandon School Division pursuant to Part 8, s. 136(1) of the Planning Act; and
- 6) the applicant submitting to the Planning Department an engineering report relating to drainage of the site, such report to compare pre- and post-development site drainage and establishing control mechanism to ensure no further rate of run-off water generated from the site after development in comparison to the site in its present condition."

Schedule "C"

(To be a copy of the resolution of City Council
from their meeting to be held December 17th, 2007)

DRAFT



Schedule "D"

BRANDON & AREA PLANNING DISTRICT

421- 9th Street • Brandon, Manitoba • R7A 4A9

Telephone (204) 729-2110 • Fax (204) 728-2406

The following resolution was passed at the April 5, 2007, Brandon & Area Planning District Board Meeting:

Resolution	Moved/ Jeff Harwood
No. 043/2007	Seconded/ Dave Burgess

That the Board of the Brandon & Area Planning District grants Conditional Approval to the Proposal to subdivide the 1501 Braecrest Drive (Plan of Survey 863 BLTO Exc Wly 125 Feet Perp SW ¼ 35-10-19 WPM) in the City of Brandon, subject to the following:

- a) **The City of Brandon resolution dated March 20, 2007; and**
- b) **Confirmation that arrangements have been made for a Joint Use Easement and Plan of Easement to the satisfaction of Manitoba Hydro, MTS Allstream Inc. and Westman Communications Group,**

and further, that subject to meeting all other necessary conditions and requirements of subdivision, that the designated signing officers are authorized to sign and seal the Final Certificate of Approval.

Carried 9/0

MAXIMUM POTENTIAL DENSITY UNDER CONCEPT PLAN

GARDEN HEIGHTS WEST (PHASE-1)

- Building W-1: 6-12 suites (1-2 floors)
 - Building W-2: 6-12 suites (1-2 floors)
 - Building W-3: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building W-4: 12-15 suites (3-4 floors above main floor with foyer/parking)
- TOTAL - 4 Multifamily Buildings 36-54 Suites**

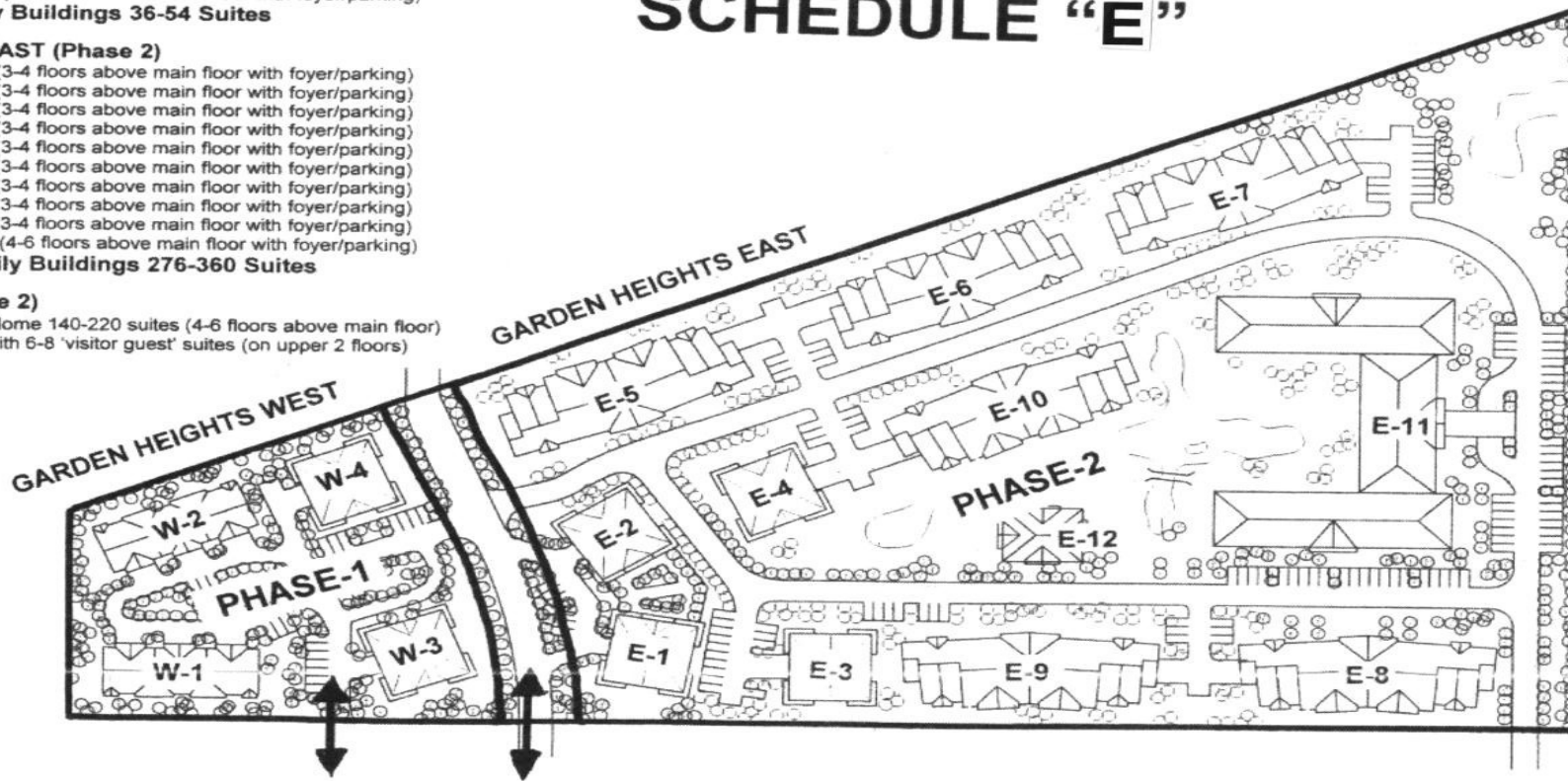
GARDEN HEIGHTS EAST (Phase 2)

- Building E-1: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building E-2: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building E-3: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building E-4: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building E-5: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-6: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-7: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-8: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-9: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-10: 48-60 suites (4-6 floors above main floor with foyer/parking)
- TOTAL - 10 Multifamily Buildings 276-360 Suites**

OTHER (Part of Phase 2)

- Building E-11: Retirement Home 140-220 suites (4-6 floors above main floor)
- Building E-12: Clubhouse with 6-8 'visitor guest' suites (on upper 2 floors)

SCHEDULE "E"



**TEMPORARY DRIVEWAY ACCESS
TO/FROM BRAECREST DRIVE**

WHISTLER DRIVE (NEW PUBLIC ROAD)

*GARDEN HEIGHTS OF NORTH HILL
BRANDON, MANITOBA*

October 24, 2007 scale 1:600 (24x36) Drawing for discussion purposes only, not for construction.



THIS AGREEMENT made in duplicate
this day of , A.D. 2007.

BETWEEN:

GARDEN HEIGHTS INC.

(hereinafter called the "Developer"),
OF THE FIRST PART,

-- and --

THE CITY OF BRANDON,

(hereinafter called the "City"),
OF THE SECOND PART.

**DEVELOPMENT AGREEMENT –
PHASE 1**

TS/pk

December 13, 2007

The City of Brandon
Engineering & Operations Department
410 - 9th Street
Brandon, Manitoba
R7A 6A2

T. E. Snure, P. Eng.
CITY ENGINEER

Telephone: 729-2214
Fax: 725-3235

4500-07-328

THIS AGREEMENT made in duplicate this _____ day of _____, A.D. 2007.

BETWEEN:

BRADLEY SAND & GRAVEL LTD.

(hereinafter called the "Developer"),
OF THE FIRST PART,

- and -

THE CITY OF BRANDON,

(hereinafter called the "City"),
OF THE SECOND PART.

DEVELOPMENT AGREEMENT – PHASE 2

WHEREAS the Developer is the owner or is entitled to be the owner of all or part of property commonly known as 1501 Braecrest Drive and legally described as Plan of Survey 863 BLTO exc WLY 125 feet perp SW ¼ 35-10-19 WPM and illustrated on the attached Schedule "A" (hereinafter called the "lands");

AND WHEREAS the Developer or its Agent has made application for subdivision of the said lands;

AND WHEREAS the City of Brandon Planning Commission conducted a Public Hearing on the application for subdivision on February 21, 2007 and submitted a report and recommendation to Brandon City Council for approval of the subdivision;

AND WHEREAS the Council of the City of Brandon at its meeting held March 19, 2007, considered the report and recommendation of the Planning Commission and agreed by resolution that the subdivision of the lands be approved subject to a Development Agreement being entered between the Developer and the City containing the terms set out hereinafter, as well as conditions of subdivision approval as shown in Schedule "B" which is a copy of the resolution of City Council;

AND WHEREAS the Council of the City of Brandon at its meeting held December 17, 2007, considered a report from the General Manager of Development Services dated December 6, 2007 complete with the Phase 1 and Phase 2 Development Agreements for the lands and by resolution (Schedule "C") authorize changes to the conditions of subdivision of the lands and required the execution of the Phase 1 and Phase 2 Development Agreements;

AND WHEREAS the Brandon and Area Planning District gave conditional approval to the subdivision on April 5, 2007 as shown in Schedule "D" which is a copy of the resolution of the Brandon and Area Planning District Board and will consider the new City Resolution at their meeting on January 17, 2008;

AND WHEREAS the Developer plans to proceed with Development of the lands in phases with this agreement being for Phase 2 only, and acknowledges that development of Phase 2 lands shall not proceed until the new public road "Whistler Drive" as per attached concept illustrated is constructed;

Initials

NOW THEREFORE this Agreement witnesseth that in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The preamble hereof and the attached Schedules shall form an integral part of this Agreement.

2. DEFINITIONS

Where the context so implies the following definitions shall apply in the singular and the plural:

(a) "City Engineer" shall mean the Senior Engineer employed by the City of Brandon or any person delegated to act on his behalf;

(b) "Consulting Engineer" shall mean the firm or person employed by the Developer for the designs, drawings, specifications and supervision of the works necessary to be carried out by the Developer and the City of Brandon;

(c) "Municipal above ground improvements" shall include all improvements installed by the Developer in or on existing or proposed municipal streets, lanes, easements, land or Rights of Way (hereinafter called "Municipal Lands") as per approved plans and specifications said improvements in or on municipal lands to become the responsibility of the City, or others to own and maintain after acceptance by the City and shall include but not be limited to the following:

1. Construction and installation of all roads, walkways, sidewalks, retention ponds, etc. as laid out in the approved construction drawings;
2. All street lighting of roadways and lane ways;
3. All signing including street names, and traffic control signs as directed by the City Engineer; and
4. Landscaping of all publicly owned land including the planting of trees and sodding of boulevards and ditches, parkland, and public reserve land; and

(d) "Municipal Underground Improvements" shall include all improvements installed by the Developer in or on existing or proposed municipal lands as per approved plans and specifications said improvements in or on municipal lands to become the responsibility of the City, or others to own and maintain after acceptance by the City and shall include and not be limited to a storm water drainage system with detention pond, potable water system, waste water system, below ground electrical power, telephone and natural gas distribution systems, together with all laterals, branches, manholes, service connections, fire hydrants, valves, pedestals, culverts and usual engineering appurtenances necessary to fully service the lands, and all excavation of frost susceptible material, back fill, sub-base construction to roads and grading of right-of-ways to levels and grades acceptable to the City Engineer.

3. The Developer shall:

a) engage a Consulting Engineer, duly licensed to practice by the Association of Professional Engineers & Geoscientists of the Province of Manitoba, for the purpose of design and project management for all aspects of construction of the lands;

b) provide a lot grading and drainage plan for the lands, which plan

Initials

shall be acceptable to the City Engineer prior to issuance of a building permit, and the Developer covenants and agrees that the lands shall be graded to, conform to, and be maintained in accordance with the said lot grading and drainage plan;

- c) provide a landscape plan of the lands, which plan shall be acceptable to the Director of Operations prior to issuance of a building permit, and the Developer covenants and agrees the lands shall be landscaped in accordance with the plan immediately upon the completion of the development;
- d) grade and level all boulevards and ditches within the subdivision including a minimum of six inches of top soil and shall sod all of the said boulevards and ditches and the Developer shall plant trees of no less than 5 years maturity on the said boulevards which trees shall be spaced and shall be of such species as shall be prescribed by the Director of Community Services but such spacing shall not be more than 50 feet apart;
- e) provide a storm water management plan for the lands, which plan shall be acceptable to the City Engineer prior to issuance of a building permit;
- f) provide all plans of ingress and egress to the lands, which plans shall be acceptable to the City Engineer;
- g) provide all plans of above and below ground infrastructure, which plans shall be acceptable to the City Engineer prior to issuance of a building permit; and
- h) obtain from the City Engineer a certificate to state that the construction of the above and below ground improvements as required by this Agreement for the lands has been satisfactorily completed, and this certificate must accompany application made to the Brandon & Area Planning District for a building permit.

4. The Developer acknowledges and agrees that once Phase 2 development has commenced, the construction and servicing of the lands must be finalized within two (2) years. Failure to do so may in the determination of the City render said agreement null and void, and be termed a default to the agreement. The Developer may however, by notice in writing, request an extension of time within to complete the construction and servicing. No extension of time shall be allowed unless such written request is made by the Developer and approved by the City.

5. From and effective on the date of written acceptance from the City Engineer for all municipal above and below ground improvements required pursuant to this Development Agreement, the Developer agrees to and shall provide a full and comprehensive warranty for all such improvements, concerning any and all defects and failures, for a period of two (2) years. The Developer agrees to be responsible for all engineering and maintenance costs during such warranty period. Failure on the part of the Developer to comply with the terms with respect to this warranty shall result in default of the agreement and shall give rise to the City exercising its rights and remedies. In addition though, and while the warranty is to be for a period of two (2) years, the Developer agrees and acknowledges that the warranty and obligations thereunder to the City shall not be released or determined satisfied until such time as a final inspection is arranged at or upon the end of the two (2) year warranty period. The onus to arrange such final inspection shall be on the Developer. The Developer shall not be released of any and all obligations pursuant to this Development Agreement or the warranty until such time as any defects or failures, if

Initials

any, which are determined upon final inspection for completion of the warranty period, are remedied to the complete satisfaction of the City. As a result, the Developer understands and acknowledges that the warranty period can extend farther than a period of two (2) years in these circumstances, and until same is released by the City.

6. The Developer acknowledges and agrees to:

- a) that the estimated cost to construct one half of Braecrest Drive for the entire length of the lands bordering the said Drive is \$126,850.00 contribute, on a one time basis, the amount of \$88,528.00, payable to the City, to said future construction of one half of Braecrest Drive for the length of the lands bordering the said Drive for Phase 2 as follows:

Phase 2 per Schedule "E":

- i) a payment of \$29,510.00 due upon the application for access to Phase 2 lands from either Braecrest Drive or Whistler Drive;
- ii) a payment of \$29,509.00 due on or before the first anniversary of the application for such access; and
- iii) a payment of \$29,509.00 due on or before the second anniversary of the application for such access.

The City will undertake to complete said upgrade of Braecrest Drive without further contributions from the Developer as demand calls for. Said payments will be held in a dedicated reserve for this purpose until required by the City.

- b) seek approval from the Brandon City Council for any change in the use or design set forth within the concept plan attached to this Agreement as Schedule "E" deemed to be substantial by the City of Brandon Planning Department;
- c) submit to the Planning Department an engineering report relating to drainage of the site whereby such report shall compare pre- and post-development site drainage and establish control mechanisms to ensure no further rate of run-off water will be generated from the site after development in comparison to the site in its present condition. Said report to be submitted prior to the issuance of a building permit for Phase 2;
- e) supply confirmation from the Senior Building Inspector to the City of Brandon Planning Department that the issues pertaining to the site access with respect to applicable building and fire codes have been resolved to the Senior Building Inspectors satisfaction prior to issuance of a building permit for Phase 2;
- f) provide a letter to the City from the Developer's legal representative confirming that this Development Agreement for Phase 2 will be held in trust and on the condition that the Developer's legal representative will register this Development Agreement for Phase 2 in series with the Plan and Transfer of Land for the Phase 1 lands to Garden Heights Inc. from Bradley Sand and Gravel Ltd. The Developer shall supply proof to the City of land transfer and registration of the Development Agreement for Phase 2 on behalf of the City of Brandon against the lands by May 1, 2008. The Developer covenants not to discharge such Development Agreement for Phase 2 once registered against title to the Phase 2 lands;

Initials

- g) development of Phase 2 shall not commence until the City is given written documentation to satisfy the City that:
 - i) the Development Agreement for Phase 2 has been registered against the Phase 2 lands; and
 - ii) the Letter of Credit in Clause 7 below is received by the City Engineer.

7. The Developer agrees to:

- a) furnish security for any and all of its obligations pursuant to this Development Agreement, by means of an Irrevocable Letter of Credit for the amount of \$150,000.00. The issuer of the Irrevocable Letter of Credit, and the form and content thereof, shall be subject to the full and complete approval of the City. City approvals and building permits for the lands will not be issued until the Irrevocable Letter of Credit is received by the City. The Developer agrees to not apply for development of Phase 2 until the required irrevocable Letter of Credit is supplied to the City. The irrevocable Letter of Credit shall be in full force and effect, the duration of which must operate continuously throughout the currency of this Agreement with the City, the warranty period, and until the City is agreeable to the release of this security, should there be deficiencies to remedy as a result of final inspections for purposes of the warranty. Upon final inspection and written acceptance by the City of all improvements for purposes of completing the warranty period, and once and only once any and all outstanding deficiencies as a result of inspections for the completion of the warranty period are met to the satisfaction of the City will the Irrevocable Letter of Credit be released back to the Developer and cancelled. Failure on the part of the Developer to comply with the terms of the Development Agreement shall result, at the discretion of the City, in action against the security as presented by the Developers in addition to and without prejudice to any and all rights and remedies of the City pursuant to statute, common law, equity, or otherwise as it relates to compelling full and complete compliance and enforcement of the obligation of the Developer;
- b) notwithstanding the requirement of paragraph 7a of this Agreement, the Developer may, in writing, request and the City may grant, in writing, a reduction in the value of the irrevocable Letter of Credit by not more than 50% of the contracted value of the infrastructure to be conveyed to the City upon completion of installation of the municipal above ground and municipal underground improvements. Said request for reduction in value from the Developer shall not be made until the Developer has been advised in writing from the City Engineer that the warranty period for the municipal above ground and municipal underground improvements has commenced.

8. The City and the Developer agree that there will be no waiver of rights on the part of the City should it not immediately enforce its rights and remedies pursuant to this Agreement.

Initials

9. The Developer shall be required to reference survey monuments prior to development, and confirm that these monuments have been replaced (if disturbed) in compliance with *The Surveys Act* when construction is completed.

10. The Developer shall obtain all necessary permits relating to the development on the lands from the City prior to issuance of a building permit(s) by the City of Brandon Planning and Building Department.

11. The Developer agrees to indemnify and save harmless the City, its officers, employees and agents from and against all claims, proceedings, demands, damages, actions, judgements of any kind, including without limiting the generality of the foregoing, all damages for personal injury or death arising out of or attributable to all actions or conduct of the Developer, their employees, agents and contractors upon the development lands including but not limited to any work or act committed or omitted by the Developer in the performance of the agreement.
12. In the event of the Developers legal representative fails to register this Phase 2 Development Agreement against the title, the City shall be entitled to register a Caveat against all of the Phase 2 lands affected by this Development Agreement reflecting the provisions of this Agreement.
13. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators and assigns, provided however that no assignment shall be made by the Developer unless and until such assignment has been approved in writing by the City, such approval should not or will not be unreasonably withheld.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals and/or caused their corporate seals to be affixed duly attested to by the hands of their proper signing officers in that behalf, the day and year first above written.

BRADLEY SAND & GRAVEL LTD.

Per:

 "Authorized Signatory
 I am authorized to bind the corporation."

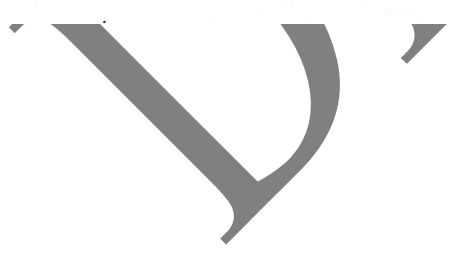
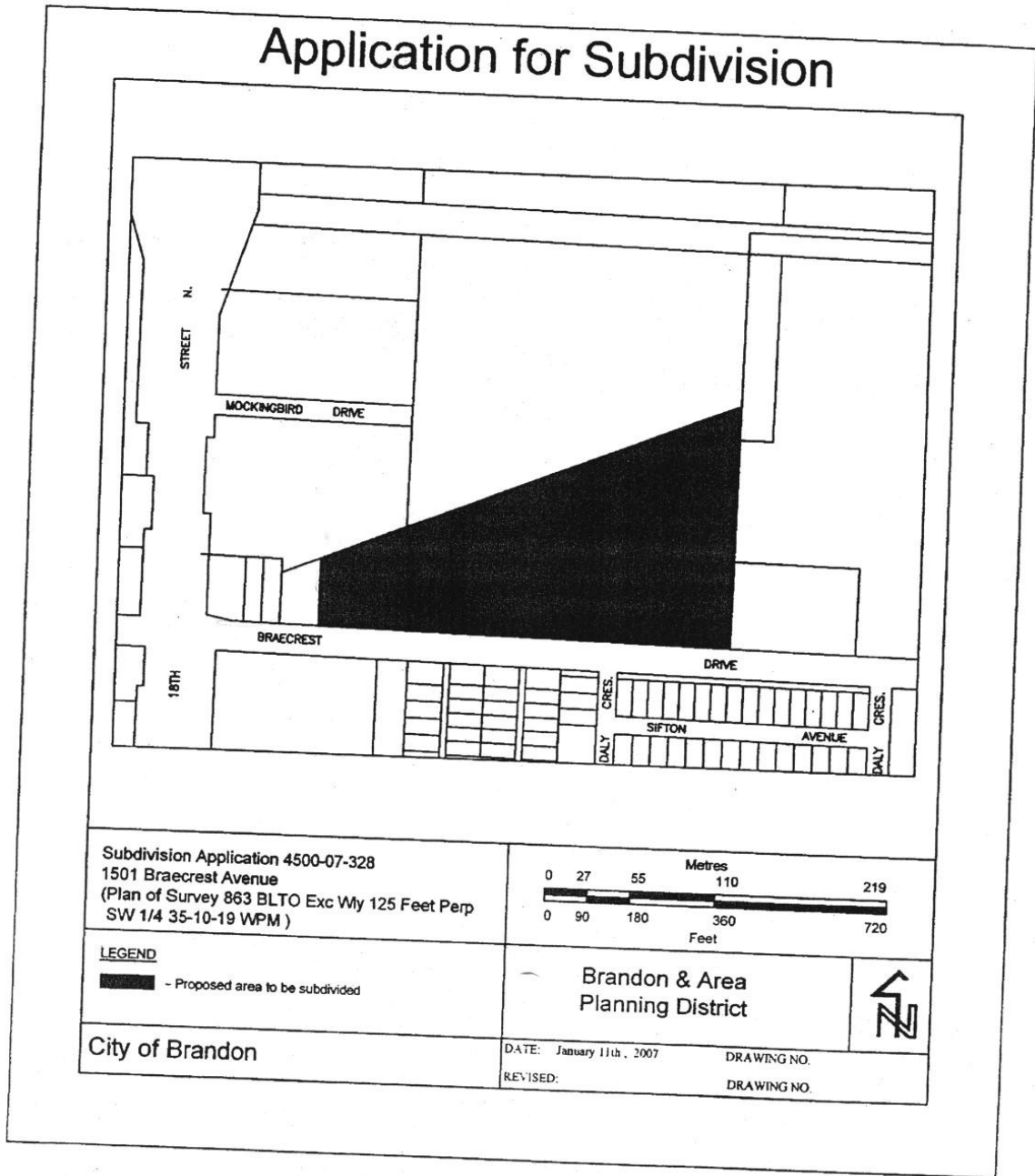
 "Authorized Signatory
 I am authorized to bind the corporation."

CITY OF BRANDON

Ted Snure, P. Eng., CITY ENGINEER

DRAFT

Schedule "A"

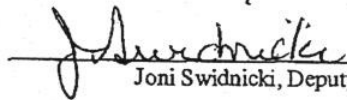


Schedule "B"



I, Joni Swidnicki, Deputy City Clerk of the City of Brandon, DO HEREBY CERTIFY the resolution written hereunder to be a true and correct copy of a resolution of the Council of the City of Brandon passed at a meeting held on the 19th day of March A.D. 2007 of which it purports to be a copy.

Dated at the City of Brandon this 20th day of March A.D. 2007.


Joni Swidnicki, Deputy City Clerk

"That the application of Peter Tines on behalf of the owner, Bradley Sand & Gravel Ltd., to subdivide 1501 Braecrest Drive (Plan of Survey 863 BLTO Exc Wly 125 Feet Perp SW 1/4 35-10-19 WPM) to create two (2) lots and a public road in the DR Development Reserve Zone to accommodate future residential condominiums, life lease condominiums and seniors assisted living be approved, subject to the following conditions:

- 1) the City of Brandon Planning Department receiving a true copy of a zoning amendment by-law rezoning the said property from DR Development Reserve Zone to RHD Residential High Density Multiple Family Zone;
- 2) confirmation from the Senior Building Inspector to the City of Brandon Planning Department that the issues pertaining to site access with respect to applicable building and fire codes have been resolved to the Senior Building Inspector's satisfaction;
- 3) the owner or successor entering into a development agreement with the City of Brandon as attached to the report to the Planning Commission dated February 14, 2007;
- 4) the applicant submitting a drainage plan, prepared by a qualified expert, to Manitoba Infrastructure and Transportation indicating how the said property will be drained, the impact that the additional runoff will have on the highway facility (if any) and what revisions will have to be made to the existing system to accommodate any additional runoff;
- 5) the applicant submitting a payment of \$26,460.00 to the Brandon School Division pursuant to Part 8, s. 136(1) of the Planning Act; and
- 6) the applicant submitting to the Planning Department an engineering report relating to drainage of the site, such report to compare pre- and post-development site drainage and establishing control mechanism to ensure no further rate of run-off water generated from the site after development in comparison to the site in its present condition."

Schedule "C"

(To be a copy of the resolution of City Council
from their meeting to be held December 17th, 2007)

DRAFT



Schedule "D"

BRANDON & AREA PLANNING DISTRICT

421- 9th Street • Brandon, Manitoba • R7A 4A9
Telephone (204) 729-2110 • Fax (204) 728-2406

The following resolution was passed at the April 5, 2007, Brandon & Area Planning District Board Meeting:

Resolution	Moved/ Jeff Harwood
No. 043/2007	Seconded/ Dave Burgess

That the Board of the Brandon & Area Planning District grants Conditional Approval to the Proposal to subdivide the 1501 Braecrest Drive (Plan of Survey 863 BLTO Exc Wly 125 Feet Perp SW ¼ 35-10-19 WPM) in the City of Brandon, subject to the following:

- a) **The City of Brandon resolution dated March 20, 2007; and**
- b) **Confirmation that arrangements have been made for a Joint Use Easement and Plan of Easement to the satisfaction of Manitoba Hydro, MTS Allstream Inc. and Westman Communications Group,**

and further, that subject to meeting all other necessary conditions and requirements of subdivision, that the designated signing officers are authorized to sign and seal the Final Certificate of Approval.

Carried 9/0

MAXIMUM POTENTIAL DENSITY UNDER CONCEPT PLAN

GARDEN HEIGHTS WEST (PHASE-1)

- Building W-1: 6-12 suites (1-2 floors)
 - Building W-2: 6-12 suites (1-2 floors)
 - Building W-3: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building W-4: 12-15 suites (3-4 floors above main floor with foyer/parking)
- TOTAL - 4 Multifamily Buildings 36-54 Suites**

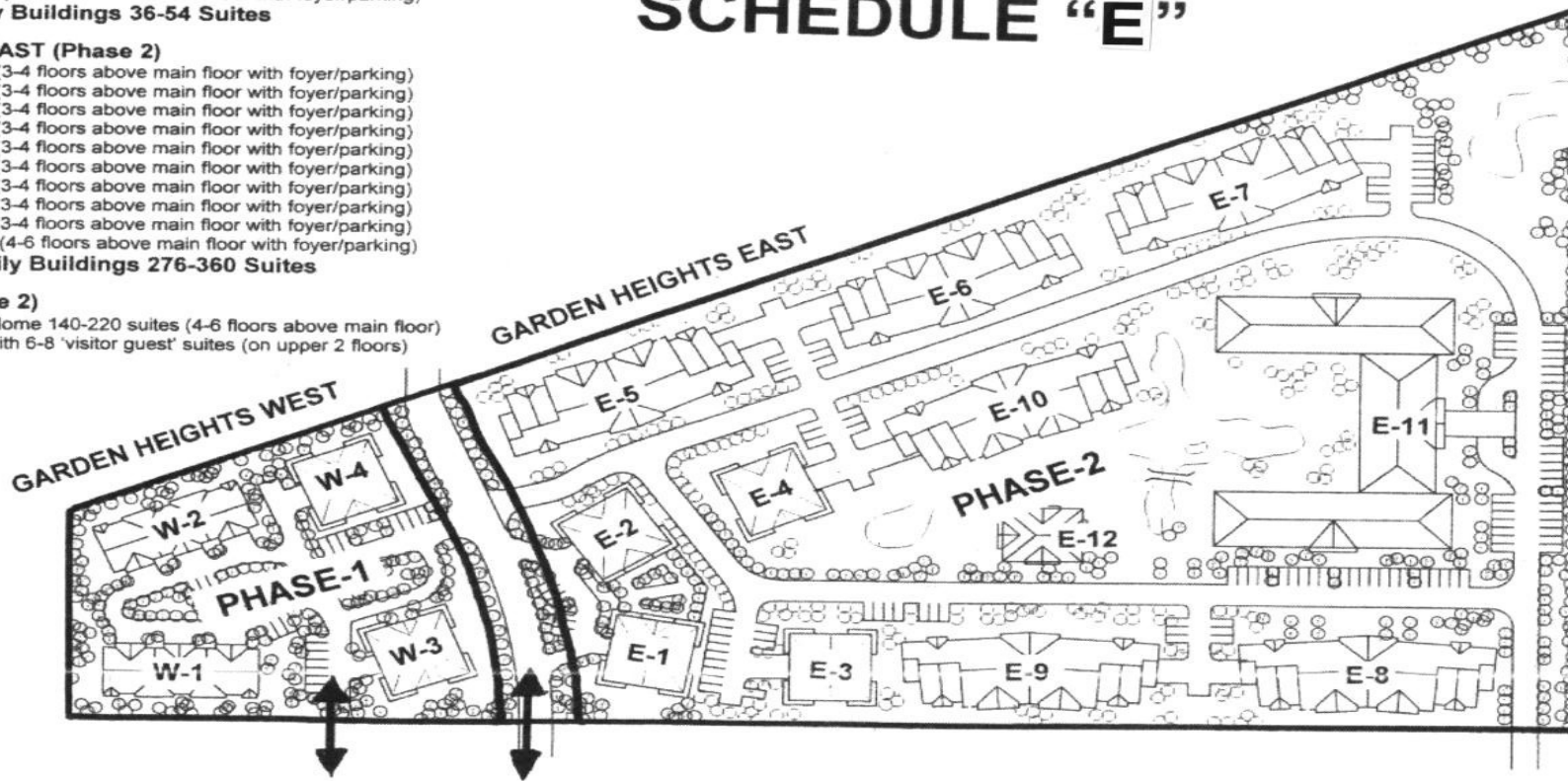
GARDEN HEIGHTS EAST (Phase 2)

- Building E-1: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building E-2: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building E-3: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building E-4: 12-15 suites (3-4 floors above main floor with foyer/parking)
 - Building E-5: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-6: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-7: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-8: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-9: 36-48 suites (3-4 floors above main floor with foyer/parking)
 - Building E-10: 48-60 suites (4-6 floors above main floor with foyer/parking)
- TOTAL - 10 Multifamily Buildings 276-360 Suites**

OTHER (Part of Phase 2)

- Building E-11: Retirement Home 140-220 suites (4-6 floors above main floor)
- Building E-12: Clubhouse with 6-8 'visitor guest' suites (on upper 2 floors)

SCHEDULE "E"



**TEMPORARY DRIVEWAY ACCESS
TO/FROM BRAECREST DRIVE**

WHISTLER DRIVE (NEW PUBLIC ROAD)

*GARDEN HEIGHTS OF NORTH HILL
BRANDON, MANITOBA*

October 24, 2007 scale 1:600 (24x36) Drawing for discussion purposes only, not for construction.



THIS AGREEMENT made in duplicate
this day of , A.D. 2007.

BETWEEN:

BRADLEY SAND & GRAVEL LTD.

(hereinafter called the "Developer"),
OF THE FIRST PART,

-- and --

THE CITY OF BRANDON,

(hereinafter called the "City"),
OF THE SECOND PART.

**DEVELOPMENT AGREEMENT –
PHASE 2**

TS/pk

December 13, 2007

The City of Brandon
Engineering & Operations Department
410 - 9th Street
Brandon, Manitoba
R7A 6A2

T. E. Snure, P. Eng.
CITY ENGINEER

Telephone: 729-2214
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