

THIS AGREEMENT made in duplicate this
day of _____, A.D. 2016.

BETWEEN:

**THE MANITOBA HOUSING AND
RENEWAL CORPORATION**

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

-- and --

THE CITY OF BRANDON,

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

DEVELOPMENT AGREEMENT

/th

DATE: May 10, 2016

The City of Brandon
Property Administration
Development Services Division
638 Princess Avenue
Brandon, Manitoba
R7A 0P3

Telephone: 729-2144
Fax: 725-3235

File No. C-05-16-B

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BETWEEN

THE MANITOBA HOUSING AND RENEWAL CORPORATION

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

- and -

THE CITY OF BRANDON,

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

WHEREAS the Developer is the owner or is entitled to be the owner of property commonly known as 30 – 3rd Street and legally described as:

Firstly: Lots 19 to 22 both inclusive, Block 71, Plan 2 BLTO
In E ½ 23-10-19 WPM

Secondly: Parcel "A", Plan 53413 BLTO
Exc all mines and minerals and other matters as set forth
In the Crown Lands Act
In SE ¼ 23-10-19 WPM

Thirdly: Lots 5 to 8 both inclusive, Block 71 Plan 2 BLTO
Exc all mines and minerals as set forth in Transfer R137901
In E ½ 23-10-19 WPM
(Certificate of Title No. 2773196/2)

(hereinafter called the "Lands");

AND WHEREAS the Developer or its Agent has made application for a conditional use for the said Lands;

AND WHEREAS the Planning Commission of the City of Brandon will conduct a Public Hearing and grant conditional approval on the application for conditional use at their meeting on May 18th, 2016;

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 accordance with approved plans and specifications which will 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:

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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 purchased through the City of Brandon; 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 accordance with approved plans and specifications which will 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 and adjacent public Right-of-Ways;
- b) provide a lot grading and drainage plan for the Lands and adjacent public Right-of-Ways, which plan shall at a minimum conform to the requirements of Bylaw No. 6626 "Lot Grading, Drainage and Elevations"; 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 Planning & Building Safety Department prior to issuance of a building permit, and the Developer covenants and agrees the Lands and adjacent public Right-of-Ways, shall be landscaped in accordance with the plan immediately upon the completion of the development and all landscape improvements shall be adequately maintained to ensure on-going growth and establishment of permanent landscape features on the Lands in compliance with the plan;
- d) grade and level all boulevards and ditches within the Lands and adjacent public Right-of-Ways including a minimum of six (6) inches of top soil and shall sod all of the said boulevards and ditches and the Developer shall plant trees of no less than five (5) years maturity on the said boulevards which trees shall be spaced and shall be of such species as shall be prescribed by the City's Director of Community Services but such spacing shall not be more than fifty (50) feet apart;
- e) provide a storm water management report for the Lands, which report shall be acceptable to the City Engineer prior to issuance of

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a building permit. The report shall contain among other things, a calculation of run-off generated for both pre and post development, retention of the difference in flows onsite, conveyance system details, etc;

- f) provide all plans of ingress and egress to the Lands, which plans shall be acceptable to the City Engineer as evidenced by the Developer obtaining a driveway permit for permanent access to a public Right-of-Way;
- g) provide all plans of Municipal Above Ground Improvements and Municipal Underground Improvements for the Lands and adjacent public Right-of-Way, which plans shall be acceptable to the City Engineer prior to issuance of a building permit; and the Developer shall construct said Municipal Above Ground and Municipal Underground Improvements in compliance with said plans at the full expense of the Developer;
- h) provide along with the submitted plan, a detailed cost estimate using pricing from the Developers Consulting Engineer for the Municipal Above Ground and Municipal Underground Improvements, which will be located in the public right-of-way's or other offsite improvements for those Municipal Above Ground and Municipal Underground Improvements which will become assets of the City. The detailed cost estimate shall be broken down into the following categories, with the following minimum details:
 - Road – length, width and materials
 - Water Main – length, size, material, number of valves and sizes and number of fire hydrants
 - Water Service – number, sizes and materials
 - Sewer Main – length, size, number of manholes and materials
 - Sewer Services – number, size and materials
 - Storm Sewer – length, sizes, materials and number of man holes
 - Inlets – number, casting type and materials. Length, size and material for lateral pipe
 - Stormwater Retention Facilities – type, size and capacity
 - Sidewalk – length, width, materials
- i) obtain from the City Engineer a certificate to state that the construction of the Municipal Above Ground Improvements and Municipal Underground Improvements as required by this Agreement for the Lands and adjacent public Right-of-Way, has been satisfactorily completed with or without conditions and this certificate must accompany application made to the City Planning & Building Safety Department 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 this Agreement null and void, and be termed a default to this 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.

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5. From and effective on the date of written acceptance from the City Engineer for all Municipal Above Ground Improvements and Municipal Underground Improvements required pursuant to this 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 this 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 Agreement or the warranty until such time as any defects or failures, if 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:

- a) to, design and construct the sidewalk, curb and gutter, bordering the westerly limits of 3rd Street from Rosser Avenue to the northerly property line of the Lands, to the latest City of Brandon standards. Installation of the sod within the boulevard, is also a requirement of the Developer;
- b) to, construct the northerly access and southerly egress points as per the attached Schedule "B", to the latest City of Brandon Standard Specifications. The City reserves the right to request the reconfiguration and/or installation of signage, of the access/egress points, should it be determined that the functional operation impedes traffic on 3rd Street or poses a safety hazard to both pedestrians and motorists;
- c) to contribute, on a one time basis, 10% of the said lands being rezoned pursuant to section 150 (h) of *The Planning Act*. This contribution will be a combination of cash and land totaling 10% with a raw land value based on \$44,460.00 per hectare or \$18,000.00 per acre as established by the "Property Division of the City's Development Services Department". For this development the contribution is as follows (as per attached Schedule "B"):

$$\begin{array}{l} \text{a) } \underline{0.2525238} \text{ hectares} \quad \times 10\% = \text{b) } \underline{0.02525238} \text{ hectares} \\ \text{Total area of land being developed} \quad \quad \quad \text{Total land required for public reserve} \\ \text{to date (see attached Schedule "B")} \end{array}$$

$$\begin{array}{l} \text{b) } \underline{0.02525238} \text{ hectares} \quad - \quad \text{c) } \underline{0.000} \text{ hectares} \\ \text{Total land required for public reserve} \quad \quad \quad \text{Land contributed to public reserve} \end{array}$$

$$= \text{d) } \underline{0.02525238} \text{ hectares} \\ \text{Land owing to equal 10\% contribution}$$

$$\begin{array}{l} \text{d) } \underline{0.02525238} \text{ hectares} \quad \quad \quad \times \quad \underline{\$44,460.00} \\ \text{Land owing to equal 10\% contribution} \quad \quad \quad \text{Monetary value per hectare} \end{array}$$

$$= \underline{\$ 1,122.72} \\ \text{Monetary contribution}$$

$$= \underline{\$1,122.72} \\ \text{Contribution for this Agreement}$$

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- d) that, pursuant to the Phase I and Phase II Environmental Site Assessments, prepared by Pinchin Environmental on April 18, 2011 and June 10, 2011, respectively, the Lands have been impacted due to contaminants discovered on-site;
- e) that, the Developer acknowledges and agrees the Lands have existing contaminants and is adjacent to two (2) known impacted site and that the Lands may be subject to the migration or presence of methane gas, related gases and/or leachate and the Developer covenants and agrees to indemnify and save harmless the City against, and does hereby release the City from, any and all actions, claims, demands, suits, costs, judgments or losses directly or indirectly arising as a result of the presence of contaminants or any future migration of methane gas, related gases and/or leachate onto the Lands or any part thereof;
- f) that, the Developer acknowledges and agrees that in developing or subdividing the Lands, does so at its own risk and cost and covenants and agrees to take or cause to be taken all reasonable precaution and do all things reasonably necessary to ensure that the contamination and any future migration of methane, related gases, and/or leachate is stopped and that any gases present are dissipated;
- g) that, the Developer covenants and agrees that all new buildings to be located on the Lands or all uses to be made of the said Lands shall be designed and constructed at the sole risk and responsibility of the Developer and the Developer shall be solely responsible to determine the proper design features for any such buildings in view of the existence of contaminants, and being adjacent to the two (2) impacted sites;
- h) that, the Developer acknowledges and agrees that no warranty has been made or implied by the City respecting the suitability of the Lands for the construction of any new buildings or uses thereon and acknowledges that any building permit to be issued by the City of Brandon Planning & Building Safety Department or by the City or any other government authority will be issued at the request of the Developer and the issuance of such building permit shall not be deemed to be a warranty by the City or any other such government authority and that the covenants of the Developer herein contained shall continue notwithstanding the issuance of any building permit;
- i) that, the Developer acknowledges that migration of methane gas, related gases, and/or leachate may have occurred, or could in the future occur, from the adjacent impacted sites and affect the Lands and the Developer does hereby release the City from any claim which it might now or hereafter have with respect to such migration;
- j) that, the Developer does hereby accept full responsibility and assumes all costs in determining whether there has been, is now, or whether in the future there will be, any migration of methane gas, related gases and/or leachate which may affect the Lands and shall be responsible for all future testing with respect thereto either on the Lands or in or on any new buildings located thereon;
- k) that Clause 3 h) is not applicable to this Agreement.

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7. The Developer agrees to furnish security upon execution of this Agreement for any and all of its obligations pursuant to this Development Agreement, by means of an Irrevocable Letter of Credit for the amount of **Thirty Thousand dollars (\$30,000.00)**. The issuer of the Irrevocable Letter of Credit, and the form and content thereof, shall be subject to the approval of the City. This will be a one-time application and will cover the

Developer for this Development Agreement entered into. City approval and building permits for the Lands will not be issued until the Irrevocable Letter of Credit is in full force and effect, the duration of which must operate continuously throughout the currency of this Development 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 to comply with the terms of this Agreement shall result, at the discretion of the City, in action against the security as presented by the Developer.

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 by the Brandon & Area Planning District.
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, its 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 this Agreement.
12. The City shall be entitled to register a Caveat against all of the Lands affected by this 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, successors and assigns, and the covenants contained herein shall be deemed to be covenants running with the Lands and shall enure to the benefit of and be binding upon future owners thereof. 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.

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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.

**THE MANITOBA HOUSING AND
RENEWAL CORPORATION**
Per:

Witness Signature

Witness Name

Witness Address

Name:
Title:

"I am an employee of the Corporation
and have authority to bind"

Witness Signature

Witness Name

Witness Address

Name:
Title:

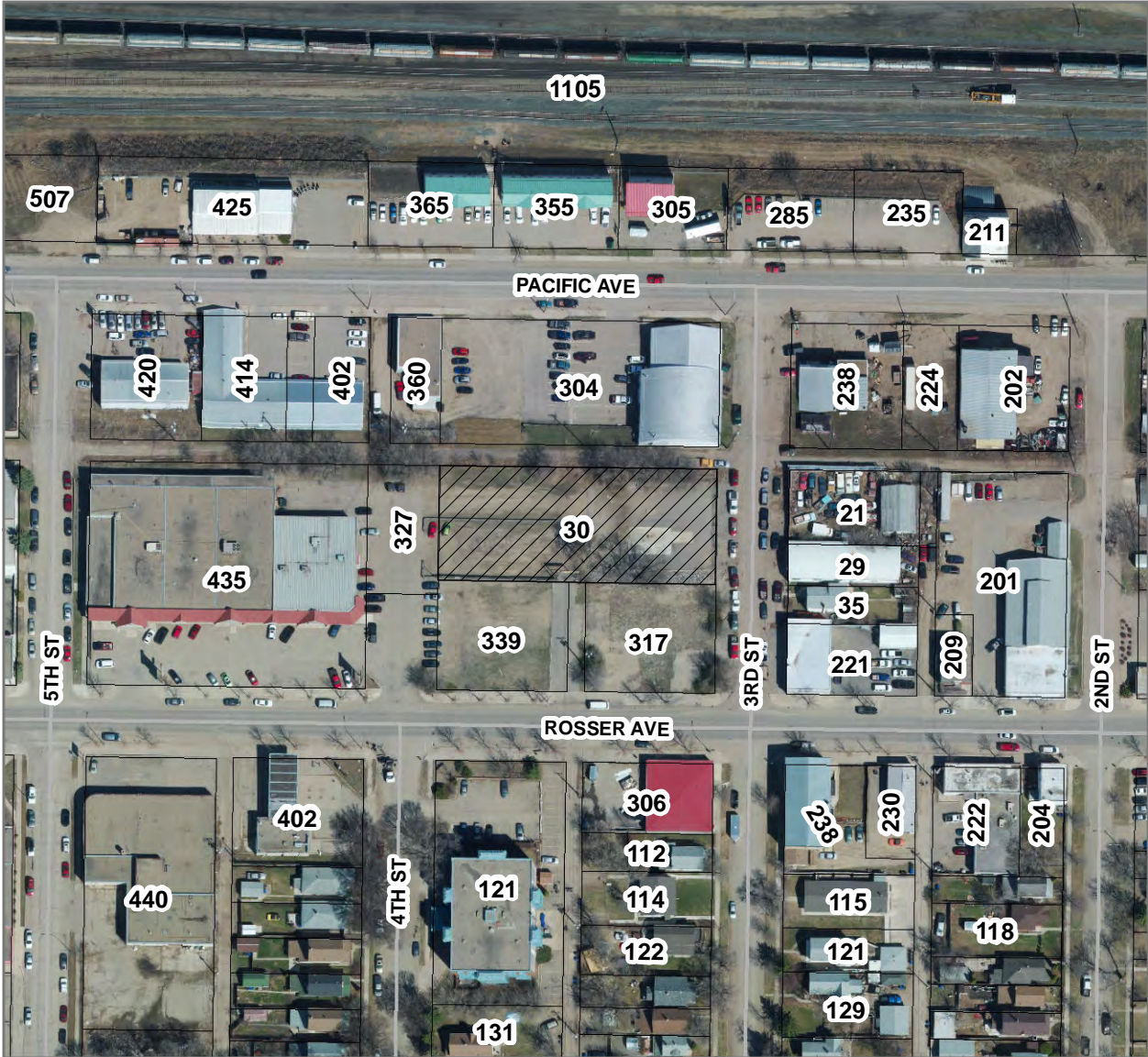
"I am an employee of the Corporation
and have authority to bind"




CITY OF BRANDON
Per:

Patrick Pulak, P. Eng., CITY ENGINEER

"I am an employee of the Corporation
and have authority to bind"

Conditional Use Application



<p>Application C-05-16-B 30 - 3rd Street</p>	<p>0 25 50 100 Meters</p> <p>0 50 100 200 Feet</p>	
<p>LEGEND</p> <p> Affected Lot(s)</p>	<p>City of Brandon Planning & Building Safety Department</p>	<p>N</p> 
	<p>Map Created: 4/13/16</p> <p>Revised:</p>	



GENERAL NOTES

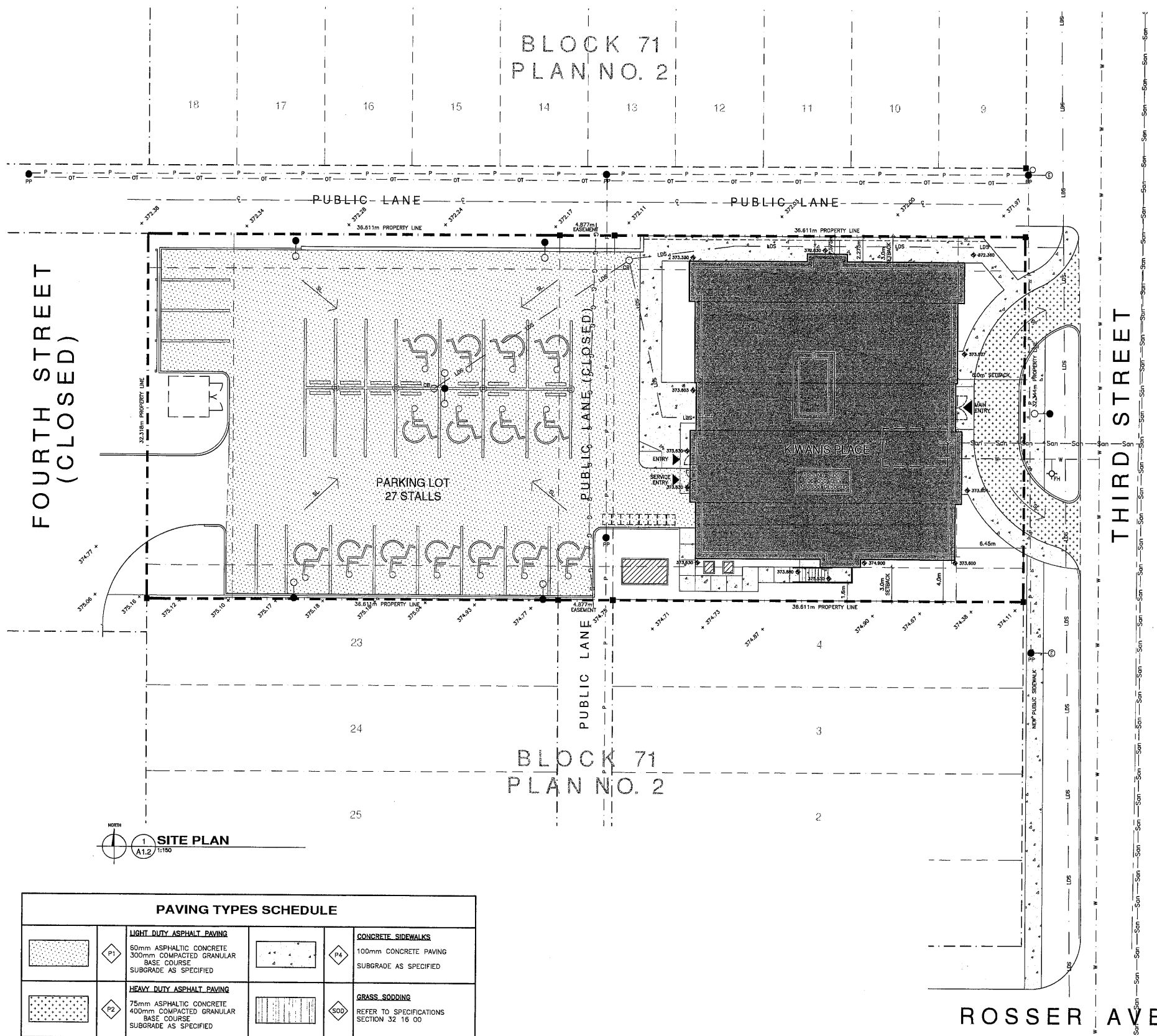
1. DRAWINGS MUST NOT BE SCALED.
2. ALL DIMENSIONS ARE IN MILLIMETRES UNLESS NOTED OTHERWISE.
3. THE GENERAL CONTRACTOR SHALL VERIFY ALL DIMENSIONS, DATUMS, AND LEVELS PRIOR TO THE COMMENCEMENT OF THE WORK. ALL ERRORS AND OMISSIONS SHALL BE REPORTED TO THE ARCHITECT IMMEDIATELY.
4. VARIATIONS AND MODIFICATIONS TO THE WORK SHOWN ON THESE DRAWINGS SHALL NOT BE CARRIED OUT WITHOUT WRITTEN PERMISSION FROM THE ARCHITECT.
5. ALL DIMENSIONS ARE TO FACE OF STEEL STUD, FACE OF MASONRY OR FACE OF CONCRETE UNLESS NOTED OTHERWISE.
6. DRAWINGS AND SPECIFICATIONS ARE PROPERTY OF THE ARCHITECT. ANY REPRODUCTIONS OF THE DRAWINGS OR SPECIFICATIONS SHALL BE MADE ONLY AFTER WRITTEN AUTHORIZATION FROM THE ARCHITECT AND SHALL REMAIN PROPERTY OF THE ARCHITECT.
7. ALL INTERIOR PARTITION WALLS ARE TO BE CONSTRUCTED TO THE UNDERSIDE OF HOLLOW CORE FLOOR OR ROOF STRUCTURE ABOVE UNLESS NOTED OTHERWISE.
8. ALL ANGLES SHOWN ARE 45° UNLESS NOTED OTHERWISE.
9. THE GENERAL CONTRACTOR SHALL VERIFY THE LOCATION OF ALL SITE SERVICES WITH THEIR RESPECTIVE UTILITY COMPANIES PRIOR TO COMMENCEMENT OF WORK; CO-ORDINATE WITH MECHANICAL AND ELECTRICAL SERVICES FOR TIE-INS.

LEGAL DESCRIPTION

LOTS 5 TO 8 BOTH INCLUSIVE AND LOTS 19 TO 22 BOTH INCLUSIVE, BLOCK 71, PLAN 2, BRANDON LAND TITLES OFFICE (S.S. PLAN NO. 307, BLTD) AND PARCEL A, PLAN NO. 53413.
 SITE AREA = 2413 SQ.M. (0.24 HA)
 ZONING = HUB TRANSITIONAL (HTR)

SITE RENOVATION NOTES

EXISTING OVERHEAD POWER DISTRIBUTION LINES & POLES TO REMAIN. PROTECT FROM DAMAGE DURING DEMOLITION & CONSTRUCTION, COORDINATE W/ LOCAL UTILITY.
 EXISTING UNDERGROUND GAS MAIN BELOW PUBLIC LANE TO REMAIN, PROTECT FROM DAMAGE DURING EXCAVATION & CONSTRUCTION, COORDINATE W/ LOCAL GAS UTILITY.
 NEW EMERGENCY GENERATOR C/W CONCRETE HOUSEKEEPING PAD.
 CONDENSING UNITS C/W CONCRETE HOUSEKEEPING PADS, COORD W/ MECHANICAL.



SITE PLAN
 1
 A1.2
 1:150

PAVING TYPES SCHEDULE			
	LIGHT DUTY ASPHALT PAVING 60mm ASPHALTIC CONCRETE 300mm COMPACTED GRANULAR BASE COURSE SUBGRADE AS SPECIFIED		CONCRETE SIDEWALKS 100mm CONCRETE PAVING SUBGRADE AS SPECIFIED
	HEAVY DUTY ASPHALT PAVING 75mm ASPHALTIC CONCRETE 400mm COMPACTED GRANULAR BASE COURSE SUBGRADE AS SPECIFIED		GRASS SODDING REFER TO SPECIFICATIONS SECTION 32 16 00
	CONCRETE APPROACHES 200mm REINFORCED CONCRETE SUBGRADE AS SPECIFIED	GENERAL NOTES REFER TO CITY OF BRANDON STANDARD CONSTRUCTION SPECIFICATIONS FOR COMPOSITION & INSTALLATION OF GRANULAR BASE COURSE MATERIAL, ASPHALTIC CONCRETE PAVING & CONCRETE SIDEWALK PAVING.	

SYMBOL KEY	
	OVERHEAD POWER LINE
	OVERHEAD TELEPHONE LINE
	UNDERGROUND GAS SERVICE
	LAND DRAINAGE SEWER
	SANITARY SEWER
	UNDERGROUND WATER SERVICE
	LIGHT STANDARD, EXISTING
	LIGHT STANDARD, REFER TO ELECTRICAL
	POWER POLE, EXISTING
	FIRE HYDRANT, REFER TO CIVIL
	CATCH BASIN, REFER TO CIVIL

No	Revision	Date	By
3	PRE-TENDER REVIEW	18-04-11	DCL
2	60% RESUBMITTAL	15-11-30	DCL
1	60% REVIEW	15-01-15	JM

This drawing shall not be scaled. Follow plan dimensions only.
 The contractor shall satisfy himself that all dimensions and information shown are correct.
 Prior to commencement of work report any discrepancies to the consultant.
 Variations and modifications to work will not be allowed without written permission (MCD).
 This drawing shall not be used for construction purposes until approved by an authorized officer of HCD.



JF (HCD)	RD (HCD)
Project Manager	Project Leader
MCM	MJF
Designed by	Reviewed by
DCL	2016-04-01
Drawn by	Date (yyyy-mm-dd)



Consultants
mcm architects inc.
 141 st. anne's road, winnipeg, manitoba R2M 2Z3
 158-Bth street, brandon, manitoba R7A 3X1

Project Title
KIWANI PLACE
 30 THIRD STREET
 BRANDON MANITOBA
 Sheet Title
SITE PLAN

Scale	1:150
HCD Asset Number	Consultant Project Number
	2003
Project Number	Sheet Number
	A1.2
	Revision