

COMMERCIAL AND INDUSTRIAL DEVELOPMENT AGREEMENT

THIS AGREEMENT is made, in duplicate, this 15th day of September 2008.

THE RURAL MUNICIPALITY OF DUFFERIN
(the "Municipality")

OF THE FIRST PART,

-and-

THE TOWN OF CARMAN
(the "Town")

OF THE SECOND PART

WHEREAS the Parties believe that there are significant opportunities to promote and enhance commercial and industrial development and growth in both the Rural Municipality of Dufferin and the Town of Carman by working together in a cooperative manner;

AND WHEREAS one of the ways in which the Parties wish to work together is to enter into this Agreement, which provides for:

- a) a sharing of real and personal property taxes paid or payable to them in excess of a certain base amount in respect of certain types of assessed property located in the Rural Municipality of Dufferin and the Town of Carman, and
- b) a mechanism for the Municipality and the Town to use part of such taxes to provide infrastructure services, such as sewer, water, natural gas, hydro and roads to certain types of property within their respective boundaries;

AND WHEREAS section 259 of *The Municipal Act* provides that two (2) or more municipalities may enter into an agreement to share taxes or grants in lieu of taxes paid or payable to them of any of them;

AND WHEREAS both the Rural Municipality of Dufferin and the Town of Carman are municipalities within the meaning of the said *Municipal Act*.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of One (\$1.00) Dollar now paid by each of the Parties hereto the other of them and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

STATEMENTS AND RECITALS

1. The Statements and Recitals contained in the preamble hereto are true in substance and in fact and form an integral part hereof.

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DEFINITIONS

2. In this Agreement, unless the context specifically indicates otherwise, the following words have the following meanings:
- a) "Base Assessment" means the portioned final assessment by the Municipality and the Town in respect of Property, as set in the 2008 Assessment Roll of the two municipalities and does not change from year to year for the purpose of this agreement. The properties and assessments included in this Base Assessment are included as Schedule "A" to this agreement.
 - b) "Base Taxes" means those real and personal property taxes in respect of Property determined by multiplying the Base Assessment by the mill rate of the Municipality or the Town applicable to such Property and shall not include any school tax levy;
 - c) "Joint committee" means a committee overseeing this agreement comprised of:
 - i) the Reeve of the Municipality (or in his or her absence, his or her designate from Council) of the Municipality and the Deputy Reeve of the Municipality, and
 - ii) the Mayor of the Town (or in his or her absence, his or her designate from Council) and the Deputy Mayor of the Town;or any other representative appointed by the Head of the Municipality or Town (collectively the "Representatives") to perform those duties as more fully set out in paragraph 6 hereof;
 - d) "Property" means all property located in the Rural Municipality of Dufferin and the Town of Carman and included in the classes set out in Regulation 184/98 of *The Municipal Assessment Act*, CCSM, cM226 in Section 7(1) Pipeline Property, Section 7(2) Railway Property, Section 9 Golf Course Property and Section 10 Other Property.
 - e) "Proponent" means the Municipality and/or the Town, as the case may be;
 - f) "Services" means the provision of infrastructure services such as sewer, water, natural gas, hydro, rail line/spurs and roads and the construction of all such works and things as may be necessary to provide such services; and
 - g) "Taxes" means all real and personal property taxes (determined by multiplying the portioned assessment for Property by the mill rate of the Municipality or the Town applicable to such Property) in respect of Property in any given calendar year in excess of Base Taxes, and excluding any school tax levies.
 - h) "Joint Fund" means a general ledger account that will be formed by both municipalities to hold funds realized through this agreement, such funds are to be used to fund joint ventures consisting of but not limited to, Carman

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Dufferin Fire Department, Carman Dufferin Recreation Commission and Boyne Regional Library or any other joint project mutually agreed upon by the two councils. The joint account has to be expended in the following year for operating expenses of joint ventures until such time as the joint fund annual balance exceeds the amount of operating requests by jointly funded initiatives. At the point when the joint fund exceeds the amount requested for allocation for annual operating expenses of the joint ventures, then the distribution of the excess funds will be allocated upon a recommendation by the Joint Committee to the two Councils.

SHARING OF TAXES

3. Subject to paragraph 4 hereof, Taxes shall be shared between the Municipality and the Town as follows:
 - a) The Municipality shall be entitled to eighty (80%) per cent of the Taxes in respect of Property located within the boundaries of the Rural Municipality of Dufferin and the remaining twenty (20%) per cent of such Taxes will be journalized to the joint fund account to be used for joint projects between the Town and Municipality;
 - b) The Town shall be entitled to eighty (80%) per cent of the Taxes in respect of Property located within the boundaries of the Town of Carman and the remaining twenty (20%) percent of such Taxes will be journalized to the joint fund for joint projects between the Town and Municipality;
 - c) The Town and Municipality, by November 30 of each year, shall calculate and report to each other, the total Municipal Taxes realized from the property in this agreement. The Town and Municipality shall journalize to a joint fund by the 31st day of December in each year, the Taxes as defined in this agreement.
 - d) The Joint Committee shall make recommendations to the two councils as to the joint services that funds from this joint fund may be contributed towards. The funds will be allocated for disbursement and included in the next year's financial plan for each municipality.

CAPITAL COSTS

4.
 - a) In order to promote and enhance commercial and industrial development and growth in both the Rural Municipality of Dufferin and the Town of Carman, the Parties agree that, subject to receiving the recommendations of the Joint Committee and the approval of the other Party pursuant to subparagraph 7(d) hereof, the Proponent may do all things as may be necessary to provide Services to part or parts of the Property in accordance with the Proponent's submission and, in order to do so, the Proponent shall be entitled to use Taxes to provide the services to such part or parts of the Property; and
 - b) The use of Taxes for the purposes set out in subparagraph 4(a) hereof shall be in priority to the sharing of Taxes as set out in paragraph 3 hereof. For greater

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certainty, when calculating Taxes to be shared in accordance with paragraph 3 hereof, the Parties shall firstly deduct (and set aside, if necessary) that portion of the Taxes used or required pursuant to subparagraph 4(a) hereof. The capital costs shall be calculated and allocated on each individual property. If the capital costs incurred exceed the taxes to be shared on a property then the property does not become a tax sharing property until the year that the costs are fully recovered and thus allow for the sharing of Taxes to occur.

ANNEXATION

5. a) If annexation occurs in the Municipality the base amount for the Municipality will be decreased by the assessed value, as determined in the 2008 Assessment Roll, of the annexed property and the base amount for the Town will be increased by the assessed value, as determined in the 2008 Assessment Roll of the annexed property.
- b) If annexation occurs in the Town the base amount for the Town will be decreased by the assessed value, as determined in the 2008 Assessment Roll, of the annexed property and the base amount for the Municipality will be increased by the assessed value, as determined in the 2008 Assessment Roll of the annexed property.

ESTABLISHMENT OF JOINT COMMITTEE

6. a) The Joint Committee shall be the Executive Committee of each municipality and shall consist of the Heads of Council and the Deputy Heads of Council. The Municipality or the Town may replace one or more of their respective Representatives at any time or times, as they shall see fit, however the Heads of Council shall always form part of this Joint Committee.
- b) The Chief Administrative Officer of either municipality shall ensure that adequate support staff and resources are made available to the Joint Committee at a cost to be shared equally between the Parties or as they shall otherwise agree.

DUTIES OF JOINT COMMITTEE

7. The Joint Committee shall have the following duties and such other duties as the Parties may jointly prescribe.
 - a) The Joint committee shall meet at least four (4) times each calendar year and shall also meet at the request of either the Municipality or the Town;
 - b) A quorum for a meeting of the Joint Committee shall be a majority of the Representatives and, subject to the approval of the Municipality and the Town, the Joint committee shall be entitled to elect its own Chairperson, establish its own rules and procedures and do all such things as may be necessary in order to ensure the efficient operation of the Joint Committee.

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- c) Each Representative shall have one (1) vote on all matters and a decision of the Joint Committee shall require no less than a majority of votes cast for the matter to be approved; and
- d) Upon written submission by a Proponent, the Joint committee shall meet and determine whether, on the merits of the submission, it believes the submission qualifies for the sharing of Taxes under this Agreement and, if so the Joint Committee shall recommend such submission to both the Municipality and the Town or their respective economic development agencies or the appropriate department within the Municipality or the Town charged with the responsibility for promotion and enhancement of economic development. The Proponent may, subject to the recommendation aforesaid and the approval of the other Party hereto, proceed to provide the Services to part or parts of the Property in accordance with the submission. In doing so, the Proponent shall be entitled to use Taxes to cover the cost of providing the Services.

RESOLUTION OF DISPUTES

- 8. If the Joint Committee cannot agree on a matter, the matter shall be referred to the Councils of the Municipality and the Town for review and determination. The Municipality and the Town agree to convene a joint meeting of the Councils and if cannot resolve the matter, either Party may refer the matter to arbitration as provided in paragraph 9 hereof.
- 9. If, at any time during the term hereof, any dispute, difference or question shall arise between the Municipality and the Town touching matters not specifically provided for herein, or any issue shall arise touching the construction, meaning or effect of this Agreement or anything herein contained, or the rights or liabilities of the Parties under this Agreement, then every such dispute, difference or question shall be referred to a single arbitrator, if the Parties can agree upon one. Otherwise, the matter shall be referred to a Board of three (3) Arbitrators, one to be appointed by each Party and the third to be appointed by the first two named Arbitrators in writing, before they enter upon the business of the reference. If either of the Party shall refuse or neglect to appoint an Arbitrator (the "Non-Appointing Party") within ten (10) days after the other Party shall have appointed an Arbitrator (the "Appointing Party"), and the Appointing Party shall have serviced a written notice upon the Non-Appointing Party requiring the Non-Appointing Party to make such appointment, and the Non-Appointing Party fails to make such appointment with five (5) days of receipt of such notice, then Arbitrator first appointed shall, at the request of the Appointing Party, proceed to hear and determine the matter at issue as if he or she were a single Arbitrator appointed by both Parties for that purpose. The award or determination which shall be made by the said Arbitrator, the Arbitrators or the majority of them, shall be final and binding upon the Parties hereto and their respective successors and permitted assigns. In the event that the first two named Arbitrators are unable to agree upon a third within seven (7) days after the appointment the last, that on motion of either Arbitrator to any Judge of the Court of Queen's Bench in Manitoba, such Judge shall be entitled to name the third Arbitrator, whose

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appointment shall be final and binding upon the Parties. In all respects, subject to the terms of this Agreement, *The Arbitration Act (Manitoba)* and amendments thereto shall govern such proceedings and the Arbitrator or Arbitrators shall be entitled to fix and apportion liability for the costs of the Arbitration.

TERM

10. The Parties recognize and agree that by entering into this Agreement, they are irrevocably committing to a course of action which may be very difficult, if not impossible, to unwind. Therefore, this Agreement shall continue and remain in full force and effect for the benefit of both Parties until such time as they mutually agree to terminate this Agreement.

NOTICE

11. a) Any Notice to be served on either of the Parties by the other shall be personally service, or shall be sent by prepaid recorded delivery or registered mail or facsimile at the following addresses or numbers:

Rural Municipality of Dufferin
Address: Box 100
12-2nd Avenue SW
Carman MB R0G 0J0
Attention: Chief Administrative Officer
Facsimile Number: (204) 745-6348

Town of Carman
Address: Box 160
12-2nd Avenue SW
Carman MB R0G 0J0
Attention: Chief Administrative Officer
Facsimile Number: (204) 745-2903

- b) Notice provided in accordance with paragraph 11(a) shall be deemed to have been received by the addressee Party immediately upon personal delivery, or three (3) business days after mailing, or one (1) day after facsimile transmission, provided that such facsimile transmission is received on a business day, otherwise on the next business day. In the event of a threatened or actual postal strike or disruption, all notice shall be served personally or by facsimile transmission.

GOVERNING LAW

12. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Manitoba and the Parties irrevocably attorn to the jurisdiction of the Courts of the Province of Manitoba.

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FURTHER DOCUMENTS

13. The Parties agree that each of them shall, upon the reasonable request of the other, do or cause to be done all further lawful acts, deeds and assurances whatsoever for the better performance of the terms and conditions of this Agreement.

ENUREMENT/TIME OF THE ESSENCE

14. This Agreement shall enure to benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Time shall be of the essence hereof.

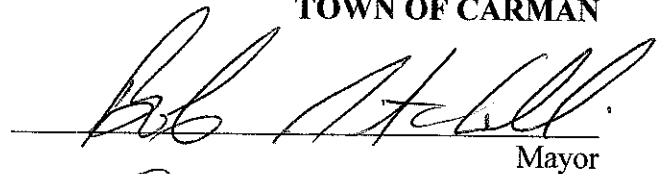
IN WITNESS WHEREOF, the Parties hereto have executed these presences as of the day and year first above written.

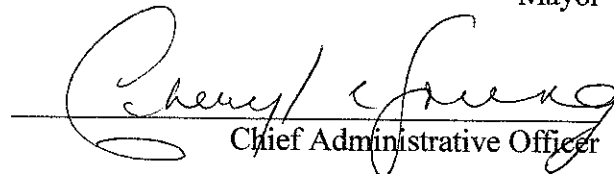
RURAL MUNICIPALITY OF DUFFERIN


Reeve


Chief Administrative Officer

TOWN OF CARMAN


Mayor


Chief Administrative Officer